

Approved: 05/02/06

Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 P.M. on March 14, 2005 in Room 241-N of the Capitol.

All members were present except:

Mike Peterson- excused
Jim Ward- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Jerry Ann Donaldson, Kansas Legislative Research
Becky Krahl, Kansas Legislative Research
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Senator Terry Bruce
Larry Welch, Director KBI
Lt. Col. Terry Maple, KS Highway Patrol
Kevin Graham, Attorneys' General Office
Kyle Smith, KBI
Lonnie Wright, Director of Narcotics, Oklahoma
Scott Rowland, General Counsel Oklahoma State Bureau
Representative Peggy Mast
Tammy Samuels
Mary Gaffey
Debbie Criswell
Randy Rogers, KS Sheriff's Association
Michael White, KCDA
Duane Simpson, KS Agribusiness Retailers Association
John Kiefhaber, KS Pharmacists Association
Terry Holdren, KS Farm Bureau
Tom Palace, Petroleum Marketers
Representative Scott Schwab
Dana Kenneson

Others attending:

See attached list.

SB 27 - Unlawfully selling drug products containing Ephedrine or Pseudoephedrine, pharmacy controls; rebuttable presumption of intent if possession of more than nine grams

Chairman Loyd opened the hearing on **SB 27**.

Chairman Loyd provided the committee with information from Firstline of Council of State Government (CSG) Midwest. (Attachment 1) The article touched on:

- Methamphetamine problems requires multifaceted response from states
- States target meth producers, seek better treatment for addicts
- supply and demand
- Prosecuting and protecting
- Environmental cleanup
- Lab seizures in 2003

Senator Terry Bruce, provided the committee the action that Senate Judiciary took on the bill.

(Attachment 2) The Senate committee looked at:

- The major components of the Oklahoma law
- Other states proposed legislation
- Current Meth problem

The components of **SB 27**:

- Makes starch-based, multi-ingredient cold products containing ephedrine or pseudoephedrine schedule 5 drugs
- Does not require liquid or gel caps to be schedule 5 – still available as currently sold
- Preempts localities from further restrictions
- Requires KBI and Board of Pharmacy to report to legislature each year
- Criminal provisions
- Sets bail at \$50,000 for certain meth related violations

Larry Welch, Director of Kansas Bureau of Investigation, passage of the bill would help the KBI better address the importation and trafficking of methamphetamine, as well as cocaine, crack, marijuana, etc. (Attachment 3) Information was provided reflecting the efforts and achievements of the KBI in reduction of the number of meth labs.

Lt. Colonel Terry Maple, Kansas Highway Patrol, appeared in support of the bill. (Attachment 4) Oklahoma has had great success with a similar law already in place, restricting some forms of precursor cold medications, such as the tablet form of ephedrine and pseudo ephedrine. The number of meth labs has been cut in half; unfortunately, this has caused an increase in people coming across the Kansas Oklahoma border to simply purchase these precursor cold medications. The Kansas Highway Patrol and the methamphetamine task force are committed to fighting meth and other illegal drugs and continue to work with communities and identify the best practices to be evaluated and employed.

Kevin Graham, Assistant Attorney General, appeared in support of the bill. (Attachment 5) The trends of criminals from other states coming to Kansas to commit their crimes of purchasing meth making supplies due to our weaker laws, further heightens the need for Kansas to take action quickly to enact legislation similar to Oklahoma.

Kyle Smith, Kansas Bureau of Investigation, appeared in favor of the bill and also provided a balloon. (Attachment 6) The technical amendments are offered after working with the Kansas Pharmacists Association and the Kansas Pharmacy Board in an effort to keep the bill as simple and straight forward as possible.

Lonnie Wright, Oklahoma Director of Narcotics, provided statistical information on Oklahoma before and after passage of the model legislation. (Attachment 7) Scott Rowland, General Counsel for the State Bureau of Narcotics, spoke about three points of legislation, that selling meth is an economical based crime versus an addiction based crime, that OK found that it is driven by addiction and that they couldn't come up with a punishment that would off set the addiction. The second point is that meth is a very dangerous controlled substance. The third point is that the similar structure and availability of the product.

Representative Peggy Mast, requested passage of the bill. (Attachment 8)

Tammy Samuels, urged passage of the bill and to spare another family the loss of a family member. (Attachment 9)

Mary Gaffey, spoke in support of the bill. (Attachment 10)

Debbie Crisswell, SOS Outreach Coordinator for Greenwood County, stated that the connection between meth and domestic violence/sexual assault is one of increased lethality, increased frequency and increased seriousness of the violence. (Attachment 11)

Randy Rogers, President Kansas Sheriff's Association, appeared in support of the bill and requesting additional funding sources or restructure the way in which Byrnes Grant are awarded. (Attachment 12)

Mike Jennings, Legislative Kansas County & District Attorneys Association, written testimony in support of the bill was presented by Michael White. ([Attachment 13](#))

Duane Simpson, Kansas Agribusiness Retailers Association, appeared in support of the bill. ([Attachment 14](#)) Anhydrous ammonia (NH₃) can be used in cooking process for methamphetamine; it is used as fertilizer for wheat in Kansas. The theft of the fertilizer and the property damage done by the theft is a serious problem for the industry and customers. Missouri and Nebraska are considering similar legislation and failure to act in Kansas could result in a dramatic increase in meth related crimes.

John Kiefhaber, Kansas Pharmacists Association, stated that the Kansas pharmacist stand ready to do their part in law enforcement's campaign against meth production in Kansas and have requested an amendment to the bill. ([Attachment 15](#)) The amendment is in Section 3, paragraph (f) to not come back on the pharmacists if the purchaser was able to beat the system.

Terry Holdren, Kansas Farm Bureau, spoke in support of the bill. ([Attachment 16](#)) KFB policy also support uniformity of laws with neighboring states and the aggressive prosecution of individuals charged with manufacturing and distribution of meth.

Tom Palace, Executive Director of the Petroleum Marketers and Convenience store Association of Kansas, appeared in support of the bill. ([Attachment 17](#)) A request that the bill be amended to require suppliers to buy back unused inventory or make the act effective two months after the statute is posted in the Kansas Register.

Representative Scott Schwab, appeared in support of the bill. ([Attachment 18](#)) A suggestion was offered by not making the pharmacist the primary source of policing of meth ingredients.

Dana Kenneson, appeared in support of the bill. ([Attachment 19](#)) She felt voting in favor of this bill would send a great message to Kansas.

Written testimony was provided by Leslie Kaufman, Kansas Cooperative Council, in favor of passage of the bill. ([Attachment 20](#))

The Chairman stated that opponents will be heard tomorrow.

The meeting was adjourned at 3:25 pm. The next scheduled meeting is March 15, 2005.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 3-14-05

NAME	REPRESENTING
BOB ANDERSON	CAFE'S GENERAL STORES
KEVIN GRAHAM	AG
Michael White	KCDAA
Mike Jennings	KCDAA
Deb Billingsley	KS Bd of Pharmacy
Brad Smart	Pfizer
John Kiefhaber	Ks. Pharmacists Assoc.
Dana Kenneson	Greenwood County
Debbie Crisswell, AAPS	Greenwood County SOS
Cheryl Samuels Tyson	greenwood County
Diana Cole	Greenwood County
Tammy Samuels	Greenwood County
LARRY WELCH	KBI
Phil Johnston	Greenwood County
Richard Scott	Chase County SOS
Duane Simpson	KARA
Terry Bruce	Senator
Sandy Barnett	KCSOV
Julie M. M. M. M.	Gov office
Richard Simpson	Kansas State
TERRY HOLDREN	KANSAS FARM BUREAU
Allyer Shaverdi	MICT of KANSAS
Kyle Smith	KBI
Jennie Wright	Oklahoma Bureau of Narcotics



States target meth producers, seek better treatment for addicts

State responses to the methamphetamine problem can be broadly categorized into five areas: controlling access to precursors, strengthening law enforcement and prosecution efforts, protecting endangered children, cleaning up meth labs and improving treatment for meth abusers. Below is a look at how states in this region have addressed these various issues.

Supply and demand

Limiting access to the precursor chemicals needed to manufacture methamphetamine is one way states have tried to curtail production of the drug.

In **ILLINOIS**, legislation that took effect in January requires medicines containing pseudoephedrine to be kept behind store counters or in locked display cases. In addition, retailers cannot sell more than two packages of cold tablets containing ephedrine or pseudoephedrine at a time. Finally, the new law requires retailers to train workers and assess penalties against store employees or businesses for violating provisions of the act.

A voluntary, public-private partnership in **KANSAS** known as Meth Watch involves law enforcement, state and local officials, and retailers. Retailers train their employees to look out for suspicious purchases and notify law enforcement when they observe such purchases. Products that can be precursors to meth are placed in locations where they can be

monitored. The state provides guidance and training materials to participating businesses.

In **NEBRASKA**, legislation introduced by the state's governor and attorney general would designate medications containing pseudoephedrine as Schedule Five drugs. Customers wanting to purchase Schedule Five drugs must go to a pharmacist, present photo identification, and sign a log or receipt. Limitations also are placed on the amount of the drug that can be purchased. Similar bills have been introduced in several other states, including **MINNESOTA** and **KANSAS**.

Production of methamphetamine also often involves the use of anhydrous ammonia, which is a problem in rural areas because farmers and farm suppliers sometimes have their fertilizer tanks tapped by meth makers. **IOWA** is using federal dollars to provide locks for anhydrous ammonia tanks in areas of the state that have had major problems with meth labs. Legislation introduced this year in **INDIANA** would provide tax credits for the purchase of tank locks or for the use of an additive that makes anhydrous ammonia change color when it is exposed to air, making thefts easier to spot. Credits also would be established for the purchase of an additive that makes anhydrous ammonia unusable in meth production.

In December 2004, the **OHIO** General Assembly passed legislation that makes the theft of anhydrous

ammonia a third-degree felony. A law passed in **WISCONSIN** several years ago increased penalties for the theft or improper storage of the chemical. In **Iowa**, anhydrous ammonia must be carried in approved tanks, allowing law enforcement officials to arrest people carrying small quantities of the chemical in milk jugs or gas cans. **MICHIGAN** has similar legislation in place.

While trying to control the supply of meth, states also have been seeking ways to curb demand for the drug. In announcing his meth-related initiatives last fall, Minnesota Gov. Tim Pawlenty noted that researchers are still determining the best way to treat and rehabilitate users. He has proposed developing new treatment protocols and experimenting with pilot programs to treat abusers. A 2003 **NORTH DAKOTA** law has made it easier for meth addicts to receive care by providing more flexibility for residential treatment under group insurance plans.

States also are increasingly using drug courts, which provide a closely supervised treatment alternative to prison for high-risk offenders. Recognizing that two-thirds of its prison population is incarcerated for drug crimes or drug-involved offenses, **Illinois** enacted a law in 2004 to increase access to these courts. The measure allows certain drug offenders who are on parole to receive probation supervision so that they can participate in drug court programs.



Prosecuting, protecting

Most states in recent years have decided to increase penalties for the production and use of methamphetamine.

In Illinois, a 2004 law targets meth manufacturers who cause fires or explosions that damage someone else's property. Penalties under the statute include prison time, with sentences increasing to 15 to 50 years if people are injured or inside the building when damage to the structure occurs. Policymakers also have looked at ways to stop meth manufacturing in the pre-production stage. Comprehensive legislation in Ohio created a new crime for the illegal possession or assembly of the chemicals used in the manufacture of drugs.

Concerns about meth also have led states to devote more law enforcement to this public safety issue. Nebraska recently added several prosecutors to its drug and violent crime unit, while Pawlenty has proposed adding 10 narcotics agents to his state's Bureau of Criminal Apprehension. These agents would work with local law enforcement officials on meth-related issues.

One of the greatest concerns about meth is its impact on families and children. Law enforcement officials are no longer surprised when they discover children on the premises of meth labs they have raided. In Iowa, for instance, more than 950 children were removed from homes in 2002

and 2003 where meth was present. Because it can be produced anywhere, including residences, meth poses unique dangers to children.

An Ohio law makes it a first-degree felony, with mandatory prison time, to manufacture meth in the vicinity of a juvenile or a school. As the result of legislation passed in Nebraska in 2003, children or vulnerable adults are placed in protective custody if they had contact with, or were injured by, methamphetamine precursors or production.

SOUTH DAKOTA now includes in its definition of abused or neglected children any youngsters whose parents, guardians or custodians exposed them to meth manufacturing. Illinois has passed similar legislation. The NORTH DAKOTA attorney general's office is establishing a special program for drug-endangered children that will develop standard procedures for treating young people and dealing with the parents or guardians who exposed them to meth or other drugs.

Environmental cleanup


Because each pound of meth yields nearly 6 pounds of toxic waste, cleaning up a lab can be quite dangerous. Chemicals used to make methamphetamine may linger in homes, and in the soil, without proper removal.

A proposal in Minnesota would mandate the use of statewide cleanup standards and procedures, while another would prevent properties that

housed meth labs from being reoccupied until a certified cleanup has been completed.

A proposal this year in Indiana would require sellers to disclose whether a meth lab had previously been located on their premises. Michigan statute requires law enforcement officials to notify the Department of Environmental Quality about potentially contaminated property.

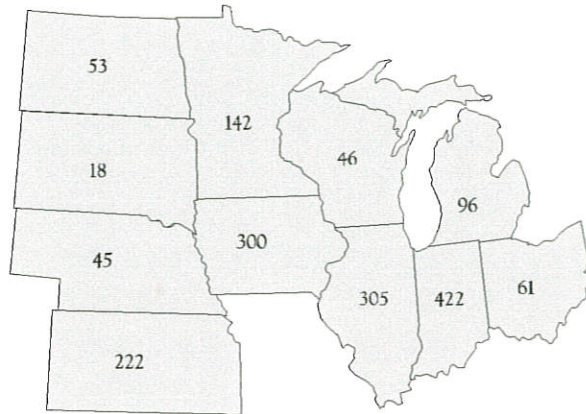
Another concern regarding meth labs is the price tag associated with cleaning them up. Ohio law allows local entities to recover cleanup costs from the person responsible for the waste. The Minnesota governor has proposed a similar restitution program and also is seeking to create a revolving loan fund for communities having to pay for cleanup efforts.

Despite the many actions being taken by states, methamphetamine will continue to be a problem for law enforcement and social service officials because of the ease with which it can be produced. Efforts to place more restrictions on precursors and to increase law enforcement activities may have the unintended consequence of simply moving production across the state line. Because of this, the battle against meth is one that states will need to fight together — by sharing information on useful practices and facilitating communication between law enforcement. 

Ilene Grossman is an assistant director for the CSG Midwestern Office.

Firstline

Methamphetamine lab seizures in 2003*



* State figures represent meth labs seized and reported to the National Clandestine Laboratory Database.

Source: U.S. Drug Enforcement Administration

Source Guide

For further information on efforts to curb the production and use of methamphetamine:

Drug Enforcement Administration
www.usdoj.gov/dea

Midwest High Intensity Drug Trafficking Area
www.whitehousedrugpolicy.gov/hidta/midw-content.html

National Crime Prevention Council
www.ncpc.org

National Institute on Drug Abuse
www.nida.nih.gov

Office of National Drug Control Policy
www.whitehousedrugpolicy.gov

Substance Abuse and Mental Health Services Administration
www.samhsa.gov

UCLA Methamphetamine Treatment Project
www.methamphetamine.org

- Recent issues of *Firstline Midwest* have examined:
- Midwestern states' energy efficiency strategies
- The evolving debate over eminent domain
- Challenges for state community college systems

The Council of State Governments
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February 2005

Firstline Midwest

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STATE SENATOR
34TH DISTRICT
RENO COUNTY



TOPEKA

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VICE CHAIR: JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE
MEMBER: AGRICULTURE ASSESSMENT & TAXATION NATURAL RESOURCES

To: The House Corrections and Juvenile Justice Committee
From: Senator Terry Bruce
Re: Senate Bill 27
Date: March 14, 2005

Chairman Loyd and the House Corrections and Juvenile Justice Committee,

Thank you for giving me the opportunity to speak before your committee regarding Senate Bill 27. I had the privilege of chairing the subcommittee regarding SB 27 and was, therefore, volunteered by Chairman Vratil and Majority Leader Schmidt to testify in support of the bill.

I want to make sure the committee is aware that I strongly favor SB 27. However, I will leave it up to other proponents to explain to you why it is needed and what it will do for their communities. I believe my testimony is better served to give you a relatively objective narrative of the actions taken by the Senate Judiciary Committee and explain why we took them.

As I am sure you are aware, there is a lot of information circulating about what can be and cannot be done to make methamphetamine. There is probably more information, some true and some not, about what kind of proactive measures will work instead of scheduling ephedrine and pseudoephedrine.

As a result, the Judiciary Subcommittee engaged in a fact finding mission. I have provided the outline below to list what occurred during subcommittee discussions and the actions taken by the Senate. What you do with this information, I believe, is your prerogative. I do not believe it is proper form to tell you what to do with this information. At any rate, I don't think you'll listen to a Senator anyway.

I. Discussion during the Subcommittee

- 1) Oklahoma law- major components
 - a) Classifies starch-based tablets as schedule 5 drug
 - b) No bail for meth related crimes
- 2) Other states' proposed legislation
 - a) All states around us except Colorado are enacting the Oklahoma law
 - b) Numerous states have point-of-sale restrictions

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STATE CAPIT
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House C & JJ
3-14-05
Attachment 2

i) No other restrictions have worked as effectively

3) Current Meth Problem

a) What medicines can be used for meth?

i) All types of ephedrine or pseudoephedrine products

b) What medicines are being used for meth?

i) Only starch-based

II. What does SB 27 do?

1) Makes starch-based, multi-ingredient cold products containing ephedrine or pseudoephedrine schedule 5 drugs.

a) Schedule 5

i) Need a photo ID,

ii) Sign a log book, and

iii) Only purchase at pharmacy

b) Other point-of-sale restrictions were not effective

c) K.S.A. 65-4102 (b) (8) requires precursors to be scheduled drugs

i) Pure ephedrine was listed as a schedule 5 after 2 meth labs

2) Does not require liquid or gel caps to be schedule 5 - still available as currently sold

a) Still allows public access to a legitimate medicine.

b) Other types of products are not being used only starch-based

3) Preempts localities from further restrictions.

a) Want uniformity for retailers

b) Most likely an irrelevant issue because federal law would dictate state control

4) Requires KBI and Board of Pharmacy to report to legislature each year.

a) Status of the State's meth problem

b) What type of evidence is being found at meth lab crime scenes

i) May result in future restrictions

5) Criminal Provisions

a) Retailers cannot sell 4 or more packages at one sale.

b) Makes it a class C misdemeanor with \$200 fine (like tobacco)

6) Sets bail at \$50,000 for certain meth related violations

a) Because Kansas guarantees a right to bail there are three exceptions:

i) Judge finds on record the defendant is not likely to re-offend

ii) Judge places the defendant on pre-trial supervision

iii) Defendant enters a drug treatment facility



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

**Representative Ward Loyd, Chairman
House Corrections and Juvenile Justice Committee
State Capitol
241-North
March 14, 2005**

KANSAS "METH" FACTS

Director Larry Welch
Kansas Bureau of Investigation

- "Raiding a clandestine drug laboratory (clan lab) has become one of the most dangerous operations a law enforcement officer can undertake. Officers sometimes refer to clan labs as 'chemical time bombs' because they contain highly flammable and explosive materials, lethal chemicals, and even mechanical or chemical booby traps. Law enforcement has found these makeshift laboratories in apartments, hotel rooms, mobile homes, outdoor sites, and in all types of vehicles."

The FBI Law Enforcement Bulletin, April, 2000

- "Drugs and crime are unraveling rural America ... Crime, fueled by a methamphetamine epidemic that has turned fertilizer into a drug lab component and given some sparsely populated counties higher murder rates than New York City, has so strained small-town police budgets that many are begging the federal government for help. The rate of serious crime in Nebraska, Kansas, Oklahoma and Iowa is as much as 50 percent higher than the states of New York and New Jersey ... Drug-related homicides fell by 50 percent in urban areas, but they tripled over the last decade in the countryside. We have serious drug crime in places that never used to have it."

The New York Times, Sunday, December 8, 2002

- The KBI, since 1996, of necessity, has focused a disproportionate percentage of our resources on methamphetamine in general and “meth labs” in particular, forensically and investigatively.
- Kansas, since 1996, has annually ranked in the top five, and/or top ten states in the number of “meth lab” incidents and seizures of operating laboratories.
- The KBI has trained, equipped and certified approximately 300 local Kansas law enforcement officers as “meth lab” first-responders and investigators.
- The KBI has provided “meth lab” recertification training and additional equipment to more than 200 officers previously certified by the KBI and/or DEA.
- The KBI has provided methamphetamine awareness training to at least 3,300 Kansas first-responders, i.e., fire fighters, EMS personnel, officers, et al.
- Almost 75 percent of all KBI arrests relate to narcotics. Primarily methamphetamine.
- Almost 80 percent of all KBI criminal convictions relate to narcotics. Primarily methamphetamine.
- The KBI is an active participant in 8 drug-related task forces across the state, with methamphetamine usually the emphasis.
- From 1997 through 2004, the KBI made 2,362 meth-related arrests. 1,859 were for manufacturing.
- From 1997 through 2004, the KBI obtained 1,326 meth-related convictions. 1,013 were for manufacturing.

- Kansas law enforcement “meth lab” incidents:
 - 1994 - 4 *
 - 1995 - 7 *
 - 1996 - 71*
 - 1997 - 99 *
 - 1998 - 189 *
 - 1999 - 511 *
 - 2000 - 702 *
 - 2001 - 846 *
 - 2002 - 728
 - 2003 - 649
 - 2004 - 583 (Projected; we’re still sorting out reports)

*** new state record**



Despite the extraordinary efforts and achievements cited above, the KBI estimates 75-80 percent of Kansas methamphetamine is actually imported from Mexico, and/or California, and not manufactured locally. If Kansas law enforcement could accomplish a more dramatic reduction in the number of “meth labs”, we could better address the importation and trafficking of methamphetamine, as well as cocaine, crack, marijuana, etc.

Based on the Oklahoma experience, Senate Bill 27 would appear to be the appropriate vehicle with which to accomplish the dramatic reduction.



K A N S A S

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 27 House Corrections and Juvenile Justice

Presented by
LTC Terry Maple
Kansas Highway Patrol

March 14, 2005

Good afternoon, Mr. Chairman and members of the committee. My name is Lieutenant Colonel Terry Maple, and I appear before you on behalf of Colonel William Seck and the Kansas Highway Patrol to support SB 27.

On the morning of January 19, Colonel Seck testified in support of SB 27 in front of the Senate Judiciary Committee. At approximately the same time Greenwood County Sheriff Matt Samuels was fatally shot while serving a search warrant at a residence near Virgil. Unbeknownst to Sheriff Samuels, the residence had an active methamphetamine laboratory. Last month, the Senate respectfully named SB 27 after Sheriff Samuels, and passed the measure unanimously 40-0. Sheriff Samuels' death emphasized the need to tighten access to resources that can be used to make methamphetamine.

As members of the law enforcement community, we have seen the consequences methamphetamine and other illegal drugs can cause to families and communities. Unfortunately, local community resources are stretched thin. Therefore, a task force, charged by Governor Kathleen Sebelius and the Kansas Criminal Justice Coordinating Council, was formed to identify how best to address the methamphetamine and other illegal drug problems in Kansas.

