

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1099/P1dn
MGD:wlj:pg

January 18, 2005

Chris:

1. Here are a few examples of other midwestern states' penalties for the possession of precursors with intent to manufacture methamphetamine:

| <i>State</i> | <i>Statutory section</i> | <i>Maximum term of imprisonment</i> | <i>Fine</i> |
|--------------|--------------------------|-------------------------------------|-------------------|
| Minnesota | 152.021(2a)(b) | 3 years | \$5,000 maximum |
| Iowa | 124.401(4) | 4 years | \$750-\$7,500 |
| Kansas | 65-7006(a) | 17 years (presumptive) | \$500,000 maximum |

The penalties that this bill provides are closer to Minnesota's and Iowa's than to Kansas's. Under the bill, possession of precursors with intent to manufacture methamphetamine is a Class H felony. (Note that possessing, delivering, or manufacturing methamphetamine-related drug paraphernalia is also a Class H felony under current law.) The maximum total sentence length for a Class H felony is six years, the maximum initial term of confinement is three years, and the maximum fine is \$10,000. Please let me know if that is okay.

2. The bill lists pseudoephedrine as a schedule V controlled substance and limits the amount that a person can purchase within a 48-hour time period to nine grams. That would permit a person to purchase no more than three packages of a product that has pseudoephedrine as the sole active ingredient. (Other states' laws that I have reviewed and that set a similar threshold allow the purchase of either two or three packages.) At the same time, the bill would regulate the sale of products that contain other active ingredients in combination with pseudoephedrine. Is that your intent? (Some states regulate all medications containing methamphetamine precursors, and some regulate only those in which pseudoephedrine is the sole active ingredient.) In addition, Iowa law exempts products containing pseudoephedrine as the product's sole active ingredient if it is in liquid form, if it is intended for use by children, or if the Iowa Board of Pharmacy Examiners, with the concurrence of the Iowa Department of Public Safety, determines that the product is formulated to prevent its conversion into methamphetamine. Do you want to include a comparable exemption? Finally, Oklahoma's nine-gram limitation is based on a 30-day period. The 48-hour period that this bill contains is derived from the restrictions in current law for other schedule

V drugs. Let me know if you want to use a time frame other than the existing one for schedule V drugs.

3. Item 5. in Eric Johnson's letter refers to minors being used to help produce methamphetamine, but the statute that he mentions relates to all drugs. Since s. 961.46 already provides higher penalties for distributing drugs to minors, I assumed that you wanted the Class B penalties to apply only in cases involving methamphetamine.

4. Oklahoma requires a person to present a photo ID when purchasing pseudoephedrine. Wisconsin law requires a person purchasing a schedule V drug only to "present to the seller that person's correct name and address." Do you want to include a photo ID requirement for methamphetamine precursors? If so, should it apply to all schedule V drugs?

5. There are a number of cross-references in other Wisconsin statutes to prohibitions in s. 961.41 (1m) on possessing a controlled substance with intent to manufacture, distribute, or deliver it. For example, under s. 973.017 (8) (a) 2., if a person violates s. 961.41 (1m) with intent to distribute a controlled substance in a prison or jail, the court must consider that fact as an aggravating factor at sentencing. Do you want the bill to treat possession of methamphetamine precursors with intent to distribute the drug in the same way, for the purpose of these cross-references, as s. 961.41 (1m) is treated? (If it would help, I can discuss each of those cross-references with you.)

6. I did not include anything for item 4. in Mr. Johnson's letter. The three-package limit is covered by item 2., and the immunity provision is made unnecessary by classifying methamphetamine precursors as schedule V controlled substances. (Under s. 961.23, schedule V drugs can be sold at retail only by a registered pharmacist.) Note, however, that selling more of a schedule V controlled substance than is authorized under s. 961.23 is a Class I felony. In Iowa and Missouri, by contrast, selling more than the authorized amount of pseudoephedrine is a misdemeanor. *See* s. 126.23A(4), Iowa stats.; s. 195.417(5), Missouri stats.

7. The bill adds liquid nitrogen to s. 101.10 (3) (e) so that theft of liquid nitrogen is treated the same way as theft of anhydrous ammonia. Should the prohibition regarding the release of anhydrous ammonia also cover liquid nitrogen? The bill also treats attempted theft of anhydrous ammonia and liquid nitrogen in the same way as the completed offense. But what Mr. Johnson requests in the second sentence of item 6. is already covered under current law. *See* s. 101.10 (1) (b) and (3) (e).

8. The word "forfeiture" was handwritten on Mr. Johnson's letter next to item 7. I ignored that notation for now.

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