

BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY
Senator Mark Leno, Chair S
2009-2010 Regular Session B

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SB 484 (Wright)
As Introduced February 26, 2009
Hearing date: April 28, 2009
Health & Safety Code
JM:mc

PSEUDOEPHEDRINE:

SCHEDULING AS A CONTROLLED SUBSTANCE

HISTORY

Source: Attorney General's Office

Prior Legislation: AB 162 (Runner) - Ch. 978, Stats. 1999

Support: San Francisco District Attorney; California Police Chiefs Association; Peace Officers Research Association of California; California Narcotics Officers Association; Los Angeles County Police Chiefs; California Correctional Supervisors Organization; Fresno County Board of Supervisors; Los Angeles County District Attorney; California State Sheriffs Association; Oregon State Pharmacy Association; Long Beach Police Officers Association; Santa Ana Police Officers Association; California Fraternal Order of Police; Los Angeles County Professional Peace Officers Association; San Bernardino County Sheriff's Department

Opposition: Consumer Healthcare Products Association; Taxpayers for Improving Public Safety; Healthcare Distribution

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Management Association (unless amended);
Schering-Plough; California Retailers Association;
National Association of Chain Drug Stores

(SEE COMMENT #8 FOR AUTHOR'S AMENDMENTS THAT ELIMINATE FELONY PENALTIES IN THE BILL. PSEUDOEPHEDRINE AND SPECIFIED DRUGS WILL BE OBTAINABLE ONLY BY PRESCRIPTION, BUT NOT AS A CONTROLLED SUBSTANCE.)

KEY ISSUES

SHOULD EPHEDRINE, PSEUDOEPHEDRINE, NORPSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE BE PLACED ON SCHEDULE V OF THE CONTROLLED SUBSTANCE SCHEDULES, WITH THE FOLLOWING APPLICABLE PENALTIES:

POSSESSION OF ONE OF THESE CHEMICALS WOULD BE AN ALTERNATE FELONY-MISDEMEANOR, WITH A MAXIMUM JAIL TERM OF ONE YEAR OR A PRISON TRIAD OF 16 MONTHS, TWO YEARS OR THREE YEARS;

POSSESSION FOR SALE OF ONE OF THESE CHEMICALS WOULD BE A FELONY, WITH A PRISON TERM OF 16 MONTHS, TWO YEARS OR THREE YEARS; AND

SALE OR OTHER TRANSFER OF ONE OF THESE CHEMICALS WOULD BE A FELONY, WITH A PRISON TERM OF TWO, THREE OR FOUR YEARS?

PURPOSE

The purpose of this bill is to place ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine, and specified related chemicals, on Schedule V of the controlled substance schedules and to thereby provide that 1) possession of one of these chemicals is an alternate felony-misdemeanor; 2) possession for sale of one of these chemicals is a felony, with a prison term of 16 months, two years or three years; and 3) sale or transfer of one of these chemicals is a felony, with a prison term of two, three or four years.

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Existing law provides the following restrictions and requirements for the sale of ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine in over-the-counter retail transactions:

A retailer in a single transaction may sell no more than three packages of a product containing these chemicals.

A retailer may sell no more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine.

A first violation of these restrictions is a misdemeanor, punishable by a jail term of up to six months, a fine of up to \$1,000, or both.

A second or subsequent violation is a misdemeanor, punishable by a jail term of up to one year, a fine of up to \$10,000, or both. (Health & Saf. Code 11100, subd. (g).)

Existing federal law (21 USC 830, subd. (e)) includes very detailed restrictions and requirements the for retail sale of ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine. These restrictions include, in part:

No more than 3.6 grams in a single transaction.

No more than 7.5 grams per customer in a one-month period.

Seller must maintain a written or electronic logbook of

each sale, including the date of the transaction, the name and address of the purchaser and the quantity sold.

The purchaser must present valid identification, as specified, and the seller must verify the identification.

The purchaser must sign a paper or electronic logbook, as specified.

The seller must maintain these documents, as specified.