As Co-Chairs of this task force, Colonel Seck and KBI Director Larry Welch felt the first focus should be methamphetamine. It should be no surprise to any of us that the availability of meth is on the rise. I quickly see this when reviewing the drug seizures made by Kansas troopers. Routinely, troopers discover large quantities of meth in vehicles traveling Kansas' roadways. In your handouts, I've included statistical information for your review. This information shows that from 1993 to 2004, our agency has seized over 643 pounds of meth. And by looking at the amount seized each year, it's clear that the amount of this illegal drug has increased significantly over the last decade. And this doesn't take into account the number of rolling meth labs we find in vehicles and / or meth precursors.

The Patrol also assists local, State and Federal law enforcement agencies with meth related crimes and investigations. The Patrol's Special Response Team or SRT has primarily addressed outside requests for agency resources in three areas: surveillance for other agencies, warrant execution for meth distribution, and warrant execution for meth labs. Overall, the number of requests for assistance in these three areas has totaled 49 since 2000. Exact numbers are listed in your materials. Simply put, these instances equate to many hours spent by law enforcement agencies in dealing with this problem.

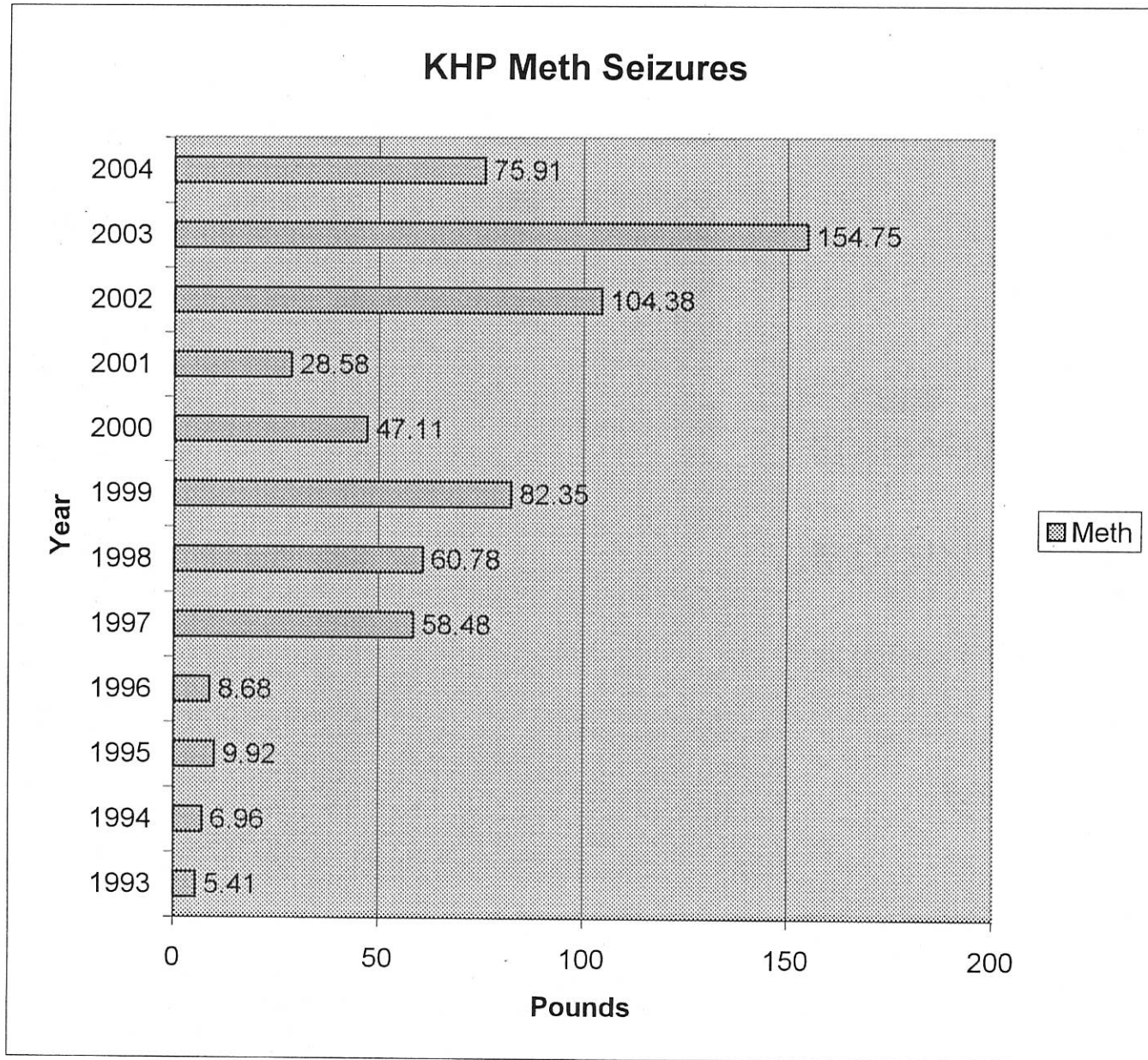
As we begin to compile efforts already made to fight meth addiction and manufacturing and develop new and different solutions, we have looked to other states. Oklahoma has a similar law already in place, restricting some forms of precursor cold medications, such as the tablet form of ephedrine and pseudo ephedrine. They have had great success. The number of meth labs has been cut in half. Unfortunately, this has caused an increase in people coming across the Kansas-Oklahoma border to simply purchase these precursor cold medications.

Cutting the number of methamphetamine labs and the flow of meth into the hands of drug dealers and users in Kansas would save millions of taxpayer dollars, some of which could be used to help treatment, education and enforcement efforts. The Kansas Highway Patrol and the methamphetamine task force are committed to fighting meth and other illegal drugs. We will continue to work with communities and identify the best practices to be evaluated and employed.

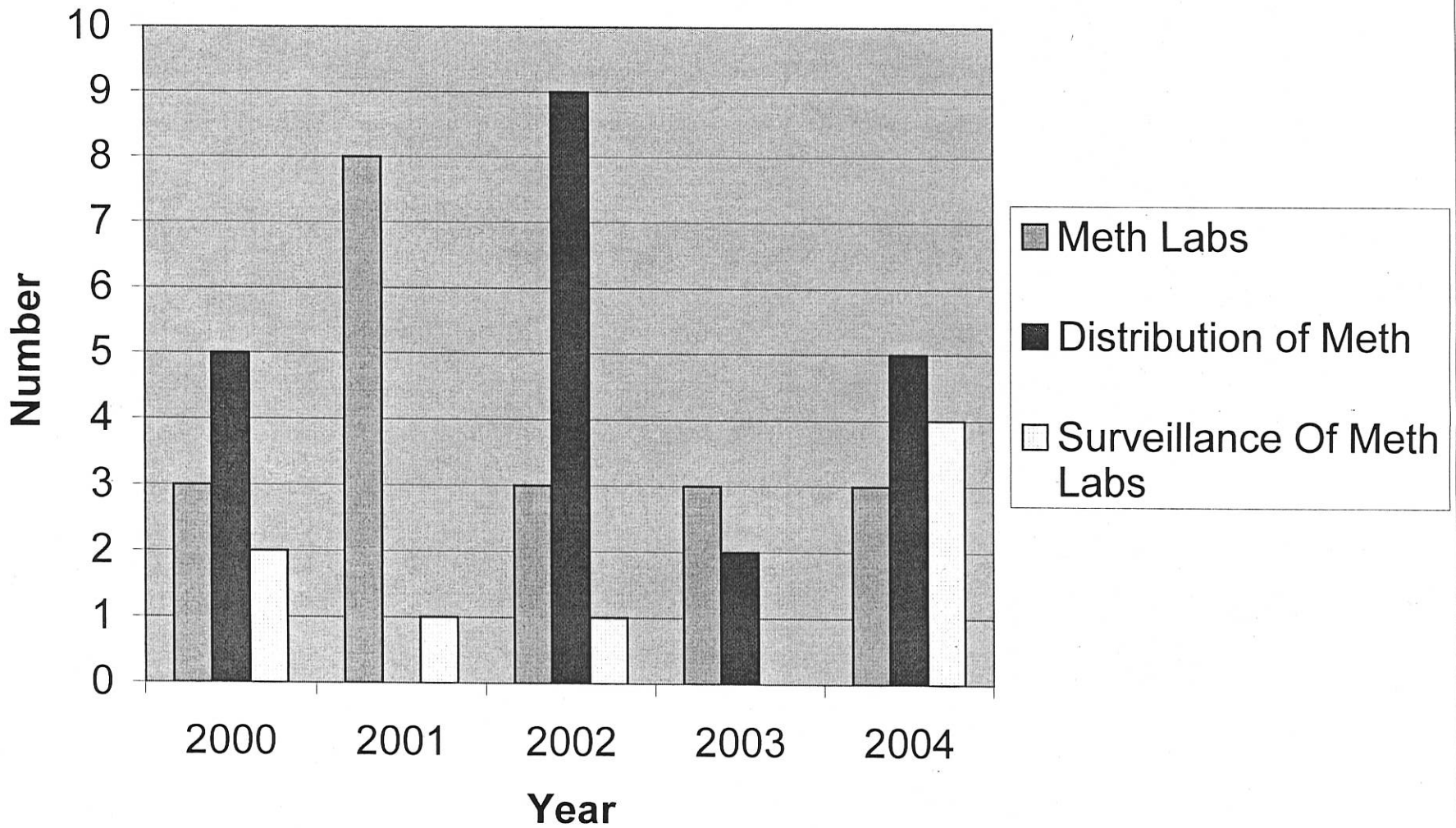
The Kansas Highway Patrol fully supports SB 27 because of its benefits to law enforcement agencies as we fight this problem and to Kansas' communities and taxpayers. In honor of Sheriff Samuels, the Patrol appreciates the opportunity to address you today and urges this committee to give SB 27 a favorable report. I will be happy to stand for any questions you might have.

###

Year	Meth/lbs
1993	5.41
1994	6.96
1995	9.92
1996	8.68
1997	58.48
1998	60.78
1999	82.35
2000	47.11
2001	28.58
2002	104.38
2003	154.75
2004	75.91



KHP SRT Call Outs





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March 14, 2005

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

Testimony in Support of

Senate Bill No. 27

by

Kevin A. Graham

Office of the Attorney General

Dear Chairman Loyd and Members of the Committee:

Thank you for allowing me to appear today in support of SB 27, an important item of legislation designed to help prevent the illegal and extremely dangerous production of methamphetamine at clandestine "labs" across the State of Kansas. SB 27 follows a very successful model that has been implemented in the State of Oklahoma which has reduced the number of "meth labs" seized by law enforcement in that State dramatically. SB 27 seeks to make it more difficult for offenders attempting to manufacture methamphetamine to acquire pseudoephedrine - one of the critical ingredients necessary for the production of methamphetamine.

In very simple terms, what Oklahoma has done was to take hard pill and/or powder forms of products containing ephedrine or pseudoephedrine off of the publicly accessible shelves of retail stores and require those products be sold from the pharmacy counter. Purchasers of these products are not required to have a prescription, but they must present photo identification and they must sign a log book recording the purchase. Effectively this forces offenders who would seek to acquire hard pill/powder products containing ephedrine or pseudoephedrine for the purposes of manufacturing methamphetamine to expose themselves to increased levels of identification, scrutiny and record-keeping; the offenders are very aware the chances of being arrested and prosecuted go up substantially if law enforcement authorities are able to track the amount, date and location of their purchases of products containing ephedrine or pseudoephedrine. Statistics received from Oklahoma in the past year indicate between a 50% to 80% reduction in the number of clandestine "meth labs" seized by Oklahoma law enforcement authorities since the adoption of this law. The success of the Oklahoma approach is difficult to ignore. Adoption of similar laws in Kansas has the potential for allowing our law enforcement professionals to make great strides towards reducing the number of illegal and deadly meth labs that threaten our State.

Law enforcement agencies along the southern border of our State have begun to report an increased number of incidents where offenders from Oklahoma are traveling north to acquire ephedrine or pseudoephedrine containing products in Kansas. Likewise, additional reports of theft of anhydrous ammonia in southern border counties appear to be on the rise – apparently “meth cooks” from Oklahoma are choosing “one stop shopping” in Kansas for their meth making supplies. These trends further heighten the need for Kansas to take action quickly to enact legislation similar to that in Oklahoma so that we do not have criminals from other states coming to Kansas to commit their crimes due to our weaker laws.

The Senate has taken several steps to refine SB 27 – and the Senate Judiciary Subcommittee which was chaired by Senator Terry Bruce deserves a great deal of credit for their efforts to mitigate the impact of the imposition of additional duties and responsibilities for pharmacists, pharmacy retailers and others while preserving the aspects of the bill necessary to deter meth manufacturers.

On behalf of Attorney General Phill Kline, I encourage the Committee to support SB 27, as amended, and to recommend the bill favorably for passage.

[Please note that liquid and gel based products containing pseudoephedrine are not included in the new restrictions imposed under SB 27 for two primary reasons: (1) It is considerably more difficult and time consuming to manufacture methamphetamine from liquid or gel products, thus there has not been the wide-spread utilization of these products to “cook” meth in the past; and (2) by exempting liquid and gel forms of products containing pseudoephedrine stores that do not have pharmacies may continue to carry the medications for their customers – just in a different form.]

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Kevin A. Graham
Assistant Attorney General
Director of Governmental Affairs



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

House Corrections and Juvenile Justice Committee

Testimony in Support of SB 27

Kyle G. Smith

Special Assistant Attorney General and Special Agent
Kansas Bureau of Investigation

March 14, 2005

Chairman Loyd and Members of the Committee,

I am pleased to appear on behalf of the Kansas Bureau of Investigation and the Kansas Peace Officers Association before this committee in support of SB 27, a long wished for effective weapon against meth manufacture.

The manufacture of methamphetamine is still the number one public safety problem in Kansas. Untrained 'cooks' mix these precursors with explosive, flammable and toxic chemicals, including sulfuric acid, red phosphorus, sodium metal, anhydrous ammonia, ether and sodium hydroxide. Besides long term health problems there are acute problems of fires and explosions. The fumes and residue damage and kill children present at these 'cooks'. Last year 120 children were found at these lab sites, some with serious health problems. Subsequent renters and motel users are also subject to exposure to these chemicals. Our water and soil are contaminated by the byproducts these 'cooks' dump on the ground. The resources of our law enforcement agencies are being sucked dry by the challenge of dealing with these deadly kitchens. There are still hundreds of meth labs being discovered across Kansas, causing deaths, fires and explosions, injuring children, endangering both officers and private citizens, poisoning our land and soil. The resulting strain on our treatment resources, law enforcement resources, courts, forensic laboratories, and prisons has been monumental, in the tens of millions of dollars. And federal dollars are dwindling as expected – the block grant program was cut by 30% and COPS and other DOJ grant programs are slated for reduction or termination as the federal government diverts more resources into homeland defense. Unfortunately, the states have been strapped for resources the last several years and Kansas, like most states, have become reliant on these grants for most of their anti-drug efforts. And while the number of reported meth labs has gone down the last two years, I fear this may not be direct proof of a decrease in the number of actual labs operating in Kansas. Why? In the July 2001 Legislative Post Audit Performance Audit on Methamphetamine, it was noted that there was a substantial under reporting by local agencies. Post Audit conducted a survey in 2000 and, the agencies responding reported 1,209 meth labs, compared to the 702 in the 'official' KBI numbers. Recent events may have aggravated that situation:

- In 2001 the KBI started training local agencies to handle meth labs, thanks to a million-dollar grant from the federal government. Tracking of the meth labs seized also went to the local agencies. There is some basis to believe that local officers aren't bothering to fill out the four page federal form used to track meth lab seizures, since they know how many they had in their jurisdiction and aren't necessarily concerned with spending resources compiling the data for others.
- Recent legal decisions such as *St. v Frazier*, *St. v McAdam* and the appearance of lack of legislative concern have created a perception among some officers that I've heard expressed, that there is no reason to risk one's life working a difficult and hazardous case if no one else thinks it is a priority.

We are making progress and methamphetamine production is in fact down, but the extent of the reduction is probably less than the EPIC numbers suggest.

I've been working with the legislature since the mid-1980's on ways to address this problem. Illegal manufacture of meth has gone from a class A misdemeanor punishable by up to a year in jail to a level one drug felony with a minimum sentence of 11 years and 4 months. Yet the numbers of labs have increased. This is a highly addictive drug that can be made right here in your home after a quick trip to your local store. The KBI has worked with the Kansas Department of Health and Environment to create the "MethWatch" program – a voluntary educational effort with the Kansas Retail Association. MethWatch is an excellent program but we still have hundreds and hundreds of illegal meth labs. Education, punishment and millions of dollars have not solved this plague that is killing Kansans and draining our law enforcement agencies, courts and prisons of badly needed resources.

Yet, the solution has been obvious: we have to control access to the precursor chemicals that are used by the clandestine laboratories: ephedrine and pseudoephedrine. These precursors are to meth manufacture what flour is to bread making. Look at the attached chart, showing the molecular structure of ephedrine, pseudoephedrine and methamphetamine. See the difference? One oxygen atom. While other chemicals and methods may be used to strip off that atom, every meth lab in Kansas has either ephedrine or pseudoephedrine as the basic precursor. Until we get control of the basic precursors' availability we will never stop the meth lab problem. Everyone recognizes the legitimate uses of these drugs. But we also need recognize the need to balance legitimate commercial needs with society's legitimate need to protect itself.

Ephedrine and pseudoephedrine are not manufactured in the United States, but imported from the orient, primarily China. The illegal use of these precursors in recent years is shown by the DEA chart documenting the increased importation of the precursor pseudoephedrine from about 250,000 kilograms in 1993 to almost 700,000 kilograms in 2003. Does anyone really think the number of colds doubled or tripled in those ten years? Or has the market grown to meet the needs of illegal clandestine laboratories?

In 2001, Legislative Post Audit Performance Audit on meth labs (http://www.kslegislature.org/postaudit/audits_perform/01pa17a.pdf) reached the same conclusion:

To help ensure that law enforcement officials have the statutory provisions they need to help combat the methamphetamine problem, the House or Senate Judiciary Committees or other appropriate legislative committees should consider introducing legislation during the 2002 legislative session to do the following:

b. increase regulation of over-the-counter drugs containing pseudoephedrine.

Exactly how to do this without creating a massive bureaucracy or interfering with the public's need for these products has eluded the states until last year. The state of Oklahoma passed the "Trooper Nik Green Act" (named for the third trooper to die in methamphetamine related case in a year) also known as Oklahoma HB 2176. HB 2176 put tablet forms of pseudoephedrine (ephedrine was already a schedule 4 controlled substance under Oklahoma law) on schedule 5 – so only pharmacies could sell this precursor and photo identification and signature was required. ***Oklahoma Bureau of Narcotics reports their lab seizures are down 80% since April.***

The essential features of this legislation are:

- 1. SB 27 does not restrict access to cold medicines.** It does restrict access to the starch based pill forms, but the easier to swallow and faster acting versions are still totally unregulated. This is because the liquid, liquid tab and gel cap forms have not been used by meth cooks due to the precursor being dissolved in non-water based solution which is difficult to separate. So after SB 27 becomes law, citizens can get the liquid form any place and any time they can get it now.
- 2. No prescription is required to get the pill forms of the precursor drugs.** By putting the meth precursors on schedule 5, all that is required to buy them is providing photo identification and signing a form.
- 3. SB 27 not only does not cost taxpayer dollars, it should save millions of taxpayers dollars.** The 2001 Post Audit report estimated that Kansas spent over \$21 million in 2000 fighting meth – and that didn't count treatment dollars. If we can cut the number of labs in half, that means over 10 million dollars of precious, needed court, prison, treatment, prosecutor and law enforcement resources will be freed up.
- 4. By cutting down the number of meth labs, we will be saving the lives and protecting the health of officers, first responders, the criminals themselves and, perhaps most importantly, their children.**

The only bad news is if we don't pass SB 27, and our neighboring states do. Arkansas, Missouri, Iowa and Nebraska were represented at a meeting I attended in St. Louis 5 weeks ago regarding this legislation. They are all pursuing legislation following the Oklahoma example. Since it is nearly impossible to get the precursors in Oklahoma now, we've seen a marked

increase in fine Oklahoman citizens coming across the border to steal or purchase psuedoephedrine in Kansas. In Derby, Kansas, the Dillon's store reported a minibus from Oklahoma pulled in with about 20 apparently homeless people who came in and each bought the 3-package limit, got back on the bus. Information has been developed that the manufacturers are paying \$10 to each person on these meth junkets to buy the precursor. Wichita reports a 500 percent increase in the number of Oklahomans arrested for buying precursors. Here in Topeka, on July 7, state employee Mark Duncan was shot down at a car wash, in front of his wife and kids, by an Oklahoman trying to get money to buy precursors. We expect many labs will simply move north of the border to make production easier due to the ease of acquiring the ephedrine and psuedoephedrine in Kansas. **You don't want to be the low spot when your neighbors are draining their swamps!**

The bottom line is that by adopting this simple amendment to their controlled substances act Oklahoma has allowed people access to the product while cutting their meth labs in half, saved lives of first responders, law enforcement, meth cooks and their children, saved millions of dollars in law enforcement, prosecution, defense, court and prison resources and not cost the tax payers a single penny.

Given these facts, perhaps it is not surprising that law enforcement, public policy makers, treatment and prevention specialists and others have endorsed this legislation:

Governor Kathleen Sebelius
Attorney General Phill Kline's Law Enforcement Legislation Task Force
The Criminal Justice Coordinating Council's Methamphetamine Task Force
The Regional Prevention Centers of Kansas
Kansas Gas Retailers Association
The Kansas Peace Officers Association
The Kansas County and District Attorneys Association
The Kansas Sheriff's Association
The Kansas Association of Chiefs of Police
The Kansas Methamphetamine Prevention Project
Prevention and Recovery Services of Topeka
Kansas Farm Bureau

Technical Amendments

We are aware that there have been some concerns raised by the Kansas Pharmacists Association and the Kansas Pharmacy Board. We have had several meetings and conversation to try and work out some acceptable changes to ease their concerns. As a result of those meetings and in an effort to keep the bill as simple and straight forward as possible, I would like to offer several amendments. They are contained in the balloon attached at the back of my testimony.

- Page 3, lines 14 and 17: strike the word "dispense" as under Kansas Board of Pharmacy regulations, only a pharmacist can dispense, not techs or interns.

- Page 3, line 19: At the request of the board, strikes the word “clerk” and inserts “intern or student”. This will maximize the number of qualified pharmacy personnel who can sell the precursors. Clerks were struck at the suggestion of the board, as they are not supervised or trained as well as technicians, students and interns.
- Page 3, Line 23-25: Strikes the contents of what must be provided by a purchaser at a pharmacy. The board already has a form that person buying schedule 5 drugs must fill out. It was pointed out that the original draft of the bill actually required *less* information than was already being gathered by their form.
- Page 4, line 25, 28, 32: the names of the precursor drugs do not need to be capitalized.
- Page 4, line 33: The board also requested that we except out prescription medicines which contain the precursor drugs. Oklahoma has done this by regulation but would be simpler by statute.

Explanation of the bill

Section 1 amends K.S.A. 65-1643, which deals with restrictions on pharmacies and pharmacists, adds the requirement that products containing ephedrine and psuedoephedrine must be sold only by the pharmacist, a licensed technician or a student or intern. And when it is sold, a form in a log must be filled out by the purchaser and a photo ID provided. The log is to be available to the board of pharmacy and law enforcement.

Section 2, amends K.S.A. 65-4113 (schedule 5 of the controlled substances act, the lowest schedule containing drugs with the lowest potential for abuse) by adding ephedrine and psuedoephedrine but exempting out from regulation products in liquid, liquid capsule or gel capsule form. Pure forms of the precursors would still be controlled.

