SB 484 Prescription Pseudoephedrine – Eliminating California Methamphetamine Production

Senator Roderick Wright

The number of methamphetamine laboratories in California is increasing

Pseudoephedrine is the essential Precursor needed to manufacture methamphetamine. Effective control of PSE will result in effective control of domestic methamphetamine production

Pseudoephedrine purchased (smurfed) from retail outlets in California supplies 90% of the essential precursor to California meth labs.

Current laws and regulation are ineffective to curb the methamphetamine production problem

Prescription pseudoephedrine is the only viable solution

Dramatically reducing, and certainly eliminating, methamphetamine labs will result in significant cost savings to California.

Dispelling the oppositions unfounded allegations

The number of methamphetamine laboratories in California is increasing

	Labs	Abandonments	Totals
2007	163	189	352
2008	184	190	374

Source: California Department of Toxic Substance Control

According to the National Drug Intelligence Center (NDIC)[1], the Drug Enforcement Administration (DEA), and the Bureau of Narcotic Enforcement (BNE) this trend is expected to continue for the following reasons:

- Large-scale pseudoephedrine smurfing from retail outlets in California
- Resurgence of small-scale methamphetamine production
- Relocation of Mexican methamphetamine producers from Mexico to California

In 2007, the Government of Mexico (GOM) announced a prohibition on ephedrine and pseudoephedrine imports into Mexico for 2008 and a ban on the use of both chemicals in Mexico by 2009. Several other Central and South American countries are adopting the same policy. Coupled with the increased pressure from the Calderon administration, Mexican drug cartels and other drug trafficking organizations are returning to California to produce methamphetamine. This explains the increase in the number of Super Labs[2] seized last year. In 2008, law enforcement seized 15 Super Labs compared to only 4 in the previous year.

Although California longer seizes the most methamphetamine labs compared to some Midwestern states (e.g., Missouri, Tennessee, Kentucky), the production capabilities of California's methamphetamine labs exceeds that of the other leading states combined. Most other states have "Addiction" or "User" Labs that only produce a small amount of methamphetamine that is used by its maker and/or small in small quantities. Although California does have some small labs, many are much larger than those typically seized in other parts of the nation. This is especially true for the Mexican Drug Trafficking Organizations (MDTO) that have been headquartered and well entrenched in California for decades.

[1] National Methamphetamine Threat Assessment, 2009, pgs. 4 &7
[2] Super Labs are those capable of producing 10 or more pounds of methamphetamine in a single production cycle.

The large amount of methamphetamine laboratories is another alarming trend because it reflects many labs that had been operating for some time, but were undiscovered. The trend in recent years, particularly amongst the larger labs, is for the criminals to burry the lab trash. Consequently, the amount of lab dumps discovered each year only provides a glimpse of the problem's enormity.

Historically, BNE seizes approximately half of al the methamphetamine laboratories seized in California each year. Since 2004, BNE has experienced a 70% reduction in funding for methamphetamine enforcement; BNE is not the only organization experiencing such cutbacks. It is intuitive that fewer methamphetamine labs have been seized during this time period. At the same time period, pseudoephedrine controls were implemented that temporarily disrupted some of the pseudoephedrine supply to methamphetamine manufacturers. However, those same measures intended to curb the illegal access of pseudoephedrine, namely the Combat Methamphetamine Epidemic Act (CMEA), have spawned the smurfing epidemic.

Pseudoephedrine is the essential Precursor needed to manufacture methamphetamine

There are a variety of methods used to manufacture methamphetamine and an assortment of interchangeable chemicals; however, there is no substitute for pseudoephedrine. Eliminate illegal access to PSE – meth labs will vanish.

