State of Wisconsin
2005 – 2006 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT ,

TO 2005 SENATE BILL 78

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AN ACT ***to renumber*** 961.437, 961.49, 961.61 and 961.62; ***to amend*** 101.10 (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m) (d), 961.22 (3) (title), 961.23 (1), 961.23 (2), 961.23 (3), 961.23 (4), 961.23 (5) and 961.49 (title); and ***to create*** 101.10 (3) (f), 111.335 (1) (cs) 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag) 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (11t), 961.01 (12t), 961.01 (20c), 961.01 (20e), 961.22 (2m), 961.23 (6), 961.23 (8), 961.235, 961.41 (3j), 961.452, 961.453, 961.49 (2m), 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c) of the statutes; **relating to:** pseudoephedrine and other materials used to produce methamphetamine and providing penalties.

Analysis by the Legislative Reference Bureau

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 under 18 (the "age restriction"). At the same time, the substitute amendment also creates an exception to the requirement that all retail sales of schedule V controlled substances be made by a

registered pharmacist. Under the exception, a person working under the direction of a registered pharmacist may 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 for pseudoephedrine products 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 for pseudoephedrine products 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 three 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 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 of pseudoephedrine products 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, unless 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 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 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 three–strikes 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 anhydrous ammonia for an agricultural purpose or to store, hold, transport, or transfer anhydrous ammonia (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. (With most other crimes, an attempt is punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

Penalties

Crime	*Maximum fine*	*Maximum term of confinement*	*Maximum sentence length*
Class H felony	$10,000	3 years	6 years
Class I felony	$10,000	1.5 years	3.5 years

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 **anhydrous ammonia and anhydrous ammonia equipment.**

4 **SECTION 2.** 101.10 (3) (f) of the statutes is created to read:

5 101.10 **(3)** (f) Intentionally release or allow the escape of anhydrous ammonia
6 belonging to another into the atmosphere. This paragraph does not apply if the
7 owner has authorized the actor to exercise control over the anhydrous ammonia or
8 has consented to its release.

9 **SECTION 3.** 111.335 (1) (cs) 5. of the statutes is created to read:

10 111.335 **(1)** (cs) 5. Possessing any of the materials listed in s. 961.65 with intent
11 to manufacture methamphetamine under that section or under a federal law or a law
12 of another state that is substantially similar to s. 961.65.

13 **SECTION 4.** 125.12 (2) (ag) 5m. of the statutes is created to read:

14 125.12 **(2)** (ag) 5m. The person has been convicted of possessing any of the
15 materials listed in s. 961.65 with intent to manufacture methamphetamine under
16 that subsection or under a federal law or a law of another state that is substantially
17 similar to s. 961.65.

18 **SECTION 5.** 125.12 (2) (ag) 6m. of the statutes is created to read:

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

SECTION 6. 125.12 (4) (ag) 7m. of the statutes is created to read:

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

SECTION 7. 125.12 (4) (ag) 8m. of the statutes is created to read:

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

SECTION 8. 895.555 (1) of the statutes is amended to read:

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

SECTION 9. 938.34 (14s) (am) (intro.) of the statutes is amended to read:

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

SECTION 10. 939.32 (1) (g) of the statutes is created to read:

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

SECTION 11. 939.62 (2m) (a) 2m. am. of the statutes is created to read:

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

SECTION 12. 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

939.62 **(2m)** (a) 2m. d. A crime at any time under federal law or the law of any other state or, prior to April 28, 1994, under the law of this state that is comparable to a crime specified in <u>this</u> subd. 2m. a., <u>am.,</u> b., or c.

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

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

SECTION 14. 961.01 (11t) of the statutes is created to read:

961.01 **(11t)** "Ephedrine product" means any material, compound, mixture, or preparation that contains any quantity of ephedrine or any of its salts, isomers, and salts of isomers.

SECTION 15. 961.01 (12t) of the statutes is created to read:

961.01 **(12t)** "Liquid–filled pseudoephedrine gelcap" means a soft, liquid–filled gelatin capsule that is intended to be sold at retail and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

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

961.01 **(20c)** "Pseudoephedrine product" means a material, compound, mixture, or preparation containing any quantity of pseudoephedrine or any of its salts, isomers, or salts of isomers but does not include such a product if any of the following applies:

(a) The product is a pseudoephedrine liquid or a liquid–filled pseudoephedrine gelcap. This paragraph does not apply if the controlled substances board has determined, by rule, that the product can be readily used in the manufacture of methamphetamine.

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

SECTION 17. 961.01 (20e) 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 pseudoephedrine or any of its salts, isomers, or salts of isomers.

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SECTION 18. 961.22 (2m) of the statutes is created to read:

961.22 **(2m)** PSENDOPHEDRINE. Any pseudoephedrine product.

SECTION 19. 961.22 (3) (title) of the statutes is amended to read:

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

SECTION 20. 961.23 (1) of the statutes is amended to read:

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

SECTION 21. 961.23 (2) of the statutes is amended to read:

961.23 **(2)** ~~That they~~ They may be sold at retail only by a registered pharmacist or, if the substance is a pseudoephedrine product, by a person who is working under the direction of a registered pharmacist when sold in a retail establishment.

1 **SECTION 22.** 961.23 (3) of the statutes is amended to read:

2 961.23 **(3)** ~~That, when~~ When sold in a retail establishment, they shall bear the
3 name and address of the establishment on the immediate container of said
4 preparation.

5 **SECTION 23.** 961.23 (4) of the statutes is amended to read:

6 961.23 **(4)** ~~That any~~ Any person purchasing such a substance shall, at the time
7 of purchase, present to the seller that person's correct name ~~and~~, address, and, if the
8 person is purchasing a pseudoephedrine product, an identification card containing
9 the person's photograph. The seller shall record the name and address and the name
10 and quantity of the product sold. The purchaser and either the seller or, if the
11 substance is a pseudoephedrine product and is being sold by a person who is not a
12 registered pharmacist, the pharmacist supervising the seller shall sign the record of
13 this transaction. The giving of a false name or false address by the purchaser shall
14 be prima facie evidence of a violation of s. 961.43 (1) (a).