Existing law defines a dangerous drug as any drug that is unsafe for self-use. It includes any drug that under federal or state law can only be obtained through a prescription. (Health & Saf. Code 4021.)

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Existing law classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, and are deemed by law to have no accepted medical use. (Health and Saf. Code 11054-11058.)

Existing federal law (21 U.S.C. 812) includes the following scheduling criteria:

Schedule I: The drug or other substance has a high potential for abuse. The drug or other substance has no currently accepted medical use in treatment in the United States. There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Schedule II: The drug or other substance has a high potential for abuse. The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions. Abuse of the drug or other substances may lead to severe psychological or physical dependence.

Schedule III: The drug or other substance has a potential for abuse less than the drugs or other substances in Schedules I and II. The drug or other substance has a currently accepted medical use in treatment in the United States. Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

Schedule IV. The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III. The drug or other substance has a currently accepted medical use in treatment in the United States. Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

Schedule V: The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV. The drug or other substance has a currently accepted medical use in treatment in the United States. Abuse of the drug or other substance may lead to

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limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

This bill places ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine in Schedule V of the controlled substance schedules. This bill makes possession of ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine a felony, punishable by imprisonment in state prison for 16 months, two years or three years and a fine of up to \$10,000.

This bill makes possession for sale or specified transfer of ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine a felony, punishable by imprisonment in state prison for 16 months, two years or three years and a fine of up to \$10,000.

This bill makes selling, furnishing, et cetera, ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine a felony, punishable by imprisonment in state prison for two, three or four years and a fine of up to \$10,000.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION IMPLICATIONS

California continues to face a severe prison overcrowding crisis. The Department of Corrections and Rehabilitation (CDCR) currently has about 170,000 inmates under its jurisdiction. Due to a lack of traditional housing space available, the department houses roughly 15,000 inmates in gyms and dayrooms. California's prison population has increased by 125% (an average of 4% annually) over the past 20 years, growing from 76,000 inmates to 171,000 inmates, far outpacing the state's population growth rate for the age cohort with the highest risk of

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incarceration.<1>

In December of 2006 plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On February 9, 2009, the three-judge federal court panel issued a tentative ruling that included the following conclusions with respect to overcrowding:

No party contests that California's prisons are overcrowded, however measured, and whether considered in comparison to prisons in other states or jails within this state. There are simply too many prisoners for the existing capacity. The Governor, the principal defendant, declared a state of emergency in 2006 because of the "severe overcrowding" in California's prisons, which has caused "substantial risk to the health and safety of the men and women who work inside these prisons and the inmates housed in them." . . . A state appellate court upheld the Governor's proclamation, holding that the evidence supported the existence of conditions of "extreme peril to the safety of persons and property." (Citation omitted.) The Governor's declaration of the state of emergency remains in effect to this day.

. . . the evidence is compelling that there is no relief other than a prisoner release order that will remedy the unconstitutional prison conditions.

. . .

Although the evidence may be less than perfectly

<1> "Between 1987 and 2007, California's population of ages 15 through 44 - the age cohort with the highest risk for incarceration - grew by an average of less than 1% annually, which is a pace much slower than the growth in prison admissions." (2009-2010 Budget Analysis Series, Judicial and Criminal Justice, Legislative Analyst's Office (January 30, 2009).)

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clear, it appears to the Court that in order to alleviate the constitutional violations California's inmate population must be reduced to at most 120% to 145% of design capacity, with some institutions or clinical programs at or below 100%. We caution the parties, however, that these are not firm figures and that the Court reserves the right - until its final ruling - to determine that a higher or lower figure is appropriate in general or in particular types of facilities.

. . .Under the PLRA, any prisoner release order that we issue will be narrowly drawn, extend no further than necessary to correct the violation of constitutional rights, and be the least intrusive means necessary to correct the violation of those rights. For this reason, it is our present intention to adopt an order requiring the State to develop a plan to reduce the prison population to 120% or 145% of the prison's design capacity (or somewhere in between) within a period of two or three years.<2>

The final outcome of the panel's tentative decision, as well as any appeal that may be in response to the panel's final decision, is unknown at the time of this writing.