Opponents of this bill try to convince listeners that an old production method of producing methamphetamine will simply replace the current production methods using pseudoephedrine. This assertion must first concede that requiring a prescription for pseudoephedrine will have a dramatic impact of meth production causing criminals to seek other production alternatives. Second, the old method they refer to (P2P) was eliminate some 15 years ago because of laws and regulation implemented that eliminated that method because it eliminate the essential precursor – precisely what this bill will also accomplish. The same laws and regulation that successfully eliminated the P2P method are still in effect today. Recently I heard someone speaking on behalf of the Consumer Healthcare Products Association of America (CHPA) making such an assertion after describing a recent P2P lab seizure in February of 2009 in Oregon. Here are the true facts: According to Oregon law enforcement, an old P2P meth cooker was recently released from prison after serving a lengthy prison sentence. After his release, law enforcement learned the subject still had chemicals hidden away from prior to his incarceration. Law enforcement located a seized the chemicals, which were not being used to make methamphetamine. This is a non-issue and stories such as this are designed to be a diversion from the truth.

Pseudoephedrine purchased (smurfed) from retail outlets in California supplies 90% of the essential precursor to California meth labs.

Although it is difficult to accurately estimate how much of PSE purchased in California is used for making methamphetamine, we do know that PSE purchased in California accounts for 90% of the precursor used to make methamphetamine. There are occasions when the origin of the pseudoephedrine is unknown, but it most of those incidences, it is likely to have also come from California retail outlets.

The following example provides a glimpse into the enormity of the Smurfing Epidemic. On October 29, 2008, CVS implemented a Block Sale[3] system in California. In the first hour of the new system, CVS blocked 168 purchases in California. Over the next 20 days, CVS block an additional 9,400 purchases of PSE.

The following table shows the decreased amount of PSE sold in just 11 Los Angeles CVS stores in November of 2008 compared to October of 2008:

Store #	Address	City	State	Zip Code	GRAMS SOLD OCT '08	GRAMS SOLD NOV '08	DECREASE IN TOTAL GRAMS
9686	4707 Venice Blvd	LA	CA	90019	4,223.25	144.57	4,078.68
9781	5985 Pico Blvd	LA	CA	90035	2,454.76	323.45	2,131.31
9609	9920 East Garvey Avenue	El Monte	CA	91733	2,151.36	218.2	1,933.16
9590	6000 Atlantic Ave	Long Beach	CA	90805	1,594.97	115.49	1,479.48
9645	8225 East Garvey Ave	Rosemead	CA	91770	1,665.27	228.75	1,436.52
4792	15232 Sherman Way	Van Nuys	CA	91405	1,932.92	492	1,363.99
9639	11940 Garvey Ave	El Monte	CA	91732	1,464.96	166.5	1,298.46
9679	1485 E. Valley Blvd	Alhambra	CA	91801	1,268.87	155.72	1,113.15
9580	5101 W. Rodeo Rd	LA	CA	90016	1,071.56	203.23	868.33
9579	4570 Atlantic Ave	Long Beach	CA	90807	951.71	154.72	796.99
8875	3644 East Olympic Blvd	LA	CA	90016	647.22	162.15	485.07
				TOTAL	19,426.85	2,364.78	16,985.14

That was an 87% reduction, or 16,985 grams of PSE that would have been enough to make approximately 30 pounds of meth.

[3] Block Sale is a system by which a retail store has an integrated network of information that permits one outlet to know the PSE sales information for all other outlets. Consequently, if someone had purchased the maximum amount of PSE permitted in a day and/or month, that outlet would block the sale of PSE to that person.

A typical day for a smurfing cell

Most smurfing cells are comprised of approximately 32-40 people and typically there will be about 8 people to each sub cell.

Each individual is capable of purchasing PSE from approximately 20 stores a day:

> 3.5 grams (maximum allowed pre store) of PSE x 20 stores = 70 grams of PSE/day
>
> 70 grams x 32 people = 2,240 grams/day
>
> 2,240 grams of PSE can be converted to 1,792 grams (80% conversion rate) or **4 pounds of meth a day**.

Profit Earning Potential

Each member pays $7 for a box and earns between on the black market $20 to $32 a box, for a profit margin between $14 and $25 per box.

