

New, Cheap & Deadly

Kentucky's drug abusers find new ways to get high with unexpected consequences

ABBIE DARST | PROGRAM COORDINATOR

Actions of insanity, disconnection from reality and extremely bad judgment characterizes nearly everyone addicted to the host of available drugs carousing the streets of Kentucky's communities.

Addicts, driven either by drug-induced, shrouded reasoning or a desperate need for their next high, have always challenged law enforcement, keeping them on their toes. But it seems as law enforcement fights back, cracking down on the biggest drug issues in their communities, the abusers gain ingenuity and turn to different or newly-concocted drugs to fulfill their manic substance desperation.

Often the new thing to hit the streets is simply a substitute to provide the abuser the same type of high as an old drug. Designer drugs, one of the newest drug fads, is a term used to describe drugs created or marketed to get around existing drug laws, usually by modifying the molecular structures of existing drugs to varying degrees. Last April, two laws were signed banning Salvia

and K2, previously legal versions of drugs somewhat similar to marijuana.

Designer drugs allow substances with extremely harmful side effects to be sold at local convenient stores, gas stations and "head shops." This 24/7 access can lead to deadly consequences. A sheriff's deputy from Mississippi, responding to a disturbance call, was killed reportedly by an offender under the influence of one of the newest designer drugs to hit the streets — psychoactive bath salts. In that case, six men allegedly were needed to subdue the assailant, who at one point broke free of heavy medical tape and straps binding him to a gurney.

Across the country, reports of the behavior of individuals under the influence of these bath salts ranges from a man who repeatedly slashed his face and abdomen with a skinning knife, to an extended skirmish in which a would-be burglar was Tased twice and twice yanked out probes while continuing to fight violently. In another instance, a 21-year-old male slashed his

throat then shot and killed himself after three sleepless days and nights on a bath-salts high. Paranoid and intermittently delirious, the last night he reportedly hallucinated that the family's house was surrounded by police helicopters and dozens of squad cars.

Here in Kentucky, a mother said to be high on bath salts was found wandering on Interstate-24 in Marshall County with her two young children, one of which she dropped on the side of the road at some point and was found with a large head laceration.

Abusers of this drug exhibit dangerously out-of-control behavior that is very similar to what officers have confronted in trying to deal with excited delirium subjects, said national excited delirium researcher Chris Lawrence. (For more information on excited delirium, see Issue 33, available on DOCJT's website.) Similar to excited delirium subjects, bath salts abusers in worst-case scenarios exhibit signs of profound paranoia, agitation, hallucination, super strength and energy, exceptionally high pain tolerance and potentially lethal combativeness, he said.

By mid February, the Kentucky Regional Poison Control Center said there had been 45 bath salt overdoses since the beginning of the year. Realizing the severity of the problem, in March, Gov. Steve Beshear signed emergency legislation banning MDPV and mephedrone, the two manufactured drugs found in the bath salts, which also have been marketed as plant food.

As if the mephedrone bath salts were not dangerous enough on their own, Marshall County Sheriff Office's Detective Kevin Mighell said some abusers are mixing bath salts and methamphetamine or using bath salts as a cutting agent for meth.

"The dangers with [bath salts] are so great ... it gives the same effects of Ecstasy," Mighell said. "My big concern right now is you've already got methamphetamine, which is an extremely dangerous drug by itself, and then you're going to mix it with these bath salts, which are extremely dangerous. I don't know what kind of effects we can expect with it. ... It's going to be extremely unpredictable."

Though the law has been in effect for several months, Ashland Detective Brian Clark said it may not curb the use of bath salts across the state.

"Sometimes when you make something untouchable, it becomes more attractive," he said. "I think people are just trying to find ways to get high, to become intoxicated, be under the influence of something, and they're willing to stick anything in their nose or smoke anything that you give to them. Who would have ever thought that you'd take bath salts and snort them up your nose?"

"Law makers are not going to be able to make every chemical out there illegal," he continued. "What if you snorted Motrin up your nose, what's that do to you? You can make laws, but some common sense [has to be used.]"

LEGAL LOOPHOLE

From Fulton to Floyd County, Kentucky's most >>



⊞ This container of Tranquilly concentrated bath salts is one of numerous types of a substance that contains MDPV or methadone that has recently been scheduled as a controlled substance. These type of containers had been sold legally at convenient stores and head shops across Kentucky.



>> widespread drug problem doesn't deal with illegal substances, but those that can be picked up at the local pharmacy — prescription pills. More than 80 people die every month from drug overdoses in Kentucky, Beshear announced in April, surpassing car crashes as the leading cause of accidental death in our state.