Section 3 amends K.S.A. 65-7006 dealing with possessing meth precursors and reagents with the intent to manufacture. The senate deleted the original language dealing with ‘smurfing’, i.e. several small purchases being done to obtain precursor drugs in sufficient quantity to manufacture methamphetamine, and inserted the present language found on page 5, starting at line 32, making it an unclassified misdemeanor to sell 4 or more packages at a time and also setting a minimum bond for violations of this offense.

Section 4 is a new section charging the Kansas board of pharmacy to monitor abuse of the ephedrine and psuedoephedrine, in conjunction with the KBI and law enforcement.

Section 5 amends the drug paraphernalia statute, K.S.A. 65-4152 to include the \$50,000 presumptive minimum bond.

Section 6 amends the drug manufacturing statute, K.S.A. 65-4159 to include the \$50,000 presumptive minimum bond.

Section 7 is a preemption clause to standardize the penalties and prevent local municipalities from adopting more or less stringent standards dealing with precursors.

Objections and Responses to SB 27

1. “Just put single ingredient pills on schedule 5, as cold remedies with multiple ingredients aren’t used to manufacture methamphetamine.”

- Unfortunately this is false. In fact, meth cooks don’t care what else is in their meth. Of course they would prefer pure psuedoephedrine but our forensic laboratory in Pittsburg Kansas, which does about 45% of all the labs seized in Kansas, reports that 25-30% of the cases submitted were using multi-ingredient forms of the precursors.
- Attached is a photo of packages seized in a September raid at a meth lab by the KBI. You’ll note they are multi-ingredient psuedoephedrine products.
- Meth cooks have cut their ‘for sale’ product with the left over binder and other drugs that were separated during manufacture.
- By not scheduling multi-ingredient products, which generally only contain 30 milligrams of precursor, all you are doing is boosting the profits of the drug companies, as meth cooks will have to buy 4 times the number of pills to make the same amount of meth.

2. “This won’t solve the methamphetamine problem as it will still be imported from Mexico.”

- The point of this proposal is to address the problem of Methamphetamine labs - the hazardous labs that blow up, poison the ground, damage our children. This is the problem we need help with, not importation. Law enforcement has great expertise and tools such as wiretaps, border searches, informants, financial records, etc., in working economically motivated drug organizations. It is these small, easy, personal use labs that can cook anywhere after a stop at their local hardware and convenience stores that we have been unable to stop and deter. This bill will reduce the number of these dangerous labs and make the resulting drug importation organizations more vulnerable to law enforcement.

3. “Other restrictions, such as putting the packages behind counters and restricting the number of packages that can be sold, will work and be less intrusive.”

- Where has that been the case? Missouri and Illinois have the strictest 'gatekeeper' legislation in the nation and they both have more labs seized than we do! Perhaps even more telling is that both Missouri and Illinois are vigorously pushing the adoption of the Oklahoma approach in their legislatures this year.

4. "This law will interfere with the public's access to needed medicine."

- As noted, liquid forms of the drugs will still be available to all outlets. And the tablet forms will be treated the same as cough syrup with codeine – you just have to go to a pharmacist and sign for the drug. A survey conducted by the University of Northern Iowa shows that 79 percent of Iowans polled would support showing identification to buy the pseudoephedrine products. The same percentage said they would also be willing to ask a pharmacist or a clerk to purchase the products. Oklahoma has found indicators that more people are buying a package to have on hand in case they get sick but no other notable changes in consumer practices.

5. "There simply isn't space for all the thousands of such products behind the counter"

- While there are undoubtedly thousands of products in the world with these precursors, stores don't carry them all. I checked of an actual drug store and they carried about 36 products that will be covered by this legislation. Do we need to sacrifice our children, the lives of police officers and public health just so we have more choices? Given the massive damage caused by these products, making these drugs a priority for controlled delivery seems a reasonable balance. Since all pharmacies will be under the same rules, there won't be any competitive advantage.

6. "Pharmacists don't have time to dispense these cold medicines."

- We have been meeting with pharmacists since September and several amendments have been made to try and minimize the inconvenience to pharmacists. But, with all due respect, these meth precursors are dangerous drugs. The state has always told pharmacists how dangerous drugs are to be dispensed. Based on the Oklahoma experience, most customers will switch to the liquid forms and this will work. I met with the Kansas Board of Pharmacy back in September and have been in contact with them as the bill developed. The Board of Pharmacy has no objection to SB 27. I think they recognize that the inconvenience to pharmacists must be balanced against the horrific damage that meth manufacture does to our public health and safety.

7. "This legislation is unnecessary as the industry is close to perfecting a 'molecular lock' which will prevent pseudoephedrine from being used in the manufacture of methamphetamine."

- This claim was raised in 1999 when we first suggested some restrictions

on the precursors and 5 years later it is still only a dream. Phizer Pharmaceuticals was leading this research and has abandoned it. It might be worth noting that Phizer, probably the largest seller of psuedoephedrine in the U.S., did not appear in opposition to the Oklahoma law and has recently stated that they support states taking this action if warranted in a particular state. See attached Jan. 17, 2005 AP article.

8. "This legislation is unnecessary as education, such as in the MethWatch program, can reduce meth labs."

- MethWatch is a very good program and a very good tool. But it is only one tool against an incredibly destructive force. While many 'good citizen' retailers have voluntarily set limits on how many precursors they will sell, that doesn't solve the problem of 'smurfing'. The Dillon's in Derby Kansas reported last week that vans from Oklahoma are coming up with 15 - 20 apparently homeless persons who then come in and buy the limit of psuedoephedrine. Allegedly they are being paid \$20 each for their efforts. Nor does education address the retailers that are not 'good citizens' - the ones that are making thousands of dollars by selling psuedo by the case and winking. While reported meth labs seizures in Kansas have gone down the last two years, this appears to be explained by the switch from the KBI to local agencies being equipped to handled meth labs due to a million dollar federal grant - they simply too busy and see little value in filling out the 4 page federal form on each lab. This explanation is supported by the fact that submissions of meth lab seized for examination by the KBI's forensic laboratory hasn't tracked the supposed drop in seizures.

Other States See Hope In Oklahoma's Meth Prescription (AP)

By KELLY KURT

The Associated Press, January 17, 2005

TULSA, Okla. -- After years of locking up methamphetamine makers only to see homemade drug labs multiply on urban stovetops and country roads, Oklahoma got tough.

It locked up the meth makers' cold medicine.

Two months after the state ordered common nasal decongestants like Sudafed and Claritin-D placed behind pharmacy counters, law officers were finding half as many labs. Ten months later, meth lab seizures are down more than 80 percent.

State officials believe many clandestine cooks have closed their kitchens for good now that pseudoephedrine, the key ingredient in meth, cannot be sold over the counter.

"To see the sort of diminution we've seen, there is absolutely no other reason," said Lonnie Wright, who heads Oklahoma's drug agency and fields the calls from other states where leaders are now looking to lock up pseudoephedrine, too.

Several states have tried to limit the amount of pseudoephedrine sold at one time, but Oklahoma's law went further by requiring the drug to be dispensed by a pharmacist and that consumers sign for it.

Oklahoma averaged 105 meth lab busts a month before the law took effect last April, said Wright, director of the Bureau of Narcotics and Dangerous Drugs Control. By November, the number had dropped to 19.

Those numbers convinced Missouri Attorney General Jay Nixon to push for a largely identical measure there.

"This is a relatively small discomfort for the public," said Nixon, whose state limited how much pseudoephedrine a customer could buy but only saw the number of labs surge.

The nasal decongestant can no longer be sold in Oklahoma grocery and convenience stores, along with other retail outlets. Signs on empty drug store shelves direct people looking for relief from stuffy heads to the pharmacist.

Oklahoma's law applies only to pills containing pseudoephedrine. Gel and liquid forms, which normally not found in meth-making, are available over the counter.

Some people grumble when told they'll also have to show an ID to receive their tablets, said Jim Brown, owner of Freeland-Brown Pharmacy in Tulsa.

"But when you tell them why," he said, "they really don't object."

Rough-and-ready meth making has left ugly scars on communities large and small in Oklahoma.

Children have been found playing among the volatile and highly toxic waste of their parents' drug making. Addicts haunt farmland looking to steal anhydrous ammonia fertilizer, which they use to convert pseudoephedrine into a potent high.

Oklahoma's law bears the names of three state troopers who were killed in situations involving suspected meth users.

Trooper Nik Green used to weep over the people he had arrested who were caught in meth's iron grip, his widow said.

"He said, "I really feel like this is one of Satan's tools,"" said Linda Green, who helped push for the law soon after Green was shot while investigating a suspicious vehicle on a rural road.

Along with Missouri, lawmakers in neighboring states of Arkansas, Kansas and Texas also are looking to restrict over-the-counter pseudoephedrine.

Arrests and police intelligence indicate Oklahoma meth makers are crossing the state line to buy the drug, said Tom Cunningham, drug task force coordinator for the Oklahoma District Attorneys Council.

"When you see Arkansas, Kansas, Missouri and Texas get on board with the controls," he said. "I think you'll see Oklahoma's numbers drop again."

Leaders in Washington, Idaho, Minnesota, Indiana, Iowa, Kentucky, Connecticut and Georgia have advocated laws requiring pharmacists to dispense pseudoephedrine or will be considering such legislation this year.

Oregon's pharmacy board in October approved new cold medicine restrictions that are patterned after the Oklahoma law. And Illinois began this month requiring retailers to lock pseudoephedrine tablets in cabinets or behind counters.

Pfizer Inc., the maker of Sudafed, does not oppose limiting access to the medication, said spokesman Jay Kosminsky.

"Every state has got to get the balance right between access to legitimate consumers and preventing access to criminals," he said.

But the company believes it's possible to secure the drug in grocery stores and other outlets _ not just pharmacies, he said. Meanwhile, Pfizer plans to introduce a new form of Sudafed this month made without pseudoephedrine.

The National Association of Chain Drug Stores doesn't "necessarily think the Oklahoma law is the way to go," said Mary Ann Wagner, the group's vice president of pharmacy regulatory affairs.

Consumers miss out on hundreds of pseudoephedrine products that can't be displayed behind the pharmacy counter, she said.

The group believes the law's apparent success may have more to do with impeding backdoor sales of cases of pseudoephedrine by rogue retailers, she said.

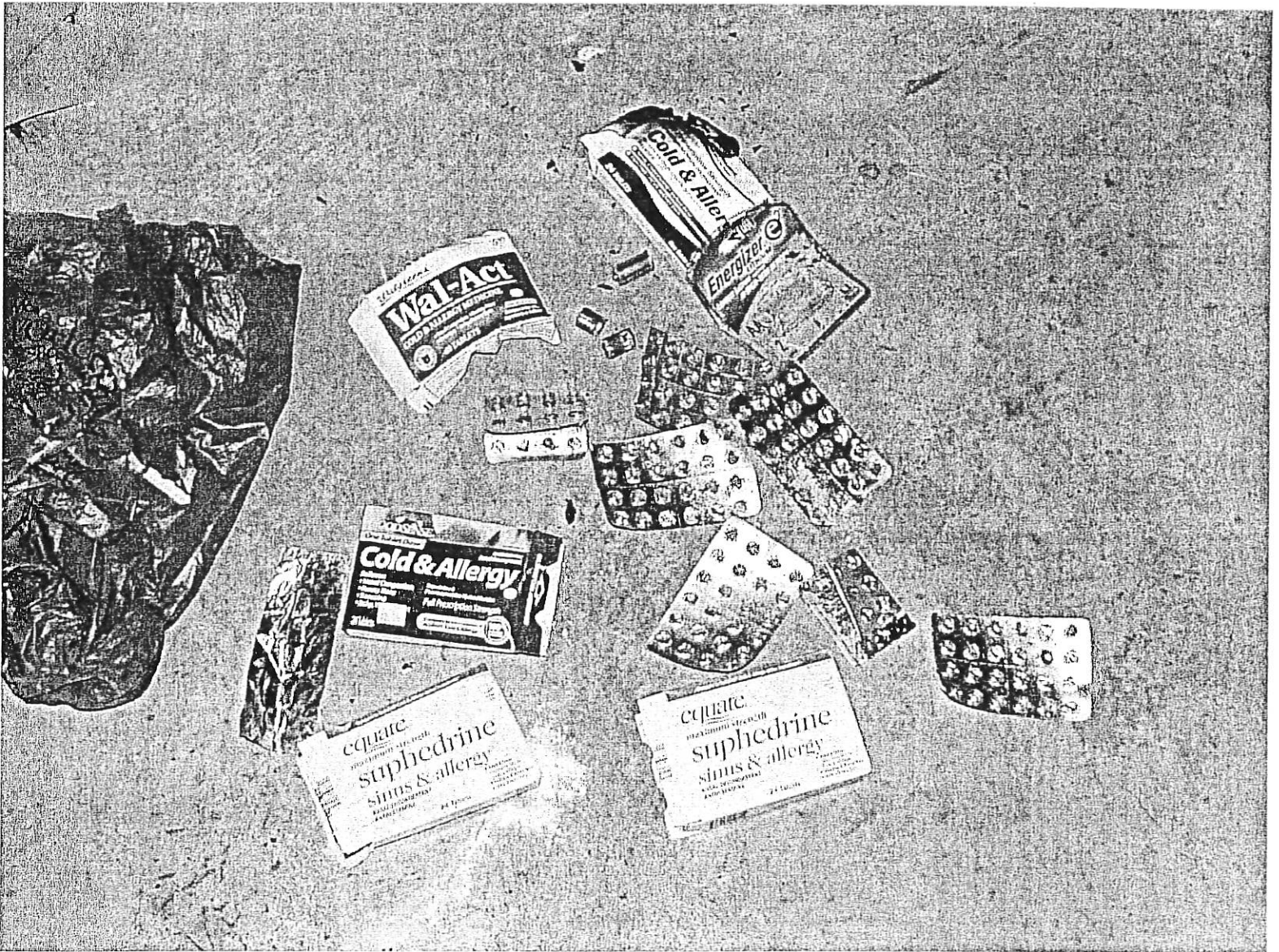
The head of the U.S. Drug Enforcement Administration has referred to Oklahoma's "hard hitting" law in urging states to help fight small labs. But a spokesman said the agency wants more data before drawing conclusions about the approach's success.

Oklahoma is now working on a computer network that will enable authorities to catch people who try to exceed the state's 30-day nine gram pseudoephedrine limit by pharmacy-hopping.

Investigators who were once overwhelmed by scattered mom-and-pop meth labs are now focusing on busting traffickers of Mexican meth, Wright said.

No one knows for sure where the former cooks are turning for their supply, but because meth is so powerfully addictive the search for a new recipe is likely on, he said.

"Somebody," Wright said, "is trying to figure out how to make it out of air or something."



[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

SENATE BILL No. 27

By Senators D. Schmidt, Apple, Barnett, Barone, Bruce, Donovan, Em-
ler, Gilstrap, Goodwin, Hensley, Jordan, Kelly, Lee, Morris, Pine,
Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson
and Wysong

1-10

15 AN ACT concerning controlled substances; relating to schedule V sub-
16 stances; unlawful acts; amending K.S.A. 65-1643, 65-4113, **65-4152**,
17 **65-4159**, **65-7001** and 65-7006 and repealing the existing sections.
18

19 *Be it enacted by the Legislature of the State of Kansas:*

20 Section 1. K.S.A. 65-1643 is hereby amended to read as follows: 65-
21 1643. It shall be unlawful:

22 (a) For any person to operate, maintain, open or establish any phar-
23 macy within this state without first having obtained a registration from
24 the board. Each application for registration of a pharmacy shall indicate
25 the person or persons desiring the registration, including the pharmacist
26 in charge, as well as the location, including the street name and number,
27 and such other information as may be required by the board to establish
28 the identity and exact location of the pharmacy. The issuance of a regis-
29 tration for any pharmacy shall also have the effect of permitting such
30 pharmacy to operate as a retail dealer without requiring such pharmacy
31 to obtain a retail dealer's permit. On evidence satisfactory to the board:
32 (1) That the pharmacy for which the registration is sought will be con-
33 ducted in full compliance with the law and the rules and regulations of
34 the board; (2) that the location and appointments of the pharmacy are
35 such that it can be operated and maintained without endangering the
36 public health or safety; (3) that the pharmacy will be under the supervision
37 of a pharmacist, a registration shall be issued to such persons as the board
38 shall deem qualified to conduct such a pharmacy.

39 (b) For any person to manufacture within this state any drugs except
40 under the personal and immediate supervision of a pharmacist or such
41 other person or persons as may be approved by the board after an inves-
42 tigation and a determination by the board that such person or persons is
43 qualified by scientific or technical training or experience to perform such

1 duties of supervision as may be necessary to protect the public health and
2 safety; and no person shall manufacture any such drugs without first ob-
3 taining a registration so to do from the board. Such registration shall be
4 subject to such rules and regulations with respect to requirements, sani-
5 tation and equipment, as the board may from time to time adopt for the
6 protection of public health and safety.

7 (c) For any person to distribute at wholesale any drugs without first
8 obtaining a registration so to do from the board.

9 (d) For any person to sell or offer for sale at public auction or private
10 sale in a place where public auctions are conducted, any drugs without
11 first having obtained a registration from the board so to do, and it shall
12 be necessary to obtain the permission of the board in every instance where
13 any of the products covered by this section are to be sold or offered for
14 sale.

15 (e) For any person to in any manner distribute or dispense samples
16 of any drugs without first having obtained a permit from the board so to
17 do, and it shall be necessary to obtain permission from the board in every
18 instance where the samples are to be distributed or dispensed. Nothing
19 in this subsection shall be held to regulate or in any manner interfere
20 with the furnishing of samples of drugs to duly licensed practitioners, to
21 mid-level practitioners, to pharmacists or to medical care facilities.

22 (f) Except as otherwise provided in this subsection (f), for any person
23 operating a store or place of business to sell, offer for sale or distribute
24 any drugs to the public without first having obtained a registration or
25 permit from the board authorizing such person so to do. No retail dealer
26 who sells 12 or fewer different nonprescription drug products shall be
27 required to obtain a retail dealer's permit under the pharmacy act of the
28 state of Kansas or to pay a retail dealer new permit or permit renewal fee
29 under such act. It shall be lawful for a retail dealer who is the holder of
30 a valid retail dealer's permit issued by the board or for a retail dealer who
31 sells 12 or fewer different nonprescription drug products to sell and dis-
32 tribute nonprescription drugs which are prepackaged, fully prepared by
33 the manufacturer or distributor for use by the consumer and labeled in
34 accordance with the requirements of the state and federal food, drug and
35 cosmetic acts. Such nonprescription drugs shall not include: (1) A con-
36 trolled substance; (2) a prescription-only drug; or (3) a drug product in-
37 tended for human use by hypodermic injection; but such a retail dealer
38 shall not be authorized to display any of the words listed in subsection
39 (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a
40 pharmacy or drugstore.

41 (g) For any person to sell any drugs manufactured and sold only in
42 the state of Kansas, unless the label and directions on such drugs shall
43 first have been approved by the board.

1 (h) For any person to operate an institutional drug room without first
2 having obtained a registration to do so from the board. Such registration
3 shall be subject to the provisions of K.S.A. 65-1637a and amendments
4 thereto and any rules and regulations adopted pursuant thereto.

5 (i) For any person to be a pharmacy student without first obtaining
6 a registration to do so from the board, in accordance with rules and reg-
7 ulations adopted by the board, and paying a pharmacy student registration
8 fee of \$25 to the board.

9 (j) For any person to operate a veterinary medical teaching hospital
10 pharmacy without first having obtained a registration to do so from the
11 board. Such registration shall be subject to the provisions of K.S.A. 65-
12 1662 and amendments thereto and any rules and regulations adopted
13 pursuant thereto.

14 (k) *It shall be unlawful for any person to ~~dispense~~, sell or distribute*
15 *in a pharmacy a controlled substance designated in subsection (e) or (f)*
16 *of K.S.A. 65-4113, and amendments thereto, unless:*

17 (1) *Such controlled substance is ~~dispensed~~, sold or distributed by a*
18 *licensed pharmacist, a registered pharmacy technician or a pharmacy*
19 *~~clerk~~ supervised by a licensed pharmacist or ~~registered~~ pharmacy tech-*—intern or student
20 *nician; and*

21 (2) *any person purchasing, receiving or otherwise acquiring any such*
22 *controlled substance produces a photo identification showing the date of*
23 *birth of the person and signs a written log or receipt ~~showing the date of~~*
24 *~~the transaction, name of the person and the amount of the controlled~~*
25 *~~substance.~~ The log, receipt book or database shall be available for inspec-*
26 *tion during regular business hours to the board of pharmacy and any law*
27 *enforcement officer.*

28 Sec. 2. K.S.A. 65-4113 is hereby amended to read as follows: 65-
29 4113. (a) The controlled substances or drugs, by whatever official name,
30 common or usual name, chemical name or brand name designated, listed
31 in this section are included in schedule V.

32 (b) Unless specifically excepted or unless listed in another schedule,
33 any material, compound, mixture or preparation containing the following
34 narcotic drug or its salts:

35 Buprenorphine 9064

36 (c) Any compound, mixture or preparation containing limited quan-
37 tities of any of the following narcotic drugs which also contains one or
38 more nonnarcotic active medicinal ingredients in sufficient proportion to
39 confer upon the compound, mixture or preparation valuable medicinal
40 qualities other than those possessed by the narcotic drug alone:

41 (1) Not more than 200 milligrams of codeine or any of its salts per
42 100 milliliters or per 100 grams.

43 (2) Not more than 100 milligrams of dihydrocodeine or any of its salts

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1 per 100 milliliters or per 100 grams.

2 (3) Not more than 100 milligrams of ethylmorphine or any of its salts
3 per 100 milliliters or per 100 grams.

4 (4) Not more than 2.5 milligrams of diphenoxylate and not less than
5 25 micrograms of atropine sulfate per dosage unit.

6 (5) Not more than 100 milligrams of opium per 100 milliliters or per
7 100 grams.

8 (6) Not more than .5 milligram of difenoxin (9168) and not less than
9 25 micrograms of atropine sulfate per dosage unit.

10 (d) Unless specifically excepted or unless listed in another schedule,
11 any material, compound, mixture or preparation which contains any quan-
12 tity of the following substances having a stimulant effect on the central
13 nervous system, including its salts, isomers (whether optical, position or
14 geometric) and salts of such isomers whenever the existence of such salts,
15 isomers and salts of isomers is possible within the specific chemical des-
16 ignation:

17 (1) Propylhexedrine (except when part of a compound used for nasal
18 decongestion which is authorized to be sold lawfully over the counter
19 without a prescription under the federal food, drug and cosmetic act,
20 so long as it is used only for such purpose)..... 8161

21 (2) Pyrovalerone..... 1485

22 (e) ~~Unless specifically excepted or unless listed in another schedule,~~
23 ~~any product containing as its single ingredient the substance Ephedrine.~~
24 ~~Except as provided in subsection (g), any compound, mixture or prepa-~~
25 ~~ration containing any detectable quantity of Ephedrine, its salts or optical~~ e
26 ~~isomers, or salts of optical isomers.~~

27 (f) ~~Except as provided in subsection (g), any compound, mixture or~~
28 ~~preparation containing any detectable quantity of Pseudoephedrine, its~~ p
29 ~~salts or optical isomers, or salts of optical isomers.~~

30 (g) ~~The scheduling of the substances in subsections (e) and (f) shall~~
31 ~~not apply to any compounds, mixtures or preparations which are in liquid,~~
32 ~~liquid capsule or gel capsule form if Ephedrine or Pseudoephedrine is not~~ e p
33 ~~the only active ingredient.~~

34 Sec. 3. K.S.A. 65-7006 is hereby amended to read as follows: 65-
35 7006. (a) It shall be unlawful for any person to possess ephedrine, pseu-
36 doephedrine, red phosphorus, lithium metal, sodium metal, iodine, an-
37 hydrous ammonia, pressurized ammonia or phenylpropanolamine, or
38 their salts, isomers or salts of isomers with intent to use the product to
39 manufacture a controlled substance.

