



State of Wisconsin
2005 - 2006 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT,
TO 2005 SENATE BILL 78

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1 AN ACT *to renumber* 961.437, 961.49, 961.61 and 961.62; *to renumber and*
2 *amend* 961.46; *to amend* 101.10 (title), 101.10 (3) (e), 895.555 (title), 895.555
3 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m) (d), 961.41 (1r),
4 961.49 (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f), 111.335 (1) (cs)
5 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag)
6 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.01 (20d), 961.46
7 (2), 961.49 (2m), 961.63, 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c) of the
8 statutes; **relating to:** pseudoephedrine hydrochloride and other materials
9 used to produce methamphetamine, the distribution of methamphetamine to
10 minors, ~~granting~~^{requiring the exercise of} rule-making authority, and providing penalties.

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

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

1 **101.10 (title) Storage and handling of anhydrous ammonia; theft of**
2 **liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.**

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

4 101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession
5 of liquid nitrogen, anhydrous ammonia ~~belonging to another~~, or anhydrous ammonia
6 equipment belonging to another, without the other's consent and with intent to
7 deprive the owner permanently of possession of the liquid nitrogen, anhydrous
8 ammonia, or anhydrous ammonia equipment.

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

10 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia
11 belonging to another into the atmosphere. This paragraph does not apply if the
12 owner has authorized the actor to exercise control over the anhydrous ammonia or
13 has consented to its release.

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

15 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.65 with intent
16 to manufacture methamphetamine under that subsection or under a federal law or
17 a law of another state that is substantially similar to s. 961.65.

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

19 125.12 (2) (ag) 5m. The person has been convicted of possessing any of the
20 materials listed in s. 961.65 with intent to manufacture methamphetamine under
21 that subsection or under a federal law or a law of another state that is substantially
22 similar to s. 961.65.

23 **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 subsection 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., 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 (14f) of the statutes is created to read:

21 961.01 (14f) "Methamphetamine precursor" means ephedrine,
22 pseudoephedrine, hydrochloride, phenylpropanolamine, or any of their salts,
23 isomers, and salts of isomers, that are theoretically possible within the specific
24 chemical designation.

25 SECTION 17. 961.01 (20d) of the statutes is created to read:

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INS 4/24

1 961.01 (20**6**) "Pseudoephedrine hydrochloride" does not include a product
 2 containing the chemical pseudoephedrine hydrochloride if any of the following
 3 applies:

4 (a) The product contains therapeutically significant quantities of another
 5 active medicinal ingredient.

6 (b) The product is a liquid or a soft gelatin capsule

7 (c) The controlled substances board has determined, by rule, that the product
 8 cannot be readily used in the manufacture of methamphetamine.

9 SECTION 18. 961.41 (1r) of the statutes is amended to read:

10 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
 11 s. 961.49 (2) (b), 1999 stats., ~~and~~ subs. (1) and (1m), and s. 961.65, an amount includes
 12 the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid
 13 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
 14 methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any
 15 controlled substance analog of any of these substances together with any compound,
 16 mixture, diluent, plant material or other substance mixed or combined with the
 17 controlled substance ~~or~~, controlled substance analog, or methamphetamine
 18 precursors. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the
 19 amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)
 20 and includes the weight of any marijuana.

21 SECTION 19. 961.437 of the statutes is renumbered 961.67.

22 SECTION 20. 961.46 of the statutes is renumbered 961.46 (1) and amended to
 23 read:

24 961.46 (1) If Except as provided in sub. (2), if a person violates s. 961.41 (1) by
 25 distributing or delivering a controlled substance or a controlled substance analog to

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hydrochloride
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INS
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1 a person 17 years of age or under who is at least 3 years his or her junior, the
2 applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the
3 offense may be increased by not more than 5 years.

4 SECTION 21. 961.46 (2) of the statutes is created to read:

5 961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)
6 by distributing or delivering methamphetamine or a controlled substance analog of
7 methamphetamine to a person 17 years of age or under who is at least 2 years his
8 or her junior, the person is guilty of a Class ^{III}B felony.

9 SECTION 22. 961.49 (title) of the statutes is amended to read:

10 961.49 (title) ~~Distribution of or possession with~~ Offenses involving
11 intent to deliver or distribute a controlled substance on or near certain
12 places.

13 SECTION 23. 961.49 of the statutes is renumbered 961.49 (1m).

14 SECTION 24. 961.49 (2m) of the statutes is created to read:

15 961.49 (2m) If any person violates s. 961.65 with intent to deliver or distribute
16 methamphetamine or a controlled substance analog of methamphetamine and the
17 delivery, distribution, or possession takes place under any of the circumstances listed
18 under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment for that crime
19 may be increased by 5 years.