"The problem with prescription drugs is that they are legal to possess as long as the person has a prescription," Clark said. "A lot of people want to stay in that area. Plus there's a lot of money in prescription drugs. The risk is lower, the reward is just as good. ... It's just what they've been drawn to for the fact that it's easy to get them, they can possess them legally and they've kind of cornered the market on it.

"If I, as a police officer, go up to citizen X and they have a prescription bottle with their name on it, they can carry it all day long in their pocket and it's perfectly legal for them to do that," he continued. "If I find them and they have marijuana or crack cocaine, well I immediately can arrest them on that."

In an effort to curb abuse and fatal overdoses, Purdue Pharma, the makers of Oxycontin, recently reformulated the drug to make it difficult to manipulate. Instead of becoming powdery when crushed, it will break into chunks that cannot be snorted. If the pills are melted down for injection, they become gummy, one University of Kentucky researcher said.

"But they'll find a way," Clark said. "People are smart and they get a lot of information off of the Internet. Someone will put something out there about how to do it."

In the meantime, many Oxycontin addicts are looking for a drug to replace the sensation they get from the pills.

A mother of two young children in Louisville found that replacement in Opana, an extended-release formula of oxycodone. After locking her two toddlers outside during a severe thunderstorm while she slept in a back bedroom, she admitted being addicted to Opana. Opana and alcohol also played

a role in the deaths of two former golf pros from Louisville in January.

"Opana is showing up like crazy," said Sgt. John McGuire, with Louisville Metro police's prescription investigations team. "It's going from something we didn't see at all to something anyone can get fairly easily."

Opana is not a new drug, though. It has been available for decades, mostly in liquid form in hospitals, prescribed for chronic pain. What is new is its availability since going to pill form in recent years, leading to higher levels of abuse and addiction across the commonwealth.

But Opana, or oxycodone, has very different effects on users than Oxycontin. Similar to methadone, Opana has a much more depressing affect and is a respiratory depressant. Especially when taken with alcohol or other depressants, Opana can cause respiratory failure — a problem only heightened if the user has never taken an opiate before, McGuire said.

"My fear with Opana is in-custody deaths," McGuire said. "If an officer has someone in custody and he or she becomes lethargic or begins snoring loudly and the complaint involves Opana or something doesn't seem right, I would encourage officers to take the individual to a hospital."

"Many of the overdoses we've seen are people with a history of abusing narcotics, but they think [Opana] is like Oxycontin, but it acts totally different," he continued.

Like many other prescription medications, Opana is not just appearing on Kentucky's streets from Kentucky doctors' prescriptions and pharmacies, but is part of the pill pipeline from >>

“I think people are just trying to find ways to get high, to become intoxicated, be under the influence of something, and they're willing to stick anything in their nose or smoke anything that you give to them.”

⊞ Prescription pills, like this 80 mg Oxycontin, have been heavily abused across the commonwealth. Prescription drug abuse remains the No. 1 drug epidemic plaguing Kentucky.



>> southern states such as Florida, McGuire said.

With Florida's lack of a tracking system, many of Kentucky's resident drug abusers are traveling to Florida to obtain and fill prescriptions to support their habit, Clark said.

"From somebody that is doing the dirt work so to speak ... [Florida is] making a lot of money off of people from Kentucky, Ohio and Tennessee — it's almost like that's another form of tourism for them," he said. "People are going down there and the trips may cost them \$500 or \$1,000, but that's money going to [Florida] and what happens down there doesn't necessarily affect [the state of Florida] because the problem comes here."

In April, Beshear testified before a congressional panel about the pill pipeline from Florida, after weeks of urging Florida Gov. Rick Scott to implement a monitoring system in the state.

"In October 2009, during the state's largest drug bust, Kentucky law enforcement officials arrested more than 500 people in connection with diverting prescription drugs, all of whom had a Florida connection," Beshear said.

Although Scott was initially against a monitoring system because of privacy concerns, at the April hearing he announced he was moving ahead with the implementation of a prescription-drug monitoring system.

"This is great news for Kentucky and could save thousands of lives," Beshear said of Scott's decision.

CHEAP BUT COSTLY ALTERNATIVE

But, such monitoring systems are only helpful for prescription tracking. In many places across the country, Oxycontin addicts have turned from the reformulated pill to a cheaper, stronger replacement — black tar heroin. Immigrants from Xalisco, in the Pacific Coast state of Nayarit, Mexico have brought a potent form of heroin into numerous cities and towns across the United States, including Kentucky-bordering Huntington, W.Va. Xalisco dealers have been particularly successful in areas where addiction to prescription painkillers like Oxycontin was widespread,

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because it is cheaper and more powerful than the pills.

Overall, Mexican heroin is becoming more pervasive in the United States than Colombian heroin and is not associated with the heightened violence of the larger cartels. Unlike traditional heroin cartels, the Xalisco business model hinges on convenient home delivery, customer service and satisfaction and discounts for referrals. However, because black tar is about 70 percent pure, its arrival to an area is said to be marked with a sharp rise in overdose deaths.

