

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB183)

Received: 04/21/2005

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Michael Huebsch (608) 266-2401

By/Representing: Jodi

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - drugs

Extra Copies:

Submit via email: YES

Requester's email: Rep.Huebsch@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Methamphetamine and pseudoephedrine

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 04/25/2005	wjackson 04/28/2005		_____			
/1			chaugen 04/28/2005	_____	lemery 04/28/2005	lemery 04/28/2005	
/2	mdsida 04/29/2005	wjackson 05/02/2005	pgreensl 05/03/2005	_____	sbasford 05/03/2005	sbasford 05/03/2005	
/3	mdsida	wjackson	jfrantze	_____	sbasford	sbasford	

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	05/04/2005	05/04/2005	05/04/2005	_____	05/04/2005	05/04/2005	
/4	mdsida 05/05/2005	wjackson 05/05/2005	jfrantze 05/05/2005	_____ _____	sbasford 05/05/2005	sbasford 05/05/2005	

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5/5

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1/4 WJ 55

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/1		1/2 wj 5/2	chaugen 04/28/2005	5/3 SEP	lemery 04/28/2005	lemery 04/28/2005	

FE Sent For:

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P8

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*Redrafted from
20095/1*

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AB183)

Received: **04/21/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB: *20095/1*

For: **Michael Huebsch (608) 266-2401**

By/Representing: **Jodi**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Huebsch@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Methamphetamine and pseudoephedrine

Instructions:

See Attached

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/?	mdsida	<i>1 NJ 4/26</i>	<i>OK 4-25</i>	<i>OK 4-28</i>			

FE Sent For:

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*****DRAFT*****

Meth Bill Discussion Items:

Purchase Limit: 7.5 grams per 30 days, unless purchaser has a prescription.

Possession Limit: Possession of 9 grams, creates a rebuttable presumption of intent to manufacture meth

Definition of "Meth Precursor" – "Any material, compound, mixture, or preparation that contains any quantity of ephedrine or pseudoephedrine or any of their salts, isomers, and salts of isomers,"

Any product containing pseudoephedrine would be classified as a Schedule V controlled substance, with exemptions.

Exemptions: Liquid and liquid filled gel cap products would be exempt from the Schedule V designation. The controlled substances board, through rule, would be able to add or remove any products that can or cannot be made into meth (this requires a slight technical change to allow the CSB to schedule over the counter pseudoephedrine products).

Other provisions:

Pharmacists would be immune from prosecution for being shown a fake ID or if they self-report infractions relating to the sales limits within 30 days (Senate)

Logbooks must be kept for 2 years, may only be viewed by pharmacists or law enforcement, must be signed by the pharmacist (federal law) and may be kept electronically.

Pseudoephedrine may be dispensed by pharmacist or someone working under the direction of a pharmacist (Assembly)

3 month implementation date (Senate)

Penalty for distribution of meth or a controlled substance analog to meth to a minor is a Class G felony. For clarification, this provision deals only with providing meth or something substantially similar to meth to a minor. It does not deal at all with meth precursors. (Senate)

No person may knowingly solicit, hire, direct, employ, or use another to purchase, on behalf of the person, pseudoephedrine with the intent to acquire more than 7.5 grams. (Assembly)

No person may purchase more than 7.5 grams per 30 days from a single seller other than in person from a pharmacy or pharmacist. (Assembly)

Clarify that the total weight of the pseudoephedrine counted towards the purchasing and possession limits does not include the weight of other active or nonactive ingredients.

Exempt warehouses that are DEA-registered from the requirement that pseudoephedrine products be kept in a cage.

Remove liquid nitrogen provisions.

Other portions on which the bills agree would be kept as/is.

2005 - 2006 LEGISLATURE

LRBs0047/4
MGD&CTS:wj:pb

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stays

and
50096/1

Wed.

Today please

SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 78

LPS: Inserts
are somewhat
out of order.

April 1, 2005 - Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING AND
LONG TERM CARE.

