



Lincoln County District Attorney

225 West Olive Street, Room 100, Newport, Oregon 97365
541-265-4145, FAX 541-265-3461, www.co.lincoln.or.us/da/

Rob Bovett
District Attorney

Marcia Buckley
Chief Deputy

MEMORANDUM

TO: Staff, California Assembly Public Safety Committee

FROM: Rob Bovett, Chair, Oregon Meth Task Force

DATE: June 30, 2009

SUBJECT: Questions posed by staff in the Senate relating to Senate Bill 484

Shortly after the hearings on the Senate side for Senate Bill 484, staff for both the substantive and appropriations committees had a number of questions about the Oregon experience with returning pseudoephedrine to a prescription drug, as it was prior to 1976. Just in case you might have those same questions, I've decided to provide you with the answers to those questions at this time. However, if separate or further questions come up, please don't hesitate to contact me. As I've mentioned to others, Senate Bill 484 is the most important piece of pending legislation for Oregon's drug endangered children, and I will work hard to provide you with prompt and accurate answers. With that being said, here goes:

1. The Problem: Smurfing

The underlying reason for the recent resurgence of meth labs¹ in California is the smurfing² of pseudoephedrine. I have attached a three-page PDF from a spreadsheet depicting the beginning of the resurgence as it occurred in 2008.

The first page of the attachment is the raw meth lab incident data from both California and Oregon from 2004 through 2008. Because the issue of population disparity between our two states came up during the hearing on Senate Bill 484 in the Public Safety Committee, I have also adjusted that data for population.

¹ Meth lab incident data is collected from each state by the El Paso Intelligence Center (EPIC). Although it is not adjusted, and reflects all three categories of meth lab incidents (full meth labs, partials, and dump sites), EPIC meth lab data is quite useful for the evaluation of meth lab incident trends. A mapped summary of the data can be found at http://www.usdoj.gov/dea/concern/map_lab_seizures.html.

² As you know, the term "smurfing" describes the practice of using many individuals to purchase pseudoephedrine (the key ingredient necessary to make *d*-methamphetamine) at many different locations (*i.e.*, going from store to store). Smurfing is used to evade the controls contained in the federal Combat Methamphetamine Epidemic Act (CMEA), which had been working to significantly reduce meth labs, until recently. If you are a glutton for punishment and would like a more thorough explanation of the history of pseudoephedrine control, a law review article on the subject (late night put-you-to-sleep stuff) can be found here: <http://www.oregondec.org/GMC-2008-Handout-Article.pdf>

As adjusted, in 2004, Oregon's meth lab problem was six times that of California (1 lab incident in Oregon for every 8,000 people, compared to California's 1 lab incident for every 47,000 people). By 2007, California already had a worse rate than Oregon. Equally as important, California is now on a bad trend line (*i.e.*, a resurgence of meth labs).

The second page in the first attachment is a graph generated by the spreadsheet numbers, depicting the raw Oregon and California meth lab incident data and trend lines. The third page in the first attachment is a graph generated by the spreadsheet numbers, as adjusted for population.

Furthermore, the returning meth lab problem in California is exacerbated by the resurgence of super labs³ in California. The source of pseudoephedrine for California super labs is also smurfing.⁴ This devastating problem will continue to grow in California, due in part to the positive action taken earlier this year by Mexico, which banned pseudoephedrine entirely. The drug trafficking organizations are therefore smurfing pseudoephedrine all across California. Unfortunately, California is again a source state for the meth epidemic that continues to plague not only California, but other states as well (in other words, California's problem is now directly impacting Oregon again; hence why SB 484 is the most important piece of pending legislation for Oregon's drug endangered children).

2. The Solution: Moving Pseudoephedrine to Prescription-Only

The solution to end smurfing in California is not an electronic monitoring system. Those systems have been used in other states and are expensive, complicated, reactive, law enforcement intensive, and are failing.

In contrast, Oregon eliminated smurfing entirely by returning pseudoephedrine to its status prior to 1976, namely a prescription-only drug. This law went into effect on July 1, 2006.⁵ Oregon's few remaining meth lab incidents each year⁶ are due to smurfing in neighboring states.

³ The term "super lab" refers to a meth lab capable of producing 10 pounds or more of methamphetamine during each reaction cycle. Super labs are generally run by drug trafficking organizations, and generate significant problems for both public safety and the environment, due to the large volume of toxic waste byproducts.