15 **SECTION 24.** 961.23 (5) of the statutes is amended to read:

16 961.23 **(5)** ~~That no~~ No person may purchase more than 8 ounces of a product
17 containing opium or more than 4 ounces of a product containing any other schedule
18 V substance within a 48–hour period without the authorization of a physician,
19 dentist, or veterinarian ~~nor~~. This subsection does not apply to a pseudoephedrine
20 product unless it contains another schedule V substance.

21 **(7)** No person other than a physician, dentist, veterinarian, or pharmacist may
22 possess more than 8 ounces of a product containing opium or more than 4 ounces of
23 a product containing any other schedule V substance ~~be in the possession of any~~
24 ~~person other than a physician, dentist, veterinarian or pharmacist~~ at any time
25 without the authorization of a physician, dentist, or veterinarian. This subsection

1 does not apply to a pseudoephedrine product unless it contains another schedule V
2 substance.

3 **SECTION 25.** 961.23 (6) of the statutes is created to read:

4 961.23 **(6)** No person other than a physician, dentist, veterinarian, or
5 pharmacist may purchase more than 7.5 grams of a pseudoephedrine product within
6 a 30–day period without the authorization of a physician, dentist, or veterinarian.

7 **SECTION 26.** 961.23 (8) of the statutes is created to read:

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

11 **SECTION 27.** 961.235 of the statutes is created to read:

12 **961.235 Records relating to sales of pseudoephedrine products.**
13 Records required under s. 961.23 (4) with respect to the sale of a pseudoephedrine
14 product may be kept in either a paper or electronic format and shall be maintained
15 by the pharmacy for at least 2 years. Only a pharmacist or a law enforcement officer
16 may have access to information recorded under s. 961.23 (4) with respect to the sale
17 of a pseudoephedrine product.

18 **SECTION 28.** 961.41 (3j) of the statutes is created to read:

19 961.41 **(3j)** PURCHASES OF PSEUDOEPHEDRINE PRODUCTS. Whoever purchases
20 more than 7.5 grams of a pseudoephedrine product within a 30–day period, other
21 than by purchasing the product in person from a pharmacy or pharmacist, is guilty
22 of a Class I felony. This subsection does not apply to a purchase by a physician,
23 dentist, veterinarian, or pharmacist or a purchase that is authorized by a physician,
24 dentist, or veterinarian.

25 **SECTION 29.** 961.437 of the statutes is renumbered 961.67.

1 **SECTION 30.** 961.452 of the statutes is created to read:

2 **961.452 Defenses in certain schedule V prosecutions. (1)** A person who
3 proves all of the following by a preponderance of the evidence has a defense to
4 prosecution under s. 961.41 (1) (j) that is based on the person's violation of a condition
5 specified in s. 961.23 with respect to the person's distribution or delivery of a
6 pseudoephedrine product:

7 (a) The person did not knowingly or recklessly violate the condition under s.
8 961.23.

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

12 **(2)** A seller who proves all of the following by a preponderance of the evidence
13 has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's
14 violation of a condition specified in s. 961.23 with respect to the person's distribution
15 or delivery of a pseudoephedrine product:

16 (a) The person did not knowingly or recklessly violate the condition under s.
17 961.23.

18 (b) The acts or omissions constituting the violation of the condition under s.
19 961.23 were the acts or omissions of one or more of the person's employees.

20 (c) The person provided training to each of those employees regarding the
21 restrictions imposed under s. 961.23 on the delivery of pseudoephedrine products.

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

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

1 (b) The appearance of the purchaser was such that an ordinary and prudent
2 person would believe that the purchaser was the person depicted in the photograph
3 contained in that identification card.
4 (c) The sale was made in good faith, in reasonable reliance on the identification
5 card and appearance of the purchaser, and with the belief that the name and address
6 of the purchaser were as listed on the identification card.
7 **(4)** A person who proves all of the following by a preponderance of the evidence
8 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):
9 (a) The purchaser presented an identification card that indicated that he or she
10 was 18 years of age or older.
11 (b) The appearance of the purchaser was such that an ordinary and prudent
12 person would believe that the purchaser was 18 years of age or older.
13 (c) The sale was made in good faith, in reasonable reliance on the identification
14 card and appearance of the purchaser, and with the belief that the purchaser was 18
15 years of age or older.
16 **SECTION 31.** 961.453 of the statutes is created to read:
17 **961.453 Purchases of pseudoephedrine products on behalf of another**
18 **person. (1)** (a) No person may, with the intent to acquire more than 7.5 grams of
19 a pseudoephedrine product within a 30–day period, knowingly solicit, hire, direct,
20 employ, or use another to purchase a pseudoephedrine product on his or her behalf.
21 (b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of
22 a Class I felony.
23 2. If the person who is solicited, hired, directed, employed, or used to purchase
24 the pseudoephedrine product is an individual who is less than 18 years of age, the
25 actor is guilty of a Class H felony.

1 **(2)** No person may purchase a pseudoephedrine product on behalf of another
2 with the intent to facilitate another person's manufacture of methamphetamine. A
3 person who violates this subsection is guilty of a Class I felony.

4 **SECTION 32.** 961.49 (title) of the statutes is amended to read:

5 **961.49** (title) ~~**Distribution of or possession with**~~ **Offenses involving**
6 **intent to deliver or distribute a controlled substance on or near certain**
7 **places.**

8 **SECTION 33.** 961.49 of the statutes is renumbered 961.49 (1m).