This bill does appear to aggravate the prison overcrowding crisis outlined above.

COMMENTS

1. Need for This Bill

According to the author:

<2> Three Judge Court Tentative Ruling, Coleman v. Schwarzenegger, Plata v. Schwarzenegger, in the United States District Courts for the Eastern District of California and the Northern District of California United States District Court composed of three judges pursuant to Section 2284, Title 28 United States Code (Feb. 9, 2009).

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The enormous impact of methamphetamine on human life, public safety and health costs is hard to overemphasize. A RAND study estimated that the yearly cost of the nation's meth epidemic exceeds of \$23 billion.

In 2008, California seized 119 meth labs, by far the highest total in the Western United States. Also in 2008, a total of 15 meth "super labs" capable of producing in excess of 10 pounds of meth were seized in California.

Without a ready supply of ephedrine/pseudoephedrine, found in many cold medications, criminals cannot make meth. . . .

The restrictions that have been placed on pseudoephedrine/ephedrine products do not work. . . . Some retailers ignore the limits on the amount that can be sold and criminals circumvent the restrictions by "smurfing" -- making numerous purchases of over-the-counter packages. . . .

SB 484 will require a prescription for purchase of ephedrine-based drugs. SB 484 is modeled after an Oregon law that resulted in a huge drop in meth labs. In 2003, the last year products with ephedrine/pseudoephedrine were not restricted, Oregon discovered 473 labs. In 2007, following the prescription, Oregon found 18 meth labs. Other states are now considering similar legislation and similar legislation has been introduced in Congress. . . .

Schedule V drugs, which would include ephedrine/pseudoephedrine, can be prescribed by phone. Drug manufacturers have also produced replacement cold and allergy medicines containing phenylephrine, which cannot be converted to meth and which would remain readily available for purchase without

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restriction.

2. Scheduling a Drug or Chemical that is not Itself a Drug of Abuse as a Controlled Substance

This bill would place pseudoephedrine and related drugs in Schedule V of the controlled substance schedules, although these chemicals are not directly used for intoxication. Such a listing would arguably be a departure from the intended use of and policy behind the controlled substance schedules. Pseudoephedrine, because it is the basic chemical used for clandestine manufacturing of methamphetamine, is a closely regulated chemical. Distributors and sellers of pseudoephedrine must make reports to the Department of Justice as to transactions involving the chemical. A record of purchasers and purchases must be kept. Failure to report, or including false information in a report, is a misdemeanor, and in some cases a felony for repeated violations. Sale of pseudoephedrine, except in limited quantities of over-the-counter cold and allergy medications, is a crime. It is a felony to sell pseudoephedrine with knowledge that the drug will be used to manufacture a controlled substance. (Health & Saf. Code 11100 et seq.)

The controlled substance schedules classify drugs of abuse in five schedules. The drugs on Schedule I, which include heroin, are deemed to have no legitimate medical use. Schedule I drugs cannot be prescribed. Drugs on the other schedules are deemed to have decreasing potential for abuse and decreasing regulations concerning administration and prescription. Before the state adopted an electronic reporting system for prescriptions, Schedule II drugs could only be prescribed through a special triplicate prescription, a copy of which was kept by law enforcement.

Possession of any drug on Schedule V is an alternate felony-misdemeanor. Possession for sale or other transfer is a felony and sale or transfer is a felony, with a maximum prison term of four years. What is commonly described as sale of a controlled substance actually includes giving such a drug away. In other words, were this bill to pass, it would be a felony to

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give someone a few pseudoephedrine decongestant tablets.

Many drugs that are not used for intoxication can only be obtained through a prescription. These drugs are generally described as "dangerous drugs," in contrast with over-the-counter drugs that are deemed safe to use without medical supervision. The drugs or chemicals placed in the

controlled substance schedules could be defined as drugs for which a prescription is required, although not controlled substances. Misdemeanor penalties apply to transfer of such drugs, but a person would not be guilty of a felony for possessing or transferring the drugs.

