

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2847

1 of the lieutenant governor is \$100,000 [\$76,188].

2 * Sec. 4. AS 39.20.080(a) is amended to read:

3 (a) The monthly salary of the head of each principal executive department of
4 the state is not less than Range 28 nor more than Range 30 [EQUAL TO STEP E,
5 RANGE 28] of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

6 * Sec. 5. AS 39.27.011(a) is repealed and reenacted to read:

7 (a) The following monthly basic salary schedule is approved as the pay plan
8 for classified and partially exempt employees in the executive branch of the state
9 government who are not members of a collective bargaining unit established under the
10 authority of AS 23.40.070 - 23.40.260 (Public Employment Relations Act), and for
11 employees of the legislature under AS 24:

12	Range	Step	Step	Step	Step	Step	Step
13	No.	A	B	C	D	E	F
14	05	1724	1773	1822	1874	1929	1981
15	06	1822	1874	1929	1981	2038	2098
16	07	1929	1981	2038	2098	2163	2230
17	08	2038	2098	2163	2230	2294	2366
18	09	2163	2230	2294	2366	2440	2510
19	10	2294	2366	2440	2510	2587	2663
20	11	2440	2510	2587	2663	2753	2840
21	12	2587	2663	2753	2840	2936	3035
22	13	2753	2840	2936	3035	3142	3255
23	14	2936	3035	3142	3255	3368	3496
24	15	3142	3255	3368	3496	3608	3744
25	16	3368	3496	3608	3744	3878	4015
26	17	3608	3744	3878	4015	4152	4295
27	18	3878	4015	4152	4295	4429	4597
28	19	4152	4295	4429	4597	4740	4914
29	20	4429	4597	4740	4914	5061	5249
30	21	4740	4914	5061	5249	5410	5606
31	22	5061	5249	5410	5606	5788	5997

1	23	5410	5606	5788	5997	6196	6426
2	24	5788	5997	6196	6426	6641	6866
3	25	6196	6426	6641	6866	7115	7379
4	26	6426	6641	6866	7115	7379	7645
5	27	6641	6866	7115	7379	7645	7932
6	28	6866	7115	7379	7645	7932	8209
7	29	7115	7379	7645	7932	8209	8498
8	30	7379	7645	7932	8209	8498	8797

9 * Sec. 6. AS 39.27.011(e) is amended to read:

10 (e) Effective July 1, 2005 [2001], the amounts set out in the salary schedule
11 contained in (a) of this section are increased by two percent.

12 * Sec. 7. AS 39.27.011(f) is amended to read:

13 (f) Effective July 1, 2006 [2002], the amounts set out in the salary schedule
14 contained in (a) of this section, as increased under (e) of this section, are increased by
15 two [THREE] percent.

16 * Sec. 8. AS 39.20.010(b), 39.20.010(c), 39.20.030(b), and 39.20.030(c) are repealed.

17 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 SALARY ADJUSTMENTS FOR CERTAIN EXEMPT OFFICERS AND
20 EMPLOYEES OF THE EXECUTIVE BRANCH. Public officers and permanent and
21 temporary employees in the executive branch of the state government, other than the governor
22 and lieutenant governor, who are in the exempt service under AS 39.25.110, are not members
23 of a collective bargaining unit established under AS 23.40.070 - 23.40.260 (Public
24 Employment Relations Act), and are not otherwise covered by AS 39.27.011(a), are entitled
25 to receive salary adjustments comparable to those received by classified and partially exempt
26 employees of the executive branch under AS 39.27.011(a), as repealed and reenacted by sec.
27 5 of this Act, and AS 39.27.011(e) and (f), as amended by secs. 6 and 7 of this Act.

28 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 SALARY ADJUSTMENTS FOR CERTAIN EMPLOYEES OF THE JUDICIAL
31 BRANCH. (a) Permanent and temporary employees in the judicial branch of the state

1 government, other than magistrates and judicial officers, who are not members of a collective
 2 bargaining unit established under AS 23.40.070 - 23.40.260 (Public Employment Relations
 3 Act) are entitled to receive salary adjustments comparable to those received by classified and
 4 partially exempt employees of the executive branch under AS 39.27.011(a), as repealed and
 5 reenacted by sec. 5 of this Act, and AS 39.27.011(e) and (f), as amended by secs. 6 and 7 of
 6 this Act.

7 (b) Justices of the supreme court, judges of the court of appeals and the superior and
 8 district courts, and magistrates are entitled to receive salary adjustments provided for in secs.
 9 5 - 7 of this Act, in accordance with AS 22.05.140(d), AS 22.07.090(c), AS 22.10.190(d), and
 10 AS 22.15.220(b) and (e).

11 * Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to
 12 read:

13 SALARY INCREASES FOR CERTAIN EMPLOYEES OF THE UNIVERSITY OF
 14 ALASKA. The employees of the University of Alaska who are not members of a collective
 15 bargaining unit are entitled to receive salary increases in accordance with the compensation
 16 policy of the Board of Regents of the University of Alaska.

17 * Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 BONUSES FOR CERTAIN LEGISLATIVE EMPLOYEES. In addition to
 20 compensation authorized under AS 24.10.200 and 24.10.210, an employee of the legislature
 21 may be awarded and paid a bonus to reward extraordinary effort, competency, job
 22 performance, or uncompensated overtime. However, after January 1, 2005, the authority to
 23 award and pay a bonus under this section is terminated, and bonuses may not be awarded or
 24 paid after that date.

25 * Sec. 13. Section 1 of this Act takes effect January 16, 2007.

26 * Sec. 14. Sections 2, 3, and 8 of this Act take effect December 4, 2006.

27 * Sec. 15. Sections 4 - 7 and 9 - 11 of this Act take effect July 1, 2005.

28 * Sec. 16. Except as provided in secs. 13, 14, and 15 of this Act, this Act takes effect
 29 immediately under AS 01.10.070(c).

Amend.
#1

Adopted

24-GH1099\X
Craver
5/8/05

SENATE CS FOR CS FOR HOUSE BILL NO. 98(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the compensation of legislators, the governor, the lieutenant
2 governor, and certain public officials, officers, and employees not covered by collective
3 bargaining agreements; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 24.10.100 is amended to read:

6 Sec. 24.10.100. Salary of legislators. The monthly salary for each member of
7 the legislature is equal to Step A, Range 10, of the salary schedule in
8 AS 39.27.011(a) [\$2,001]. The president of the senate and the speaker of the house of
9 representatives are each entitled to an additional \$500 a year during tenure of office.

10 * Sec. 2. AS 39.20.010(a) is amended to read:

11 Sec. 39.20.010. Annual salary of governor. (a) The annual salary of the
12 governor is \$125,000 [\$81,648].

13 * Sec. 3. AS 39.20.030(a) is amended to read:

14 Sec. 39.20.030. Annual salary of lieutenant governor. (a) The annual salary

1 of the lieutenant governor is \$100,000 [\$76,188].

2 * Sec. 4. AS 39.20.080(a) is amended to read:

3 (a) The monthly salary of the head of each principal executive department of
4 the state is not less than Range 28 nor more than Range 30 [EQUAL TO STEP E,
5 RANGE 28] of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

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8 for classified and partially exempt employees in the executive branch of the state
9 government who are not members of a collective bargaining unit established under the
10 authority of AS 23.40.070 - 23.40.260 (Public Employment Relations Act), and for
11 employees of the legislature under AS 24:

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5 reenacted by sec. 5 of this Act, and AS 39.27.011(e) and (f), as amended by secs. 6 and 7 of
6 this Act.

7 (b) Justices of the supreme court, judges of the court of appeals and the superior and
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9 5 - 7 of this Act, in accordance with AS 22.05.140(d), AS 22.07.090(c), AS 22.10.190(d), and
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19 BONUSES FOR CERTAIN LEGISLATIVE EMPLOYEES. In addition to
20 compensation authorized under AS 24.10.200, an employee of the house of representatives or
21 senate may be awarded and paid a bonus to reward extraordinary effort, competency, job
22 performance, or uncompensated overtime. However, after January 1, 2005, the authority to
23 award and pay a bonus under this section is terminated, and bonuses may not be awarded or
24 paid after that date.

25 * Sec. 13. Section 1 of this Act takes effect January 16, 2007.

26 * Sec. 14. Sections 2, 3, and 8 of this Act take effect December 4, 2006.

27 * Sec. 15. Sections 4 - 7 and 9 - 11 of this Act take effect July 1, 2005.

28 * Sec. 16. Except as provided in secs. 13, 14, and 15 of this Act, this Act takes effect
29 immediately under AS 01.10.070(c).

Ivy Frye

From: Marcy McDannel [ycramm@yahoo.com]
Sent: Wednesday, May 04, 2005 12:04 PM
To: Sen. Lyda Green
Subject: A Message from the Alaska Prosecutor's Association

Senator Green:

I am writing to you on behalf of the Alaska State Prosecutor's Association to urge your support for House Bill 98, which was just transmitted to the Senate on May 4th. This bill would give all of your state prosecutors a much-needed pay raise. For many years now, our pay scale has remained stagnant, not keeping pace with the rate of inflation, or the debts accrued by many young prosecutors as they leave law school.

This may not be common knowledge, but the price of law school exploded during the 1990's, leaving most young prosecutors with a law school debt equivalent to a house mortgage. This puts many of us in a real bind: we want to have jobs where we help people and improve the quality of life in our communities, but we don't want to live like college students forever.

The difficulty of balancing huge debt against pay that has not kept pace either with inflation or the salaries of other legal positions has resulted in a constant drain of talented young attorneys from the Department of Law. This fact impacts, not only the quality of law enforcement in your community, but also the resources of the state. Young prosecutors generally leave after two to five years, after the state has expended time and money to develop their skills. New prosecutors are then hired to replace their more experienced counterparts, who must, in turn, be trained all over again.

The static pay scale also hurts prosecutors who have dedicated their professional careers to this demanding job. Many have hit longevity where they are no longer progressing up the pay scale. With their pay remaining flat, these prosecutors have slowly watched their standard of living — which for most means their ability to support their family — being eroded by inflation. In effect, they are actually taking yearly pay cuts.

Alaska's prosecutors are dedicated law-enforcement professionals who work far more hours, and endure far greater job stress than is generally required of a state employee. Those of us who have dedicated ourselves to this profession have prioritized helping our community above material wealth or personal gain. But at minimum we deserve pay increases that will allow us to satisfy our financial obligations and support our families. We hope that we have your support!

Yahoo! Mail Mobile
Take Yahoo! Mail with you! Check email on your mobile phone.

5/4/2005

HB 98



FRANK H. MURKOWSKI
GOVERNOR
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 2005

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

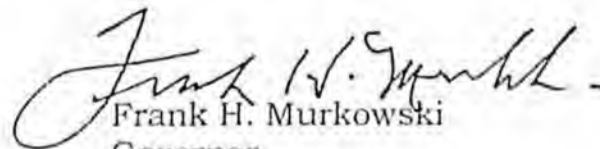
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the compensation of certain public officials, officers, and employees not covered by collective bargaining agreements.

This bill would revise the salary schedule for certain state officials, officers, and employees who are not covered by collective bargaining agreements to bring those salaries into line with employees in the supervisory bargaining unit.

Additionally, this bill would provide for a two percent increase in fiscal years 2006 and 2007, to parallel the offer the state extended to bargaining units with similarly situated employees. This proposal would cover employees in the executive, legislative, and judicial branches of state government who are not covered by a collective bargaining agreement.

I urge your prompt and favorable action on this measure.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

HB

99

HFIN

FILE

STATE OF ALASKA

FRANK H. MURKOWSKI,
GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

Sectional Analysis of CSHB 99(JUD) (Controlled Substances Regarding The Crimes Of Manslaughter, Endangering The Welfare Of A Child, And Misconduct Involving A Controlled Substance)

(Prepared by the Department of Law, March 2, 2005)

CSHB 99(JUD) would make it manslaughter for a person to manufacture or deliver a controlled substance in violation of Alaska's drug laws if a person dies from ingesting the substance. The bill also would make it a class C felony to manufacture or attempt to manufacture methamphetamine in a building where one or more children reside. It also would raise the penalty for possessing methamphetamine in solution with intent to extract methamphetamine salts from it.

Sec. 1: *Manslaughter:* This section adds elements to the crime of manslaughter under AS 11.41.120(a), to provide that a person commits manslaughter if the person knowingly manufactures or delivers a controlled substance in violation of AS 11.71, and a person dies as direct result of ingestion of the controlled substance. It also provides that the death of the person who ingests the controlled substance is a result that does not require an additional culpable mental state.

Sec. 2: *Special definition of "building":* This section adds a definition of "building" to AS 11.51.100(c) (Endangering the Welfare of a Child in the First Degree), to reflect the use of that term as proposed in CSHB 99(JUD). This special definition differs from the definition of "building" set out in AS 11.81.900(b) for the rest of the Criminal Code: The general definition provides that "when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building"; by contrast, the special definition proposed for AS 11.51.100(c) provides that "when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered *a part of the same building*" [emphasis added].

A technical change was made to put the section-specific definitions in AS 11.51.100(c) in alphabetical order.

Sec. 3: *Conforming provision:* This section amends AS 11.51.100(f) (Endangering the Welfare of a Child in the First Degree), to include AS 11.51.100(g) as a class C felony under AS 11.51.100.

Sec. 4: *Manufacture of methamphetamine in a building that houses children:* This section adds a new subsection (g) to AS 11.51.100 (Endangering the Welfare of a Child

in the First Degree), to make it a class C felony to knowingly manufacture or attempt to manufacture methamphetamine in violation of AS 11.71 in a building, with reckless disregard that the building is used as a permanent or temporary home or place of lodging for one or more children under 18 years of age.

Sec. 5: *Misconduct involving a controlled substance:* This section adds a new paragraph (5) to AS 11.71.020(a) (Misconduct Involving a Controlled Substance to the Second Degree), a class A felony, to raise the level of the crime of possessing methamphetamine in an organic solution with intent to extract from it methamphetamine salts, isomers, or salts of isomers. The section also makes conforming and technical changes to AS 11.71.020(a).

Sec. 6: *Applicability:* This section makes secs. 1 - 5 of the Act applicable to offenses committed on or after the effective date of the Act.

Sec. 7: *Effective date:* This section establishes an effective date of July 1, 2005.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

HB 99

STATE OF ALASKA

DEPARTMENT of HEALTH & SOCIAL SERVICES
DIVISION of PUBLIC HEALTH

FRANK H. MURKOWSKI, GOVERNOR

OFFICE OF THE DIRECTOR
P.O. BOX 110610
JUNEAU, AK 99811-0610
PHONE: (907) 465-3090
FAX: (907) 465-4832

February 28, 2005

The Honorable Kevin Meyer
Co-Chair, House Finance Committee
Alaska State Capitol, Room 515
Juneau, AK 99801-1182

The Honorable Mike Chenault
Co-Chair, House Finance Committee
Alaska State Capitol, Room 507
Juneau, AK 99801-1182

Dear Representatives Meyer and Chenault:

As director of the state Division of Public and as a longtime pediatrician in Alaska, I support the passage of House Bill 99, which strengthens criminal penalties for people who manufacture methamphetamine.

I regret I am unable to attend today's scheduled hearing on the bill. I testified to the Legislature last week in support of the companion bill, Senate Bill 70.

These statutory changes proposed by Governor Murkowski recognize the significant dangers posed by the illegal manufacture of methamphetamine. I am especially pleased that these proposals increase penalties for those who expose children to methamphetamine and the toxic byproducts of its production. Anyone exposed to this dangerous drug is at risk, but our children are especially vulnerable. The chemicals used in methamphetamine labs can harm fetal development, affect the healthy growth of young brains and bodies and, in fact, hurt children of any age.

I believe our laws must be strengthened accordingly, and I strongly support the passage of House Bill 99.

Sincerely,

Richard Mandsager, M.D.
Richard Mandsager, M.D.
Director, Division of Public Health

cc: Joel Gilbertson
Commissioner, Department of Health and Social Services

Randy Russo
Assistant Attorney General, Department of Law

AMENDMENT |

OFFERED IN THE HOUSE
TO: CSHB 99(JUD)

BY REPRESENTATIVE HAWKER

1 Page 3, following line 28:

2 Insert a new bill section to read:

3 **"* Sec. 6. AS 11.71.900(20) is amended to read:**

4 (20) "recreation or youth center" means a building, structure, athletic
5 playing field, or playground

6 (A) run or created by a municipality or the state to provide
7 athletic, recreational, or leisure activities for minors; or

8 (B) operated by a public or private agency to provide
9 shelter, training, or guidance for minors."

10

11 Renumber the following bill sections accordingly.

12

13 Page 3, line 31:

14 Delete "secs. 1 - 5"

15 Insert "secs. 1 - 6"

Representative Mike Hawker

Alaska State Legislature



Session:

State Capitol
Juneau, AK 99801
907-465-4949 direct
800-478-4950 toll free
907-465-4979 fax

Interim:

716 W 4th Avenue
Anchorage, AK 99501
907-269-0244 office
907-269-0248 fax

Member:

House Finance Committee
Legislative Budget
& Audit Committee

House District 32:

Eagle River
Anchorage
Rainbow
Indian
Bird
Gridwood
Portage
Whittier
Sunrise
Hope

To: Representative Kevin Meyer
Co-Chair, House Finance Committee

From: Representative Mike Hawker

Date: February 25, 2005

Re: Proposed amendment to HB 99

House Bill 99 will be up for consideration in the House Finance Committee on Monday, February 28. I have attached a proposed amendment expanding the definition of "recreation or youth center" with regard to crimes involving controlled substances. As you probably know, our statutes regarding controlled substances at AS 11.71 provide stiffer penalties for drug offenses near schools and youth centers.