A box of PSE (48 tables of 30 mg) contains 1,440 mg of PSE, or 1.4 grams. A smurfer can buy two boxes at each store, so that's 40 boxes a day with a **profit earning potential of $560 to $1,000 a day.**

Current laws and regulation are ineffective to curb the methamphetamine production problem

California's laws and the Combat Methamphetamine Epidemic Act (CMEA) cannot prevent smurfing operations that can compile large amounts of PSE in short periods of time. The CMEA legally requires a retailer to do very little:

- Place PSE products "behind the counter."
- Create and maintain a logbook (written or electronic)
- Obtain identification and have the customer complete the logbook
- Sell only 3.6 grams of PSE products total per day (per regulated retail seller)
- Provide law enforcement personnel access to the logbook upon request
- The 9 gram 30-day limit applies to the **purchaser** only.

This is how the CMEA has fueled the Smurfing Epidemic:

- Allows customers to go from store to store buying up to the 3.6 gram daily limit at each store
- Does not prohibit a retail seller from selling more than 9 grams of PSE to a customer in 30 days
- Only requires a retail store to provide the logbook upon request – not to proactively provide any specific reports or analysis
- **The CMEA is a mild inconvenience to smurfing, not a solution**

Because most retail outlets do not have a "Block Sale" mechanisms in place, in addition to the absence of a centralize database, any smurfer with identification can buy PSE all day long and no one can prevent it. Of course, a Block Sale system only prevents people from buying PSE from the same retailer but doesn't prevent them from buying multiple amounts from other retailers. For example, Target has a Block Sale system that will limit what a person can buy at Target, but it doesn't stop them from also buying PSE at CVS, Walgreens, Wal-Mart, etc. A centralize database would allow law enforcement to identify individuals and rings of individuals who are illegally purchasing large amounts of PSE. However, that system is reactive and does not prevent the sale of the PSE. In addition, such a system would be very expensive and impractical considering the diverse array of computer systems used by various retail chains.

Even if an integrated electronic database was possible, law enforcement doesn't have the resources to track the thousands of leads it would develop. Worse yet, meth labs will continue to flourish just as they are in other states with such systems. Kentucky, Tennessee, and Oklahoma are all experiencing an increase in methamphetamine labs. These systems are costly, reactive, ineffective, and not preventative!

Another reason an electronic tracking system will be a waste of time and money is because it can be easily defeated by smurfers. For example, CVS already has such a system in place and agents routinely follow smurfers to multiple CVS stores at which they purchase pseudoephedrine beyond the daily limit. They accomplish this by using false identifications and/or working in collusion with store employees. When agents check the database for the records corresponding to their observations, there are no records. Cleary these types of systems are already being circumvented. Electronic tracking systems are a waste of time and resources and will do nothing to reduce the amount of methamphetamine labs.

Prescription pseudoephedrine is the only viable solution

The best way to combat the smurfing problem is to require a prescription for PSE and only have it available from a pharmacy. Oregon is currently on the state that has successfully implemented such a regulation and the results have been dramatic.

Controlling Pseudoephedrine – The Oregon Experience

Effective July 1, 2006, Oregon passed a law (House Bill 2485) that requires a prescription for pseudoephedrine.

Since the enactment of HB 2485, Oregon has **eliminated pseudo smurfing and reduced methamphetamine lab incidences by 95%.** The few labs that remain are the result of interstate pseudoephedrine smuggling.

In Oregon, nearly all of the former OTC pseudoephedrine products have been reformulated with phenylephrine (PE) or other ingredients and are back on regular retail shelves. These medicines cannot be used to manufacture methamphetamine.

There were few complaints and no public outcry after pseudoephedrine was moved to prescription only. Most consumers in Oregon simply switched to the over-the-counter alternatives. Consequently, there has been no negative impact on legitimate Oregon consumers.

