



# Kansas Bureau of Investigation

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## Methamphetamine Recommendation Report

Calendar Year 2011

January 31, 2012

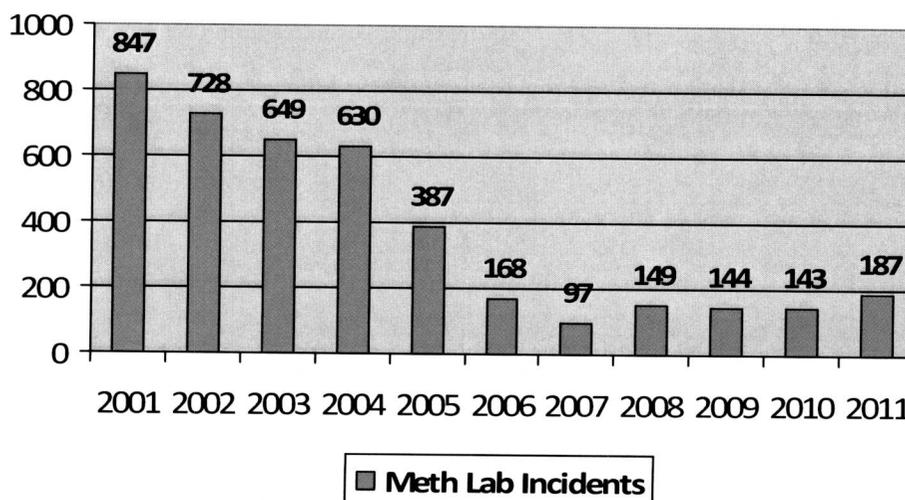
(As required by K.S.A. 75-722)

In 2005, the Kansas legislature passed S.B. 27, the Sheriff Matt Samuels Act, to restrict access to the precursor chemicals ephedrine and pseudoephedrine, used to manufacture methamphetamine. Section 4 of the Act, now K.S.A. 75-722, requires the Kansas Bureau of Investigation (KBI) to gather information and consult with local law enforcement agencies regarding trends seen in the manufacture of methamphetamine; and, after consulting with the state board of pharmacy, develop recommendations concerning the control of ephedrine and pseudoephedrine.

### Methamphetamine in Kansas

As noted in the graph below, Kansas law enforcement reported 187 meth lab incidents in 2011. This total represents a slight increase over the reported meth lab seizures for the previous three years. Multiple factors may have contributed to the increase, including improved meth lab incident reporting procedures by law enforcement, the spread of the one-pot method of meth manufacturing, and an increase in illegal "smurfing" activity.

### Kansas Meth Lab Seizures



“Smurfing” is the practice of an individual or groups purchasing the legally allowable amount of cold medicine containing pseudoephedrine at one store, then continuing with successive purchases at other stores. Some “smurfers” are able to circumvent electronic tracking systems by purchasing legal limits under numerous identities. Recent law enforcement intelligence has revealed that persons not directly associated with meth manufacturing are being recruited to purchase pseudoephedrine on behalf of meth manufacturers. These paid “smurfers” purchase cold medicine at retail cost (generally less than \$10.00 per box) and in-turn sell the cold medicine to meth manufacturers for a profit of up to \$75.00 per box.

The one-pot method of methamphetamine production is a simplified manufacturing process that requires fewer chemicals and less equipment than traditional methods of production. Utilizing the “one-pot” method allows the methamphetamine manufacturer to produce the drug using quantities of pseudoephedrine available for purchase under the legal limit. Of the 187 meth lab incidents reported by Kansas law enforcement in 2011, 42% were one-pot labs.

Although small-scale methamphetamine manufacturing persists in Kansas, the vast majority of all methamphetamine used in Kansas is imported from Mexico and Central America. Unfortunately, even if local methamphetamine manufacturing were to be eradicated, methamphetamine supplied by Mexican Drug Trafficking Organizations would still be readily available.