40 (b) It shall be unlawful for any person to market, sell, distribute, ad-
41 vertise, or label any drug product containing ephedrine, pseudoephed-
42 rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
43 ammonia, pressurized ammonia or phenylpropanolamine, or their salts,

1 isomers or salts ~~or~~ of isomers if the person knows or reasonably should
2 know that the purchaser will use the product to manufacture a controlled
3 substance.

4 (c) It shall be unlawful for any person to market, sell, distribute, ad-
5 vertise or label any drug product containing ephedrine, pseudoephedrine,
6 or phenylpropanolamine, or their salts, isomers or salts of isomers for
7 indication of stimulation, mental alertness, weight loss, appetite control,
8 energy or other indications not approved pursuant to the pertinent federal
9 over-the-counter drug final monograph or tentative final monograph or
10 approved new drug application.

11 ~~(d) It shall be unlawful for any person to purchase, receive or oth-~~
12 ~~erwise acquire more than nine grams of any controlled substance desig-~~
13 ~~ated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto,~~
14 ~~within any thirty-day period.~~

15 ~~—(e) Except as provided in this subsection, possessing, purchasing, re-~~
16 ~~ceiving or otherwise acquiring a drug product containing more than nine~~
17 ~~grams of Ephedrine, Pseudoephedrine or Phenylpropanolamine, or their~~
18 ~~salts, isomers or salts of isomers shall constitute a rebuttable presumption~~
19 ~~of the intent to use the product as a precursor to methamphetamine or~~
20 ~~another controlled substance. The rebuttable presumption established by~~
21 ~~this subsection shall not apply to the following persons who are lawfully~~
22 ~~possessing drug products in the course of legitimate business:~~

23 ~~—(1) A retail distributor of drug products or wholesaler;~~

24 ~~—(2) a wholesale drug distributor, or its agents, licensed by the board~~
25 ~~of pharmacy;~~

26 ~~—(3) a manufacturer of drug products, or its agents, licensed by the~~
27 ~~board of pharmacy;~~

28 ~~—(4) a pharmacist licensed by the board of pharmacy; and~~

29 ~~—(5) any person licensed by the state board of healing arts under the~~
30 ~~Kansas healing arts act possessing the drug products in the course of~~
31 ~~carrying out such person's duties.~~

32 (d) It shall be unlawful for any retailer, as defined pursuant to
33 subsection (ff) of K.S.A. 65-1626, and amendments thereto, to sell,
34 deliver or otherwise transfer ~~three~~ [four] or more packages or con-
35 tainers of any controlled substance designated in subsection (e) or
36 (f) of K.S.A. 65-4113, and amendments thereto, during a single retail
37 transaction. For the purposes of this section, “single retail trans-
38 action” means a sale by a retail distributor to a specific customer
39 at a specific time.

40 (e) For persons arrested and charged under this section, bail
41 shall be at least \$50,000 cash or surety, unless the court determines
42 on the record that the defendant is not likely to re-offend, the court
43 imposes pretrial supervision or the defendant agrees to participate

1 ~~in an accredited drug treatment program.~~

2 [^](f) A violation of this section subsection (a), (b) or (c) shall be a drug a licensed
 3 severity level 1 felony. A violation of subsection (d) shall be ~~a class A~~
 4 ~~nonperson misdemeanor~~ **an unclassified misdemeanor, the sentence**
 5 **for which must include, but is not limited to, a minimum \$200 fine.**

6 **New Sec. 4. (a) It shall be the policy of the state of Kansas to**
 7 **restrict access to ephedrine and pseudoephedrine for the purpose**
 8 **of impeding the unlawful manufacture of methamphetamine. In fur-**
 9 **therance of this policy, the state board of pharmacy shall:**

10 (1) **Consult with the Kansas bureau of investigation and other**
 11 **law enforcement agencies to gather information and detect trends**
 12 **with regard to the types of drug paraphernalia and evidence found**
 13 **at crime scenes. The board shall take into consideration such infor-**
 14 **mation and trends in developing the recommendations required by**
 15 **paragraph (2); and**

16 (2) **develop recommendations concerning the most appropriate**
 17 **controls for all products that contain any compound, mixture or**
 18 **preparation containing any detectable quantity of ephedrine or**
 19 **pseudoephedrine, its salts, or optical isomers, or salts of optical iso-**
 20 **mers.**

21 (b) **Such recommendations shall be submitted on or before Feb-**
 22 **ruary 1 each year to the standing committee on judiciary in the**
 23 **senate and the standing committee on corrections and juvenile jus-**
 24 **tice in the house of representatives.**

25 **Sec. 5. K.S.A. 65-4152 is hereby amended to read as follows:**
 26 **65-4152. (a) No person shall use or possess with intent to use:**

27 (1) **Any simulated controlled substance;**

28 (2) **any drug paraphernalia to use, store, contain, conceal, in-**
 29 **ject, ingest, inhale or otherwise introduce into the human body a**
 30 **controlled substance in violation of the uniform controlled sub-**
 31 **stances act;**

32 (3) **any drug paraphernalia to plant, propagate, cultivate, grow,**
 33 **harvest, manufacture, compound, convert, produce, process, pre-**
 34 **pare, test, analyze, pack, repack, sell or distribute a controlled sub-**
 35 **stance in violation of the uniform controlled substances act; or**

36 (4) **anhydrous ammonia or pressurized ammonia in a container**
 37 **not approved for that chemical by the Kansas department of agri-**
 38 **culture.**

39 (b) **Violation of subsection (a)(1) or (a)(2) is a class A nonperson**
 40 **misdemeanor.**

41 (c) **Violation of subsection (a)(3), other than as described in**
 42 **paragraph (d), or subsection (a)(4) is a drug severity level 4 felony.**

43 (d) **Violation of subsection (a)(3) which involves the possession**

1 of drug paraphernalia for the planting, propagation, growing or
2 harvesting of less than five marijuana plants is a class A nonperson
3 misdemeanor.

4 (e) For persons arrested and charged under paragraph (a)(4), bail
5 shall be at least \$50,000 cash or surety, unless the court determines, on
6 the record, that the defendant is not likely to re-offend, the court imposes
7 pretrial supervision or the defendant agrees to participate in ~~an accredited~~ a licensed
8 drug treatment program.

9 Sec. 6. K.S.A. 65-4159 is hereby amended to read as follows:
10 65-4159. (a) Except as authorized by the uniform controlled sub-
11 stances act, it shall be unlawful for any person to manufacture any
12 controlled substance or controlled substance analog.

13 (b) Any person violating the provisions of this section with re-
14 spect to the unlawful manufacturing or attempting to unlawfully
15 manufacture any controlled substance or controlled substance an-
16 alog, upon conviction, is guilty of a drug severity level I felony and
17 the sentence for which shall not be subject to statutory provisions
18 for suspended sentence, community work service, or probation.

19 (c) For persons arrested and charged under this section, bail shall be
20 at least \$50,000 cash or surety, unless the court determines, on the record,
21 that the defendant is not likely to re-offend, the court imposes pretrial
22 supervision or the defendant agrees to participate in ~~an accredited~~ drug a licensed
23 treatment program.

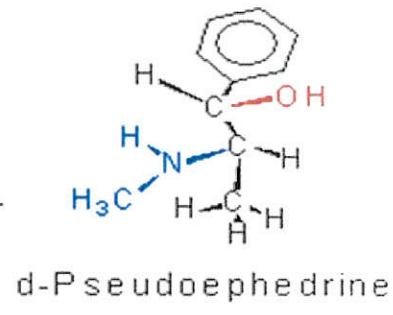
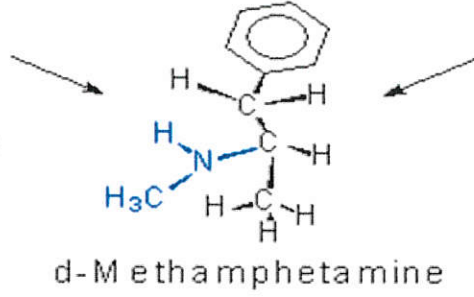
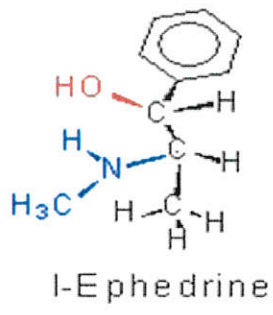
24 (d) The provisions of subsection (d) of K.S.A. 21-3301, and
25 amendments thereto, shall not apply to a violation of attempting to
26 unlawfully manufacture any controlled substance pursuant to this
27 section.

28 New Sec. 7. The provisions of this act, and any rules and reg-
29 ulations promulgated thereunder shall be applicable and uniform
30 throughout this state and in all cities and counties therein. No city
31 or county shall enact or enforce any law, ordinance, rule, regulation
32 or resolution in conflict with, in addition to, or supplemental to, the
33 provisions of this act unless expressly authorized by law to do so.

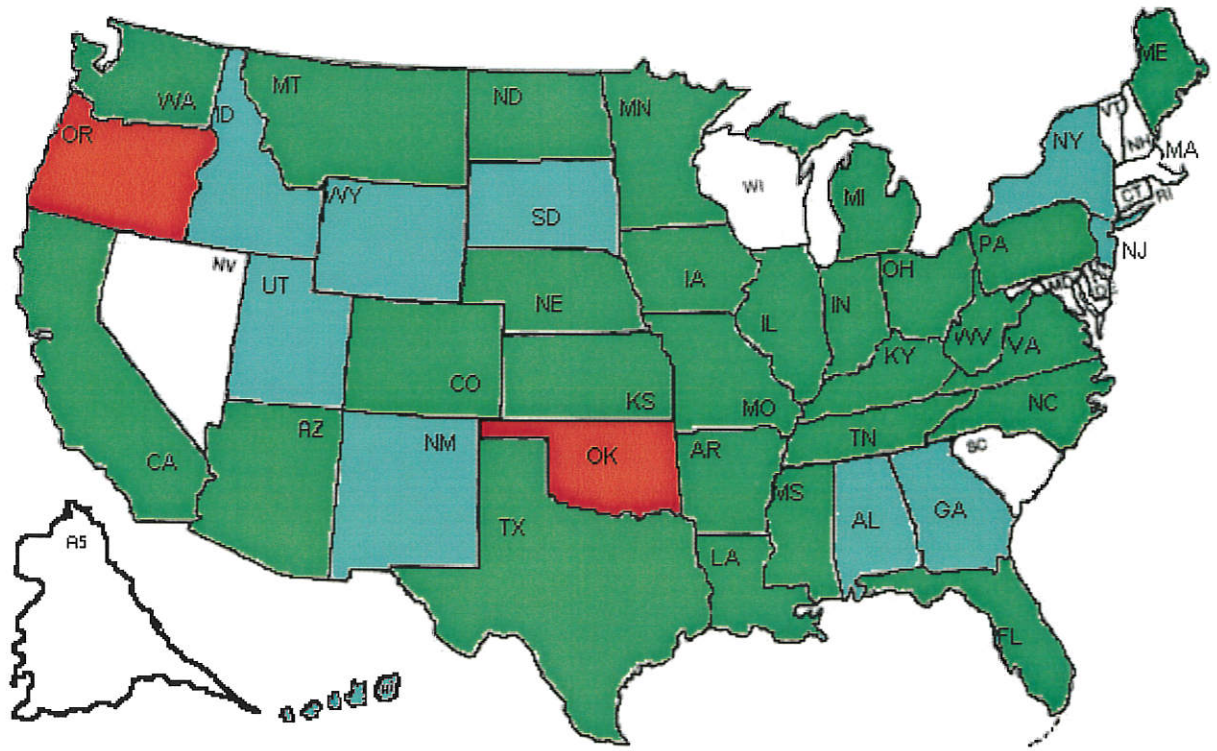
34 [Sec. 8. K.S.A. 65-7001 is hereby amended to read as follows:
35 65-7001. K.S.A. 65-7001 through 65-7015 and amendments thereto
36 shall be known and may be cited as the Kansas sheriff Matt Samuels
37 chemical control act.]

38 Sec. 4 & [9]. K.S.A. 65-1643, 65-4113, 65-4152, 65-4159[, 65-
39 7001] and 65-7006 are hereby repealed.

40 Sec. 5 & [10]. This act shall take effect and be in force from and
41 after its publication in the Kansas register.

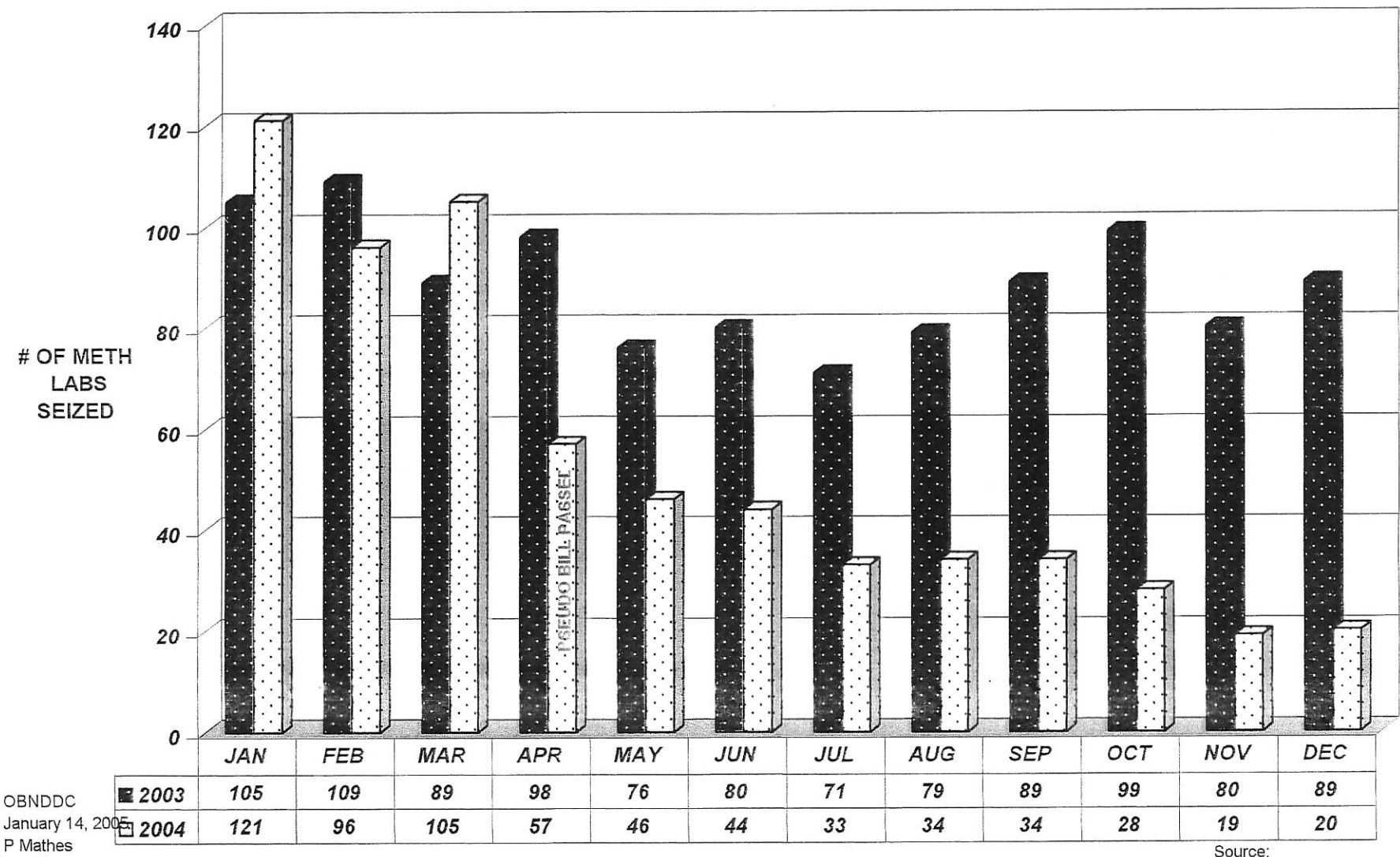


HOUSE BILL 2176 BECOMES MODEL LEGISLATION



States that have passed 2176
States with 2176 in progress
States that have expressed an interest in 2176

STATE OF OKLAHOMA

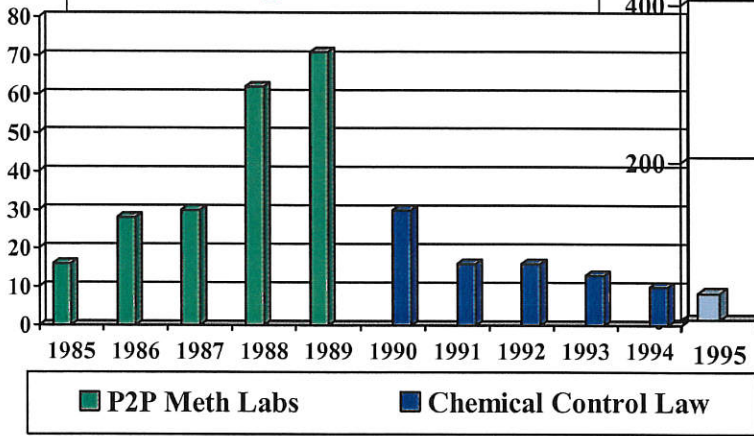
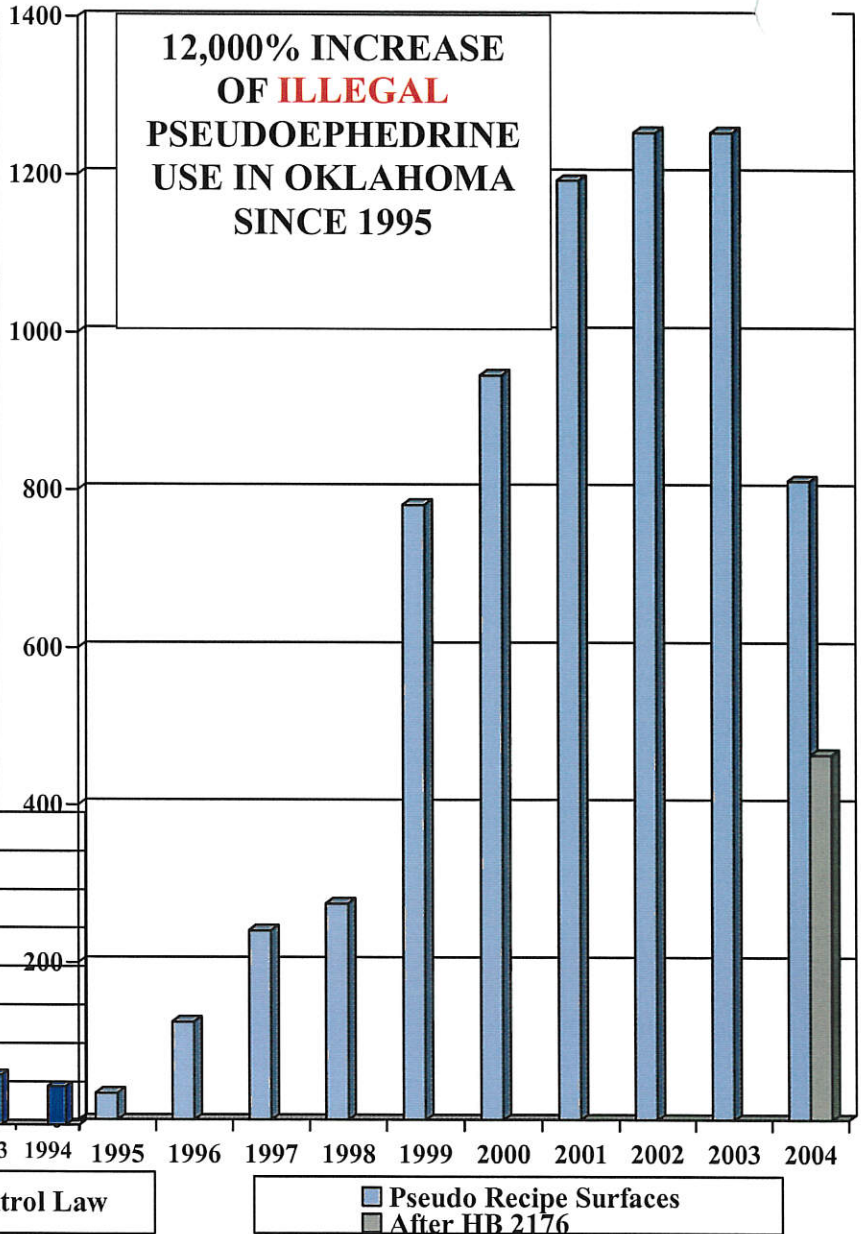


OBNDCC
 January 14, 2005
 P Mathes

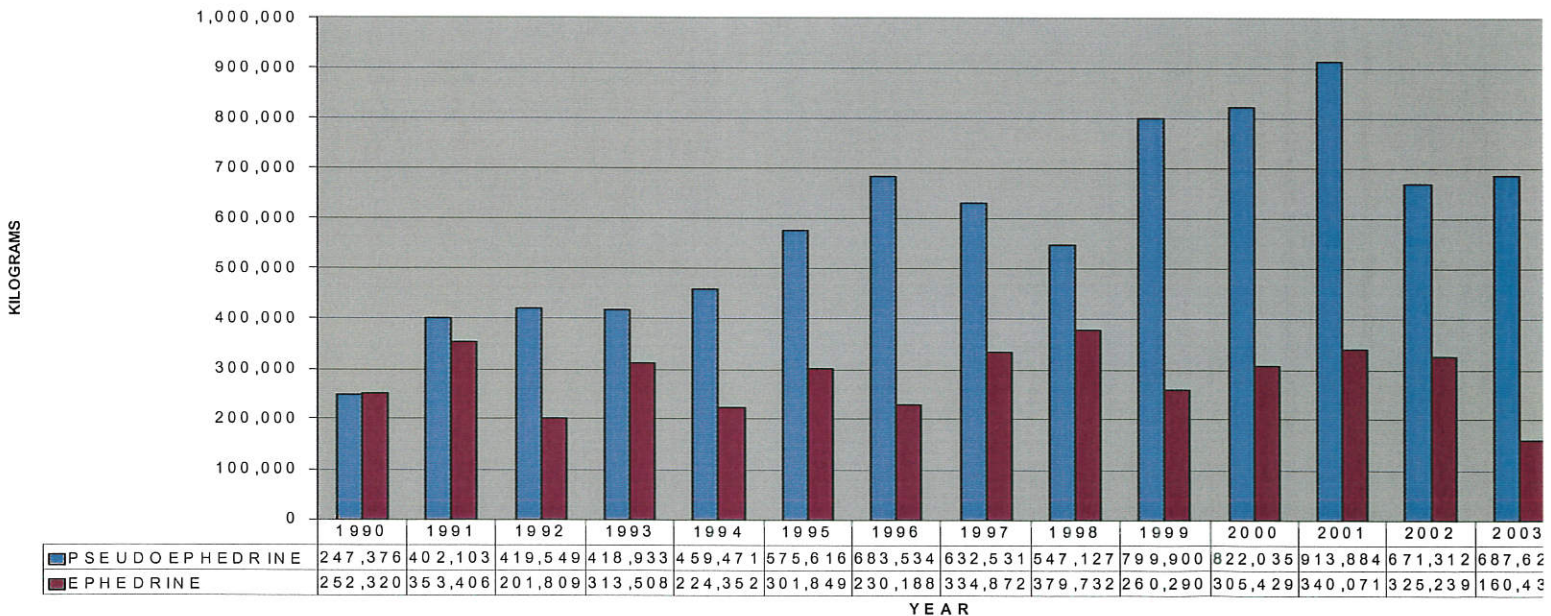
Source:

**Oklahoma Bureau of
Narcotics and
Dangerous Drugs
Control**

**OKLAHOMA METH
LAB SEIZURES:**
Oklahoma meth lab seizures, the correlation between chemical control laws and a drop in labs, and the increase in pseudoephedrine labs and pseudoephedrine importation.