Five gallon bucket filled with an assortment of PSE pills

Oregon's Progression to Prescription Pseudoephedrine

The following table, showing the number of methamphetamine labs found by month and year, graphically illustrates the varying degrees of success the different types of PSE controls have had:

2003		2004		2005		2006		2007	
January	34	January	40	January	24	January	9	January	3
February	38	February	42	February	19	February	6	February	0
March	36	March	49	March	23	March	15	March	1
April	49	April	39	April	31	April	8	April	1
May	51	May	59	May	26	May	4	May	4
June	26	June	2	June	15	June	6	June	0
July	37	July	42	July	7	July	4	July	0
August	42	August	30	August	10	August	6	August	1
September	52	September	28	September	8	September	2	September	3
October	53	October	34	October	13	October	2	October	2
November	33	November	18	November	9	November	1	November	3
December	22	December	25	December	7	December	0	December	0
	473		448		192		63		18

On October 15, 2004, the Oregon Board of Pharmacy adopted a rule requiring pseudoephedrine (PSE) products, other than certain liquids and gel caps, be kept behind the counter (BTC) and requiring picture ID for each sale. The rule went into effect on November 15, 2004. **Moving pseudo/ephedrine (PSE) behind the counter (retail outlets and pharmacies) resulted in a 40-70% reduction in local methamphetamine labs.**

On April 6, 2005, the Pharmacy Board adopted a rule requiring those PSE products be kept behind the *pharmacy* counter and requiring picture ID *and logging* for each sale. The rule went into effect on May 14, 2005. **Moving PSE behind the pharmacy counter and eliminating retail outlet distribution resulted in a 70-90% reduction.**

On April 5, 2006, the Pharmacy Board adopted a rule requiring a *prescription* for *all* PSE products. The rule went into effect on July 1, 2006. **This eliminating intrastate smurfing and essentially eliminated all methamphetamine labs.**

In 2008, Oregon continued to enjoy a small number of meth labs (15), most of which were old remnant labs (not operational) and a few resulting from smurfed PSE from neighboring states. The trend thus far in 2009 indicates a further decline in methamphetamine lab incidences.

The Oregon alternative "offers an effective approach . . . if broadly adopted, there would be no reason to develop state or national tracking systems, resulting in substantial, ongoing savings, literally in the millions of dollars."

- *NAMSDL Methamphetamine Precursor Tracking Advisory Committee*

Opponents of this bill assert that Oregon prescription law went into effect in 2006 during the same time the CMEA went into effect; therefore, Oregon's dramatic reduction in meth labs may not be solely attributed to the prescription law. This is utter nonsense. Oregon implemented in April 2005 a more stringent law than the CMEA. Consequently, when the CMEA went into effect it had no impact on Oregon. The dramatic reduction in meth labs is solely attributable to what caused it – the prescription PSE law. Further evidence of this point is the fact that Oregon's meth labs incidences continue to decrease while other states methamphetamine lab numbers continue to increase while having to rely only on the CMEA. This is another diversionary tactic that ignores the truth.

Dramatically reducing, and certainly eliminating, meth labs will result in significant cost savings in California.

PROSECUTION AND INCARCERATION FOR METH PRODUCTION OFFENSES	
Prison Sentences	$6,156,551
County Jail	$1,959,048
Prosecution costs	$5,780,000

CLEAN-UP COSTS RESULTING FROM METH LABS	
CA Dept. of Toxic Substance Control (DTSC)	$1,055,098

LAW ENFORCEMENT COSTS ASSOCIATED WITH METH PRODUCTION INVESTIGATIONS (2008)	
184 meth labs @ $5,722	$1,052,848
190 dump sites @ $2,282	$433,580

TOTAL COSTS ASSOCIATED WITH METH LABS	**$16,437,125**

Dispelling the opposition's unfounded allegations

Myth: Pseudoephedrine is an "essential" medicine

Truth: Pseudoephedrine is NOT and essential medication. PSE doesn't cure anything. PSE relieves the symptoms of a cold or allergy (nasal or sinus congestion). It does not, by any means, treat the underlying cause of the medical condition nor will it speed up recovery. Essential medications are those that treat illnesses that, if left untreated, will result in serious harm or death. For example, an essential class of medication includes insulin, blood pressure medication or medication to control heart function. These medications are truly essential, if they are not taken, or another viable alternative is not available, that will likely result in serious health consequences and potential death. The Government of Mexico and other Central and South American countries have banned PSE use altogether – clearly they have deemed PSE as nonessential.