### **Meth Precursor Electronic Logs**

In 2009, the Kansas Board of Pharmacy, under statute K.S.A. 65-16,101 was tasked with establishing an electronic precursor log for pharmacies to use in registering the sale of pseudoephedrine, ephedrine or phenylpropanolamine. In April 2011, the Board of Pharmacy implemented the National Precursor Log Exchange (NPLEx) as the States’ electronic precursor monitoring program. The KBI is the State Administrator for Kansas law enforcement, serving as the liaison for training and law enforcement access.

The NPLEx system maintains a single database of all pseudoephedrine purchases, providing pharmacists with access to customer purchasing history before proceeding with a sale. A stop sale mechanism notifies the pharmacist if a customer attempts a purchase in excess of the legal limit. Information captured in the electronic system is made available to law enforcement agencies and can be used to generate investigative leads and support prosecutions.

Between May and December 2011, pharmacists denied the sale of approximately 16,000 boxes of cold medicine containing pseudoephedrine. Nearly 300 law enforcement officers across the state have registered to access the electronic logbook and anecdotal evidence indicates that investigations have benefited from the information available through the system.

### **Methamphetamine Waste Disposal Program (MWDP)**

In February 2011, the Drug Enforcement Administration (DEA) announced that funding provided by Congress for state and local law enforcement agencies to clean up meth labs was exhausted. Without the DEA funding, local law enforcement agencies would be responsible for approximately \$3,500 per lab to contract clean-up services. In recognition of the hardship placed on local law enforcement agencies by the DEA announcement, the Kansas Legislature provided the KBI with funding to develop a Meth Waste Disposal Program to ensure continued access to appropriate clean-up services. Through the MWDP clean-up services were provided for 45 meth lab incidents in FY 2010.

### **Rural Law Enforcement Meth Initiative (RLEMI)**

From June 2010 to October 2011, Kansas was one of seven states that participated in the Rural Law Enforcement Methamphetamine Initiative (RLEMI) through support from the Bureau of Justice Assistance, U.S. Department of Justice. The goal of the RLEMI was to focus efforts to reduce the production, distribution, and use of methamphetamine in rural states. The RLEMI project created a State Meth Coordinator position, housed at the KBI. With the support and oversight of the Kansas Task Force Addressing Methamphetamine and Illegal Drugs, a comprehensive strategic plan to address methamphetamine was developed and implemented. At the conclusion of the RLEMI, the KBI obtained grant funding to sustain the program efforts by retaining the coordinator in the position of Drug Strategy Coordinator.

### **National Perspective on Scheduling Pseudoephedrine**

Two states, Oregon and Mississippi, have adopted legislation requiring a prescription to obtain cold medicines containing pseudoephedrine and several other states have considered similar legislation. As the debate about requiring a prescription to access pseudoephedrine becomes a national issue, attached is a position paper on the topic from the Office of National Drug Control Policy.

### **Recommendations**

- The available evidence, as it relates to Kansas, is inconclusive regarding the argument to reschedule pseudoephedrine at this time. The KBI will continue to study the impact of the NPLEx electronic pseudoephedrine tracking system and monitor the outcomes reported in states that have rescheduled pseudoephedrine. The KBI will reevaluate and provide an update in the 2013 legislative report.
- The KBI recommends continued funding for the Methamphetamine Waste Disposal Program. This critical program ensures the appropriate removal of the hazardous materials associated with methamphetamine manufacturing, without placing a financial burden on local law enforcement agencies. Additionally, the KBI recommends further study toward transitioning the Methamphetamine Waste Disposal Program into an Authorized Centralized Storage program, which would be eligible for partial funding support the Drug Enforcement Agency. It is the opinion of the KBI that the Authorized Central Storage program will allow for even more efficient use of resources, both financial and manpower, to remove methamphetamine waste.

The KBI will continue to work with law enforcement agencies throughout the state to address the illegal drug problem.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Kirk D. Thompson', written over a horizontal line.

Kirk D. Thompson  
Director

Appendix A: "Use of Sales Precursor Tracking Databases Versus 'Prescription Only' as an Effective Means To Prevent Methamphetamine Lab Incidents", Office of the National Drug Control Policy, National Methamphetamine and Pharmaceuticals Initiative, January 21, 2011.