20 SECTION 25. 961.61 of the statutes is renumbered 961.003.

21 SECTION 26. 961.62 of the statutes is renumbered 961.005.

22 SECTION 27. 961.63 of the statutes is created to read:

23 961.63 Delivery of pseudoephedrine hydrochloride (1) DEFINITIONS. In

24 this section:

^Bliquids and gelcaps

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

3 (b) "Seller" means a person who sells pseudoephedrine hydrochloride

4 ~~No~~ (2) RESTRICTIONS ON DELIVERY. The delivery of pseudoephedrine hydrochloride
5 is subject to the following conditions:

6 (a) ~~It~~ ^{They} may be delivered and sold only in good faith as a medicine and not for the
7 purpose of evading this section.

8 (b) ~~It~~ ^{They} may be sold at retail only by a registered pharmacist or a pharmacy
9 assistant and only in a retail establishment.

10 (c) When sold in a retail establishment, ~~its~~ ^{Their} container shall bear the name and
11 address of the establishment.

12 (d) Any person purchasing ~~it~~ ^{them} at retail shall present to the seller, at the time of
13 the purchase, the person's correct name and address and an identification card
14 containing the person's photograph and date of birth. The seller shall record the
15 person's name and address and the name and quantity of the product sold. The
16 purchaser and the seller shall sign the record of this transaction. The giving of a false
17 name or false address by the purchaser or the use of an identification card containing
18 false information by the purchaser shall be prima facie evidence of a violation of sub.

19 (3) (b).

20 (e) No person may sell ~~it~~ ^{them} to a person under 18 years of age, and no person under
21 18 years of age may purchase ~~it~~ ^{them}

22 (f) No person other than a physician, dentist, veterinarian, or pharmacist may
23 purchase more than 9 grams of ~~it~~ ^{one package of either} within a 30-day period without the authorization
24 of a physician, dentist, or veterinarian

Under
sub. 1.

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one package of either
pseudoephedrine liquid
or pseudoephedrine gelscaps at retail
within a 24-hour
period

W&T INS 8/11 ✓

(g) No person may sell more than 9 grams of it within a 30-day period to any other person, other than to a physician, dentist, veterinarian, or pharmacist, unless the other person has been authorized to purchase more than that amount by a physician, dentist, or veterinarian.

INS from prev page

(4) OFFENSES AND PENALTIES. (a) Any person who violates sub. (2) is guilty of a Class I felony.

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(b) Any person who acquires or obtains possession of pseudoephedrine hydrochloride by misrepresentation, fraud, forgery, deception, or subterfuge is guilty of a Class H felony.

liquid pseudoephedrine gel caps

(4) DEFENSES. (a) A seller who proves all of the following by a preponderance of the evidence has a defense to prosecution under sub. (1) (a):

- 1. The seller did not knowingly or recklessly violate sub. (2).
- 2. The seller reported his or her own violation to a law enforcement officer in the county or municipality in which the violation occurred within 30 days after the violation.

(b) A seller who proves all of the following by a preponderance of the evidence has a defense to prosecution under sub. (1) (a):

- 1. The seller did not knowingly or recklessly violate sub. (2).
- 2. The acts or omissions constituting the violation of sub. (2) were the acts or omissions of one or more of the seller's employees.
- 3. The seller provided training to each of those employees regarding the restrictions imposed under sub. (1) on the delivery of pseudoephedrine hydrochloride.

(c) A seller who proves all of the following by a preponderance of the evidence has a defense to prosecution under sub. (1) (a) for a violation of sub. (2) (g):

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1 1. The purchaser presented an identification card that indicated that he or she
2 was 18 years of age or older.

3 2. The appearance of the purchaser was such that an ordinary and prudent
4 person would believe that the purchaser was 18 years of age or older.

5 3. The sale was made in good faith, in reasonable reliance on the identification
6 card and appearance of the purchaser, and in the belief that the purchaser was 18
7 years of age or older.

8 (d) A ^{person} ~~seller~~ who proves all of the following by a preponderance of the evidence
9 has a defense to prosecution under sub. (a) for a violation of sub. (g):

10 1. The purchaser presented an identification card that contained a name or
11 address other than the person's own.

12 2. The appearance of the purchaser was such that an ordinary and prudent
13 person would believe that the purchaser was the person depicted in the photograph
14 contained in that identification card.

15 3. The sale was made in good faith, in reasonable reliance on the identification
16 card and appearance of the purchaser, and in the belief that the name and address
17 of the purchaser were as listed on the identification card.

18 (5) ~~RECORDKEEPING REQUIREMENTS~~. The pharmacy examining board shall
19 determine by rule the form of the record required under sub. (d) Only

20 ~~pharmacist, pharmacist assistant, law enforcement officer, or the pharmacy~~
21 ~~examining board~~ may have access to information recorded under sub. (d).

22 SECTION 28. 961.65 of the statutes is created to read:

23 **961.65 Possessing materials for manufacturing methamphetamine.**

24 Except as authorized by this chapter, any person who possesses a methamphetamine
25 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous

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the seller or a

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1 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture
2 methamphetamine is guilty of a Class H felony. Possession of more than 24 grams ^{8 ✓}
3 of methamphetamine precursors shall be prima facie evidence of intent to
4 manufacture methamphetamine.