SHOULD PSEUDOEPHEDRINE AND OTHER SPECIFIED DRUGS OR CHEMICALS THAT ARE NOT GENERALLY DIRECTLY USED FOR INTOXICATION, BUT THAT ARE USED TO MANUFACTURE METHAMPHETAMINE, BE LISTED IN THE SCHEDULES OF DRUGS OF ABUSE?

3. Access to Decongestant Medications Under this Bill for Persons with Little or No Access to Physicians

Many consumers rely on pseudoephedrine products to ease nasal congestion due to colds, allergies and related maladies because these products are effective. Because one does not need a prescription to buy them, these medications are readily available to people who do not have medical insurance or reasonable access to physicians for non-emergency treatment. This bill, in requiring cold and allergy sufferers to obtain a prescription for pseudoephedrine, would limit or deny access to this effective medication for a significant portion of Californians.

In recent years, because of restrictions on the sale and distribution of pseudoephedrine, the pharmaceutical industry has developed and marketed alternative or substitute products. It appears that the most commonly used substitute is phenylephrine.

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A recent article by Gayle Nicholas Scott, Pharm. D., <3> reviewed the relative efficacies of pseudoephedrine and phenylephrine.

Dr. Scott concluded: "Phenylephrine appears to have less decongestant activity than pseudoephedrine ." She also noted that phenylephrine has a shorter half-life than pseudoephedrine, thus requiring more frequent use.

HOW EFFECTIVE ARE OVER-THE-COUNTER ALTERNATIVES TO PSEUDOEPHEDRINE FOR PEOPLE WHO DO NOT HAVE ACCESS TO PHYSICIANS TO OBTAIN A PRESCRIPTION FOR PSEUDOEPHEDRINE?

4. Potential Unintended Consequences

While pseudoephedrine is an effective decongestant, sale of the chemical with few restrictions creates serious problems because it is used to make methamphetamine. In addition to methamphetamine being a drug of serious abuse, manufacturing methamphetamine produces toxic and volatile chemicals. The toxic chemicals poison the environment, as illicit manufacturers dump waste wherever they can. People who are exposed to the chemicals can become ill and can become severely injured if the toxic materials explode in clandestine laboratories.

Illicit manufacturing of methamphetamine in California from pseudoephedrine obtained through over-the-counter sales creates serious problems. However, eliminating this source of chemicals for methamphetamine manufacturing may not be free of negative consequences. Eliminating California manufacturing of methamphetamine may not substantially diminish use of the drug. The supply of methamphetamine is driven by demand, and finished methamphetamine appears to be readily available from sources outside of California, including Mexico.

<3> Dr. Scott wrote the article as a consultant to Sportpharm, a company that supplies medical supplies and drugs to athletic organizations. Sportpharm is relied upon by organizations such as USA Track and Field, the national governing body for track and field, including anti-doping issues.

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Any policy change which might result in an increase in the importation of methamphetamine from Mexico could have serious and deleterious effects on public safety. Law enforcement and media sources have recently noted an increase in violence used by Mexican cartels in the United States, including significant increases in violence related to Mexican cartels in border states. (Mexican Drug Cartel Violence Spills Over, Alarming U.S., New York Times, March 22, 2009.)

The New York Times article included a concise history of the development of the Mexican illicit drug business, including the more recent methamphetamine manufacturing and trafficking:

The spread of the Mexican cartels, longtime distributors of marijuana, has coincided with their taking over cocaine distribution from Colombian cartels. Those cartels suffered setbacks when American authorities curtailed their trading routes through the Caribbean and South Florida. Since then, the Colombians have forged alliances with Mexican cartels to move cocaine, which is still largely produced in South America, through Mexico and into the United States. The Mexicans have also taken over much of the methamphetamine business, producing the drug in "super labs" in Mexico. The number of labs in the United States has been on the decline. (Emphasis added.)