⁴ The federal government has just released a Situation Report entitled "Pseudoephedrine Smurfing Fuels Surge in Large-Scale Methamphetamine Production in California," National Drug Intelligence Center (NDIC) (June, 2009). The report can be viewed here: <http://www.usdoj.gov/ndic/pubs36/36407/36407p.pdf>

⁵ The legislation I drafted up to accomplish this was Oregon House Bill 2485 (2005). The final Enrolled version can be viewed here: <http://www.leg.state.or.us/05reg/measpdf/hb2400.dir/hb2485.en.pdf>. The pseudoephedrine provisions are in Sections 11 through 13a on pages 5 through 8 of the bill. If you want further details about the exact sequence of Oregon's pseudoephedrine controls, see <http://www.oregondec.org/OregonMethLabStats.pdf>.

⁶ Three operational meth lab incidents for the entirety of 2007; three operational meth lab incidents for the entirety of 2008; and two operational meth labs incidents so far in 2009; the remainder of the meth lab incidents in each of those years were remnants and dump sites.

3. Fiscal Issues

Jacqueline Wong-Hernandez, Analyst for the California Senate Appropriations Committee, and Kent Shaw, Assistant Chief of the California Department of Justice's Bureau of Narcotics Enforcement, have investigated this matter and provided California-based cost savings information relating to Senate Bill 484. I won't repeat that information here. Suffice to say there was an equivalent proportional cost savings realized in Oregon (*i.e.*, less meth cooks and smurfers sent to prison, less meth labs to clean up, etc).⁷

Instead, what I will address is a cost concern that never materialized in Oregon, namely the potential impact on the Oregon equivalent of Medi-Cal and Healthy Families.

A part of the long parade of horrors offered up by the pharmaceutical and retail associations in opposition to Oregon's prescription-only law was the cost that would be incurred by the State due to a projected onslaught of Oregon Health Plan and Healthy Families folks going to the doctor or hospital to obtain prescriptions for pseudoephedrine. Like the rest of the items in the parade of horrors, it just never happened.⁸

During the hearing on Senate Bill 484 before the Public Safety Committee, Senator Cedillo asked about an important corollary to this issue: What are the potential adverse consequences on the poor?

Because Oregon's prescription-only law has been in place for almost three years with little to no public outcry, I decided we should find out specifically if there has been any particular identifiable disparate impact on the poor.

Therefore, I asked the staff of the Oregon Criminal Justice Commission to make inquiries (they serve as staff to the Oregon Meth Task Force). They were able to make contact with the directors of key service providers, and confirmed there was simply no disparate impact. By way of example, the Director of Northwest Human Services, which runs free clinics and homeless shelters in Salem, Oregon, checked with his clinic and shelter managers. The response: "We haven't heard a peep from either the patients or the providers since the change to pseudoephedrine. There are so many good alternatives that it isn't an issue."

⁷ There are significant economic savings realized by many others beyond the State itself, such as costs savings to property owners and local governments. Furthermore, this also doesn't take into account the avoidance of the ultimate price paid by the environment, public safety, and drug endangered children. But, of course, your focus is on the State budget.

⁸ With respect to impact on Medicaid, a letter from the Oregon Department of Human Services, which administers that program in Oregon, indicates the total economic impact on Medicaid from moving pseudoephedrine back to prescription-only to be \$7,780 per year. The letter can be viewed at: <http://www.oregondec.org/CASB484/DHS.pdf>. With respect to hospitals, a letter from the Oregon Chapter of the American College of Emergency Physicians (OCEP) indicates there was virtually no impact whatsoever. The letter can be viewed at: <http://www.oregondec.org/CASB484/ACEP.pdf>.

4. Meth Use Trends

As you may already know, the federal government recently released an updated Arrestee Drug Abuse Monitoring (ADAM) Program report.⁹

Among other things, ADAM II confirms what Oregon's own data has been showing for a couple years: Unlike California, meth use trends are down dramatically in Oregon:

- From the Executive Summary: "In Sacramento the proportion of arrestees involved in acquiring methamphetamine in the prior 30 days remains high (26%), unchanged from 2007, but in Portland reported acquisition is significantly lower (13%) than 2007 levels (23%)."
- From the Conclusion: "Methamphetamine remains largely a regional phenomenon in this population and declines significantly in one of the ADAM II western sites (Portland) from 2007 (20% positive) to 2008 (15% positive). Thirty five percent of Sacramento arrestees test positive in 2008, representing no statistically significant change from 2007."

