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1-1-2006

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### Recommended Citation

O'Connor, Jean C.; Chriqui, Jamie F.; and McBride, Duane C. (2006) "Developing Lasting Legal Solutions to the Dual Epidemics of Methamphetamine Production and Use," *North Dakota Law Review*: Vol. 82 : No. 4 , Article 4.

Available at: <https://commons.und.edu/ndlr/vol82/iss4/4>

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# DEVELOPING LASTING LEGAL SOLUTIONS TO THE DUAL EPIDEMICS OF METHAMPHETAMINE PRODUCTION AND USE\*

JEAN C. O'CONNOR,<sup>†</sup> JAMIE F. CHRIQUI,<sup>††</sup> AND DUANE C. MCBRIDE<sup>†††</sup>

## I. INTRODUCTION

Usually, when those actively engaged in the process of making new laws and policies talk about a problem or an issue “catching fire,” they are speaking figuratively about the way in which an idea for policy change spreads and legislative changes are adopted. Unfortunately, in the case of methamphetamine, clandestine home laboratories, where the drug is manufactured, have actually caught fire in recent years<sup>1</sup> and created other significant threats to health and safety.<sup>2</sup> These events have drawn to the attention of the United States public, as well as local, state, and federal law makers,

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\*Acknowledgements: This paper was prepared under National Institute of Justice grant number 2005-IJ-CX-0028 to Andrews University entitled, *Controlling Methamphetamine Precursors: From Policy to Practice*. The views presented in this report are those of the authors and do not, necessarily, reflect the position, views, or opinions of the National Institute of Justice or those of the authors' employers. The authors wish to thank the following individuals for their assistance and support: Sandra Woerle (NIJ Program Officer for this project), Hananalori Bates (The MayaTech Corporation), Carissa Baker (The MayaTech Corporation), Shelby S. Eidson, J.D. (The MayaTech Corporation), Rachel Bishop, M.S.W. (Andrews University) and Curt Vanderwaal, Ph.D. (Andrews University), and Yvonne Terry-McElrath, M.S. (University of Michigan).

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1. *Deputies Blame Explosion on Meth Lab*, ORLANDO SENTINEL, Sept. 19, 2006, at G2; Brett Clarkson, *Explosion Leads Cops to Meth Lab*, TORONTO SUN, Nov. 19, 2006, at 9.

2. NAT'L INST. ON DRUG ABUSE, NAT'L INST. OF HEALTH, PUBL'N No. 06-4210, RESEARCH REPORT SERIES: METHAMPHETAMINE ABUSE AND ADDICTION 4-6 (2006), available at <http://www.drugabuse.gov/PDF/RRMetham.pdf> [hereinafter METHAMPHETAMINE ABUSE AND ADDICTION].

the unnecessary dual epidemics of methamphetamine production and use.<sup>3</sup> The attention resulted in countless legislative proposals at all levels of government, and on March 9, 2006, President George W. Bush signed<sup>4</sup> the Combat Methamphetamine Epidemic Act (CMEA)<sup>5</sup> as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Improvement and Reauthorization Act of 2005.<sup>6</sup>

The CMEA amends the Controlled Substances Act (CSA)<sup>7</sup> by restricting the amount of essential methamphetamine precursors that can be purchased at retail, funds state and local law enforcement activities related to methamphetamine, and contains provisions intended to address methamphetamine as part of the illegal global drug trade.<sup>8</sup> In lauding the bill's passage, United States Drug Czar John Walters said the CMEA would "turn off the spigot" of methamphetamine in this country.<sup>9</sup> But, while it does clearly mark a significant development in the federal law, the CMEA, which primarily aims the reduction of the methamphetamine and methamphetamine precursors supply, is not the only approach needed to combat the dual methamphetamine epidemics of production and use. As the patterns of the drug's production and use have changed, so must the legal approaches to controlling methamphetamine continue to evolve.

The CMEA is only one of many federal and state laws related to methamphetamine that have been adopted over the past twenty years and, alone, does not necessarily represent a complete approach to addressing what is likely to be methamphetamine's continuing and far-reaching consequences for the criminal justice system, public health, healthcare, child protective services, schools, and communities.<sup>10</sup> Adhering to the provisions indicating a clear intent not to preempt states found in other sections of the federal statutes on controlled substances,<sup>11</sup> the CMEA, like many past

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3. Public Broadcasting Station (PBS), Frontline: The Meth Epidemic, Frequently Asked Questions, <http://www.pbs.org/wgbh/pages/frontline/meth/faqs/> (last visited Dec. 27, 2006).

4. Press Release, Office of the Press Sec'y, President Signs H.R. 3199 and S. 2271 (Mar. 9, 2006), available at <http://www.whitehouse.gov/news/releases/2006/03/20060309-9.html>.

5. Combat Methamphetamine Epidemic Act of 2005, Pub. L. No. 109-177, 120 Stat. 256 (codified as amended at 21 U.S.C. §§ 802-844 (2006)).

6. USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192.

7. Controlled Substances Act, 21 U.S.C. §§ 801-971 (2006).

8. Combat Methamphetamine Epidemic Act, H.R. 3199, 109th Cong. § 711 (2006).

9. Press Release, Office of Nat'l Drug Control Pol'y, President Bush Signs USA PATRIOT Act: Anti-Meth Provisions Take Aim at Methamphetamine Production, Trafficking, Use (Mar. 9, 2006), available at <http://www.whitehousedrugpolicy.gov/NEWS/press06/030906.html>.

10. METHAMPHETAMINE USE AND ABUSE, *supra* note 2, at 4-6.

11. 21 U.S.C. § 903 (2006).

federal efforts to address methamphetamine, leaves significant challenges that will likely only be addressed through further state or local action.

To identify what further state action is needed, Part II of this article summarizes the multi-faceted and multi-jurisdictional nature of the methamphetamine problem in the United States. Part III examines the current state of the federal law, as well as past legal approaches of the federal government to control the production and use of methamphetamine. Part IV looks at recent state efforts to control methamphetamine production and explores the comprehensiveness of these efforts. And lastly, Part V draws from the findings in the other parts to propose that continuing the development of novel legal solutions to the dual methamphetamine epidemics of production and use will depend on a long-term commitment to interdisciplinary and cross-jurisdictional approaches by all levels of government.

## II. METHAMPHETAMINE AS A MULTI-JURISDICTIONAL AND MULTI-FACETED PROBLEM

A highly addictive, long-lasting central nervous system (CNS) stimulant,<sup>12</sup> like many other synthetic drugs, methamphetamine appears in a variety of forms, including powder, crystal, tablets, and can be swallowed, snorted, injected or smoked. The methamphetamine found in the United States originates from one of three sources: (1) importation of the finished form of the drug from Mexico and Asia, (2) the diversion of levo-methamphetamine, a legally, commercially produced ingredient in pharmaceuticals, or (3) the domestic production of illicit dextro-methamphetamine and dextro-levo methamphetamine made with either imported precursor chemicals or domestically purchased precursors.<sup>13</sup> In the United States, the production and use of methamphetamine are considered by some to have reached epidemic proportions.<sup>14</sup> Although little empirical information exists on the complex relationship between domestic methamphetamine manufacturing and use rates, the two seem to go hand in hand and call for comprehensive solutions that both address the regional variation of the drug and that reach across jurisdictions and borders.

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12. *Methamphetamine Abuse: Hearing Before the Subcomm. on Labor, Health and Human Services, Education, and Related Agencies of the S. Comm. on Appropriations, 109th Cong.* (2005) (statement of Nora D. Volkow, Director, National Institute on Drug Abuse), available at <http://www.drugabuse.gov/Testimony/4-21-05Testimony.html>.

13. JEAN C. O'CONNOR ET AL., FROM POLICY TO PRACTICE: A REPORT ON STATE METHAMPHETAMINE PRECURSOR LAWS AS OF OCTOBER 1, 2005 (2006) (unpublished report, on file with the Nat'l Inst. for Justice).

14. PBS, *supra* note 3.

## A. THE DUAL EPIDEMICS: METHAMPHETAMINE USE

According to the 2004 National Survey on Drug Use and Health, approximately 11.7 million Americans ages twelve and older reported trying methamphetamine at least once during their lifetime.<sup>15</sup> An estimated 1.4 million persons, or 0.6% of the population, aged twelve or older used methamphetamine within the past year.<sup>16</sup> Young adults between the age of eighteen and twenty-five were the most likely to use methamphetamine.<sup>17</sup> Although a relatively small proportion of people in the United States use methamphetamine—it is yet unclear whether methamphetamine use is rising overall—use prevalence trends among young adults and arrestees,<sup>18</sup> as well as emergency department visits and drug treatment admission data<sup>19</sup> indicate that methamphetamine is an increasingly significant drug problem in the United States, particularly in the West and Midwest regions of the country.<sup>20</sup> Rates of past year methamphetamine use were highest in the West and Midwest. Nevada (two percent), Montana (1.5%) and Wyoming (1.5%) had the highest rates of use.<sup>21</sup> Moreover, methamphetamine treatment admissions comprise eight percent of all primary substance abuse treatment admissions.<sup>22</sup>

Methamphetamine has significant health and social consequences that pose a substantial challenge to medical systems and communities.

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15. OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., PUBL'N NO. SMA 05-4062, RESULTS FROM THE 2004 NATIONAL SURVEY ON DRUG USE AND HEALTH: NATIONAL FINDINGS 232 (2005), *available at* <http://oas.samhsa.gov/nsduh/2k4nsduh/2k4Results/2k4Results.htm#toc> [hereinafter RESULTS FROM 2004].

16. OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., THE NSDUH REPORT, NATIONAL SURVEY ON DRUG USE AND HEALTH: STATE ESTIMATES OF PAST YEAR METHAMPHETAMINE USE 2 (2006), *available at* <http://oas.samhsa.gov/2k6/stateMeth/stateMeth.pdf> [hereinafter STATE ESTIMATES OF PAST YEAR METHAMPHETAMINE USE].

