

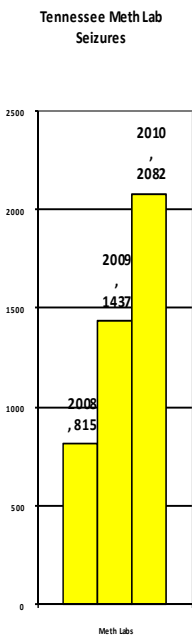
PROPOSAL TO ELIMINATE METH LABS IN TENNESSEE BY RETURNING PSEUDOEPHEDRINE TO PRESCRIPTION-ONLY STATUS

I. INTRODUCTION

2010 statistics show that methamphetamine abuse and addiction in Tennessee have never been greater. The State has experienced substantial increases in meth lab seizures every year since 2007. These increases occurred even after Tennessee's progressive lawmakers declared war on methamphetamine by enacting the *Meth Free Tennessee Act of 2005*, and despite enhanced law enforcement efforts to actively attack the problem. As of today, a record number of state officers (1761) have been trained to safely respond and dismantle meth labs in the State. In addition, a comprehensive electronic precursor tracking system, the Tennessee Methamphetamine Intelligence System (TMIS), was created and implemented to identify and prosecute individuals involved in the illegal manufacture of the drug. Despite, arresting and prosecuting a greater number of methamphetamine offenders, and educating the public about the dangers of meth, Tennessee is still losing the battle.

With current manufacturing methods, methamphetamine cannot be produced without pseudoephedrine. The purpose of this proposal is to present a workable solution to the methamphetamine problem. If common-sense restrictions are imposed on access to the primary ingredient used to make the drug, the manufacture of methamphetamine in Tennessee can be eliminated or greatly reduced. This simple solution will minimize the devastating consequences of meth addiction and provide both physical and economic protection to the citizens of Tennessee.

II. IDENTIFICATION OF THE METHAMPHETAMINE PROBLEM IN TENNESSEE



Legislative History Prior to 1976, pseudoephedrine, the main ingredient needed to make meth, was a controlled substance and required a prescription from a doctor. Ultimately it became apparent that the manufacturing of meth in Tennessee, due to the availability and ease in obtaining pseudoephedrine, was at epidemic proportions. The state legislature responded by passing the *Meth Free Tennessee Act of 2005* requiring that pseudoephedrine be sold only behind the pharmacy counter. Likewise, Congress passed the federal *Combat Meth Act* in 2005 with similar restrictions.

Increase in Clan Lab Seizures During 2006 and 2007, this legislation, along with an aggressive, comprehensive effort supporting law enforcement, was instrumental in reducing the number of meth labs in Tennessee. However, the number of labs has steadily increased during the past three years due to the

sophistication and determination of illicit meth makers who are exploiting weaknesses in these laws.

In 2008, 2009, and 2010, Tennessee experienced increases in methamphetamine production and distribution. In 2010, law enforcement in Tennessee seized, dismantled, and disposed of more than 2,082 hazardous methamphetamine labs. This is the largest number of labs ever seized in one year. Intelligence analysts predict there will be as many as 2,400 clandestine meth labs seized in Tennessee next year. Obviously, law enforcement is not seizing all the labs that exist. Regardless, this trend is ominous and reflects the increasing grip methamphetamine is placing on our state and its citizens.

The El Paso Intelligence Center (EPIC) is the intelligence arm of the DEA that monitors and tracks all methamphetamine related information nationally and internationally. According to EPIC, Tennessee's experience is part of a national trend. In 2009, EPIC recorded a nationwide increase of 2,751 meth lab incidents which was a 36.7% increase in comparison to 2008. National clandestine meth lab seizures have surpassed the 10,000 mark in each of the last two years. This represents the largest totals since state and federal legislation restricting pseudoephedrine was passed in 2005-2006. Missouri, Tennessee, and Indiana take the top three slots for the most meth lab seizure incidents in 2010.