9 **SECTION 34.** 961.49 (2m) of the statutes is created to read:

10 961.49 **(2m)** If any person violates s. 961.65 and, during the violation, the
11 person intends to deliver or distribute methamphetamine or a controlled substance
12 analog of methamphetamine under any of the circumstances listed under sub. (1m)
13 (a), (b), (c), or (d), the maximum term of imprisonment for that crime is increased by
14 5 years.

15 **SECTION 35.** 961.61 of the statutes is renumbered 961.003.

16 **SECTION 36.** 961.62 of the statutes is renumbered 961.005.

17 **SECTION 37.** 961.65 of the statutes is created to read:

18 **961.65 Possessing materials for manufacturing methamphetamine.**
19 Except as authorized by this chapter, any person who possesses an ephedrine or
20 pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine,
21 anhydrous ammonia, or pressurized ammonia with intent to manufacture
22 methamphetamine is guilty of a Class H felony. Possession of more than 9 grams of
23 ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product
24 to which s. 961.01 (20c) (a) or (b) applies, creates a rebuttable presumption of intent

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

3 **SECTION 38.** 973.017 (8) (a) 3. of the statutes is created to read:

4 973.017 **(8)** (a) 3. When making a sentencing decision concerning a person
5 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
6 fact that the person intended to deliver or distribute methamphetamine or a
7 controlled substance analog of methamphetamine to a prisoner within the precincts
8 of any prison, jail, or house of correction.

9 **SECTION 39.** 973.017 (8) (c) of the statutes is created to read:

10 973.017 **(8)** (c) When making a sentencing decision concerning a person
11 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
12 fact that the person intended to deliver or distribute methamphetamine or a
13 controlled substance analog of methamphetamine and that the person knowingly
14 used a public transit vehicle during the violation.

15 **SECTION 40. Effective dates.** This act takes effect on the day after publication,
16 except as follows:

17 (1) The treatment of sections 961.22 (2m) and 961.23 (1) to (8) of the statutes
18 takes effect on the first day of the 4th month beginning after publication.

19 **(END)**

1 **INSERT 8/14**

2 SECTION 1. 961.11 (6) (a) of the statutes is amended to read:

3 961.11 **(6)** (a) The controlled substances board shall not have authority to
4 control a nonnarcotic substance if the substance may, under the federal food, drug
5 and cosmetic act and the laws of this state, be lawfully sold over the counter without
6 a prescription. This paragraph does not apply to the promulgation of rules by the
7 controlled substances board under s. 961.01 (20c).

History: 1971 c. 219, 307; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1981 c. 79 s. 18; 1983 a. 189 s. 329 (13); 1995 a. 448 ss. 145 to 152, 469, 470; Stats. 1995 s. 961.11.

Dsida, Michael

From: Dsida, Michael
Sent: Wednesday, May 04, 2005 10:31 AM
To: Jensen, Jodi
Subject: RE: Caging

Section 450.07 (4) (b) does not specifically cover storage. It covers only manufacturing and distributing drugs. But the rulemaking requirement regarding "distributing" is pretty broad, and it could be construed to include storage, so I'll include "building" just to be on the safe side.

You will get the sub sometime this afternoon.

-----Original Message-----
From: Jensen, Jodi
Sent: Wednesday, May 04, 2005 10:21 AM
To: Dsida, Michael
Subject: RE: Caging

Drug or drug product is fine

Compartment, area or room is fine. The distributors tell me all of the buildings where they store pseudoephedrine are already secured. I don't think we need to include building unless the board would be able to require an entirely separate building for the product. If they could do that, then we should include building.

Do you think we can get the sub finished today?

From: Dsida, Michael
Sent: Wednesday, May 04, 2005 9:25 AM
To: Jensen, Jodi
Subject: RE: Caging

Is it okay to change "product" to "drug or drug product" (which are defined in s. 450.01)? Also, do you want to say "compartment, area, room, or building"? Otherwise, the CSB could require storing pseudoephedrine products, say, in a separate room or a secured warehouse (which, as noted below, is one of the ways that a person can meet the storage requirements for a controlled substance under federal law).

-----Original Message-----
From: Jensen, Jodi
Sent: Tuesday, May 03, 2005 4:22 PM
To: Dsida, Michael
Subject: RE: Caging

Okay - how about this?

I know I said be general, but maybe we should be more specific because I don't want to go too far in limiting the Board's authority.

Can we say something like - Rules adopted under this paragraph may not impose requirements regarding the storage of a product in a safe, steel cabinet, vault or other secure storage compartment unless the product is a controlled substance under federal law.

From: Dsida, Michael
Sent: Tuesday, May 03, 2005 3:27 PM
To: Jensen, Jodi
Subject: RE: Caging

I started comparing the two schedules, but it would take a while. Maybe CSB knows the answer to your second question without having to do the comparison.

-----Original Message-----
From: Jensen, Jodi
Sent: Tuesday, May 03, 2005 2:28 PM
To: Dsida, Michael
Subject: RE: Caging

We would rather do this without referring to pseudoephedrine - we don't want to create the inference that the board can impose requirements on other drugs.

But, if we take "containing pseudoephedrine or any of its salts, isomers or salts of isomers" out of the proposed language, does the language end up being too broad? Are there a lot of differences between the state and federal schedules?

From: Dsida, Michael
Sent: Tuesday, May 03, 2005 1:33 PM
To: Jensen, Jodi
Subject: RE: Caging

Maybe you want to run this by people before I finish the redraft?

450.07 (4) (b) The board shall adopt rules prescribing minimum standards for manufacturing and distributing drugs. Rules adopted under this paragraph may not impose requirements regarding the storage of a product containing pseudoephedrine or any of its salts, isomers, or salts of isomers unless the product is a controlled substance under federal law.