17. *Id.*

18. OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., PUBL'N NO. SMA 04-3964, RESULTS FROM THE 2003 NATIONAL SURVEY ON DRUG USE AND HEALTH: NATIONAL FINDINGS fig. 5.3 (2004), *available at* <http://www.oas.samhsa.gov/nhsda/2k3nsduh/2k3Results.htm#toc> [hereinafter RESULTS FROM 2003]; *see generally* ZHIWEI ZHANG, U.S. DEP'T OF JUSTICE, DRUG AND ALCOHOL USE AND RELATED MATTERS AMONG ARRESTEES 2003 5-28 (2004), *available at* <http://www.ncjrs.gov/nij/adam/ADAM2003.pdf>.

19. NAT'L INST. OF JUSTICE, THE DAWN REPORT: AMPHETAMINE AND METHAMPHETAMINE EMERGENCY DEPARTMENT VISITS, 1995-2002 1-3 (2004), *available at* <http://oas.samhsa.gov/2k4amphetamines.pdf>; OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN., THE DASIS REPORT: PRIMARY METHAMPHETAMINE/AMPHETAMINE TREATMENT ADMISSIONS: 1992-2002 1-3 (2004), *available at* <http://www.oas.samhsa.gov/2k4/methTX/methTX.pdf>.

20. STATE ESTIMATES OF PAST YEAR METHAMPHETAMINE USE, *supra* note 16.

21. *Id.*

22. OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN., THE DASIS REPORT: TRENDS IN METHAMPHETAMINE/AMPHETAMINE ADMISSIONS TO TREATMENT: 1993-2003 (2006), *available at* <http://drugabusestatistics.samhsa.gov/2k6/methTx/methTX.htm>.

Immediate physiological effects of methamphetamine use include increased respiration and heart rate, high blood pressure, hyper-physical activity, decreased appetite, hyperthermia, tremors, convulsions, strokes, and irregular heartbeat.<sup>23</sup> Use can also cause confusion, anxiety, delusions, hallucinations, paranoia, and aggressive behavior.<sup>24</sup> Long-term use of methamphetamine can result in addiction and a range of conditions, such as “meth mouth,” obsessive scratching, and anorexia.<sup>25</sup> Methamphetamine use or abuse can also result in death through collapse of the cardiovascular system and/or bleeding in the brain.<sup>26</sup>

Prolonged use of methamphetamine also is linked with dangerous and undesirable social behavior, such as child neglect, prenatal exposure, risky sexual behavior associated with the spread of HIV and other STDs, neglect of property, and criminal behavior.<sup>27</sup> Chronic substance abuse of all types by child caregivers is related to neglect of a child’s health and educational needs, increased behavioral problems among the affected children, and poverty and homelessness.<sup>28</sup> Methamphetamine use is associated with an increased risk of sexually transmitted infection.<sup>29</sup> Particularly troubling, methamphetamine users are at higher risk of being infected with HIV and of spreading HIV, and they are less likely to report behavior change in response to an HIV diagnosis.<sup>30</sup> In addition, there have been some preliminary findings that methamphetamine may affect the immune system in such a way that increases the probability of HIV infection following exposure.<sup>31</sup> Use of methamphetamine appears to increase the risk of violent behavior

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23. METHAMPHETAMINE ABUSE AND ADDICTION, *supra* note 2, at 4-6.

24. *Id.*

25. *Id.* at 5-6.

26. Nat’l Inst. on Drug Abuse, *NIDA InfoFacts: Methamphetamine 2* (2007), <http://www.drugabuse.gov/pdf/infofacts/Methamphetamine07.pdf> [hereinafter *NIDA InfoFacts*].

27. Shanta R. Dube et al., *Childhood Abuse, Neglect, and Household Dysfunction and the Risk of Illicit Drug Use: The Adverse Childhood Experiences Study*, 111 *PEDIATRICS* 564, 567-72 (2003).

28. *Id.*; see Joseph Semidei et al., *Substance Abuse and Child Welfare: Clear Linkages and Promising Responses*, 80 *CHILD WELFARE* 109, 112-13 (2001) (explaining that children from homes where there are substance abuse problems are more likely to be neglected); see also Catherine McAlpine, et al., *Combining Child Welfare and Substance Abuse Services: A Blended Model of Intervention*, 80 *CHILD WELFARE* 129, 130 (2001) (indicating that half of child welfare cases come from homes where there is parental substance abuse).

29. *NIDA InfoFacts*, *supra* note 26, at 2.

30. William A. Zule & David P. Desmond, *An Ethnographic Comparison of HIV Risk Behaviors Among Heroin and Methamphetamine Injectors*, 25 *AM. J. DRUG & ALCOHOL ABUSE* 1, 1 (1999).

31. Madhavan P.N. Nair et al., *Methamphetamine Modulates DC-SIGN Expression by Mature Dendritic Cells*, 1 *J. NEUROIMMUNE PHARMACOLOGY* 296, 296 (2006).

among users,<sup>32</sup> and methamphetamine trafficking is related to increased violence within communities.<sup>33</sup> Individuals who use methamphetamine are significantly more likely to be re-incarcerated for any type of crime or parole violation.<sup>34</sup> Over sixty percent of the counties surveyed reported that methamphetamine users accounted for increases in burglaries, robberies and domestic violence.<sup>35</sup>

## B. THE DUAL EPIDEMICS: METHAMPHETAMINE PRODUCTION

Methamphetamine manufacturing, too, has become considered a domestic crisis over the past five years. The federally sponsored Interagency Methamphetamine Availability Working Group estimated the total amount of methamphetamine manufactured in the United States to be somewhere between 98.3 to 131.2 metric tons.<sup>36</sup> The National Drug Intelligence Center (NDIC) has concluded that “the threat posed to the United States by the trafficking and abuse of methamphetamine is high and increasing.”<sup>37</sup> The drug is associated with psychopharmacological aggression effects,<sup>38</sup> production- and distribution-related violence,<sup>39</sup> and production-related toxicity issues that may affect drug manufacturers, others present at manufacturing laboratories (such as children), and law enforcement personnel involved in laboratory seizures.<sup>40</sup> Additionally, state and local law

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32. Ira Sommers & Deborah Baskin, *Methamphetamine Use and Violence*, 36 J. DRUG ISSUES 77, 77 (2006).

33. C. WEST HUDDLESTON III, U.S. DEPT. OF JUSTICE, DRUG COURTS: AN EFFECTIVE STRATEGY FOR COMMUNITIES FACING METHAMPHETAMINE 1 (2005), available at <http://www.ojp.usdoj.gov/BJA/pdf/MethDrugCourts.pdf>.

34. Jerome Cartier et al., *Methamphetamine Use, Self-Reported Violent Crime, and Recidivism Among Offenders in California Who Abuse Substances*, 21 J. INTERPERSONAL VIOLENCE 435, 435, 437-40 (2006).

35. ANGELO D. KYLE & BILL HANSELL, NAT'L ASS'N OF COUNTIES, THE METH EPIDEMIC IN AMERICA: TWO SURVEYS OF US COUNTIES: THE CRIMINAL EFFECT OF METH ON COMMUNITIES; THE IMPACT OF METH ON CHILDREN 2-3 (2005), available at [http://www.naco.org/Content/ContentGroups/Publications1/Press\\_Release/Documents/NACo-MethSurvey.pdf](http://www.naco.org/Content/ContentGroups/Publications1/Press_Release/Documents/NACo-MethSurvey.pdf).

36. NAT'L DRUG INTELLIGENCE CTR., PUBL'N NO. 2004-Q0317-002, NATIONAL DRUG THREAT ASSESSMENT 2004, 22 (2004), available at <http://www.usdoj.gov/ndic/pubs8/8731/8731p.pdf> [hereinafter NATIONAL DRUG THREAT ASSESSMENT 2004].

37. *Id.* at vi.

38. Joan E. Zweben et al., *Psychiatric Symptoms in Methamphetamine Users*, 13 AM. J. ADDICTIONS 181, 184-85 (2004).

39. See generally Duane C. McBride et al., *The Drugs-Crime Wars: Past, Present and Future Directions in Theory, Policy and Program Interventions*, in TOWARD A DRUGS AND CRIME RESEARCH AGENDA FOR THE 21ST CENTURY 97, 102 (2003).

40. Karen Swetlow, *Children at Clandestine Methamphetamine Labs: Helping Meth's Youngest Victims*, OVC BULL., June 2003, at 1, 3-5, available at <http://www.ojp.usdoj.gov/ovc/publications/bulletins/children/197590.pdf>; Natalie Vandeveld, *Clandestine Methamphetamine Labs in Wisconsin*, 66 J. ENVTL. HEALTH 46, 48 (2004).

enforcement officers recently identified methamphetamine as their greatest drug threat.<sup>41</sup>

The essential precursors to methamphetamine, such as ephedrine or pseudoephedrine, are found in common over-the-counter cold remedies that have historically been available in drug, convenience, and grocery stores, other household products, and common agricultural products. In turn, these compounds can be reduced to the illicit form of methamphetamine through a variety of simple laboratory extraction techniques. Domestic production of methamphetamine can be broken down into two types: large production facilities capable of producing ten or more pounds of the drug within one “cooking” cycle, referred to by the Drug Enforcement Administration (DEA) as “super labs,” and low-capacity or small toxic laboratories (STLs), often located in home environments.<sup>42</sup>

In 2003, a total of 9,815 methamphetamine laboratories were seized, including 143 “super labs” (1.4% of all laboratory seizures) and 9,672 STLs (98.6% of all laboratory seizures), across forty-six states.<sup>43</sup> “Super labs” account for only a small percentage of the total number of laboratories seized, but they also account for the majority of the domestically produced methamphetamine by quantity. Most “super labs” have been located in California.<sup>44</sup> STLs are particularly prevalent in California, Arkansas, Missouri, Indiana, Iowa, and Illinois.<sup>45</sup>

Because STLs are found in homes, vans, and trailers, they are particularly likely to pose a significant health and safety risk to communities and family members.<sup>46</sup> Children present where methamphetamine is being manufactured are especially at risk.<sup>47</sup> Between 2001 and 2003, the number of small-toxic laboratories (STLs) in the Great Lakes and the Southeast regions increased seventy-five percent (from 727 to 1,274 laboratories) and seventy-one percent (from 633 to 1,081 laboratories), respectively.<sup>48</sup> Although the total number of domestic methamphetamine laboratories seized has been declining since 2004, the total number of methamphetamine laboratories seized in 2006 was similar to the number seized in 2000.<sup>49</sup>

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41. Kyle & Hansell, *supra* note 35, at 5.