Regen

1 AN ACT *to renumber* 961.22 (3) (a), 961.437, 961.49, 961.61 and 961.62; *to*
2 *renumber and amend* 961.46; *to amend* 101.10 (title), 101.10 (3) (e), 895.555
3 (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m)
4 (d), 961.23 (1), 961.23 (2), 961.23 (3), 961.23 (4), 961.23 (5), 961.41 (1r), 961.49
5 (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f), 111.335 (1) (cs) 5.,
6 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag) 8m.,
7 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.01 (17m), 961.01 (20c),
8 961.01 (20d), 961.01 (20e), 961.22 (3) (am), 961.23 (6), 961.23 (8), 961.235,
9 961.452, 961.46 (2), 961.49 (2m), 961.63, 961.65, 973.017 (8) (a) 3. and 973.017
10 (8) (c) of the statutes; **relating to:** pseudoephedrine and other materials used
11 to produce methamphetamine, the distribution of methamphetamine to
12 minors, and providing penalties.

insert anl:line
insert analysis
insert anl:line

The people of the state of Wisconsin, represented in senate and assembly, do
enact as follows:

1 SECTION 1. 101.10 (title) of the statutes is amended to read:

2 **101.10 (title) Storage and handling of anhydrous ammonia; theft of**
3 **liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.**

4 SECTION 2. 101.10 (3) (e) of the statutes is amended to read:

5 101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession
6 of liquid nitrogen, anhydrous ammonia belonging to another, or anhydrous ammonia
7 equipment belonging to another, without the other's consent and with intent to
8 deprive the owner permanently of possession of the liquid nitrogen, anhydrous
9 ammonia, or anhydrous ammonia equipment.

10 SECTION 3. 101.10 (3) (f) of the statutes is created to read:

11 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia
12 belonging to another into the atmosphere. This paragraph does not apply if the
13 owner has authorized the actor to exercise control over the anhydrous ammonia or
14 has consented to its release.

15 SECTION 4. 111.335 (1) (cs) 5. of the statutes is created to read:

16 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.65 with intent
17 to manufacture methamphetamine under that ~~sub~~ section or under a federal law or
18 a law of another state that is substantially similar to s. 961.65.

19 SECTION 5. 125.12 (2) (ag) 5m. of the statutes is created to read:

20 125.12 (2) (ag) 5m. The person has been convicted of possessing any of the
21 materials listed in s. 961.65 with intent to manufacture methamphetamine under
22 that ~~sub~~ section or under a federal law or a law of another state that is substantially
23 similar to s. 961.65.

24 SECTION 6. 125.12 (2) (ag) 6m. of the statutes is created to read:

1 125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the
2 premises for which the license under this chapter is issued, to possess any of the
3 materials listed in s. 961.65 with the intent to manufacture methamphetamine.

4 **SECTION 7.** 125.12 (4) (ag) 7m. of the statutes is created to read:

5 125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of
6 the materials listed in s. 961.65 with intent to manufacture methamphetamine
7 under that ~~section~~ section or under a federal law or a law of another state that is
8 substantially similar to s. 961.65.

9 **SECTION 8.** 125.12 (4) (ag) 8m. of the statutes is created to read:

10 125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is
11 on the premises for which the license under this chapter is issued, to possess any of
12 the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

13 **SECTION 9.** 895.555 (title) of the statutes is amended to read:
14 **895.555 (title) Liability exemption; anhydrous ammonia and liquid**
15 **nitrogen.**

16 **SECTION 10.** 895.555 (1) of the statutes is amended to read:

17 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person
18 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.
19 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal
20 purpose is immune from any civil liability for acts or omissions relating to the
21 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that
22 cause damage or injury to an individual, if that damage or injury occurs during the
23 individual's violation of s. 101.10 (3) (c), (d), or (e), or (f).

24 **SECTION 11.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

1 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under
2 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.65,
3 the court shall order one of the following penalties:

4 SECTION 12. 939.32 (1) (g) of the statutes is created to read:

5 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is
6 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

7 SECTION 13. 939.62 (2m) (a) 2m. am. of the statutes is created to read:

8 939.62 (2m) (a) 2m. am. A crime under s. 961.65.

9 SECTION 14. 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

10 939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any
11 other state or, prior to April 28, 1994, under the law of this state that is comparable
12 to a crime specified in subd. 2m. a., ^{this} am. b., or c.

13 SECTION 15. 939.62 (2m) (d) of the statutes is amended to read:

14 939.62 (2m) (d) If a prior conviction is being considered as being covered under
15 par. (a) 1m. b. or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or
16 2m. a., am. b., or c., the conviction may be counted as a prior conviction under par.
17 (b) only if the court determines, beyond a reasonable doubt, that the violation
18 relating to that conviction would constitute a felony specified under par. (a) 1m. a.
19 or 2m. a., am. b., or c. if committed by an adult in this state.