5 **SECTION 29.** 973.01 (2) (c) 2. a. of the statutes is amended to read:
6 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

7 **SECTION 30.** 973.017 (8) (a) 3. of the statutes is created to read:
8 973.017 (8) (a) 3. When making a sentencing decision concerning a person
9 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
10 fact that the person intended to deliver or distribute methamphetamine or a
11 controlled substance analog of methamphetamine to a prisoner within the precincts
12 of any prison, jail, or house of correction.

13 **SECTION 31.** 973.017 (8) (c) of the statutes is created to read:
14 973.017 (8) (c) When making a sentencing decision concerning a person
15 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
16 fact that the person intended to deliver or distribute methamphetamine or a
17 controlled substance analog of methamphetamine and that the person knowingly
18 used a public transit vehicle during the violation.

19 **SECTION 32. Effective dates.** This act takes effect on the day after publication,
20 except as follows:

21 (1) The treatment of section ^{5 9610 22(3)(am) 961023 (1) to (8) and} 961.63 of the statutes takes effect on the first day
22 of the 3rd month beginning after publication.

23 (END)

Handwritten scribbles and marks:
A large scribble on the left side of the page.
A circled '22' next to line 22.
A circled '2' next to line 23.
The number '44' written below line 23.
A large 'X' drawn over the bottom left corner, with 'INS 10(18)' written inside it.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0047/3ins
MGD:.....

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2 *No/f* any material, compound, mixture, or preparation ^{that} ~~which~~ contains any quantity
3 of

4 INSERT 4/24

5 *No/f* but does not include a product to which sub. (20c) (a) [✓] or (b) [✓] applies

6 INSERT 4/25

7 SECTION ~~§~~ 961.01 (17m) [✓] of the statutes is created to read:

8 961.01 (17m) "Pharmacy assistant" means a person working under the
9 supervision of a pharmacist.

10 INSERT 5/2

11 *No/f* or any of its salts, isomers, or salts of isomers

12 INSERT 5/6

13 *No/f* This paragraph does not apply if the package containing the product contains
14 more than 360 milligrams of the chemical pseudoephedrine or any of its salts,
15 isomers, or salts of isomers.

16 INSERT 5/8A

17 SECTION ~~§~~ 961.01 (20d) [✓] of the statutes is created to read:

18 961.01 (20d) "Pseudoephedrine gelcap" means a soft gelatin capsule that is
19 intended to be sold at retail and that contains 360 milligrams or less of the chemical
20 pseudoephedrine or any of its salts, isomers, or salts of isomers.

21 SECTION ~~§~~ 961.01 (20e) [✓] of the statutes is created to read:

22 961.01 (20e) "Pseudoephedrine liquid" means a product that is intended to be
23 sold at retail, that is a liquid at room temperature, and that contains 360 milligrams
24 or less of the chemical pseudoephedrine or any of its salts, isomers, or salts of
25 isomers.

1 SECTION ~~§~~ 961.22 (3) (a) of the statutes is renumbered 961.22 (3) (b).

2 SECTION ~~§~~ 961.22 (3) (am) of the statutes is created to read:

3 961.23 (3) (am) Pseudoephedrine.

4 SECTION ~~§~~ 961.23 (1) of the statutes is amended to read:

5 961.23 (1) ~~That they~~ They may be dispensed and sold only in good faith as a
6 medicine, and not for the purpose of evading this chapter.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23.

7 SECTION ~~§~~ 961.23 (2) of the statutes is amended to read:

8 961.23 (2) ~~That they~~ They may be sold at retail only by a registered pharmacist
9 or, if the substance is pseudoephedrine, by a pharmacy assistant when sold in a retail
10 establishment.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23.

11 SECTION ~~§~~ 961.23 (3) of the statutes is amended to read:

12 961.23 (3) ~~That, when~~ When sold in a retail establishment, they shall bear the
13 name and address of the establishment on the immediate container of said
14 preparation.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23.

15 **INSERT red (goes into INS 5/8B from 05-1099/1)**

16 (Woff)

16 or, if the substance is pseudoephedrine and is being sold by a pharmacy
17 assistant, the pharmacist supervising the seller

18 **INSERT 5/8C**

19 SECTION ~~§~~ 961.23 (8) of the statutes is created to read:

20 961.23 (8) No person may sell pseudoephedrine to a person under 18 years of
21 age, and no person under 18 years of age may purchase pseudoephedrine.

22 SECTION ~~§~~ 961.31 of the statutes is amended to read:

23 **961.31 Rules.** The pharmacy examining board may promulgate rules relating
24 to the manufacture, distribution and dispensing of controlled substances within this

INS
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pseudoephedrine

SENATE BILL 78

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SECTION ~~19~~ 961.23 (4) of the statutes is amended to read:

961.23 (4) ~~That any~~ ^{Strike} ~~person~~ ^{Any} purchasing such a substance ^{shall} at the time of purchase ^s present to the seller that person's correct name and, address, and, if the person is purchasing a product to which s. 961.22 (3) (b) applies, an identification card containing the person's photograph. The seller shall record the name and address and the name and quantity of the product sold. The purchaser and ^{either} the seller ^{NS ✓} shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

SECTION ~~20~~ 961.23 (5) of the statutes is amended to read:

961.23 (5) ~~That no~~ ^{Strike} ~~person~~ ^{No} may purchase more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance other than pseudoephedrine hydrochloride within a 48-hour period without the authorization of a physician, dentist, or veterinarian ~~nor~~.