42. *Id.* at 8.

43. NATIONAL DRUG THREAT ASSESSMENT 2004, *supra* note 36, at 22.

44. *Id.* at 23.

45. *Id.*

46. Swetlow, *supra* note 40, at 2.

47. *Id.* at 3.

48. NATIONAL THREAT ASSESSMENT 2004, *supra* note 36, at 35.

49. See generally OFFICE OF NAT'L DRUG CONTROL POL'Y, PUSHING BACK AGAINST METH: A PROGRESS REPORT ON THE FIGHT AGAINST METHAMPHETAMINE IN THE UNITED STATES 2 (2006), available at <http://www.whitehousedrugpolicy.gov/publications/pdf/>



STLs still account for twenty percent of the methamphetamine consumed in the United States.<sup>50</sup> Despite declining, or at best steady rates, similar to methamphetamine use, domestic methamphetamine manufacturing remains a very significant problem with complex health, social, and criminal justice consequences.

The methamphetamine manufacturing process in either STLs or super labs can lead to explosions, fire, toxic fumes, and immediate environment and groundwater contamination.<sup>51</sup> Law enforcement officers, firefighters, and emergency medical professionals who respond to methamphetamine laboratory seizures are at particular risk of exposure to fumes and burns to their skin and respiratory passages.<sup>52</sup> First responders and law enforcement officers also may be intentionally exposed to harm through booby traps or incendiary devices left by manufacturers.<sup>53</sup> Of all of the types of events reported through the federal Agency for Toxic Substances and Disease Registry's Hazardous Substances Emergency Events Surveillance (HSEES) system, methamphetamine-related events are rare, but are the most likely to result in injury.<sup>54</sup> Children who live where methamphetamine is made are also at risk of abuse and neglect by methamphetamine-addicted caregivers,<sup>55</sup> and children exposed to hazardous and unsafe methamphetamine laboratory environments require significant on-going medical care, including treatment for lead poisoning, even after being removed from hazardous laboratory locations.<sup>56</sup>

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pushingback\_against\_meth.pdf [hereinafter PROGRESS REPORT] (indicating a decline in methamphetamine laboratory seizures since 2004).

50. *International Meth Trafficking: Hearing Before the Subcomm. on International Economic Policy, Export and Trade Promotion and the Subcomm. on Western Hemisphere, Peace Corps and Narcotics Affairs, S. Foreign Relations Comm.*, 109th Cong. 2 (2006) (statement of Karen P. Tandy, Administrator, Drug Enforcement Admin.), available at <http://www.dea.gov/pubs/cngrtest/ct062106.htm>.

51. METH Awareness & Prevention Project, *Meth Labs and Their Dangers* <http://www.mappsd.org/Meth%20Labs%20Overview.htm> (last visited Dec. 27, 2006).

52. Ctrs. for Disease Control & Prevention, *Public Health Consequences Among First Responders to Emergency Events Associated with Illicit Methamphetamine Laboratories—Selected States, 1996–1999*, 49 MORBIDITY & MORTALITY WKLY. REP. 1021, 1023 (2000), available at <http://www.cdc.gov/mmwr/pdf/wk/mm4945.pdf>; WASHINGTON/BALTIMORE HIGH INTENSITY DRUG TRAFFICKING AREA FUTURES UNIT, METHAMPHETAMINE: A UNIQUE THREAT TO LAW ENFORCEMENT 13 (2004), available at [http://www.hidta.org/programs/docs/040922\\_Meth\\_Report.pdf](http://www.hidta.org/programs/docs/040922_Meth_Report.pdf).

53. Carol Robinson, *Meth Labs Often Rigged to Explode, Say Federal Agents*, BIRMINGHAM NEWS, Sept. 25, 2006, at 1A, available at <http://www.al.com/news/birminghamnews/index.ssf?/base/news/1159175959306440.xml&coll=2>.

54. Ctrs. for Disease Control & Prevention, *supra* note 52, at 1021.

55. Sandra J. Altshuler, *Drug-Endangered Children Need a Collaborative Community Response*, 84 CHILD WELFARE 171, 173 (2005).

56. *Id.* at 174.

Given that the domestic manufacturing of methamphetamine depends primarily on access to precursors that until recently were found in a number of common household or industrial chemicals, methamphetamine production is related to the theft of these chemicals. Methamphetamine manufacturers that produce methamphetamine through STLs have been reported to engage in a practice known as “smurfing”—the theft or purchase of small quantities of methamphetamine precursors to accumulate sufficient quantities of precursors to make the drug.<sup>57</sup>

There are also reports in the substance abuse media, as well as national media, that methamphetamine use is related to identity theft, property crime, and violence.<sup>58</sup> Trafficking of methamphetamine and methamphetamine precursors, particularly those used in super labs, have been associated with gangs and gang violence.<sup>59</sup> Together with the fact that methamphetamine is more likely to be produced and used in rural environments where the manufacturing process is less likely detectable, the drug also strains social, health, and welfare systems of communities where resources may be limited.<sup>60</sup>

When the health, environmental, and social costs and consequences of methamphetamine use and production across the nation and within states are examined, it is clear that methamphetamine is a significant problem. Although regional variation does exist in the prevalence of the drug, its spread from west to east also makes it clear that the success of one jurisdiction may be dependent on another. Production, in particular, poses a threat to communities and families and a challenge for the variety of professionals and government agencies that are working to reduce or eliminate methamphetamine.

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57. *The Poisoning of Paradise: Crystal Methamphetamine in Hawaii: Hearing Before the Subcomm. on Crim. Just., Drug Pol’y and Human Resources of the H. Comm. on Gov’t Reform*, 108th Cong. 86 (2004) (statement of Mark Souder, Chairman, H. Comm. on Gov. Reform), available at [http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=98604.pdf&directory=/diskb/wais/data/108\\_house\\_hearings](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=98604.pdf&directory=/diskb/wais/data/108_house_hearings).

58. Kyle & Hansell, *supra* note 35, at 2; *Meth Use Linked to Identity Theft*, ALCOHOLISM & DRUG ABUSE WEEKLY, June 7, 2004, at 7; *White Collar Crime Up Among Drug Addicts*, ALCOHOLISM & DRUG ABUSE WEEKLY, Aug. 1, 2005, at 8; John Leland, *Meth Users, Attuned to Detail, Add Another Habit: ID Theft*, N.Y. TIMES, July 11, 2006, at A1.

59. NAT’L DRUG INTELLIGENCE CTR., PUBL’N. No. 2005-L0559-001, DRUGS AND GANGS FAST FACTS (2005), available at <http://www.usdoj.gov/ndic/pubs11/13157/index.htm>.

60. Denise C. Herz & Rebecca Murray, *Exploring Arrestee Drug Use in Rural Nebraska*, 33 J. DRUG ISSUES 99, 111-12 (2003).

### III. PAST AND CURRENT FEDERAL APPROACHES TO METHAMPHETAMINE

Amphetamine was originally synthesized in 1887 and methamphetamine, a type of amphetamine,<sup>61</sup> was synthesized in 1919 in Japan.<sup>62</sup> Closely related, both drugs were reportedly used during World War II and in other military conflicts in the mid-twentieth century to increase troop responsiveness.<sup>63</sup> Amphetamine was also sold in the United States as Benzedrine, an over-the-counter inhaler for asthmatics and allergy sufferers in the 1930s, and then offered in prescription tablet form in 1937 for a variety of medicinal purposes.<sup>64</sup> Both amphetamines and methamphetamines became widely prescribed in tablet form in the 1950s and 1960s for conditions such as obesity and depression.<sup>65</sup> By the mid-1960s, methamphetamine had been used by the military, trucking industries, and athletes and the drug was reportedly being abused by large numbers of Americans.<sup>66</sup> At the peak of use in 1967, approximately 31 million prescriptions were issued under the trade names Dexodrine and Methodrine.<sup>67</sup>

#### A. PAST FEDERAL EFFORTS TO CONTROL METHAMPHETAMINE

As the magnitude of the abuse became clear, the federal government sought to control methamphetamine, along with other drugs.<sup>68</sup> In 1970, the CSA was passed as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970.<sup>69</sup> The CSA, serving as an umbrella for all controlled substances law, placed a host of substances, including already regulated substances, under a single legal framework that divided illicit substances into five schedules based on the medical use, abuse potential, and safety of the substance.<sup>70</sup> Under the CSA, as amended in 1971, amphetamine and

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61. U.S. Drug Enforcement Admin., Methamphetamine, [http://www.usdoj.gov/dea/concern/meth\\_factsheet.html](http://www.usdoj.gov/dea/concern/meth_factsheet.html) (last visited Dec. 27, 2006).

62. MethamphetamineAddiction.com, *History of Methamphetamine*, [http://www.methamphetamineaddiction.com/methamphetamine\\_hist.html](http://www.methamphetamineaddiction.com/methamphetamine_hist.html) (last visited Dec. 27, 2006).

63. *Id.*

64. *Id.*

65. M. Douglas Anglin et al., *History of the Methamphetamine Problem*, 32 J. PSYCHOACTIVE DRUGS 137, 138 (2000), available at <http://amphetamines.com/methamphetamine/index.html>.

66. MethamphetamineAddiction.com, *supra* note 62.

67. Anglin et al., *supra* note 65, at 138.

68. James K. Cunningham & Lon-Mu Liu, *Impacts of Federal Ephedrine and Pseudoephedrine Regulations on Methamphetamine-Related Hospital Admissions*, 98 ADDICTION 1229, 1229-30 (2003).

69. 21 U.S.C. §§ 801-971 (2006).

