

## 2005 DRAFTING REQUEST

### Senate Substitute Amendment (SSA-SB78)

Received: 04/21/2005

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Sheila Harsdorf (608) 266-7745

By/Representing: Chris

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: Sen.Harsdorf@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us  
cathlene.hanaman@legis.state.wi.us  
christopher.sundberg@legis.state.wi.us  
anne.sappenfield@legis.state.wi.us

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Methamphetamine and pseudoephedrine

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#### Instructions:

See Attached

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#### 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	wjackson	rschluet	_____	sbasford	sbasford	

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	04/29/2005	05/02/2005	05/03/2005	_____	05/03/2005	05/03/2005	
/3	mdsida 05/04/2005	wjackson 05/04/2005	jfrantze 05/04/2005	_____	sbasford 05/04/2005	sbasford 05/04/2005	
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		13 WJ 5/4	JH/4	J/CH 5/4			

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/?	mdsida	/1 Wlj 4/26	OK 4-28	OK 4-28 PS			

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:**

- 2 ✓ 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.
- 2 ✓ Pseudoephedrine may be dispensed by pharmacist or someone working under the direction of a pharmacist (Assembly)
- ✓ 3 month implementation date (Senate)
- 2 ✓ 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

0095/1  
LRBs 0047/4  
MGD&CTS:wlj:pb  
↑  
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 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 <sup>this</sup> 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 (14) of the statutes is created to read:

21 961.01 (14) "~~Methamphetamine preparation~~" means any material, compound,  
22 mixture, or preparation that contains any quantity of ephedrine or pseudoephedrine  
23 or any of <sup>its</sup> 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 a large signature at the bottom.*

*Ephedrine product*

*Handwritten circle around the phrase "but does not include a product to which sub. (20c) (a) or (b) applies"*

material,  
compound,  
mixture, or  
preparation

who is not  
a pharmacist  
and who is

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

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

961.01 (20c) "Pseudoephedrine" <sup>means</sup> ~~does not include~~ a ~~product~~ containing ~~the~~ <sup>chemical</sup> pseudoephedrine or any of its salts, isomers, or salts of isomers, if any of the following applies:  
*a liquid-filled pseudoephedrine*

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

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

SECTION 19. 961.01 (20d) <sup>12t</sup> of the statutes is created to read:

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

SECTION 20. 961.01 (20e) <sup>12t</sup> of the statutes is created to read:

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

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

SECTION 22. 961.22 (3) (am) <sup>2m</sup> of the statutes is created to read:

961.22 (3) (am) <sup>any</sup> Pseudoephedrine <sup>product</sup>

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

any quantity of

INS  
5/8

move  
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CS  
Pseudoephedrine

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 <sup>a</sup>pseudoephedrine, by a pharmacy assistant when sold in a retail  
6 establishment. product INS 6/5 ✓

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 <sup>a</sup>pseudoephedrine, <sup>product</sup> 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 <sup>a</sup>pseudoephedrine <sup>product</sup> 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). INS 6/17 ✓

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~~. y INS 6/25 ✓

This subsection does not apply to  
a pseudoephedrine product

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) grams <sup>75</sup> of a ~~product containing~~  
 10 pseudoephedrine <sup>product</sup> 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           (13) 961.23 (8) No person may sell <sup>a</sup> pseudoephedrine to a person under 18 years of  
 14 age, and no person under 18 years of age may <sup>a</sup> purchase pseudoephedrine.

15           **SECTION 30.** 961.235 of the statutes is created to read: <sup>products</sup>

16           **961.235 Records relating to pseudoephedrine sales.** Records required  
 17 under s. 961.23 (4) with respect to the sale of <sup>a</sup> 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 <sup>a</sup> 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.~~

115  
8/7

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 <sup>a</sup> 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 <sup>a</sup> pseudoephedrine product

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 <sup>products</sup>

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 <sup>with</sup> 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 <sup>with</sup> 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:

INS  
9/23

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).

*and, during the violation, the person intends*

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 <sup>is</sup>

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:~~

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

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

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

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

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

(b).

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

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

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

2

1 (g) 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) (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) (f):

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) (c) 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) (c).

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

*an ephedrine or pseudoephedrine product*

1 ammonia, <sup>or</sup> 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. *INS 14/4 creates a rebuttable presumption*

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 (2) (am) <sup>2m</sup> 961.23 (1) to (8), <sup>and</sup> ~~and~~ 961.63 of the  
 22 statutes takes effect on the first day of the 4th month beginning after publication.

23 (END)

1 (b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of  
2 a Class I felony.

