

**OSAGE NATION CONGRESS**

1<sup>st</sup> Special Session of the 1<sup>st</sup> Legislature (2007)

**BILL NUMBER ONCA 07-04**

ENROLLED

AUTHOR: Congresswoman Debra Littleton

SPONSOR: Congresswoman Jerri Jean Branstetter

**An Act**

Relating to the use, possession, manufacture, and distribution of methamphetamine; limiting the precursors necessary for its manufacture; providing a penalty for the unlawful possession of such precursors; amending Section 540 of the Osage Criminal Code; criminalizing fraudulent results in drug testing; creating the Osage Nation Anti-Methamphetamine Joint Task Force; setting an effective date; and declaring an emergency.

*Be it enacted by the Congress of the Osage Nation:*

**SECTION 1. SHORT TITLE**

This Act may be cited as the “Osage Nation Anti-Methamphetamine Act.”

**SECTION 2. FINDINGS; PURPOSE**

A. FINDINGS. The Osage Nation Congress finds that:

1. Methamphetamine use and addiction have reached epidemic proportions;
2. The nature and cycle of methamphetamine use and addiction have many negative and severe impacts on the livability of communities and villages throughout the Osage Reservation including, but not limited to:
  - a. Endangering children exposed to a methamphetamine laboratory or methamphetamine house environment;
  - b. Increasing the rate of property crimes such as theft, identity theft, and burglary;
  - c. Increasing the rate of violent crimes such as homicide, robbery, assault, and sexual abuse;
  - d. Creation and dumping of toxic waste from methamphetamine laboratories on Indian trust and restricted lands and other lands within the territorial jurisdiction of the Osage Nation; and
  - e. Methamphetamine-induced mental illness, psychosis, and death;
3. Recent developments in methamphetamine manufacturing methods, purity levels, and methods of ingestion have substantially contributed to the extremely addictive nature and expanded use of methamphetamine; and
4. Osage Nation prevention, enforcement and treatment providers need to work together in an effort to raise community awareness about methamphetamine and to reduce its use, manufacturing, and distribution.

B. PURPOSE. The purposes of this Act are as follows:

1. To control precursor substances consistent with Oklahoma law;
2. To reduce the harm that methamphetamine and its manufacturers are inflicting on individuals, families, communities, villages, first responders, the economy, and the environment;
3. To make it more difficult for persons engaged in the unlawful manufacture of methamphetamine within the Osage Nation to possess its essential ingredient ephedrine;
4. To include ephedrine and its variants within the listing of controlled dangerous substances which are banned from the Osage Nation;
5. To amend Section 540 of the Osage Criminal Code to provide increased penalties for possession, manufacturing, transportation, sale, use, trade, or delivery of ephedrine and its variants and to further define the exception;
6. To make it unlawful to defraud or cause deceitful results in drug testing or screening within the Osage Nation; and
7. To create the Osage Nation Anti-Methamphetamine Joint Task Force.

### **SECTION 3. DEFINITIONS**

As used in this section:

A. "Manufacturer" means any person within the Osage Nation who produces, compounds, packages, or in any manner initially prepares for sale or use any drug product described in Section 4 of this Act;

B. "Wholesaler" means any person within the Osage Nation, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product described in Section 4 of this Act to any other person for the purpose of being resold; and

C. "Distributor" means any person within the Osage Nation, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product described in Section 4 of this Act to any person who is not the ultimate user or consumer of the product.

### **SECTION 4. UNLAWFUL PRECURSOR SUBSTANCES**

A. It shall be unlawful for a person to knowingly and unlawfully possess a drug product containing ephedrine, pseudo-ephedrine, or phenylpropanolamine or their salts, isomers, or salts of isomers with intent to use the product as a precursor to manufacture methamphetamine or another controlled substance.