-----Original Message-----
From: Jensen, Jodi
Sent: Tuesday, May 03, 2005 10:18 AM
To: Dsida, Michael
Subject: RE: Caging

Something in more general terms. Thanks.

From: Dsida, Michael
Sent: Tuesday, May 03, 2005 9:45 AM
To: Jensen, Jodi
Subject: Caging

Sure. But using a cage is just one of a several options for meeting the safe storage requirement. For example, Schedule III, IV, and V controlled substances can also be stored in a building with perimeter security. Do you want something in more general terms, so that the Board doesn't require some other method of storing pseudoephedrine? Or is it only caging that you are concerned about?

-----Original Message-----
From: Jensen, Jodi
Sent: Tuesday, May 03, 2005 9:23 AM
To: Dsida, Michael
Subject:

Here's the deal on caging: We have a memo from Anne Sappenfield saying federal regulations would not require the caging of pseudoephedrine when Wisconsin makes it schedule V. We also have an email from the EA (Chris Klein) at DRL pointing out that administrative rules require distributors to comply with federal law and since pseudoephedrine is not on the federal schedule, caging is not required.

Despite all of this, two concerns remain. First, Chris Klein said he could not send us a letter stating this as the Department's official position until the Pharmacy Examining Board discussed it - on June 22. He said it's their rule and "we need to run it by them and determine what they wish." Because their administrative rules are pretty broad, there is concern the board will come to a different conclusion. Second, because the legislature granted the Board broad rulemaking authority under Sec. 450.07, there is a concern the Board could write a rule requiring caging of drugs that are not on the federal schedules.

So, yes, we're back where we started. Can we put a provision in the bill that somehow says the Board cannot promulgate a rule requiring the caging drugs unless they are on the federal schedule?

State of Wisconsin
2005 – 2006 LEGISLATURE

LRBs0095/2 3
MGD:wlj:~~rs~~

SENATE SUBSTITUTE AMENDMENT ,

TO 2005 SENATE BILL 78

Wed

Regen

AN ACT ***to renumber*** 961.437, 961.49, 961.61 and 961.62; ***to amend*** 101.10 (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m) (d), 961.11 (6) (a), 961.22 (3) (title), 961.23 (1), 961.23 (2), 961.23 (3), 961.23 (4), 961.23 (5) and 961.49 (title); and ***to create*** 101.10 (3) (f), 111.335 (1) (cs) 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag) 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (11t), 961.01 (12t), 961.01 (20c), 961.01 (20e), 961.22 (2m), 961.23 (6), 961.23 (8), 961.235, 961.41 (3j), 961.452, 961.453, 961.49 (2m), 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c) of the statutes; **relating to:** pseudoephedrine and other materials used to produce methamphetamine and rules regarding the storage of drugs and drug product, and providing penalties.

Analysis by the Legislative Reference Bureau

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.

(CSB) CSB

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 under 18 (the "age restriction"). At the same time, the substitute amendment also creates an exception to the requirement that all retail sales of schedule V controlled substances be made by a

Sub-Head = Additional crimes relating to pseudoephedrine purchases

registered pharmacist. Under the exception, a person working under the direction of a registered pharmacist may 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 for pseudoephedrine products 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 for pseudoephedrine products 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 three 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 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 of pseudoephedrine products 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, unless 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 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 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 three–strikes 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 anhydrous ammonia for an agricultural purpose or to store, hold, transport, or transfer anhydrous ammonia (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. (With most other crimes, an attempt is punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

1 3

INS A

Penalties

Crime	*Maximum fine*	*Maximum term of confinement*	*Maximum sentence length*
Class H felony	$10,000	3 years	6 years
Class I felony	$10,000	1.5 years	3.5 years

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 **anhydrous ammonia and anhydrous ammonia equipment.**

4 **SECTION 2.** 101.10 (3) (f) of the statutes is created to read:

5 101.10 **(3)** (f) Intentionally release or allow the escape of anhydrous ammonia
6 belonging to another into the atmosphere. This paragraph does not apply if the
7 owner has authorized the actor to exercise control over the anhydrous ammonia or
8 has consented to its release.

9 **SECTION 3.** 111.335 (1) (cs) 5. of the statutes is created to read:

10 111.335 **(1)** (cs) 5. Possessing any of the materials listed in s. 961.65 with intent
11 to manufacture methamphetamine under that section or under a federal law or a law
12 of another state that is substantially similar to s. 961.65.

13 **SECTION 4.** 125.12 (2) (ag) 5m. of the statutes is created to read:

14 125.12 **(2)** (ag) 5m. The person has been convicted of possessing any of the
15 materials listed in s. 961.65 with intent to manufacture methamphetamine under
16 that subsection or under a federal law or a law of another state that is substantially
17 similar to s. 961.65.

18 **SECTION 5.** 125.12 (2) (ag) 6m. of the statutes is created to read:

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

SECTION 6. 125.12 (4) (ag) 7m. of the statutes is created to read:

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

SECTION 7. 125.12 (4) (ag) 8m. of the statutes is created to read:

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

INS 6/12

SECTION 8. 895.555 (1) of the statutes is amended to read:

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

SECTION 9. 938.34 (14s) (am) (intro.) of the statutes is amended to read:

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

SECTION 10. 939.32 (1) (g) of the statutes is created to read:

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

SECTION 11. 939.62 (2m) (a) 2m. am. of the statutes is created to read:

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

SECTION 12. 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

939.62 **(2m)** (a) 2m. d. A crime at any time under federal law or the law of any other state or, prior to April 28, 1994, under the law of this state that is comparable to a crime specified in <u>this</u> subd. 2m. a., <u>am.,</u> b., or c.

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

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

SECTION 14. 961.01 (11t) of the statutes is created to read:

961.01 **(11t)** "Ephedrine product" means any material, compound, mixture, or preparation that contains any quantity of ephedrine or any of its salts, isomers, and salts of isomers.