# NMPI

*"A National HIDTA Initiative"*

## Advisory Board Position Paper

January 21, 2011

### **USE OF RETAIL SALES PRECURSOR TRACKING DATABASES VERSUS "PRESCRIPTION ONLY" AS AN EFFECTIVE MEANS TO PREVENT METHAMPHETAMINE LAB INCIDENTS**

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This document represents the NMPI Advisory Board position and not necessarily the official position of the member's agencies.

## **NMPI Advisory Board Mission Statement**

*The National Methamphetamine and Pharmaceuticals Initiative (NMPI) Advisory Board, composed of federal, state and local law enforcement and prosecutorial agency representatives from throughout the nation, provides oversight and expertise, ensuring a cohesive strategy of federal, state, and local concerns to further the NMPI mission of reducing and eliminating the occurrence of methamphetamine/chemicals/pharmaceutical drug crimes in the United States.*

## **NATIONAL SITUATION**

The NMPI was founded on the premise that the availability of methamphetamine is directly related to the availability of the essential precursors to manufacture the drug. Those precursors being utilized by illicit methamphetamine lab operators in the United States are pseudoephedrine (PSE) and ephedrine (EPH).

History has shown that methamphetamine manufacturing can be affected immediately if the source of the precursor is found and eliminated. Methamphetamine cannot be made without a chemical precursor. PSE or EPH are currently essential in the modern manufacturing process.

**Law enforcement across the United States is faced with evidence that the primary precursor source for domestic methamphetamine labs is cold and allergy medicine containing PSE sold at retail stores and pharmacies.** This is true for the large "super labs" (operated by drug trafficking organizations- DTOs) producing at least 10 lbs. of methamphetamine per cooking cycle or the smaller "user labs" producing less than 2 ounces of methamphetamine per cook.

Law enforcement also recognizes from evidence found at meth lab sites, investigations, and intelligence, that although restricted, cold and allergy medicine is being illegally obtained through the technique known as "smurfing." This is the practice of purchasing the legal allowable amount of products containing PSE at one retail outlet but following up with successive purchases at other stores that in total exceed the daily or monthly legal limit. This can be done by one individual or a group of individuals operating together in one city, multiple cities, multiple counties, or multiple states depending on the sophistication of smurfing in any particular region. Significant amounts of meth precursor can be obtained this way.

The NMPI Advisory Board believes that the level of "**smurfing sophistication**" in any area depends on two distinct factors:

- (1) The size of labs operating in the region which dictates the demand for the precursor.
- (2) DTOs that are operating smurfing "cells" in the area to collect large amounts of the precursor for use in super labs in the same state or out of state.

Of particular concern to law enforcement (and a detriment to their investigations) is the fact that smurfers are increasingly not utilizing their own identification, but using multiple identification. All of this is done to circumvent the federal Combat Methamphetamine Epidemic Act (or similar state or local laws) which require identification and the signing of purchase logbooks for the purpose of monitoring limits and for law enforcement scrutiny.

The NMPI Advisory Board believes that sufficient evidence now exists to support the conclusion that smurfing is at epidemic proportions across the country with states in various stages of "smurfing sophistication." In some states, such as California and Arizona, smurfing is well organized and has progressed into its own black market industry. Smurfers run in groups along daily routes and sell their

acquired cold medicine at the end of the day to a "collector" or "cell head" overseeing multiple groups. The venture is extremely profitable with boxes of cold and allergy medicine being purchased at about \$7.00 a piece and sold for as much as \$80 each. Some states do not have large methamphetamine lab seizure numbers (such as Arizona), yet large smurfing organizations exist and the methamphetamine precursor is being shipped out of state to California and Georgia by Drug Trafficking Organizations (DTOs) operating methamphetamine super labs.

## USE OF TRACKING DATABASES

Tracking retail sales of products containing PSE with databases populated with information gathered in manual or electronic log books has been conducted in some states across the country for at least the last three years. States such as Oklahoma, Arkansas, Kentucky, Tennessee, Arizona, California and others are using databases as an investigative tool to thwart smurfing.