⁶ ~~(6) That~~ ⁷ no person other than a physician, dentist, veterinarian, or pharmacist may possess more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance be in the possession of any person other than a physician, dentist, veterinarian or pharmacist other than pseudoephedrine hydrochloride at any time without the authorization of a physician, dentist, or veterinarian.

SECTION ~~21~~ 961.23 (6) of the statutes is created to read:

961.23 (6) ~~That~~ ⁶ ~~no person other than a physician, dentist, veterinarian, or pharmacist~~ ⁶ may purchase more than ⁹ grams of a product to which s. 961.22 (3) (b) applies within a 30-day period without the authorization of a physician, dentist, or veterinarian.

SECTION 22. 961.41 (1r) of the statutes is amended to read:

containing pseudoephedrine

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1 (g) No person may sell more than 9 grams of it within a 30-day period to any
2 other person, other than to a physician, dentist, veterinarian, or pharmacist, unless
3 the other person has been authorized to purchase more than that amount by a
4 physician, dentist, or veterinarian.

5 (3) OFFENSES AND PENALTIES. (a) Any person who violates sub. (2) is guilty of
6 a Class I felony.

7 (b) Any person who acquires or obtains possession of pseudoephedrine
8 hydrochloride by misrepresentation, fraud, forgery, deception, or subterfuge is guilty
9 of a Class H felony.

10 (4) DEFENSES. (a) A seller who proves all of the following by a preponderance
11 of the evidence has a defense to prosecution under sub. (3) (a):

12 (a) 1. The seller did not knowingly or recklessly violate sub. (2)

13 (b) 2. The seller reported his or her own violation to a law enforcement officer in
14 the county or municipality in which the violation occurred within 30 days after the
15 violation.

16 (b) A seller who proves all of the following by a preponderance of the evidence
17 has a defense to prosecution under sub. (3) (a):

18 (a) 1. The seller did not knowingly or recklessly violate sub. (2)

19 (b) 2. The acts or omissions constituting the violation of sub. (2) were the acts or
20 omissions of one or more of the seller's employees.

21 (c) 3. The seller provided training to each of those employees regarding the
22 restrictions imposed under sub. (2) on the delivery of pseudoephedrine

23 hydrochloride
24 (c) A seller who proves all of the following by a preponderance of the evidence
25 has a defense to prosecution under sub. (3) (a) for a violation of sub. (2) (e):

50961041 (1)(j) that is based on the person's violation of an condition specified in 50961023 with respect to the person's distribution or delivery of pseudoephedrine

condition specified in 50961023 with respect to the person's

50961041 (1)(j)

50961023 (8)

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(2)

the condition under 50961023

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1 (a) ~~1~~ 1. The purchaser presented an identification card that indicated that he or she
2 was 18 years of age or older.

3 (b) ~~2~~ 2. The appearance of the purchaser was such that an ordinary and prudent
4 person would believe that the purchaser was 18 years of age or older.

5 (c) ~~3~~ 3. The sale was made in good faith, in reasonable reliance on the identification
6 card and appearance of the purchaser, and in the belief that the purchaser was 18
7 years of age or older.

8 (d) A ~~seller~~ ^{person} who proves all of the following by a preponderance of the evidence
9 has a defense to prosecution under sub. (3) (a) for a violation of ~~sub. (2) (g)~~ ^{96.041(1)(j) ✓} ~~sub. (2) (g)~~ ^{96.023(6) Δ}

10 (a) ~~1~~ 1. The purchaser presented an identification card that contained a name or
11 address other than the person's own.

12 (b) ~~2~~ 2. The appearance of the purchaser was such that an ordinary and prudent
13 person would believe that the purchaser was the person depicted in the photograph
14 contained in that identification card.

15 (c) ~~3~~ 3. The sale was made in good faith, in reasonable reliance on the identification
16 card and appearance of the purchaser, and in the belief that the name and address
17 of the purchaser were as listed on the identification card.

18 ~~(5) RECORDKEEPING-REQUIREMENTS. The pharmacy examining board shall~~
19 ~~determine by rule the form of the record required under sub. (2) (d). Only a~~
20 ~~pharmacist, pharmacist assistant, law enforcement officer, or the pharmacy~~
21 ~~examining board may have access to information recorded under sub. (2) (d).~~

22 ~~SECTION 28. 961.65 of the statutes is created to read:~~

23 **961.65 Possessing materials for manufacturing methamphetamine.**

24 Except as authorized by this chapter, any person who possesses a methamphetamine
25 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous

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96.041(1)(j) ✓
96.023(6) Δ

1 state. The board shall determine by rule the form of the record required under s.
 2 961.23 (4) with respect to the sale of pseudoephedrine, but the record may be kept
 3 in either a paper or electronic format and shall be maintained by the pharmacy for
 4 at least 5 years. The rules shall specify that only a pharmacist or a law enforcement
 5 officer may have access to information recorded under ^{s.}961.23 (4) with respect to the
 6 sale of pseudoephedrine.