The illicit production and use of methamphetamine is a nationwide problem which imposes financial burdens on individuals, communities, and the criminal justice system. Taxpayer money spent on addiction treatment, medical care, foster care, environmental clean-ups, lost wages and productivity, and the criminal justice system are enormous. In February 2009, the RAND Corporation released a study on the economic costs of the methamphetamine problem.¹ It concluded that methamphetamine abuse costs the country \$23.4 billion per year. **Tennessee's annual cost due to methamphetamine is over \$1 billion per year** (see Appendix C), based upon the number of meth labs seized in the state compared to the national number. The study also found that, "Law enforcement and the criminal justice system bear some of the greatest financial burden, making up more than 15% - \$4 billion - of the total annual cost. . . . 47% of county sheriffs in 2007 reported that meth remains their #1 drug problem." Further, these costs have likely increased since the study's release. At the 2009 DEA Diversion Conference, it was reported that nationwide pseudoephedrine sales had increased to \$1 billion in 2008. All pseudoephedrine is manufactured outside the United States and the importation of pseudoephedrine has nearly doubled since 2005 (2005: 382,000 kilograms; 2010: 650,000 kilograms).

Shake and Bake or One-Pot Method The rise in meth lab seizure incidents in Tennessee can be attributed to two factors: Shake and Bake (or One-Pot) Manufacturing Method and Smurfing.

¹ *Economic Study Estimates Meth Abuse Costs the U.S. \$23.4 Billion*, the Rand Corporation Meth Project 2005 – Released February 2009

Meth cooks are increasingly using the One-Pot Manufacturing Method, commonly referred to as Shake and Bake. This simple method has increased the amount of meth addicts capable of manufacturing their own meth. It currently accounts for about 87.3% of all meth lab seizures across the state. The benefits of this production method are that smaller amounts of pseudoephedrine are needed; it cooks faster, requires less chemicals and equipment, and allows for greater mobility of the lab. Unfortunately, the risk of fire and explosion increases greatly. The process includes mixing a highly flammable solvent, such as ether or camping fuel, with lithium and water in a plastic soda bottle. Mixing the lithium and the water together starts a chemical reaction that creates fire. A piece of burning lithium can easily burn a hole in the side of the bottle, allowing oxygen to rush in and causing the bottle to explode.

Smurfing Although the illicit drop in clandestine labs from 2005 thru 2007 was attributable to aggressive law enforcement efforts along with federal and state legislation restricting the sale of pseudoephedrine products, it is apparent that meth manufacturers have adapted. They are circumventing the laws by using smurfs. Smurfs are individuals who go from store to store and buy, or enlist others to buy, legal amounts of pseudoephedrine. While cumulatively these purchases violate the law, the smurfers avoid detection by making multiple purchases. Even electronic tracking systems that incorporate a “stop sale” mechanism are easily defeated by using multiple ids or accomplices, to purchase necessary amounts. Smurfers purchase just under the legal limit at each store until they have enough pseudoephedrine to make meth. Law enforcement officers report that currently in Tennessee, smurfs resell pseudoephedrine to meth manufacturers for \$33-\$100 per box.

According to NDIC’s *National Drug Threat Assessment of 2010*², “The increase in domestic production was realized primarily in small-scale methamphetamine laboratories throughout the country, especially in the Southeast Region; . . . The increase in domestic methamphetamine production in 2008 and 2009 was fueled primarily by individuals and criminal groups that organized pseudoephedrine smurfing operations . . . Smurfing has become the primary means by which meth producers acquire pseudoephedrine.”

The National Methamphetamine Pharmaceuticals Initiative *Meth Update*³ reported, as of June 2010, that domestic meth labs are on the rise fueled by smurfing operations. “Retail sales “tracking” databases have proven to be ineffective in preventing these domestic labs due to the sheer number of smurfs, the use of false identifications, and many small purchases . . . for use in the “one pot” method of manufacturing methamphetamine.”

Suspicious Pseudoephedrine Purchases TMIS, the electronic tracking system used in Tennessee, tracks suspicious pseudoephedrine purchases. A purchase is deemed suspicious by TMIS if the purchaser has been arrested or convicted of a methamphetamine offense or has been encountered by law enforcement officers at a methamphetamine site. Since 2008, the number of pseudoephedrine sales in our state has steadily increased (2008: 1,280,386; 2009: 1,404,007; 2010: 1,555,299). Approximately 57.25% of these purchases are considered

² *National Drug Threat Assessment of 2010*, National Drug Intelligence Center

³ *Meth Update*, page 11, as of June 2010, National Methamphetamine Pharmaceuticals

suspicious for smurfing activity. In other words, over half of the individuals buying pseudoephedrine in the State have a history of committing methamphetamine offenses or have been previously questioned by law enforcement at a methamphetamine crime scene.