U.S. IMPORTS OF EPHEDRINE AND PSEUDOEPHEDRINE
As of October 15, 2003





TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

VICE-CHAIR: HEALTH & HUMAN SERVICES
UTILITIES
SOCIAL SERVICES BUDGETPEGGY MAST
REPRESENTATIVE, 76TH DISTRICT
765 ROAD 110
EMPORIA, KANSAS 66801
(620) 343-2465ROOM 446-N CAPITOL BLDG.
TOPEKA, KS 66612
(785) 296-7685**TESTIMONY ON SB 27**

I am very thankful that this committee has agreed to hear this bill and consider action that will make meth more difficult to manufacture and obtain in Kansas. I have personally witnessed the devastation of this drug when our family took a young woman and her baby into our home to try to help her recover from meth. I called Menniger Clinic before allowing Melodie to come to stay with us to try to educate myself on what to expect. It was gut wrenching to see her leave our home after only a short stay telling me that she was going to stay off of it this time. She was back in our home just a few weeks later and again I took off work to stay home with her and the baby as she attempted to ween herself from the drug. Just as Menniger counselors had cautioned me, she slipped into depression without it and needed that fix to make her feel good again. I refused to drive her back into that harmful environment, but she found someone who would.

Melodie was in Osawatomie within six months after she stayed with us. I brought her to our home for Christmas, but there was no joy for her. She would never recover. After about two years, Melodie found a way of hanging herself up there.

Meth has taken the life of a man who will be impossible to replace in Greenwood County. A law enforcement officer who cared about everyone in that county and who treated everyone with respect. He was a fair man, and only weeks before he was shot, he stood in a meeting in Madison and warned citizens that if they did not take action, that drug was going to take over their town. Those of us who knew Matt Samuels are ready to take action now. This is one of the first steps and a very important one to preventing more deaths from occurring from the effects of this drug.

Please pass SB27 on to the House so that we can get it into the statute books. Lets do all we can to rid our state of this terrible

March 14, 2005

Mr. Chairman, Members of the House Corrections and Juvenile Justice Committee:

Thank you for allowing me to address you today. I stand before you as the voice of my deceased husband, Matt Samuels, Greenwood County Sheriff, whose voice was tragically, senselessly and abruptly silenced on January 19, 2005 by Scott Cheever, a methamphetamine user.

Meth labs, meth use and distribution of meth was something my husband had consistently and with dedication fought to eradicate in Greenwood County. Matt, if given the chance, would request that you vote in favor of this bill in the hopes of avoiding another senseless tragedy from occurring.

Yesterday our daughter, Sharlee - Matt's "little girl" turned 16 without her daddy. Because someone's use of methamphetamine he was not there for her Sweet 16th Birthday. He won't be here next month to celebrate our 22nd Anniversary. He won't be here this summer to play golf with our son, Heath. Why won't he be here? Because Scott Cheever was allowed to obtain sudafed, one of the main ingredients used in the manufacturing of meth. Then after ingesting this horrifically addicting drug, picked up a gun and brutally took from me, our children and an entire community a wonderful husband, loving father, caring and compassionate sheriff and good friend to many.

I honestly cannot think of what other reason you need to vote in favor of this bill. Heath, Sharlee and I urge you to pass this Meth Bill and spare another family what we have been through since January 19, 2005.

In closing, I would like to thank Larry Welch, KBI Director, for his constant and unwavering support of myself and kids and his diligence in obtaining passage of this Bill. I also want to thank Peggy Palmer, Peggy Mast and Forest Knox for their support of this Bill.

Again, thank you for allowing me to address you today. I know in my heart that you will do the right thing and vote in favor of this Bill, so that Matt's death will not be in vane.

Tammy Samuels

Dear House Members:

I am writing to you urging you to support Senate Bill 27, also known as the Sheriff Matt Samuels Chemical Control Act..

On January 19, 2005 Matt Samuels paid the ultimate price as he faithfully carried out his duties as the Sheriff of Greenwood County. Sadly the bullets that struck Matt also ripped through the hearts of his wife, Tammy; son, Heath and daughter, Sharlee. They also ripped through the hearts of his family, friends and the county he swore to serve and protect.

On that fateful day, the very people that Matt took an oath to serve and protect took from him that which was most precious - his very life. I know that it has been said that meth killed Matt. They only thing meth did on that day was to give Scott Cheever the courage to perform a very cowardly act. I firmly believe that Mr. Cheever would not have had the guts to pull the trigger and shoot Matt had he had not been high on meth. And it was Mr. Cheever who made the choice to not only produce meth, but to ingest it - to his detriment and ultimately to Matt's. This is the same individual Matt had wanted to catch before he hurt himself or someone else. How ironic, the very person who's goal it was to find Mr. Cheever before he hurt himself or others, was the same person who was gunned down and killed at the hands of Scott Cheever.

On January 19, 2005 Scott Cheever did two things. One, was to take the life of a proud husband and father; a very compassionate and dedicated law enforcement officer; and a friend to all. Two, he made it much easier for you to vote to pass the meth bill. You now have the power to send a very strong message to meth manufacturers and meth users throughout the state that this will not be tolerated. And you alone can make the decision to make it nearly impossible to be able to secure one of the key ingredients, sudafed, which is used to produce this highly addicted, extremely habit forming and life destroying drug. Why not follow in the footsteps of our neighboring states and quickly and swiftly enact legislation that will help to eradicate the manufacturing of and usage of meth?

Sheriff Samuels would be the first to applaud you in having the courage to take a stand and pass a law that would place sudafed behind the counter, where it can be monitored and where it can be purchased for legal use. The elimination of meth labs in Greenwood County was something that was very important to Matt and something he felt very strongly about. At the time of his death, Matt was

working diligently to clean up the meth problem in Greenwood County. By voting to support this new legislation, you will be carrying on Matt's efforts and maybe in some small way bringing to light a "positive" in such a tragic situation.

We cannot and should not condone the unfortunate events that unfolded in Greenwood County on January 19, 2005. We cannot let this happen to another law enforcement officers' family or God forbid, one of your family members. As you carefully consider your positions, which to me, would be an easy decision, please keep these things in the forefront of your minds - Tammy, Matt's wife will never again have her husband by her side or hear him say the words, "I love you" ever again. She will never be able to stand beside him as they together fulfill the goals and dreams they had together.

Heath, Matt's 19 year old son, who is attending Washburn University, studying Criminal Justice, so he can someday soon proudly follow in his dad's footsteps, will never again be able to hunt, fish or golf with his dad. These are all things they both loved to do. Matt won't be there when Heath gets a hole-in-one at golf or shoots the 16 point buck. He won't be there as Heath takes a bride and starts a family of his own.

Sharlee, Matt's 15 year old daughter, won't have her Dad here to help her celebrate her 16th Birthday, watch her go off to her Prom, see her graduate from high school or walk her down the aisle the day she marries someone like "Dear 'Ol Dad". Matt won't have the joy of watching his grandkids born and teaching the next generation, not only about hunting, fishing and golfing, but about honesty, integrity, and respect for your fellow man. These are all attributes that Matt exhibited as he lived life.

Please don't let Matt's death be in vain. By voting in favor of this bill, you will be saying, "Matt, you paid the ultimate price and for that we are truly saddened, but grateful for your service to the law enforcement community and as a small token of our appreciation, we want to honor you and the way you lived your life by passing this bill and thereby finishing what you had started."

I want to close by reciting a poem that I recited at Matt's funeral.

Someone Special

*Someone special died today,
Leaving this world
Lonely, bleak, and gray.
He was a man in blue
With a Badge and a gun,
Who left behind
A wife, a daughter and a son.
His warm sad tears
Wet the earth as he died,
While his brothers in blue
Wept and cried.
His badge now rests
Upon his still breast,
A shining bright star
Among a dark blue chest.
Though the sun will warm
Another summer day,
The world is so cold
Cause someone special died today.*

Matt Samuels was very special to all who knew him.

Mary Gaffey
Family Friend

House Corrections & Juvenile Justice Committee

March 14, 2005

Senate Bill 27

Debbie Crisswell, Proponent

My name is Debbie Crisswell and I am the SOS Outreach Coordinator for Greenwood County. I have been asked to present testimony concerning the connections between domestic violence, sexual assault and methamphetamine addiction.

In preparing for my testimony, I attempted to find research on how methamphetamine addiction impacts victims of domestic violence and sexual assault by either increasing the severity and frequency of the violence or by putting up additional barriers to escaping the violence. I was unable to uncover any kind of research on this topic.

I would first like to state clearly that drug abuse and drug addictions do not cause domestic violence or sexual assault. Perpetrators often use their addictions or substance abuse as an excuse for their behavior. In reality, a batterer or perpetrator who beats and sexually assaults must identify both the addiction and the violence as separate issues in any effort to end this behavior.

That said, from my personal observations in Greenwood County, however, I can see that methamphetamine addiction does have an impact on these issues. From trainings I have attended I understand that meth users exhibit increased paranoia, increased violence, odd and unusual sexual inclinations and sexual violence, booby-trapping the home, and literally staying awake for days not allowing anyone in the house out of sight. I can readily see the connection between these behavior descriptions and sexual assault and domestic violence. A batterer, who is now using or addicted to meth., will become a "super" batterer by using potentially lethal violence and exhibiting extreme paranoia. When strung out on meth, a user will never sleep, thus keeping the victim from calling for help, leaving the house or seeking safety. A perpetrator of sexual assault, who is now using meth, becomes the "super" perpetrator, thinking up more cruel and unusual ways to sexually assault a partner or housemate, while keeping the victims trapped in this setting.

This connection rings true in the work I do every day with victims in Greenwood County. While I cannot talk specifically about any individual victims I have worked with, I can assure you that the connection between meth and domestic violence/sexual assault is one of increased lethality, increased frequency of violence and increased seriousness of the violence.

I urge you to consider this when you are debating the passage of Senate Bill 27.

To: House Committee on Corrections and Juvenile Justice
Re: Senate Bill 27

Chairman and Committee Members,

I am Randy Rogers, President of the Kansas Sheriff's Association. I am here today to testify on Behalf of Senate Bill 27. I am here today not only as a Sheriff who understands the impact that this evil drug we call meth has had on all our communities through out Kansas but, more importantly I am here as a victim of this evil drug, meth. As you are aware this bill has been named the *Sheriff Matt Samuels Chemical Control Act*. January 19th 2005 will forever be etched in my memory as the day there became an empty void in my heart for that was the day my dear friend, Sheriff Matt Samuels was slain. You see Sheriff Samuels was not only a fellow Sheriff whom I worked on a narcotics task force with in an effort to rid our communities of meth. No, he was more importantly my friend.

There will be others that will testify as to statistics, percentages, effectiveness and results that this type of legislation can have. I will not talk about those things. I would like to address the issue of Victims.

For many years I have gone to civic organizations, schools and anywhere that I have been invited to speak about the evils of meth. During my talks I explain about the various chemicals involved and the effects that this drug has on individuals. Included in my talks is the issue of victims. I explain that many lives have been destroyed due to meth. There are many innocent people that meth has claimed as victims; spouses, children, family members and friends. On January 19th meth claimed many victims, Sheriff's Samuels, his wife, children, family members, Greenwood County Sheriff's Employees, Greenwood county citizens, law enforcement officers throughout the state of Kansas and friends of Sheriff Matt Samuels. The list of friends are to many to name, for if you ever met Matt you called him friend, that was the type of person that he was, even criminals call Matt friend and respected him. I cannot think of any other case in which meth has claimed so many victims.

Local law enforcement is battling meth on a daily basis throughout Kansas. While there is funding that is made available to local law enforcement through the Byrne Grant program, it is not enough. We must find additional funding sources or restructure the way in which Byrnes Grant are awarded. Currently my agency receives funds from the Byrnes Grant Program. The problem is this. A local agency when awarded a Byrnes grant initially receives 75% grant funds of what the project costs. The second year the amount is reduced to 70%, the third year it is reduced to 50%, the fourth year it gets further reduced to 25% and then each year thereafter you can continue upon submission receive 25% as well. This is not enough. While many agencies at the state level and the local level receive Byrnes funding we must look at restructuring the system and get more monies to the locals. Sheriff's Offices and Police Departments throughout the state provide a vast majority of meth lab investigations and meth lab cleanup; therefore I would like to once again state that we need help.

Not a day goes by that I do not think about my friend and my heart aches to see him one more time. It is time to end this tragedy and stop the endless list of victims. With this legislation we will be taking a giant step forward in our efforts to stop meth. So I ask you to please support this bill and take that step with us to stop this vicious drug.

Randy L. Rogers
President
Kansas Sheriff's Association

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DIRECTOR

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Jacie Spradling

Kansas County & District Attorneys Association

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Topeka, Kansas 66604
(785) 232-5822 FAX: (785) 234-2433
www.kcdaa.org

WRITTEN TESTIMONY IN SUPPORT OF S.B.27, THE SHERIFF MATT SAMUELS ACT

TO: HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

FROM: KANSAS COUNTY AND DISTRICT ATTORNEYS ASSOCIATION
MIKE JENNINGS, LEGISLATIVE CHAIR

Thank you for the opportunity to express our support of Senate Bill 27, the Sheriff Matt Samuels Act.

The Bill we consider today could save the life of the next Sheriff Matt Samuels who comes across a meth lab while on duty. The Bill before you today and tomorrow mirrors the provisions of Oklahoma's Trooper Nik Green Act, also named for a law enforcement officer murdered by a meth user he had stopped for a traffic violation.

The Trooper Nik Green Act has reduced by as much as eighty percent (80%) the number of meth labs recovered by law enforcement in Oklahoma. This dramatic reduction has saved the taxpayers of Oklahoma millions in clean up and lab enforcement costs in the first year alone. These savings have allowed Oklahoma to focus its narcotics enforcement dollars on those who smuggle methamphetamine and other illegal drugs onto the streets and alleys of Oklahoma to be sold and ingested.

Methamphetamine is one of the most dangerous and addictive drugs out there today. It is easy to make right here at home, unlike cocaine, X, and a host of other widely abused street/club drugs.

There is only one precursor needed to make meth. That precursor is PSEUDOEPHEDRINE. Once an addict has pseudoephedrine, it is a quick and inexpensive process to convert it to methamphetamine.

House C & JJ
3-14-05
Attachment 13

In fact, all that needs to be done is to remove a single oxygen atom from pseudoephedrine and you have methamphetamine. There are two ways this is done around the U. S. today. One is by combining PSEUDOEPHEDRINE with lithium metal and anhydrous ammonia. The other is by combining PSEUDOEPHEDRINE with red phosphorous and iodine, usually over heat.

Because of its key role, you would think that PSEUDOEPHEDRINE would be controlled, but it is not. This is due to the successful efforts of the lobbyists for the industry which uses pseudoephedrine in its products. That is, up until now. Now, everybody can see the clear relationship between the plentiful supply of PSEUDOEPHEDRINE products and the unacceptably high level of clandestine meth labs discovered by law enforcement each year, a discovery which has lethal consequences, as we have seen on more than one occasion. The Oklahoma Bureau of Narcotics places the decline in the number of illegal labs at as much as eighty percent (80%). The Bureau places the decline in the level of PSEUDOEPHEDRINE products formerly sold over the counter at forty percent (40%). This means that roughly forty percent of the PSEUDOEPHEDRINE passing over retail counters has been going into illegally manufactured methamphetamine!

Many of Kansas' neighboring states are enacting similar measures to provide their citizens some or all the same protections offered by the Sheriff Matt Samuels Act. This includes Missouri, Arkansas, and Nebraska. In addition there are several bills in the Congress with the same provisions.

The key protection under the Sheriff Matt Samuels Act is placing PSEUDOEPHEDRINE on Schedule V of the list of controlled substances. This will have the effect of allowing pseudoephedrine to be sold in limited quantities from behind the counter of a licensed pharmacy under the supervision of a licensed pharmacist only to a properly identified person who signs a log for the purchase. Liquid based pseudoephedrine products are exempt, so customer inconvenience is at a minimum as liquid based products are still available any time, anywhere to anyone who needs some pseudoephedrine.

Its hard to see a downside to this Act.

For additional information, please see the attached article from the Journal of the Kansas Bar Association, written testimony from the Wichita Police Department submitted for the Senate hearing, a press release from the 18th Judicial District in Wichita, and the attached summary of findings being proposed to the National District Attorneys Association.

I can also provide you copies of the Oklahoma law, the Oklahoma Interim Study and the Kansas Legislative Post Audit 2001 report on Methamphetamine. I hope it is the desire of this committee and the House of Representatives to pass this bill out favorably and give the citizens of Kansas the protections they deserve.

METHAMPHETAMINE

A Recipe for Disaster



By Debra S. Peterson and R. Michael Jennings

Introduction

Methamphetamine. What is it? How is it made? How does it affect the user? How does it affect the nonuser? What is being done to curtail manufacture of the drug? What issues have the Kansas Supreme Court and the Kansas Court of Appeals addressed in conjunction with the drug? This article addresses these questions. Knowledge about the “devil’s drug” and its impact on society is the first step to stimulating thought about how to effectively rid ourselves of methamphetamine and its curses.

The Consequences

How can I make methamphetamine? Let me count the ways ... The recipes are on the Internet and in the bookstores. Police clandestine laboratory investigators routinely explain the recipes for the manufacturing process in court under oath. You can even find recipes in Kansas’ appellate decisions.¹ So, if the recipes are widely available in the public domain, what’s the big deal?

Try long-term brain damage for starters.² This damage takes at least two forms: First, the presence of methamphetamine in the brain initiates chemical reactions that are toxic to neurons. In other words, methamphetamine deforms and kills brain cells.³ Second, methamphetamine alters the way neurons communicate with each other. It causes new connections between neurons to grow, and it causes other connections to atrophy. Such new connections also occur in learning.⁴

As far as brain structure goes, a methamphetamine user “learns” to be an addict simply by ingesting the drug.

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Above photo courtesy of the Kansas Department of Health and Environment. All other photos in this article are courtesy of the KBI.

The Addiction Mechanism

When methamphetamine is first ingested it stimulates the brain's neurons to release dopamine, which is a neural transmitter used throughout the brain. One of the systems that primarily uses dopamine is the limbic system. This system is the center of our neural substrate for pleasure. The surplus dopamine produces effects via the limbic system, which most people experience as pleasurable. Indeed, it has been observed that the rush following ingestion can produce a sexual orgasm.⁵

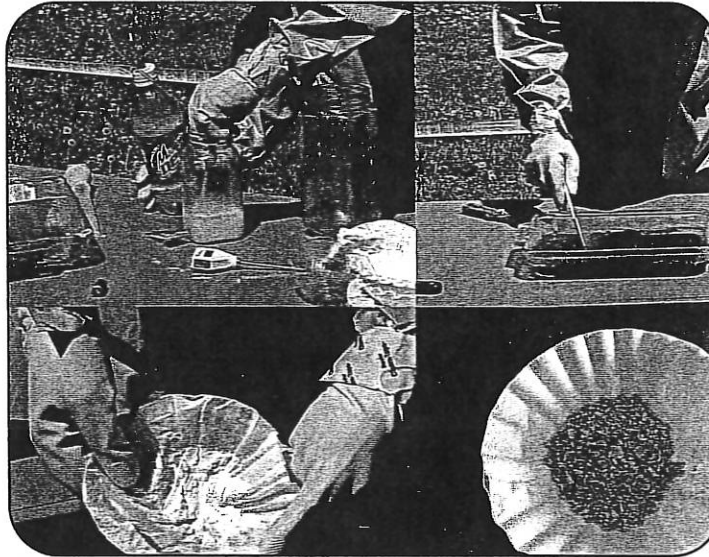
As usage continues, the toxic effects of methamphetamine gradually reduce the ability of the user's neurons to make and use dopamine. Initially, users tend to experience diminished dopamine levels only as an increased difficulty in achieving a high as pleasurable as the last one. As their dopamine levels continue to decrease, the inability to experience highs of an intensity comparable to the first highs becomes a more generalized effect. The users find their ability to experience everyday enjoyments, pleasure in general, has become reduced. The loss of ability to experience pleasure is known as anhedonia. An almost clinical depression can result. The response of many users is to increase their dosage and, hence, their drug-seeking behavior. This response can become an obsession.

Unfortunately, more methamphetamine does not solve their problem. In physiological truth, ingesting more methamphetamine only makes the problem worse because the additional methamphetamine further reduces the brain's ability to supply dopamine while at the same time increasing its physical ability to accommodate ever larger quantities of the addictive substance through added dendrites. The neural circuitry added in response to the increased neural activity caused by the methamphetamine tends to create its own demand for more of the drug. If this demand is not met, the user experiences craving. Craving among metham-

phetamine users can result in intense drug-seeking behavior, which may include criminality. The damage to the brain's ability to produce and/or process dopamine is long term in heavy users, extending over several years, and may be permanent.⁶ This may account for the stubbornly high relapse rates for methamphetamine addicts who receive treatment.

In addition to long-term brain damage and the concomitant addiction to

This re-initiates the cycle of ...; insufficient levels of dopamine; and the concurrent anxiety, depression, and anhedonia. The only relief for the inability to achieve what were once pleasurable responses to the everyday experiences of eating, touching, smelling, and the like, is to ingest the drug again. Hence, the addiction.⁸ (Another point of comparison is that dopamine levels are also elevated in schizophrenics.)⁹



The Need For Effective Control of Methamphetamine Use is Clear

Methamphetamine is relatively easy to make. Addicts can acquire everything they need to satisfy their cravings at the local Wal-Mart or other retailer, except anhydrous ammonia (which can be easily stolen from any of the great number of tanks in farm fields anywhere in the state). Addicts are no longer dependant on a long supply chain coming up from the Caribbean or through Mexico. They and their friends can make their own any time, any place.

the drug, the physical effects include severe weight loss, tooth decay, and organ damage, including inflammation of the heart lining; rapid heart rate; irregular heartbeat; increased blood pressure; and irreversible, stroke-producing damage to the small blood vessels in the brain. Hyperthermia and convulsions occur with overdoses and, if not treated immediately, can result in death.⁷

In summary, the addict's dopamine baseline levels drop with continued ingestion. Once they fall below what the user requires for proper functioning, the user experiences unpleasant effects, including incoordination, fatigue, anhedonia, depression, and anxiety. (A point of comparison here is that people with Parkinson's Disease also have low levels of dopamine.) The brain is unable to respond to the dopamine deficit because the drug has caused it to lose too much of its reserve supply and, over time, its ability to make replacement dopamine. All too often the users attempt to restore their now diminished sense of pleasure by ingesting the drug again.