In Ohio, where Columbus is a central hub for Xalisco networks, black tar has contributed to one of the country's worst heroin problems. Over the past decade, heroin overdoses rose more than threefold to 229 in 2008, according to the Ohio Department of Health. The number of heroin addicts admitted to state-funded treatment centers has quintupled, to nearly 15,000.

While there is absolutely nothing new about drug abuse and addiction in Kentucky, the methods abusers are using and the types of substances they are experimenting with is a constantly-changing cycle that forces law enforcement officers to keep a keen eye on the market and trends. Whether manufactured in an eastern Kentucky trailer, grown on plains in Mexico, picked up at a local head shop or purchased at a pain clinic in Florida, Kentucky officers know the devastating effects these drugs have on the citizens they are sworn to protect. And it's not just Kentucky citizens — these drugs know no borders, forcing officers to constantly stay up to date on drug trends not just across the street, but also across the country and across the world. J

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UNITE Honors Law Enforcement for 'Rising Above' in Fight Against Drugs

DALE MORTON | UNITE COMMUNICATIONS DIRECTOR

Communities "breaking down silos" to effectively tackle the region's drug problem can't be underestimated, the nation's top drug official told UNITE coalition members during his visit to Kentucky.

"You can really see and really feel the power of people working together, trying to make sure young people aren't involved in drugs," said Gil Kerlikowske, White House Director for Drug Policy. "The important part is that so many community groups are working together and don't have barriers."

More than 375 people representing coalitions from across southern and eastern Kentucky attended the celebration dinner and roundtable to hear Kerlikowske speak about the nation's efforts to combat substance abuse — particularly strategies dealing with prescription drug abuse and diversion — and to help honor those whose leadership efforts inspire and motivate others.

"We are at ground zero. Our backyard is the battleground of the drug epidemic," said Fifth District Congressman Harold "Hal" Rogers, who created UNITE in 2003, in response to an epidemic prescription drug problem raging in his 29-county district. "You can't turn on the six o'clock news or pick up your morning paper without seeing a story about meth labs or drug-related crimes.

"At the same time," Rogers continued, "adversity is being harnessed into hope. UNITE volunteers have stood up and said: 'Enough! We are taking back our communities here and now. We are doing our part through law enforcement, treatment and education, but it's not enough. We need the full attention of (the Office of National Drug Control Policy) to get involved with us and walk shoulder to shoulder with us in this fight.

"We are not denying we have a problem — we laid our problems out on the table, on display for the nation to see. But Director Kerlikowske, we want you to understand we have a capable and willing army that stands ready to fight this battle," Rogers concluded. "I view Operation UNITE as a national model. It can be copied in any region of our country where communities are willing to work for a better future — like we have here. UNITE is reshaping our future generations and the way they think about drug abuse, and it's working."

Kerlikowske, who has served as director for the Office of National Drug Control Policy since May 2009, coordinates all aspects of federal drug control programs and implements the president's national drug control strategy, said substance abuse knows no boundary.

He hailed the three-pronged efforts of UNITE — investigations, treatment and education — as being a model for other areas of the country being hit hard by prescription drug abuse, and praised the spirit of "people so committed and willing to work together" for a common cause.

During Kerlikowske's visit, four individuals or agencies serving southern and eastern Kentucky

were honored by Operation UNITE for inspiring leadership in the field of law enforcement.

The Rising Above leadership awards were presented by Kerlikowske and Rogers.

Those receiving the honors were the London Residence Agency of the federal Drug Enforcement Administration, Kentucky State Police Detective Chris Fugate, Monticello Police Chief Ralph W. Miniard, and Letcher County Sheriff Danny Webb.

"The London Resident Agency of the Drug Enforcement Administration has been an invaluable resource not only to Operation UNITE, but numerous other city and county agencies that don't have the ability to combat illegal drug trafficking on their own," said Dan Smoot, law enforcement director for UNITE.

Accepting the award were Residence Agent In Charge Kyle Scott and Assistant Special Agent In Charge Tom Gorman.

Fugate, a 19-year veteran with the Kentucky State Police, is presently assigned to the Appalachia HIDTA Task Force in Hazard.