I have also attached a series of slides showing Oregon drug arrest trends, which are down significantly for the first time in many years. But it is not all drugs arrests that are down. In fact, the number of arrests for most drugs of addiction in Oregon are either flat or slightly up. The only exception is meth, which is solely responsible for the overall decline, as can be seen in the attached charts.

Although I do not yet have any direct proof that Oregon's pseudoephedrine control laws have led to this additional positive result (and therefore I am not making such a claim), it is certainly worth noting the difference in meth use trends in Oregon, as compared to California.

Attachments: Three-page PDF of spreadsheet (data sheet and two charts)
Three-page PDF of Oregon drug arrest trends

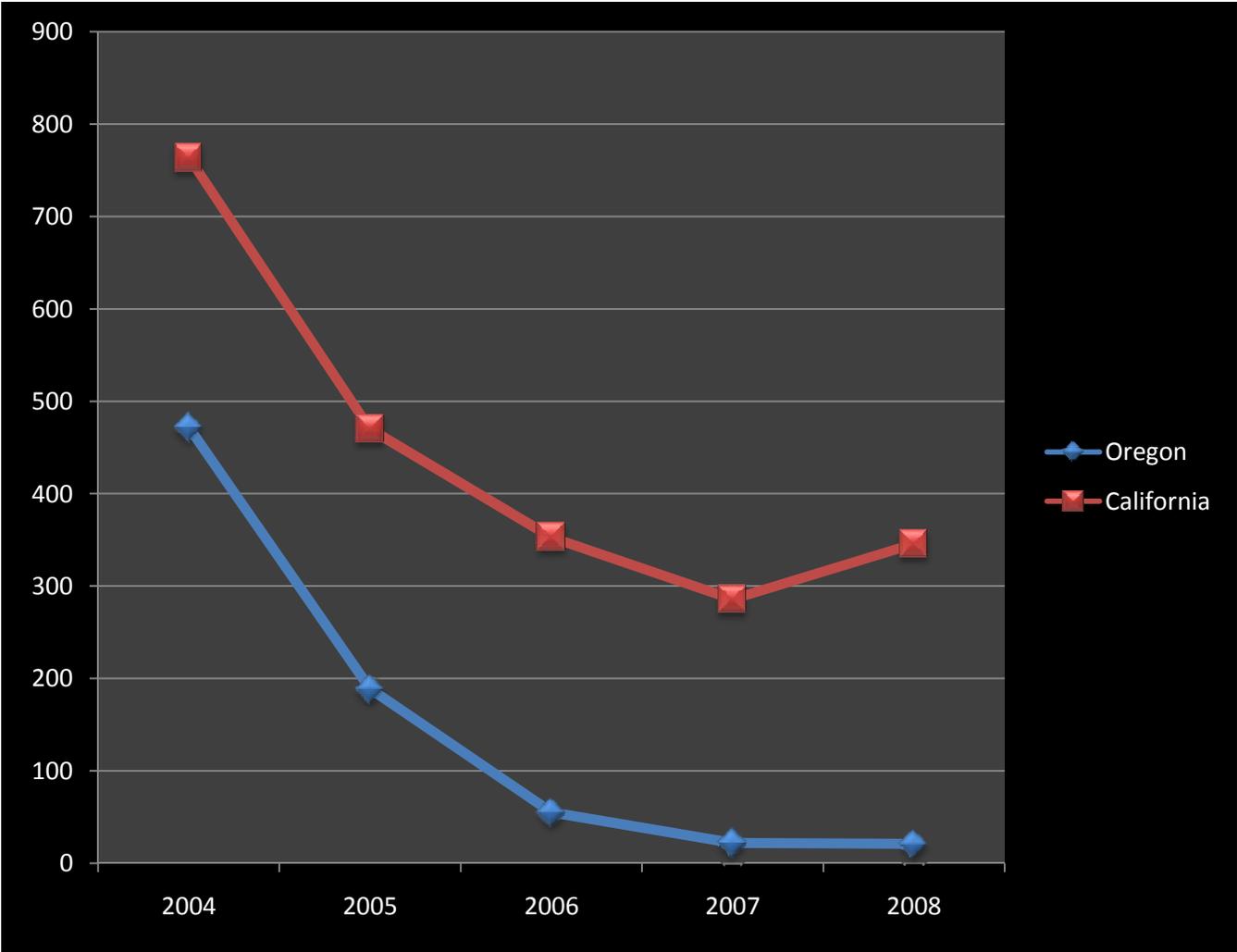
⁹ The full report can be viewed here: <http://www.whitehousedrugpolicy.gov/publications/pdf/adam2008.pdf>.