70. U.S. Drug Enforcement Admin., The Controlled Substances Act, <http://www.usdoj.gov/dea/pubs/abuse/1-csa.htm> (last visited Dec. 27, 2006).

injectable methamphetamine were categorized as Schedule II drugs,<sup>71</sup> making them available only in limited circumstances with a prescription.<sup>72</sup> However, by the mid 1980s sub-cultures found primarily in California were producing methamphetamine illicitly.<sup>73</sup>

Congress has passed a series of at least seven major acts, starting with the Anti-Drug Abuse Act of 1988 (ADAA),<sup>74</sup> in attempts to control the sales of other precursors and penalize methamphetamine manufacturers and traffickers.<sup>75</sup> Since then, federal strategy to control methamphetamine has focused primarily on supply reduction through the control of methamphetamine's essential precursors, in what some have called the abandonment of the "flexible and innovative spirit" of the CSA.<sup>76</sup>

When methamphetamine use and production rates increased in the 1980s, Congress responded by enacting the ADAA.<sup>77</sup> The ADAA amended the CSA by requiring certain regulated organizations to maintain records of transactions involving bulk amounts of norpseudoephedrine and pseudoephedrine, two methamphetamine precursors.<sup>78</sup> The ADAA also required the United States Attorney General to maintain a program with both a domestic and international focus to limit the diversion of precursor chemicals and provided guidelines for the creation of bilateral narcotics agreements to reduce the trafficking of methamphetamine precursor chemicals.<sup>79</sup> In addition, it authorized the Director of the Bureau of Justice Assistance to make grants to states to help enforce state and local laws and assist programs that target domestic sources of controlled substances, such

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71. Schedules of Controlled Substances, Amphetamine, Methamphetamine and Optical Isomers, 36 Fed. Reg. 12734, 12734 (July 7, 1971).

72. 21 U.S.C.A. § 829(a) (1970). Methamphetamine still has some legal uses today and is sold in powder form under the trade name "Desoxyn." Merck Manuals Online Med. Library, Drug Names: Generic and Trade, <http://www.merck.com/mmhe/drugnames-index/trade/d.html> (last visited June 15, 2007).

73. See generally MethamphetamineAddiction.com, *supra* note 62 (discussing meth trends in California).

74. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (codified as amended in scattered sections of 21 U.S.C.).

75. *Id.*; Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789; Domestic Chemical Diversion and Control Act of 1993, Pub. L. No. 103-200, 107 Stat. 2333; Comprehensive Methamphetamine Control Act of 1996, Pub. L. No. 104-237, 110 Stat. 3099; Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, 112 Stat. 2681; Children's Health Act of 2000, Pub. L. No. 106-310, 114 Stat. 110; USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192.

76. David T. Courtwright, *The Controlled Substances Act: How a "Big Tent" Reform Became a Punitive Drug Law*, 76 DRUG & ALCOHOL DEPENDENCE 9, 9 (2004).

77. Anti-Drug Abuse Amendments Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (codified as amended in scattered sections of 21 U.S.C.).

78. 21 U.S.C. § 802(34)(G) and (K)(2006).

79. 21 U.S.C. § 872 (2006).

as precursor chemicals.<sup>80</sup> The ADAA also redefined the quantity that constitutes a substantial quantity of methamphetamine to trigger the mandatory minimum penalty for trafficking.<sup>81</sup> However, the ADAA did not regulate over-the-counter sales of ephedrine, pseudoephedrine, and phenylpropanolamine.

Shortly thereafter, Congress added N-methylpseudoephedrine and N-ethylpseudoephedrine to the list of precursor chemicals controlled under federal law, and through the passage of the Crime Control Act of 1990 (CCA),<sup>82</sup> it increased the sentencing level of offenses involving smokeable crystal methamphetamine.<sup>83</sup> The CCA also appropriated funds for federal law enforcement of precursor chemical provisions allowed for the federal assistance to state and local governments where methamphetamine could not be addressed using local resources.<sup>84</sup> In 1993, Congress passed the Domestic Chemical Diversion and Control Act (DCDCA),<sup>85</sup> which required certain persons and organizations to keep records of transactions involving controlled substances and certain methamphetamine precursors.<sup>86</sup> However, the DCDCA did not require records for transactions involving pseudoephedrine and methamphetamine production and use.

In an attempt to directly address methamphetamine, the Comprehensive Methamphetamine Control Act (CMCA) was enacted in 1996.<sup>87</sup> The CMCA has a number of seemingly important restrictions on methamphetamine and methamphetamine precursors. It increased the penalties for the illegal importation or exportation of controlled substances,<sup>88</sup> required the United States Attorney General to study measures to prevent the sales of agents used in methamphetamine production,<sup>89</sup> and added a penalty for persons who possess chemicals with the intent to manufacture or facilitate the manufacture of methamphetamine as imprisonment for up to ten years and/or a fine of up to \$30,000.<sup>90</sup> Additionally, the CMCA added iodine and hydrochloric gas as listed

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80. 42 U.S.C. §§ 3741-3766 (2006).

81. 21 U.S.C. § 841(b)(1)(viii) (2006).

82. Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (codified as amended in scattered sections of 21 U.S.C.).

83. 21 U.S.C. § 841(b) (2006).

84. Crime Control Act of 1990, Pub. L. No. 101-647, § 701(2)(B), 104 Stat. 4789, 4824.

85. Domestic Chemical Diversion and Control Act of 1993, Pub. L. No. 103-200 (codified as amended in scattered sections of 21 U.S.C.).

86. 21 U.S.C. § 822 (2006).

87. Comprehensive Methamphetamine Control Act of 1996, Pub. L. No. 104-237, 110 Stat. 3101 (codified as amended in scattered sections of 21 U.S.C.).

88. 21 U.S.C. § 959 (2006).

89. 21 U.S.C. § 872 (2006).

90. 21 U.S.C. § 843(d)(2) (2006).

chemicals;<sup>91</sup> added civil penalties for firms that supply precursor chemicals with “reckless disregard” to their potentially illegal uses;<sup>92</sup> limited the mail order of products involving ephedrine, pseudoephedrine, or phenylpropanolamine products;<sup>93</sup> established a Methamphetamine Interagency Task Force; and required the Secretary of Health and Human Services to develop a public health monitoring program to monitor methamphetamine abuse.<sup>94</sup>

However, the CMCA exempted sales of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retailers from the definition of regulated transaction.<sup>95</sup> The CMCA defined ordinary over-the-counter retail sales as the sale of not more than nine grams of pseudoephedrine or nine grams of phenylpropanolamine, in package sizes of not more than three grams of base of either product, and packaged in blister packs with each blister containing not more than two dosage units.<sup>96</sup> Under the Act, the United States Attorney General was permitted to limit the per transaction amount sold to twenty-four grams, but the law did not establish a limit on the amount of liquid pseudoephedrine or phenylpropanolamine that could be sold.<sup>97</sup> One exception was that liquids must be sold in packages containing no more than three grams of base of either drug.<sup>98</sup> Collectively, these provisions allowing virtually unlimited and unmonitored retail sales of methamphetamine precursors came to be known as the “blister pack exemption.”<sup>99</sup> In retrospect, it is not surprising that the CMCA appeared to have little effect on the growing crises methamphetamine use and production presented.

With methamphetamine use on the rise, Congress acted again by rapidly passing the Methamphetamine Trafficking Penalty Enforcement Act of 1998 (MTPEA),<sup>100</sup> which was passed as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999,<sup>101</sup>

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91. 21 U.S.C. § 802(35)(I) and (J) (2006).

92. 21 U.S.C. § 842(a)(11) (2006).

93. 21 U.S.C. § 830(b)(3) (2006).

94. 42 U.S.C. § 290aa-4 (2006).

95. 42 U.S.C. § 802(39) (A)(iv)(II) (2006).

96. 42 U.S.C. § 802(39)(B)(i) (2006); OFFICE OF DIVERSION CONTROL, U.S. DEP'T OF JUSTICE, PSEUDOEPHEDRINE 1 (2004) [http://www.deadiversion.usdoj.gov/pubs/brochures/pseudo/pseudo\\_notice.pdf](http://www.deadiversion.usdoj.gov/pubs/brochures/pseudo/pseudo_notice.pdf).

97. 42 U.S.C. § 802(39)(B)(i) (2006).

98. *Id.*

99. FOOD AND DRUG ADMIN., CDER DATA STANDARDS MANUAL (1998), *available at* <http://www.fda.gov/cder/dsm/drg/DrG00907.htm>.

100. Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, Div. E, 112 Stat. 2681 (codified as amended at 21 U.S.C. §§ 801, 841, 960 (2006)).

101. Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, 112 Stat. 2681.

and the Methamphetamine Anti-Proliferation Act of 2000 (MAA),<sup>102</sup> which was passed as part of the Children's Health Act.<sup>103</sup> These laws appropriated funds for community violence and drug prevention, authorized the director of the Center for Substance Abuse Prevention to make grants that carry out school-based or community-based programs for methamphetamine use prevention, and authorized the administrator of the DEA to assist state and local law enforcement in activities related to methamphetamine manufacturing and trafficking.<sup>104</sup> These laws also established federal penalties for the theft of anhydrous ammonia<sup>105</sup> and required the federal Sentencing Commission to adjust sentencing guidelines for penalties related to ephedrine and pseudoephedrine possession.<sup>106</sup>

#### B. THE COMBAT METHAMPHETAMINE EPIDEMIC ACT OF 2006

Despite the many past federal efforts to control methamphetamine over the past two decades, state and local law enforcement officers recently identified methamphetamine as their greatest drug threat and states began responding to the threat with legislation.<sup>107</sup> These state regulations seem to have prompted the enactment of the CMEA. The CMEA amends the CSA by adding products containing ephedrine, pseudoephedrine, and phenylpropanolamine to the CSA's definition of listed chemicals.<sup>108</sup> The CMEA also repealed the federal blister pack exemption established by the CMCA.<sup>109</sup> Instead, since April 8, 2006, federal law restricts the amount of non-liquid pseudoephedrine that may be sold to an individual in a single day, regardless of the number of transactions, to 3.6 grams, up to a total of nine grams within a thirty day time period.<sup>110</sup>

Like past federal efforts to control methamphetamine, the CMEA does not completely ban the sale of methamphetamine precursors and it contains certain exemptions.<sup>111</sup> Single packages of pseudoephedrine that contain not more than sixty milligrams are exempt from certain record-keeping

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102. Methamphetamine Anti-Proliferation Act of 2000, Pub. L. No. 106-310, 114 Stat. 1101.