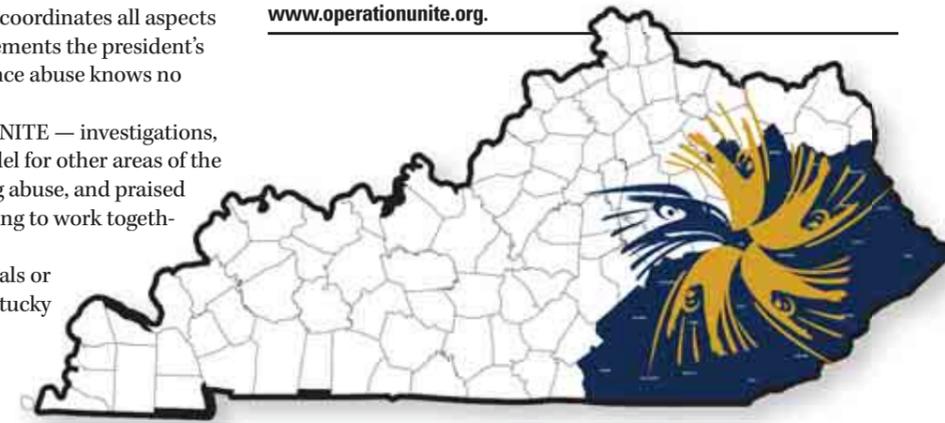
"Detective Fugate and his team have been highly successful in locating and dismantling several out-of-state pill pipeline trafficking organizations that were responsible for distributing hundreds of thousands of pain pills within eastern Kentucky," Smoot said.

Chief Miniard served his country as a U.S. Marine during the Vietnam War. After being wounded in action, he returned to Wayne County and has served with the Monticello police for more than 33 years. Information from Chief Miniard and his officers led to the discovery of 34 methamphetamine labs in 2010 alone, and he has assisted UNITE detectives on a daily basis to apprehend drug traffickers in the county, Smoot said.

Sheriff Webb served the commonwealth for three decades with the Kentucky State Police, rising to the rank of captain, prior to becoming Letcher County sheriff. Before that, he served in the U.S. Army during the Vietnam War where he was awarded the Bronze Star.

Now in his third term as sheriff, Webb currently serves as an Executive Board member for Appalachian HIDTA and is co-chairman for the Letcher County UNITE Coalition. J

For more information about Operation UNITE visit the website at www.operationunite.org.



Is It Legal... or Not?

SHAWN HERRON | STAFF ATTORNEY, DOCJT LEGAL TRAINING SECTION

As part of the Controlled Substances Act of 1970, Pub.L. 91-513, two federal agencies, the U.S. Drug Enforcement Administration and the Food and Drug Administration, were tasked with the responsibility of assigning substances to classifications, called schedules. The criteria for scheduling drugs takes into consideration its potential for abuse, its accepted medical use and federal treaties. Inclusion on one of the schedules has an impact on how that medication may be prescribed, as prescribing controlled substances requires that the doctor or other prescriber have a DEA number.

Kentucky mirrors federal law in how it assigns drugs to schedules and lists the drugs that are controlled both by statute and regulation. In KRS 218A.020, Kentucky places the responsibility on the Cabinet for Health and Family Services to administer the chapter. However, many officers do not realize that statute also permits the CHFS to add, delete or reschedule any of the substances in the chapter, by regulation, and provides specific criteria for substances to be regulated. Specifically, the CHFS has the ability to adjust the list by regulation when notified that federal law has done so and has taken advantage of this statute to classify a number of drugs as controlled

substances under 902 Kentucky Administrative Regulations, Chapter 55. (<http://www.lrc.ky.gov/kar/TITLE902.HTM>)

As such, to discover if a particular drug is scheduled as a controlled substance under Kentucky law, an officer should first find out its actual active chemical composition. There are numerous Internet resources and even cell phone applications to assist in doing so. For example, Xanax, a Schedule IV drug by Kentucky regulation, has a high potential for abuse, but if it is identified, either by the individual in possession of it or by the label on the bottle as alprazolam, would it be immediately recognized by an officer as a controlled substance? With the multitude of prescription drugs available which have a high potential for abuse, identifying a prescription drug as a scheduled controlled substance can be difficult. In addition, plants, herbs or herbal concoctions that are sold as, or believed to be, legal may in fact contain

Websites

<http://www.rxlist.com>
<http://www.drugs.com/>
<http://www.webmd.com/pill-identification/default.htm>

regulated substances. As an example, khat, a green plant commonly chewed in African and Middle Eastern countries that has a stimulant effect, contains the active ingredient cathinone, a Schedule I controlled substance under 902 KAR 55:015. Ultimately, the substance may have to be tested before it can be determined to contain an

illegal substance. If the substance is controlled under federal law but not under

state law, it may be necessary to take the case to federal authorities for possible prosecution.

Finally, individuals may also be in possession of, and illegally using, medication that is not a controlled substance. If the medication requires a prescription but is not a controlled substance, it is classified as a legend drug under KRS 217. Illegal distribution, trafficking or possession of such substances falls under KRS 217.182, with distribution and trafficking a class A misdemeanor upon a first offense. (Subsequent offenses would be considered a class D felony and possession of legend drugs is a class B misdemeanor.) Legend drugs need not be carried in their original container, however, as controlled substances must be under KRS 218A.210.