There are two crucial effectiveness factors to the use of tracking databases:

- (1) The information gathered by the database must be timely and accurate.
- (2) The database must be able to "block sales" of purchases over the legal amounts to be effective against the diversion of precursors for illegal activity.

Since PSE products are sold by a multitude of vendors, ideally all these stores must also be electronically connected in order to be timely and accurate and in order to block sales over the daily and monthly limits. This is crucial in regards to the information gathering end; however on the receiving end, law enforcement must have the resources to investigate the leads generated by the databases in order to have the opportunity of identifying smurfers, finding methamphetamine labs, or preventing methamphetamine lab incidents.

The NMPI Advisory Board recognizes that methamphetamine lab incident numbers are now on the rise in the U.S., including in states that have been utilizing tracking databases. The NMPI Advisory Board attributes this to "smurfer sophistication" and the ability to adapt and thwart the use of these databases as an effective law enforcement tool. While it is recognized that the use of tracking and blocking was initially effective, today smurfers have taken away the two database effectiveness factors:

(1) The information gathered, while it may be timely, is no longer always accurate. Smurfers are increasingly utilizing fake identification and "corrupting" databases to the point where prosecutors prefer eyewitness accounts and investigation (read law enforcement surveillance) of violations before filing charges or authorizing arrests and/or search warrants. This results in costly man power consuming investigations.

(2) Along with the accuracy factor, the use of fake IDs, as well as a multitude of smurfers working together, severely hampers a systems ability to block over the limit sales as smurfers distribute purchases so as not to initiate the "block." In addition, because of the lucrative profits of smurfing, there have been many cases of employee collusion/corruption to thwart blocked sales and/or aid in the use of fake identification documents.

Additional factor affecting database efficiency: Indications are that a significant amount of the rise in current meth lab incident numbers can be attributed to the now frequent use of the "**one pot method**" to manufacture methamphetamine by smurfers that are users and cooking themselves. These are under two ounce cooks and are conducted in a small cooking vessel (such as a bottle). This is a very quick (although dangerous) effective production method. The NMPI Advisory Board believes that the

proliferation of these small pot or bottle cooks is directly attributable to anti-blocking efforts. This method does not require purchasing precursor containing products in amounts over the legal purchase limit which would trigger a blocked sale. For instance, the purchase of one box of cold or allergy medicine containing PSE would not by itself initiate a block. It can be argued that this technique could only be used once or twice per buyer in a 30 day time frame; however the use of multiple identifications is still an option along with the sheer number of smurfers that are available to make purchases (which would avoid a blocked sale).

More important in regards to preventing methamphetamine labs, it should be noted that because of the portability and ease of the one pot/bottle method, law enforcement has virtually little chance of stopping the manufacturing of meth before it happens. Many used bottles (where methamphetamine has been cooked) are being found strewn along the side of the road where they have been thrown out of a vehicle window after a quick cook following the purchase of the precursor containing product. This also creates environmental/contamination issues, as well as dangerous exposure issues to the public.

### **PRESCRIPTION ONLY OPTION**

In 2005 the State of Oregon passed legislation restricting the sale of products containing PSE (and EPH) to only those individuals who were able to present a valid prescription. The legislation went into effect on July 1, 2006. This effectively limited the amount of vendors who were able to sell these products to pharmacies only, where sales are conducted under the watchful eye of a registered pharmacist. Making PSE "Prescription Only" eliminated smurfing in Oregon as well as their entire methamphetamine lab problem. More importantly, methamphetamine labs have not returned to Oregon while in the rest of the country methamphetamine lab incidents are on the rise. There have been no adverse effects in Oregon because of this action. Shelves are still lined with cold and allergy medicine containing reformulated products for consumers (without PSE).

During the legislative process to enact the Oregon law, the following reasons were cited against prescription only. However, none of the below claims came true in **Oregon**:

1. **Public outcry**

There have been hardly any complaints, and no public outcry. More than four years have passed since the prescription law went into effect, and there has been no push back or effort to undo or weaken the Oregon legislation.