Myth: Requiring customers to obtain a prescription for PSE products would impose substantial, unnecessary, new costs on consumers and healthcare systems.

Truth: The opponents making this assertion have failed to provide any quantifiable data to substantial this allegation. Three years after Oregon enacted similar legislation, none of this has occurred in Oregon despite the same opponents making the same allegation three years ago. It didn't happen in Oregon and it won't happen in California.

Myth: Millions of consumers still wait in line at the pharmacy and subject themselves to state and federal prosecution if they exceed legal quantity limits to buy PSE.

Truth: Californians don't wait in lines at pharmacies to purchase PSE, they buy it at retail counters along with other products they purchase. They also show their identification just as they do for purchasing alcohol or tobacco. This assertion exaggerates the inconvenience of the process to try and convince people that consumers will go to great lengths to legitimately obtain PSE. When Oregon implemented prescription PSE, most consumers simply switch to the hundreds of over the counter (OTC) alternatives.

Myth: California stands to lose approximately 4.5 million in sales tax revenue because prescription medication is not taxed.

Truth: First, as the Oregon experience has proven, many people will switch to OTC alternatives which will continue to generate sales tax revenue in California. Second, a substantial portion of the sales tax revenue generate each year in California comes from criminals who convert the PSE into methamphetamine that costs California much more money in law enforcement, courts, incarceration, emergency and healthcare costs, and human misery. The United States Attorney's office conservatively estimates that approximately half of the PSE sold in California is being diverted for illegal purposes. In some instances it has been as high as 87% (see page 5).

Myth: Customers will be unduly inconvenienced by requiring a prescription for PSE.

Truth: There are more than one hundred reformulated alternatives to PSE that are readily available OTC products that cannot be used to produce methamphetamine. One such alternative is Phenylephrine (PE). PE has been proven safe and effective as a decongestant and sales seem to be doing quite well. It was approved by FDA and marketed as a decongestant by several different drug companies. There maybe some consumers who don't get adequate relief from PE products and they will have to see a physician. However, they will be able to obtain more substantial medication, even than PSE, to treat their affliction. Depending on a person's relationship with their doctor, they will not need to visit the doctor to obtain a prescription for PSE. In addition, PSE prescription can have unlimited refills.

Myth: Uninsured people will not be able to obtain PSE if it requires a prescription. The uninsured will flood our emergency rooms seeking PSE.

Truth: This is another unfounded scare tactic. Again, three years after it implementation in Oregon, they have not experienced any of these problems. A recent consultation with homeless and indigent advocates in Oregon revealed that Oregon's law has had no negative impact on the uninsured.

Myth: California has yet to enact legislation similar to that of the Combat Methamphetamine Epidemic Act (CMEA) that would give state and local law enforcement jurisdiction to enforce sales limits, including the use of a logbook. Since the CMEA became law in 2006, there has been a 61% nationwide drop in meth lab incidences.

Truth: First, we already know the CMEA and any proposed fixes will not stop the escalation of meth lab incidences in California or anywhere else in the nation. We know this because other state have more restrictive laws in place than the CMEA (pharmacy sales only, electronic tracking systems, Block Sales system) and all of those states are experiencing increasing amount of meth lab incidences. Second, law enforcement doesn't have the resources to police this enormous problem. There are tens of thousands of location were PSE is currently sold and the smurfing problem is much greater than law enforcement can address. Why would the opponents endorse an option that is expensive, reactive and not preventative, is unenforceable, and will not be effective? This will do nothing more than perpetuate the human misery while fleecing our state of it precious resources.

A typical day for a smurfing cell

Most smurfing cells are comprised of approximately 32-40 people and typically there will be about 8 people to each sub cell.

Each individual is capable of purchasing PSE at approximately 20 stores a day:

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