The Anchorage Police Department contacted me earlier this session because facilities such as the Covenant House are not covered by our current statutory definition, even though youth who visit these facilities are at a high risk for substance abuse. The current definition of "recreation or youth center" only includes facilities that provide "athletic, recreational or leisure activities." The attached amendment would expand that definition to include facilities that provide "shelter, training or guidance."

Please feel free to contact me if you have any questions or concerns about this amendment. You can also contact my legislative staff, Juli Lucky.

A M E N D M E N T 2

OFFERED IN THE HOUSE
TO: CSHB 99(JUD)

BY REPRESENTATIVE CROFT

1 Page 1, line 2, following "substance;":

2 Insert "relating to listing certain anabolic steroids as controlled substances;"

3

4 Page 3, following line 28:

5 Insert a new bill section to read:

6 * Sec. 6. AS 11.71.180 is amended by adding a new subsection to read:

7 (f) Schedule VA includes, unless specifically excepted or unless listed in
8 another schedule, any material, compound, mixture, or preparation that contains any
9 quantity of the following substances, including their salts, esters, isomers, and salts of
10 esters and isomers if those salts, esters, or isomers promote muscle growth, whenever
11 the existence of these salts, esters, and isomers is possible within the specific chemical
12 designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug
13 or hormonal substance that is chemically and pharmacologically related to testosterone
14 (other than estrogens, progestins, and corticosteroids) and that promotes muscle
15 growth; "anabolic steroids" does not include an anabolic steroid that is expressly
16 intended for administration through implants to cattle or other nonhuman species and
17 that has been approved by the United States Secretary of Health and Human Services
18 for that administration, unless a person prescribes, dispenses, or distributes that type of
19 anabolic steroid for human use; "anabolic steroids" includes the following:

20 (1) boldenone;

21 (2) chlorotestosterone (4-chlorotestosterone);

22 (3) c'ostebol;

23 (4) dehydrochloromethyltestosterone;

- 1 (5) dihydrotestosterone (4-dihydrotestosterone);
- 2 (6) drostanolone;
- 3 (7) ethylestrenol;
- 4 (8) fluoxymesterone;
- 5 (9) formebulone (formebolone);
- 6 (10) mesterolone;
- 7 (11) methandienone;
- 8 (12) methandranone;
- 9 (13) methandriol;
- 10 (14) methandrostenolone;
- 11 (15) methenolone;
- 12 (16) methyltestosterone;
- 13 (17) mibolerone;
- 14 (18) nandrolone;
- 15 (19) norethandrolone;
- 16 (20) oxandrolone;
- 17 (21) oxymesterone;
- 18 (22) oxymetholone;
- 19 (23) stanolone;
- 20 (24) stanozolol;
- 21 (25) testolactone;
- 22 (26) testosterone;
- 23 (27) trenbolone."

24

25 Renumber the following bill sections accordingly.

26

27 Page 3, line 31:

28 Delete "The changes made in secs. 1 - 5 of this Act apply"

29 Insert "This Act applies"

AMENDMENT 3

OFFERED IN THE HOUSE
OF: CSHB 99(JUD)

BY REPRESENTATIVE WEYHRAUCH

- 1 Page 1, lines 12 - 13:
- 2 Delete "a person dies as a direct result of ingestion of the controlled substance"
- 3 Insert "another person dies and ingestion of the controlled substance
- 4 manufactured or delivered is the actual and proximate cause of the death"

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 99
(H) Publish Date: 1/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An Act relating to controlled substances RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: Rules Committee
Requester: Governor Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This proposed bill amends the crime of manslaughter to include deaths that are the direct result of ingesting drugs knowingly manufactured or delivered illegally. It also amends the crime of child endangerment to include a C felony for manufacturing methamphetamine in a building where children reside. It also raises to an A felony possession of methamphetamine in an organic solution. While the agency has seen a recent increase in appointments concerning methamphetamine cases, this proposed legislation is not expected to have a noticeable fiscal impact on the operations of the Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone: (907)334-4416
Division: Public Defender Agency Date/Time: 1/20/05 1:18 PM
Approved by: Michael Tibbles, Deputy Commissioner Date: 1/20/2005
Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 99
(H) Publish Date: 1/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title Methamphetamine / Drug Crimes Bill RDU CRIMINAL
Component CDCO
Sponsor Possible Governor
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would make it manslaughter for a person to manufacture or deliver a controlled substance in violation of Alaska's drug laws if a person dies from ingesting the substance. The bill also would make it a class C felony to manufacture or attempt to manufacture methamphetamine in a building where children reside. It also would raise the penalty for possessing methamphetamine in solution with intent to extract methamphetamine salts from it. The Department of Law does not anticipate a significant fiscal impact from passage of this legislation.

Prepared by: Robert Meiners, Dep. Director Phone 465-5427
Division Administrative Services Date/Time 12/22/04 2:55 PM
Approved by: Robert Meiners for Gregg D. Ronks, Attorney General Date 12/22/2004
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: HB 99
(H) Publish Date: 1/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title Act relating to controlled substance; crimes of RDU Alaska State Troopers
manslaughter and endangering welfare of a child Component AST Detachments
Sponsor Rules Committee
Requester Governor Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this Act will have no fiscal impact on the Department of Public Safety. This Act addresses issues relating to the extreme dangers that surround the unlawful manufacture of methamphetamine. It makes it a crime of manslaughter for a person to manufacture or deliver a controlled substance in violation of Alaska law if a person dies as a result of ingesting the substance. It will make it a class C felony to manufacture or attempt to manufacture methamphetamine in a building where one or more children are present, and will increase penalties for processing methamphetamine in solution with the intent to extract.

Prepared by: Lieutenant Todd Sharp Phone 907-269-4532
Division: Alaska State Troopers Date/Time 1/20/05 2:01 PM
Approved by: Commissioner William Tandesko Date 1/20/2005
Agency: Department of Public Safety

What is the Drug Endangered Children program (DEC)?

The DEC program is a multi-agency approach to assist and protect drug-endangered children whose lives are jeopardized by their families' illegal manufacturing, sales, and possession of drugs in the home. The purpose of the Riverside County Drug Endangered Children's Response team is to intervene on the behalf of children who have been exposed to Methamphetamine or toxic chemicals as a result of residing in a home-based illicit clandestine drug laboratory and to vigorously prosecute the offending adults. The DEC response team will provide a comprehensive county response by coordinating Law Enforcement, Child Protective Services, District Attorney's Office, Riverside County Regional Medical Center, and Public Health Nursing agencies.

Drug Endangered Children key services:

- Removal of child from toxic chemical exposure and drug environments
- Comprehensive medical screening & follow-up
- Drug screening
- Mental care evaluation & follow-up services
- Dental care treatment
- Background checks and home-evaluation for possible placement

How to spot a Meth lab in your neighborhood?

- Strong chemical odors like cat urine, ether, ammonia, acetone.
- Unusual amounts of activity in and out of the residence or unusual late night activity.
- Paranoid or unusual behaviors.
- Trash including camping fuel containers, starter fluid cans, drain cleaners, numerous over-the-counter-cold medicine containers, plastic tubing, and red stained coffee filters.
- People bringing things to trade.
- Children noticed unattended or neglected.
- Children repeatedly kept home from school.
- Children in dirty cloths or inappropriate clothing
- Unreported fires.
- Reinforced doors and windows; attempts to cover/blacken out windows.

If you suspect methamphetamine abuse especially where children are involved, please call:

911

or

**(909) 955-METH
(Hot Line)**

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Inland Narcotic Clearing House Riverside Ca.
909 328-6270 Los Angeles (310) 626-003

Riverside County



*"Because, in America,
it shouldn't be
dangerous to be a kid"*

Drug Endangered Children Program (DEC)

Methamphetamine Lab Dangers to Children



Methamphetamine

Methamphetamine, or "Meth", is a clandestinely manufactured, long-lasting nervous system stimulant. It is the product of a witch's brew of common household cleaners, flammable solvents, corrosive acids and over-the-counter cold medicines. Methamphetamine is also known locally as meth, speed, crystal, glass, crank, go fast, or ice. Methamphetamine is an extremely destructive and debilitating addiction.



Toxic Chemicals

Toxic hazardous waste from meth production is often left in the house or dumped in the backyard where kids play. Every 1 lb of meth made results in 7 lbs of toxic chemical waste. Some of these poisonous chemicals include acids, solvents, drain cleaners, camping fuels and carcinogen items. Meth-abusing parents often use the same household glassware to cook meth and dinner.



Fire and Explosions

Cooking methamphetamine is a dangerous proposition due to the extreme risk of fires, explosions, and exposure to toxic fumes. Current local lab statistics reveal that 50% of all lab fires had children present at or near the incident with 18% of suspects reported injured. Seeking care for children injured in a lab fire may be delayed or denied for fear of arrest.

Child Neglect and Sexual Abuse

In Riverside County, 70% of child abuse cases are related to Meth. Due to their parents' drug addiction, these young children are regularly neglected, and left unattended for long periods of time. Meth abuse in the home increases parent aggression, sexual drive, and can lead to violent psychotic behaviors, which are often perpetrated on their own children by the very persons who are supposed to protect them. Meth is probably the single greatest cause for increases in child sexual abuse cases.

Horrendous Living Conditions

Meth abuse forces once-caring parents to forgo personal and family hygiene. This creates unimaginable filth and unhealthy living conditions for the children. Meth induced paranoia often leads the parents to booby-trap the home and leave firearms unsecured to the detriment of small children. The parents' self-induced paranoia and child neglect also keep the children from attending school regularly.

Medical Complications

Lack of pediatric medical and dental care is commonplace in homes where meth is being produced or used. Preventable prenatal complications include premature birth, congenital deformities, and drug addiction. Children also face learning disabilities such as Language Delay Development, and Attention Deficit Disorder (ADD). Children found at lab sites also show signs of liver damage, malnutrition, dehydration, and breathing problems which can cause further medical complications.

"In Riverside County 70% of child abuse cases are Methamphetamine related."

Hazards of Methamphetamine Production:

Typical Chemicals Found In Lab Sites	Common Legitimate Uses	Poison	Flammable	Toxic Vapors	Explosive	Corrosive	Skin Absorption	Common Health Hazards
Acetone	Fingernail polish remover, solvents	X	X	X			X	Reproductive disorders
Methanol	Brake Cleaner fluid, fuel	X	X	X			X	Blindness, eye damage
Ammonia	Disinfectants	X		X		X	X	Blistering, lung damage
Benzene	Dye, varnishes, lacquers	X	X		X	X	X	Carcinogen, Leukemia
Ether	Starters fluid, anesthetic	X	X		X			Respiratory Failure
Freon	Refrigerant, propellants	X		X		X		Frostbite, Lung damage
Hydriodic Acid	Driveway cleaner	X		X		X	X	Burns, Thyroid Damage
Hydrochloric Acid (HCL Gas)	Iron ore processing, mining	X		X		X	X	Respiratory, Liver Damage
Iodine Crystals	Antiseptic, disinfectant	X	X		X	X		Birth Defects, Kidney Failure
Lithium Metal	Lithium batteries	X				X	X	Burns, Pulmonary Edema
Muriatic Acid	Swimming pool cleaners	X		X		X		Burns, Toxic Vapors
Phosphine Gas	Pesticides	X		X			X	Respiratory Failure
Pseudophedrine	Cold medicines	X						Abuse: Heart Damage
Red Phosphorus	Matches, fireworks	X	X	X	X			Unstable, Flammable
Sodium Hydroxide	Drain cleaners, lye	X		X		X	X	Burns, Skin Ulcers
Sulfuric Acid	Battery Acid	X		X		X	X	Burns, Thyroid Damage
Toluene	Paint, thinners, solvents	X	X	X	X		X	Fetal Damage, Pneumonia
Liquid Lab Waste	None	X	X	X	X	X	X	Unknown long term effects



Dangers

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Dangers to Children Living at Meth Labs: Children Found in Meth Lab Homes

Description of two cases as cited in a NDIC Report, stating the living areas and physical condition of the children found in meth lab homes.

The five children ranged in age from 1 to 7 years old. The one-bedroom home had no electricity or heat other than a gas stove with the oven door opened. Used hypodermic needles and dog feces littered areas of the residence where the children were found playing. Because there were no beds for the children, they slept with blankets underneath a small card table in the front room. The bathroom had sewage backed up in the tub, leaving no place for the children to bathe. A subsequent hospital exam revealed that all the children were infected with hepatitis C. The youngest was very ill. His liver was enlarged to the size of an adult's. The children had needle marks on their feet, legs, hands, and arms from accidental contact with syringes.

At another lab site, a 2-year-old child was discovered during a lab seizure. Her parents both abused and manufactured methamphetamine. She was found with open, seeping sores around her eyes and on her forehead that resembled a severe burn. The condition was diagnosed as repeated, untreated cockroach bites.



Used hypodermic needles, razor blades and methamphetamine laying within reach of inquisitive children.



This is an poisoning waiting to happen. Plastic soda bottles are frequently used to store

methamphetamine in solution, acids, or even urine which can be recycled later.

Source: Text based on NDIC Report
Photos: Riverside Sheriff Dept Special Investigative Bureau

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Frontiersman

Tuesday, November 23, 2004

The online edition of the Frontiersman does not contain the entire content of our print version.

Spun out: Methamphetamine epidemic hits Mat-Su

By JOHN



Mike Anderson, a toxicologist who works for the ECC, examines chemical waste from a meth lab. Waste products from methamphetamine include highly toxic chemicals that must be disposed of by trained professionals. Photo courtesy of Environmental Compliance Consultants.

DAVIDSON/Frontiersman reporter

Imagine staying awake for weeks on end, mostly indoors, peering out curtained windows and closed blinds when the paranoia sets in. Imagine not eating, or eating very little, feeding your body a chemical soup of cleaning products and cold medicines cooked down to crystals in someone else's basement. Imagine five or six people huddled in a dark apartment for days and days, talking excitedly, cleaning, planning, taking things apart, pacing, itching, going nowhere,

wasting away.

Imagine you are addicted to methamphetamine.

For a growing number of Valley residents, meth addiction is anything but imaginary. As local police and Alaska State Troopers continue to discover more meth labs every year and arrest more Valley 20-somethings for meth production and possession



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than ever before, a meth epidemic in the Mat-Su is fast becoming a grim reality.

In recent years Mat-Su's problem with methamphetamine has become increasingly apparent. In 2003, nearly half the meth labs seized statewide were found in the Valley. This year, with 39 labs discovered already, the Mat-Su Drug Unit expects its share will be well over half the state's total.

"There's been an explosion in the number of labs we've found over the last five years," Sgt. Patrick Davis said. "The trend is climbing at an alarming rate."

Davis describes Mat-Su's meth underworld as a cancer -- a loose network of cells consisting of small groups scattered throughout the Valley. The groups make, use and sell methamphetamine, Davis said, but they only make and sell enough to sustain their addiction and perpetuate the process.

A "family" of tweakers

Jennifer first tried methamphetamine when she was 16. She began taking it occasionally, whenever she was hired to clean someone's house; she says it helped her work faster, it helped her make more money.

But meth gradually became a habit, and then, much more quickly, it became a way of life.

Over the last seven years Jennifer has used meth on and off, going through periods of heavy, prolonged use. She is 23 now and says she will never do meth again; she feels lucky to be alive.

Jennifer, who requested her last name not be used, is trying to regain custody of her son and set her life in order. She has been clean and sober since March 28, 2004 -- the day the state took her son away.

"When the troopers came and took him, everyone felt really bad and they wanted to do some [meth]," Jennifer said. "But that's when I realized I had to stop. I realized it had gone way too far."

Losing her 2-year-old son jolted Jennifer out of a meth underworld in which she had been deeply involved for seven months.

She describes being part of a group of "tweakers" who stayed in or near a certain meth cook's house in Anchorage. About a half-dozen people were there at any given time, sitting around with the windows and doors locked, the shades drawn tight, first cooking and then smoking or snorting meth.

was gone for two weeks.

Nowadays Jennifer has no contact with her former "meth family." She says she wants to leave behind that world forever, including the paranoid ways of thinking and behaving associated with it.

"To this day I can't just peek out the blinds, I have to open them up all the way," Jennifer said. "I don't want to do things the way I did them when I was tweaking. I know where I am in my life now and I know I'll never do [meth] again."

Paranoia is a near-constant state of mind for a chronic meth user. Jennifer said her friends would sometimes freak out and imagine there were cops in the woods with sniper rifles trained on them, or they would see a plane flying over the flats and think it was tracking them while they drove back to the Valley from Anchorage.

Some of her friends suffered from the delusional sensation of bugs crawling under their skin -- "crank bugs," they called them -- which causes people to scratch their skin raw. Jennifer, although she never felt crank bugs under her skin, would pick at her fingers until she had sores.