Enforcing Kentucky's drug laws can be a daunting task, and when it comes to new drugs or herbal substances, further investigation may be needed before charges may be placed. Making the additional effort to determine how and when a particular substance is scheduled can only result in stronger cases and more convictions. If a new or unusual drug or drug-like substance comes into your community, discuss the matter with your prosecutor or legal advisor and fully explore all options before making a decision as to the appropriate charge to place, if any. J



PHOTO BY ELIZABETH THOMAS

What is that?

Codeine is regulated in several ways, depending upon how it is used. Cough syrup that contains codeine is usually classified as an "exempt codeine preparation" under KRS 218A.190 and may be purchased without a prescription. But it is kept behind the pharmacy counter and the buyer must be an adult. However, the CHFS may specifically prohibit one or more of these preparations from being sold without a prescription if they are identified as being abused.

Under Schedule, R indicates it is by regulation and S indicates it is by statute. n

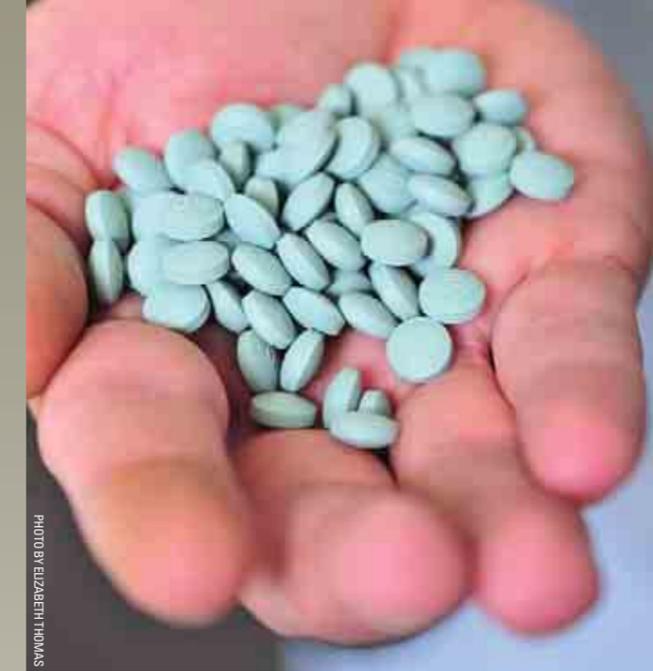


PHOTO BY ELIZABETH THOMAS

| Generic | Brand | Form | Schedule | Purpose |
|------------------|---------------------|-----------------------|-----------------|----------------------------|
| Alprazolam | Xanax | Tablet | IV-R | Anxiety |
| Amitriptyline | Elavil | Tablet | | Depression |
| Amphetamine | Adderall | Tablet | II-S | Attention Deficit Disorder |
| Buprenorphine | Burprenex | Injectable | III-R | Pain |
| see above | Suboxone | Sublingual Film | III-R | Opioid addiction |
| Butalbital | Fioricet, Esgic | Tablet | EXEMPT | Migraine headache |
| Carisoprodol | Soma | Tablet | IV-R | Relaxation (pre-surgery) |
| Chlordiazepoxide | Librium | Capsule | IV-R | Bipolar disorder |
| Clonazepam | Klonopin | Tablet | IV-R | Seizures, panic disorder |
| Diazepam | Valium | Tablet | IV-R | Anxiety |
| Fentanyl | Duragesic | Patch | II-S | Pain |
| Hydrocodone | Lortab, Vicodin | Tablet | II-R | Pain |
| Hydromorphone | Dilaudid | Liquid, Tablet | II-R | Pain |
| Lorazepam | Ativan | Tablet | IV-R | Bipolar disorder |
| Meperidine | Demerol | Tablet, Oral Solution | | Pain |
| Meprobamate | Miltown, Equanil | Tablet | IV-R | Anxiety |
| Methadone | Dolophine | Tablet | II-S | Pain, opioid addiction |
| Methylphenidate | Ritalin | Tablet | II-S | Attention Deficit Disorder |
| Midazolam | Dormicum | Liquid | IV-R | Sedation (medical use) |
| Morphine | MS-Contin | Tablet | I or III | Pain |
| Oxycodone | OxyContin, Percocet | Tablet | II-R | Pain |
| Oxymorphone | Opana | Tablet | II-R | Pain |
| Pentazocine | Talwin | Tablet, Injectable | III-R and III-S | Pain |
| Promethazine | Phenergan | Tablet | | Nausea |
| Propoxyphene | *Darvocet, Darvon | Tablet | | Pain |
| Temazepam | Restoril | Capsule | IV - R | Insomnia |
| Tramadol | Ultracet, Ultram | Tablet | IV-R | Pain |
| Trazadone | Desyrel | Tablet | | Depression |
| Zolpidem | Ambien | Tablet | IV - R | Sleep disorders |

* Darvocet/Darvon is abused, but it is now off the market and officers will see it less and less.