3 2. If the person who is solicited, hired, directed, employed, or used to purchase  
4 the product to which s. 961.22(3) (b) applies is less than 18 years of age, the actor  
5 is guilty of a Class H felony. *an individual who is*  
*pseudoephedrine*

6 (2) No person may purchase on behalf of another a product to which s. 961.22  
7 (3) (b) applies if the actor does so with the intent to facilitate another person's  
8 manufacture of methamphetamine. A person who violates this subsection is guilty  
9 of a Class I felony. *pseudoephedrine product*

10 ~~SECTION 35. 961.46 of the statutes is renumbered 961.46 (1) and amended to~~  
11 ~~read:~~

12 ~~961.46 (1) If Except as provided in sub. (2), if a person violates s. 961.41 (1) by~~  
13 ~~distributing or delivering a controlled substance or a controlled substance analog to~~  
14 ~~a person 17 years of age or under who is at least 3 years his or her junior, the~~  
15 ~~applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the~~  
16 ~~offense may be increased by not more than 5 years.~~

17 ~~SECTION 36. 961.46 (2) of the statutes is created to read:~~

18 ~~961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)~~  
19 ~~by distributing or delivering methamphetamine or a controlled substance analog of~~  
20 ~~methamphetamine to a person 17 years of age or under who is at least 2 years his~~  
21 ~~or her junior, the person is guilty of a Class B felony.~~

22 ~~SECTION 37. 961.49 (title) of the statutes is amended to read:~~

23 ~~961.49 (title) **Distribution of or possession with Offenses involving**~~  
24 ~~**intent to deliver or distribute a controlled substance on or near certain**~~  
25 ~~**places.**~~

INS  
9/23

1 of methamphetamine precursors shall be prima facie evidence of intent to  
2 manufacture methamphetamine.

3 SECTION 30. 961.437 (3) of the statutes is renumbered 961.437 (3m) (b), and  
4 961.437 (3m) (b) (intro.) and 2., as renumbered, are amended to read:

5 961.437 (3m) (b) (intro.) ~~Subsection (2) Paragraph (a)~~ does not apply to a person  
6 who possesses or disposes of methamphetamine manufacturing waste under all of  
7 the following circumstances:

8 2. The methamphetamine manufacturing waste had previously been possessed  
9 or disposed of by another person in violation of sub. (2) par. (a).

10 SECTION 31. 961.437 (3m) (title) of the statutes is created to read:

11 961.437 (3m) (title) WASTE FROM MANUFACTURE OF METHAMPHETAMINE.

12 SECTION 32. 961.437 (4) of the statutes is renumbered 961.437 (3m) (c), and  
13 961.437 (3m) (c) (intro.), as renumbered, is amended to read:

14 961.437 (3m) (c) (intro.) A person who violates sub. (2) par. (a) is subject to the  
15 following penalties:

16 SECTION 33. 961.437 (5) of the statutes is renumbered 961.437 (3m) (d) and  
17 amended to read:

18 961.437 (3m) (d) Each day of a continuing violation of sub. (2) par. (a) 1. or (b)  
19 2. constitutes a separate offense.

products

20 SECTION 34. 961.453 of the statutes is created to read:

21 961.453 Purchases of pseudoephedrine, on behalf of another person.

a product

22 (1) (a) No person may knowingly solicit, hire, direct, employ, or use another to  
23 purchase <sup>his or her</sup> on behalf of <sup>5 x 3</sup> the actor, a product to which s. 961.22 (3) (b) applies if the actor

24 ~~person~~ with the intent to acquire within a 30-day period more than 9 grams of a  
25 product to which s. 961.22 (3) (b) applies.

705

pseudoephedrine

INS  
8/7

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

products

6 SECTION 25. 961.41 (3j) of the statutes is created to read:

7 961.41 (3j) PURCHASE OF PSEUDOEPHEDRINE. Whoever ~~is a~~ a physician;  
8 dentist, veterinarian, or pharmacist purchases within a 30-day period more than  
9 9 grams of a product ~~as defined in s. 961.22 (3) (a) applied to purchasing~~ other than  
10 by purchasing the product in person from a pharmacy or pharmacist is guilty of a  
11 Class I felony. This subsection does not apply to a purchase that is authorized by a  
12 physician, dentist, or veterinarian.

769

13 SECTION 26. 961.437 (title) of the statutes is amended to read:

14 961.437 (title) **Possession and disposal of Materials used in and waste**  
15 **produced from manufacture of methamphetamine.**

16 SECTION 27. 961.437 (1) (title) of the statutes is created to read:

17 961.437 (1) (title) DEFINITIONS.

18 SECTION 28. 961.437 (2) of the statutes is renumbered 961.437 (3m) (a).

19 SECTION 29. 961.437 (2m) of the statutes is created to read:

20 961.437 (2m) MATERIALS USED IN MANUFACTURE OF METHAMPHETAMINE. Except  
21 as authorized by this chapter, any person who possesses a methamphetamine  
22 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous  
23 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture  
24 methamphetamine is guilty of a Class H felony. Possession of more than 24 grams

1

**analysis INSERT**

This substitute amendment makes a number of changes in the law relating to pseudoephedrine and other materials used to make the controlled substance methamphetamine.