2. **Inconvenience to consumers**

The claim was made that consumers would be terribly inconvenienced by having to go to a doctor to get a prescription for pseudoephedrine. The actual experience in Oregon has been that most consumers just purchase over-the-counter alternatives. Those few that still want pseudoephedrine call their physician and get a prescription.

3. **Increased work load on pharmacists**

The claim was made that increasing work loads dispensing pseudoephedrine by prescription would occur. This did not happen as most consumers simply purchase over-the-counter alternatives. Oregon pharmacists have stated that they actually prefer the simplicity and ease of the Oregon law returning pseudoephedrine to prescription only status.

4. **Increased work load on doctors and emergency rooms**

The claim was made that demands on the healthcare system would dramatically increase as a result of patients going to doctors, particularly emergency rooms, to get pseudoephedrine. This never happened.

5. **Medicaid costs**

The claim was made that Medicaid costs would skyrocket as the result of Medicaid patients getting prescriptions for pseudoephedrine. The actual statewide Oregon impact has been less than \$8,000 per year. This dollar figure (along with loss of sales tax revenue) does not compare to the savings in meth lab incident clean-up costs, investigative costs, social service costs, incarceration costs, etc.

6. **Impact on the poor**

The claim was made that there would be an impact on the poor because they could not afford to see a physician. For all of the reasons discussed in items 1 through 5 above, this did not occur in Oregon. The Oregon Criminal Justice Commission has made special inquiries on this issue. Contact with the directors of key service providers confirmed there has not been any negative impact. By way of example, the Director of Northwest Human Services, which operate free clinics and homeless shelters in Salem, Oregon, checked with clinic and shelter managers. The response: "We haven't heard a peep from either the patients or the providers since the change in access to pseudoephedrine. There are so many good alternatives that it isn't an issue."

7. **Cost of pseudoephedrine**

The claim was made that pseudoephedrine prices would increase dramatically. The opposite occurred in Oregon. Pseudoephedrine actually became less expensive due to pharmacies selling generic brands.

**Note:** Recently, cities and counties in methamphetamine lab plagued **Missouri** have already passed, or are considering passing, ordinances moving products that contain PSE to prescription only. Those cities and counties (22 as of this update) that have enacted ordinances have had dramatic drops in smurfing activity similar to Oregon. In **California**, where meth super labs and organized large scale smurfing exists, there is currently a bill pending in favor of prescription only. Other states with pending bills or moving towards prescription only are Indiana, Kentucky, Nevada, Missouri, and Tennessee.

In February 2010, the State of **Mississippi** passed Prescription Only legislation which became effective July 1, 2010. After six months (January 2011) Mississippi reported an approximate 70% reduction in meth lab incidents with none of the above cited opposition claims occurring. In addition, Mississippi had a 63% drop in meth arrests and the number of related drug endangered children removals fell by 76%.

During prescription only efforts in California, Mississippi, and Missouri, the following additional claims were cited by opponents:

**8. PSE move will add to the pharmaceuticals problem**

The claim was made that moving PSE to prescription only would add to the already epidemic pharmaceuticals diversion problem. This never happened in Oregon. There has not been one case of prescription PSE diversion in four years of control. This also has not happened in Mississippi. Prescription fraud is dominated by drug users while PSE has to be extracted and made into a usable drug involving many other chemicals in a dangerous process.

**9. Allergy clinics**

The claim was made that moving PSE to prescription only would cause the rise of "allergy clinics" similar to pain clinics which have been a source of diversion problems. This is simply mere speculation.

**10. Mexico**

The claim was been made that moving PSE to prescription only would be a wasted effort because meth would continue to be supplied by DTOs bringing in meth from Mexico. The NMPI Advisory Board believes that prescription only is not about stopping meth use but rather about eliminating smurfing and thus domestic meth production. Prescription only would free up our valuable law enforcement resources to work on the DTO's who along with meth bring in other drugs (such as marijuana, cocaine, and heroin) and affect public safety in many other ways.