SMALL TOWN — BIG PROBLEM

Law enforcement bands together in an effort to help change the culture of a small eastern Kentucky city

KYLE EDELEN | U. S. ATTORNEY'S OFFICE

What could cause a man to abandon his roots and plan to leave the area he's called home for 67 years?

The unfortunate answer — a city where he and other citizens felt so overwhelmed by fear that they confined themselves to their homes, guarded by locked doors to guarantee safety.

"These law abiding citizens felt like hostages," said Paris Mayor Michael Thornton. "Citizens were fearful to venture outside their homes after dark."

Thornton recalled the moment when he heard this man, a lifelong citizen of Paris, tell him about his plans to move away from the small Eastern Kentucky city.

"You could see the pain and fear that he was going through and that was very hard to deal with," Thornton said. Thornton asked the Kentucky Law Enforcement magazine to conceal the man's identity for the story.

Longtime drug dealers, some with steep criminal records, threatened peace and created a culture of fear that permeated throughout the city.

Some of these drug addicts were affiliated with gangs and congregated in the streets at all hours of the day executing drug deals that primarily involved cocaine and crack cocaine.

One citizen said she often spotted people from her bedroom window probing the streets for drugs at 6 a.m. while she prepared for work.

The heavy drug activity often led to numerous acts of violence. Several stabbings and some shootings transpired right before the eyes of lawful citizens.

"I personally have family and friends who have had their lives shattered because of this," said one resident, who maintains anonymity.

"This doesn't just affect the sellers and users [of drugs] but destroys families in the process."

The safety of teenagers worried parents and citizens as well. High school students routinely passed by a grocery store that served as a hub for the majority of the drug trafficking.

However, the concerned voices of the Paris community didn't fall on deaf ears.

Kentucky State Police (KSP) detectives listened to the complaints of citizens and the concerns of the Paris officials including Thornton.

"I told them whatever they needed to address the problem, I would authorize," Thornton said.

KSP detectives opened an investigation into the drug trafficking activity in 2008, and invited ATF to participate. Both agencies worked closely with prosecutors at the U.S. Attorney's Office and in Bourbon County throughout the investigation.

The two year investigation was keyed by a covert camera placed on a pole adjacent to the grocery store that allowed agents to monitor drug transactions and capture important events including a few shootings.

"The camera was invaluable," said KSP Detective Sergeant Mark Burden. "It allowed us to gather factual evidence to help us identify the major dealers and use as evidence in court."

Both KSP and ATF deployed informants and undercover agents into Paris

to perform hundreds of undercover drug buys.

"All undercover buys are dangerous, but this operation raised the danger level even more" Burden said. "With the shootings around the neighborhood and the fact that some of these guys were violent gang members, it worried us, because if things went awry we feared that an informant's life could be at stake."

The investigation culminated in a massive drug sweep where nearly a hundred law enforcement agents blocked off exit routes from the city so they could arrest drug traffickers inside Paris.

After several days, KSP and ATF handcuffed more than 50 individuals involved in drug trafficking. Three fourths of the individuals arrested had prior felony convictions; some of the convictions dated back more than three decades.

The roundup included everyone from low level narcotic dealers all the way up to the multi kilogram distributors.

"We wanted to take everyone out at once," said ATF agent Eric Mercer.

"We didn't want to just take the head off the monster and leave someone else on the street to fill the role and continue dealing drugs."

After the arrests, agents and detectives passed the torch to Assistant United

States Attorneys Hydee Hawkins, Rob Duncan and Lindsay Thurston with the U.S. Attorney's Office.

By January of this year, the three prosecutors negotiated and composed plea agreements with all 55 defendants charged in the case.

As of March, a federal judge had sentenced every defendant. One of the leaders received 18 years and more than half received five years or more in federal prison where they have to serve at least 85 percent of their sentences.

"It was the extraordinary amount of work by everyone involved prior to the arrests that allowed us to quickly resolve this case and hopefully enhance the quality of life for the law abiding citizens of Paris," Hawkins said.

For the time being, many residents are resting their anxiety.

"The streets are peaceful and calm now," one anonymous resident said.

"Our elderly can come out on their porches without worrying about someone fighting in the streets or even a shooting."

Perhaps no one was more satisfied than the man who nearly left 67 years of memories behind.

"He came to me with tears in his eyes to express his thanks," Thornton said. J

Meth Lab Funding Cut KELLY FOREMAN | PUBLIC INFORMATION OFFICER

As the number of methamphetamine lab busts rise, the money Kentucky has to clean up the mess has come to a screeching halt.