***Classification of pseudoephedrine products as controlled substances***

Under current law, each controlled substance is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for being abused; and 3) the nature of the psychological or physical dependence that use of the drug may produce. Controlled substances that have a high potential for abuse and no currently accepted medical use are included in Schedule I. Controlled substances that have an accepted medical use and that have the lowest potential for abuse and produce the least dependence when compared with other controlled substances are included in Schedule V. (Methamphetamine is included in Schedule II.)

In general, a Schedule I controlled substance may not be dispensed, even with a prescription. A Schedule II, III, or IV controlled substance may be dispensed, but only with a prescription. A Schedule V controlled substance may be dispensed without a prescription, but only a registered pharmacist may sell it at retail and only then, in most cases, in certain specified amounts. In addition, the pharmacist must record the name and address of the purchaser of a Schedule V controlled substance and the quantity of the product sold.

Penalties for crimes relating to Schedule I and II controlled substances are, in general, more severe than those relating to other controlled substances. Penalties for crimes relating to Schedule V controlled substances are generally the least severe. To illustrate, unlawful delivery of heroin (a Schedule I controlled substance) is a Class C, D, E, or F felony, depending on the amount of the drug involved, while unlawful delivery of any Schedule V controlled substance is a Class I felony, regardless of the amount involved.

Under this substitute amendment, pseudoephedrine products are classified as Schedule V controlled substances. The substitute amendment defines a "pseudoephedrine product" as any product containing pseudoephedrine unless: 1) the Controlled Substances Board has determined that the product cannot be used readily in the manufacture of methamphetamine; or 2) the pseudoephedrine is in a liquid or in a soft, liquid-filled gelatin capsule, but not if the Controlled Substances Board has determined that the liquid or gelatin capsule can be used readily in the manufacture of methamphetamine.

The substitute amendment also establishes a number of restrictions on the sale of pseudoephedrine products in conjunction with its classification as a Schedule V controlled substance. First, no person may purchase more than seven and a half grams of a pseudoephedrine product within a 30-day period (the "quantity restriction"). Second, a person purchasing a pseudoephedrine product must present a photo ID at the time of the purchase. Third, a pharmacist must sign a record of the sale. Fourth, pharmacists must maintain records relating to sales of pseudoephedrine products for at least two years in an electronic or paper format. The

records, however, are to be made available only to a pharmacist or a law enforcement officer. Fifth, the substitute amendment prohibits a person from purchasing or selling a pseudoephedrine product if the purchaser is ~~less than~~ 18 years of age (the "age restriction"). At the same time, the substitute amendment also creates an exception to requirement that all retail sales of Schedule V controlled substances occur through a registered pharmacist. Under the ~~substitute amendment~~, a person working under the direction of a registered pharmacist may also sell pseudoephedrine products.

As noted above, the unlawful delivery of any Schedule V controlled substance is a Class I felony. (See the table near the end of this analysis for the penalties that apply to felonies created in this substitute amendment.) This would include a sale of a pseudoephedrine product in violation of any of the restrictions established under current law or under the substitute amendment. But a person has a defense to such a prosecution involving a pseudoephedrine product if the person did not knowingly or recklessly violate the applicable restriction and either 1) he or she reports it to a law enforcement officer within 30 days thereafter; or 2) the violation stemmed from the conduct of one or his or her employees, but only if the person had provided training to the employee regarding those restrictions. The substitute amendment also provides a defense to a prosecution based on a violation of the quantity restriction if: 1) the purchaser presented a fake ID that an ordinary and prudent person would think was legitimate; and 2) the sale was made in good faith, in reasonable reliance on the ID card and the appearance of the purchaser, and with the belief that the ID card contained the purchaser's true name and address. In addition, the substitute amendment provides a defense to a prosecution based on a violation of the age restriction if: 1) the purchaser presented an ID card indicating that he or she was 18 or over; 2) an ordinary and prudent person would believe that the purchaser, based on his or her appearance, was 18 or over; and 3) the sale was made in good faith, in reasonable reliance on the ID card and the appearance of the purchaser, and with the belief that the purchaser was 18 or over. If a person raises one of these defenses, he or she must prove each element by a preponderance of the evidence.