**NATIONAL ORGANIZATIONS IN FAVOR OF PRESCRIPTION ONLY**

National Narcotics Officers Association Coalition (NNOAC)  
National HIDTA Directors Association  
National Alliance for State Drug Enforcement Agencies (NASDEA)  
International Association of Chiefs of Police (IACP)

**STATE AND LOCAL ORGANIZATIONS IN FAVOR OF PRESCRIPTION ONLY**

(CA)  
California Attorney General's Office DOJ  
California Bureau of Narcotic Enforcement  
California Narcotic Officers Association (CNOA)  
California Meth and Pharmaceuticals Initiative  
(KY)  
Appalachia HIDTA Drug Task Forces  
Barren-Edmonson County Drug Task Force  
Bowling Green Police Department  
Bowling Green-Warren County Drug Task Force  
Central Kentucky Area Drug Task Force  
Greater Louisville Medical Society Public Safety Committee  
Jeffersontown Police Department  
Kentucky Academy of Family Physicians  
Kentucky Association Chiefs of Police  
Kentucky Association of Counties  
Kentucky Commonwealth Attorney Association  
Kentucky Education Association

Kentucky Jailer's Association  
Kentucky Medical Association  
Kentucky Narcotics Officers' Association  
Kentucky State Police  
Lake Cumberland Area Drug Task Force  
Lexington-Bluegrass Association of Realtors  
Louisville Fire Department  
Louisville Metro Board of Health  
Louisville Metro E.M.S.  
Louisville Metro Health Department  
Louisville Metro Police  
Operation UNITE  
Owensboro Police Department  
Shively Police Department  
South Central Kentucky Drug Task Force  
Warren County Sheriff's Office  
*(MO)*  
Missouri Narcotics Officers Association  
Missouri Prosecutors Association  
Missouri Sheriff's Association  
Missouri Peace Officers Association  
Missouri Police Chiefs Association  
Missouri State Troopers Association  
*(MS)*  
Mississippi Bureau of Narcotics  
*(NV)*  
Nevada District Attorney's Association  
Carson City District Attorney's Office  
Douglas County District Attorney's Office  
Lyon County District Attorney's Office  
Nevada Sheriff's and Chief's Association  
Carson City Sheriff's Office  
Lyon County Sheriff's Office  
Carson City Dept. of Alternative Sentencing  
Carson City Board of Supervisors  
Lyon County Commission  
Nevada Medical Association  
Nevada Pharmacy Board  
*(OR)*  
Oregon State Sheriffs Association  
Oregon District Attorneys Association  
Oregon Association of Chiefs of Police  
Oregon Narcotics Enforcement Association  
*(Other)*  
Southeast Meth and Pharmaceuticals Initiative  
Southwest Meth and Pharmaceuticals Initiative

## **IN CONCLUSION**

The NMPI Advisory Board recognizes that:

- Law Enforcement agencies do not have the resources to chase smurfers after they have obtained the precursor. There are too many leads to follow.
- Law Enforcement wants to free up resources to focus more on DTOs.
- Law Enforcement does not want to arrest more smurfers or find more methamphetamine labs. Law Enforcement wants to eliminate smurfing and prevent methamphetamine lab incidents.

**The NMPI Advisory Board supports "Prescription Only" over the use of tracking databases as the only effective means to eliminate "smurfing" and prevent illicit methamphetamine lab incidents in the United States.**

- "Prescription Only" is the only proven tool that keeps legitimate consumer access while preventing methamphetamine labs.
- "Prescription Only" addresses "smurfer sophistication" at all levels in all states.
- "Prescription Only" addresses precursor demand no matter what size methamphetamine labs are being supplied, in the same state or another state.
- "Prescription Only" of PSE, as with any new controlled product, can easily be regulated by new or existing state prescription monitoring programs.
- "Prescription Only" saves taxpayers millions of dollars in investigative costs, lab cleanup costs, incarceration costs, court costs, social services costs, etc.
- "Prescription Only" was the rule for PSE/EPH prior to 1976.

***Questions or requests for additional information can be directed to:***

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