20 SECTION 16. 961.01 (14) of the statutes is created to read:

21 961.01 (14) "^{llt} ~~Methamphetamine precursor~~" means any material, compound,
22 mixture, or preparation that contains any quantity of ephedrine ^{Ephedrine product} or pseudoephedrine
23 or any of ^{its} salts, isomers, and salts of isomers but does not include a product to
24 which sub. (20c) (a) or (b) applies.

25 SECTION 17. 961.01 (17m) of the statutes is created to read:

Handwritten notes and signatures on the left margin, including "GTS" and "me".

material,
compound,
mixture, or
preparation

who is not
a pharmacist
and who is

1 961.01 (17m) "Pharmacy assistant" means a person working under the
2 supervision of a pharmacist.

3 SECTION 18. 961.01 (20c) of the statutes is created to read:

4 961.01 (20c) "Pseudoephedrine" ^{means} ~~does not include a product containing the~~
5 ~~chemical~~ pseudoephedrine or any of its salts, isomers, or salts of isomers, if any of the
6 following applies: a liquid-filled pseudoephedrine

but does
not include
such a
product

7 (a) The product is a pseudoephedrine liquid or gelcap. This paragraph does not
8 apply if the package containing the product contains more than 360 milligrams of the
9 chemical pseudoephedrine or any of its salts, isomers, or salts of isomers.

10 (b) The controlled substances board has determined, by rule, that the product
11 cannot be readily used in the manufacture of methamphetamine.

12 SECTION 19. 961.01 (20d) of the statutes is created to read:

13 961.01 (20d) ^{12t} ~~"Pseudoephedrine gelcap"~~ ^{liquid-filled} means a soft gelatin capsule that is
14 intended to be sold at retail and that contains 360 milligrams or less of the chemical
15 pseudoephedrine or any of its salts, isomers, or salts of isomers.

16 SECTION 20. 961.01 (20e) of the statutes is created to read:

17 961.01 (20e) "Pseudoephedrine liquid" means a product that is intended to be
18 sold at retail, that is a liquid at room temperature, and that contains 360 milligrams
19 or less of the chemical pseudoephedrine or any of its salts, isomers, or salts of
20 isomers.

21 SECTION 21. 961.22 (3) (a) of the statutes is renumbered 961.22 (3) (b).

22 SECTION 22. 961.22 (3) (am) ^{2m} of the statutes is created to read:

23 961.22 (3) (am) ^{2m} ~~Pseudoephedrine~~ ^{Any} ~~product~~

24 SECTION 23. 961.23 (1) of the statutes is amended to read:

(c) Pseudoephedrine

quantity
of

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12t
12t

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1 **(7)** No person other than a physician, dentist, veterinarian, or pharmacist may
 2 possess more than 8 ounces of a product containing opium or more than 4 ounces of
 3 a product containing any other schedule V substance ~~be in the possession of any~~
 4 ~~person other than a physician, dentist, veterinarian or pharmacist other than~~
 5 ~~pseudoephedrine~~ at any time without the authorization of a physician, dentist, or
 6 veterinarian. *INS 716*

7 **SECTION 28.** 961.23 (6) of the statutes is created to read:

8 961.23 (6) No person other than a physician, dentist, veterinarian, or
 9 pharmacist may purchase more than 6 ⁷⁰⁵ grams of a ~~product containing~~
 10 pseudoephedrine within a 30-day period without the authorization of a physician,
 11 dentist, or veterinarian. *product*

12 **SECTION 29.** 961.23 (8) of the statutes is created to read:

13 961.23 (8) No person may sell ^a pseudoephedrine to a person under 18 years of
 14 age, and no person under 18 years of age may ^a purchase pseudoephedrine.

15 **SECTION 30.** 961.235 of the statutes is created to read: *products*

16 **961.235 Records relating to ^{of} pseudoephedrine sales.** Records required
 17 under s. 961.23 (4) with respect to the sale of ^a pseudoephedrine may be kept in either
 18 a paper or electronic format and shall be maintained by the pharmacy for at least 5
 19 years. Only a pharmacist or a law enforcement officer may have access to
 20 information recorded under s. 961.23 (4) with respect to the sale of ^a pseudoephedrine.