History: 1971 c. 219; 1995 a. 448 s. 231; Stats. 1995 s. 961.31.

7 **INSERT 5/21A**

8 SECTION ~~#~~. 961.452 of the statutes is created to read:

9 **961.452 Defenses in certain Schedule V prosecutions. (1)**

10 **INSERT 8/1**

11 **No ff** one package of either pseudoephedrine liquid or pseudoephedrine gelcaps
 12 within a 24-hour

13 **INSERT 8/4**

14 (h) No person may sell pseudoephedrine liquids ^{or} gelcaps at retail except from
 15 a locked cabinet or behind a sales counter where the public is unable to reach the
 16 product and where the public is not permitted.

17 **INSERT 9/19**

18 **No ff**, but the record may be kept in either a paper or electronic format and shall be
 19 maintained by the seller for at least 5 years. The rules shall specify that

g pseudoephedrine



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0047/3
MGD&CTS:wlj:jf

SENATE SUBSTITUTE AMENDMENT ,
TO 2005 SENATE BILL 78

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), 961.31, 961.41 (1r),
5 961.49 (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f), 111.335 (1) (cs)
6 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag)
7 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.01 (17m), 961.01
8 (20c), 961.01 (20d), 961.01 (20e), 961.22 (3) (am), 961.23 (6), 961.23 (8), 961.452,
9 961.46 (2), 961.49 (2m), 961.63, 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c) of
10 the statutes; **relating to:** pseudoephedrine and other materials used to
11 produce methamphetamine, the distribution of methamphetamine to minors,
12 requiring the exercise of rule-making authority, and providing penalties.

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

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.

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 grams of a product containing
 10 pseudoephedrine within a 30-day period without the authorization of a physician,
 11 dentist, or veterinarian.

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

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

15 **SECTION 30.** 961.31 of the statutes is amended to read:

16 **961.31 Rules.** The pharmacy examining board may promulgate rules relating
 17 to the manufacture, distribution and dispensing of controlled substances within this
 18 state. The board shall determine by rule the form of the record required under s.
 19 961.23 (4) with respect to the sale of pseudoephedrine, but the record may be kept
 20 in either a paper or electronic format and shall be maintained by the pharmacy for
 21 at least 5 years. The rules shall specify that only a pharmacist or a law enforcement
 22 officer may have access to information recorded under s. 961.23 (4) with respect to
 23 the sale of pseudoephedrine.

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

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7/15

1 3. The person provided training to each of those employees regarding the
2 restrictions imposed under sub. (1) on the delivery of pseudoephedrine liquid or
3 pseudoephedrine gelcaps.

4 (c) A person who proves all of the following by a preponderance of the evidence
5 has a defense to prosecution under sub. (2) (a) for a violation of sub. (1) (f):

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

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

11 3. The sale was made in good faith, in reasonable reliance on the identification
12 card and appearance of the purchaser, and in the belief that the name and address
13 of the purchaser were as listed on the identification card.

14 (d) A person who proves all of the following by a preponderance of the evidence
15 has a defense to prosecution under sub. (2) (a) for a violation of sub. (1) (g):

16 1. The purchaser presented an identification card that indicated that he or she
17 was 18 years of age or older.

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

20 3. The sale was made in good faith, in reasonable reliance on the identification
21 card and appearance of the purchaser, and in the belief that the purchaser was 18
22 years of age or older.

23 (4) RECORD-KEEPING REQUIREMENTS. ~~The pharmacy examining board shall~~
24 ~~determine by rule the form of the record~~^s required under sub. (1) (d), but the record
25 may be kept in either a paper or electronic format and shall be maintained by the

1 seller for at least 5 years. ~~The rules shall specify that~~ only the seller or a law
2 enforcement officer may have access to information recorded under sub. (1) (d).

3 **SECTION 42.** 961.65 of the statutes is created to read:

4 **961.65 Possessing materials for manufacturing methamphetamine.**

5 Except as authorized by this chapter, any person who possesses a methamphetamine
6 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
7 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture
8 methamphetamine is guilty of a Class H felony. Possession of more than 8 grams of
9 methamphetamine precursors shall be prima facie evidence of intent to manufacture
10 methamphetamine.

11 **SECTION 43.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

12 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

13 **SECTION 44.** 973.017 (8) (a) 3. of the statutes is created to read:

14 973.017 (8) (a) 3. When making a sentencing decision concerning a person
15 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
16 fact that the person intended to deliver or distribute methamphetamine or a
17 controlled substance analog of methamphetamine to a prisoner within the precincts
18 of any prison, jail, or house of correction.

19 **SECTION 45.** 973.017 (8) (c) of the statutes is created to read:

20 973.017 (8) (c) When making a sentencing decision concerning a person
21 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
22 fact that the person intended to deliver or distribute methamphetamine or a
23 controlled substance analog of methamphetamine and that the person knowingly
24 used a public transit vehicle during the violation.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0047/4ins
MGD:.....