103. Children's Health Act of 2000, Pub. L. No. 106-310, 114 Stat. 1101 (2000), (codified as amended in scattered sections of 21, 28 & 42 U.S.C.).

104. 42 USCA § 290bb-9 (2006); Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, 112 Stat. 2681-64.

105. 21 U.S.C. § 864 (2006).

106. 28 U.S.C. § 954 (2006).

107. Kyle & Hansell, *supra* note 35, at 9.

108. 21 U.S.C. § 802(45)(A) (2006).

109. *Id.*

110. *Id.*

111. 21 U.S.C. § 830(e) (2006).

requirements.<sup>112</sup> As of September 30, 2006, products containing methamphetamine precursors must be placed behind the counter or in a locked cabinet where purchasers cannot access the products before the sale.<sup>113</sup> In addition, buyers must present picture identification at the time of purchase, and retailers must maintain a logbook of sales and provide training to staff.<sup>114</sup> The CMEA also requires the reporting of mail order purchases.<sup>115</sup> It limits mail order purchases to 7.5 grams per individual per thirty day period, and it establishes requirements for reporting of imported precursors by distributors.<sup>116</sup>

The CMEA also has several other provisions essential to the federal government's recent efforts to control methamphetamine. To address domestic methamphetamine laboratory waste, the CMEA requires reporting by the Secretary of Transportation on the transportation of methamphetamine manufacturing by-product and amends existing language relating to the costs associated with the clean-up of methamphetamine production.<sup>117</sup> It also increases funding for the Department of Justice Drug Court Grant Program and expands grant programs for drug-endangered children and methamphetamine use by pregnant and parenting women.<sup>118</sup>

To address interstate and international trafficking of methamphetamine, it provides for enhanced criminal penalties for methamphetamine production and trafficking, and substantially increases the penalties for certain violations.<sup>119</sup> It also allows for increased sentencing for child endangerment related to methamphetamine production, and requires the Attorney General to make semiannual reports to Congress on alleged violations of the CSA related to methamphetamine.<sup>120</sup> In order to address foreign supplies of methamphetamine, it requires certain foreign entities to supply information about methamphetamine precursors to the Attorney General.<sup>121</sup> The CMEA also allows for the United States government, under the Foreign Assistance Act of 1961,<sup>122</sup> to identify the five countries

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112. 21 U.S.C. § 830(e) (1)(A)(iii) (2006).

113. 21 U.S.C. § 830(e) (1)(A)(ii) (2006).

114. 21 U.S.C. § 830(e) (1)(A)(iv)(I)(aa) (2006).

115. 21 U.S.C. §§ 830(e) (1)(A)(v) and 830(e)(1)(B) (2006).

116. 21 U.S.C. §§ 830(e) (1)(A)(ix) (II) (2006).

117. 49 U.S.C. § 5103 (2006).

118. 42 U.S.C. § 3797u (2006).

119. USA PATRIOT Improvement and Reauthorization Act of 2005, Publ. L. No. 109-177, §§ 731-735, 120 Stat. 192, 270 (codified as amended at scattered sections of 21 and 28 U.S.C. (2006)).

120. 21 U.S.C. § 871a (2006).

121. 21 U.S.C. § 971 (2006).

122. Foreign Assistance Act of 1961, Pub. L. No. 87-194, 75 Stat. 424 (1961) (codified as amended in scattered sections of 22 U.S.C.).



that exported the largest amount of precursors, to conduct additional research on countries that have high rates of diversion, and to cooperate with Mexican authorities to prevent smuggling of precursors.<sup>123</sup>

### C. FEDERALISM AND THE COMBAT METHAMPHETAMINE EPIDEMIC ACT

Generally speaking, under the United States Constitution, only the federal government has the power to address interstate and international issues.<sup>124</sup> However, under the Tenth Amendment,<sup>125</sup> unless an area of the law has been expressly or impliedly preempted by a federal statute, the responsibility for rapid and innovative responses to social, economic, and health problems falls to the states and their local governments.<sup>126</sup> Although the federal government has enacted legislation related to methamphetamine, federal statutes are generally not considered to preempt more stringent state regulation of scheduled substances, especially methamphetamine precursors.<sup>127</sup>

The CSA provides:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.<sup>128</sup>

The CMEA does not change the language of the CSA as it relates to preemption, and explicitly states that the amendments to the CSA should not be construed as having any legal effect on the role of states in the regulation of scheduled chemicals.<sup>129</sup> Therefore, when state laws meet or exceed the requirements in the federal CSA, those laws may restrict the availability of a substance, establish sentencing guidelines for violations, and set parameters for prescribing and purchasing certain scheduled

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123. 22 U.S.C. § 2291h(a)(8)(A) (2006).

124. U.S. CONST. art. I, § 8, cl. 1 & 3.

125. U.S. CONST. amend. X.

126. *See* *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (suggesting that states have a right to experiment with social and economic practices).

127. *See* *Gonzales v. Oregon*, 546 U.S. 243, 273-75 (2006) (holding that the Controlled Substances Act could not be used to preempt a state law prohibiting prescriptions of certain drugs).

128. 21 U.S.C. § 903 (2006).

129. *Combat Methamphetamine Epidemic Act of 2005*, H.R. 3199, 109th Cong. § 743(b) (2006).

substances.<sup>130</sup> For example, where a state law places a greater restriction on the quantity of precursors that can be sold in a transaction than is required by federal law, retailers within that state are subject to the state requirements. Therefore, state laws and local regulations aimed at restricting the sale and/or possession of methamphetamine precursors remain a very important consideration in the effort to decrease domestic methamphetamine manufacturing, particularly in STLs, which are potentially controllable, within limits, by state actions focusing on small quantity purchases of precursors.<sup>131</sup>

However, states are more than just Brandeisian laboratories<sup>132</sup> for identifying federal solutions; states have a role in tailoring unique solutions for the unique methamphetamine problems faced by their populations.<sup>133</sup> State and local laws related to drug manufacturing and possession laws, treatment provisions, and law enforcement are also very important. Part of the reasoning is due to the fact that methamphetamine is distributed through a number of domestic and international channels that are rapidly changing the demographics of methamphetamine users and the geography of distribution.<sup>134</sup> Although methamphetamine manufacturing is primarily considered to be a criminal justice problem, it is also regarded as a threat to public health.<sup>135</sup> In the public health field, local control is almost always preferred over more distal legal authority.<sup>136</sup> Therefore, as the dual epidemics of methamphetamine use and production have adjusted and continue to adjust to changing state and federal laws, the interplay between the federal government and the states is becoming both more complex and more important to controlling methamphetamine.<sup>137</sup>

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130. State *ex rel.* Lance v. District Court, 542 P.2d 1211, 1213 (1975).

131. *Law Enforcement and the Fight Against Methamphetamine: Hearing before the H. Comm. on Gov't Reform*, 108th Cong. (2004) (statement of Joseph T. Ranazzisi, Deputy Chief, Office of Enforcement Operations, Drug Enforcement Admin.), available at <http://www.usdoj.gov/dea/pubs/cngrtest/ct111804.html>.

132. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

133. *See id.* (arguing that states have the right to develop innovative ways to address changing social needs).

134. PBS, *supra* note 3.

135. NAT'L DRUG INTELLIGENCE CTR., PUBL'N NO. 2006-Q0317-003, NATIONAL DRUG THREAT ASSESSMENT 2007 1, 6 (2006), available at <http://www.usdoj.gov/ndic/pubs21/21137/21137p.pdf> [hereinafter NATIONAL DRUG THREAT ASSESSMENT 2007].

136. Eric Gorovitz et al., *Preemption or Prevention? Lessons from Efforts to Control Firearms, Alcohol, and Tobacco*, 19 J. PUB. HEALTH POL'Y 36, 46 (1998).

137. *See* PBS, *supra* note 3 (discussing certain states' legislation passed in order to restrict the sales of ephedrine and pseudoephedrine products).

## IV. RECENT STATE EFFORTS TO CONTROL METHAMPHETAMINE

The majority of state laws related to methamphetamine address the restriction of methamphetamine precursors.<sup>138</sup> States have restricted the quantities of precursors that can be sold at retail, restricted the manner of sale of methamphetamine precursors, criminalized the possession of the precursors, established new penalties, designated state agencies to provide enforcement of the laws, and established uniform statewide enforcement schemes through preemptive provisions.<sup>139</sup> However, some states, to a lesser degree, have also enacted other types of legislation that establishes methamphetamine offender registries, requires real estate warnings for property used as a methamphetamine laboratory, and adds methamphetamine manufacturing in the presence of a child to the actions that constitute child endangerment.<sup>140</sup>

## A. STATE METHAMPHETAMINE PRECURSORS QUANTITY RESTRICTIONS

Comprehensive domestic precursor laws/regulations are one of the critical components of methamphetamine control. Although the CMEA established a floor for restrictions on ephedrine and pseudoephedrine, aspects of many state laws still exceed the federal requirements. The federal government has credited state laws, rather than the CMEA, for the decline in methamphetamine laboratory seizures that started in late 2003 and early 2004,<sup>141</sup> probably because most state methamphetamine precursor laws in force in 2005 were enacted since 2001.<sup>142</sup> In some states, cooking methamphetamine for personal use is the main source for the drug<sup>143</sup> and skilled methamphetamine cooks can get as much as one gram of methamphetamine for every gram of precursor.<sup>144</sup> As a result, there is significant variation across and within regions in the types of state precursor quantity restrictions.<sup>145</sup>

Some states have utilized controlled substances scheduling laws to restrict access to primary methamphetamine precursors while other states

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138. O'CONNOR ET AL., *supra* note 3.