The substitute amendment also creates two new crimes related to pseudoephedrine products. First, the substitute amendment prohibits a person from purchasing more than seven and a half grams of a pseudoephedrine product ~~from a single seller~~ within a 30-day period, other than by purchasing it in person from a pharmacy or pharmacist. A person who violates this prohibition is guilty of a Class I felony. This prohibition does not apply to purchases by a physician, dentist, veterinarian, or pharmacist or to purchases that are authorized by a physician, dentist, or veterinarian. Second, the substitute amendment prohibits purchases made to enable a person to avoid the quantity restriction. A person who knowingly uses another person to do so is guilty of a Class I felony, he or she uses an individual who is under 18 to do so. In that case, the person is guilty of a Class H felony. Third, the substitute amendment prohibits a person from purchasing a pseudoephedrine product on behalf of another person with intent to facilitate another person's

the  
be made by

under  
younger

pseudoephedrine products

of a

three

unless

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✓

manufacture of methamphetamine. A person who violates this prohibition is guilty of a Class I felony.

**Possession of methamphetamine precursors**

Current law generally prohibits possessing or disposing of waste resulting from the manufacture of methamphetamine. This prohibition does not apply to legitimate storage, treatment, or clean-up operations. A violation of this prohibition is a Class F felony. Second and subsequent offenses are Class H felonies.

Current law also prohibits possessing or attempting to possess methamphetamine itself. A violation of that prohibition is a Class I felony. In addition, current law prohibits manufacturing, distributing, and delivering methamphetamine and possessing methamphetamine with intent to manufacture, distribute, or deliver. A violation of one of these prohibitions is a Class C, D, E, or F felony, depending on the amount of the drug involved.

This substitute amendment prohibits possessing a variety of materials with intent to manufacture methamphetamine. A person who violates this prohibition is guilty of a Class H felony. The materials that are covered by this prohibition are pseudoephedrine products, products containing ephedrine (a ~~S~~ Schedule IV controlled substance), phenylpropanolamine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, and pressurized ammonia. Possession of more than nine grams of pseudoephedrine or ephedrine creates a rebuttable presumption of the person's intent to manufacture methamphetamine.

In general, a person who is convicted of possessing the materials listed above with intent to manufacture methamphetamine is subject to the same disqualifications, disabilities, increased penalties, and other adverse or unfavorable treatments as a person who is convicted of possessing a controlled substance with intent to manufacture, distribute, or deliver ("possession with intent" crimes). For example, like possession with intent crimes, this new offense is classified as a "three-strikes" crime, which means that a person who is convicted of this crime and two other offenses that are covered by the relevant statute is sentenced, upon conviction for the last of those three offenses, to life imprisonment without the possibility of parole or extended supervision.

**Agricultural chemicals used to make methamphetamine**

Current law prohibits the theft of anhydrous ammonia or equipment used to apply ~~it~~ for an agricultural purpose or to store, hold, transport, or transfer ~~it~~ (anhydrous ammonia equipment). Current law also contains other prohibitions regarding storing, holding, transporting, and transferring anhydrous ammonia. A person who violates one of these prohibitions is guilty of a Class I felony (unless the violation occurs during agricultural activity or while the person is working on anhydrous ammonia equipment with its owner's consent, in which case the person is subject to a civil monetary penalty).

This substitute amendment prohibits a person from intentionally releasing another person's anhydrous ammonia without the other person's consent. A person who violates this prohibition is guilty of a Class I felony. The substitute amendment also specifies that attempted theft of anhydrous ammonia or anhydrous ammonia equipment is subject to the same penalties as those that apply to the completed

offense. <sup>with crimes, an</sup> (Most other attempts are punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

**Penalties**

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum term of confinement</i>	<i>Maximum sentence length</i>
Class H felony	\$10,000	3 years	6 years
Class I felony	\$10,000	1.5 years	3.5 years

1 **INSERT 5/8**

No F

2 the controlled substances board has determined, by rule, that the product can  
3 be readily used in the manufacture of methamphetamine.

4 **INSERT 5/23**

5 SECTION ~~4~~ 961.22 (3) (title) of the statutes is amended to read:

6 961.22 (3) (title) ~~STIMULANTS~~ OTHER STIMULANTS.

History: 1971 c. 219; 1981 c. 206; CSB 2.15; 1985 a. 135; CSB 2.17; 1995 a. 448 ss. 223 to 227, 481; Stats. 1995 s. 961.22; CSB 2.17 (1).

7 **INSERT 6/5**

No F

8 person who is working under the direction of a registered pharmacist

9 **INSERT 6/17**

No F

10 person who is not a registered pharmacist

11 **INSERT 6/25**

No F

12 unless it contains another schedule V substance.

13 **INSERT 7/6**

No F

14 This subsection does not apply to a pseudoephedrine product unless it contains  
15 another schedule V substance.

16 **INSERT 14/3**

No F

17 ephedrine or pseudoephedrine, other than pseudoephedrine contained in a  
18 product to which s. 961.01 (20c) (a) or (b) applies,

19 **INSERT 14/4**

- 1  In this section, "ephedrine" and "pseudoephedrine" include any of their salts,
- 2 isomers, and salts of isomers.

