



State of Wisconsin  
2005 - 2006 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 2,  
TO 2005 SENATE BILL 78**

May 6, 2005 - Offered by Senator HARSDORF.

1     **AN ACT** *to renumber* 961.437, 961.49, 961.61 and 961.62; *to renumber and*  
2     *amend* 450.07 (4) (b); *to amend* 101.10 (title), 895.555 (1), 938.34 (14s) (am)  
3     (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m) (d), 961.11 (6) (a), 961.22 (3) (title),  
4     961.23 (1), 961.23 (2), 961.23 (3), 961.23 (4), 961.23 (5) and 961.49 (title); and  
5     *to create* 101.10 (3) (f), 111.335 (1) (cs) 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag)  
6     6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag) 8m., 450.07 (4) (b) 1., 450.07 (4) (b) 2.,  
7     939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (11t), 961.01 (12t), 961.01 (20c),  
8     961.01 (20e), 961.22 (2m), 961.23 (6), 961.23 (8), 961.235, 961.41 (3j), 961.452,  
9     961.453, 961.49 (2m), 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c) of the  
10     statutes; **relating to:** pseudoephedrine and other materials used to produce

- 1           methamphetamine and rules regarding the storage of drugs and drug products  
2           and providing penalties.
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***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 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.)

***Penalties***

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

***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:

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

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

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

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

10          125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the  
11 premises for which the license under this chapter is issued, to possess any of the  
12 materials listed in s. 961.65 with the intent to manufacture methamphetamine.

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

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

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

19          125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is  
20 on the premises for which the license under this chapter is issued, to possess any of  
21 the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

22          **SECTION 8.** 450.07 (4) (b) of the statutes is renumbered 450.07 (4) (b) (intro.)  
23 and amended to read:

24          450.07 (4) (b) (intro.) The board shall adopt rules prescribing minimum  
25 standards for manufacturing and distributing drugs. Rules adopted under this

1 paragraph may not impose requirements regarding the storage of a controlled  
2 substance in a safe, a steel cabinet, a vault, or any other secure storage compartment,  
3 area, room, or building unless one of the following applies:

4 **SECTION 9.** 450.07 (4) (b) 1. of the statutes is created to read:

5 450.07 (4) (b) 1. The controlled substance is included in schedule I, II, III, or  
6 IV under ch. 961.

7 **SECTION 10.** 450.07 (4) (b) 2. of the statutes is created to read:

8 450.07 (4) (b) 2. The controlled substance is also a controlled substance under  
9 federal law.

10 **SECTION 11.** 895.555 (1) of the statutes is amended to read:

11 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person  
12 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.  
13 101.10 (1) (b), or who uses anhydrous ammonia for any legal purpose is immune from  
14 any civil liability for acts or omissions relating to the anhydrous ammonia equipment  
15 or to anhydrous ammonia that cause damage or injury to an individual, if that  
16 damage or injury occurs during the individual's violation of s. 101.10 (3) (c), (d), ~~or~~  
17 (e), or (f).

18 **SECTION 12.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

19 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under  
20 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.65,  
21 the court shall order one of the following penalties:

22 **SECTION 13.** 939.32 (1) (g) of the statutes is created to read:

23 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is  
24 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

25 **SECTION 14.** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

1           939.62 **(2m)** (a) 2m. am. A crime under s. 961.65.

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

3           939.62 **(2m)** (a) 2m. d. A crime at any time under federal law or the law of any  
4 other state or, prior to April 28, 1994, under the law of this state that is comparable  
5 to a crime specified in this subd. 2m. a., am., b., or c.

6           **SECTION 16.** 939.62 (2m) (d) of the statutes is amended to read:

7           939.62 **(2m)** (d) If a prior conviction is being considered as being covered under  
8 par. (a) 1m. b. or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or  
9 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.  
10 (b) only if the court determines, beyond a reasonable doubt, that the violation  
11 relating to that conviction would constitute a felony specified under par. (a) 1m. a.  
12 or 2m. a., am., b., or c. if committed by an adult in this state.

13           **SECTION 17.** 961.01 (11t) of the statutes is created to read:

14           961.01 **(11t)** “Ephedrine product” means any material, compound, mixture, or  
15 preparation that contains any quantity of ephedrine or any of its salts, isomers, and  
16 salts of isomers.

17           **SECTION 18.** 961.01 (12t) of the statutes is created to read:

18           961.01 **(12t)** “Liquid-filled pseudoephedrine gelcap” means a soft, liquid-filled  
19 gelatin capsule that is intended to be sold at retail and that contains  
20 pseudoephedrine or any of its salts, isomers, or salts of isomers.

21           **SECTION 19.** 961.01 (20c) of the statutes is created to read:

22           961.01 **(20c)** “Pseudoephedrine product” means a material, compound,  
23 mixture, or preparation containing any quantity of pseudoephedrine or any of its  
24 salts, isomers, or salts of isomers but does not include such a product if any of the  
25 following applies:

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

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

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

8 961.01 (20e) "Pseudoephedrine liquid" means a product that is intended to be  
9 sold at retail, that is a liquid at room temperature, and that contains  
10 pseudoephedrine or any of its salts, isomers, or salts of isomers.