SECTION 15. 961.01 (12t) of the statutes is created to read:

961.01 **(12t)** "Liquid–filled pseudoephedrine gelcap" means a soft, liquid–filled gelatin capsule that is intended to be sold at retail and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

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

961.01 **(20c)** "Pseudoephedrine product" means a material, compound, mixture, or preparation containing any quantity of pseudoephedrine or any of its salts, isomers, or salts of isomers but does not include such a product if any of the following applies:

(a) The product is a pseudoephedrine liquid or a liquid–filled pseudoephedrine gelcap. This paragraph does not apply if the controlled substances board has determined, by rule, that the product can be readily used in the manufacture of methamphetamine.

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

SECTION 17. 961.01 (20e) 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 pseudoephedrine or any of its salts, isomers, or salts of isomers.

SECTION 18. 961.11 (6) (a) of the statutes is amended to read:

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. <u>This paragraph does not apply to the promulgation of rules by the controlled substances board under s. 961.01 (20c).</u>

SECTION 19. 961.22 (2m) of the statutes is created to read:

961.22 **(2m)** PSEUDOEPHEDRINE. Any pseudoephedrine product.

SECTION 20. 961.22 (3) (title) of the statutes is amended to read:

961.22 **(3)** (title) ~~STIMULANTS~~ <u>OTHER STIMULANTS</u>.

SECTION 21. 961.23 (1) of the statutes is amended to read:

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

SECTION 22. 961.23 (2) of the statutes is amended to read:

961.23 **(2)** ~~That they~~ They may be sold at retail only by a registered pharmacist or, if the substance is a pseudoephedrine product, by a person who is working under the direction of a registered pharmacist when sold in a retail establishment.

SECTION 23. 961.23 (3) of the statutes is amended to read:

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

SECTION 24. 961.23 (4) of the statutes is amended to read:

961.23 **(4)** ~~That any~~ Any person purchasing such a substance shall, at the time of purchase, present to the seller that person's correct name ~~and~~, address, and, if the person is purchasing a pseudoephedrine product, 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 or, if the substance is a pseudoephedrine product and is being sold by a person who is not a registered pharmacist, the pharmacist supervising the seller 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 25. 961.23 (5) of the statutes is amended to read:

961.23 **(5)** ~~That no~~ No person 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 within a 48–hour period without the authorization of a physician,

dentist, or veterinarian ~~nor~~. This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

(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~~ at any time without the authorization of a physician, dentist, or veterinarian. This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

SECTION 26. 961.23 (6) of the statutes is created to read:

961.23 **(6)** No person other than a physician, dentist, veterinarian, or pharmacist may purchase more than 7.5 grams of a pseudoephedrine product within a 30–day period without the authorization of a physician, dentist, or veterinarian.

SECTION 27. 961.23 (8) of the statutes is created to read:

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

SECTION 28. 961.235 of the statutes is created to read:

961.235 Records relating to sales of pseudoephedrine products. Records required under s. 961.23 (4) with respect to the sale of a pseudoephedrine product may be kept in either a paper or electronic format and shall be maintained by the pharmacy for at least 2 years. Only a pharmacist or a law enforcement officer may have access to information recorded under s. 961.23 (4) with respect to the sale of a pseudoephedrine product.

SECTION 29. 961.41 (3j) of the statutes is created to read:

1 961.41 **(3j)** PURCHASES OF PSEUDOEPHEDRINE PRODUCTS. Whoever purchases
2 more than 7.5 grams of a pseudoephedrine product within a 30–day period, other
3 than by purchasing the product in person from a pharmacy or pharmacist, is guilty
4 of a Class I felony. This subsection does not apply to a purchase by a physician,
5 dentist, veterinarian, or pharmacist or a purchase that is authorized by a physician,
6 dentist, or veterinarian.

7 **SECTION 30.** 961.437 of the statutes is renumbered 961.67.

8 **SECTION 31.** 961.452 of the statutes is created to read:

9 **961.452 Defenses in certain schedule V prosecutions. (1)** A person who
10 proves all of the following by a preponderance of the evidence has a defense to
11 prosecution under s. 961.41 (1) (j) that is based on the person's violation of a condition
12 specified in s. 961.23 with respect to the person's distribution or delivery of a
13 pseudoephedrine product:

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

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

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

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

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 products.
5 **(3)** A person who proves all of the following by a preponderance of the evidence
6 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (6):
7 (a) The purchaser presented an identification card that contained a name or
8 address other than the person's own.
9 (b) The appearance of the purchaser was such that an ordinary and prudent
10 person would believe that the purchaser was the person depicted in the photograph
11 contained in that identification card.
12 (c) The sale was made in good faith, in reasonable reliance on the identification
13 card and appearance of the purchaser, and with the belief that the name and address
14 of the purchaser were as listed on the identification card.
15 **(4)** A person who proves all of the following by a preponderance of the evidence
16 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):
17 (a) The purchaser presented an identification card that indicated that he or she
18 was 18 years of age or older.
19 (b) The appearance of the purchaser was such that an ordinary and prudent
20 person would believe that the purchaser was 18 years of age or older.
21 (c) The sale was made in good faith, in reasonable reliance on the identification
22 card and appearance of the purchaser, and with the belief that the purchaser was 18
23 years of age or older.
24 **SECTION 32.** 961.453 of the statutes is created to read:

961.453 Purchases of pseudoephedrine products on behalf of another person. (1) (a) No person may, with the intent to acquire more than 7.5 grams of a pseudoephedrine product within a 30–day period, knowingly solicit, hire, direct, employ, or use another to purchase a pseudoephedrine product on his or her behalf.

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

2. If the person who is solicited, hired, directed, employed, or used to purchase the pseudoephedrine product is an individual who is less than 18 years of age, the actor is guilty of a Class H felony.