## Dsida, Michael

---

**From:** Schneider, Christian  
**Sent:** Thursday, March 31, 2005 11:13 AM  
**To:** Dsida, Michael  
**Subject:** RE: Meth sub

Okay, the guy that handles that is out of the office, anyway.

It passed 5-0 incidentally, so it turns out we may have done something right.

As long as I have your attention, the pharmacists swear up and down that the bill creates a new "pharmacy assistant" position, despite the way it is defined earlier in the bill. They would much rather take the definition and incorporate that language into the line about who can distribute. They say that the way it is written now, it would create a new position that the pharmacy examining board would have to write rules to regulate.

Another question - is there any requirement in the bill or in Schedule V generally that the pharmacist sign the log book at the very time the transaction is made? It sounds like they can sign for all the transactions at the end of the day, which is fine with us. They are arguing that it will be too time consuming to sign the log book anytime someone purchases a pseudo product. It appears that there are no time restrictions on when they can sign.

I believe we will also be doing an amendment that eliminates the requirement for all pseudoephedrine products (regardless of makeup or dosage) to be labeled by the pharmacy or retailer.

The Attorney General made reference to the way the pills are weighed - total weight versus weight of the active ingredient. She said this was confusing and needing clarification - it seems clear to me.

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

**From:** Dsida, Michael  
**Sent:** Thursday, March 31, 2005 11:04 AM  
**To:** Schneider, Christian  
**Subject:** RE: Meth sub

I should have said "thanks, **but you don't need to.**" So I'll say it now. Thanks, **but you don't need to.**

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

**From:** Dsida, Michael  
**Sent:** Thursday, March 31, 2005 11:03 AM  
**To:** Schneider, Christian  
**Subject:** RE: Meth sub

thanks

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

**From:** Schneider, Christian  
**Sent:** Thursday, March 31, 2005 11:02 AM  
**To:** Dsida, Michael  
**Subject:** RE: Meth sub

Yes. There's usually a little lag time in getting it up on the computers. I can check with the chief clerk to see if they've entered it yet.

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

**From:** Dsida, Michael  
**Sent:** Thursday, March 31, 2005 10:59 AM  
**To:** Schneider, Christian  
**Subject:** Meth sub

Our computers are showing that it hasn't yet been designated as SSA1. I assume that it was formally introduced yesterday -- was it?

## Dsida, Michael

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**From:** Schneider, Christian  
**Sent:** Thursday, March 31, 2005 4:03 PM  
**To:** Dsida, Michael  
**Subject:** Senate Bill 78 Simple Amendment to SSA1

Mike,

In part to summarize what we talked about and get my own thoughts in order, here's what we would like our new amendment to do:

1. Page 5, Delete lines 1 and 2. Amend page 6, lines 4-6 to say "They may be sold at retail only by a registered pharmacist or, if the substance is pseudoephedrine, by a person working under the supervision of a pharmacist when sold in a retail establishment."
2. Page 6, lines 8-10, exempt pseudoephedrine products from the Schedule V requirement that they bear the name and address of the establishment on the immediate corner of said preparation.
3. Page 11, delete lines 6 and 7
4. Page 7, lines 8-11, clarify that the individual may not purchase more than 6 grams of *pseudoephedrine* within a 30 day period, as opposed to 6 grams of a *product containing pseudoephedrine*. We want to measure only the amount of pseudoephedrine purchased.
5. Delete Section 31?
6. Section 42 - clarify for the purposes of this section, possession of 8 grams means 8 grams of pseudoephedrine, as opposed to 8 grams of a product containing pseudoephedrine. If the weight of other ingredients is included in the gram limit, the purchase of combination products will be severely limited. Since it is a legal product, it needs to be easy for citizens to determine how near the limit they are, and that can only be done by counting up the pseudoephedrine.
7. We will most likely have to include language similar to that suggested by Dick Sweet, changing "prima facie" possession to a rebuttable presumption, to protect law abiding citizens.

That's all I see right now.

Thanks,

Chris

## Dsida, Michael

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**From:** Schneider, Christian  
**Sent:** Tuesday, April 05, 2005 4:49 PM  
**To:** Dsida, Michael  
**Subject:** FW: Controlled substances board question

When we do an amendment, please keep this in mind. I asked the question, "If the controlled substances board can add pseudoephedrine to Schedule V, why haven't they done so already?" This is the answer - so we may have to change the bill to allow the CSB the flexibility to add products, as well as remove them from Schedule V.

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

**From:** Rose, Laura  
**Sent:** Tuesday, April 05, 2005 4:46 PM  
**To:** Schneider, Christian  
**Subject:** Controlled substances board question

Hi Chris,

It looks like the CSB could not add pseudoephedrine on its own at this point, since it can be lawfully sold over the counter without a prescription. However, the CSB may request DOJ to seek a restraining order to ban or regulate the sale and possession of pseudoephedrine. Here's the relevant statute:

961.11(6)(a) The controlled substances board shall not have authority to control a nonnarcotic substance if the substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription.