Methamphetamine Lab Incidents (per EPIC - all categories)

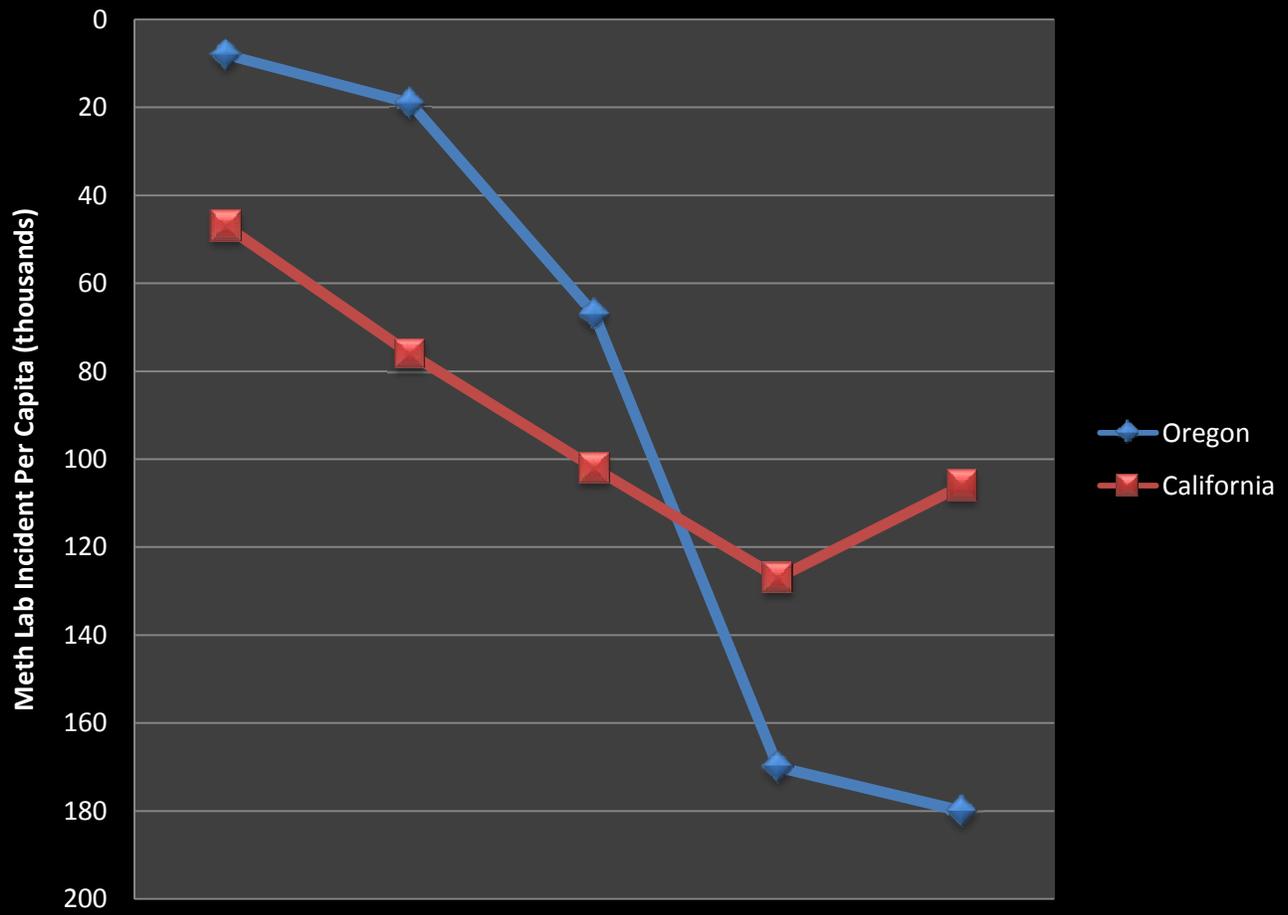
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Oregon	472	189	55	22	21
	S-Glimit	S-C5lite	S-C5	S-C3	S-C3
California	764	470	353	286	346
	S-Glimit	S-Glimit	S-Glimit	F-C5lite	F-C5lite