But Jennifer is in the process of turning her life around. For the past five months she has been in a recovery program. After completing her treatment, she will have a hearing about regaining custody of her son, who now lives with his grandmother.

Still, for Jennifer, there are occasional reminders of the meth life. She gets phone calls every now and then from friends who are still users. She says they don't make sense anymore; now that she is sober she can't really talk to them about anything, there is no common ground.

Four out of every 10 people Jennifer knows have "spun out," or used meth regularly in the past. Six out of 10 people she knows have tried it at least once.

Off the top of her head, Jennifer can think of at least eight meth labs in her corner of the Valley. Every one of those labs has about a dozen people connected to it, sometimes more. Jennifer thinks those numbers have been steadily growing, since she first tried meth seven years ago, and first-time users are getting younger.

"I had a 13-year-old ask for it one time and I just about flipped out," Jennifer said. "But how could I tell him not to do it when I was doing it? You can't say you're not old enough, because no one's old enough."

Jones left the car in the middle of a road with the lights on, his driver's license on the driver's seat and Shane Rogers' wallet and identification on the passenger seat, on top of broken glass and blood.

During questioning, Jones seemed disoriented and said several times, "Shane is not dead." Jones told police the meth was making him hallucinate and he thought there was someone else in the car with them at the time.

At one point in the questioning, Jones wondered out loud why they were asking him questions, saying, "You were there, weren't you?"

In a telephone interview from Spring Creek Correctional Center, a maximum-security state prison in Seward where he is serving a 25-year sentence for second-degree murder, Jones set Rogers' death in a broader context.

Jones said he and Rogers had spent nearly two weeks cooking meth in a small room in Anchorage before they set out for Palmer that day. They were awake, on meth, the entire time.

"We were so high we should've been dead from overexposure to the chemicals," Jones said. "When you're in the same room where that stuff is being cooked, you have no idea how intense it is, it's just a cloud of gas, it attacks your body from every direction."

Jones said he was "tripping out," hallucinating and seeing things that day. He said Rogers was flicking red phosphorus at his eyes, he didn't know why, and things got out of control.

"I didn't realize I was so out of it," Jones said. "I didn't think I had that much in my system."

Although Jones says he had taken meth for 15 years, on and off, the weeks before the shooting when he and Rogers were cooking up meth in a small room together were the first time he had ever been around when meth was being cooked. Jones says they were not making a lot of meth, just enough to keep them high.

"The whole thing was crazy. My life is a living hell now," Jones said. "Meth was the only drug I ever really did, and the only reason I did it was because I worked a lot of hours driving trucks. I was an addict, and when you're an addict you find your sources and keep them close."

In Jones' case, his source was Rogers, and like the

frontiersman

Tuesday, November 30, 2004

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Methamphetamine waste out of control

JOHN DAVIDSON/Frontiersman reporter

MAT-SU -- It's not exposure to deadly chemicals that frightens them; nor is it the possibility of toxic vapors igniting and blowing up their house. It's that knock at the door they fear most of all.

Methamphetamine cooks are perhaps the most paranoid and unstable of all drug criminals. Most meth cooks are also meth addicts, and in heavy users the drug can cause extreme paranoia, psychotic behavior and, often, violence.

"We've had quite a few cases where we've seized weapons at a lab," said Sgt. Patrick Davis of the Mat-Su Drug Team. "When these people are tweaking, they are ultra-paranoid, they don't want to go to jail and they can become violent. One aspect of their paranoia is violence."

But the five officers who make up the Mat-Su Drug Team have more than paranoid meth addicts to deal with when they seize a lab. Sometimes the greatest danger to officers is the mix of chemicals and toxic vapors in an active meth lab.

Depending on what kind of intelligence they have about a lab, members of the team go in wearing masks and full chem suits. Two members of the team have attended a tactical clan-lab school in California -- a week of scenario-based training in which officers learn how to seize active meth labs while wearing chem suits, respirators and oxygen tanks.

The extra training has been valuable, since most of the team's work now centers on clandestine meth labs.

Four years ago, when Davis was assigned to the drug team, almost all the team's work dealt with marijuana and cocaine; now Davis says 80 to 85 percent of the team's time and resources are spent chasing down meth labs and cooks.



"An overwhelming number of the tips we get now are about meth labs," Davis said. "That doesn't mean other drugs aren't out there, we just have to prioritize our time."

The public-safety aspect is critical when it comes to meth labs, Davis said. Cooks tend to dump waste chemicals in the woods or in Dumpsters of apartment complexes; they also cook meth in hotel rooms. At least two Valley hotels unwittingly have played host to meth labs this year.

The fact that in 2003, more than half of all meth labs seized statewide were operating in the Valley -- Davis predicts an even higher percentage by the end of 2004 -- means the Mat-Su has a veritable meth epidemic on its hands.

"If we were to double the size of this team and just work on meth, we'd still be working around the clock," Davis said. "My guys spend a lot of hours away from home, and even in the face of overwhelming odds and adversity, they come to work every day and go after the bad guys."

Davis describes meth as a cancer that is eating away at society. In terms of public health and safety, Davis and his team consider meth labs public enemy number one.

And there are more than ever these days. The proliferation of labs in the Valley may have something to do with Mat-Su being one of the fastest-growing communities in the state and the country; Davis says meth production and addiction are part of a larger, national problem.

"We're seeing a trend that started in the late '80s and early '90s, where meth would come into an area and explode," Davis said. "We're experiencing that now."

The proliferation of meth

Small-scale, clandestine labs are a relatively recent development in the history of methamphetamine. A Japanese pharmacologist is believed to have developed the drug in 1919, and during World War II, meth was reportedly given to both Allied and Axis troops to sustain them on long flights or marches.

In the 1950s, versions of meth called "pep pills" or "bennies" were sold in the U.S. for nonmedical purposes, and meth was marketed to treat obesity, narcolepsy and sinus inflammation.

Meth became regulated under the Controlled Substances Act of 1970, but in the late 1980s new

methods of cooking more potent versions of meth began to appear. These methods used ephedrine or pseudoephedrine as the precursor to meth, and made it possible for addicts to produce meth on their own -- if they didn't blow up their houses in the process.

Nowadays, there are three main methods used to produce the drug: The red phosphorus, birch and amalgam methods. The two methods used in Alaska are the red phosphorus method and the birch method.

The birch, also known as the "ammonia" or "Nazi" method, relies on a plentiful supply of anhydrous ammonia that is most commonly found in commercial freezers and agricultural applications in the Lower 48. Farmers have lost large stores of ammonia fertilizer to raids by meth cooks who use this method throughout the Midwest.

In Alaska, meth labs using the "Nazi" method would likely be found near shore-based fish-processing plants or fish-processing vessels.

In Alaska, most meth cooks use the red phosphorus method. According to the ADEC, wastes generated from the red phosphorus method include flammable extraction-process sludge, phosphine gas, iodine, hydriodic acid, hydrogen chloride gas, phosphoric acid and yellow or white phosphorus.

But none of these chemicals or gases are active ingredients in the final product.

Meth's only active ingredient is ephedrine, which is also the only active ingredient in many over-the-counter cold remedies; it's the caffeine in the tea bag. All the other chemicals used are there to bind up the ephedrine, convert and crystallize it into a usable product. Pure ephedrine is actually extremely dangerous; in its pure form, it is a controlled substance.

But converting ephedrine to meth produces volatile and toxic chemical waste. A 2003 University of Washington study of chemical exposures at meth labs found the chemical exposures of greatest concern were those produced using the red phosphorus method -- specifically those consisting of phosphine, iodine and hydrogen chloride.

The study highlighted iodine as a likely cause of mucus membrane and eye irritation reported at many lab seizures, and stated that the persistence of iodine in the environment of the cook, "is very important to the children that are present in clandestine laboratories as well as children who inadvertently become residents in a building previously used as a meth lab. Children crawling on contaminated carpet



may pick up high levels of iodine."

Aside from waste chemicals produced from cooking, meth contamination was found in every one of the 16 buildings tested in the study, all of which housed meth labs at some point.

"Even labs that had been busted several months prior to testing still had contamination levels of methamphetamine present on many surfaces within the building," the report stated.

In one controlled meth cook, researchers placed a teddy bear 12 inches from the cook area and afterward checked the bear's pH level and tested the bear's "fur" for meth contamination. The teddy bear had an extremely acidic pH of 1, and was highly contaminated with meth.

According to the study, "Children playing with such toys may be exposed to strong acids contained within the toy, causing severe burns to the skin and mucus membranes, and also be exposed to significant concentrations of methamphetamine -- particularly if the toy is placed in the mouth."

Fit for use?

In July 2003, House Bill 59 was signed into law. The bill directed the ADEC to adopt regulations "for the evaluation and cleanup of sites where methamphetamine was manufactured or stored."

HB 59

The bill was meant to address a relatively new problem: As the number of clandestine labs seized in Alaska continues to skyrocket, more landlords are faced with contaminated houses and apartments. Often the costs associated with properly testing and cleaning a former meth lab exceed the value of the property itself.

Although HB 59 requires property owners to clean up hazardous materials and provide test results that show contamination levels below ADEC limits before the property can be used again, it does not require third-party verification that a former lab is "fit for use."

While the ADEC recommends landlords hire a professional contractor to clean and test contaminated homes, the proposed regulations do not mandate it.

Some experts think this is a problem.

Mike Anderson, a toxicologist with Environmental Compliance Consultants, the company contracted to clean up meth labs statewide, thinks HB 59 is a good idea, but without requiring expert testing and cleaning

of a lab site, it leaves the door open for landlords to cheat -- and save thousands on cleanup costs.

"It's woefully inadequate to have people test their own homes," Anderson said. "It's inadequate to have them clean their own homes, and especially to have them test their own homes."

The ADEC regulations do require samples of former labs to be tested by professionals before the property can be certified "fit for use," but Anderson says it would be easy for a homeowner to cheat. By sending in a sample from a different home, or sending a clean piece of drywall in for lab analysis, a landlord could have a property certified "fit for use" without ever cleaning or testing it.

Although the ADEC has offered to provide property owners with the guidelines for cleaning a site and a list of laboratories that can test the site, there is no requirement for them to verify their work through a third party.

State Rep. Jim Holm, R-Fairbanks, and state Sen. Gretchen Guess, D-Anchorage, sponsored the bill and worked together to ensure passage of the new regulations.

Neither Holm nor Guess returned phone calls for this article, but minutes of a 2003 House Judiciary Committee discussion of the bill shed some light on why DEC officials and legislators made key changes to the bill that shifted responsibility for verification of lab cleanup from the state to the property owner.

The minutes state that Larry Dietrick, acting director of the Division of Spill Prevention and Response for the DEC, said the intent was to make the bill "self-implementing" in order to protect public health without developing a new government service. The minutes state, "The department won't review the work and the cleanup, but rather the owner will do so."

The minutes also state Dietrick said laboratory certification is quite costly.

The proposed ADEC regulations outline 29 substances that are potentially harmful wastes associated with meth labs, but advises against "unwarranted sampling," which may "place an excessive and pointless financial burden upon home owners to demonstrate 'fit for use' compliance."

Because homemade meth labs are such a recent phenomena, no one really knows the long-term effects of meth contamination.

Anderson thinks meth residue, which gets in and on

the walls of a lab site, can affect people who inhabit a house or apartment even after the lab itself has been removed. Because of the molecular structure of methamphetamine, it can be extremely difficult to get it off walls and out of carpet.

"This is a great problem," Anderson said. "People don't have the means to test for fumes, which adhere to drywall and paint. Meth comes out in a gas form, and it's so persistent and soluble, a wet rag just smears it across the wall. If you keep using the same rag, you're not cleaning it, you're just smearing it around."

Cutting off supply

For every meth lab law-enforcement officials seize, more crop up. This is because meth cooks teach as many as a dozen other tweakers how to make it.

Assistant District Attorney Paul Roetman, who handles narcotics cases for the Palmer DA's office, says he has three to four times as many meth cases this year as his predecessor had in 2003.

★ possible witness

The Palmer DA's office handled only 10 meth-related cases last year; this year Roetman has 40 meth cases, to date, out of a total caseload of 200.

Almost all of those meth cases involved two to four co-defendants.

"People can't do it alone," Roetman said. "But we're taking a hard line on meth, it's a huge problem."

The charge for manufacturing meth is second-degree misconduct involving a controlled substance -- a class-A felony. Five years is the presumptive term for class-A felonies, but a judge can reduce that to two and a half years.

Even though the normal term of sentence is five years, Sgt. Davis says he and his team often arrest the same people more than once.

"I'm starting to see guys we arrested in 2000," Davis said. "They get out and hit the street again and their names are popping up. They're at it again."

Davis thinks the key to keeping meth addicts off the streets is to impose stiffer penalties. Sentencing guidelines often don't allow a judge to hand down more than a five-year sentence, and after two years they're out on the street again.

★

Investigator Mike Ingram, another Mat-Su Drug Team member, agrees. The only treatment for meth addicts is to get away from the scene completely.

"They need isolation, by which I mean they need to be incarcerated," Ingram said. "They need to get out of the cooking scene and get away from the people who cook it and get a rush off it."

But some say the costs associated with longer prison terms and heavier prosecution do little to curb the number of labs being set up.

One strategy used in Oklahoma was to cut off the supply of ephedrine and pseudoephedrine by allowing only licensed pharmacists to sell it. Although customers don't need a prescription, they do have to show photo identification and sign a registry when they purchase ephedrine or pseudoephedrine products.

Ephedrine, after all, is the key ingredient needed to make meth. By restricting the free flow of ephedrine over countertops at supermarkets and convenience stores, the ability to make meth would be greatly reduced. After Oklahoma's law had been in effect for just one month, the state was claiming a 25-percent decrease in lab busts for the year to date.

And there seems to be a correlation between meth production and ephedrine consumption. According to the federal Drug Enforcement Agency, consumption of raw pseudoephedrine by U.S. drug firms climbed 178 percent between 1990 and 2003, the very years that saw meth rise from obscurity to epidemic proportions.

In 1998, a year before meth use really exploded in the U.S., the amount of raw ephedrine sold nationwide was nine tons; the next year it rose to 14 tons.

State Rep. Carl Gatto, R-Palmer, says there hasn't been any discussion in the state Legislature about reclassifying ephedrine-based products as controlled substances, but he admits the meth problem is getting out of control and such restrictions might help.

"It's fairly inexpensive to restrict products, much more so than adding units and personnel to law enforcement," Gatto said. "All you have to do is interfere with one major ingredient and you can disrupt production."

ECC toxicologist Mike Anderson thinks the effect would be profound.

"It's a great idea to make cold tablets a schedule-five drug," Anderson said. "For the types of labs we have in Alaska, I think it would have a substantial effect. It would make [ephedrine] more difficult to get and easier to track."

For Gatto, much of the issue is a question of ever-increasing costs associated with the rising meth epidemic in Alaska.

"How much are the savings from overcrowded prisons and court fees and law enforcement compared to the costs of running a program that will reduce the need for these things?" Gatto said. "These are the types of things we have to look at in greater detail."

But for Anderson, something as simple as making a controlled substance controlled should be a first step in fighting meth production in Alaska.

"Getting meth out of ephedrine would be like extracting crack cocaine from old-fashioned Coca-Cola," Anderson said. "I guess no one ever thought people would be able to extract ephedrine from cold tablets and make methamphetamine."

Contact John Davidson at
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Medical waste permit passed

MAT-SU -- With construction of the new Valley Hospital facility progressing rapidly, the Mat-Su Borough Assembly passed an ordinance at its Nov. 16 meeting aimed at one type of business that often accompanies growth in the medical field.

Hospital 'topping off' party planned

MAT-SU -- Valley Hospital will mark off a milestone next Friday when it hosts a "topping off" ceremony to celebrate the highest beam being swung into place on its new hospital.

Methamphetamine waste out of control

JOHN DAVIDSON/Frontiersman reporter

Palmer Ice Arena solidifies its place

JOEL DAVIDSON/Frontiersman reporter

Illegal moose kills: An increasing problem in the Valley?

HOWARD DELO/For Frontiersman

New traffic light brings relief

JOEL DAVIDSON/Frontiersman reporter

Troopers to crack down during holidays

SHAUN M. WHITESIDES, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-8274, No. 1921

COURT OF APPEALS OF ALASKA

88 P.3d 147; 2004 Alas. App. LEXIS 66

April 2, 2004, Decided

PRIOR HISTORY: [**1] Appeal from the Superior Court, First Judicial District, Ketchikan, Trevor N. Stephens, Judge. Trial Court No. IKE-00-656 Cr. *Whitesides v. State*, 2003 Alas. App. LEXIS 89 (Alaska Ct. App., May 7, 2003)

DISPOSITION: Reversed and remanded for resentencing.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant appealed the judgment of the Superior Court, First Judicial District, Ketchikan, Alaska, convicting and sentencing her for selling heroin.