(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. (a) is dangerous to or is being so used as to endanger the public health and welfare, it may request the department of justice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (1m).

Laura Rose  
Deputy Director  
Legislative Council Staff  
ph. 608.266.9791; fax 608.266.3830  
laura.rose@legis.state.wi.us

## **Dsida, Michael**

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**From:** Schneider, Christian  
**Sent:** Thursday, April 07, 2005 8:35 AM  
**To:** Dsida, Michael  
**Subject:** RE: fyi - i'm back in the office

There's no rush. It will be at least May before we can take up either version of the bill, so we have a little time. I think we will scratch the part I told you about doing away with the labeling requirement. We should keep that in, as the bill is now.

I'm looking at Section 25 of the Assembly sub - is that enforceable? Do we have restrictions like that in place for other things like cigarettes? I realize they are trying to get at internet sales, but that is why we made the case for the possession limits - so no matter how they got them, they would still be in violation if they had too much.

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

**From:** Dsida, Michael  
**Sent:** Wednesday, April 06, 2005 1:13 PM  
**To:** Schneider, Christian  
**Subject:** RE: fyi - i'm back in the office

Do you want something drafted to make those changes (as well as what you sent over this morning re the CSB), or am I awaiting further instructions?

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

**From:** Schneider, Christian  
**Sent:** Tuesday, April 05, 2005 1:23 PM  
**To:** Dsida, Michael  
**Subject:** RE: fyi - i'm back in the office

Thanks. Given the tenor of the meeting this morning, I think it is unlikely we will be making any changes to our bill soon. We still, however, wanted to investigate those changes I sent to you last week.

Thanks,

Chris

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

**From:** Dsida, Michael  
**Sent:** Tuesday, April 05, 2005 1:19 PM  
**Subject:** fyi - i'm back in the office

## Dsida, Michael

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**From:** Schneider, Christian  
**Sent:** Thursday, April 21, 2005 12:40 PM  
**To:** Dsida, Michael  
**Subject:** RE: Meth sub

I believe section 2 would be out, section 3 would be in. We have determined that liquid nitrogen is not a threat, and should not be affected. All the changes to anhydrous ammonia should remain in the bill.

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**From:** Dsida, Michael  
**Sent:** Thursday, April 21, 2005 12:22 PM  
**To:** Schneider, Christian; Jensen, Jodi  
**Subject:** RE: Meth sub

Does your reference to "liquid nitrogen" include the provisions dealing with the theft of anhydrous ammonia? In other words, is Section 3 of the Senate sub in or out?

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

**From:** Schneider, Christian  
**Sent:** Thursday, April 21, 2005 11:16 AM  
**To:** Dsida, Michael; Jensen, Jodi  
**Subject:** RE: Meth sub

Yes. I amended our previous agreement condition document to reflect today's meeting. Here it is:

<< File: SB78-AB183Agreement.doc >>

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**From:** Dsida, Michael  
**Sent:** Thursday, April 21, 2005 11:15 AM  
**To:** Schneider, Christian; Jensen, Jodi  
**Subject:** Meth sub

Do each of you want a sub for your respective houses?

## Dsida, Michael

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**From:** Schneider, Christian  
**Sent:** Thursday, April 21, 2005 12:50 PM  
**To:** Dsida, Michael; Jensen, Jodi  
**Subject:** RE: Secured storage requirements under federal law

Attached is the bill passed by Arkansas that makes pseudoephedrine Schedule V. As you can see, they have specific language exempting warehouses from the caging requirement, which you say is unnecessary. There may be other states with language like this, this is just the one I know about. Even if your e-mail below is correct (which I'm certain it is), would it do any harm just to have clarifying language added to the bill, just to be safe?

(See page 2, line 34)



AR SB109  
Adopted.pdf

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**From:** Dsida, Michael  
**Sent:** Thursday, April 21, 2005 12:18 PM  
**To:** Schneider, Christian; Jensen, Jodi  
**Subject:** Secured storage requirements under federal law

The restrictions imposed under federal law regarding the storage of controlled substances would not apply to pseudoephedrine, even if it becomes a Schedule V controlled substance under Wisconsin law. The relevant provisions of federal law are set forth in 21 CFR § 1301.73 (<http://squid.law.cornell.edu/cgi-bin/get-cfr.cgi?TITLE=21&PART=1301&SECTION=72&TYPE=TEXT>). Paragraph (b) of that section requires that controlled substances listed in Schedule III, IV, or V be stored in safes, vaults, cages, or similar secured facilities. But as I explained (perhaps not as clearly as I could have), this restriction only applies to materials that are controlled substances as defined under federal law -- in other words, under 21 U.S.C. § 802 (6). That provision states in part, "The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of *this subchapter*." In other words, the restriction uses the federal schedules, not those developed by the states.