Kentucky law enforcement agencies rely on about \$725,000 in federal funding to combat meth, said Kentucky State Police Lt. David Jude. About \$400,000 of that pays contractors to legally dispose of the confiscated materials. Roughly \$325,000 purchases equipment and supplies, provides training and pays overtime for officers tasked with taking down the labs, he said.

For 10 years, the clean up funding has been supplied through the Drug Enforcement Administration, but was eliminated recently in the federal budget bill. In a statement from the DEA, officials said the agency attempted to stretch the grant money, but it is now gone.

"We are out of money, and the prospect of getting additional funding is bleak," the statement said.

The majority of funds used for training, overtime and equipment has been supplied by a Community Oriented Policing Services grant, which Jude said the agency is hoping will be refunded.

"So, if that doesn't get renewed, we will have to pick up that expense as well," he said.

Last year, Kentucky law enforcement seized 1,080 meth labs, breaking a state record for the number seized in the state in any given year. Kentucky also recorded the third-highest number of labs in the nation in 2010. Labs in 2011 already are showing an increase of 20 percent from a year ago.

The cost to clean up a meth lab averages around \$2,600, Jude said. The process is extremely dangerous and includes hours of work to secure the highly volatile and combustible materials for disposal. Once that clean up is done, Jude said the disposal also is a complex process, and not one that can be easily done.

"Because of OSHA and federal guidelines, we just don't take it out in the backyard and dump it," he said. "It has to be stored, and these companies have to come and dispose of it properly."

Solutions to the problem are being discussed, Jude said. The brunt of the expense may have to be absorbed into the already thin-stretched state general fund. Some agencies which previously relied on the state police to clean up and dispose of their meth labs may have to take on the financial responsibility themselves.

But, Jude noted, that isn't always a possibility, particularly in smaller, rural areas that already struggle with limited resources. However, State Police Commissioner Rodney Brewer said regardless of the funding woes, the state will continue the fight against meth makers. □

NO CRIME SCENE

Exception

MIKE SCHWENDEMAN | STAFF ATTORNEY, DOJT
LEGAL TRAINING SECTION

Methamphetamine continues to be a curse upon Kentucky, despite the enormous efforts of law enforcement to stamp it out. The cost to the commonwealth in terms of bulging and expensive prison populations, strained law enforcement resources, destroyed lives and related crimes is staggering. As officers and deputies continue their efforts to combat meth labs, they should ensure they are not only doing it safely (which is the No. 1 priority), but they are doing it in a manner consistent with the law.

One of the enduring legal myths that continues to exist despite all efforts to eradicate it is the idea that there is a “crime-scene exception” to the Fourth Amendment of the United States Constitution. It has seeped its way into popular culture. One of my favorite shows is “CSI,” set in Las Vegas and one of the reasons I enjoy it is that, generally, it is accurate in its portrayal of the law. However, the producers of this show have also drunk the crime-scene exception Kool-Aid. In the ninth season episode, “Young Man with a Horn,” two of the CSIs are on the grounds of a closed and padlocked casino searching for evidence of a homicide. Upon finding some evidence outside, they want to go into the closed casino to search further. When the junior CSI expresses concern about the legality of going inside, the senior CSI breezily assures him that, “It’s a crime scene, we don’t need a warrant.” There

is now a small dent in the ceiling above the couch in my living room where I hit the roof when I heard that statement.

A clandestine lab where methamphetamine is being manufactured is most assuredly a crime scene. Manufacturing meth is punishable per KRS 218A.1432 as a class B felony for the first offense, and a class A felony for subsequent offenses. Kentucky punishes offenders more severely for manufacturing meth than it does for trafficking it because of the enormous hazard it creates. A meth lab easily meets the statutory definition of a hazardous materials site. Peace officers in Kentucky should be aware of the dangers of meth labs and must take appropriate measures to ensure their safety in dealing with one. A meth lab must be properly cleaned up and necessary evidence collected by OSHA-trained personnel with appropriate protective gear and equipment.

When peace officers discover a meth lab, they typically arrest the violators, exit the area, and secure the scene. Specialized teams are summoned to process the lab and clean it up. The question that arises is, what may lawfully be done with the lab upon discovery, and when will it be necessary to obtain a search warrant? There is growing concern that the response teams may be violating the Fourth Amendment rights of defendants by entering these labs to process them without a search warrant. This could lead to suppression of evidence seized during the search.

The Fourth Amendment applies whenever a person has a reasonable expectation of privacy. It must be remembered that the Fourth Amendment protects people, not places. *Katz v. U.S.*, 389 U.S. 347, 353 (1967). May a meth response team enter the scene without a warrant to process it?