Mississippi made pseudoephedrine a controlled substance last year. The impact of this action on methamphetamine manufacturers is clear. Law enforcement there is finding significantly fewer labs in the state and TMIS is documenting that many are traveling to Tennessee to obtain pseudoephedrine. (See Appendix D).

Although aggressive law enforcement efforts and tracking of pseudoephedrine purchases are constant and ongoing, it has become apparent that the only way to stop smurfing is to return pseudoephedrine to a prescription-only drug. In fact, smurfing has created an entirely new criminal industry for the overburdened justice system to absorb. The lure of quick and easy cash has enabled organized crime groups to recruit college students, homeless, unwitting elderly, and drug addicts to buy and resell pseudoephedrine.

Children at Risk Drug endangered children (DEC) are defined as those children who suffer physical or psychological harm or neglect resulting from exposure to illegal drugs, persons under the influence of illegal drugs, dangerous environments where drugs are being manufactured, or access to chemicals used to make drugs. When methamphetamine is the drug involved, these harms may include injury from explosion, fire, toxic chemicals found at clandestine lab sites, physical abuse, sexual abuse, medical neglect, and lack of basic care. (Appendix E)



According to the Tennessee Department of Children's Services, 484 children were removed from meth homes in 2010, up from the 288 reported in 2009. Since 2003, law enforcement has reported to TMIS that more than 1,367 children have been rescued from meth labs. This is often a forgotten element when considering the effects meth labs have on our society. The Department of Children's Services reports an average cost of \$106 for keeping a child in foster care for one day, or \$38,690 per child for one year. Although this translates into a tremendous economic burden to the state, the real transgression is the psychological and medical injury to those children. The long term impact is unknown, but will most likely result in health, learning, and social disabilities.

The vision of the Tennessee Alliance for Drug Endangered Children is to ensure that every child in this state has the opportunity to experience a safe and healthy childhood free from the effects of drug exposure. If for no other reason than to protect and defend these children, a solution must be found to the methamphetamine dilemma in Tennessee.

Environmental/ Contamination Issues The clandestine manufacture of methamphetamine presents a significant threat of contamination to the environment. The explosive solvents, toxic chemicals, and noxious fumes contaminate air, water, and soil. The removal and disposal of these contaminants is not only dangerous, it is expensive. The annual

cost to state and local agencies for cleanup is in the millions and that does not account for further remediation costs to the innocent land/homeowner whose property was contaminated. A single home clean up can run between \$5,000 and \$25,000. The consequences for meth waste, if unattended, can be even more harmful or even deadly to children and the unwitting public, not just the meth cook.

Economic Loss The taxes paid by the citizens of Tennessee and the ever present economic crisis of balancing the state's budget, are additionally burdened by the economic losses created by the manufacturing of methamphetamine. Some of the costs borne by the state and federal governments due to methamphetamine abuse and addiction in Tennessee include:

- Drug endangered children removed from homes and placed in foster care cost taxpayers \$106 per day or \$38,690 per child a year.
- Environmental and hazardous materials clean up of the lab is approximately \$2,500. This does not include the clean up costs for the property owner which starts at \$1,000 for testing and \$5,000-\$25,000 for clean up.
- DEA's cost for clean up in 2010 was \$20 million.
- Specialized training and equipment for law enforcement responding to hazardous lab sites costs taxpayers approximately \$550,000 per year.
- Overtime for law enforcement working on meth labs costs on average \$250,000 or more per year.
- Cost of prosecutors and judges involved in meth cases; and defense attorneys provided for indigent offenders.
- Treatment for meth addicts.
- Meth related burns account for 1/3 of the burn patients at Vanderbilt. On average, it costs \$10,000 per day to treat one burn victim in the Vanderbilt Regional Burn Center. In 2010, the cost for one patient reached nearly \$1 million. 50% of meth offenders are indigent with no form of health care.
- Loss of jobs and productivity.
- Incarceration of convicted meth offenders at approximately \$47,000 per year, per inmate. This is significantly increased by health care for meth offenders.

According to the *RAND Corporation Study* the estimated annual meth related cost to the nation was \$23.4 billion. With Tennessee having over 7% of the nation's meth lab seizures in recent years, it is estimated that the cost to the citizens of Tennessee is over \$1 billion annually. In short, methamphetamine abuse and addiction in Tennessee presents a huge economic burden to this state; one which the state and local communities can no longer afford.

III. THE SOLUTION - This proposal solicits assistance from the legislative and executive bodies of Tennessee to pass a law returning pseudoephedrine to a prescription-only drug.