State law does not impose any comparable restriction.

I hope this is helpful.

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
[michael.dsida@legis.state.wi.us](mailto:michael.dsida@legis.state.wi.us)

## Dsida, Michael

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**From:** Jensen, Jodi  
**Sent:** Thursday, April 21, 2005 3:25 PM  
**To:** Dsida, Michael  
**Subject:** RE: Secured storage requirements under federal law

Mike - your explanation makes sense to me. I told Huebsch I don't think we have to address the cage issue. He wants me to run it by a constituent before making a final decision. I'll get back to you and Chris ASAP.

Also, just want to confirm that wholesalers are exempt from the possession and purchase limits.

Thanks for everything.  
Jodi

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**From:** Dsida, Michael  
**Sent:** Thursday, April 21, 2005 1:29 PM  
**To:** Schneider, Christian; Jensen, Jodi  
**Subject:** RE: Secured storage requirements under federal law

The provisions to which the bill is referring are in the Arkansas Code of Rules and Regulations (their equivalent of our Administrative Code):

### SECTION 3. SECURITY REQUIREMENTS

A. All practitioners shall provide effective controls and procedures to guard against theft and diversion of controlled substances. Controlled substances listed in Schedules I, II, III, IV and V (except injectable ephedrine kept for emergency use in institutions), shall be stored in a securely locked, substantially constructed cabinet.

However, pharmacies may disperse such controlled substances throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

007 07 CARR 009.

In general, we try to avoid adding unnecessary language to the statutes. Besides keeping the statutes more manageable, that also helps avoid unintended consequences. For example, in this case, stating that pseudoephedrine is not subject to the federal requirements may lead a court or the CSB to conclude that other drugs that are listed in Schedule V under state law but that are not scheduled under federal law **are** subject to those requirements.

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

**From:** Schneider, Christian  
**Sent:** Thursday, April 21, 2005 12:50 PM  
**To:** Dsida, Michael; Jensen, Jodi  
**Subject:** RE: Secured storage requirements under federal law

Attached is the bill passed by Arkansas that makes pseudoephedrine Schedule V. As you can see, they have specific language exempting warehouses from the caging requirement, which you say is unnecessary. There may be other states with language like this, this is just the one I know about. Even if your e-mail below is correct (which I'm certain it is), would it do any harm just to have clarifying language added to the bill, just to be safe?

(See page 2, line 34)

<< File: AR SB109 Adopted.pdf >>

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**From:** Dsida, Michael  
**Sent:** Thursday, April 21, 2005 12:18 PM  
**To:** Schneider, Christian; Jensen, Jodi  
**Subject:** Secured storage requirements under federal law

The restrictions imposed under federal law regarding the storage of controlled substances would not apply to pseudoephedrine, even if it becomes a Schedule V controlled substance under Wisconsin law. The relevant provisions of federal law are set forth in 21 CFR § 1301.73 (<http://squid.law.cornell.edu/cgi-bin/get-cfr.cgi?TITLE=21&PART=1301&SECTION=72&TYPE=TEXT>). Paragraph (b) of that section requires that controlled substances listed in Schedule III, IV, or V be stored in safes, vaults, cages, or similar secured facilities. But as I explained (perhaps not as clearly as I could have), this restriction only applies to materials that are controlled substances as defined under federal law -- in other words, under 21 U.S.C. § 802 (6). That provision states in part, "The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of *this subchapter*." In other words, the restriction uses the federal schedules, not those developed by the states.

State law does not impose any comparable restriction.

I hope this is helpful.

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@legis.state.wi.us

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## Dsida, Michael

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**From:** Jensen, Jodi  
**Sent:** Thursday, April 21, 2005 4:21 PM  
**To:** Schneider, Christian; Dsida, Michael  
**Subject:** RE: More meth

1. We didn't want to use pharmacy tech because it doesn't cover all of the people who might be behind the pharmacy counter. As Chris said, the concern about pharmacy assistant is serious. We do not want to use it.
2. Agree with Chris.
3. Agree with Chris.

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**From:** Schneider, Christian  
**Sent:** Thursday, April 21, 2005 3:48 PM  
**To:** Dsida, Michael; Jensen, Jodi  
**Subject:** RE: More meth

1. The primary concern of the pharmacists' organization is that distilling "pharmacy assistant" into a single term creates a new position, of which the pharmacy examining board would have to write rules to regulate. They are adamant that the more lengthy description be included, to the point that their support of the bill hinges on its inclusion. In our discussions, we agreed to the Assembly language on this provision, so I think it should be Jodi that makes the call here.
2. 961.452(2) should stay. I included this as part of the catch-all "immunity from prosecution" provisions.
3. Our recommendation would be to provide a five year penalty enhancer to the existing meth distribution penalties for distribution of meth to a minor. That way, we keep the graduated penalty structure, but make it more serious for selling to kids. This is, of course, subject to agreement with the Assembly.