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relating clause

INSERT 7/15

SECTION 1. 961.235 of the statutes is created to read:

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

s.

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., 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 (14f) of the statutes is created to read:

21 961.01 (14f) "Methamphetamine precursor" ^{mean} any material, compound, mixture,
22 or preparation that contains any quantity of ^{move} means ephedrine or pseudoephedrine
23 or any of their 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:

1 961.23 (1) ~~That they~~ They may be dispensed and sold only in good faith as a
2 medicine, and not for the purpose of evading this chapter.

3 **SECTION 24.** 961.23 (2) of the statutes is amended to read:

4 961.23 (2) ~~That they~~ They may be sold at retail only by a registered pharmacist
5 or, if the substance is pseudoephedrine, by a pharmacy assistant when sold in a retail
6 establishment.

7 **SECTION 25.** 961.23 (3) of the statutes is amended to read:

8 961.23 (3) ~~That, when~~ When sold in a retail establishment, they shall bear the
9 name and address of the establishment on the immediate container of said
10 preparation.

11 **SECTION 26.** 961.23 (4) of the statutes is amended to read:

12 961.23 (4) ~~That any~~ Any person purchasing such a substance shall, at the time
13 of purchase, present to the seller that person's correct name and, address, and, if the
14 person is purchasing pseudoephedrine, an identification card containing the
15 person's photograph. The seller shall record the name and address and the name and
16 quantity of the product sold. The purchaser and either the seller or, if the substance
17 is pseudoephedrine and is being sold by a pharmacy assistant, the pharmacist
18 supervising the seller shall sign the record of this transaction. The giving of a false
19 name or false address by the purchaser shall be prima facie evidence of a violation
20 of s. 961.43 (1) (a).

21 **SECTION 27.** 961.23 (5) of the statutes is amended to read:

22 961.23 (5) ~~That no~~ No person may purchase more than 8 ounces of a product
23 containing opium or more than 4 ounces of a product containing any other schedule
24 V substance other than pseudoephedrine within a 48-hour period without the
25 authorization of a physician, dentist, or veterinarian ~~nor~~.

1 **961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE.** In determining amounts under
2 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), and s. 961.65, an amount includes
3 the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid
4 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
5 methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any
6 controlled substance analog of any of these substances together with any compound,
7 mixture, diluent, plant material or other substance mixed or combined with the
8 controlled substance ~~or~~, controlled substance analog, or methamphetamine
9 precursors. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the
10 amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)
11 and includes the weight of any marijuana.

12 **SECTION 32.** 961.437 of the statutes is renumbered 961.67.

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

14 **961.452 Defenses in certain schedule V prosecutions.** (1) A person who
15 proves all of the following by a preponderance of the evidence has a defense to
16 prosecution under s. 961.41 (1) (j) that is based on the person's violation of a condition
17 specified in s. 961.23 with respect to the person's distribution or delivery of
18 pseudoephedrine:

19 (a) The person did not knowingly or recklessly violate the condition under s.
20 961.23.

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

24 (2) A seller who proves all of the following by a preponderance of the evidence
25 has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's

1 (c) The sale was made in good faith, in reasonable reliance on the identification
2 card and appearance of the purchaser, and in the belief that the purchaser was 18
3 years of age or older.

4 **SECTION 34.** 961.46 of the statutes is renumbered 961.46 (1) and amended to
5 read:

6 961.46 (1) If Except as provided in sub. (2), if a person violates s. 961.41 (1) by
7 distributing or delivering a controlled substance or a controlled substance analog to
8 a person 17 years of age or under who is at least 3 years his or her junior, the
9 applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the
10 offense may be increased by not more than 5 years.

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

12 961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)
13 by distributing or delivering methamphetamine or a controlled substance analog of
14 methamphetamine to a person 17 years of age or ~~under~~ who is at least 2 years his
15 or her junior, the person is guilty of a Class ~~II~~ felony.

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

17 **961.49 (title) ~~Distribution of or possession with~~ Offenses involving**
18 **intent to deliver or distribute a controlled substance on or near certain**
19 **places.**

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

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

22 961.49 (2m) If any person violates s. 961.65 with intent to deliver or distribute
23 methamphetamine or a controlled substance analog of methamphetamine and the
24 delivery, distribution, or possession takes place under any of the circumstances listed



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0047/3
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SENATE SUBSTITUTE AMENDMENT,
TO 2005 SENATE BILL 78

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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.

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 subsection 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 subsection 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 subsection 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., 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 (14f) of the statutes is created to read:

21 961.01 (14f) “Methamphetamine precursor” means any material, compound,
22 mixture, or preparation that contains any quantity of ephedrine or pseudoephedrine
23 or any of their 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:

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" 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:

7 (a) The product is a [✓]pseudoephedrine ^{liquid} or gelcap. This paragraph does not apply
8 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) "Pseudoephedrine gelcap" 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) of the statutes is created to read:

23 961.22 (3) (am) Pseudoephedrine.