Media and law enforcement reports noted an increase in involvement by Mexican drug organizations in the methamphetamine trade when states across the country greatly restricted the availability of pseudoephedrine. A January 23, 2006 article in the New York Times entitled, "Potent Meth Floods in as States Curb Domestic Variety," described the intended and unintended consequences of reducing access to pseudoephedrine in Midwest states such as Iowa and Oklahoma. Law enforcement and health officials found:

Laboratory seizures dropped dramatically (from 120 to 20 a month in Iowa);
Burn injuries from handling toxic chemicals decreased

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greatly in Iowa;

Demand remained constant, and even increased among women in Iowa;

Decreases in removal of children because parents cooked meth was offset by an increase in removals based on parental use;

Mexican cartels greatly increased distribution of meth as an addition to marijuana, cocaine and heroin;

Methamphetamine became much more potent and addictive - often 80% pure crystal ice" meth;

Overdoses increased; and

Methamphetamine prices greatly increased, as did burglaries, in Iowa.

COULD IMPOSITION OF A PRESCRIPTION REQUIREMENT FOR PURCHASE OF PSEUDOEPHEDRINE AND SIMILAR CHEMICALS LEAD TO INCREASED PRESENCE IN THE METHAMPHETAMINE TRADE BY MEXICAN DRUG CARTELS?

WOULD METHAMPHETAMINE COMMERCE BE MORE EFFECTIVELY CURBED BY REDUCING DEMAND, WITH FEWER POTENTIAL INADVERTENT AND ADVERSE CONSEQUENCES?

5. U.S. Drug Enforcement Agency (DEA) Analysis of Drug Trade in Oregon and California, with Emphasis on Methamphetamine

This bill is essentially modeled on an Oregon law which placed pseudoephedrine and similar drugs or chemicals on Schedule III of the controlled substance schedules. The U.S. DEA publishes a summary of illicit drug facts and issues as to each state. The Oregon summary follows:

DEA Oregon Drug Analysis, with Emphasis on Methamphetamine:

Mexican drug trafficking organizations dominate the illicit drug market in Oregon. The state serves as a transshipment point for controlled substances smuggled from Mexico to Washington and Canada. Recent trends show the state is also becoming a transshipment point for controlled substances smuggled from Mexico to various states east of Oregon, such as Montana,

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Minnesota, Illinois, and New York. Marijuana and MDMA (street name Ecstasy) from Canada also transit Oregon en route to other U.S. locations. While methamphetamine is a significant drug threat in Oregon, marijuana, heroin, cocaine, and club drugs are of concern. In 2007, drug prices in Oregon for

methamphetamine and cocaine doubled due to enforcement operations in the United States and Mexico that disrupted the supply of these drugs. Drug trafficking organizations in Oregon also engage in money laundering, using a variety of methods to legitimize and reposition illicit proceeds.

Methamphetamine abuse, trafficking, and manufacturing occur in Oregon. Methamphetamine is one of the most widely abused controlled substances in the state and availability is high. In the past, powder methamphetamine was most common; however, seizures show a switch to the more addictive and potent form of meth referred to as "ice" or "crystal."

Oregon legislators enacted a number of laws aimed at directly reducing methamphetamine availability and local production. In July 2006, products containing ephedrine and pseudoephedrine, . . . became Schedule III controlled substances, available only by prescription. In recent years, legislation restricted sales of pseudoephedrine by limiting sales to licensed pharmacies. In addition, pharmacies are required to maintain a log of purchase transactions and keep products behind a pharmacy counter. Reported clandestine laboratory seizures have been declining, and the local drug market has been increasingly supplied with methamphetamine from other southwestern states and Mexico. Mexican drug trafficking organizations dominate the methamphetamine supply in the Pacific Northwest. (Emphasis added.)

DEA data: diminishing methamphetamine lab incidents in

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Oregon, 2003- 2207:

2003	375
2004	322
2005	189
2006	55
2007	20

Pseudoephedrine did not become a prescription drug until 2006. In 2003, when laboratory incidents began to fall in Oregon, the state limited pseudoephedrine sales to licensed pharmacies and required pharmacies to keep a log of purchasers.