B. Except as provided in this subsection, possession of a drug product containing more than nine (9) grams of ephedrine, pseudo-ephedrine, or phenylpropanolamine or their salts, isomers, or salts of isomers shall constitute a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subsection shall not apply to the following persons who are lawfully possessing drug products in the course of legitimate business:

1. An Osage and/or Oklahoma licensed retail distributor of drug products or Osage and/or Oklahoma licensed wholesaler;
2. A wholesale drug distributor or its agents, licensed by the Osage Nation and/or Oklahoma Board of Pharmacy;
3. A manufacturer of drug products or its agents, licensed by the Osage Nation and/or Oklahoma Board of Pharmacy;
4. A pharmacist licensed by the Osage Nation and/or Oklahoma Board of Pharmacy; and
5. An Osage and/or Oklahoma licensed healthcare professional possessing the drug products in the course of carrying out its profession.

C. A violation of this section shall be punishable by a fine not less than Five Hundred Dollars (\$500), yet not to exceed Five Thousand Dollars (\$5,000), or by a term of imprisonment not less than Thirty Days, yet not to exceed Three Hundred and Sixty Five (365) Days, or a combination of both fine and imprisonment. This punishment shall not be subject to a deferred or suspended sentence.

**SECTION 5. AMENDING SECTION 540 OF THE OSAGE CRIMINAL CODE**

A. Subsection (b) of Section 540, entitled Dangerous Drug Offense, of the Osage Criminal Code shall be amended to read:

“Controlled or counterfeit substances shall consist of the substances listed in 21 U.S.C. 812 (1972), **as amended and to include addition of a drug product containing more than nine (9) grams of ephedrine, pseudo-ephedrine or phenylpropanolamine or their salts, isomers, or salts of isomers to Schedule V,** and any other chemical substance, natural or artificial, defined as a controlled or dangerous substance, the possession, sale, distribution or use of which is prohibited by Federal law, except peyote. **It shall not be unlawful for any registered members of the Native American Church to transport, buy, sell, possess, or use peyote in any form in connection with recognized bona fide practices, sacraments, or services of the Native American Church consistent with the American Indian Religious Freedom Act and its amendments.**”

B. Subsection (c) of Section 540, entitled Dangerous Drug Offense, of the Osage Criminal Code shall be amended to read:

“Dangerous drug offenses shall be punishable by a fine not **less than Five Hundred Dollars (\$500), yet not** to exceed ~~One Thousand Dollars (\$1,000)~~ **Five Thousand Dollars (\$5000)**, or by a term of imprisonment ~~in the Tribal jail~~ **not less than Thirty (30) Days, yet not** to exceed ~~six (6) months~~ **Three Hundred and Sixty Five (365) Days,** or a combination of both fine and imprisonment. **This punishment shall not be subject to deferred or suspended sentence.** Upon conviction under this section for sales distribution, possession with intent to distribute, manufacturer with intent to sale or cultivation with intent to distribute, banishment may also be imposed for a term not to

exceed ten (10) years.”

**SECTION 6. UNLAWFUL TO DEFRAUD OR CAUSE DECEITFUL RESULTS IN DRUG TEST**

A. It is unlawful for a person to:

1. Sell, give away, distribute, or market human or synthetic urine in the Osage Nation Reservation or transport human or synthetic urine into the Reservation with the intent of using the urine to defraud or cause deceitful results in a urine, drug, or alcohol screening test;
2. Attempt to foil or defeat a urine, drug, or alcohol screening test by the substitution or spiking of a urine sample;
3. Advertise for sale any product designed to foil or defeat a urine, drug, or alcohol screening test;
4. Adulterate a urine or other bodily fluid sample with the intent to defraud or cause deceitful results in a urine, drug, or alcohol screening test;
5. Possess adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding or causing deceitful results in a urine, drug, or alcohol screening test; or
6. Sell or market an adulterant with the intent by the seller or marketer that the product be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding or causing deceitful results in a urine, drug, or alcohol screening test.

B. Intent to defraud or cause deceitful results in a urine, drug, or alcohol screening test is presumed if:

1. A heating element or any other device used to thwart a drug screening test accompanies the sale, giving, distribution, or marketing of urine; or
2. Instructions that provide a method for thwarting a drug screening test accompany the sale, giving, distribution, or marketing of urine.