The ability to make the drug virtually on demand has changed law enforcement's ability to control the drug's use. Traditional methods to control supply are ineffective. In their place, law enforcement is required to try to limit access to the admittedly lawful and commercially available ingredients by means other than search warrants, arrest, and confiscation of the drugs and proceeds of the enterprise. Before looking at some new and promising ways to limit such access, it will be helpful to sketch out the basics of the manufacturing process. By understanding the role each ingredient plays in the production of the drug, differing solutions can be objectively evaluated for their likely effectiveness.

In chemical terms, the manufacturing process is straightforward: Start with a pseudoephedrine molecule and remove one oxygen atom. The resulting molecule is methamphetamine.

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The removal of an oxygen atom is called a reduction. Reduction of a pseudoephedrine molecule yields a methamphetamine base. The base form is not water soluble and hence cannot be readily absorbed by the human body. To make the base molecule water soluble, and thus absorbable by a user, hydrogen chloride is added to the (base) molecule. This then is the essence of the process: Start with pseudoephedrine, remove oxygen, and add hydrogen chloride. Voila! (Perhaps we should say, "Now you're cookin'.")

The first step: Get the pseudo out of the cold pills

The technology to carry out this process is also relatively simple. It can be done at home, in a car, in a field, and with equipment consisting of common household items sold at Dollar General or Wal-Mart. Here is the basic process: First, get some pseudoephedrine, which is contained in cold pills like Sudafed. It can be removed from the pills' bindings by placing the pills in a solvent. The pseudoephedrine dissolves from the binding materials in the cold pills and is held in solution by the solvent, thereby separating it from the binding materials. Water, ether, or methanol can be used as the solvent. Methanol is the preferred solvent because it is an alcohol and evaporates faster than the water or ether, thereby accelerating the process.

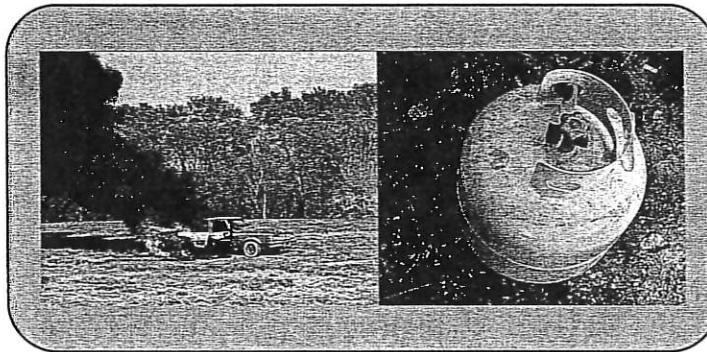
After the pills are soaked for an hour or so, the entire mixture, including the binding materials and the liquid solvent that contains the pseudoephedrine, is passed through a filter, usually a coffee filter. Left in the filter is the binding material. The solvent containing the pseudoephedrine has passed on through the filter and is allowed to evaporate. What remains after evaporation is only pseudoephedrine. This is the first stage of the manufacturing process. It is usually performed using glass Mason-type jars to hold the pills and the solvent. Prior to being soaked, the pills can be crushed in a coffee grinder or similar appliance for a faster, more complete separation.

Methanol is wood alcohol and is the principal ingredient in over-the-counter

gas line treatments such as HEET. Methanol is a respiration and fire hazard. Cooks may try heating the solution containing the pseudoephedrine to evaporate the methanol more quickly. Any open flame used for this purpose creates an obvious fire/explosion hazard.

The second step: Remove the oxygen atom from the pseudoephedrine molecule

The next step is the removal of an oxygen atom from the now pure pseudoephedrine molecule.



doephedrine molecule. Currently there are two ways to do this: One method uses lithium metal and anhydrous ammonia, and the other uses red phosphorous and iodine. Chemically, properly combining pseudoephedrine with either lithium and anhydrous ammonia or red phosphorus and iodine will cause the desired reduction to occur.

The third step: Add hydrogen chloride to the methamphetamine base molecule

Once the reduction step is complete, the next, and final, step is to make the methamphetamine base capable of being absorbed by the human body. This is readily accomplished by adding hydrogen chloride to the base molecule. Adding hydrogen chloride to an active ingredient is a common way to make a wide range of products capable of being absorbed by the human body. Many over-the-counter (and prescription) drug products have added hydrogen chloride. This is the reason for an "hcl" designation following the name of their active ingredient.

The hydrogen chloride is added by first dissolving the methamphetamine base into a liquid, such as the ether found in starting fluid, so that hydrogen chloride gas may be bubbled

through it, allowing the hydrogen chloride to combine with the methamphetamine base in the ether. The methamphetamine base becomes visible at this point as a whitish substance due to the bonding with the hydrogen chloride. It then precipitates out of the ether solution and falls to the bottom of the container. This process is often described as "salting out."

The hydrogen chloride is made in two ways. The first is to combine table salt and sulfuric acid (available in drain cleaners); the second is to combine aluminum and muriatic acid. Both are readily available over the counter. Hydrogen chloride gas is produced when either of these two combinations occurs. Many cooks combine these materials in what is called a gassing generator. Gassing generators frequently consist of a two-liter pop bottle into which is placed rock salt and sulfuric acid or pieces of aluminum

foil and muriatic acid. The pop bottle is capped with a long rubber tube. Once the reaction liberating the hydrogen chloride starts, the end of the tube is submerged into the solution containing the methamphetamine base. The reaction in the pop bottle is sufficiently vigorous to force the gas through the tube and into the methamphetamine base/ether solution.

This ease of production allows addicted individuals to support their habit by stealing checkbooks, credit cards, and identification papers; cashing the checks or fencing the goods bought with the credit cards; driving stolen cars to do all this; and then get the ingredients, cook the methamphetamine, get high, and continue the drill. There are a number of loosely organized users who specialize in one or more of the steps necessary to maintain this addicts' lifestyle. Some steal the cars containing the checks and credit cards and give the checks to someone else, who in turn may have several crews of addicts who pass the checks or shop with the credit cards using forged identifications. Others may use computers to make the checks and identification. Still others manufacture the methamphetamine. Such associations function until the participants cannot

co. ue. Because of economies of scale, the harm generated by these criminal associations is greater than the sum of the activities of the individual addicts. Such behavior is truly addiction-driven crime, since the motivation for the association's activities is to feed the members' collective addiction.

The most problematic consequence of the ease of production is that the limits on consumption imposed by the laws of supply and demand no longer operate to restrict consumption. Addicts can feed their own addiction anytime the hunger strikes simply by making more methamphetamine.

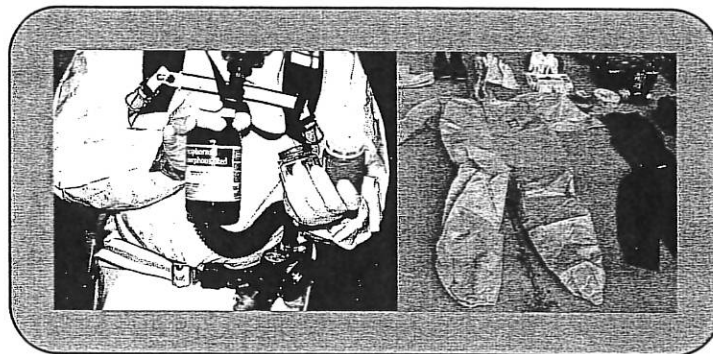
It is clear that without pseudoephedrine as a precursor, methamphetamine could not be manufactured as easily as it is today.

The addiction-driven production is made possible by the ease with which oxygen is removed from the pseudoephedrine. The process is, unfortunately, a no-brainer. In fact, without pseudoephedrine, cooks would be forced back into the days of making so-called biker dope from phenylpropanone (P2P). This dope is not as potent as that produced by methods currently in vogue. Besides, the Drug Enforcement Administration has effectively controlled access to P2P and other ingredients used in the biker recipe. Consequently, until methods to make methamphetamine from pseudoephedrine became widely known, the drug was not a national problem. Usage was confined to a few areas, such as San Diego and Hawaii, where it had been the drug of choice, at least among arrestees, for 20 years or more. Methamphetamine use was being, if not eliminated, effectively controlled by existing legal structures.

This all changed when dopers realized they could easily make methamphetamine from pseudoephedrine. Once they realized that their access to pseudoephedrine was not legally controlled at the retail level, the land rush was on. Simply put, it was a marketing free-for-all. Law enforcement efforts to get the pills behind the counter have been rebuffed by the pill makers' lobbyists,

even though store security and store pharmacists have provided excellent cooperation in the effort to limit the amount of pseudoephedrine being diverted via retail outlets to the cooks.

Oklahoma recently enacted a statute that should effectively limit diversion of pseudoephedrine from its lawful use. The statute allows pseudoephedrine to be sold over the counter only in liquid capsule form. Any other form is controlled to the extent that prospective purchasers must obtain the substance from store personnel after identifying themselves. Quantities are limited over



time. Over-limit quantities are available on a prescription-only basis.¹⁰

The measure has been effective not only in controlling the diversion of pseudoephedrine into clandestine channels, it appears to have curtailed the number of labs. The initial impact of the new law has been dramatic. Agent Scott Rowland of the Oklahoma Bureau of Narcotics and Dangerous Drugs has gathered the latest available statistics from official law enforcement reporting agencies and advised the authors via e-mail dated August 11, 2004, that "In short, we're seeing a decrease [in the number of labs seized] hovering around 60 percent overall."

Pseudoephedrine in liquid capsules is not easily separated from the liquid solution and, therefore, is not sought by methamphetamine addicts for use in the manufacturing process, in contrast to that contained in the cold pills sold over the counter in Kansas. Consequently, the authors have personally noted that the only pseudoephedrine prosecutions for the last several weeks in Sedgwick County have been of individuals traveling up from Oklahoma to get the pills. Perhaps Kansas should consider legislation like that adopted in Oklahoma.

The Kansas Experience

History

It appears methamphetamine was first mentioned in a Kansas appellate decision in 1970. In *Zimmer v. State*, 206 Kan. 304, 477 P.2d 971 (1970), the movant alleged his confession was involuntary because of his consumption of methamphetamine. Another early case was *State v. Callazo*, 1 Kan. App. 2d 654, 574 P.2d 214 (1977). At issue were some hearsay statements linking the defendant to the sale of methamphetamine.

A number of the early cases concerning methamphetamine involved possession, possession with intent to sell, and sale of the drug.¹¹ According to the defendant in *State v. Mumpower* (Kan. Ct. App. No. 64,290 unpublished opinion issued February 8, 1991), he sold methamphetamine, in part, to make his child support payments.

A number of the early cases involved search and seizure issues.¹² As might be expected, methamphetamine has been found in a variety of places: *State v. Alvarez*, 29 Kan. App. 2d 368, 28 P.3d 404 (2001) (in a bottle of "Lean Life" and box of dental floss); *State v. Bone*, 27 Kan. App. 2d 582, 6 P.3d 914 (2000) (in a commercial motor carrier); *State v. Morris*, 27 Kan. App. 2d 155, 999 P.2d 283 (2000) (methamphetamine lab found in home); *State v. Bartlett*, 27 Kan. App. 2d 143, 999 P.2d 274 (2000) (boxed methamphetamine found in car); *State v. Beal*, 26 Kan. App. 2d 837, 994 P.2d 669 (2000) (in a detached garage); and *State v. Bickerstaff*, 26 Kan. App. 2d 423, 988 P.2d 285 (1999) (in a car).

Seemingly, the first case to deal with the manufacture of methamphetamine was *State v. Davidson* (Kan. Ct. App. No. 60,779 unpublished opinion issued November 18, 1987). Davidson and his cohorts had an arrangement with a Texas provider who manufactured large quantities of methamphetamine in a laboratory operation. The defendant helped finance the lab and made trips to Texas to pick up the drug and bring it back to Topeka. See also *State v. Dunn* (Kan. Ct. App. No. 65,597 unpublished opinion issued

ember 20, 1991) (methamphetamine purchased in California for sale and distribution in Kansas).

The first case mentioning the manufacture of methamphetamine in this state appears to be *State v. Fausnett* (Kan. Ct. App. No. 63,258 unpublished opinion issued August 4, 1989). The defendant argued the trial court erred in failing to suppress evidence seized pursuant to a search warrant for methamphetamine and chemicals and equipment used in the manufacture of methamphetamine.

Legal issues

What are some of the current legal issues surrounding the manufacture of methamphetamine?

Search and seizure

Search and seizure issues continue.

In *State v. Bowles*, 28 Kan. App. 2d 488, 18 P.3d 250 (2001), the district court suppressed evidence seized pursuant to a search warrant. Finding probable cause to support the warrant, the Court of Appeals noted the purchase of items associated with the production of methamphetamine, including John Deere starting fluid, which is a choice product in the manufacture of methamphetamine due to its high ether

content; a strong odor of ether coming from the residence to be searched; a dubious explanation for the odor; refusal to consent to search; and statements by a confidential informant.

In another case, the Court of Appeals held the mere odor of ether coming from a garage did not, however, supply the requisite probable cause to search.¹³ "Although ether is used in the manufacture of methamphetamine, it is not illegal to possess it."¹⁴

Similarly, in *State v. Schneider*, 32 Kan. App. 2d 258, 80 P.3d 1184 (2003), while the court acknowledged that under K.S.A. 65-7006(a) it is illegal to possess ephedrine or pseudoephedrine with the intent to use it to manufacture a controlled substance, the purchase of two packages of cold pills containing pseudoephedrine was not sufficient to constitute reasonable suspicion of intent to commit a crime. The court found the state's argument about reasonable suspicion, "a little scary."¹⁵

Finally, ignoring the machinations the court went through to reach the issue it wanted to address, in *State v. Morris*, 276 Kan. 11, 72 P.3d 570 (2003), the court was concerned with the timing of the defendant's seizure. The court found that law enforcement officials must have proper grounds for the seizure at the time the seizure is initially made, otherwise, evidence obtained as a result of the seizure is inadmissible.

Morris was parked in his pickup, with the engine running, on a rocky jetty-breaker area at the Douglas County State Lake. Officers pulled in behind the defendant's pickup "and activated [their] red lights and illuminated the back of [the defendant's] pickup with ... spotlights."¹⁶ As the officers approached the driver's and passenger's doors, they noticed a chemical odor associated with methamphetamine labs coming from inside the truck. The officers also observed items associated with the production of methamphetamine. Morris was removed from the truck and the officers observed more articles associated with methamphetamine labs. Based on what they saw and smelled the officers decided to search the truck and found a fairly complete lab.

The court held: (1) Morris' initial encounter with the police was not voluntary, but rather occurred under a show of authority. "The officers' con-

duct, the activation of the emergency lights in a remote area off a roadway, was a show of authority which would communicate to a reasonable person that there was an intent to intrude upon freedom of movement";¹⁷ (2) Morris submitted to the officers' authority by not attempting to leave, (3) therefore, he was seized for Fourth Amendment purposes; (4) there was no reasonable suspicion of criminal activity at the moment the officers pulled in behind the defendant; and (5) evidence of the fairly complete methamphetamine lab obtained as a direct result of that illegal seizure should have been suppressed.

Charging issues

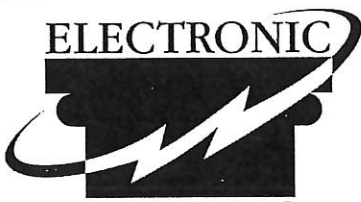
The sufficiency of charging documents and determining the proper charge have also been the fodder of recent appellate decisions.

State v. Shirley, ___ Kan. ___, 89 P.3d 649 (2004), addressed the sufficiency of a charge of conspiracy to manufacture methamphetamine. Since the defendant first challenged the sufficiency of the charging document at the trial level, the Supreme Court focused on "technical compliance" in alleging the essential elements of the crime. The court held that under K.S.A. 21-3302(a) the state was required to set out in the charging document a specific overt act in furtherance of the conspiracy. The mere allegation that the defendant had committed "an overt act in furtherance of the conspiracy" was insufficient. The complaint was fatally defective and the court did not have jurisdiction. Shirley's conviction was reversed.

Further, the court held that under K.S.A. 21-3302(a), which requires that an overt act in furtherance of the conspiracy be alleged *and* proved, "both the factual allegation in the charging document and the proof of the same factual allegation are required for a conviction."¹⁸ The specific actor, whether it be the defendant or a co-conspirator, must be identified in the charging document as well as the specific overt act. That is also what the state must prove in order to secure a conviction.

When is it manufacture of methamphetamine or only attempted manufacture? The answer can be found in *State v. Martens*, 273 Kan. 179, 54 P.3d 960 (2002). See also *State v. Peterson*, 273 Kan. 217, 42 P.3d 137 (2002).

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artens, the court held that K.S.A. 65-4159(a) prohibits the manufacture of a controlled substance or a controlled substance analog. Attempted manufacture of a controlled substance is a separate crime under K.S.A. 21-3301(a).

"To prove the crime of manufacture of methamphetamine, the state must show that the defendant (1) intentionally (2) completed the manufacture of methamphetamine or (3) could have successfully manufactured methamphetamine."¹⁹ In arriving at the "could have successfully manufactured methamphetamine" proviso the court looked to the definitions of "manufacture" and "controlled substance" set out in K.S.A. 65-4101(n) and (e).

To prove an attempt, the state must prove (1) an overt act toward the commission of a crime, (2) that the defendant did so with the intent to commit the crime, and (3) that the defendant failed to perpetrate the crime or was prevented or intercepted in the execution of the crime.

"[W]hile the crimes of attempt to manufacture methamphetamine and actual manufacture of methamphetamine may overlap somewhat, the distinction between the two crimes may be said to depend upon the degree of likelihood that a defendant's efforts will succeed in producing methamphetamine."²⁰

Subsections (b) and (c) of K.S.A. 65-4159 mandate the imposition of the same penalty for attempting to unlawfully manufacture as for the actual manufacture of a controlled substance.

Sufficiency of the evidence

An example of sufficient evidence to support a conviction of manufacturing methamphetamine can be found in *State v. Gunn*, 29 Kan. App. 2d 337, 26 P.3d 710 (2001). In that case, numerous components of a methamphetamine lab were found in the defendant's motel room, there was an "overwhelming odor of anhydrous ammonia" in the room, and the defendant had "played an instrumental role in the purchase of ... starter fluid earlier in the morning."²¹ Law enforcement officials found a "64-ounce bottle containing liquid, which was still smoking when removed from a sink," and this bottle contained anhydrous ammonia and methamphetamine. Further, a KBI forensic scientist testified the "finished product" was found in the room.²²

In *State v. Sheikh*, 30 Kan. App. 2d 188, 41 P.3d 290 (2001), the court held the charge of attempted manufacture of methamphetamine based on the following evidence should not have been dismissed for lack of probable cause: (1) the defendant had opened 14 boxes of pseudoephedrine and removed approximately 672 pills from their bubble packs and (2) put the pills in a backpack together with an empty two-liter pop bottle, 48-inches of clear plastic tubing, four lithium batteries, a can of starter fluid, two cans of gas-line antifreeze, a container of drain opener, and a bag of rock salt. In reversing, the court relied on *United States v. Savaiano*, 843 F.2d 1280 (10th Cir. 1988), where the court stated:

The purchase of a recipe might not be an attempt by itself. But, proceeding to obtain the required chemicals called for in the recipe, and actively locating and attempting to meet with a chemist for instruction, are certainly acts 'strongly corroborative of the actor's criminal purpose.' They are overt acts 'pointed directly to the commission of the crime charged.' The realistic emphasis on what had been done, rather than dwelling on what remained to be done is consistent with our decision in *United States v. Prichard*, 781 F. 2d 179, 181-82 (10th Cir. 1986), in which we held that reconnoitering the object of a crime together with collecting the instruments to be used in that crime, constituted an attempt.' [Citation omitted.] 30 Kan. App. 2d at 1919.

Sentencing issues

Clearly, the use of ephedrine or pseudoephedrine has enhanced the manufacture of methamphetamine. However, what penalty to apply to a conviction for possession of ephedrine or pseudoephedrine has been an issue perplexing our appellate courts.

In *State v. Frazier*, 30 Kan. App. 2d 398, 42 P.3d 188 (2002), the defendant was convicted of the severity level 1 offense of possession of ephedrine or pseudoephedrine in violation of K.S.A.



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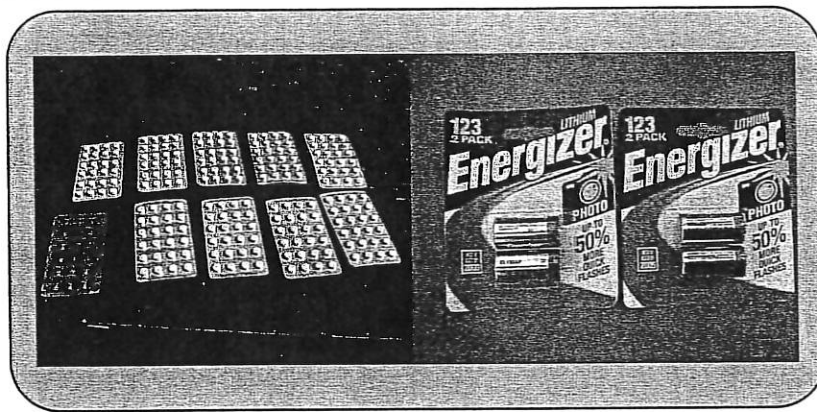
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2001 Supp. 65-7006(a). That statute provided:

"It shall be unlawful for any person to possess ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers, or salts of isomers with intent to use the product as a precursor to any illegal substance."

The defendant argued the trial court imposed an illegal sentence. He argued the conduct for which he was convicted was prohibited by both K.S.A. 2001 Supp. 65-7006(a) and the severity level 4 offense of possession of drug paraphernalia; therefore, he should have been sentenced only as a severity level 4 offender. It is a principle of Kansas law that when two criminal offenses have the same elements but are classified differently for purposes of imposing a penalty, a defendant may be sentenced under the lesser penalty provision only, regardless of the crime for which he was convicted.



K.S.A. 2001 Supp. 65-4152(a) prohibited the possession with intent to use "any drug paraphernalia to ... manufacture ... a controlled substance." Drug paraphernalia was defined in K.S.A. 65-4150(c) to include "all equipment, products and materials of any kind which are used or intended for use in ... manufacturing ... a controlled substance."

In finding possession of ephedrine or pseudoephedrine and possession of drug paraphernalia were identical offenses, the court concluded both statutes prohibited the possession of ephedrine or pseudoephedrine for use in the manufacture of a controlled substance. "Ephedrine and pseudoephedrine fall within the definition of drug paraphernalia because they are materials used to manufacture a controlled substance."²³

The case was remanded with instructions to sentence the defendant as a severity level 4 offender.

The Supreme Court denied the state's petition for review and the scramble was on. Defendants statewide sought to be sentenced in accordance with *Frazier*.

In *Wilson v. State*, 31 Kan. App. 2d 728, 71 P.3d 1180 (2003), another panel of the Court of Appeals wrestled with whether the *Frazier* decision should be applied retroactively. That panel held *Frazier* should "not be retroactively applied in a K.S.A. 60-1507 collateral attack of an unappealed conviction after a favorable plea agreement."²⁴

In a concurring opinion, Judge Knudson stated his belief that *Frazier* was wrongly decided.²⁵ Judge Knudson opined the two statutes in issue did not prohibit the same conduct:

"K.S.A. 1999 Supp. 65-7006(a) prohibits possession of drugs used to make meth-

amphetamine. K.S.A. 65-4152(a)(3) prohibits possession of drug paraphernalia. ... The elements test is tenuous, and the result wholly ignores legislative intent to ratchet up the penalty for possession of ingredients necessary to cook methamphetamine while imposing a less severe penalty for possession of drug paraphernalia."²⁶

Again, the Supreme Court denied review.