To answer that question, another must be asked: Does anyone have a reasonable expectation of privacy in the location? If so, the Fourth Amendment will apply. If the crime scene is somebody’s home, a motel room while they are renting it, or other structure in their possession, the answer is yes. A search of a place where there is a reasonable expectation of privacy without a search warrant is presumptively invalid unless it meets one of the exceptions recognized by the court.

One of the recognized exceptions is exigent circumstances. The idea behind these is that time is of the essence and that if officers have to get a warrant before entering a location or seizing evidence, it will be too late. Among the specific circumstances that fall under exigent circumstances are: hot pursuit of a suspect; evidence in imminent danger of loss or destruction, and human life in danger of death or serious physical injury. The mere fact that a location is a crime scene does not create an exigent circumstance. Likewise, just because it is a meth lab and a crime scene will not by itself create an exigent circumstance. However, any one of the three categories listed could exist at the discovery of a meth lab.

In a series of three cases, the Supreme Court of the United States firmly rejected the idea that there was a crime scene exception to the Fourth Amendment. In *Mincey v. Arizona*, there had been a shoot out at Mincey’s apartment. (437 U.S. 385 1978). Mincey was a drug dealer and the shooting was the result of a drug raid gone wrong. Mincey was shot, as was an undercover officer and several others. The officer was fatally wounded. The other officers who took part in the raid conducted a sweep to look for any other shooters and victims. When completed, they summoned EMS

□ A variety of harmful chemicals are used in methamphetamine production.



and the wounded were transported. The officers left the apartment and secured it. Subsequently, detectives arrived, entered without a warrant and searched Mincey's apartment for evidence for four days. Mincey sought to have the evidence of the warrantless search excluded. Arizona argued that there should be a murder scene exception to the Fourth Amendment and that the detectives did not need a warrant. SCOTUS rejected that argument. The

Court had no problem with the sweep by the original officers to look for other shooters and victims recognizing this as an exigent circumstance and finding these actions legitimately necessary. On an exigent circumstance entry, officers are allowed to do whatever is necessary to deal with the emergency, but no more. An officer may remain there as long as necessary to deal with the exigency, but must leave when it is over. The exigency in Mincey ended after the scene was secure and the wounded had been transported. As this was Mincey's home, he had a reasonable expectation of privacy and a warrant was required to do any further searching.

SCOTUS reiterated this rule in the subsequent cases of *Thompson v. Louisiana* 469 U.S. 17 (1984) and *Flippo v. West Virginia* 528 U.S. 11 (1999). Indeed, in *Flippo* a plainly irritated Court asked, in as many words, what is it about the word no that you don't understand? There is no such thing as a crime-scene exception to the Fourth Amendment. The Court stressed that an exigency did not give officers the right to remain on the scene after the exigency was resolved. Evidence collected after the exigency as well as searches done exceeding the scope of what is permitted during the exigency without a warrant will be excluded.

How does this apply to meth labs? Consider the following scenarios:

(1) A fire breaks out in a residence. Firefighters extinguish the fire, and advise police that the cause of the fire was a meth lab. May officers now enter to secure evidence and clean up the lab? No. The firefighters had the right to enter the home without a warrant to extinguish the fire. That was an exigency. However, once the fire is out and the situation stable, the exigency is over. Officers cannot now enter to process the scene. Since the response team is also part of law enforcement, they cannot now enter, either. The scene should be secured and a warrant obtained. The information

from the firefighters would easily provide probable cause to support a search warrant.

(2) Deputies are executing an arrest warrant on a subject at his home. When the door is opened, they smell a strong odor of ether, and see an apparent meth-cooking operation in progress. They also observe small children in the home. What may the deputies do? They may make a sweep of the home to get all persons out and arrest the subject of the warrant. Assuming it is somebody else doing the cook, they may arrest that person as well. They must then secure the scene and get a search warrant. The entry into the home was a justifiable exigent circumstance. The meth cook posed a clear and present danger to the occupants of the home. It was justifiable to enter to get everybody out. Once everybody is out, the exigency is over, so the right of the deputies to be in the house likewise ends.

Officers should keep in mind that a person who has a reasonable expectation of privacy but who is not currently a suspect does not mean he will never be one. That was the case in *Flippo*. Officers initially thought *Flippo* and his fatally-injured wife had been attacked in their rented cabin by an invader. It was only after the *Flippos* had been transported to the hospital and the officers found no evidence of an intruder outside the cabin that they began to suspect *Flippo* in the murder of his wife. If anybody has a reasonable expectation in a crime scene, whether they are currently a suspect or not, the smart and safe play is to secure the scene and get a search warrant. Officers have the right to secure the crime scene and keep everybody out of it while waiting for the warrant. It is not going anywhere, so take the time to do it right. J

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Red Devil Lye is a chemical sometimes used in producing methamphetamine.