OVERVIEW: The police received a report of a drug overdose. When they arrived at the scene, they discovered that the victim was dead. The medical examiner concluded that the victim's death was due to a heroin overdose. Defendant admitted that she sold him the heroin. The sentencing judge found one aggravating factor under *Alaska Stat. § 12.55.155(c)(1)*: that a person, other than an accomplice, sustained physical injury as a direct result of defendant's conduct. On review, the Court of Appeals of Alaska determined that aggravator (c)(1) did not apply. A drug purchaser's physical injury from ingesting drugs was not normally a "direct result" of the sale by which the drug purchaser gained possession of the drug.

OUTCOME: The decision of the superior court regarding the aggravator factor was reversed, and the case was remanded to the superior court so that defendant could be resentenced.

LexisNexis(R) Headnotes

Criminal Law & Procedure > Sentencing > Adjustments

Criminal Law & Procedure > Sentencing > Sentencing Ranges

[HN1] *Alaska Stat. § 12.55.155(c)(1)* is one of the statutory aggravating factors that authorize a sentencing judge to exceed the presumptive term of imprisonment in cases governed by presumptive sentencing. *Alaska Stat. § 12.55.155(c)(1)* states that a defendant's presumptive term can be aggravated if a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct.

Criminal Law & Procedure > Criminal Offenses > Controlled Substances > Delivery, Distribution & Sale

[HN2] Second-degree controlled substance misconduct is a class A felony.

Criminal Law & Procedure > Sentencing > Adjustments

[HN3] *Alaska Stat. § 12.55.155(c)(1)* states that a felony is aggravated, for purposes of Alaska's presumptive sentencing laws, if a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct.

Criminal Law & Procedure > Sentencing > Adjustments

[HN4] Not all acts that physically contribute to a result are deemed significant for purposes of assessing criminal responsibility. Aggravator *Alaska Stat. § 12.55.155(c)(1)* applies only to cases in which a person suffered physical injury as a direct result of the defendant's conduct.

*Governments > Legislation > Interpretation
Criminal Law & Procedure > Sentencing > Adjustments*

[HN5] The normal meaning of the words "direct" and "result" used in *Alaska Stat. § 12.55.155(c)(1)* imply that the defendant's conduct must, at a minimum, be a "proximate cause" of the victim's physical injury before the victim's injury could be said to be a "direct result" of the defendant's conduct.

Torts > Causation > Proximate Cause

[HN6] "Proximate cause" is a physical ("actual") cause which, in the eyes of the law, is significant enough under the circumstances of the case to support a finding that the defendant is responsible for the victim's physical injury.

Torts > Causation > Proximate Cause

[HN7] In both civil and criminal contexts, the appellate courts of Alaska state that a defendant's conduct can normally be viewed as a "proximate cause" of an ensuing injury if the defendant's conduct was a "substantial factor" in causing that injury.

Torts > Causation > Proximate Cause

*Governments > Legislation > Interpretation
Criminal Law & Procedure > Sentencing > Adjustments*

[HN8] For purposes of aggravator *Alaska Stat. § 12.55.155(c)(1)*, a defendant's conduct should be deemed a "direct cause" of another person's physical injury if the defendant's conduct was a "proximate cause" of that injury. Or worded another way, a defendant's conduct should be deemed a "direct cause" of someone's physical injury if that conduct was a "substantial factor" in causing the injury.

Torts > Negligence > Defenses

Governments > Agriculture & Food > Product Quality

[HN9] Title 17 contains two statutes that limit the liability of food banks, and the liability of persons who donate food to food banks, for injuries or death caused by the distributed food. *Alaska Stat. § 17.20.346(a)* states that a food bank is immune from civil or criminal liability for injury or death attributable to the condition of the food it distributes, so long as the injury or death is not a direct result of the negligence, recklessness, or intentional misconduct of the food bank.

Torts > Negligence > Defenses

Governments > Agriculture & Food > Product Quality

[HN10] *Alaska Stat. § 17.20.345(a)* protects people who donate food to food banks from criminal or civil liability for injury or death attributable to the food, so long as the

injury or death is not "a result" of the donor's "gross negligence, recklessness, or intentional misconduct."

Torts > Causation > Proximate Cause

Governments > Legislation > Interpretation

[HN11] *Alaska Stat. § § 17.20.345(a), 17.20.346(a)* suggest that the legislature views the phrase "direct result" as meaning something different from "result."

Governments > Legislation > Interpretation

[HN12] In both Title 17 and Title 16, the Alaska Legislature uses the phrase "direct result" in ways that suggest a tighter connection between cause and effect than would be required to establish "proximate cause" -- i.e., a tighter connection than would be required to establish that the actor's conduct was a "substantial factor" in causing the prohibited result.

Governments > Legislation > Interpretation

Criminal Law & Procedure > Sentencing > Adjustments

[HN13] The legislature intends aggravator *Alaska Stat. § 12.55.155(c)(1)* to codify a more stringent test than merely "proximate cause" or "substantial factor."

Governments > Legislation > Interpretation

[HN14] Ambiguities in penal statutes are to be construed against the government.

COUNSEL: Appearances: Michael P. Heiser, Ketchikan, for the Appellant.

Nancy R. Simel, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for the Appellee.

JUDGES: Before: Coats, Chief Judge, and Mannheimier and Stewart, Judges.

OPINIONBY: MANNHEIMER

OPINION: [*148] OPINION

MANNHEIMER, Judge.

In this sentence appeal, we are asked to construe [HN1] *AS 12.55.155(c)(1)*, one of the statutory aggravating factors that authorize a sentencing judge to exceed the presumptive term of imprisonment in cases governed by presumptive sentencing. Subsection (c)(1) states that a defendant's presumptive term can be aggravated if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct". The question presented in this appeal is whether aggravator (c)(1) applies when a

defendant [**2] illegally sells drugs and one of the defendant's customers dies from an overdose.

For the reasons explained here, we conclude that aggravator (c)(1) normally will not apply to such cases. However, we also conclude that another aggravator -- (c)(10), which applies when the defendant's conduct is among the most serious within the definition of the offense -- authorizes a sentencing judge to take the drug purchaser's death into consideration when sentencing the defendant.

Underlying facts

On July 11, 2000, the Ketchikan police received a report of a drug overdose. When they arrived at the scene, they discovered that the victim, Robert Glenn, was dead. The State Medical Examiner tentatively concluded that Glenn's death was due to a heroin overdose.

Ten days later, the Ketchikan police received information that Shaun M. Whitesides was selling cocaine and was also using methamphetamine. Based on this information, the police obtained a search warrant for Whitesides's apartment.

During the execution of that warrant, the police found a small amount (.6 grams) of methamphetamine. While they were there, the police interrogated Whitesides about the report that she was selling drugs. [**3] Whitesides initially denied selling any drugs. But when the police informed Whitesides that Glenn was dead, and that he appeared to have died from a drug overdose, Whitesides began to cry. She then admitted that Glenn had come to her, looking for heroin, and that she had sold him a gram of heroin for \$ 150.

Based on the foregoing, Whitesides was indicted for second-degree controlled substance misconduct (sale of heroin) and fourth-degree controlled substance misconduct (possession of methamphetamine). n1 She pleaded guilty to the methamphetamine possession charge, but she chose to go to trial on [•149] the sale of heroin charge. The jury found her guilty.

n1 AS 11.71.020(a)(1) and AS 11.71.040(a)(3)(A), respectively.

[HN2] Second-degree controlled substance misconduct is a class A felony, n2 and Whitesides was a first felony offender for presumptive sentencing purposes. The superior court and the parties agreed that Whitesides faced a 5-year presumptive term of imprisonment [**4] under AS 12.55.125(c)(1) for the offense of selling heroin.

n2 AS 11.71.020(c).

The sentencing judge, Superior Court Judge Trevor N. Stephens, found that the defense had proved one mitigating factor: AS 12.55.155(d)(14) -- that Whitesides's offense involved only a small amount of heroin. But Judge Stephens also found one aggravating factor: AS 12.55.155(c)(1) -- that a person, other than an accomplice, sustained physical injury as a direct result of Whitesides's conduct.

Having found the "small quantity" mitigator and the "physical injury" aggravator, Judge Stephens concluded that "the aggravator far outweighed the mitigator" in Whitesides's case, in large measure because the judge concluded that Whitesides had poor prospects for rehabilitation.

(Even though Whitesides was technically a first felony offender for presumptive sentencing purposes, she had a prior conviction for a drug felony (sale [**5] of cocaine) -- a conviction that was set aside after she successfully completed her suspended-imposition-of-sentence probation.)

At the same time, Judge Stephens declared that he would not increase Whitesides's time to serve based on the aggravating factor. Rather, he added 3 years of suspended imprisonment to Whitesides's 5-year presumptive term. That is, Judge Stephens sentenced Whitesides to 8 years with 3 years suspended for the sale of heroin.

For the remaining offense (possession of methamphetamine), Judge Stephens sentenced Whitesides to a consecutive term of 2 years with 1 1/2 years suspended (six months to serve). Thus, Whitesides's composite sentence for her two offenses is 10 years' imprisonment with 4 1/2 years suspended -- 5 1/2 years to serve.

Whitesides appealed her sentence. In *Whitesides v. State*, 2003 Alas. App. LEXIS 89, Alaska App. Memorandum Opinion No. 4700 (May 7, 2003), 2003 WL 21019233, we expressed doubt whether, as a legal matter, aggravator (c)(1) applied to the facts of Whitesides's case. We therefore remanded that issue to the superior court for further consideration.

In accordance with our mandate, Judge Stephens re-examined the meaning of aggravator (c)(1). [**6] In a lengthy and thoughtful written opinion, Judge Stephens concluded that aggravator (c)(1) applies to cases in which a defendant illicitly sells a controlled substance to a purchaser and, as a result of ingesting the controlled substance, the purchaser dies or sustains physical injury.

Although we appreciate the care and effort that Judge Stephens devoted to this issue, we respectfully disagree with his conclusion -- for reasons that we explain in the next section.

Why we conclude that a drug purchaser's physical injury from ingesting drugs is not normally a "direct result" of the sale by which the drug purchaser gained possession of the drug

[HN3] AS 12.55.155 (c)(1) states that a felony is aggravated (for purposes of Alaska's presumptive sentencing laws) if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct".

Whitesides sold a small amount of heroin to Robert Glenn. Later, Glenn ingested the heroin and died. As a matter of physical or "actual" causation, Whitesides's sale of heroin to Glenn contributed to his death. [HN4] But not all acts that physically contribute to a result are deemed significant [**7] for purposes of assessing criminal responsibility. n3 In particular, aggravator (c)(1) applies only to cases in which a person suffered physical injury as a "direct result" of the defendant's conduct. Thus, the question in this case is whether Glenn's death was a "direct result" of Whitesides's act of selling heroin to him.

n3 See Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* (3rd edition 1982), pp. 771-72.

[*150] More generally, the issue is this: When a defendant sells or otherwise furnishes illegal drugs to a willing consumer, and the consumer later dies of an overdose after taking these drugs, can this death be termed a "direct result" of the defendant's conduct for purposes of applying aggravator (c)(1) to increase the defendant's presumptive sentence?

The legislature's commentary to AS 12.55.155 does not explain what they meant by the term "direct result"; in fact, the legislative commentary does not address aggravator (c)(1) at all. n4 However, [HN5] the normal meaning of [**8] the words "direct" and "result" imply that the defendant's conduct must, at a minimum, be a "proximate cause" of the victim's physical injury before the victim's injury could be said to be a "direct result" of the defendant's conduct.

n4 See 1978 Senate Journal, Supp. No. 47 (June 12th), pp. 159-161.

[HN6] By "proximate cause", we mean a physical ("actual") cause which, in the eyes of the law, is significant enough under the circumstances of the case to support a finding that the defendant is responsible for the victim's physical injury. Because "proximate cause" ultimately hinges not only on questions of physical causation but also on questions of law and policy, it can sometimes be a difficult concept to apply. However, [HN7] in both civil and criminal contexts, the appellate courts of Alaska have stated that a defendant's conduct can normally be viewed as a "proximate cause" of an ensuing injury if the defendant's conduct was a "substantial factor" in causing that injury. n5

n5 See *Dura Corporation v. Harned*, 703 P.2d 396, 406 (Alaska 1985); *State v. Malone*, 819 P.2d 34, 36-37, 39 (Alaska App. 1991).

[**9]

In his written decision on remand, Judge Stephens concluded that, [HN8] for purposes of aggravator (c)(1), a defendant's conduct should be deemed a "direct cause" of another person's physical injury if the defendant's conduct was a "proximate cause" of that injury. Or worded another way, a defendant's conduct should be deemed a "direct cause" of someone's physical injury if that conduct was a "substantial factor" in causing the injury.

(This is not to say that the defendant could necessarily be found criminally liable for causing that injury -- for, in addition to proving that the defendant's conduct caused the harm, the government would normally have to prove that the defendant acted with one or more culpable mental states.)

The State urges us to adopt this interpretation of aggravator (c)(1) and to affirm Judge Stephens's application of this aggravator to Whitesides's case.

As the State points out, Titles 11 and 12 of the Alaska Statutes contain no other references to "direct result" (or its counterpart, "direct cause"). These two titles generally afford little insight into what the legislature may have meant by the phrase. However, the legislature has used the phrase "direct result" [**10] in two other places: Title 17 and Title 16.

[HN9] Title 17 contains two statutes that limit the liability of food banks, and the liability of persons who donate food to food banks, for injuries or death caused by the distributed food. AS 17.20.346(a) states that a food bank is immune from civil or criminal liability for injury or death attributable to the condition of the food it distributes, so long as "the injury or death is not a *direct result* of the negligence, recklessness, or intentional

misconduct of the food bank". (Emphasis added) Here, the legislature left no doubt that its use of the term "direct result" was deliberate -- because, in the same session law that created AS 17.20.346(a), the legislature also enacted [HN10] AS 17.20.345(a), a statute that protects people who donate food to food banks from criminal or civil liability for injury or death attributable to the food, so long as the injury or death is not "a result" of the donor's "gross negligence, recklessness, or intentional misconduct". (Emphasis added)

The legislature appears to have picked its language with some care. The first statute [**11] says that a food bank can not be found liable [*151] unless (1) the food bank acted with "negligence" and (2) this act of negligence was a "direct" cause of the injury or death. The second statute, on the other hand, says that a donor to a food bank can not be found liable unless (1) the donor acted with "gross negligence", but (2) this act of gross negligence need only be a cause of the resulting injury, not a "direct" cause.

Although these statutes deal with the donation and distribution of food rather than the illegal distribution of drugs, they appear to be instructive in Whitesides's case. [HN11] These statutes suggest that the legislature views the phrase "direct result" as meaning something different from "result".

If food bank employees act with the requisite culpable mental state, the food bank will be held liable for injuries that are the "direct result" of their distribution of tainted food. Food donors, on the other hand, only set the stage for the eventual distribution of the food that they donate. Thus, the legislature has decided that a donor can be held liable for injuries that merely "result" from their donation of food -- but only if the donor has acted with at least gross negligence. [**12]

A similar restrictive use of "direct result" is found in Title 16 -- specifically, in AS 16.05.662, a statute that authorizes the issuance of no-cost permits to fishing derby associations to allow the sale of "sport caught fish obtained as a *direct result* of a fishing derby". (Emphasis added) That is, this statute carves out a narrow exception to the general rule that a license is required for any commercial catching or sale of fish. n6 Given the comprehensive character of this state's fish and game licensing laws, it appears that the legislature advisedly chose the phrase "direct result" to clarify the limited scope of the fishing derby exemption.

n6 See AS 16.05.680.

Thus, [HN12] in both Title 17 and Title 16, the Alaska Legislature has used the phrase "direct result" in

ways that suggest a tighter connection between cause and effect than would be required to establish "proximate cause" -- *i.e.*, a tighter connection than would be required to establish [**13] that the actor's conduct was a "substantial factor" in causing the prohibited result.

Moreover, as we noted in our first decision in this case, courts from around the country are split on the question of whether a drug seller can be held criminally liable for the ensuing injury or death of a drug purchaser, at least when the seller has no reason to believe that the drugs being sold are atypically dangerous or that the purchaser is atypically susceptible to drug-induced injury. See *Whitesides*, 2003 Alas. App. LEXIS 89, Memorandum Opinion No. 4700 at 9-10, 2003 WL 2109233 at *5.

Given the Alaska legislature's other uses of the phrase "direct result" in contexts that imply a stricter test than "proximate cause", and given the split in the case law on the related topic of a drug seller's potential criminal liability for a drug purchaser's ensuing injuries, we conclude that there is substantial reason to believe that [HN13] the legislature intended aggravator (c)(1) to codify a more stringent test than merely "proximate cause" or "substantial factor".

At best, the interpretation of aggravator (c)(1) adopted by the superior court and endorsed by the State is only arguable. We therefore must interpret [**14] the aggravator against the government. See *Brookins v. State*, 600 P.2d 12, 17 (Alaska 1979), and *State v. Rastopsoff*, 659 P.2d 630, 640 (Alaska App. 1983) [HN14] (recognizing and applying the rule that ambiguities in penal statutes are to be construed against the government). In particular, see *Mancini v. State*, 841 P.2d 184, 188-89 (Alaska App. 1992), and *Kuwaas v. State*, 696 P.2d 684, 685 (Alaska App. 1985), cases in which we applied this rule of construction when interpreting aggravators (c)(15) and (c)(20), respectively.