C. As used in this section, “adulterant” means a substance that is not expected to be in human urine or a substance expected to be present in human urine but that is at a concentration so high that it is not consistent with human urine including, but not limited to:

1. Bleach;
2. Chromium;
3. Creatinine;

4. Detergent;
5. Glutaraldehyde;
6. Glutaraldehyde/squalene;
7. Hydrochloric acid;
8. Hydroiodic acid;
9. Iodine;
10. Nitrite;
11. Peroxidase;
12. Potassium dichromate;
13. Potassium nitrite;
14. Pyridinium chlorochromate; and
15. Sodium nitrite.

D. Any person convicted of violating any of the provisions of subsection A of this section shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment not to exceed Three Hundred and Sixty Five (365) Days, or a fine not to exceed Five Thousand Dollars (\$5,000), or both.

#### **SECTION 7. THE OSAGE NATION ANTI-METHAMPHETAMINE JOINT TASK FORCE**

A. The Osage Nation Anti-Methamphetamine Joint Task Force (Task Force) is created to research and recommend future legislation and develop education and training programs that will curb the abuse of methamphetamine precursors used to make methamphetamine and curb the use of methamphetamine within the Osage Nation, the details of which will be presented in a recommended plan of action submitted to the Osage Nation Congress. The task force shall consist of the following:

1. The Attorney General or the Osage Nation Chief of Police;
2. Two representatives of the Osage Nation Executive Branch as appointed by the Speaker; and
3. Two representatives of the Osage Nation Executive Branch as appointed by the Chief.

B. The members of the Task Force shall elect a chair from among their membership.

C. The membership of the task force shall be inclusive and reflect the diversity of the Nation.

D. The Task Force shall annually submit to the Legislature a schedule of upcoming quarterly report meetings. The Task Force shall report during the quarterly meetings as to the accomplishment and completion of Task Force priorities and objectives.

E. The Task Force shall meet no less than six times annually, with additional meetings called by the chair. A majority of the appointed members shall constitute a quorum.

F. The chair of the task force shall be responsible for the conduct of the meetings and any correspondence derived therefrom.

G. The Task Force priorities shall include:

1. Develop a long-range plan that will create training, education, treatment, and enforcement programs that will fight the use and abuse of methamphetamine and methamphetamine precursors. The long range plan shall be focused on one clear anti-methamphetamine message to enhance public awareness.

2. Seek out grant funding for the continuation of anti-methamphetamine training, treatment, and education programs.

3. Locate and identify areas within the jurisdiction that show a problem or a potential increase in methamphetamine use and abuse. Develop a strategy to address the problem and/or the potential increase for this area.

4. Identify enforcement needs and enforcement priorities related to methamphetamine use and abuse.

5. Develop a plan designed to safeguard the health and well-being of all Osage Nation employees and citizens who are exposed to methamphetamine users, manufacturers, and/or distributors.

H. The task force shall develop training and education programs and may avail itself of any advisory information as needed to develop the training and information programs. The chair of the task force shall call an organizational meeting of the task force no later than December 31, 2006, and the task force shall report its meeting schedule, priorities, objectives, and procedural rules to the Clerk of the Congress within 10 days of the meeting. The task force shall collect data related to the effectiveness of its training and education programs and shall file a report with the Clerk of the Congress no later than ten (10) days prior to each quarterly report meeting of each year.

I. The task force may expend any funds from donations, grants, and appropriations of tribal funds received for purposes of this subsection.

J. The Task Force members shall not receive stipends nor salaries out of any funds received for purposes of this subsection, but shall be entitled to reimbursement for actual and necessary expenses incurred in carrying out duties pursuant to this section.