(2) No person may purchase a pseudoephedrine product on behalf of another with the intent to facilitate another person's manufacture of methamphetamine. A person who violates this subsection is guilty of a Class I felony.

SECTION 33. 961.49 (title) of the statutes is amended to read:

961.49 (title) ~~**Distribution of or possession with**~~ **<u>Offenses involving</u> intent to deliver <u>or distribute</u> a controlled substance on or near certain places.**

SECTION 34. 961.49 of the statutes is renumbered 961.49 (1m).

SECTION 35. 961.49 (2m) of the statutes is created to read:

961.49 **(2m)** If any person violates s. 961.65 and, during the violation, the person intends to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine under any of the circumstances listed under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment for that crime is increased by 5 years.

SECTION 36. 961.61 of the statutes is renumbered 961.003.

SECTION 37. 961.62 of the statutes is renumbered 961.005.

1 **SECTION 38.** 961.65 of the statutes is created to read:

2 **961.65 Possessing materials for manufacturing methamphetamine.**
3 Except as authorized by this chapter, any person who possesses an ephedrine or
4 pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine,
5 anhydrous ammonia, or pressurized ammonia with intent to manufacture
6 methamphetamine is guilty of a Class H felony. Possession of more than 9 grams of
7 ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product
8 to which s. 961.01 (20c) (a) or (b) applies, creates a rebuttable presumption of intent
9 to manufacture methamphetamine. In this section, "ephedrine" and
10 "pseudoephedrine" include any of their salts, isomers, and salts of isomers.

11 **SECTION 39.** 973.017 (8) (a) 3. of the statutes is created to read:

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

17 **SECTION 40.** 973.017 (8) (c) of the statutes is created to read:

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

23 **SECTION 41. Effective dates.** This act takes effect on the day after publication,
24 except as follows:

1 (1) The treatment of sections 961.22 (2m) and 961.23 (1) to (8) of the statutes
2 takes effect on the first day of the 4th month beginning after publication.
3 **(END)**

1 **insert a**

Rules regarding storage of drugs and drug products

Under current law, the CSB must adopt rules setting minimum standards regarding manufacturing and distributing drugs. This substitute amendment prohibits the CSB from adopting rules that impose requirements regarding the storage of a drug or drug product in a safe, a steel cabinet, a vault, or any other secure storage compartment, area, room, or building unless the product is a controlled substance under federal law.

2 **INSERT 6/12**

3 SECTION 450.07 (4) (b) of the statutes is amended to read:

4 450.07 **(4)** (b) The board shall adopt rules prescribing minimum standards for

5 manufacturing and distributing drugs. Rules adopted under this paragraph may not

6 impose requirements regarding the storage of a drug or drug product in a safe, a steel

7 cabinet, a vault, or any other secure storage compartment, area, room, or building

8 unless the product is a controlled substance under federal law.

History: 1985 a. 146; 1991 a. 39.

State of Wisconsin
2005 – 2006 LEGISLATURE

LRBs0095/3
MGD:wlj:jf

SENATE SUBSTITUTE AMENDMENT ,

TO 2005 SENATE BILL 78

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AN ACT ~~*to renumber*~~ 961.437, 961.49, 961.61 and 961.62; ***to amend*** 101.10 (title), 450.07 (4) (b), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m) (d), 961.11 (6) (a), 961.22 (3) (title), 961.23 (1), 961.23 (2), 961.23 (3), 961.23 (4), 961.23 (5) and 961.49 (title); and ***to create*** 101.10 (3) (f), 111.335 (1) (cs) 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag) 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (11t), 961.01 (12t), 961.01 (20c), 961.01 (20e), 961.22 (2m), 961.23 (6), 961.23 (8), 961.235, 961.41 (3j), 961.452, 961.453, 961.49 (2m), 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c) of the statutes; **relating to:** pseudoephedrine and other materials used to

1 produce methamphetamine and rules regarding the storage of drugs and drug
2 products and providing penalties.

Analysis by the Legislative Reference Bureau

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 (CSB) 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 CSB 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 under 18 (the "age restriction"). At the same time, the substitute amendment also creates an exception to the requirement that all retail sales of schedule V controlled substances be made by a registered pharmacist. Under the exception, a person working under the direction of a registered pharmacist may 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 for pseudoephedrine products 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 for pseudoephedrine products 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.

Additional crimes relating to pseudoephedrine purchases

The substitute amendment creates three 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 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 of pseudoephedrine products 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,

unless 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 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 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 three–strikes 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 anhydrous ammonia for an agricultural purpose or to store, hold, transport, or transfer anhydrous ammonia (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. (With most other crimes, an attempt is punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

Rules regarding storage of drugs and drug products

Under current law, the CSB must adopt rules setting minimum standards regarding manufacturing and distributing drugs. This substitute amendment prohibits the CSB from adopting rules that impose requirements regarding the storage of a drug or drug product in a safe, a steel cabinet, a vault, or any other secure storage compartment, area, room, or building unless the product is a controlled substance under federal law.

Penalties

Crime	*Maximum fine*	*Maximum term of confinement*	*Maximum sentence length*
Class H felony	$10,000	3 years	6 years
Class I felony	$10,000	1.5 years	3.5 years

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

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

101.10 (title) **Storage and handling of anhydrous ammonia; theft of anhydrous ammonia and anhydrous ammonia equipment.**

SECTION 2. 101.10 (3) (f) of the statutes is created to read:

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

SECTION 3. 111.335 (1) (cs) 5. of the statutes is created to read:

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

1 **SECTION 4.** 125.12 (2) (ag) 5m. of the statutes is created to read:

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

6 **SECTION 5.** 125.12 (2) (ag) 6m. of the statutes is created to read:

7 125.12 **(2)** (ag) 6m. The person knowingly allows another person, who is on the
8 premises for which the license under this chapter is issued, to possess any of the
9 materials listed in s. 961.65 with the intent to manufacture methamphetamine.