For this reason, we reverse the decision of the superior court regarding the applicability of aggravator (c)(1) to Whitesides's case, and we remand this case to the superior court for resentencing.

The potential applicability of aggravator (c)(10)

Even though we have concluded that aggravator (c)(1) is not applicable to Whitesides's case, our prior decisions construing aggravator (c)(10) (conduct among the most serious included in the definition of the offense) suggest that this aggravator may be applicable here.

[*152] In *Martin v. State*, 973 P.2d 1151 (Alaska App. 1999), we ruled [*15] that when a sentencing judge evaluates the seriousness of a drug offense for purposes of aggravator (c)(10), the judge is not limited to

consideration of "the circumstances directly relating to [the] delivery of the [controlled substance]". n7 Thus, in *Martin*, we upheld the sentencing judge's consideration of the fact that the defendant's delivery of cocaine to a woman was part of the defendant's design to sexually assault the woman.

N7 *Martin*, 973 P.2d at 1155.

As we noted in our *Martin* opinion, the sentencing judge declared that he "wanted to emphasize ... that the defendant [was] not being sentenced for sexual assault", but he nevertheless concluded that it was "impossible to ignore that [sexual assault] or to separate it out, since [the assault] was part of the circumstances". n8 We upheld the sentencing judge's analysis against Martin's contention that this analysis impermissibly broadened the scope of aggravator (c)(10):

It is true that aggravator (c)(10) focuses on the defendant's conduct, not the defendant's personal characteristics. But [the sentencing judge] did not rely on Martin's personal characteristics; he based his decision on Martin's motive for giving cocaine to K.W. and on the conduct that ultimately accompanied Martin's delivery of this drug. This was proper. Our prior decisions construing aggravator (c)(10) are inconsistent with the restrictive definition of "conduct" that Martin proposes.

For example, in *Curl v. State*, [843 P.2d 1244 (Alaska App. 1992),] the defendant was convicted of a single count of sexual abuse of a minor. The sentencing judge found aggravator (c)(10) based on evidence that the charged incident of sexual abuse was but one of a series of twenty to twenty-five similar episodes, committed over a period of approximately four months, many of which apparently involved multiple acts of sexual contact. We upheld the sentencing judge's finding of aggravator (c)(10). [*Id.* at 1245.]

And in *Machado v. State*, [797 P.2d 677 (Alaska App. 1990),] the defendant was sentenced for perjury. The sentencing judge found aggravator [*17] (c)(10) based on the fact that Machado's perjury went to a material issue and the fact that Machado committed the perjury in an

attempt to escape prosecution for his part in a car bombing. We upheld the sentencing judge's finding of aggravator (c)(10). [*Id.* at 690.] In particular, we noted that "Machado's motive for giving the false testimony ... seems to make his offense particularly severe." [*Id.*]

We therefore conclude that [the sentencing judge] properly considered Martin's motive for delivering cocaine to K.W.. And, because [the judge] concluded that Martin's motive for this crime was to accomplish a sexual assault, [the judge] could properly conclude that Martin's ensuing physical and sexual assaults on K.W. were related to the delivery of cocaine and aggravated that offense.

Martin, 973 P.2d at 1155-56.

n8 *Id.*

[**16]

We upheld a similarly broad application of aggravator (c)(10) in *Brown v. State*, 12 P.3d 201, 207 (Alaska App. 2000), where the defendant was convicted of tampering with evidence, and the government sought to prove aggravator (c)(10) by showing that the defendant was actually guilty (as an accomplice) of the [**18] crimes to which the tampered-with evidence was pertinent. And see *Griffin v. State*, 9 P.3d 301, 307 (Alaska App. 2000), where the defendant was convicted of theft, and the sentencing judge found aggravator (c)(10) based on the fact that the defendant was actually guilty of burglary as well as theft. Finally, see *Monroe v. State*, 752 P.2d 1017, 1021 (Alaska App. 1988), where this Court upheld the sentencing judge's finding of aggravator (c)(10) based on the fact that the defendant's arson had endangered a large number of people (rather than the one person minimally necessary to constitute the offense of first-degree arson).

Whitesides's offense was the delivery of a concededly small amount of heroin to a willing purchaser. Robert Glenn's death was apparently unexpected, and, based on the [*153] medical examiner's preliminary findings (which revealed a blood alcohol level of 0.19), Glenn's death may have been partly due to his consumption of alcohol at the time he took the heroin. The State does not contend that Whitesides should be held criminally responsible for that death. Nevertheless, a reasonable judge might conclude, echoing the words of the sentencing [*19] judge in *Martin*, that it would be "impossible to ignore that

[death] or to separate it out, since [Glenn's death] was part of the circumstances" of Whitesides's offense.

We do not decide this issue now -- for Whitesides has not had the opportunity to analyze these cases and respond to this argument. However, we conclude that Judge Stephens should at least be allowed to consider, if he wishes, the question of whether the circumstance of Glenn's death makes aggravator (c)(10) applicable to Whitesides's case.

Conclusion

The decision of the superior court regarding aggravator (c)(1) is REVERSED, and this case is REMANDED to the superior court so that Whitesides can be resentenced. If Judge Stephens wishes, he is authorized to consider the applicability of aggravator (c)(10) to Whitesides's case.



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Four indicted in largest-ever Southeast drug bust

Crack, meth seized from truck tire aboard state ferry

A federal grand jury has indicted four people with drug conspiracy charges after what authorities are calling the largest-ever seizure of crack cocaine and methamphetamine in Southeast Alaska.

The indictment names Francis Sampaga Guerrero, 36, and Angela Balogh Galeana, 28, both of Juneau, and Robert Lee Moore, 52, and Adrian Lopez-Cota, also known as Angel Bautista-Alvarado, age unknown, of Seattle. All were charged this week on conspiracy and drug possession charges.

"It was significant because of the quantity," said Harvey L. Goehring, federal Drug Enforcement Administration assistant special agent in charge, from Anchorage.

In a pickup shipped aboard the Alaska Marine Highway System ferry Malaspina in September, agents seized nearly 2 1/2 pounds of crack cocaine, about 1 pound of high-purity methamphetamine and a little more than 1 pound of powder cocaine.

According to a statement from First Assistant U.S. Attorney Deborah Smith in Anchorage, the charges would carry mandatory minimum prison sentences of 10 years and possible life sentences if the defendants are convicted as charged.

Goehring also said the case was significant because it was a cooperative effort involving so many federal, state and local agencies.

The indictment alleges the drugs were concealed inside the spare tire on the undercarriage of a pickup placed on the Malaspina, traveling from Bellingham, Wash., to Juneau. Investigators discovered the drugs and replaced all but a small amount of them with items of similar weight.

Moore, Galeana and Guerrero allegedly drove the pickup to Jerry Drive in the Mendenhall Valley on Sept. 23, according to the indictment, which alleged the drugs were obtained from Lopez-Cota.

Goehring said investigators followed the movements of the vehicle and arrested suspects attempting to retrieve the drugs.

Asked if any more indictments are likely in the case, Smith said she could only say the investigation continues.

"It was a pretty manpower-intensive investigation, and it was well worth it," Goehring said. "For Juneau, that's an awful lot of drugs."

The drugs, he added, were of exceptionally high purity, which would have allowed them to be diluted, increasing the amount that could have been sold on the streets.

In addition to the DEA, the case was investigated by the Southeast Alaska Narcotics Enforcement Team - SEANET - which is made up of state and municipal drug-enforcement officers. Also contributing to the investigation were the Alaska State Troopers Major Offenders Unit, Western Alaska Alcohol Narcotic Enforcement Team, drug units from Mat-Su and Fairbanks, Juneau and Ketchikan police and the Air National Guard Counter-Drug Support Program.

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Chemical Exposures Associated with Clandestine Methamphetamine Laboratories

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Introduction:

The State of Colorado as well as the nation face an unprecedented epidemic of clandestine methamphetamine drug manufacturing. Seizures of methamphetamine drug laboratories continue to rise putting police and fire first responders at risk for a variety of hazards. The number of seizures in Colorado has risen dramatically from 31 laboratories in 1998 to 455 laboratories in 2001. First responders and susceptible third parties, such as children, are at risk for exposures to the chemical hazards and the fire, explosion, and safety hazards inherent with clandestine manufacture of methamphetamine.

Unfortunately, very little is known regarding the specific exposure hazards faced by first responders and bystanders associated with illegal methamphetamine manufacture and lab seizure. As a result there is very poor information on which to establish appropriate medical treatment plans and healthcare providers are forced to provide generic, often expensive, and probably to some extent unnecessary medical testing.

The use of personal protective equipment (PPE) by emergency services and law enforcement personnel also vary widely by jurisdiction due to the lack of information regarding chemical exposures at the sites and the necessity for protection. Some jurisdictions use self-contained breathing apparatus and chemical-protective suits while other neighboring jurisdictions use no respiratory protection or chemical-protective suits at all. Other agencies switch from self-contained breathing apparatus to air-purifying respirators after the initial assessment while other agencies remain in the highest levels of protection. These variations are due to a lack of information from scientifically-based studies, relating to exposure risks while conducting these operations.

Even though many agencies use some form of PPE, there are increasing reports of emergency service and law enforcement personnel being injured while conducting investigations at clandestine methamphetamine laboratories. The Centers for Disease Control reported 59 events associated with methamphetamine labs where emergency services personnel were injured during the investigation between 1996 and 1999. The number of injured responders was 155 with most reporting respiratory irritation.⁽¹⁾

Studies conducted by Dr. Jefferey Burgess^(2,3) at the University of Washington investigated the symptoms reported by emergency responders during illegal methamphetamine laboratory seizures. Responders predominately reported general irritant symptoms, but least one case of phosphine gas exposure was reported. In a questionnaire study of emergency responders, 53.8% reported at least one illness while conducting laboratory seizures with most symptoms appearing to be related to chemical exposure at the laboratory site. The primary symptoms reported were headache and mucous membrane irritation.

Although the predominant symptoms were irritant symptoms, a number of responders were found to have an accelerated drop in one second forced expiratory volume (FEV₁) that may have been related to work in drug laboratories. The majority of symptoms reported by officers occurred during the processing phase of the laboratory seizures but

this phase was also the phase in which the most time was spent in the laboratory area. The use of respiratory protection did seem to reduce the incidence of symptoms while investigating these laboratories. There has also been anecdotal evidence of exposure to methamphetamine causing permanent lung damage but the actual cases have not been reported in the literature.

This increase in illegal laboratory seizures and reported health effects has resulted in health concerns by the emergency services and law enforcement personnel responding to these incidents. Typical concerns expressed by first responders regarding exposures at clandestine methamphetamine laboratory seizures include:

- Was I exposed to something that can harm me?
- Could my exposures cause me health concerns?
- What personal protective equipment should I have been wearing during the lab seizure?
- When was it safe for me to remove my personal protective equipment?

Although the chemicals used in the production of methamphetamine are well known, first responders do not know which of these chemicals by themselves or in combination may be harmful and what routes of exposure present the most severe risks. Industrial hygienists commonly approach such problems by quantifying the actual exposures using air sampling, modeling, and in some cases teamed with occupational environmental medical specialists using biological markers (chemical traces in urine or blood, for example) to determine what the exposure has been. Major exposure assessment issues include individual chemical characteristics as well as potentially complex interactions of chemicals that might result in unusual and potentially very toxic mixtures.

This project was designed to determine the potential chemical exposures to law enforcement and emergency services personnel responding to clandestine methamphetamine laboratory seizures. The results of the project would be utilized to inform decisions regarding PPE, containment, and medical treatment of individuals involved with these responses.

The six goals of the study were to:

- Determine the primary chemical exposures of concern at clandestine drug laboratory seizures for both the responders and the children present at the laboratory site.
- Determine which phase of the response poses the highest risk for responders, what chemicals responders are exposed to, and to what concentrations they are exposed.
- Investigate the relationship between symptoms reported by the responders and the actual exposures measured at the site.

- Investigate how symptoms observed or reported in children that are present in clandestine drug laboratories, relate to the chemical exposures within the laboratory.
- Determine the appropriate types of personal protective equipment required for the various phases of drug lab seizures based on exposure assessments.
- Determine the appropriate components of a medical monitoring program for first responders based on exposure assessments at illegal drug lab sites.

Project Methodology:

Laboratory Methods

To perform the exposure-monitoring component of this project, it was necessary to:

1. Obtain the samples quickly since there would be a limited time for sampling.
2. Hold samples without losing information until they could be shipped to the laboratory for analysis.
3. Obtain enough sample so that the laboratory limit of detection for the chemicals of interest were lower than the levels of concern for that chemical.
4. Collect the samples with a minimum of personnel effort.

Based on these criteria, air samples were collected for general hydrocarbons, phosphine, inorganic acids, iodine, and metals. In addition, surface samples were collected for methamphetamine and its precursors. The samples for general hydrocarbons were collected using two different approaches. The first approach involved the use of a summa canister, which is a stainless steel evacuated cylinder that can be used to obtain a volume of air immediately from the area in question. The canister was taken into the clandestine lab area and the valve opened, allowing the tank to fill with the air present within the suspected laboratory. After the tank had filled, the valve was shut and the canister sent to Data Chem Laboratories in Salt Lake City for analysis. The samples were analyzed using a gas chromatograph combined with a mass spectrometer (GC/MS) by the United States Environmental Protection Agency (EPA) Method T0-15.

The second general hydrocarbon sampling method was conducted using a carbotrap tubes supplied by Data Chem Laboratories. Thermal desorption tubes consist of multi-layer charcoal sorbents through which a known volume of air is drawn using a flow-calibrated personal sampling pump. These samples were collected at a rate of approximately 50 cubic centimeters (cc) per minute. After sampling, the tubes were packaged in air-tight containers and shipped to Data Chem Laboratories for analysis. At Data Chem, the samples were thermally desorbed and analyzed using a GC/MS according to the EPA method T0-17.

Initial phosphine samples were collected on specially treated silica gel tubes using a personal sampling pump that had been calibrated to an approximate flow rate of 100 cc

per minute. The sample tubes were capped and sent to Data Chem Laboratories for analysis using the NIOSH Manual of Analytical Methods (NMAM) 6002. This analysis method uses a manual visible spectrophotometry method of analysis. Phosphine samples obtained during the hotel cook were collected using a 37 mm filter cassette containing a glass fiber filter and a mercuric chloride-treated filter. These samples were capped and sent to Data Chem Laboratories for analysis using OSHA Method 1003 which uses an ICP-AES analysis method.

Samples were collected for airborne iodine using standard charcoal tubes combined with a personal sampling pump calibrated to a flow rate of approximately 1.0 liters per minute (lpm). After sampling, these tubes were capped and sent to Data Chem Laboratories where they were analyzed by ion chromatography using NMAM 6005.

The inorganic acids samples were collected using a silica gel tube and a personal sampling pump calibrated to an approximate flow rate of 200 cc per minute. After sampling, the tubes were capped and sent to Data Chem Laboratories for ion chromatography analysis using NMAM 7903.

Samples for metals were collected using a 0.8 um. cellulose ester membrane filter and a personal sampling pump calibrated to a flow of approximately 2.0 lpm. After sampling, the filters were packaged and sent to Data Chem Laboratories where they were analyzed by inductively coupled argon plasma using NMAM 7300.

Wipe samples for methamphetamine were collected by wiping a specific area with a sterile four inch by four inch (4x4) gauze wipe. Prior to entering the suspected laboratory, the 4x4 wipes were individually placed into plastic centrifuge tubes. After entering the laboratory, the wipes were taken out of the tubes and wetted with several milliliters of isopropanol prior to sampling. An attempt was made to minimize cross contamination by using separate pairs of gloves or by wiping the gloves with isopropanol between sampling efforts. After sampling, the wipes were put back into the centrifuge tubes and sent to Data Chem Laboratories for analysis. The samples were analyzed using a NIOSH method under development at the laboratory, which enabled the analysis of the samples using GC/MS.

Sampling Scenarios

Four sampling scenarios were conducted during the investigation. An initial sampling scenario was conducted at the Colorado Springs Police Laboratory in order to determine the potential levels of chemicals that might be encountered in the field and to determine the effectiveness of the sampling methodology. In this instance, three different methods of methamphetamine manufacture were conducted using the facilities and laboratory hoods present in the police laboratory. Two variations of the red phosphorous method and one hypo-phosphorous cook were conducted. In each case, the sampling devices were installed into the hood where the cook was taking place and positioned so that the highest concentrations of chemicals would be collected.

For each type of cook, samples were taken for inorganic acids, phosphine, metals, and iodine. Summa canisters and thermal desorption tubes for organics were taken in one hood at the end of the cook when the methamphetamine was being dissolved in solvent. Wipe samples for methamphetamine were taken in all of the hoods prior to performing the cooks and after conducting the cooks in order to see if methamphetamine was released during the cook. It was expected that prior contamination did exist since methamphetamine had been manufactured in the laboratory prior to this event.