21 **SECTION 31.** 961.41 (1r) of the statutes is amended to read:

22 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
 23 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), and s. 961.65, an amount includes
 24 the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid
 25 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,

1 ~~methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any~~
 2 ~~controlled substance analog of any of these substances together with any compound,~~
 3 ~~mixture, diluent, plant material or other substance mixed or combined with the~~
 4 ~~controlled substance or, controlled substance analog, or methamphetamine~~
 5 ~~precursors. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the~~
 6 ~~amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)~~
 7 ~~and includes the weight of any marijuana.~~

8 SECTION 32. 961.437 of the statutes is renumbered 961.67.

9 SECTION 33. 961.452 of the statutes is created to read:

10 **961.452 Defenses in certain schedule V prosecutions.** (1) A person who
 11 proves all of the following by a preponderance of the evidence has a defense to
 12 prosecution under s. 961.41 (1) (j) that is based on the person's violation of a condition
 13 specified in s. 961.23 with respect to the person's distribution or delivery of

14 ^a pseudoephedrine ^{product}

15 (a) The person did not knowingly or recklessly violate the condition under s.
 16 961.23.

17 (b) The person reported his or her own violation of the condition under s. 961.23
 18 to a law enforcement officer in the county or municipality in which the violation
 19 occurred within 30 days after the violation.

20 (2) A seller who proves all of the following by a preponderance of the evidence
 21 has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's
 22 violation of a condition specified in s. 961.23 with respect to the person's distribution
 23 or delivery of ^a pseudoephedrine ^{product}

24 (a) The person did not knowingly or recklessly violate the condition under s.
 25 961.23.

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1 (b) The acts or omissions constituting the violation of the condition under s.
2 961.23 were the acts or omissions of one or more of the person's employees.

3 (c) The person provided training to each of those employees regarding the
4 restrictions imposed under s. 961.23 on the delivery of pseudoephedrine ^{products}

5 (3) A person who proves all of the following by a preponderance of the evidence
6 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (6):

7 (a) The purchaser presented an identification card that contained a name or
8 address other than the person's own.

9 (b) The appearance of the purchaser was such that an ordinary and prudent
10 person would believe that the purchaser was the person depicted in the photograph
11 contained in that identification card.

12 (c) The sale was made in good faith, in reasonable reliance on the identification
13 card and appearance of the purchaser, and ^{with} in the belief that the name and address
14 of the purchaser were as listed on the identification card.

15 (4) A person who proves all of the following by a preponderance of the evidence
16 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):

17 (a) The purchaser presented an identification card that indicated that he or she
18 was 18 years of age or older.

19 (b) The appearance of the purchaser was such that an ordinary and prudent
20 person would believe that the purchaser was 18 years of age or older.

21 (c) The sale was made in good faith, in reasonable reliance on the identification
22 card and appearance of the purchaser, and ^{with} in the belief that the purchaser was 18
23 years of age or older.

24 SECTION 34. 961.46 of the statutes is renumbered 961.46 (1) and amended to

25 read:

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9

1 ~~961.46 (1) If Except as provided in sub. (2), if a person violates s. 961.41 (1) by~~
 2 ~~distributing or delivering a controlled substance or a controlled substance analog to~~
 3 ~~a person 17 years of age or under who is at least 3 years his or her junior, the~~
 4 ~~applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the~~
 5 ~~offense may be increased by not more than 5 years.~~

6 SECTION 35. 961.46 (2) of the statutes is created to read:

7 961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)
 8 by distributing or delivering methamphetamine or a controlled substance analog of
 9 methamphetamine to a person 17 years of age or under who is at least 2 years his
 10 or her junior, the person is guilty of a Class I felony.

11 SECTION 36. 961.49 (title) of the statutes is amended to read:

12 **961.49 (title) ~~Distribution of or possession with Offenses involving~~**
 13 **~~intent to deliver or distribute a controlled substance on or near certain~~**
 14 **~~places.~~**

15 SECTION 37. 961.49 of the statutes is renumbered 961.49 (1m).

16 SECTION 38. 961.49 (2m) of the statutes is created to read:

17 961.49 (2m) If any person violates s. 961.65 ~~with intent~~ to deliver or distribute
 18 methamphetamine or a controlled substance analog of methamphetamine and the
 19 delivery, distribution, or possession takes place under any of the circumstances listed
 20 under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment for that crime ^{is}

21 ~~may be~~ increased by 5 years.

22 SECTION 39. 961.61 of the statutes is renumbered 961.003. ✓

23 SECTION 40. 961.62 of the statutes is renumbered 961.005. ✓

24 ~~SECTION 41. 961.63 of the statutes is created to read.~~

and, during the violation, the person intends