Methamphetamine Lab Incidents Adjusted for Population (incident per population in thousands)

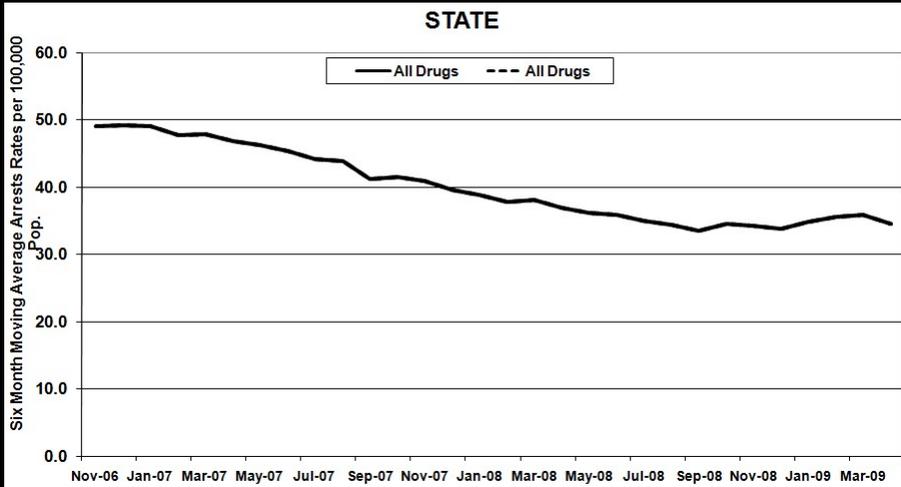
OR labs/pop	472/3576262	189/3621939	55/3680968	22/3735549	21/3790060
CA labs/pop	764/35629666	470/35885415	353/36121296	286/36377534	346/36756666
Oregon	8	19	67	170	180
California	47	76	102	127	106



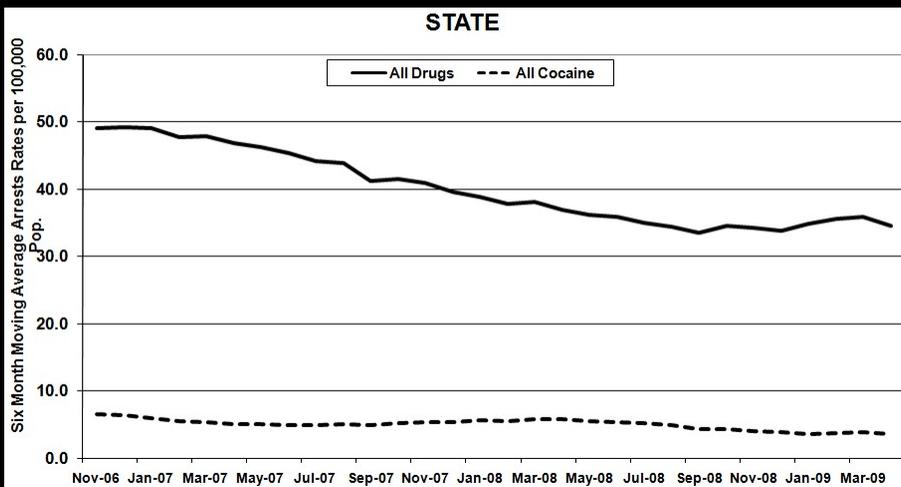
Meth Lab Incidents Adjusted for Population