**SECTION 8. APPROPRIATION.**

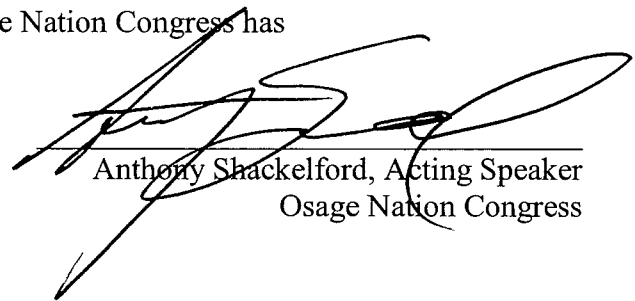
Twenty-five thousand dollars (\$25,000) is appropriated for expenditure in fiscal year 2007 for the Osage Nation Anti-Methamphetamine Joint Task Force. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the Osage Nation Treasury Fund.

**SECTION 9. EFFECTIVE DATE AND EMERGENCY CLAUSE**

It being immediately necessary for the preservation of the Osage public peace, health and safety, an emergency is hereby declared to exist so that this law becomes effective immediately after passage and approval. This clause has been voted upon separately with concurrence of two-thirds (2/3) of the Membership.

ENACTED by the Osage Nation Congress on this 15<sup>th</sup> day of November, 2006.

IN WITNESS WHEREOF, the Speaker of the Osage Nation Congress has hereto attached his signature.



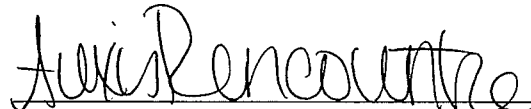
Anthony Shackelford, Acting Speaker  
Osage Nation Congress

**CERTIFICATION**

I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING IS A TRUE EXTRACT FROM THE MINUTES OF THE Osage Nation Congress comprised of twelve members and one ex-officio member with 11 members attending this meeting on the 15<sup>th</sup> day of November, 2006, and that the above is in conformity with the provisions therein adopted by a vote of 10 in favor, 0 against, 0 abstentions, and 2 absent.

Faren Revard Anderson	yes
Jerri Jean Branstetter	absent
Shannon Edwards	yes
Mark Freeman	yes
Debra Littleton	yes
Archie Mason	absent
Raymond Red Corn	yes
Eddy Red Eagle, Jr.	yes
Doug Revard	yes
Anthony Shackelford	yes
Mark Simms	yes
William Supernaw	yes

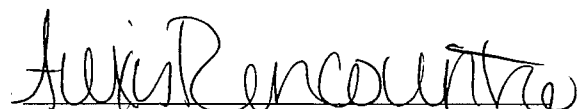
Said Bill has not been rescinded or amended in any way and the above is the signature of the Speaker of the Osage Nation Congress.

  
 Alexis Rencountre, Clerk  
 Osage Nation Congress

**EFFECTIVE DATE CERTIFICATION**

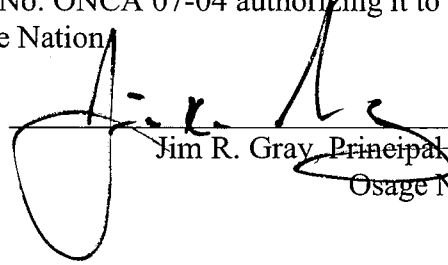
I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING EFFECTIVE DATE was approved by a two-thirds vote of the Osage Nation Congress in accordance with the Constitution of the Osage Nation Article VI, Section 13. This provision was adopted by a vote of 10 in favor, 0 against, 0 abstentions, and 2 absent.

Faren Revard Anderson	yes
Jerri Jean Branstetter	absent
Shannon Edwards	yes
Mark Freeman	yes
Debra Littleton	yes
Archie Mason	absent
Raymond Red Corn	yes
Eddy Red Eagle, Jr.	yes
Doug Revard	yes
Anthony Shackelford	yes
Mark Simms	yes
William Supernaw	yes

  
 Alexis Rencountre, Clerk  
 Osage Nation Congress

**APPROVAL**

I, the Principal Chief of the Osage Nation, hereby affix my signature this  
day 15 of November, 2006, to the above Bill No. ONCA 07-04 authorizing it to  
become a law under the Constitution of the Osage Nation



Jim R. Gray, Principal Chief  
Osage Nation