In *State v. Campbell*, 31 Kan. App. 2d 1123, 78 P.3d 1178 (2003), Judge Elliott, who was on the panel that decided *Frazier*, Senior Judge Larson, who authored the *Wilson* opinion, and Judge Johnson concluded that *Frazier* was wrongfully decided and declined to follow it.²⁷

The court reasoned that when one looked at the "definition of 'drug paraphernalia' found in K.S.A. 65-4150(c), which is broadly stated as including 'products and materials,' but in the main describes physical objects or tools used in the manufacture of controlled substances, it becomes apparent that K.S.A. 65-7006 was intended to criminalize the possession and use of specific substances (such as ephedrine) which are used as a precursor to any illegal substance."²⁸ Thus, the more specific statute controlled and a person in possession of ephedrine or pseudoephedrine with the requisite criminal intent should be sentenced as a severity level 1 offender.²⁹ Legislative intent was key to the court's decision.³⁰

Addressing a second issue, the court in *Campbell* held that the crimes of manufacturing methamphetamine, K.S.A. 65-4159, and possession of ephedrine/pseudoephedrine, K.S.A. 65-7006, require the proof of different ele-

ments; therefore, the defendant was properly charged with and convicted of both offenses.

In order to prove the defendant guilty of the unlawful manufacture of methamphetamine, the state was required to prove that he manufactured a controlled substance known as methamphetamine. In order to prove the defendant guilty of possession of ephedrine, the state was required to prove that he knowingly possessed the substance with intent to use the product to manufacture a controlled substance. The court reasoned, "The Legislature clearly provided for the criminalization of two different and distinct acts. The crimes have different aims and different prerequisite intents."³¹

This time, the Supreme Court granted review. The case has been briefed and argued and a decision is pending.

In *State v. Layton*, 276 Kan. 777, 80 P.3d 65 (2003), the court held the penalty provision applicable to a violation of K.S.A. 65-4159, manufacture of a controlled substance, is the penalty contained in that specific statute. K.S.A. 65-4159(b) provides that manu-

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manufacturing or attempting to manufacture a controlled substance is a severity level 1 felony. A defendant's sentence would be ascertained based on the severity level 1 classification and the defendant's criminal history.

The defendant had argued that the penalty provision of K.S.A. 65-4127c should apply.

That would have rendered manufacture of a controlled substance a class A nonperson misdemeanor. The defendant's argument was based on the following provision in 65-4127c: "except as otherwise provided in K.S.A. 65-4127a and 65-4127b and K.S.A. 2001 Supp. 65-4160 through 65-4164 and amendments thereto, any person violating any of the provisions of the uniform controlled substances act shall be guilty of a class A nonperson misdemeanor."

The court held that K.S.A. 65-4159 is not a part of the uniform controlled substances act. K.S.A. 65-4159 is part of the act concerning drug paraphernalia which starts at 65-4150. While the Legislature expressly included some parts of the drug paraphernalia act as part of the uniform controlled substances act, i.e. 65-4160-65-4164, it did not include 65-4159. Therefore, 65-4127c was inapplicable to a violation of 65-4159.

State v. McAdam, 277 Kan. 136, 83 P.3d 161 (2004), dealt with whether the defendant had been illegally sentenced for conspiracy to unlawfully manufacture methamphetamine when he was sentenced for a violation of K.S.A. 65-4159(a), a severity level 1 offense, rather than a violation of K.S.A. 65-4161(a), a severity level 3 drug felony.

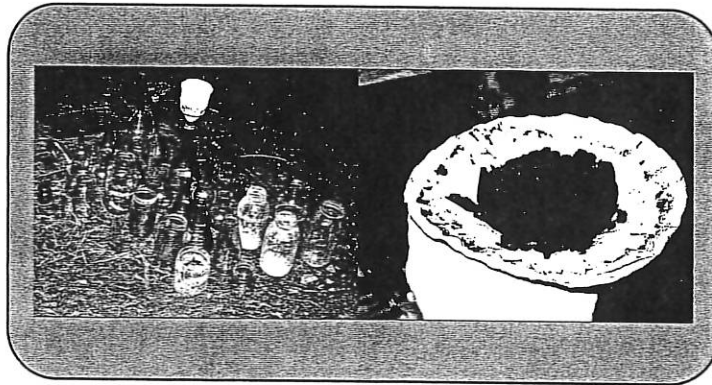
K.S.A. 65-4159(a) provides: "Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to *manufacture* any controlled substance or controlled substances analog." (Emphasis added.) Methamphetamine is a controlled substance.

K.S.A. 65-4161(a) provides, in part: "Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; dispense or compound any opiates,

opium or narcotic drugs, or any stimulant designated in subsection (a)(1), (d)(3) or (f)(a) of K.S.A. 65-4107 and amendments thereto." (Emphasis added.) Methamphetamine is a stimulant designated in 65-4107(d)(3).

The statutory definition of manufacture, taken from the uniform controlled substance act, which the court recognized K.S.A. 65-4159 was not a part of in *State v. Layton*,³² states:

"*Manufacture*' means the production, preparation, propagation, *compounding*, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by



means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container ..." K.S.A. 65-4101(n). (Emphasis added.)

The court held that because of this definition, manufacturing and compounding are one in the same thing, thus only the severity level 3 provision of K.S.A. 65-4161(a) could apply.

The *McAdam* decision spawned legislation.

Substitute for House Bill 2777, which was signed by the governor and became effective on May 20, 2004, upon publication in the Kansas Register,³³ deleted "or compound" from K.S.A. 65-4161(a) so it no longer includes the crime defined in K.S.A. 65-4159.³⁴ Thus, the penalty for manufacturing methamphetamine, for crimes committed on or after May 20, 2004, will be pursuant to K.S.A. 65-4159, not 65-4161(a).

Retroactivity

Substitute for House Bill 2777 contained the following provision:

"New Sec. 3. On or before the effective date of this act, any person violating the provisions of K.S.A. 65-4159, and amendments thereof, upon conviction, is guilty of a drug severity level 1 felony. Such sentence shall not be reduced to violating the provisions of K.S.A. 65-4161 or 65-4163, and amendments thereto, because prior to this act, such statutes prohibited the identical conduct."

In *State v. Barnes*, ___ Kan. ___ (No. 89,628 opinion issued June 25, 2004), the court held this provision violated the Ex Post Facto Clause of the U.S. Constitution. Therefore, for crimes committed before May 20, 2004, the penalty provision of 65-4161(a) may apply to a person convicted of manufacturing methamphetamine.

In *Barnes*, the court further held that *McAdam* applied to cases on direct appeal from sentence that were pending when *McAdam* was decided January 30, 2004. The court rejected the state's argument that *McAdam* should not apply because the defendant received the benefit of a plea bargain where other charges were dismissed, in part, for the defendant's plea of guilty to aiding and abetting the manufacture of methamphetamine.

The issue remains whether *McAdam* should apply to cases raising the issue in a collateral attack on a sentence. In *Barnes*, the court specifically stated, "The question presented in this case is not whether the *McAdam* rule can be asserted in a collateral attack."³⁵

In *State v. McCain*, 32 Kan. App. 2d 638, 87 P.3d 325 (2004), the Court of Appeals held that *McAdam* did not apply retroactively to "a collateral attack of an unappealed conviction after a favorable plea agreement."³⁶ The Supreme Court granted review of the *McCain* decision two days before its decision in *Barnes*.

state's plea in *Barnes* that *McAdam* was wrongly decided based on legislative history fell on deaf ears. In *Barnes*, the court stated it was going to focus on words rather than legislative history:

"The *McAdam* court characterized legislative intent as 'the critical issue' in the case. 277 Kan. at 143. However, the court considered the wording of the statutes involved as evidence of legislative intent rather than looking at legislative history. 277 Kan. at 144. 'The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted.' [Citation omitted.]

Whatever the legislature may have intended (which they have not clarified with Substitute for House Bill 2777), the end result was that it created two statutes which under the facts presented in *McAdam* and this case, contained identical elements but provided different penalties. As a result ... a defendant can only be sentenced to the lesser penalty.³⁷

The chaos surrounding methamphetamine-related crimes continues.

Conclusion

The manufacture of methamphetamine literally endangers children, kills, and destroys careers. That much is clear from reported Kansas appellate decisions.³⁸

In Florida, some of the hardest hit by the manufacture of methamphetamine, "the devil's drug," are children. It is reported law enforcement officials found a 9-day-old baby in a methamphetamine kitchen — the child's skin stained red from chemicals used to manufacture the drug; a 10-year-old addict fed methamphetamine by her mother; a 4-year-old child who boasted about helping his father in a methamphetamine lab chocked full of explosive chemicals; and adolescent girls prostituted by their parents to pay for more of the highly addictive drug.³⁹

On June 29, 2004, the Wichita Eagle reported about a 15-month-old child, "her body poisoned by methamphetamine,"⁴⁰ who had been taken to a local hospital.

In that article, Lt. Alan Prince of the Wichita Police Department was quoted as saying, "When you use methamphetamine, you don't think like a normal person would think; you do things a normal person wouldn't do. [E]ating, bathing, and 'taking care of your kids' can become secondary to drug abuse."⁴¹

Dr. Sheldon Preskorn, professor and chair of the Psychiatry and Behavioral Sciences Department, University of Kansas Medical Center — Wichita, was quoted as saying that methamphetamine-exposed toddlers could encounter neurological problems and warped brain functioning. About methamphetamine itself, Preskorn said, "It is highly addictive. It's not something you should screw around with."⁴²

Somehow we can do better by our children and, for that matter, their parents. The first step is to understand the severity of the methamphetamine problem and the need to effectively curtail production of the drug. That, against the backdrop of how our appellate courts are dealing with methamphetamine cases, has been the aim of this article. ■ (Endnotes begin on page 52.)

About the authors

Debra S. Peterson is deputy district appeals attorney for the 18th Judicial District of Kansas. She has served as chief of that department since 1989. Prior to 1989, she was with the Kansas Court of Appeals in various capacities, the last position as a research attorney for the late John E. Rees.



She has taught on the national, state, and local levels on a variety of topics and is a contributing author for the second and third editions of the KBA "Appellate Practice Handbook."

**HEIRS LOCATED
NO FEE TO THE ESTATE**

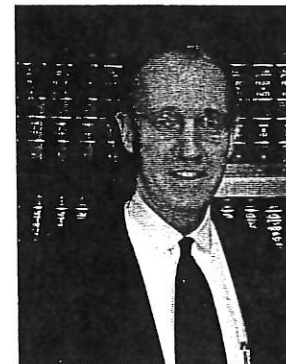


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Madison, TN 37116-0182

Established 1960

R. Michael Jennings is an assistant district attorney for the 18th Judicial District of Kansas. He has been the chief



attorney for narcotics and vice and handled a variety of narcotics cases and investigations. He currently serves on the Sheriff's

Career Criminal Task Force, a multi-agency group with local, state, and federal investigative and prosecutorial functions.

He has served as a trainer with emphasis on search and seizure topics at law enforcement agencies in Sedgwick County and the Wichita/Sedgwick County Law Enforcement Training Center.

The Kansas Legislature often calls on Jennings to offer his expertise on bills in process.



WICHITA POLICE DEPARTMENT

Senator John Vratil, Chairman
Senate Judiciary Committee
State Capitol, Room 123S
Topeka, Kansas

Subject: Written testimony in Support of Senate Bill 27 - Controlled Substance

The City of Wichita supports law enforcement efforts to stop the production and sale of methamphetamine. The Legislature could assist in this effort by continuing education and training programs directed at retailers, by enacting restrictions on the availability and sale of certain over-the-counter medicines used in the production of methamphetamine, by providing additional funding and training to law enforcement agencies, and by shifting the responsibility for costs of clean up to the offender(s) and/or property owner(s) where the drugs are manufactured.

Current Practice/Statistics

In the late 1980s crack cocaine busted onto the scenes of our communities nationwide. With this highly addictive drug came an unprecedented level of violence, which devastated families and communities. In the 1990s the City of Wichita and State of Kansas witnessed the emergence of yet another devastating drug called methamphetamine. During the last three years, the Wichita Police Department has investigated 72 clandestine methamphetamine laboratories and arrested 81 suspects involved with these laboratories. In 2004, 107 individuals were arrested for manufacturing methamphetamine in the city of Wichita. Also in 2004, 331 individuals were arrested for either using or selling methamphetamine in our city.

Since April 6, 2004, when the State of Oklahoma enacted Legislation restricting the sale of pseudoephedrine, the city of Wichita has seen a drastic increase in the number of cases involving the sale/theft of pseudoephedrine involving suspects from the state of Oklahoma, as illustrated in the following table:

Investigated pill cases 01/01/03-12/31/03	52
Cases involving Oklahoma Suspects	2
Total known Oklahoma Suspects	3

Investigated pill cases 01/01/04 - 04/05/04	27
Cases involving Oklahoma Suspects	1
Total known Oklahoma Suspects	2
Total Oklahoma Suspects charged	2

Investigated pill cases 04/06/04 – 12/31/04	82
Cases involving known Oklahoma Suspects	39
Total known Oklahoma Suspects	69
Total known Oklahoma Suspects charged	58

During the 15-month period from January 1, 2003, through April 5, 2004, the Wichita Police Department worked 79 pseudoephedrine pill cases. Of the 79 cases investigated, three cases and five suspects involved individuals from Oklahoma.

During the nine-month period from April 6, 2004, through December 31, 2004, 69 individuals from Oklahoma were identified as suspects in pseudoephedrine pill cases. Of the 82 pill cases investigated during this time period, 39 cases involved individuals from Oklahoma, in which 69 suspects (held at least one day in Sedgwick County Jail pending charges) were identified, and 58 were formally charged.

It is estimated that it costs the Kansas Department of Corrections about \$19,478 to house one prisoner for one year in a Kansas prison. If all of the charged Oklahoma suspects (58) spent one year in a Kansas prison, the projected cost to the taxpayers of this state would be approximately \$1,129,724.

If each of these defendants spent just one day in the Sedgwick County jail, the cost would be approximately \$2968 (58 x \$51.18 per day). If these individuals spent a year in the Sedgwick County Jail it would cost Kansas taxpayers approximately \$1,083,320 (\$51.18 per day x 365 days x 58 prisoners).

Current Practice/Scene Administration

The initial police response to a call of a clandestine methamphetamine laboratory requires one police Sergeant and a minimum of four police Officers. Once the Sergeant determines that it is a clandestine methamphetamine laboratory, the Department's Meth Team is activated. This team is made up of one Lieutenant and four Detectives who must suit up in appropriate equipment such as self-contained breathing apparatus, level B suits and other protective gear. If the crime scene is large, then the number of responding Police Officers is increased to ensure that the scene is secured.

The following information provides a cost analysis regarding the investigation of a clandestine methamphetamine laboratory:

- Police Officer (one) 6 hours x \$25/hour = \$150
- Police Sergeant (one) 2 hours x \$28/hour= \$ 56
- Police Lieutenant (one) 6 hours x \$29/hour = \$174
- Police Detective (four) 6 hours x 4 x \$27/hour = \$648

Total cost for an initial methamphetamine laboratory investigation: \$1,028*

*The above figure does not include potential personnel over-time costs or the expense of disposable equipment necessary for the processing of the lab.

Conclusion

The Wichita Police Department supports Senate Bill 27. We view this bill as a proactive and preventive mechanism to dissuade potential suspects from purchasing/stealing excessive amounts of pseudoephedrine for the purpose of manufacturing methamphetamine. This proposed Legislation is also an investment in the lives of our children, who often live in these clandestine methamphetamine environments, and experience long-term health, behavioral and cognitive problems.

Sincerely,

Norman D. Williams
Chief of Police
Wichita Police Department



For Immediate Release
December 13, 2004

District Attorney Nola Tedesco Foulston called on state lawmakers for bipartisan support for a measure which has cut the number of methamphetamine labs in half where it has been enacted. The statute places the sale of cold and allergy pills containing pseudoephedrine under the supervision of licensed pharmacists while leaving the sale of gel caps containing pseudoephedrine unrestricted

The advantage is that methamphetamine cannot readily be made from the pseudoephedrine in gel caps but can easily be made from that in the pills. For this reason, the new law allows pills to be sold only from behind the counter of licensed pharmacies to purchasers who show identification and sign for them. Also, the quantity of pseudoephedrine which can be purchased in pill form is limited. Amounts in excess of the limit are available by prescription. Gel caps are not covered by the law and customers can buy as much as they want right off the shelf without identifying themselves or getting a prescription.

The measure is receiving favorable attention from lawmakers around the country, including Kansas where task forces of the Governor and the Attorney General have voiced support. A statute is expected to be introduced early in the upcoming legislative session.

The District Attorney cited Oklahoma's recently adopted law as proof of the effectiveness of such statutes. Foulston noted that the number of labs found by authorities is approximately half what it was before the law was adopted in that state. She also noted that most of the arrests in her jurisdiction for the illegal possession of pseudoephedrine now are of Oklahoma residents driving up to buy the pill form of pseudoephedrine and take it back to Oklahoma where it is then illegally made into meth.

Foulston emphasized that this change is for the benefit of all Kansans and deserves the prompt, bipartisan support reserved for measures which truly benefit the public. She noted that the measure has already been endorsed by the National District Attorney's Association where she serves on the Board of Directors, and by the Kansas County and District Attorney's Association, which she represents on the Board of the National Association.

In an effort to further cooperation among states in this area, Chief Attorney of the Narcotics Division of the District Attorney's Office, Mike Jennings, recently attended a regional meeting focused on implementing the provisions of the Oklahoma law in the thirteen states represented at this gathering.

Kansans can expect to save hundreds of thousands, if not millions, of law enforcement, clean-up, probation supervision and incarceration dollars from the reduction in the number of meth labs; not to mention the reduction in suffering of innocent children exposed to the hazardous fumes and chemicals used in the illegal manufacturing process and the reduction in health care costs associated with fewer exposures to the drug itself and its manufacturing process.

"It is hard to see any real losers with this law," Foulston said.

Nola Tedesco Foulston
District Attorney
Eighteenth Judicial District of Kansas

National District Attorneys Association

I. SUMMARY OF FINDINGS REGARDING SCHEDULING PSEUDOEPHEDRINE TO COMBAT METHAMPHETAMINE

There have been serious concerns over the growing methamphetamine abuse problem in this country. During the mid-1990's California was the source for most of the methamphetamine seized in the United States and California led the nation in the number of labs seized. Traditional arrest, search and seizure methods were deployed against these labs, with the principal enforcement focus being California. Despite this focus, the number of labs manufacturing methamphetamine domestically has increased significantly since the mid-1990's. California no longer is the principal source state for domestically produced methamphetamine with over one-half the labs seized now coming from Missouri and the eight states adjoining her.

This shift in the locus of production has been accompanied by an approximately ten (10) fold increase in the number of labs seized nationally; with that number exceeding 16,000 last year (2004), as opposed to under 1,700 seizures reported in 1996.

In 2004, only three (3) states reported seizing no meth labs; in 2003 every state reported at least one (1) meth lab seizure. The distribution and prevalence of such labs has thus become a national problem for our country's justice, health, and environmental systems with primary clean-up costs alone running into the hundreds of millions of tax dollars annually.

The manufacture of methamphetamine is made easy by the fact that the only precursor needed to produce the drug is pseudoephedrine which is contained in numerous cold remedies all of which are sold over the counter anywhere in the country with the retail gross sales for pseudoephedrine based products estimated to exceed \$3 billion a year.

The chemical structure of pseudoephedrine is identical to methamphetamine except that pseudoephedrine has an easily removed oxygen-hydrogen (OH) group that methamphetamine does not have. Thus, the only step necessary to convert pseudoephedrine to methamphetamine is the easy and simple removal of this OH group from the precursor drug, pseudoephedrine. See the diagram of the ephedrine, pseudoephedrine and methamphetamine molecules, attached hereto. The removable OH group is just below the benzene ring in the ephedrine and pseudoephedrine diagrams. As you can see, the oxygen ("O") is missing from the methamphetamine diagram. This is the only difference between methamphetamine and these two precursors.

The materials needed to remove the OH group from pseudoephedrine are also available in every section of the country, most over the counter and at relatively low prices.

The law enforcement techniques designed to control the smuggling and distribution of drugs manufactured outside the United States have not been successful in controlling the manufacture of methamphetamine in small, clandestine labs largely because the only precursor

needed to make methamphetamine this way is easily diverted from lawful commercial channels to clandestine production of this dangerously addictive drug. This precursor, pseudoephedrine, is contained in over the counter cold remedies sold 24 hours a day, seven days a week, throughout the country. It is easily removed from its host product and converted into methamphetamine using simple chemical processes and, for the most part, common household items.

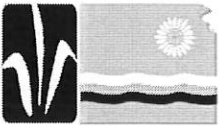
Because of the ease with which the pseudoephedrine in cold remedies is made into methamphetamine, the uncontrolled access to pseudoephedrine products results in access to methamphetamine which is also uncontrolled. Because these cold products are sold over the counter, they have become a source of methamphetamine that is not subject to interdiction by traditional law enforcement methods. Consequently, there are few effective limits or checks on the supply of methamphetamine in the United States. The increase in the number of illegal labs nationally bears witness to this fact. Accordingly, effectively controlling an addict's access to cold products containing the precursor pseudoephedrine will have the same beneficial effect that controlling an addict's access to methamphetamine itself will have in that both measures will limit the supply of the drug. The precipitous drop in the number of meth labs found in Oklahoma after that state scheduled pseudoephedrine bears clear witness to this fact.

In April, 2004, the State of Oklahoma implemented a statute which requires pseudoephedrine products to be sold only from behind the counters of pharmacies, under the supervision of a registered pharmacist, in limited quantities, to properly identified buyers who must sign a register. Oklahoma's statute exempts from these restrictions liquid based pseudoephedrine products. Following implementation, the number of meth labs seized in Oklahoma has dropped by as much as eighty percent (80%); and the sales of precursor pseudoephedrine products have dropped by an estimated forty percent (40%).

Because the Oklahoma experience has demonstrated the undeniable effectiveness of scheduling pseudoephedrine, there is pending in the Senate of the United States a bill to do at the national level what the State of Oklahoma did at the state level by placing pseudoephedrine on Schedule V of the list of controlled substances, and additional provisions, known collectively as the "Combat Meth Act of 2005." In addition to the Congress, over half the states are involved in efforts to schedule pseudoephedrine.

Pseudoephedrine is the only precursor to methamphetamine and because of this needs to be controlled just as its chemical child, methamphetamine, needs to be controlled.

KANSAS AGRIBUSINESS RETAILERS ASSOCIATION



**KARA is
"Committed to
Professional
Development
and Business
Viability for
the Retail Crop
Production
Industry"**

Statement of the

Kansas Agribusiness Retailers Association

Presented to the

House Corrections and Juvenile Justice Committee

In support of

Senate Bill 27

Representative Ward Loyd, Chairman

March 14, 2005

Presented by:

Duane Simpson

Director of Government Relations

Kansas Agribusiness Retailers Association

(785) 234-0463

Chairman Loyd and Members of the House Corrections and Juvenile Justice Committee, I am Duane Simpson appearing on behalf of the Kansas Agribusiness Retailers Association (KARA). KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. I appear before you in support of SB 27.

Anhydrous ammonia (NH_3) can be used in the cooking process for methamphetamine. NH_3 is a commonly used plant nutrient that has added billions of dollars in yield improvement returns to producers around the globe for many years. In Kansas, approximately 235,000 tons of NH_3 is used per year. It is the preeminent fertilizer for wheat in Kansas.