139. *Id.*

140. Devon R. Sanchez & Blake Harrison, *The Methamphetamine Menace*, 12 NAT'L CONF. STATE LEGIS. LEGISBRIEF 1 (2004), available at <http://www.ncsl.org/programs/cj/meth.pdf>.

141. O'CONNOR ET AL., *supra* note 3.

142. PROGRESS REPORT, *supra* note 52, at 2.

143. Rocky Sexton et al., *Patterns of Illicit Methamphetamine Production ("Cooking") and Associated Risks in the Rural South: An Ethnographic Exploration* 36 J. DRUG ISSUES 853, 869.

144. *Id.* at 865.

145. O'CONNOR ET AL., *supra* note 3.

have enacted separate laws aimed specifically at the retail sales of specific products.<sup>146</sup> At least nineteen states schedule ephedrine and twelve states have scheduled pseudoephedrine.<sup>147</sup> Although the type and meaning of state scheduling restrictions vary, the variety of ways in which ephedrine and pseudoephedrine have been scheduled reflects the great variation in state approaches.<sup>148</sup>

However, it is notable that many states have some type of exception to the restrictions imposed by their scheduling requirements. For example, although Nebraska has designated ephedrine as a schedule IV drug, the law contains some significant exceptions.<sup>149</sup> There are some exceptions for Primatene tablets, Bronkaid Dual Action Caplets, and food and dietary supplements sold in accordance with federal law.<sup>150</sup> Although Nevada has designated both ephedrine and pseudoephedrine as schedule III substances, its law excludes products available over-the-counter from the scheduling requirements.<sup>151</sup>

State approaches to restricting the quantity of pseudoephedrine and ephedrine that may be purchased or sold at retail also vary based on combinations of restrictions on the total weight of the precursor chemical or the number of packages containing the chemical.<sup>152</sup> More than half of states restrict the amount of pseudoephedrine that can be purchased by an individual consumer.<sup>153</sup>

Some states restrict only the number of packages that may be purchased, others restrict only the quantity in weight of pseudoephedrine that may be purchased.<sup>154</sup> Most states specify that either package or

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146. *Id.*

147. One reason ephedrine might appear to be less highly regulated on the state level is that in 2004 the FDA issued a federal regulation prohibiting the sale of dietary supplements that contain ephedrine alkaloids and had been conducting hearings on the matter since the late 1990s; these actions may have discouraged states from pursuing their own, possibly more stringent, regulations of ephedrine. O'CONNOR ET AL., *supra* note 3.

148. Colorado, Idaho, and Louisiana have designated ephedrine as a schedule II substance. *Id.* Nevada, Oregon, and South Dakota have made it a schedule III substance. O'CONNOR ET AL., *supra* note 3. Illinois, Missouri, Montana, Nebraska, Oklahoma, and Wisconsin have designated it as a schedule IV substance. *Id.* Arizona, Arkansas, Iowa, Kansas, Michigan, Minnesota, and West Virginia have designated it as a schedule V substance. *Id.* Pseudoephedrine has been scheduled somewhat differently from ephedrine; Idaho and Louisiana have designated pseudoephedrine as a schedule II substance. *Id.* Nevada and Oregon have designated it as a schedule III substance. *Id.* Arkansas, Iowa, Kansas, Minnesota, Missouri, Oklahoma, West Virginia and Wisconsin, have designated it as a schedule V substance. *Id.*

149. NEB. REV. STAT. ANN. § 28-405 (LexisNexis 2005).

150. *Id.*

151. NEV. ADMIN. CODE § 453 530(6)(a) (2005).

152. O'CONNOR ET AL., *supra* note 3.

153. *Id.*

154. *Id.*

quantity restrictions must apply to each purchase.<sup>155</sup> The pseudoephedrine package limits range from one (Iowa) to two or three packs; the quantity limits range from not more than one package per day, which is defined as containing no more than 1.4 grams of pseudoephedrine base (Nebraska), to nine grams in thirty days (Arizona, Kentucky, Missouri, Montana, Oklahoma, Tennessee, and West Virginia).<sup>156</sup> Two states specify weekly quantity limits—Indiana (three grams/seven days) and New Mexico (six grams/seven days).<sup>157</sup>

Nebraska's law specifies that the maximum quantity (1.4 grams) can be purchased no more than once every twenty-four hours.<sup>158</sup> Fewer states restrict ephedrine, probably due to the historically higher degree of federal control.<sup>159</sup> No state has specified a separate limit for liquid ephedrine or pseudoephedrine and many states have significant exceptions for liquid children's cold and flu products.<sup>160</sup> Some states have no limits on packages that contain only single doses of pseudoephedrine.<sup>161</sup> In addition, some states restrict retail sales or purchase of ephedrine or pseudoephedrine only when the vendor knew that the consumer intended to manufacture methamphetamine—a policy which could present challenges for retailers trying to implement the law and for the prosecution of violations.<sup>162</sup>

More than half of states have at least one measure to prevent or deter the theft or diversion of pseudoephedrine in the retail sales environment, and almost half have such a measure for ephedrine.<sup>163</sup> States have also enacted provisions that require government-issued identification with proof of age for purchase, require buyers to sign a written log upon purchase of pseudoephedrine, require pseudoephedrine to be placed behind the counter, or require video surveillance of pseudoephedrine.<sup>164</sup> Some states require more than one approach to theft prevention, while other states allow retailers to choose between certain methods.<sup>165</sup> The effectiveness of the various methods in different types of retail outlets is not yet known.

It is also notable that while many states are using government issued identification to track purchasers, most states do not prohibit minors from

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155. *Id.*

156. *Id.*

157. *Id.*

158. NEB. REV. STAT. ANN. § 28-405 (LexisNexis 2005).

159. O'CONNOR ET AL., *supra* note 3.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

purchasing ephedrine or pseudoephedrine.<sup>166</sup> Because there are some indications that minors are used by their parents in drug trafficking, and because minors may experiment with methamphetamine manufacturing information found on the Internet, restrictions might serve to protect children from the dangers of methamphetamine manufacturing.

States are not only restricting the sale of methamphetamine precursors, they are also restricting possession of precursors.<sup>167</sup> More than half of states restrict the possession of specific quantities of both ephedrine and pseudoephedrine.<sup>168</sup> The amount of precursor that triggers a criminal penalty varies across the states.<sup>169</sup> Some states prohibit the possession of any amount of precursor, while others either specify an amount or specify an amount and restrict the possession of any quantity of precursor with the intent to manufacture methamphetamine.<sup>170</sup> The most commonly restricted amount of pseudoephedrine or ephedrine that may be possessed by an individual in most states is nine grams.<sup>171</sup>

It is notable that state limits on the possession of ephedrine and pseudoephedrine are not necessarily related to the quantity that can be legally purchased at retail. In Oregon, only nine grams or less of ephedrine can be purchased or possessed by an individual.<sup>172</sup> In South Carolina, however, there is no limit on the amount that can be purchased, but possessing in excess of twelve grams of ephedrine, regardless of intent to manufacture, is a crime.<sup>173</sup> Similarly, in Indiana, only three grams of pseudoephedrine can be purchased,<sup>174</sup> but up to ten grams can be possessed by an individual.<sup>175</sup> Pennsylvania, on the other hand, has no limits on the quantity of pseudoephedrine that can be purchased, but the possession of any amount with intent to manufacture is a felony.<sup>176</sup>

Finally, while ephedrine and pseudoephedrine are the most well-known primary precursors used to manufacture methamphetamine, there are a number of precursor chemicals that can be used to produce the drug. Thirty-eight states in some way restricted the sale or possession of at least

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166. O'CONNOR ET AL., *supra* note 3.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. After the data was collected, Oregon established a final rule requiring a prescription for the purchase or possession of any pseudoephedrine. OR. REV. STAT. § 475.950(2) (2006).

173. S.C. CODE ANN. § 44-53-375 (2005).

174. IND. CODE § 35-48-4-14.7 (2005).

175. IND. CODE § 35-48-4-14.5 (2005).

176. 35 PA. STAT. ANN. § 780.113.1 (2005).

one other methamphetamine precursor chemical beyond pseudoephedrine and ephedrine.<sup>177</sup> In addition to precursor chemicals, a range of reagents including hydrogen peroxide, iodine crystals, and red phosphorous can be used in the methamphetamine manufacturing process. Certain precursor chemicals and reagents are heavily regulated while others, like anhydrous ammonia or phosphorous, are widely available for agricultural and other uses in certain markets. The reagents that states most commonly restrict are anhydrous ammonia, iodine, red phosphorous, and lithium metal.<sup>178</sup>

In addition to a variety of restrictions on methamphetamine precursors, states have a variety of enforcement schemes for methamphetamine. Almost half of states name an enforcement agency for methamphetamine precursor related laws including Boards of Pharmacy and state or local law enforcement.<sup>179</sup> Colorado, Kansas, Louisiana, Minnesota, Mississippi, New Mexico, Tennessee, Wisconsin, and Wyoming all designated enforcement authority to more than one government agency.<sup>180</sup>

Interestingly, no state has identified a specific role for the state attorney general in methamphetamine precursor control enforcement. In some cases, states have restricted enforcement or control methamphetamine precursors to the state and preempted any local control.<sup>181</sup> Arizona and Florida have completely preempted local governments from enacting any local ordinance related to the sale or possession of methamphetamine precursors.<sup>182</sup> The Arizona statute states that “[n]otwithstanding any other law, a county, city or town shall not enact an ordinance that is more restrictive than the requirements of this section.”<sup>183</sup> The Florida statute provides, “[t]he requirements of this section relating to the marketing, sale, or distribution of ephedrine, pseudoephedrine, or phenylpropanolamine products shall supersede any local ordinance or regulation passed by a county, municipality, or other local governmental authority.”<sup>184</sup> Other states have less comprehensive preemption; they prohibit local governments from enacting only certain types of local ordinances, such as those related to either the retail sale or possession of precursors or those related to criminal penalties. Some less

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177. O’CONNOR ET AL., *supra* note 3.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. ARIZ. REV. STAT. ANN. § 13-3404.01(g) (1986); FLA. STAT. ANN. § 893.1495(4) (LexisNexis 2005).