It is clear that present efforts are insufficient in addressing the problem. With the staggering costs to children, citizens, communities, environment and taxpayers Tennessee cannot delay. The solution presented by lobbyists and special interest groups for the pharmaceutical industry is to use an electronic tracking system that can stop the sale of pseudoephedrine if the purchaser exceeds the legal limit. The states currently using this system can attest to its failure. Lab seizures have increased in every state that has electronic tracking systems. Supporting the profits of the drug companies are creating an expense for people.

Other States Making Pseudoephedrine a Prescription Drug Oregon and Mississippi have passed laws requiring consumers to have a prescription from a doctor in order to purchase pseudoephedrine. Oregon has reported a complete elimination of smurfing and a near elimination of meth labs following enactment of the law. Mississippi's law was passed in 2010 and statistics already show a marked decrease (76%) in meth lab incidents. Many other states such as Indiana, Missouri, Kentucky, Nevada, Kansas and California are also looking at returning pseudoephedrine to a prescription-only drug status. Tennessee, being second in the nation in meth lab seizure incidents, needs to take a strong stand and join Mississippi and Oregon in eliminating meth labs.

No one denies that returning pseudoephedrine to a prescription-only drug will result in the eradication of meth labs. (See Appendix-F) Even the drug companies do not contest this result. Instead, in an effort to maintain sales and profits, drug companies argue for additional law enforcement. Tennessee has developed an immensely effective investigative tool for law enforcement. The result is easily quantified by a comparison of lab seizure incidents (2,082) to meth lab arrests (1,835). With a solvability rate of 88%, the problem in Tennessee is not law enforcement finding meth labs or the offenders. It is stopping the production of the drug. E-tracking simply has not proven to be an effective solution for meth manufacturing. In 2008, Kentucky was the first state to use this type of system and meth lab seizures have increased 65%. Missouri, which has led the nation in meth lab seizures for the past seven years, implemented this system in 2010. Consequently, lab seizures increased, and 26 local jurisdictions encompassing 122 pharmacies passed ordinances requiring a prescription for pseudoephedrine. In addition, 200 individual pharmacies have voluntarily chosen to require a prescription. States that use this system have seen an increase in meth labs without a corresponding increase in arrest rates.

Along with the successful elimination of smurfing and near elimination of meth labs, Oregon, Mississippi and the 26 jurisdictions in Missouri requiring a prescription for pseudoephedrine, report that there has been no public outcry about returning pseudoephedrine to a prescription-only drug. (See Appendix – G)

Any delay in action does nothing but postpone the inevitable human and environmental devastation and destruction which comes at a huge cost. Tennessee has received national recognition as an innovative leader to combat the meth scourge. The fight against meth in the state is requiring another step forward.

The Opponents

The Consumer Healthcare Products Association (CHPA), representative for the pharmaceutical industry along with other special interest surrogates, oppose to any rescheduling of pseudoephedrine. In 2005, CHPA opposed Tennessee's version of e-tracking (TMIS), limiting sales of pseudoephedrine to pharmacy only. Official statistics and well documented facts from nationwide agencies have refuted the misinformation presented by industries and interest groups.

More recently, the PR firm representing CHPA sent out memorandums to members of the media; followed by a series of meetings with editorial boards and representatives from the PR firm and CHPA. Much of the information contained in the memo or supporting documentation presented to the media is simply misleading or inaccurate.

IV. CONCLUSION

The societal costs of methamphetamine are exorbitant. Protecting the children and citizens of Tennessee by providing an acceptable solution for the complete prevention of meth labs, needs to be a priority to prevent further economic, physical, emotional, and environmental devastation to the State. Therefore, law enforcement recommends the legislative and executive bodies of Tennessee act by returning pseudoephedrine to a prescription-only drug. Law enforcement's interest is not economic. It is simply for the safety and welfare of the public. The ability to conquer the meth scourge, depends largely on arming the State with the appropriate tools to win the battle.

Appendix A - Chart on Tennessee Lab Incidents, 1999-2010

Appendix B - Chart on Suspicious Purchases from Other States

Appendix C – Chart on National and Tennessee Cost from Rand Corporation Study of 2005

Appendix D - Chart on Suspicious Purchases from Mississippi

Appendix E - Impact on Meth Exposed Children

Appendix F – Charts on the Comparison of E-tracking States to Oregon

Appendix G – Additional Reference Materials