The second sampling scenario occurred during the investigation of individual clandestine methamphetamine laboratories by law enforcement officers. In these situations sample collection devices were brought into the suspected laboratory immediately after entry by law enforcement officials. Initially samples were taken for organics using both the summa canisters and the thermal desorption tubes. After the first several labs, the use of the summa canister was eliminated since the thermal desorption tubes provided adequate information. Initially samples for airborne iodine, phosphine, inorganic acids, and metals were collected at all of the sites. As the investigation progressed, sampling for elements (metals) was discontinued because sampling results were consistently below the limits of detection for the method. Later, sampling focused on acids, iodine, and phosphine in those laboratories that appeared to have been in operation in the recent past. Because environmental surface samples consistently showed positive results, wipe samples were always collected in each suspected laboratory.

The third sampling scenario involved controlled methamphetamine manufacture conducted in an abandoned house scheduled to be burned by the local fire department. This scenario was intended to simulate exposures during illegal methamphetamine manufacture in a residence. Two areas of the house were designated in which to conduct cooks. In one area, a red phosphorous method was utilized and in the other a hypophosphorous method was utilized. Samples were collected both in the area of the cook and at a distance from the cook in order to determine the movement of chemical exposures. Samples for phosphine, inorganic acids, iodine, and organics were taken at all sampling locations. In addition, real-time data for hydrochloric acid and phosphine were also obtained using an ITX Multi-Gas Monitor (Industrial Scientific Corporation). This meter provides real-time monitoring and data logging that can be used to determine chemical concentrations during the cook. Methamphetamine wipe samples were collected from specific locations that were measured to be 100 square centimeters. The samples were taken at three intervals; prior to starting the cooks, after the cooks, and after the salting out process.

The fourth scenario was conducted in a three-story hotel that was being demolished. This scenario was again intended to simulate exposures during an illegal methamphetamine cook using the red phosphorous method of manufacture. The cook was conducted in one room of the hotel and samples were collected in that room, in the bathroom, in the hallway, and in an adjacent room. The sampling methodologies utilized were the same as those used in the house during the third scenario with the exception of the phosphine sampling and the use of a real-time methamphetamine sampler called a Cozart RapiScan (manufactured by Dominion Diagnostics) that was employed during the cook.

Questionnaires

We initially planned to give questionnaires to all of the individuals present at each of the clandestine laboratory investigations as well as at training classes put on by the North Metro Task Force. The two questionnaires were developed and submitted to the National Jewish Institutional Review Board for approval. This approval was obtained but not until a large number of the clandestine laboratories had already been investigated. For this reason, the questionnaires were only given to participants at North Metro Task Force training sessions. They were handed out by North Metro staff and self-administered by participants in the training class. The questionnaires were collected at the end of the class and returned to National Jewish Staff.

Data Collection

All of the data collected during the study was put into Microsoft Excel Spread Sheets. The spread sheets and the raw data were kept on the computer of the Principal Investigator.

Project Results:

This study was initiated on January 1, 2003 and the research team was ready to respond to any methamphetamine labs by the second week of January, 2003. We purchased all necessary respiratory protection, personal protective equipment, sampling equipment, and established the necessary sampling protocols. The team collected samples at the Colorado Springs Police Laboratory where methamphetamine was manufactured under controlled conditions (laboratory hoods) to evaluate potential exposures. The team responded to a total of 16 suspected clandestine methamphetamine laboratories between January 14, 2003 and May 17, 2003. Samples were also collected at two controlled methamphetamine cooks conducted in an abandoned house prior to being destroyed by the Fire Department and at a hotel prior to demolition.

Current Occupational Health Criteria for Sampled Substances

The concentration results for the three primary chemicals for which we sampled were compared to the following standards for occupational exposures:

Compound	OSHA PEL	ACGIH TLV	NIOSH REL
Iodine	Ceiling 1.0 mg/m ³	Ceiling 1.0 mg/m ³	Ceiling 1.0 mg/m ³
Phosphine	0.4 mg/m ³	0.4 mg/m ³	0.4 mg/m ³
Hydrogen Chloride	Ceiling 7.0 mg/m ³	STEL Ceiling 3.0 mg/m ³	Ceiling 7.0 mg/m ³

OSHA PEL – Occupational Safety and Health Admin. Permissible Exposure Level

ACGIH TLV – American Conference of Governmental Industrial Hygienists Threshold Limit Value

NIOSH REL – National Institute of Safety and Occupational Health Recommended Exposure Level

STEL – Short Term Exposure Level

Clandestine Laboratories Sampled

The first sampling effort at a clandestine laboratory was conducted on January 14, 2003 at a local hotel in Westminster, CO. This laboratory was in a hotel room that had likely been used for several days. Chemicals were present but no cook was in progress during our sampling. The drug manufacturers were out of the room at the time of law enforcement entry.

The second sampling effort was conducted on January 15, 2003 in a private residence. According to law enforcement officers, this home had been used as a drug lab until December 2002. The Health Department had ordered the home vacated and the residence had been closed for some time.

A third sampling effort was conducted on January 16, 2003 in an apartment. This apartment had been identified, by law enforcement officers, as a methamphetamine laboratory and was reportedly remediated.

The fourth sampling effort was conducted on January 17, 2003 in a mobile home. This facility also had some chemicals but the laboratory was not in operation at the time of law enforcement entry.

The fifth sampling effort was conducted at a residence where the methamphetamine laboratory was in a bedroom on the 2nd floor. An area in the bedroom had been used for cooking as evidenced by glassware and stains in the area.

The sixth and seventh sampling efforts were conducted at a trailer park and a motel room. The two laboratories were related since a cook had apparently been conducted at the motel room and then the chemicals moved to the trailer park. The cooking area at the motel had significant iodine staining and it was reported, by law enforcement officers, that there had been an associated explosion.

The eighth sampling effort was conducted in another trailer park. The laboratory was located in the kitchen where a number of chemicals were found as well as significant iodine staining. It was reported that the cook had occurred on the Friday before the Monday raid.

The ninth sampling effort was conducted in a house. There was no evidence of cooking at this house but chemicals and glassware were present. It appeared that the house may have been entered prior to the cook actually occurring.

The tenth site that was sampled was a home. It appeared that a cook had occurred in this home since there were many coffee filters with residues that appeared to be related to

methamphetamine manufacture at the location. Upon entry, there was a smoky haze inside of the house but no iodine stains were observed.

Suspected laboratory number twelve was located in at home. Iodine stains and burns were evident in the basement bedroom of the home. Iodine staining was not visible on the walls or ceiling, making it difficult to determine if the home was used to cook methamphetamine. This home may have been used as a small day care facility for family members.

The thirteenth laboratory sampling effort was located in a trailer. Glassware and chemicals to manufacture methamphetamine, and drug paraphernalia were discovered on scene, but no signs of iodine stains or a cook were visible.

The fourteenth site was a trailer. Although no visible smoke or discernable smell was present, officers reported having headaches after removing the suspects from the home. Additionally, officers did not wear any personal protective equipment while in the trailer. Although chemicals to manufacture methamphetamine and drug paraphernalia were present, it is unclear if methamphetamine was manufactured in this residence.

Laboratory number fifteen was located in a residence. This laboratory was unique in this study because the lab was discovered after firefighters extinguished a fire in the residence. Chemicals and glassware used to manufacture methamphetamine were discovered throughout the home.

The sixteenth laboratory was a vehicle that was acquired by the Trinidad Police Department. Officers frequently reported headaches and rashes on the arms and forehead after riding in the vehicle.

In general, none of the suspected clandestine methamphetamine laboratories sampled were active laboratories at the time of sampling. In no case did we enter a structure where chemical agents used for the illegal manufacture of methamphetamine were actually being used at the time of entry. In fact, in most cases there was no evidence that a cook had taken place within the last few hours. This was not totally unexpected since some effort is made by North Metro Task Force officials to conduct law enforcement operations at a time where exposure to chemicals is minimized. However, due to the status of the suspected laboratories during our sampling effort, the chemical exposure results that we have obtained from these laboratories should be considered to be the minimum exposures expected during these operations. Chemical exposures at an operational laboratory would be expected to be much higher as our results from the Colorado Springs Police Department and the controlled cooks have shown.

Colorado Springs Police Department Results:

The sampling scenario conducted at the Colorado Springs Police Department was designed to test the sampling methodologies that had been developed and to determine the order of magnitude of the maximum exposures expected at an operating methamphetamine laboratory. Samples were taken for phosphine, metals, inorganic acids, iodine, organic compounds and methamphetamine.

This sampling was conducted on January 10, 2003 in the criminology laboratory located at the police station. Three methamphetamine cooks were conducted at the facility using a street variation of the Red "P" Method, a DEA laboratory variation of the Red "P" Method, and a hypophosphorous acid method. All of these cooks were conducted in laboratory hoods and samples were taken so as to obtain worst-case samples. Since the hoods were in operation for much of the time during sampling, the results may not be actual worst-case for the process but, rather worst-case under those conditions.

Inorganic Acid Results

The acid scan that was conducted determined the presence of hydrofluoric acid, hydrochloric acid, hydrobromic acid, phosphoric acid, nitric acid, and sulfuric acid. One concern regarding the methodology used was that the blanks submitted with the actual samples were found to contain low levels of nitric and sulfuric acids. In addition, all of the acids, except hydrobromic, for which we tested were found to be present at the Colorado Springs cooks, even though these acids were not utilized in the cooking process and even though they would not be expected to be present. This may not be a surprise since these tests were conducted in laboratory hoods that have likely been used to contain acids in past experiments. During this cook hydrofluoric acid was found in high concentrations in the laboratory variation of the Red "P" Method but so was phosphoric, nitric, and sulfuric. That particular sample appears to have been contaminated either by acids in the hood or as a background artifact in the silica gel tube. In addition, no phosphoric acid was found in the hypophosphorous acid method, which was somewhat of a surprise.

The primary acid concentrations found at the Colorado Springs Police Department were as follows:

Manufacturing Process	Sulfuric (mg/m ³)	Hydrochloric (mg/m ³)	Phosphoric (mg/m ³)
Street method hood cook	0.02	16.9	ND
Street method hood extraction	ND	ND	ND
Lab Method	0.07	4.5	ND
Hypophosphorous method	0.04	0.12	ND
Street Method salting out	0.04	2.35	ND
Blank	ND	ND	ND
Blank	0.021	ND	ND

The highest acid levels were found during the Street Red "P" Cook. The primary acid found was hydrochloric acid. This is no surprise since hydrochloric acid is used during the salting out portion of the process. It was somewhat of a surprise that hydrochloric acid was found during the cooking phase of both the red phosphorous cook and the hypophosphorous cook. It is believed that the production of hydrochloric acid was likely due to the use of ephedrine chloride for the cook.

The salting out phase was found to generate high levels of hydrogen chloride even though the use of the hydrogen chloride was much more controlled that it would have been in a home laboratory. The current American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Level Value (TLV) for hydrochloric acid is approximately 3.0 mg/m^3 and is a ceiling value meaning that it can't be exceeded for any amount of time. Levels measured at the controlled cooks ranged from slightly below the current allowable level to approximately five times the allowable level. During an actual cook in a house where poor ventilation is present and generation methods are not as controlled, it is likely that acid levels will be significantly higher than those observed in this experiment.

Phosphine Sampling Results

The results of the samples taken for phosphine were as follows:

<i>Phosphine Samples Collected at the Colorado Springs Police Dept. Cooks</i>	
Manufacturing Process	Phosphine (ug/m^3)
Street Cook	433.6
Street Extraction	489.4
Lab Cook	4842
Hypophosphorous Cook	ND
Blank	170

The phosphine concentrations ranged from a non-detect in the hypophosphorous cook to 4842 ug/m^3 during the laboratory red phosphorous cook. However, the blank for the laboratory samples was found to contain 170 ug/m^3 suggesting that actual phosphine levels were approximately 200 ug/m^3 lower than the levels reported by the laboratory. The ACGIH TLV for phosphine is approximately 420 ug/m^3 which is approximately what the laboratory is reporting in the samples, however the samples may have been at $\frac{1}{2}$ of that concentration.

Iodine Sampling Results

The results of the iodine samples taken at the Colorado Springs Police Department were as follows:

<i>Iodine Sampling Results at the Colorado Springs P.D. Laboratory</i>	
Sample Location	Iodine (mg/m ³)
Street method hood	2.3
Lab method hood	37

The levels of iodine found in the air ranged from 2.3 mg/m³ to 37 mg/m³ during the actual cooks. The current TLV for iodine is a ceiling value of 1 mg/m³ indicating that the levels of iodine found in the controlled cook would have exceeded the current standards by almost an order of magnitude. This was not a surprise since the color of the gases coming off of the cook suggested that iodine was being released at high levels.

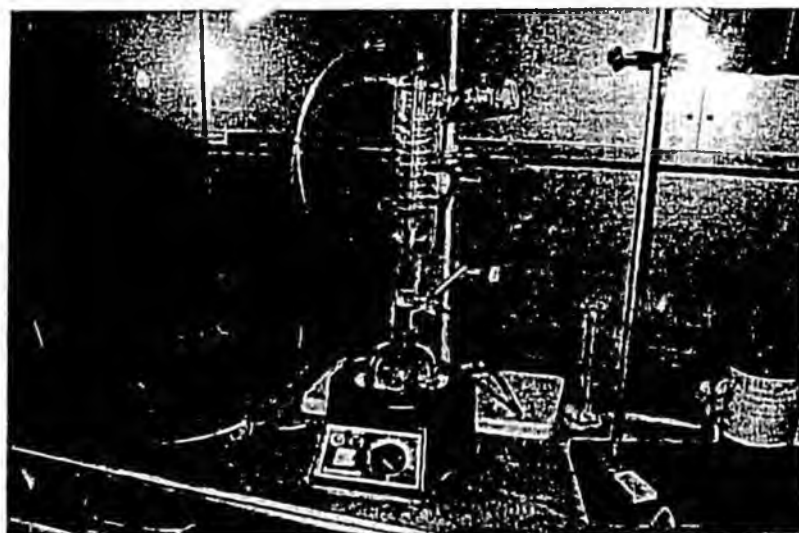


Figure 1: Iodine staining on condenser tube in laboratory hood.

Total Hydrocarbon Results

It was expected that the GC/MS results from this sampling effort would be difficult to interpret due to the fact that the sampling was conducted in a laboratory where a large number of solvents were routinely utilized. Large peaks were found for methyl chloride, isopropanol, chloroform, heptane, methanol, pentane, and a number of aliphatic hydrocarbons. Ethanol, acetone, benzene, toluene, and perchloroethylene were also found to be present in moderate amounts. These compounds would be expected to be common in a chemistry laboratory and none were considered unique to the

methamphetamine manufacturing. Chloroform was the solvent that was used to collect the methamphetamine and it was found at high levels in the sampling effort.

Methamphetamine Wipe Sample Results

A number of methamphetamine wipe samples were taken at the Colorado Springs Police Department laboratory cooks. The samples were taken in the upper portion of the hoods and were intended to determine the amount of drug that was liberated during the cook. The levels were influenced by the flow rate of the hood and, in fact, may have been lower than the levels actually produced. All of the hoods had prior methamphetamine levels due to previous cooks in this laboratory. The levels of methamphetamine measured after the cook ranged from 0.78 ug/100 cm² to 16 ug/100cm². These levels are well over the 0.5 or 0.1 ug/100 cm² levels that are currently being used as a standard by many states. The levels are lower, however, than we expected since the cook was confined to the hood. The lowest methamphetamine levels were found in the hood where the hypophosphorous method was utilized.

We also took wipes of the beaker used to manufacture the methamphetamine and the stirring rod for the cook. The stirring rod had 5200 ug of methamphetamine present and the beaker had 7900 ug of methamphetamine present. Both of these items would be expected to be high.

The results of the wipe samples were as follows:

Methamphetamine Wipe Sample Results from Colorado Springs Police Dept. Cooks				
Sample Location	Analytes in ug/wipe			
	Amphetamine	Methamphetamine	Ephedrine	Pseudoephedrine
Street Hood Pre Cook	ND	5.4	0.7	2.8
Street Hood Post Cook	3.2	16	0.5	2.4
Lab Method Pre Cook	ND	0.3	0.2	0.3
Lab Method Post Cook	ND	0.8	ND	ND
Hypophosphorous Pre	0.4	7	0.2	1.8
Hypophosphorous Post	0.5	15	0.4	2.6

Drug Lab Response Results:

We responded to a total of 16 suspected clandestine methamphetamine drug laboratories. As previously mentioned, none of these clandestine drug laboratories were in operation at the time of our response. In fact, most of the labs to which we responded were small labs with limited amounts of chemicals present. In only one instance was it reported by law enforcement that a cook had occurred that day. Due to the type of laboratories sampled, it is expected that the levels of chemical exposure that were found would be at the minimum levels that would be expected. For this reason, the exposures that we documented during the laboratory response phase are not applicable to the exposures that should be expected at clandestine laboratories where cooks are in progress or have recently been conducted.

Inorganic Acid Scan Results

Samples for acids were taken in six of the sixteen laboratories. After the first few laboratories were sampled, it was determined that we would not expect airborne acid to be present unless an actual cook was in progress or had recently been in progress. Initially samples were taken at all of the laboratories but when sample results were consistently below the level of detection, the collection of acid samples was discontinued unless an actual cook was encountered.