10 **SECTION 6.** 125.12 (4) (ag) 7m. of the statutes is created to read:

11 125.12 **(4)** (ag) 7m. That the licensee has been convicted of possessing any of
12 the materials listed in s. 961.65 with intent to manufacture methamphetamine
13 under that section or under a federal law or a law of another state that is
14 substantially similar to s. 961.65.

15 **SECTION 7.** 125.12 (4) (ag) 8m. of the statutes is created to read:

16 125.12 **(4)** (ag) 8m. That the licensee knowingly allows another person, who is
17 on the premises for which the license under this chapter is issued, to possess any of
18 the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

19 **SECTION 8.** 450.07 (4) (b) of the statutes is amended to read:

20 450.07 **(4)** (b) The board shall adopt rules prescribing minimum standards for
21 manufacturing and distributing drugs. <u>Rules adopted under this paragraph may not</u>
22 <u>impose requirements regarding the storage of a drug or drug product in a safe, a steel</u>
23 <u>cabinet, a vault, or any other secure storage compartment, area, room, or building</u>
24 <u>unless the product is a controlled substance under federal law.</u>

25 **SECTION 9.** 895.555 (1) of the statutes is amended to read:

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

SECTION 10. 938.34 (14s) (am) (intro.) of the statutes is amended to read:

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

SECTION 11. 939.32 (1) (g) of the statutes is created to read:

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

SECTION 12. 939.62 (2m) (a) 2m. am. of the statutes is created to read:

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

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

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

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

939.62 **(2m)** (d) If a prior conviction is being considered as being covered under par. (a) 1m. b. or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par. (b) only if the court determines, beyond a reasonable doubt, that the violation

relating to that conviction would constitute a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c. if committed by an adult in this state.

SECTION 15. 961.01 (11t) of the statutes is created to read:

961.01 **(11t)** "Ephedrine product" means any material, compound, mixture, or preparation that contains any quantity of ephedrine or any of its salts, isomers, and salts of isomers.

SECTION 16. 961.01 (12t) of the statutes is created to read:

961.01 **(12t)** "Liquid–filled pseudoephedrine gelcap" means a soft, liquid–filled gelatin capsule that is intended to be sold at retail and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

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

961.01 **(20c)** "Pseudoephedrine product" means a material, compound, mixture, or preparation containing any quantity of pseudoephedrine or any of its salts, isomers, or salts of isomers but does not include such a product if any of the following applies:

(a) The product is a pseudoephedrine liquid or a liquid–filled pseudoephedrine gelcap. This paragraph does not apply if the controlled substances board has determined, by rule, that the product can be readily used in the manufacture of methamphetamine.

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

SECTION 18. 961.01 (20e) 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 pseudoephedrine or any of its salts, isomers, or salts of isomers.

SECTION 19. 961.11 (6) (a) of the statutes is amended to read:

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. This paragraph does not apply to the promulgation of rules by the controlled substances board under s. 961.01 (20c).

SECTION 20. 961.22 (2m) of the statutes is created to read:

961.22 **(2m)** PSEUDOEPHEDRINE. Any pseudoephedrine product.

SECTION 21. 961.22 (3) (title) of the statutes is amended to read:

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

SECTION 22. 961.23 (1) of the statutes is amended to read:

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

SECTION 23. 961.23 (2) of the statutes is amended to read:

961.23 **(2)** ~~That they~~ They may be sold at retail only by a registered pharmacist or, if the substance is a pseudoephedrine product, by a person who is working under the direction of a registered pharmacist when sold in a retail establishment.

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

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

SECTION 25. 961.23 (4) of the statutes is amended to read:

961.23 **(4)** ~~That any~~ Any person purchasing such a substance shall, at the time of purchase, present to the seller that person's correct name ~~and~~, address, and, if the person is purchasing a pseudoephedrine product, 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 or, if the substance is a pseudoephedrine product and is being sold by a person who is not a registered pharmacist, the pharmacist supervising the seller 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 26. 961.23 (5) of the statutes is amended to read:

961.23 **(5)** ~~That no~~ No person 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 within a 48–hour period without the authorization of a physician, dentist, or veterinarian ~~nor~~. This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

(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~~ at any time without the authorization of a physician, dentist, or veterinarian. This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

SECTION 27. 961.23 (6) of the statutes is created to read:

961.23 **(6)** No person other than a physician, dentist, veterinarian, or pharmacist may purchase more than 7.5 grams of a pseudoephedrine product within a 30–day period without the authorization of a physician, dentist, or veterinarian.

SECTION 28. 961.23 (8) of the statutes is created to read:

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

SECTION 29. 961.235 of the statutes is created to read:

961.235 Records relating to sales of pseudoephedrine products. Records required under s. 961.23 (4) with respect to the sale of a pseudoephedrine product may be kept in either a paper or electronic format and shall be maintained by the pharmacy for at least 2 years. Only a pharmacist or a law enforcement officer may have access to information recorded under s. 961.23 (4) with respect to the sale of a pseudoephedrine product.

SECTION 30. 961.41 (3j) of the statutes is created to read:

961.41 **(3j)** PURCHASES OF PSEUDOEPHEDRINE PRODUCTS. Whoever purchases more than 7.5 grams of a pseudoephedrine product within a 30–day period, other than by purchasing the product in person from a pharmacy or pharmacist, is guilty of a Class I felony. This subsection does not apply to a purchase by a physician, dentist, veterinarian, or pharmacist or a purchase that is authorized by a physician, dentist, or veterinarian.

SECTION 31. 961.437 of the statutes is renumbered 961.67.