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

1 961.23 (1) ~~That they~~ They may be dispensed and sold only in good faith as a
2 medicine, and not for the purpose of evading this chapter.

3 **SECTION 24.** 961.23 (2) of the statutes is amended to read:

4 961.23 (2) ~~That they~~ They may be sold at retail only by a registered pharmacist
5 or, if the substance is pseudoephedrine, by a pharmacy assistant when sold in a retail
6 establishment.

7 **SECTION 25.** 961.23 (3) of the statutes is amended to read:

8 961.23 (3) ~~That, when~~ When sold in a retail establishment, they shall bear the
9 name and address of the establishment on the immediate container of said
10 preparation.

11 **SECTION 26.** 961.23 (4) of the statutes is amended to read:

12 961.23 (4) ~~That any~~ Any person purchasing such a substance shall, at the time
13 of purchase, present to the seller that person's correct name and, address, and, if the
14 person is purchasing pseudoephedrine, an identification card containing the
15 person's photograph. The seller shall record the name and address and the name and
16 quantity of the product sold. The purchaser and either the seller or, if the substance
17 is pseudoephedrine and is being sold by a pharmacy assistant, the pharmacist
18 supervising the seller shall sign the record of this transaction. The giving of a false
19 name or false address by the purchaser shall be prima facie evidence of a violation
20 of s. 961.43 (1) (a).

21 **SECTION 27.** 961.23 (5) of the statutes is amended to read:

22 961.23 (5) ~~That no~~ No person may purchase more than 8 ounces of a product
23 containing opium or more than 4 ounces of a product containing any other schedule
24 V substance other than pseudoephedrine within a 48-hour period without the
25 authorization of a physician, dentist, or veterinarian ~~nor~~.

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.

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 grams of a product containing
10 pseudoephedrine within a 30-day period without the authorization of a physician,
11 dentist, or veterinarian.

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

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

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

16 **961.235 Records relating to pseudoephedrine sales.** Records required
17 under s. 961.23 (4) with respect to the sale of 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 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 pseudoephedrine:

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 pseudoephedrine:

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

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.

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 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 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:

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
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:

1 **961.63 Delivery of pseudoephedrine liquids and gelcaps. (1)**

2 RESTRICTIONS ON DELIVERY. The delivery of pseudoephedrine liquids and gelcaps is
3 subject to the following conditions:

4 (a) They may be delivered and sold only in good faith as a medicine and not for
5 the purpose of evading this section.

6 (b) They may be sold at retail only by a registered pharmacist or a pharmacy
7 assistant and only in a retail establishment.

8 (c) When sold in a retail establishment, their containers shall bear the name
9 and address of the establishment.

10 (d) Any person purchasing them at retail shall present to the seller, at the time
11 of the purchase, the person's correct name and address and an identification card
12 containing the person's photograph and date of birth. The seller shall record the
13 person's name and address and the name and quantity of the product sold. The
14 purchaser shall sign the record of this transaction. The giving of a false name or false
15 address by the purchaser or the use of an identification card containing false
16 information by the purchaser shall be prima facie evidence of a violation of sub. (3)

17 (b).

18 (e) No person other than a physician, dentist, veterinarian, or pharmacist may
19 purchase more than one package of either pseudoephedrine liquid or
20 pseudoephedrine gelcaps at retail within a 24-hour period.

21 (f) No retailer or employee of a retailer may sell more than one package of either
22 pseudoephedrine liquid or pseudoephedrine gelcaps within a 24-hour period to any
23 other person, other than to a physician, dentist, veterinarian, or pharmacist.

24 (g) No person may sell them to a person under 18 years of age, and no person
25 under 18 years of age may purchase them.

1 9
(1) No person may sell pseudoephedrine liquid or pseudoephedrine gelcaps at
2 retail except from a locked cabinet or behind a sales counter where the public is
3 unable to reach the product and where the public is not permitted.

4 (2) OFFENSES AND PENALTIES. (a) Any person who violates sub. (1) is guilty of
5 a Class I felony.

6 (b) Any person who acquires or obtains possession of pseudoephedrine liquid
7 or pseudoephedrine gelcaps by misrepresentation, fraud, forgery, deception, or
8 subterfuge is guilty of a Class H felony.

9 (3) DEFENSES. (a) A person who proves all of the following by a preponderance
10 of the evidence has a defense to prosecution under sub. (2) (a):

11 1. The person did not knowingly or recklessly violate sub. (1).

12 2. The person reported his or her own violation of sub. (1) to a law enforcement
13 officer in the county or municipality in which the violation occurred within 30 days
14 after the violation.

15 (b) A person who proves all of the following by a preponderance of the evidence
16 has a defense to prosecution under sub. (2) (a):

17 1. The person did not knowingly or recklessly violate sub. (1).

18 2. The acts or omissions constituting the violation of sub. (1) were the acts or
19 omissions of one or more of the person's employees.

20 3. The person provided training to each of those employees regarding the
21 restrictions imposed under sub. (1) on the delivery of pseudoephedrine liquid or
22 pseudoephedrine gelcaps.