The theft of this valuable fertilizer and the property damage done by the theft is a serious problem for our industry and for our customers. Since Oklahoma passed similar legislation, our members have reported an increase in NH_3 thefts and attempted thefts in counties that border Oklahoma. Earlier this month, we learned that one facility in Pawnee County has lost 81.7 tons of NH_3 since December. It would take at least four semis to transport that much fertilizer. Clearly, "meth cooks" would prefer to get all of their ingredients in the same area. Those who are no longer able to get ephedrine products in Oklahoma have set up shop in Kansas.

Since, Missouri and Nebraska are considering similar legislation, failure to act in Kansas could result in a dramatic increase in methamphetamine related crime.

In 1999, our Association supported HB 2469 which made it a felony to possess anhydrous ammonia in a non-approved container. The bill was passed during the Veto Session and signed into law by Governor Graves. It was a major step forward in fighting the manufacture of methamphetamine. Unfortunately, one provision of that bill was removed late in the legislative session. That provision would have restricted the sale of ephedrine and pseudoephedrine in a similar manner to SB 27. Our Association supported restricting access to these precursors in 1999 and we still support them today.

Our industry strongly supports taking all reasonable measures to restrict ephedrine products that can be used to produce methamphetamine. We support SB 27 and urge this committee to do the same. Thank you for your time and I will stand for any questions the committee may have.



15

Kansas Pharmacists Association
Kansas Society of Health-System Pharmacists
Kansas Employee Pharmacists Council
1020 SW Fairlawn Road
Topeka KS 66604-2275
Phone 785-228-2327 ♦ Fax 785-228-9147 ♦ www.kansaspharmacy.org

T E S T I M O N Y

Before the House Committee on Corrections and Juvenile Justice

Concerning Senate Bill 27

By John L. Kiefhaber, Executive Director

KANSAS PHARMACISTS ASSOCIATION

Chairman Loyd and members of the Committee:

The 1,300 professional pharmacists of the Kansas Pharmacists Association (KPhA) appreciate the opportunity to speak to the Committee concerning **Senate Bill 27: An Act concerning controlled substances; relating to schedule V substances.**

Kansas pharmacists stand ready to do their part in law enforcement's campaign against methamphetamine production in Kansas. Controlling the sale of the meth precursors ephedrine and pseudoephedrine to protect the public fits right in with the pharmacist's ethical code to protect and to serve the patient standing before him or her. Many Kansas pharmacists have cooperated with the successful MethWatch program in the last few years to try to rid our communities of this scourge. After discussions concerning the provisions of Senate Bill 27, KPhA members are in support of the bill.

We have reviewed and discussed with representatives of the KBI and the Attorney General's office several important points in the bill that have been amended into or out of the bill on the Senate side. Some of these changes would not interfere with the intent of this proposed legislation. These include preemption of local restrictions on sales, the exclusion of multi-ingredient products from Schedule V and the issue of package v. gram limits on sales. These and other amendments only represent fine tuning of the bill's language in our view. The important thing is to act now, since other neighboring states are moving in the same direction.

We would request one amendment for your consideration: in Section 3, paragraph (f) provides for an unclassified misdemeanor for the pharmacist if a purchaser were to get more than four packages of product. We do not believe that it was ever the intent of law enforcement to come back on the pharmacist if a purchaser were able to get by the logbook and photo ID process unlawfully. This provision could become counterproductive and we would ask that it be amended out.

House C & JJ
3-14-05
Attachment 15

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE

Re: SB 27—Acquisition of Ephedrine and Pseudoephedrine.

March 14, 2005
Topeka, Kansas

Testimony Presented by:
Terry D. Holdren
KFB Governmental Relations

Chairman Loyd and members of the House Corrections and Juvenile Justice Committee, thank you for the opportunity to share our support for this approach to reduce the production of methamphetamine in Kansas. I am Terry Holdren and I serve as the Local Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Kansas Farm Bureau has long encouraged its members to be actively engaged in efforts to prevent and fight the production of methamphetamine on agricultural lands. We have conducted educational efforts and have partnered with local law enforcement to assist their efforts to prevent and report instances where methamphetamine is produced in our state. Despite those efforts and the commitment of law enforcement professionals across the state, production of methamphetamine continues to affect thousands of landowners, families, and individuals each day.

KFB members recently considered possible solutions to this crisis and determined that this proposal, despite its intrusions into personal liberties, has yielded significant improvements to public safety elsewhere. This bill, as amended by the Senate Judiciary Committee and that body as a whole should be given serious consideration as a solution in Kansas.

KFB member adopted policy supports efforts to reduce the ability of criminals to access many of the ingredients used to manufacture methamphetamine, including Ephedrine and Pseudoephedrine. KFB policy also supports uniformity of laws with our neighboring states and the aggressive prosecution of individuals charged with manufacturing and distribution of methamphetamine. We are confident that SB 27 will provide dramatic and measurable results and will positively impact our current situation.

Thank you for the opportunity to provide comments on this proposal. We are confident that SB 27 will yield significant reductions in the production and distribution of methamphetamine in Kansas and ask that the committee act favorably when it considers this legislation.

Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.

MEMO TO: House Corrections and Juvenile Justice Committee
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and
Convenience Store Association of Kansas
DATE: March 14, 2005
RE: Comments on SB 27

Mr. Chairman and members of the House Corrections and Juvenile Justice Committee:

My name is Tom Palace and I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 300 independent petroleum marketers, gasoline retailers and convenience store owners throughout Kansas.

I appreciate the opportunity to appear before you today as a proponent of SB 27.

Methamphetamine (meth) is an illegal drug that is produced in clandestine labs using products that are readily attainable in convenience stores, pharmacies, discount houses and grocery stores. Among the common household products used in meth production are cold pills containing ephedrine or pseudoephedrine. SB 27 attempts to restrict the sale of certain cold pills that are being used to "cook" meth.

The Kansas Retailer Meth Watch Program, a statewide program that is designed to limit the accessibility of products containing ephedrine or pseudoephedrine, was launched in June of 2001. PMCA and five other organizations were instrumental in establishing Meth Watch from its inception and participated in a press conference announcing the program. The Meth Watch Program's major goals are to provide a safer place to shop for Kansas's consumers and to decrease theft and large quantity purchases of pseudoephedrine, the main ingredient used to make meth. The Meth Watch posters, decals, stickers and shelf tags serve dual purposes of putting criminals on notice and letting good customers know that Kansas retailers are taking steps to reduce the production of methamphetamine.

I'm not sure that the recent article in the Topeka Capital Journal that stated Kansas ranks 10th in the top ten states for meth seizures in 2004 is good news for Kansas...but I feel it does represent good news for Kansas law enforcement, Kansas citizens and the Meth Watch Program in that it shows that Kansas is taking a very aggressive stance to curb our meth problems.

Mr. Chairman and committee members PMCA support SB 27 in its current form. We support scheduling (schedule 5) certain forms of pseudoephedrine that will only be dispensed by pharmacists. The starch based pill form of pseudoephedrine is the most common form of cold medicine used to make meth, and according to the KBI, it is more

Petroleum Marketers and Convenience Store Association of Kansas
201 NW Highway 24 • Suite 320 • PO Box 8479
Topeka, KS 66608-0479
785-233-9655 Fax: 785-354-4374

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3-14-05
Attachment 17

difficult to make meth using liquid or gel caps. Thus we feel that until such time as it is determined (by the KBI or Kansas Pharmacy Board) that liquid and gel cap forms of pseudoephedrine are being used in meth labs, only the starch based pills need to be classified as a schedule 5 drug.

Convenience stores are many things to many people in the rural areas of Kansas. They are one-stop shopping for many products such as gas, milk, eggs and minor cold medicines. If this bill goes too far by way of restricting all cold medicines, there may be unintended consequences, and the law abiding Kansas citizen that does not have the luxury of a 24/7 pharmacy in their town may find it very difficult to purchase cold medicine for a sick child.

If convenience stores are part of the "meth" problem, then we most certainly want to be part of the solution. However, we don't believe it is necessary, at this juncture, to deny Kansans in small towns perhaps the only remedy available to them for the relief from a minor health problem

Additionally, Mr. Chairman, we note that the act becomes effective after it is published in the Kansas Register. Currently, convenience stores have a small window of opportunity (24 hours) to return product (cold medicine) back to their suppliers to get a credit on their accounts. I've been told this is due to the federal Homeland Security Act.

We would request that the bill be amended to require suppliers to buy back unused inventory or make the act effective two months after the statute is posted in the Kansas Register.

Thank you, Mr. Chairman and committee members, and I urge your support of SB 27.

There's a serious drug problem in Kansas.

Methamphetamine—commonly known as “meth”—production has skyrocketed in the past five years. In 2001, Kansas law enforcement officials seized 846 labs.

Sponsored by:

Kansas Department of Health and Environment.
Kansas Bureau of Investigation

Endorsed by:

Kansas Retail Council
Petroleum Marketers and Convenience Store
Association of Kansas
Koch Crime Institute
Kansas Pharmacists Association

Program Participants:

The Kansas Retailer Meth Watch Team
Albertsons
Dillon's
Duckwall-Alco
Falley's Food 4 Less
Fleming Foods
IGA
Kansas Retail Council
Kmart
Osco
PMCA of Kansas
Walgreens
Wal-Mart

Kansas Department of Health and Environment

Clandestine Drug Lab Program
1000 SW Jackson
Topeka, KS
785-368-7301
785-296-4823 (FAX)

Kansas Bureau of Investigation

1620 SW Tyler
Topeka, KS 66612
785-296-8200
785-296-6781 (FAX)



**A program to deter
methamphetamine
production.**



Over-the-counter ingredients

Meth is an illegal, highly addictive drug produced in clandestine laboratories using readily available products obtained from retail, convenience and grocery stores. Over-the-counter cold and allergy medications contain ephedrine or pseudoephedrine, the most critical ingredients in the production of methamphetamine.

The manufacturing process also uses "precursors" such as lithium batteries, acetone, starter fluid, drain cleaner, rock or table salt, lye, matchbooks, rubbing alcohol, muriatic acid, gasoline additives such as methanol, and iodine. As you can see, these are items available in many stores.

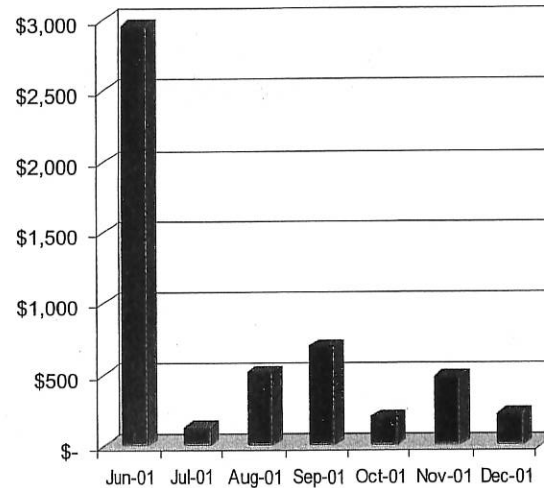
The availability of these products contributes to the growing meth problem in our state. Because meth users may become their own drug suppliers by becoming meth "cookers," the dangers associated with the labs themselves increase the urgency of a retailer assistance program.

Introducing "Meth Watch"

The Kansas Retailer Meth Watch Program is designed to limit the accessibility of products containing ephedrine or pseudoephedrine. The Kansas Department of Health and Environment, the Kansas Bureau of Investigation and a team of Kansas retailers encourage all retailers selling these products to participate in this important initiative.

If you've noticed the increase in theft or large quantity purchases of ephedrine or pseudoephedrine-containing products, your store is likely—and involuntarily—contributing to the deadly meth problem in Kansas. Participation in Meth Watch will decrease theft and the likelihood of "meth cookers" viewing your store as a supplier in drug production.

**Ephedrine Related Losses
Tracked by a Large Kansas Retailer**



What's in it for Retailers?

Increased employee awareness of our state's meth problem will provide your establishment the resources to be a responsible steward and assist in the fight against crime and drugs. Meth Watch supports the exchange of information with law enforcement officials and will reduce crime in your store.

The Meth Watch program involves:

- Employee and management training
- Signage (decals, stickers and shelf tags) that serve the dual purpose of putting criminals on notice and letting good customers know your store is taking steps to reduce the production of methamphetamine.
- Tips on strategic product placement to deter theft.
- Working closely with local law enforcement agencies.

Meth "Ingredients"

- Ephedrine or pseudoephedrine (cold or allergy tablets)
- Lithium batteries
- Starter fluid
- Rock or table salt
- Drain cleaner
- Camping fuel
- Sulfuric Acid
- Acetone
- "Heet" (gas additives)
- Paint thinner
- Matchbooks
- Coffee filters
- Aluminum foil
- Assorted glassware

Please Help Kansas

To become a partner in the Meth Watch program, please call KDHE's Clandestine Drug Lab Program at (785) 368-7301. We'll send you a program packet containing required decals, posters, Suspicious Transaction Reports and training materials.

To further assist your store in this effort, a detailed list of recommended actions is also included, as well as in-store stickers and public awareness fact sheets.

For more information:

www.kdhe.state.ks.us/methlabs



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TRAINING & EDUCATION

KDHE and KBI's goal is to educate first responders, chance encounter occupations, retailers, and the general public about the hazards of drug labs. These same citizens can also notify law enforcement of illegal activity and help stomp out drug activity in Kansas.

First Responders

KBI, KDHE, and/or EPA provide law enforcement personnel 40-Hour Hazardous Material Drug Lab Training and 8-Hour Refreshers courses. Other first responders are provided a variety of awareness training classes.

Chance Encounter Occupations

KDHE and KBI host awareness classes at conferences, farm shows, and individual training sessions to help educate workers that may encounter a drug lab while at work. These occupations include: farmers, road department crews, utility crews, social workers, hotel/motel employees, wildlife and park officials, etc.

Retailers

KDHE teamed with a group of retailers to design a program aimed at reducing the sale or theft of common drug lab precursor items. The resulting program is called the Kansas Retailer Meth Watch Program (Meth Watch). Meth Watch provides visibility for the program and teaches employees the common precursors, product management techniques to prevent the availability of excessive amounts of precursors, and a method of reporting suspicious transactions. Signage used



includes cash register sticker, shelf danglers, front door decals, break room posters, etc. A training video is provided to retail stores to assist with training of the store clerks and management.

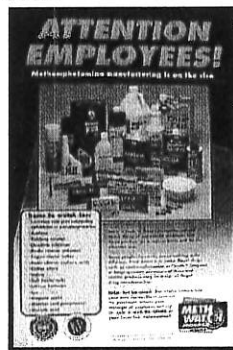
Shelf Dangler



Cash Register Sticker



Training Poster



Please visit our web site at:
www.kdhe.state.ks.us/methlabs



KANSAS CLANDESTINE DRUG LAB PROGRAM

Kansas Department of Health & Environment
Bureau of Environmental Remediation
Curtis Bldg, 1000 SW Jackson
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Phone (785) 368-7301
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KANSAS CLANDESTINE DRUG LAB PROGRAM

Program Overview



Kansas
Department
of Health &
Environment



INTRODUCTION

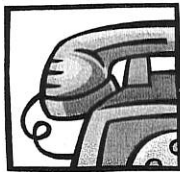
Methamphetamine (meth) clandestine drug labs have been popping up in rural and urban areas across the State of Kansas. The Kansas Department of Health & Environment (KDHE) and Kansas Bureau of Investigation (KBI) are working together to combat this unwelcomed business. The Chemical Control Act was passed on July 1, 1999, initiating an education, notification, and response cleanup program for clandestine drug labs. KDHE's Clandestine Drug Lab Program is managed by the Bureau of Environmental Remediation's Response Unit in Topeka, Kansas.

REGULATED NOTIFICATION

The Chemical Control Act requires that manufacturers and distributors contact the KBI if one of the following occurs with a regulated chemical: 1) An extraordinary quantity is purchased or unusual method of payment or delivery is requested, 2) a sale is made to a person whose identity has been provided by KBI, or 3) an unusual or excessive loss or disappearance is identified.

VOLUNTARY NOTIFICATION

KBI and KDHE are also working with retailers, chance encounter occupations, and the general public to voluntarily report unusual activity, sales, theft, and/or discovery of lab wastes. KDHE and KBI's goal is to prevent drug labs and eventually reduce the illegal sale and use of drugs in Kansas communities. Voluntary notification helps serve as the eyes and ears for Kansas law enforcement.



DRUG LAB RESPONSE

Drug labs have the potential to contaminate drinking water supplies, soil, and air causing a health risk to nearby residents and the environment. Vapors at meth labs can be highly explosive and can cause a multitude of health problems. KDHE's cleanup is conducted to ensure the safety of the citizens of Kansas and our natural resources.



LAW ENFORCEMENT

KDHE's drug lab response is available to all law enforcement agencies in the State of Kansas provided the following conditions are met: 1) Search warrant/destruction order is obtained, 2) Qualified drug lab trained law enforcement personnel are on site, and 3) assurance that an EPIC form will be completed within 2 working days.

CLEANUP REQUEST

Once the above-mentioned conditions are met a cleanup request is made to KDHE. KDHE requires a cleanup crew arrive on site within 4 hours of the request, except for a few counties in the far western part of the state or during inclement weather conditions. Typically the law enforcement agency provides KDHE with a time that evidence collection will be complete and the hazardous material (hazmat) crews will be ready to start material inventory, handling, and disposal.

The drug lab precursors and contaminated materials are segregated into hazardous material, suspected hazardous material, non-hazardous solid waste, and non-hazardous liquid waste. The material is prepared for



transport to one of three KDHE hazmat storage buildings. Hazardous and suspected hazardous materials are characterized at the hazmat buildings and consolidated into DOT-approved storage containers prior to shipment to a TSD facility. Non-hazardous wastes are disposed at a municipal solid waste landfill (solid waste) or wastewater treatment facility (liquid waste).

ANHYDROUS AMMONIA

Anhydrous ammonia is typically handled on site due to the dangers associated with handling the product. The anhydrous ammonia product is mixed with water to create a mixture that is safe to handle and easy to dispose. KDHE's hazmat contractor is capable of handling containers of ammonia that cannot be easily emptied into a water bath. The contractor uses a remote



controlled system that can puncture a steel walled container, yet seal the hole to prevent an unacceptable release of product. Containers are placed in an ice bath to ensure the internal pressure is below 90 psi. After the container is emptied the metal is taken to a recycler.

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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: APPROPRIATIONS
 GENERAL GOVERNMENT AND
 COMMERCE BUDGET
 INSURANCE

Dear Chairman Lloyd and Members of the Committee,

Thank you for allowing me to testify in favor of the bill before you today. Meth is killing people. This practice of making meth is volatile, and the use of it is destroying lives. This is a tough on crime bill, and for that I support it. Let's also be, as you say Mr. Chairman, smart on crime.

As a Legislator, someone who has worked in the Pharmacy industry for nearly a decade, and married to a Pharm. D., I have some suggestions about the bill before you today.

A few months ago, my wife got a call from a patient who had not yet received his phalidomide for his cancer. The script was written 11 days previous. The insurance company was dragging their feet on the approval process because the drug costs \$5000 per dispense. When the approval came that afternoon, it was too late, because the approval for Thalomid is only good for 7 days, according to the FDA. So she had to page the Doctor at home, because his office closes at 2:30 pm on Fridays. The Doc had to come into the office to get a new approval number. She then had to resubmit the claim to insurance. This time it cleared. Then the company called her for a conference call on how to "problem solve this issue" while she had a line going out the door. Cutting the call as short as she could, she then called her wholesaler to emergency deliver the drug. The wholesaler closes at 3:30 on Fridays. The patient had to wait through the weekend.

This is just one of many typical interruptions she deals with between regulation, practicing medicine, and making sure reimbursements happen. By placing all Psuedoephedrine as a class 5 and ordering the Pharmacist to dispense these Over The Counter pharmaceuticals, you are adding to the confusion of an already complex medical system. If you want her, and other pharmacists to Police Psuedoephedrine, then what are you going to take off her task list so she can get it done? There are only so many hours in a day. There is only so much monitoring that a Pharmacist can do. Also, I don't want a pharmacist to be the primary source of policing of meth ingredients anymore than I want police to advice me on Pharmacotherapy.

You will also increase her liability, because no she has to make sure that patient, who she may not normally dispense to, does not have a reaction to the Psuedoephedrine, or is taking another prescription that can cause it.

These are some suggestions just to make the bill better. Retailers can limit the access to this ingredient better than Pharmacists. There would be more eyes on the product. I believe it would make illegal access to this ingredient tougher and make for smarter enforcement.

Thank you,

Scott Schwab
 KS House Dist. 49

House Corrections and Juvenile Justice Committee
March 14, 2005
Senate Bill 27
Dana Kenneson, Proponent

Ladies and Gentlemen,

I come to you today to speak in favor of SB 27 the Matt Samuels Act Meth bill.

For the last ten years I have been a Kansas certified law enforcement officer. I have watched from the time that, as an officer, I did not have any idea what "meth" was, sometimes hearing about it in a training class, then occasionally running across "someone who knows someone" who uses "speed" or a drug addict that told of using this "new drug" once, to the current situation we face as law enforcement officers, the epidemic that is methamphetamine use in Kansas.

As law enforcement officers we all take the oath "To Protect and Serve" and do so proudly and with honor. But, as we fight this battle for the safety of our communities, it is very apparent that, without the help of the public, law enforcement is fighting a losing battle. Methamphetamine production in Kansas is everywhere. It's in our towns and our counties. It's made in homes, barns, sheds, and cars. One reason for this is due to the ease of purchasing the ingredients they use in the production of their drug.

Will this bill completely stop the production of methamphetamine in Kansas? Unfortunately not. But I feel that it will considerably slow down the people trying to make this drug. Maybe this bill will be the start of a great statewide effort of communities saying "We have had enough." If even one meth lab is shut down due to the passing of this bill that would be enough for me to go that extra step to sign for my family's cold medication. If even one officer's life was spared because the addict couldn't get his drugs, if even one teenager that thinks "meth won't hurt me" couldn't try it for their first time, wouldn't that be enough to pass this bill?

I speak not only as a concerned Kansas resident, as a law enforcement officer, not only as a mother, my husband was recently appointed to replace Matt Samuels as Sheriff of Greenwood County. Matt Samuels was shot by a young man strung out on methamphetamine. I worry for the safety of my husband. I have also seen first hand what this drug has done to an entire community and the struggles they are still having to come to grips with this tragedy.

Please vote in favor of this bill. What a great message Kansas could send to support those who have suffered.

Thank you for your time.

Dana Kenneson



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House Corrections & Juvenile Justice Committee

March 14, 2005
Topeka, Kansas

SB 27 – limiting the amount of ephedrine/pseudoephedrine that may be sold at one time.

Chairman Loyd and members of the Committee, thank you for the opportunity to share comments on behalf of the Kansas Cooperative Council in support of SB 27. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Governmental Relations Director. The Council includes more 223 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans.

A significant number of our members are agricultural cooperatives that handle a variety of crop inputs, including anhydrous ammonia. As you are well aware, thefts and attempted thefts of anhydrous have occurred across the state. Both agricultural producers and input providers have been victims of these criminal activities.

The Kansas Cooperative Council believes that if it is more difficult in Kansas to obtain one of the components needed to mix with the anhydrous to produce methamphetamine, hopefully that will translate into a decrease in unlawful attempts to acquire anhydrous. Passage of this bill is another tool to help diminish Kansas' attractiveness as a place of operation for meth producers. We respectfully encourage this committee to act favorably on SB 27. Thank you.