The U.S. DEA summary for California follows:

DEA California Drug Analysis, with Specific Emphasis on Methamphetamine:

Due to California's diverse culture and unique geography many issues affect the drug situation in California. Cocaine, heroin, methamphetamine, and marijuana are smuggled from Mexico; however, methamphetamine and marijuana are produced or cultivated in large quantities within the state. San Diego and Imperial Counties remain principal transshipment zones for a variety of drugs - cocaine, heroin, marijuana and methamphetamine - smuggled from Mexico. Most drug traffickers/organizations that are encountered by law enforcement continue to be poly-drug traffickers rather than specializing in one type of drug. Since September 11, 2001, greater emphasis has been placed on carefully screening people and vehicles at all California Ports of Entry into the U.S. from Mexico. Traffickers must use other

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means to smuggle their contraband into the U.S., including the use of tunnels that run underneath the border and more sophisticated hidden compartments in vehicles. Los Angeles is a distribution center for all types of illicit drugs destined for other major metropolitan areas throughout the U.S. as well as locally. Increased security at [LAX] continues to deter drug traffickers. Although [rural] northern California is awash in methamphetamine heroin remains the number one drug of abuse in San Francisco, heroin and crack cocaine continue to impact Oakland, and methamphetamine continues in and around Sacramento.

Methamphetamine is the primary drug threat in California. Mexican organizations continue to dominate the production and distribution of high-quality meth, while a secondary trafficking group, composed primarily of Caucasians, operates small, unsophisticated laboratories. Clandestine laboratories can be found in any location: high density residential neighborhoods, sparsely populated rural areas, remote desert locations in the southern portions of California, and the forested areas in northern California. In recent years, there has been a decrease in the number of meth labs seized in California and an increase in the number of meth labs just south of the border in Mexico. Rural areas in the Central Valley are the source of much of the meth produced in California and seized elsewhere. Within California itself, Hispanics and Caucasians are the almost exclusive consumers of meth. Purity levels of meth have ranged from a low of ten percent to a high of 100 percent purity. As the supply of pseudoephedrine from Canada has diminished after successful law enforcement operations, there has been a noticeable increase in pseudoephedrine and ephedrine seized that originated from China. Restrictions on pseudoephedrine importation into Mexico, balance-of-power issues among rival Mexican cartels,

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and increased enforcement efforts by the current Mexican government have all significantly impacted methamphetamine manufacturing and the smuggling of finished product into the Los Angeles area. (Emphasis added.)

DEA data: diminishing methamphetamine lab incidents in California, 2003- 2207:

2003	1,281
2004	767
2005	468
2006	353
2007	221

California, according to federal DEA data, has experienced a drop in laboratory incidents since 2003. California law was amended in 1999 (AB 162 (Runner) Ch. 978, Stats. 1999) to limit each sale to no more than 9 grams. Federal law restricts purchase of more than 3.6 grams a day and 7.5 grams in a month. Pharmacies must keep a log of such transactions.

WHAT BENEFITS OR HARM HAVE RESULTED IN OREGON FROM CLASSIFYING PSEUDOEPHEDRINE AND SIMILAR DRUGS, AS SPECIFIED, AS CONTROLLED SUBSTANCES?

WOULD THE BENEFITS OF CLASSIFYING PSEUDOEPHEDRINE AND SIMILAR DRUGS, AS SPECIFIED, AS CONTROLLED SUBSTANCES IN CALIFORNIA OUTWEIGH WHATEVER NEGATIVE CONSEQUENCES MIGHT RESULT?

DO METHAMPHETAMINE MANUFACTURERS IN CALIFORNIA HAVE ACCESS TO PSEUDOEPHEDRINE IN BULK QUANTITIES FROM CHINA AND MEXICO?

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6. Argument in Support

The California Peace Officers' Association and the California Police Chiefs Association, which support this bill, submit:

This bill may be the most important anti-methamphetamine bill ever introduced in California. Currently, 90% of the methamphetamine that is cooked in this state is produced from pseudoephedrine that is sold in California retail outlets. Clearly, California's current safeguards - as well-intentioned as they were - have not worked.