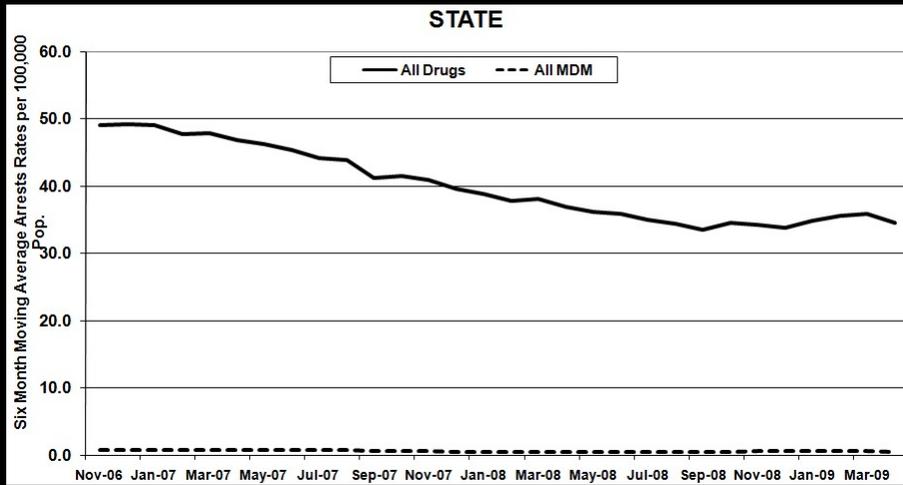
OR Drug Arrests - All



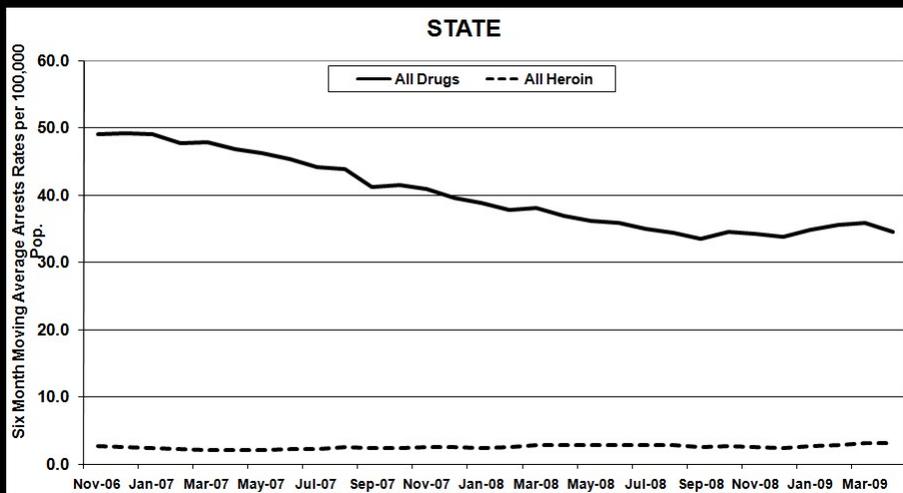
OR Drug Arrests - Cocaine



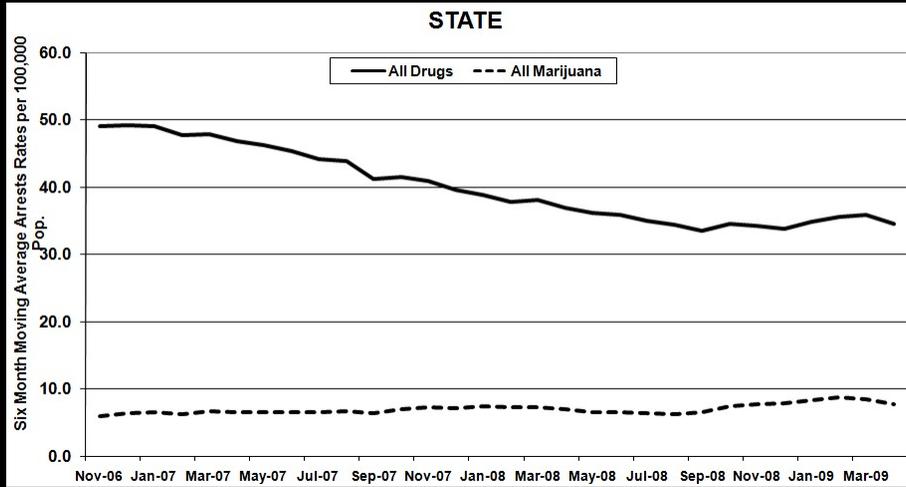
OR Drug Arrests - MDM



OR Drug Arrests - Heroin



OR Drug Arrests - Marijuana



OR Drug Arrests - Meth