183. ARIZ. REV. STAT. ANN. § 13-3404.01(g) (1986).

184. FLA. STAT. ANN § 893.1495(4) (West, Westlaw through May 21, 2007).

comprehensive preemption laws prohibit local ordinances that are enacted after a certain date.<sup>185</sup>

#### B. OTHER STATE APPROACHES TO METHAMPHETAMINE

In addition to precursor controls, states are beginning to enact laws that address other aspects of methamphetamine production and use. Some of these aspects include real estate disclosure laws, methamphetamine conviction registries, laws related to methamphetamine and child endangerment, and laws establishing methamphetamine-related task forces.

One of the lasting impacts of the production of methamphetamine is its toxic by-productions and environmental contamination. At least two states have recently required disclosure of methamphetamine production in real estate sales.<sup>186</sup> Since 2004, South Dakota has required sellers to disclose any knowledge of prior methamphetamine manufacture on the property.<sup>187</sup> Colorado's law, which took effect on January 1, 2007, is more extensive.<sup>188</sup> In addition to requiring the seller disclose information about past methamphetamine manufacturing on the property, the law allows the buyer to test the property for methamphetamine, makes the seller who omits disclosure liable for the remediation of the property and any physical harm to the buyer, and creates a three year statute of limitations for actions related to the seller's failure to disclose the methamphetamine-related history of the property.<sup>189</sup>

With the goal of protecting people and property from the dangers of methamphetamine manufacturing, states have also enacted laws that establish registries of individuals convicted of methamphetamine-related offenses.<sup>190</sup> Montana, Minnesota, Illinois, and Tennessee have all enacted such statutes.<sup>191</sup> Although Montana has been maintaining registries for many different types of convictions for many years,<sup>192</sup> Tennessee was the first state to enact a methamphetamine-specific online registry.<sup>193</sup> These

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185. O'CONNOR ET AL., *supra* note 3.

186. *Id.*

187. S.D. CODIFIED LAWS § 43-32-30 (2005).

188. COLO. REV. STAT. § 38-35.7-103 (West, Westlaw through 2006 First Extraordinary Session of the Sixty-Fifth General Assembly).

189. *Id.*

190. Donna Leinwand, *States List Meth Offenders on Web*, USA TODAY, Aug. 23, 2006, at 1A, available at [http://www.usatoday.com/news/nation/2006-08-22-meth-registries\\_x.htm](http://www.usatoday.com/news/nation/2006-08-22-meth-registries_x.htm).

191. *Id.*

192. *Id.*

193. Audie Cornish, *Morning Edition: Tennessee Starts Meth Crime Registry* (Nat'l Public Radio broadcast Jan. 19, 2006), audio available at <http://www.npr.org/templates/story/story.php?storyId=5162961>.



registries, which according to state officials, function as public warnings, similar to sex-offender registries, are controversial.<sup>194</sup> The American Civil Liberties Union (ACLU) has taken the position that the connection between methamphetamine use and manufacturing is tenuous and that these registries accomplish little beyond unnecessarily stigmatizing recovering addicts.<sup>195</sup> Nonetheless, similar registries are being considered in Georgia, Maine, Oklahoma, Oregon, Washington, and West Virginia.<sup>196</sup>

Also with the goal of protecting people and communities, and specifically children, states have started to enact statutes that make the exposure of a child to a methamphetamine laboratory, or in some cases methamphetamine, a crime. There are many types of drug-related child endangerment laws, including laws that criminalize drug use or abuse during pregnancy, drug use or abuse in the presence of a child, and exposure of children to methamphetamine laboratories. In Iowa, knowingly permitting a child to be present where methamphetamine is manufactured constitutes child endangerment.<sup>197</sup> In Michigan, the state recently added language regarding reporting of methamphetamine as child neglect to their child protection statutes,<sup>198</sup> making Michigan at least the sixth state to enact such provisions.<sup>199</sup>

To study and monitor the effectiveness of different approaches to methamphetamine and the enforcement of methamphetamine-related laws, a small number of states have established multi-jurisdictional, multi-agency statewide task forces. The Alabama Methamphetamine Abuse Task Force, which is comprised of the state Attorney General, the President of the Alabama Board of Pharmacy, a member of the state House and Senate, and the Director of the Alcoholic Beverage Control Board, was created for the express purpose of developing “education and training programs that will curb the abuse of methamphetamine precursors [and to] curb the abuse of methamphetamine in the State of Alabama.”<sup>200</sup> The Indiana methamphetamine task force is charged with “[o]btain[ing], review[ing], and evaluat[ing] information concerning the harm caused by the illegal importation, production, and use of methamphetamine in Indiana.”<sup>201</sup> The task force is

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194. *Id.*

195. *Id.*

196. Leinwand, *supra* note 190, at 1A.

197. IOWA CODE § 726.6(1)(g) (2006).

198. MICH. COMP. LAWS § 722.623 (2006) (indicating incorporating methamphetamine in child abuse and reporting statutes).

199. *Methamphetamine as Child Abuse Laws Gain Ground: But Do They Help or Do They Hurt?*, DRUG WAR CHRONICLE, July 14, 2006, available at <http://stopthedrugwar.org/chronicle-old/444/drug-child-abuse-laws.shtml>.

200. ALA. CODE § 20-2-190(g)(1) (2005).

201. IND. CODE ANN. § 5-2-14.2 (2006).

also charged with evaluating the impact of clandestine manufacturing within the state.<sup>202</sup> Colorado has taken a slightly different approach, charging a task force in 2006 with “examin[ing] and implement[ing] . . . effective models . . . for the prevention of methamphetamine production, distribution, and abuse . . . .”<sup>203</sup> In addition, the Colorado task force is responsible for implementing “a response from the criminal justice sector regarding the methamphetamine problem,” as well as “mak[ing] recommendations to the general assembly for the development of statewide strategies . . . .”<sup>204</sup>

It is currently unclear what, if any, effect these laws may have on preventing or reducing methamphetamine production and use. The National Institute of Justice (NIJ) has called for more study of state variances in drug policy in order to examine the effect of collaborative, cross-system interactions. However, it seems likely these laws raise awareness, mitigate the harm of methamphetamine, and promote collaboration between professions and between experts and the public. Moreover, other state efforts beyond laws controlling methamphetamine precursors are an important part of the overall effort of states to address methamphetamine within their borders.

## V. AN INTERDISCIPLINARY AND MULTI-JURISDICTIONAL APPROACH TO METHAMPHETAMINE

Despite all of the recently adopted state and federal legislation, the dual epidemics of methamphetamine use and production represent a complex set of problems that will have continuing consequences for health, social, and criminal justice systems in this country. Rather than viewing federal action as the single answer to the methamphetamine problem, it might be more accurate to consider the recent CMEA through what political scientists might call a “punctuating event.”<sup>205</sup> Such a perception would view the meth epidemic as a problem with a lengthy legal, economic, social, and political history.

Although some might argue that at least with respect to methamphetamine, the limited nature of past changes in federal law reflect

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202. *Id.*

203. COLO. REV. STAT. § 18-18.5-101 (West, Westlaw through laws effective Apr. 26, 2007).

204. *Id.*

205. PAUL A. SABATIER, THEORIES OF THE POLICY PROCESS 160 (Westview Press, 2d ed. 2007).

indifference by policy makers,<sup>206</sup> it is also true that many of the things that make the American legal system great, such as federalism, separation of powers, and overlapping jurisdictional authority, intentionally inhibit significant changes in federal law.<sup>207</sup> Because of this slow nature of change and because past efforts to control methamphetamine have demonstrated that methamphetamine producers and traffickers are persistent and creative in working around anything less than absolute restrictions on precursors, methamphetamine is not likely to disappear.<sup>208</sup> Therefore, a continued focus on lasting solutions is needed at all levels of government that will address not only adequately restricting precursors, but also treatment for methamphetamine addicts and the underlying causes of methamphetamine use and production.

Although some recent shifts in methamphetamine production have been attributed to changes in state and federal laws, very little empirical research has been conducted on the effectiveness of the laws.<sup>209</sup> Only one independent study on the effectiveness of federal methamphetamine laws has been conducted.<sup>210</sup> The 2003 study, which predated recent legal developments, found that the federal regulation of bulk powder and single-ingredient ephedrine and pseudoephedrine products typically used in “super labs” production of methamphetamine slowed the increase in methampheta-

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206. Steve Suo, *U.S. Drug Czar, Aide Face Meth Criticism*, THE OREGONIAN, Sept. 29, 2005, at A01, available at [http://www.csdp.org/news/news/ore\\_methczar\\_092905.htm](http://www.csdp.org/news/news/ore_methczar_092905.htm).

207. James L. True et al., *Punctuated-Equilibrium Theory*, in THEORIES OF THE POLICY PROCESS 101 (Paul A. Sabatier ed., Westview Press 1999).

208. MethAbuse.net, History of Methamphetamine, [http://www.methabuse.net/meth\\_history.php](http://www.methabuse.net/meth_history.php) (last visited Dec. 27, 2006).