Senate Bill 484, which is patterned after the very successful Oregon statute, would require that pseudoephedrine products could only be sold via prescription. This would render inoperative the sophisticated smurfing operations that, today, can generate sufficient pseudoephedrine in one day to produce a pound of methamphetamine.

7. Arguments in Opposition

The Consumer Healthcare Products Association argues in opposition:

. . . Requiring consumers to obtain a prescription to purchase PSE products would impose substantial, and unnecessary, new costs on consumers and the healthcare system. . . . CHPA supported . . . (requiring) all PSE-containing OTCs to be sold from behind the counter, limits purchases to 3.6 grams per day and 9 grams per 30 days, and requires purchaser signatures in a logbook. California has yet to enact similar restrictions that would give state and local law enforcement jurisdiction to enforce these sales limits. Since the CMEA and similar state restrictions took effect, there has been a 61% nationwide drop in meth lab incidents. California's lab incidents have

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been reduced by 86%, from a high of 2,579 incidents in 1999 to 349 lab incidents in 2008, . . .

. . . Oklahoma has seen a 90% reduction in the number of meth labs discovered in the state since implementing an electronic tracking system and other PSE sales restrictions. Kentucky and Arkansas began using similar systems state-wide in 2008. Kentucky's sales data shows that less than 1.5% of sales are blocked by the electronic tracking system because they would have exceeded legal limits, demonstrating that the vast majority of PSE sales are legitimate. While electronic tracking is not a free solution, the prescription alternative is an extremely costly route for the state. Requiring a prescription for an OTC drug will impose direct costs on the state to reimburse physicians every time a Medicaid or SCHIP recipient sees a doctor to obtain a PSE prescription. Health insurance premiums for state employees could also be affected. California would lose over \$4,460,000 in sales tax revenue (based on 2008 sales data, not including Wal-Mart) because prescription drugs are tax-exempt while OTCs are subject to sales

tax. Oregon is the only state that currently requires a prescription for PSE, and while Oregon has seen a significant reduction in meth lab incidents, it is comparable to the reductions achieved in its neighboring states which do not require a prescription.

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Millions of consumers still wait in line at the pharmacy and subject themselves to state and federal criminal prosecution if they exceed legal quantity limits to buy PSE. This demonstrates that for many, PSE is the best remedy even though reformulated products are available on the shelves and are easier to obtain. Prescription status for PSE would mean substantial new costs for these consumers, measured in both time and money, to access important and needed medicines.

8. Author's Proposed Amendments to Eliminate Felonies in the Bill

By placing pseudoephedrine and other specified chemicals on Schedule V of the controlled substance schedules, SB 484 would create new felony penalties for possession, possession for sale and sale of these chemicals. To avoid creating new felonies, the author has proposed that the bill could be amended to provide that any person who obtains the specified chemicals is guilty of an alternate infraction-misdemeanor.

As is noted in the discussion above, existing law includes crimes, including felonies, for possession of pseudoephedrine or other specified chemicals with the intent to manufacture methamphetamine. Additional crimes apply to persons who transfer these chemicals with the intent that they be used to manufacture methamphetamine or with knowledge that the chemicals will be used to manufacture methamphetamine. The new crime for possessing pseudoephedrine or other specified chemicals without a prescription be amended to provide that the new section does not prohibit prosecution under any other applicable provision of law.

SHOULD THIS BILL BE AMENDED TO PROVIDE THAT ANY PERSON WHO OBTAINS PSEUDOEPHEDRINE OR SPECIFIED RELATED CHEMICALS, WITHOUT A PRESCRIPTION IS GUILTY OF AN ALTERNATE INFRACTION-MISDEMEANOR?

SHOULD THE AMENDMENTS ALSO PROVIDE THAT POSSESSION OF PSEUDOEPHEDRINE OR OTHER SPECIFIED CHEMICALS OR DRUGS WITHOUT A

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PRESCRIPTION CAN BE PROSECUTED UNDER ANY OTHER APPLICABLE
PROVISION OF LAW?