Hydrogen chloride was detected in only two of the clandestine labs sampled. In both cases, these were mobile homes. It is not clear that a laboratory had been recently in operation at either of these locations and the levels of acid found were very low (0.007 mg/m^3 and 0.2 mg/m^3). These low levels may suggest that a cook had occurred recently within the suspected laboratory. These results may also represent the lower level of detection for this method. The current ACGIH TLV for hydrogen chloride is a ceiling value of 3 mg/m^3 (2 ppm).

Phosphine Sampling Results

Phosphine is a gas that is liberated during the cooking phase. It is an extremely reactive gas and would not be expected to be present unless a cook was actually occurring. We sampled for phosphine at three of the suspected laboratories and did obtain a positive sample from one lab. The sample result was 358.6 ug/m^3 which we considered to be relatively high. Since a previous blank had come back with a result of 170 ug/m^3 , it is possible that this method of measuring phosphine is not accurate and that this sample was, indeed, a false positive. It is also possible that somehow an accumulation of phosphine was present within the laboratory.

Iodine Sampling Results

Samples for airborne iodine were taken at 10 of the suspected laboratories. In many of the laboratories, iodine stains were observed on carpeting and on the walls as illustrated below:



Figure 2: Iodine stains on carpet of suspected methamphetamine laboratory.

It was expected, therefore, that iodine exposures might be high in some of these facilities. The results of the sampling were as follows:

<i>Iodine Sample Results</i>	
Sample Location	Iodine (mg/m ³)
Hotel room	ND
Upstairs closet	ND
Main room	ND
Upstairs Bedroom	0.015
Main room	ND
Blank	ND
Hotel room	ND
Main room	0.023
Main room	0.007
Upstairs	0.0079
Main room	ND
Downstairs	ND

Although iodine stains were readily apparent in many of the suspected laboratories, elevated levels of airborne iodine were not present in all of the locations. The levels of airborne iodine that were found were well below the current ACGIH TLV of 1.0 mg/m³ (0.1 ppm) as a ceiling value.

Total Hydrocarbon Results

GC/MS samples taken at the suspected laboratories were difficult to interpret due to the fact that hydrocarbons are commonly utilized in most homes. Peaks were found for isopropanol, methanol, pentane, propene, toluene, heptane and a number of aliphatic hydrocarbons. These compounds are commonly used and would be expected to be found in many homes. Many of the common solvents utilized by clandestine methamphetamine cooks do contain the compounds that were found, however, none of these compounds can

be considered to be unique to the production of methamphetamine. In addition, we did not observe any peaks that were exceptionally high except for the isopropanol that we used for a solvent for our methamphetamine wipe samples.

Methamphetamine Wipe Sample Results

Methamphetamine wipe samples were taken at all of the suspected clandestine laboratories. An attempt was made to take all samples in a 100 cm² area but in many cases that was not possible. For this reason, the wipe samples should be considered to be in ug/sample results. The results of the sampling efforts are as follows:

Wipe Samples Taken in Methamphetamine Labs

Sample Location	Analytes in ug/wipe			
	Amphetamine	Methamphetamine	Ephedrine	Pseudoephedrine
Blind in bedroom	1	120	ND	5.6
Closet Wall	0.36	160	ND	20
Blank	ND	0.2	ND	ND
Unknown	ND	5.9	ND	11
Unknown	2.9	370	ND	290
Unknown	0.14	12	ND	5.5
Counter top by sink	0.1	28	15	1300
Bathroom floor	0.2	9.2	ND	3.7
Floor by kitchen	0.2	39	0.84	150
Red box	0.2	9.1	ND	3.7
Wood table	1.3	920	ND	11
Window blinds	ND	2.1	ND	ND
Ceiling fan	2	94	0.22	0.47
Wall by sink	ND	1.1	ND	ND
Light above sink	0.41	49	15	26
Behind stove	ND	2	ND	0.96
Inside microwave	2	150	ND	0.86
Unknown	ND	0.95	ND	ND
Unknown	ND	3.7	ND	ND
Unknown	ND	ND	ND	ND
Unknown	ND	ND	ND	ND
Unknown	0.11	7.4	ND	ND
Unknown	ND	3.4	ND	ND
Table on floor by pumps	0.92	520	0.72	61
Table on floor with splats	0.31	29	1.6	150
Table in bedroom	ND	1.6	ND	0.5
Pest in bedroom	ND	1.1	ND	4
Chandelier in stairwell	0.55	32	0.86	39
TV screen	ND	2.9	ND	4
Sofa	ND	0.84	ND	0.9
Air return	ND	4.1	0.2	0.5
Range hood	0.2	16	ND	0.8
Microwave inside	ND	0.4	0.71	52
Ruined microwave	0.2	0.5	ND	1

Banister	ND	0.8	ND	1.1
Kitchen stove	ND	1.8	6.6	520
Bath exhaust grill	8.6	1600	75	390
Burner in bedroom	0.5	16000	65	670
Ceiling fan	7.1	2500	34	1400
Bedroom dresser	ND	71	2	99
Microwave oven	33	1700	54	4300
Range hood	1	100	2	31
Ceiling fan	4.1	250	2	30
Return air grill	0.9	85	1	48
Night stand	ND	2800	9.3	37
TV table	ND	25	ND	12
Ceiling stain	ND	10000	37	20
Microwave oven	ND	2400	7.2	21
Night stand by bed	ND	62	ND	8
Blank	ND	ND	ND	ND
Bedroom desk	ND	13	5	350
Cold air return	0.5	37	ND	1
Glass pan in bedroom	ND	64	1200	51000
Microwave	ND	37	520	30000
Television screen	0.7	44	ND	4.4
Livingroom table	ND	85	ND	12
Bedroom blinds	ND	13	ND	2
Bedroom dresser	ND	17	ND	3.2
Stained kitchen ceiling	ND	14	ND	5.1
Kitchen counter top	ND	0.51	ND	2.1
Kitchen vent	1.2	24	2	8.4
Microwave	ND	33	7.3	690
furnace return grill	2.7	320	22	35
Livingroom table	1.4	400	2	14
Inside refrigerator	ND	11	ND	2.8
kitchen stove	ND	12	ND	19
Sink counter	ND	180	120	5700
Return air vent	0.67	450	6.6	99
Recording studio table	ND	250	7.7	120
Kitchen stove	ND	790	230	4000
Livingroom table	ND	120	74	170
Microwave	ND	350	65	4000
Bedroom table	ND	64	2.9	130
Blank	ND	5.7	ND	45
Coffee table	2.4	14	ND	5.3
TV screen	34	300	96	170
Dresser top	ND	3.6	ND	ND
Heater	ND	1.2	ND	ND
Kitchen table	ND	ND	ND	ND
Inside Refrigerator	ND	ND	ND	ND
Kitchen counter	ND	ND	ND	ND
Floor stains	ND	ND	ND	ND
Shelf under window	23	94	17	73
Field Blank	ND	ND	ND	ND

N. Metro Car	ND	ND	ND	ND
Stove	ND	ND	ND	ND
Furnace return grill	ND	10	ND	ND
Bedroom Table	0.43	63	ND	ND
Field Blank	ND	ND	ND	ND
Stove	ND	4	ND	ND
Microwave	1.3	650	ND	8.2
Bedroom Table	ND	650	ND	ND
John's Car	ND	ND	ND	ND
Unknown	ND	14	ND	4.4
Unknown	0.96	78	ND	20
Unknown	ND	8.3	ND	23
Unknown	ND	ND	ND	ND
Drug Car	ND	ND	ND	ND
Drug Car	ND	ND	ND	ND
Drug Car	ND	ND	ND	ND
Drug Car	ND	ND	ND	ND
Drug Car	ND	ND	ND	ND
Drug Car	ND	ND	ND	ND

A total of 97 methamphetamine wipe samples were taken in the suspected methamphetamine laboratories. Six of the samples were blanks and only one of the blanks was positive (5.7 ug/wipe). Eighty three samples were positive with a range from 0.4 ug/sample to 16,000 ug/sample. The 16,000 ug/sample was taken in a hotel room where there had been an explosion that coated the ceiling with material. The wipe was of the material on the ceiling. It was apparent from the results that the drug car seized by the Trinidad Police Department had not been used as a methamphetamine laboratory and data from it was removed from analysis. The mean of the samples, assuming a non-detect to be 0.01 ug/sample, was 499 ug/sample. The median for all of the samples was 25 ug/sample. It should also be noted that in 10 out of the 14 labs tested, all of the samples taken in the suspected laboratory were positive.

Many of the locations where methamphetamine was found could not have been contaminated by material falling on a surface. Methamphetamine residue was found not only on tables, but also on air return grates and on ceiling fans. High levels of methamphetamine were also found in refrigerators, microwaves, and kitchen appliances, suggesting that food contamination is likely to occur. In general, all of the suspected clandestine methamphetamine laboratories had widespread, high levels of methamphetamine in many areas of the house or structure.

Results of the Controlled Methamphetamine Cook in a House:

This controlled methamphetamine cook was conducted in order to determine the likely exposures present during the cook itself. These exposures represent the potential exposures to the cook and family residing in the building where the manufacturing was conducted as well as the potential exposures to law enforcement officers entering a suspected lab, during an actual cook. It was expected that these results would generally

fall between the worst-case exposures generated in the Colorado Springs Police Department Laboratory and the results found during our sampling of the suspected labs that were not in operation at the time of the investigation.

The building was set up to utilize cooking components that a clandestine cook would be expected to use. The amount of methamphetamine made was, however, less than the amount normally made by cooks, possibly resulting in lower exposure levels. A general cook set-up is shown below:



Figure 3: Methamphetamine lab setup in abandoned house.

Three separate controlled cooks were conducted during this portion of the project. A cook using the red phosphorous method was conducted in the kitchen of the abandoned house and two hypophosphorous cooks were conducted in the bedroom. The salting out operations for all of the cooks were conducted in the kitchen. Samples were taken for phosphine, iodine, and hydrogen chloride for all of the operations. Samples were taken in close proximity to the cook (generally immediately above the cook), at a distance away from the cook (10 feet to 15 feet distant), and in the breathing zone of the individuals conducting the cook.

Red Phosphorous Method Results

The results of the chemical sampling during the red phosphorous cook were as follows:

Location	Phosphine (mg/m ³)	Iodine (mg/m ³)	Hydrogen Chloride (mg/m ³)
Above Cook	> 1.32	1.6	14.6
Distant from Cook	0.37	0.29	0.17
Personal Sample	0.2	0.42	0.65

These results indicate that the red phosphorous method of cooking methamphetamine generated a significant amount of chemical contamination. The current ACGIH TLV for phosphine is 0.4 mg/m³ (with a short term exposure limit (STEL) of 1 mg/m³). The TLV for Iodine is a ceiling value of 1.0 mg/m³ and the TLV for hydrogen chloride is a ceiling value of 3.0 mg/m³. As the table above illustrates, the TLV was exceeded for all three chemical substances at the location of the cook and produced significant levels at some distance from the cook. Although the personal samples obtained from the cook were lower than the levels generated at the cook, it should be recognized that the cooks spent a minimal time in the cook area in order to limit exposure. This would not necessarily occur in an actual clandestine laboratory.

In addition, we believe that the hydrogen chloride exposure at this stage of the cooking process is the result of the use of ephedrine chloride in the cook. It is possible that if other substances were used, the hydrogen chloride content would be much less or missing.

The samples obtained using the above sampling methods resulted in a time-weighted average of the concentration of those chemicals during the entire time of the cook. The samples are therefore an average for a period of approximately two hours. The real-time equipment provided information on the peak exposures during that time. The results were as follows:

Location	Peak Phosphine (mg/m ³)	Peak Hydrogen Chloride (mg/m ³)
Close to Cook	4.6	56.2
Distant from Cook	0.67	1.52

In the vicinity of the cook, both the phosphine and the hydrogen chloride are above the current standards, with hydrogen chloride being significantly above the current ACGIH allowable ceiling value. Even at a distance from the cook, the levels measured were significant and approaching current occupational standards.

Hypophosphorous Method Results

The results of the chemical sampling conducted during the initial hypophosphorous cook were as follows:

Location	Phosphine (mg/m ³)	Iodine (mg/m ³)	Hydrogen Chloride (mg/m ³)
Above 1 st Cook	0.2	0.19	3.4
Distant from 1 st Cook	ND	NA	0.15
Personal Sample	0.28	ND	0.53
Above 2 nd Cook	0.5	0.04	Trace
Distant from 2 nd Cook	ND	0.03	0.27

ND = Not Detected

NA = Not Available

During this sampling period, the levels of phosphine, iodine and hydrogen chloride were generally less than the levels measured during the red phosphorous cook. Detectable levels of phosphine, iodine, and hydrogen chloride were, however, measured for each of the trials using this method. The exposure levels were generally below the current ACGIH TLV's although the hydrogen chloride concentration was slightly above the proposed ceiling TLV ceiling of 2.8 mg/m³. This elevated hydrogen chloride level may also be due to the use of the ephedrine chloride during the process since no hydrogen chloride was present in the chemicals combined for the cook.

The peak levels of phosphine and hydrogen chloride were also as follows:

Location	Peak Phosphine (mg/m ³)	Peak Hydrogen Chloride (mg/m ³)
Close to Cook	1.19	9.9
Distant from Cook	0.56	5.3

These results again indicate that using the methods that we used, both phosphine and hydrogen chloride do exceed current occupational standards for a period of time. Since the hydrogen chloride is a ceiling PEL, this becomes very important to those exposed.

Hydrogen Chloride Results During Salting Out

During the salting out phase of the process, hydrogen chloride was found to be present at high levels. The time-weighted sample results from the laboratory samples revealed hydrogen chloride levels ranging from 1.2 mg/m³ to 30.4 mg/m³ in the areas of the process. The real-time monitor measured a peak hydrogen chloride level of 228 mg/m³ which is orders of magnitude above the ACGIH ceiling TLV of 7.5 mg/m³. These levels, even if existing for only a short period of time, could result in significant medical concerns for the individuals exposed to these levels.

Methamphetamine Wipe Sample Results

In order to determine the amount of methamphetamine contamination due to cooking methamphetamine, we took a number of wipe samples for methamphetamine. These samples were taken on both vertical and horizontal surfaces within the house. Samples were taken before and after the cook in order to determine the contribution of the cooks. Samples were taken in the area of both cooks. The following results were obtained from our sampling:

Cook Type	Location	Pre-Cook (ug/100 cm ²)	Post-Cook (ug/100 cm ²)
Red-P	Vertical wall 113" from cook	ND	10
Red-P	Horiz. Counter 6" from cook	ND	87
Red-P	Horiz. Counter 72" from cook	ND	28
Red-P	Floor 40" from cook	ND	15
Red-P	Wall 63" from cook	ND	20
Red-P	Floor 106" from cook	ND	14
Red-P	Horiz. Cupboard 72" from cook	ND	8.8
Red-P	Cabinet door in bathroom 15 ft. from cook	ND	1.5
Red-P	Cabinet shelf in above	ND	1.7
Hypo	Wall 34" from cook	ND	ND
Hypo	Wall 58 " from cook	ND	ND
Hypo	Wall 44 " from cook	ND	ND
Hypo	Floor 104" from cook	ND	ND
Hypo	Wall 128" from cook	ND	ND
Hypo	Floor in next room 124" from cook	ND	0.05
Hypo	Wall 69" from cook	ND	ND

ND = Not Detectable

As this table indicates, methamphetamine was not detected in any of the samples taken prior to conducting any of the cooks. The area was cleaned and sampled before any of the cooks and a 100 cm² area marked off for each area. The areas were sampled before the cook and after the cook. Figure 4 shows a typical vertical surface marked for sampling.



Figure 4: Marked wipe locations taken during controlled cooks.

Based on the information obtained, no methamphetamine was released during the hypophosphorous cook but substantial amounts were released during the red phosphorous cook. Levels were dramatically increased at significant distances from the process. It should also be mentioned that these increases in detectable methamphetamine were also due to only one small cook. It is significant that the increases were observed not only on horizontal surfaces but also on vertical surfaces. These data suggest that the

methamphetamine is generated as an aerosol that quickly is dispersed throughout the area of the cook. We believe that this may be the reason for the high levels of methamphetamine that have been found throughout all of the suspected clandestine laboratories that were sampled during this project.

In addition to the area wipes, we also obtained methamphetamine wipe samples from a number of the participants in the project. Wipe samples were taken from the front and head region of the protective suits worn by the cooks and the samplers. The samples were taken in the morning after the cook itself and then in the afternoon after the salting out process. The results of the sampling were as follows:

Time of Sample	Job Description	Methamphetamine (ug/sample)
AM	Hypo Cook	0.04
AM	Red P Cook	0.14
AM	Sampler	ND
AM	Red P Cook (second time)	ND
PM	Sampler	16
PM	Sampler	8.1
PM	Salting Out Cook	18
PM	Blank	0.12

These results indicate that exposure to methamphetamine while sampling and cooking in a methamphetamine lab may result in significant methamphetamine contamination on clothes and skin. The samples were not taken on hands or feet and, therefore, the levels of contamination are not due to touching or walking on spilled product but rather are due to contamination generated during the cook and sampling.