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**From:** Dsida, Michael  
**Sent:** Thursday, April 21, 2005 3:30 PM  
**To:** Schneider, Christian; Jensen, Jodi  
**Subject:** More meth

1. I know that some people had some concern about the use of the term "pharmacy assistant." How significant is that concern? The bill would certainly be easier to read in a couple of places if I could use that term. I would also include the definition from the Senate sub, but I would replace "supervision" with "direction" and specify that the person would not be a pharmacist herself. (Otherwise, the bill would treat a pharmacist working under another pharmacist's supervision as a

"pharmacy assistant." Another option would be to use "pharmacy technician," a term defined in the Administrative Code at Phar 7.015(1):

*As used in this section, "pharmacy technician" means a non-pharmacist or non-pharmacist intern who, under the general supervision of a pharmacist who regularly coordinates, directs and inspects the activities of the pharmacy technician, assists the pharmacist in the technical and nonjudgmental functions related to the practice of pharmacy in the processing of prescription orders and inventory management. "Pharmacy technician" does not include ancillary persons which include, clerks, secretaries, cashiers or delivery persons, who may be present in the pharmacy.*

2. Do I delete s. 961.452 (2)? (It begins on page 8.) There is no reference to it in the summary's discussion of immunity.

3. When I drafted the bills, s. 961.46 (2) made selling meth to a minor a Class B felony -- regardless of the amount of meth involved. The Senate sub changed it to a Class I felony. I should have noticed this sooner, but neither that change nor the proposal to change it to a Class G felony makes sense, given your objectives for this bill -- unless the person is subject to prosecution for both the new crime and the weight-based crime that exists under current law. (Under current law, the lowest level offense involving the distribution of methamphetamine is a Class F felony (maximum penalties: 12.5 years/\$25,000 fine). Penalties increase if the amount of methamphetamine is more than three grams. For example, if a person sells between three and ten grams, the person is guilty of a Class E felony (15 years/\$50,000 fine).) Do you want the person to be subject to prosecution for both? Another option would be to keep the five-year enhancer under current s. 961.46 applicable to meth sales to minors. A third option would be to make each weight-based offense a higher level felony if the buyer is a minor.

## Dsida, Michael

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**From:** Schneider, Christian  
**Sent:** Friday, April 22, 2005 2:40 PM  
**To:** Jensen, Jodi; Dsida, Michael  
**Subject:** RE: Definition of pseudoephedrine

Yeah, fine with me if it works.

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**From:** Jensen, Jodi  
**Sent:** Friday, April 22, 2005 2:29 PM  
**To:** Dsida, Michael; Schneider, Christian  
**Subject:** RE: Definition of pseudoephedrine

Sounds fine to me.

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

**From:** Dsida, Michael  
**Sent:** Friday, April 22, 2005 11:02 AM  
**To:** Schneider, Christian; Jensen, Jodi  
**Subject:** RE: Definition of pseudoephedrine

I should have also noted that this is a good way to address the issue of how to weigh the precursors for the purposes of s. 961.65.

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

**From:** Dsida, Michael  
**Sent:** Friday, April 22, 2005 10:57 AM  
**To:** Schneider, Christian; Jensen, Jodi  
**Subject:** Definition of pseudoephedrine

I want to give you a heads-up on this.

There are a couple of problems with circularity in the definitions. In addition, listing pseudoephedrine in 961.22 (3), the introduction for which refers to materials, compounds, mixtures...which contain....X or any of its salts..., doesn't make the most sense, since the definition of pseudoephedrine itself refers to salts, isomers, etc. Therefore, I am going to change the term to "pseudoephedrine product" and list it separately in a new s. 961.22 (2m).

This will not involve any substantive changes, and the language of the bill will end up making more sense.

Mike

## Dsida, Michael

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**From:** Jensen, Jodi  
**Sent:** Wednesday, April 27, 2005 11:52 AM  
**To:** Dsida, Michael  
**Subject:** RE:

Mike - can we take out "from a single seller" to address the problem of multiple purchases? The Class I felony is fine.

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**From:** Dsida, Michael  
**Sent:** Wednesday, April 27, 2005 10:06 AM  
**To:** Jensen, Jodi  
**Subject:**

Here's how s. 961.41 (3j) will read in the new sub:

Whoever purchases more than 7.5 grams of a pseudoephedrine product from a single seller within a 30 day period, other than by purchasing it in person from a pharmacy or pharmacist, is guilty of a Class I felony.