SECTION 32. 961.452 of the statutes is created to read:

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

1 (a) The person did not knowingly or recklessly violate the condition under s.
2 961.23.
3 (b) The person reported his or her own violation of the condition under s. 961.23
4 to a law enforcement officer in the county or municipality in which the violation
5 occurred within 30 days after the violation.
6 **(2)** A seller who proves all of the following by a preponderance of the evidence
7 has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's
8 violation of a condition specified in s. 961.23 with respect to the person's distribution
9 or delivery of a pseudoephedrine product:
10 (a) The person did not knowingly or recklessly violate the condition under s.
11 961.23.
12 (b) The acts or omissions constituting the violation of the condition under s.
13 961.23 were the acts or omissions of one or more of the person's employees.
14 (c) The person provided training to each of those employees regarding the
15 restrictions imposed under s. 961.23 on the delivery of pseudoephedrine products.
16 **(3)** A person who proves all of the following by a preponderance of the evidence
17 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (6):
18 (a) The purchaser presented an identification card that contained a name or
19 address other than the person's own.
20 (b) The appearance of the purchaser was such that an ordinary and prudent
21 person would believe that the purchaser was the person depicted in the photograph
22 contained in that identification card.
23 (c) The sale was made in good faith, in reasonable reliance on the identification
24 card and appearance of the purchaser, and with the belief that the name and address
25 of the purchaser were as listed on the identification card.

1 **(4)** A person who proves all of the following by a preponderance of the evidence
2 has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):
3 (a) The purchaser presented an identification card that indicated that he or she
4 was 18 years of age or older.
5 (b) The appearance of the purchaser was such that an ordinary and prudent
6 person would believe that the purchaser was 18 years of age or older.
7 (c) The sale was made in good faith, in reasonable reliance on the identification
8 card and appearance of the purchaser, and with the belief that the purchaser was 18
9 years of age or older.
10 **SECTION 33.** 961.453 of the statutes is created to read:
11 **961.453 Purchases of pseudoephedrine products on behalf of another**
12 **person. (1)** (a) No person may, with the intent to acquire more than 7.5 grams of
13 a pseudoephedrine product within a 30–day period, knowingly solicit, hire, direct,
14 employ, or use another to purchase a pseudoephedrine product on his or her behalf.
15 (b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of
16 a Class I felony.
17 2. If the person who is solicited, hired, directed, employed, or used to purchase
18 the pseudoephedrine product is an individual who is less than 18 years of age, the
19 actor is guilty of a Class H felony.
20 **(2)** No person may purchase a pseudoephedrine product on behalf of another
21 with the intent to facilitate another person's manufacture of methamphetamine. A
22 person who violates this subsection is guilty of a Class I felony.
23 **SECTION 34.** 961.49 (title) of the statutes is amended to read:

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

SECTION 35. 961.49 of the statutes is renumbered 961.49 (1m).

SECTION 36. 961.49 (2m) of the statutes is created to read:

961.49 **(2m)** If any person violates s. 961.65 and, during the violation, the person intends to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine under any of the circumstances listed under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment for that crime is increased by 5 years.

SECTION 37. 961.61 of the statutes is renumbered 961.003.

SECTION 38. 961.62 of the statutes is renumbered 961.005.

SECTION 39. 961.65 of the statutes is created to read:

961.65 Possessing materials for manufacturing methamphetamine. Except as authorized by this chapter, any person who possesses an ephedrine or pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, or pressurized ammonia with intent to manufacture methamphetamine is guilty of a Class H felony. Possession of more than 9 grams of ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product to which s. 961.01 (20c) (a) or (b) applies, creates a rebuttable presumption of intent to manufacture methamphetamine. In this section, "ephedrine" and "pseudoephedrine" include any of their salts, isomers, and salts of isomers.

SECTION 40. 973.017 (8) (a) 3. of the statutes is created to read:

973.017 **(8)** (a) 3. When making a sentencing decision concerning a person convicted of violating s. 961.65, the court shall consider as an aggravating factor the

fact that the person intended to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine to a prisoner within the precincts of any prison, jail, or house of correction.

SECTION 41. 973.017 (8) (c) of the statutes is created to read:

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

SECTION 42. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 961.22 (2m) and 961.23 (1) to (8) of the statutes takes effect on the first day of the 4th month beginning after publication.

(END)

analysis INSERT a

Rules regarding storage of certain schedule V controlled substances

Under current law, the Pharmacy Examining Board must adopt rules setting minimum standards regarding manufacturing and distributing drugs. This substitute amendment prohibits the Pharmacy Examining Board from adopting rules that impose requirements regarding the storage of a controlled substance in a safe, a steel cabinet, a vault, or any other secure storage compartment, area, room, or building unless: 1) the controlled substance is included in schedule I, II, III, or IV; or 2) the controlled substance is also a controlled substance under federal law. (Under the substitute amendment, this prohibition would apply only to pseudoephedrine products. All other controlled substances are included in schedule I, II, III, or IV or are controlled substances under federal law.)

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SECTION ~~#~~. 450.07 (4) (b) of the statutes is renumbered 450.07 (4) (b) (intro.) and amended to read:

450.07 **(4)** (b) (intro.) The board shall adopt rules prescribing minimum standards for manufacturing and distributing drugs. Rules adopted under this paragraph may not impose requirements regarding the storage of a controlled substance in a safe, a steel cabinet, a vault, or any other secure storage compartment, area, room, or building unless one of the following applies:

History: 1985 a. 146; 1991 a. 39.

SECTION ~~#~~. 450.07 (4) (b) 1. of the statutes is created to read:

450.07 **(4)** (b) 1. The controlled substance is included in schedule I, II, III, or IV under ch. 961.

SECTION ~~#~~. 450.07 (4) (b) 2. of the statutes is created to read:

450.07 **(4)** (b) 2. The controlled substance is also a controlled substance under federal law.