209. See, e.g., NATIONAL DRUG THREAT ASSESSMENT 2007, *supra* note 135, at 6-9 (observing that state and federal lawmakers are changing methamphetamine related laws); *Ice in the Ozarks: The Methamphetamine Epidemic in Arkansas: Hearing Before the House Subcomm. on Gov't Reform*, 108th Cong. 46 (2004) (statement of Keith Rutledge, State Drug Dir., Arkansas Governor's Office), available at [http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=97398.wais&directory=/diskb/wais/data/108\\_house\\_hearings](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=97398.wais&directory=/diskb/wais/data/108_house_hearings); *Law Enforcement and the Fight Against Methamphetamine: Hearing Before Subcomm. on Crim. Just., Drug Pol'y and Human Resources of the H. Comm. on Gov't Reform*, 108th Cong. 87 (2004) (statement of George Colby, Division Commander Allen County Indiana), available at [http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=20084.wais&directory=/diskb/wais/data/108\\_house\\_hearings](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=20084.wais&directory=/diskb/wais/data/108_house_hearings) (stating that funding is needed to handle meth problems); *Id.* at 65 (statement of Steve Bundy, Sheriff, Rice County, Kansas), available at [http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=20084.wais&directory=/diskb/wais/data/108\\_house\\_hearings](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=20084.wais&directory=/diskb/wais/data/108_house_hearings) (stating that he is the only meth investigator in his county); *The Poisoning of Paradise: Crystal Methamphetamine in Hawaii: Hearing Before the Subcomm. on Crim. Just., Drug Pol'y and Human Resources on Gov't Reform*, 108th Cong. (2004) (statement of Mark Souder, Chairman, H. Comm. on Government Reform), available at [http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=98604.wais&directory=/diskb/wais/data/108\\_house\\_hearings](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.120&filename=98604.wais&directory=/diskb/wais/data/108_house_hearings) (explaining that federal laws regarding meth abuse have changed).

210. Cunningham, *supra* note 71, at 1236.

mine-related hospital admissions.<sup>211</sup> However, federal restrictions on individual purchases of combined ephedrine and pseudoephedrine products typically used in STLs, did not impact methamphetamine-related hospital admissions.<sup>212</sup>

Similarly, recently enacted state laws continue to be anecdotally reported to have reduced the number of clandestine STLs in some areas.<sup>213</sup> However, the relationship between methamphetamine precursors commonly used in STLs and precursor control policies is not well understood. It is not clear yet if reductions in laboratory seizures are due to increased public awareness, the increased price of domestically produced methamphetamine, economic factors, or changes in reporting. No one has yet studied the impact of international production on domestic methamphetamine use or production, but according to the federal government, effective control of chemical precursors increases the difficulty, risk, and costs associated with clandestine methamphetamine manufacture.<sup>214</sup> In addition, decreases in domestic methamphetamine production have been offset by production in Mexico.<sup>215</sup>

Taking into account the history of federal drug control policy, which has been primarily punitive for the past twenty-five years,<sup>216</sup> and which has emphasized the control of methamphetamine precursors and methamphetamine rather than prevention, states will likely continue to lead the change in methamphetamine law and policy. In promoting such changes, states should ask all levels of government to commit to the development of interdisciplinary and cross-jurisdictional legal solutions that include cities, counties, states, and regions. The states should also draw in professionals from criminal justice, public health, law enforcement, healthcare, education, environmental health, housing, and economic development fields. In addition to the precursor restrictions and punitive measures that are more stringent than the CMEA, additional steps that states could take to address the dual methamphetamine epidemics include: (1) improved access to methamphetamine treatment; (2) addressing the environmental issues

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211. *Id.*

212. *Id.*

213. Curtis J. VanderWaal, Chair, Dep't of Sociology, Andrews University, Duane C. McBride, Chair, Dep't of Behavioral Sciences, Rachel Bishop, M.S.W. Candidate, Andrews University, Presentation on Controlling Methamphetamine Precursors and the View from the Trenches given at the American Society of Criminology Annual Meeting (Nov. 1, 2006).

214. OFFICE OF NAT'L DRUG CONTROL POL'Y, NATIONAL SYNTHETIC DRUGS ACTION PLAN 31 (2004), available at [http://www.whitehousedrugpolicy.gov/publications/national\\_synth\\_drugs/national\\_synth\\_drugs/index.html](http://www.whitehousedrugpolicy.gov/publications/national_synth_drugs/national_synth_drugs/index.html).

215. NAT'L DRUG INTELLIGENCE CTR., *supra* note 138, at 6.

216. VanderWaal, *supra* note 213.

associated with methamphetamine; (3) addressing the needs of drug endangered children; (4) improving training for law enforcement and criminal justice personnel; and (5) improving collaboration by integrating systems, reducing poverty, and maintaining the focus on the international aspects of methamphetamine.

Also, states with high levels of methamphetamine use could promote evidence-based treatment programs through state Medicaid programs or establish treatment diversion programs for methamphetamine offenses. To address environmental issues, state governors might seek full funding from the federal government for the clean-up of methamphetamine laboratories. As an alternative or supplementary consideration, states could seek damages from the pharmaceutical companies for the cost of clean-up. States should address the issue of disposing of toxic wastes present at methamphetamine laboratories and train first responders on these issues. States and community-based pharmacists could engage in public education efforts. States may also choose to use litigation, executive orders, and contracts to achieve some of these goals.

Collaboration and the integration of systems by states are essential in addressing methamphetamine effectively. States such as Oklahoma and Kentucky have had, it appears, major success through state level coordination of anti-methamphetamine efforts.<sup>217</sup> Consistent high-level training of law enforcement across a state could protect law enforcement personnel from laboratory toxins, aggressive or paranoid methamphetamine users, and help them to recognize drug endangered children. Some states also might benefit from efforts to better coordinate responses to methamphetamine precursor purchases and management of purchase records. Communities and schools could develop additional approaches to educating children about the hazards associated with methamphetamine. As some states with Drug Endangered Children grants are doing, states should train local law enforcement and first responders on how to handle methamphetamine laboratory situations where children are present.<sup>218</sup> States need to provide resources for these children such as immediate trauma counseling, a system of assessment for placement of children, and replacement clothing and toys for those items exposed to toxic chemicals produced through the methamphetamine manufacturing process. The State of Kentucky, for example, has a special kit which is given immediately to

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217. *Id.*

218. Office of Nat'l Drug Control Pol'y, Drug Endangered Children (DEC), [http://www.whitehousedrugpolicy.gov/enforce/dr\\_endangered\\_child.html](http://www.whitehousedrugpolicy.gov/enforce/dr_endangered_child.html) (last visited Dec. 27, 2006).

children present when a methamphetamine laboratory raid is conducted by law enforcement.<sup>219</sup>

For methamphetamine or any drug related policy to be successful over the long term, states must also continue to address the root causes of methamphetamine use and manufacturing. These roots include addiction, low literacy, poverty, and hopelessness. Job training and economic development may be a key component of any state-based methamphetamine solution. The rural, poor methamphetamine producers have very limited education or economic opportunities. Because imported methamphetamine is made with chemicals diverted from countries such as Angola, China, Congo, Kenya, and Mexico, the product is now less expensive to buy on the streets than domestically produced methamphetamine.<sup>220</sup> Therefore, border-states and states that are part of international drug trade routes also must continue to work with the federal government to address the international aspects of methamphetamine.

As noted by other legal scholars, whether the federal government or states should address methamphetamine is not a binary choice.<sup>221</sup> With the CMEA in place to serve as a national floor for restrictions on methamphetamine precursors, the federal government can now focus its efforts on the enforcement of the CMEA, as well as the international and pharmaceutical-related strategies to eliminate methamphetamine. When electronic surveillance of methamphetamine precursor purchases fully goes into effect under the CMEA, it will yield large amounts of information that could be used for prosecution of domestic methamphetamine producers.

In terms of pharmaceutical and international strategies, the maker of Sudafed™—one of the top selling cold remedies in the United States—reportedly has had the ability for several years to make a drug chemically similar to pseudoephedrine that can not be used to make methamphetamine.<sup>222</sup> Yet, the manufacturer did not pursue the new product until recently because the cost of federal drug approvals made it unlikely the drug would yield a profit.<sup>223</sup> A federal drug approval waiver for pseudoephedrine alternatives would allow for the total ban on pseudoephedrine products in the United States.

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219. VanderWaal, *supra* note 213.

220. *Meth Lab Victories Prove Fleeting*, JOIN TOGETHER, Sept 18, 2006, available at <http://www.jointogether.org/news/headlines/inthenews/2006/meth-lab-victories-prove.html>.

221. Note, *Cooking Up Solutions to a Cooked Up Menace: Responses to Methamphetamine in a Federal System*, 119 HARV. L. REV. 2508, 2522-23 (2006).

222. Steve Suo, *Shelved Solutions*, THE OREGONIAN, Oct. 6, 2004, available at [www.oregonlive.com/printer/printer.ssf?/oregonian/meth/1006\\_shelvedsolutions.htm](http://www.oregonlive.com/printer/printer.ssf?/oregonian/meth/1006_shelvedsolutions.htm).

223. *Id.*

Additionally, only a small number of factories in Asia and Europe manufacture ephedrine and pseudoephedrine.<sup>224</sup> There is one factory in Germany, one in the Czech Republic, two in China, and five in India, for a total of nine.<sup>225</sup> DEA officials have stated that the only way to effectively control methamphetamine is to regulate ephedrine and pseudoephedrine at their source.<sup>226</sup> Federal regulatory and monetary incentives, or a treaty or other international agreement, could potentially be used to reduce the production and illicit diversion of the methamphetamine precursors made at these facilities.

## VI. CONCLUSION

Finding lasting solutions to methamphetamine production and use will not be an easy task. The drug has been used in the United States since at least the 1950s,<sup>227</sup> and the chemically similar amphetamines have been more widely used for a longer period of time.<sup>228</sup> Although there have been recent successes with methamphetamine; permanent solutions that address both use and production may take decades more. Because production and use are interrelated in the United States, as well as internationally, it seems likely that there will not be one single solution to the dual epidemics of methamphetamine use and production, such as precursor restrictions.

Instead, it seems likely that results will be the confluence of many factors, including evidence-based laws and policies, cooperation and training of those implementing and enforcing the law, and advancements in biomedical sciences and healthcare, partnerships with the media, and cooperative international efforts. The challenges methamphetamine presents offer a unique opportunity to bring together the best of many disciplines to address important problems that actually extend beyond the drug itself. The law has, and must continue to play a central role in these efforts through enforcement, prosecution, litigation, regulation, contracts, and legislation, which will lead to the simultaneous efforts of many jurisdictions to address the unique needs of their particular populations, geography, communities, and economies.

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224. PBS, *supra* note 3, at 9.

225. *Id.*

226. *Id.* at 7-8.

227. MethamphetamineAddiction.com, *supra* note 65.

228. *Id.*