23 (c) A person who proves all of the following by a preponderance of the evidence
24 has a defense to prosecution under sub. (2) (a) for a violation of sub. (1) (f):

✓
f
e

1 1. The purchaser presented an identification card that contained a name or
2 address other than the person's own.

3 2. The appearance of the purchaser was such that an ordinary and prudent
4 person would believe that the purchaser was the person depicted in the photograph
5 contained in that identification card.

6 3. The sale was made in good faith, in reasonable reliance on the identification
7 card and appearance of the purchaser, and in the belief that the name and address
8 of the purchaser were as listed on the identification card.

9 (d) A person who proves all of the following by a preponderance of the evidence
10 has a defense to prosecution under sub. (2) (a) for a violation of sub. (1) (g):

11 1. The purchaser presented an identification card that indicated that he or she
12 was 18 years of age or older.

13 2. The appearance of the purchaser was such that an ordinary and prudent
14 person would believe that the purchaser was 18 years of age or older.

15 3. The sale was made in good faith, in reasonable reliance on the identification
16 card and appearance of the purchaser, and in the belief that the purchaser was 18
17 years of age or older.

18 (4) RECORD-KEEPING REQUIREMENTS. Records required under sub. (1) (d) may be
19 kept in either a paper or electronic format and shall be maintained by the retailer
20 for at least 5 years. Only the retailer or a law enforcement officer may have access
21 to information recorded under sub. (1) (d).

22 **SECTION 42.** 961.65 of the statutes is created to read:

23 **961.65 Possessing materials for manufacturing methamphetamine.**

24 Except as authorized by this chapter, any person who possesses a methamphetamine
25 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous

1 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture
2 methamphetamine is guilty of a Class H felony. Possession of more than 8 grams of
3 methamphetamine precursors shall be prima facie evidence of intent to manufacture
4 methamphetamine.

5 **SECTION 43.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

6 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

7 **SECTION 44.** 973.017 (8) (a) 3. of the statutes is created to read:

8 973.017 (8) (a) 3. When making a sentencing decision concerning a person
9 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
10 fact that the person intended to deliver or distribute methamphetamine or a
11 controlled substance analog of methamphetamine to a prisoner within the precincts
12 of any prison, jail, or house of correction.

13 **SECTION 45.** 973.017 (8) (c) of the statutes is created to read:

14 973.017 (8) (c) When making a sentencing decision concerning a person
15 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
16 fact that the person intended to deliver or distribute methamphetamine or a
17 controlled substance analog of methamphetamine and that the person knowingly
18 used a public transit vehicle during the violation.

19 **SECTION 46. Effective dates.** This act takes effect on the day after publication,
20 except as follows:

21 (1) The treatment of sections 961.22 (3) (am^o), 961.23 (1) to (8), and 961.63 of
22 the statutes takes effect on the first day of the 4th month beginning after publication.

23 (END)

Barman, Mike

From: Dsida, Michael
Sent: Thursday, March 31, 2005 11:21 AM
To: Moore, Kevin
Cc: LRB.Legal
Subject: RE: Drafting Note Request

Sure. Our records show that the sub has not yet been introduced, but I'll let our PAs know that it has been and that it is okay for you to look at the file.

-----Original Message-----

From: Moore, Kevin
Sent: Thursday, March 31, 2005 11:19 AM
To: Dsida, Michael
Subject: RE: Drafting Note Request

I will come over. Are you at 1 E Main? Can I come over now?

-----Original Message-----

From: Dsida, Michael
Sent: Thursday, March 31, 2005 11:06 AM
To: Moore, Kevin
Subject: RE: Drafting Note Request

You can look at the paper copy here or we can scan it in the next day or two and send you an electronic copy.

-----Original Message-----

From: Moore, Kevin
Sent: Thursday, March 31, 2005 10:42 AM
To: Dsida, Michael
Subject: RE: Drafting Note Request

Drafting file would be great, if possible.

-----Original Message-----

From: Dsida, Michael
Sent: Thursday, March 31, 2005 10:41 AM
To: Moore, Kevin
Subject: RE: Drafting Note Request

Are you interested in the drafter's note (there was one on the "/2" version) or the drafting file?

-----Original Message-----

From: Moore, Kevin
Sent: Thursday, March 31, 2005 9:51 AM
To: Dsida, Michael
Subject: Drafting Note Request

Mike,

Is it possible to get the drafting notes for LRBs0047/3 relating to the regulation of pseudoephedrine?

Thank you.

Kevin Moore
Office of Rep. Kitty Rhoades
1-608-266-1526
1-888-529-0030 (Toll free)

CCC to SSAI to SB-78

20047

MGD+CTS

Page 11, line 14: delete "(3)" and substitute "(2)".

(END)

Wlj #1



State of Wisconsin
2005-2006 LEGISLATURE

CORRECTIONS IN:

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 78**

Prepared by the Legislative Reference Bureau
(April 5, 2005)

1. Page 11, line 14: delete "(3)" and substitute "(2)".

(END)