11 **SECTION 21.** 961.11 (6) (a) of the statutes is amended to read:

12 961.11 (6) (a) The controlled substances board shall not have authority to  
13 control a nonnarcotic substance if the substance may, under the federal food, drug  
14 and cosmetic act and the laws of this state, be lawfully sold over the counter without  
15 a prescription. This paragraph does not apply to the promulgation of rules by the  
16 controlled substances board under s. 961.01 (20c).

17 **SECTION 22.** 961.22 (2m) of the statutes is created to read:

18 961.22 (2m) PSEUDOEPHEDRINE. Any pseudoephedrine product.

19 **SECTION 23.** 961.22 (3) (title) of the statutes is amended to read:

20 961.22 (3) (title) ~~STIMULANTS~~ OTHER STIMULANTS.

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

22 961.23 (1) ~~That they~~ They may be dispensed and sold only in good faith as a  
23 medicine, and not for the purpose of evading this chapter.

24 **SECTION 25.** 961.23 (2) of the statutes is amended to read:

1           961.23 (2) ~~That they~~ They may be sold at retail only by a registered pharmacist  
2 or, if the substance is a pseudoephedrine product, by a person who is working under  
3 the direction of a registered pharmacist when sold in a retail establishment.

4           **SECTION 26.** 961.23 (3) of the statutes is amended to read:

5           961.23 (3) ~~That, when~~ When sold in a retail establishment, they shall bear the  
6 name and address of the establishment on the immediate container of said  
7 preparation.

8           **SECTION 27.** 961.23 (4) of the statutes is amended to read:

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

18           **SECTION 28.** 961.23 (5) of the statutes is amended to read:

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

24           (7) No person other than a physician, dentist, veterinarian, or pharmacist may  
25 possess more than 8 ounces of a product containing opium or more than 4 ounces of

1 a product containing any other schedule V substance ~~be in the possession of any~~  
2 ~~person other than a physician, dentist, veterinarian or pharmacist~~ at any time  
3 without the authorization of a physician, dentist, or veterinarian. This subsection  
4 does not apply to a pseudoephedrine product unless it contains another schedule V  
5 substance.

6 **SECTION 29.** 961.23 (6) of the statutes is created to read:

7 961.23 (6) No person other than a physician, dentist, veterinarian, or  
8 pharmacist may purchase more than 7.5 grams of a pseudoephedrine product within  
9 a 30-day period without the authorization of a physician, dentist, or veterinarian.

10 **SECTION 30.** 961.23 (8) of the statutes is created to read:

11 961.23 (8) No person may sell a pseudoephedrine product to a person under 18  
12 years of age, and no person under 18 years of age may purchase a pseudoephedrine  
13 product.

14 **SECTION 31.** 961.235 of the statutes is created to read:

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

21 **SECTION 32.** 961.41 (3j) of the statutes is created to read:

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

1 dentist, veterinarian, or pharmacist or a purchase that is authorized by a physician,  
2 dentist, or veterinarian.

3 **SECTION 33.** 961.437 of the statutes is renumbered 961.67.

4 **SECTION 34.** 961.452 of the statutes is created to read:

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

10 (a) The person did not knowingly or recklessly violate the condition under s.  
11 961.23.

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

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

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

21 (b) The acts or omissions constituting the violation of the condition under s.  
22 961.23 were the acts or omissions of one or more of the person's employees.

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

1           **(3)** 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 (6):

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

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

8           (c) The sale was made in good faith, in reasonable reliance on the identification  
9 card and appearance of the purchaser, and with the belief that the name and address  
10 of the purchaser were as listed on the identification card.

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

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

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

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

20           **SECTION 35.** 961.453 of the statutes is created to read:

21           **961.453 Purchases of pseudoephedrine products on behalf of another**  
22 **person.** (1) (a) No person may, with the intent to acquire more than 7.5 grams of  
23 a pseudoephedrine product within a 30-day period, knowingly solicit, hire, direct,  
24 employ, or use another to purchase a pseudoephedrine product on his or her behalf.

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

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

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

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

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

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

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

15 961.49 (2m) If any person violates s. 961.65 and, during the violation, the  
16 person intends to deliver or distribute methamphetamine or a controlled substance  
17 analog of methamphetamine under any of the circumstances listed under sub. (1m)  
18 (a), (b), (c), or (d), the maximum term of imprisonment for that crime is increased by  
19 5 years.

20 **SECTION 39.** 961.61 of the statutes is renumbered 961.003.

21 **SECTION 40.** 961.62 of the statutes is renumbered 961.005.

22 **SECTION 41.** 961.65 of the statutes is created to read:

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

24 Except as authorized by this chapter, any person who possesses an ephedrine or  
25 pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine,

1 anhydrous ammonia, or pressurized ammonia with intent to manufacture  
2 methamphetamine is guilty of a Class H felony. Possession of more than 9 grams of  
3 ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product  
4 to which s. 961.01 (20c) (a) or (b) applies, creates a rebuttable presumption of intent  
5 to manufacture methamphetamine. In this section, “ephedrine” and  
6 “pseudoephedrine” include any of their salts, isomers, and salts of isomers.

7 **SECTION 42.** 973.017 (8) (a) 3. of the statutes is created to read:

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

13 **SECTION 43.** 973.017 (8) (c) of the statutes is created to read:

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

19 **SECTION 44. Effective dates.** This act takes effect on the day after publication,  
20 except as follows:

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

23 (END)