Results of a Controlled Methamphetamine Cook in a Motel:

This controlled methamphetamine cook was conducted in order to verify the data obtained in the previous controlled cook as well as to determine how the chemicals involved would spread in a hotel environment. This cook was conducted by chemists employed by the United States Drug Enforcement Agency who are well versed on the production of methamphetamine and conducted the cook in controlled manner. Therefore, the exposures during this cook were expected to be lower than the previous controlled cooks (Colorado Springs Police Department Laboratory and the controlled cook in the house).

Time weighted average sampling for airborne hydrochloric acid, phosphine, and iodine was conducted in four locations: the cook area, a nightstand across the room from the cook area, the bathroom, and outside the room in the hallway (Figure 5). Personal pumps were used to sample hydrochloric acid, phosphine, and iodine in the breathing zone of the 'cook'. The sampling was divided into two phases consisting of the 'cooking' phase, and the 'filtering/salting out' phase. New sampling media were provided at each location during each phase of the cook in order to better understand what concentrations of

compounds were present during each phase of the cook. Air sampling methods for hydrochloric acid and iodine were the same as used during the previous cooks. However, sampling for phosphine was conducted using the OSHA 1003 method, which was thought to provide both a lower detection limit and more accurate analytical results than the previously used NMAM 6005 method.

Airborne methamphetamine samples were also taken in the area of the cook and on the nightstand across the room using a sampling cassette containing a sulfuric acid treated glass fiber filter. Samples were taken in both locations during the 'cooking' phase and during the 'filtering/salting out' phases of the cook.

Real time sampling using the Industrial Scientific Corporation's ITX instruments was conducted in five locations including the cook area, a nightstand across the room from the cook area, the bathroom, the hallway by the door to the room of the cook, and approximately 10 feet down the hallway from the room where the cook occurred.

Wipe samples for methamphetamine were collected using 3 methods. The first method used to collect methamphetamine from surfaces by wiping a 4"x4" area with a sterile gauze wipe. Prior to entering the lab, the wipes were individually placed into plastic centrifuge tubes. After entering the laboratory, wipes were removed from the centrifuge tubes, wetted with a small amount of isopropanol alcohol and the area wiped. Samples were then placed back into the centrifuge tube. In order to minimize cross contamination, separate pairs of gloves were used between sample locations.

The second type of methamphetamine sampling was conducted using the Cozart RapiScan (manufactured by Dominion Diagnostics) immunoassay instrument. Although originally designed for detecting methamphetamine in saliva samples, this instrument provides a semi-quantitative screening analysis for the presence of methamphetamine in the field. The sampling pad was wetted with deionized water until the colorimetric indicator turned blue (an indication that the wipe has become saturated). Sampling was conducted by wiping the pad on a 1"x1" area adjacent to surface samples collected in the methamphetamine lab. Samples were then placed in the buffer solution tube and placed in a plastic bag for analysis at a later time.

The third methamphetamine wipe method was conducted using specially treated sampling paper to wipe 4"x4" areas of the surface (also adjacent to the other wipe locations) which were then analyzed with the Barringer Sabre 2000 Ion Mobility Scanner. This instrument provides semi-quantitative screening analysis for the presence of multiple drugs including methamphetamine, marijuana, cocaine, and opiates.

Chemical Results During Cooking Phase

The results of the chemical sampling conducted during the 'cooking' phase were as follows:

Location	Phosphine (mg/m ³)	Iodine (mg/m ³)	Hydrochloric Acid (mg/m ³)
Close – On Cook Table	ND	0.008	0.43
Far Wall in Cook Room	ND	0.007	0.22
Bathroom	ND	0.011	0.36
Hallway	ND	ND	0.01
Personal Sample on Cook	ND	0.029	0.07

These results indicate that the concentrations of phosphine, iodine, and hydrochloric acid were well below the current ACGIH TLV levels. The results are presented as a time-weighted average of the concentration of those chemicals during the cooking phase of the meth cook. The sampling period was approximately 160 minutes. These levels were lower than the levels found during the previous methamphetamine cooks. The cook was also closely monitored by the DEA Cooks and more water was added to the reaction. These factors may have resulted in lower exposures.

Salting/Filtering Phase Chemical Results

The results of the chemical sampling during the salting/filtering phase of the cook were as follows:

Location	Phosphine (mg/m ³)	Iodine (mg/m ³)	Hydrochloric Acid (mg/m ³)
Close – On cook Table	ND	0.025	1.8
Far Wall in Cook Room	ND	0.021	1.5
Bathroom	ND	0.025	7.2
Hallway	ND	0.001	0.22
Personal Sample on Cook	ND	Pump Failed	0.32

These time-weighted-average results (192 minutes average sampling time) indicate that the concentrations of phosphine and iodine were well below the ACGIH TLV levels. Hydrochloric acid was, for the most part, slightly below the TLV levels in all locations except in the bathroom where it was more than two times the STEL Ceiling of 3 mg/m³. This increase of concentration may be due to indoor currents moving air from the window towards the bathroom.

The peak levels of phosphine and hydrochloric acid as measured using the Industrial Scientific ITX real-time sampler occurred during the salting out phase of the cook. The following peak levels were found:

Location	Phosphine (ppm)	Hydrochloric Acid (ppm)
Close – Or. Cook Table	0.55	62.3
Far Wall in Cook Room	0.15	4.1
Bathroom	0.41	23.4
Table by Bathroom	0.38	38.0
Hallway	ND	0.4
Far Hallway Location	ND	0.2

These results indicate that phosphine concentrations can meet or exceed the ACGIH TLV of 0.3 ppm. Hydrochloric acid may also reach or significantly exceed the ACGIH Ceiling TLV of 2.0 ppm during the salting out phase of the cook. Additionally, the maximum concentration of hydrochloric acid can exceed the NIOSH IDLH (Immediately Dangerous to Life and Health) criteria of 50 ppm.



Figure 6: Hydrochloric acid fumes during the salting out phase of the cook

Methamphetamine Wipe Sample Results

Methamphetamine wipe samples were taken in 17 locations throughout the hotel room, the adjacent hallway, and in a separate room next door to the cook room. Samples were collected prior to conducting the meth cook, after the cooking phase, and again after filtering and salting out the methamphetamine. The following table summarizes the surface wipe sample results:

Location	Pre Cook (ug/100 cm ²)	Post Cook (ug/100 cm ²)	Post Salting Out (ug/100 cm ²)
60	0.12	0.05	130
61	0.15	0.1	ND
62	ND	ND	14.2
63	0.15	0.11	34.2
64	0.12	ND	30
65	0.13	0.07	31.6
66	0.17	0.09	50.7
67	ND	ND	41.5
68	ND	0.06	11.6
69	0.09	ND	120
70	1.36	0.27	7.97
71	ND	0.07	860
72	0.23	0.18	4.5
73	ND	0.11	180
74	ND	ND	16.6
75	ND	ND	16.2
76	ND	ND	1.94

These results indicate that methamphetamine was not present prior to the cook or, to any great extent, after the cooking phase. Significant amounts of methamphetamine were found after the salting-out phase of the cook in the room where the cook occurred – especially in the immediate area surrounding the cook.

Methamphetamine Wipe Sample Results Using Cozart Rapiscan and Sabre 2000 Instrumentation

Methamphetamine wipe samples were also taken using the Cozart and Sabre 2000 analyzers in most sampling locations in the meth lab, the adjacent hallway, and a wall opposite the cook in a separate room. We compared the results obtained from these instruments with those obtained using GC/MS analysis. The results were as follows:

Location	Post Cook GC/MS ug/100 cm ²	Post Cook Cozart Rapiscan Units	Post Cook Sabre 2000 (Bars)
60	130		6
61	ND	84	9
62	14	89	10
63	34		10
64	30	89	10
65	32		ND
66	51	85	7
67	42		6
68	12	88	7
69	120		ND
70	8	83	2
71	860	72	1
72	5	83	1
73	180	65	1
74	17		ND
75	16		ND
76	2	91	1

Blank data fields indicate that no sample was taken

These data show very little correlation between the three methods of measurement. Both the Cozart Rapiscan and the Sabre 2000 are direct reading instruments that are used primarily to determine the presence or absence of methamphetamine. There was not good agreement between the three methods which may be due to different concentrations at the exact location tested (each of the three methods were taken at different sites a few inches away from each other) or to inaccuracy problems with the direct-reading methods.

Methamphetamine Wipe Samples on PPE

In addition to sampling hard surfaces in the meth lab, we also sampled various locations on the personal protective equipment worn by DEA, law enforcement, and other personnel during each phase of the cook. The following table presents results of this testing:

Cooking Phase

Sample ID	Location	Result (ug/sample)
Person A	Upper torso (front)	ND
Person B	Upper torso (front)	ND
	Head	ND
Person C	Upper torso (front)	ND
	Head	ND
Person D	Upper torso (front)	ND
	Head	ND
Person E	Upper torso (front)	ND
	Head	ND
Person F	Upper torso (front)	ND
	Head	ND
Person G	Upper torso (front)	ND
	Head	ND
Person H	Hands	19.3
Person I	Hands	ND

Filtering Phase

Sample ID	Location	Result (ug/sample)
Person A	Upper torso (front)	43.6
	Hands	580
Person C	Upper torso (front)	16.7
Person D	Upper torso (front)	10.3
Person E	Upper torso (front)	6.43
Person I	Upper torso (front)	ND

Filtering Phase (After Decontamination)

Sample ID	Location	Result (ug/sample)
Person J	Upper torso (front)	10.2
	Hands	0.48
Person H	Upper torso (front)	0.81

Salting Out Phase

Sample ID	Location	Result (ug/sample)
Person A	Upper torso (front)	8.13
Person I	Upper torso (back)	4.91
	Arm (Post Decon)	ND
Person J	Upper torso (front)	14.5
	Upper torso (back)	2.54
Person K	Upper torso (front)	10.3
	Upper torso (back)	6
Person L	Upper torso (front)	9.01

These results suggest that methamphetamine is not aerosolized during the cooking phase of the process but becomes airborne during the filtering phase of the manufacturing process. Most of the samples taken after filtering were positive for methamphetamine. This may be due to the volatility of the methamphetamine in its base form. We also found that the wet decontamination procedure may move contamination onto the individual's body. Samples taken after the personnel were decontaminated revealed that levels of methamphetamine were still present on the personal protective equipment and on their hands.

Methamphetamine Results of Carpet Samples

Prior to the cook, a 20 foot long (2 foot wide) carpet was placed along the hallway from the meth lab door towards the exit of the building. After the meth cook, 4"x 4" carpet samples were cut from the carpeting and sent to Data Chem Laboratories for methamphetamine analysis. The amount of methamphetamine contained in the carpeting samples was as follows:

Distance from meth lab door	Result (ug/100cm ²)
0 feet	6.49
5 feet	12.4
10 feet	13
15 feet	3.93
20 feet	6.02

These results indicate that methamphetamine may be tracked out of the methamphetamine laboratory and down the hallway. This suggests that persons coming into a meth lab can spread methamphetamine contamination outside of the cooking area for a significant distance.

Airborne Methamphetamine Results

Four samples were taken to determine the amount of airborne methamphetamine released during the cook. These samples were taken at two locations in the hotel room. The results of this sampling effort were as follows:

<u>Location</u>	<u>During Cook (ug/m³)</u>	<u>Filtering/Salting (ug/m³)</u>
Close to cook	ND	5500
Far wall	ND	4200

These results indicate that the methamphetamine is not aerosolized during the cook itself but rather during the filtering and salting out phases. The amount of methamphetamine

reported is an average concentration for the period of 200 minutes during the last portion of the cook. It is possible that peak levels were substantially higher for specific periods during the cook.

Miscellaneous Clothing Sample Results for Methamphetamine

We also placed a stuffed bear approximately 12 inches from the cook area. After the cook was completed, the bear was sealed in a plastic bag and returned to the National Jewish laboratory. The pH of the bear was taken by pressing a piece of pH paper on the torso of the bear and then compared to the colorimetric chart. Results indicate that the bear had an extremely acid pH of 1.



Figure 2: A teddy bear was placed in the methamphetamine lab

Additionally, 100 cm² of the bear's front sweater and underlying 'fur' were retrieved and sent to Data Chem Laboratories for methamphetamine analysis. Results from the lab indicate that the sweater contained 3,100 ug/100cm² and the underlying fur had 2,100 ug/100cm² of methamphetamine. Children playing with such toys may be exposed to strong acids contained within the toy, causing severe burns to the skin and mucus membranes (such as the mouth or eyes), and also be exposed to significant concentrations of methamphetamine – particularly if the toy is placed in the mouth.

Questionnaire Results:

A total of 62 questionnaires were returned from participants in North Metro Task Force Training sessions. Forty-nine (79%) of the questionnaires were completed by law enforcement personnel, 8 (13%) by fire fighters, and the rest by public health, social services, and other groups. Fifty (81%) of the respondents were male and 19% were female. The average employee had worked in the current job description for 9.5 years and had been involved with an average of 11 clandestine laboratory investigations.

Sixty-six percent of the respondents had smelled odors they associated with the methamphetamine laboratory on at least one occasion, suggesting that there had been a potential for exposure at those laboratory investigations. Although a great number of personnel had smelled odors, only 26% of the respondents reported wearing respirators at laboratory investigations. Since not all of the respondents went into the laboratory areas,

it was expected that those that went into the laboratories would have a higher percentage of respirator users. Since 2 respondents did not say if they went into that actual laboratory areas, the total number of respondents for whom we have data was actually 60. Of those, 34 (57%) said that they entered the laboratory area and only 12 (35%) reported wearing respirators. Of the 26 (43%) individuals that stated that they did not enter the laboratory area, only 4 (15%) wore respirators.

Based on the information that we have regarding the possibility of becoming contaminated at a clandestine methamphetamine site, we might expect all individuals to be decontaminated at the site. Of the respondents that entered the laboratories, only 13 (38%) reported being decontaminated at the scene of the investigation. This would suggest that a number of individuals probably leave the site with some contamination.

Thirty-two (52%) of the 62 respondents reported at least one symptom associated with the investigation of clandestine methamphetamine laboratories. Thirty-eight percent (6) of the individuals wearing respirators reported at least one symptom and 59% (27) of the individuals not wearing respirators reported some symptoms. Of the 34 individuals that reported that they entered the laboratories, 20 (59%) reported at least one symptom. Eleven (42%) of the 26 individuals that reported that they did not enter the laboratory areas also reported at least one symptom. The primary symptoms were eye irritation, sore throat, cough, dizziness, and headache. These symptoms are suggestive of the irritational properties of the chemicals involved.

Project Discussion:

This project was conducted with the objective of answering the following questions:

- What are the primary chemical exposures of concern at clandestine drug laboratory seizures for both the responders and the children present at the laboratory site?
- During which phase of the emergency services intervention are the responders exposed to the most chemicals and what are the levels of chemicals to which they are exposed?
- How do the symptoms reported by the responders relate to the exposures measured at the site?
- How do the symptoms observed in children present at clandestine drug laboratories relate to the chemical exposures within the laboratory?
- Based on the potential exposures at clandestine drug laboratory seizures, what personal protective equipment should be worn and during what phases should it be worn?

- How do the symptoms observed in children present at clandestine drug laboratories relate to the chemical exposures within the laboratory?
- Based on the potential exposures at clandestine drug laboratory seizures, what personal protective equipment should be worn and during what phases should it be worn?
- Based upon the potential exposures at the laboratory sites, what components should the medical screening program for responding personnel contain?

Although not all of these questions have been completely answered by this report, we do have a significant start on answering many of the questions. We have obtained valuable information on the types and magnitude of chemical exposures associated with cooks involving the red phosphorous method of methamphetamine manufacturing. We have also begun to determine how widespread the contamination during these cooks can become and how it may effect the persons conducting the cook, bystanders (including children and spouses) in the same building, and law enforcement personnel responding to the clandestine laboratory. Based on the information that has been gained from this project, we can shed light on a number of areas such as chemical exposures, expected symptoms, suggested personal protective equipment, and concerns regarding children exposed to these environments.

Chemical Exposures Associated with Clandestine Methamphetamine Laboratories:

Based on our sampling results, the chemical exposures of greatest concern produced during the manufacture of methamphetamine (especially using the red phosphorous method) consist of phosphine, iodine, hydrogen chloride, solvents, and the drug or its precursors. During the cooking phase, exposure levels of all of these compounds may meet or exceed current occupational exposure guidelines. This is especially true of exposures to phosphine, iodine, and hydrogen chloride. Each of these compounds may exceed the occupational exposure guidelines as set by the Occupational Safety and Health Administration (OSHA) and by the American Conference of Governmental Industrial Hygienists (ACGIH).

Phosphine:

During our sampling efforts at the Colorado Springs Police Department and at our own controlled cook, phosphine was generated during the red phosphorous methamphetamine cooks. Phosphine was produced at levels ranging from less than 0.17 mg/m^3 to 4.84 mg/m^3 during the cooking phase of the process. It was produced on all occasions during the cook and not just during an overheating event, as has been suggested in the past. No detectable levels ($<0.17 \text{ mg/m}^3$) of phosphine were produced during the hotel cook suggesting that phosphine may be contained by sealing the cooking vessel and providing more water in the cook. The current ACGIH TLV for phosphine is 0.42 mg/m^3 on an