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**Testimony to the House Judiciary Committee  
Neutral Testimony on SB159  
March 17, 2015**

Chairman Barker and Committee Members,

Our interest in this bill is in section 8, amending KSA 38-2231, concerning the taking of children into CINC custody when a drug violation is found in their home. In one way this seems to clarify the legislative intent of when you want us to take children from the home where illegal drug activity is involved, but in another way it raises some uncertainty for us.

When our associations first vetted this bill with our members the general response was that we already do this under KSA 38-2231 (b)(1) with the caveat usually added, "we just have to accurately word our documents to demonstrate the risk of harm." The general responses also indicated a belief the bill does no harm and may be helpful in some drug related cases.

However, I have had several messages from law enforcement leaders and legal advisors since this bill was introduced. One response I received last week in regards to the Senate Committee amendments pretty well summarizes the points of all the responses:

I don't think the new subsection causes that many problems related to the CINC action. It seems that when most officers find drug manufacturing or drug sales in a house where children are present, they already consider it an endangerment situation and take the kids into custody.[Under subsection (b)(1)] Since drug sales or manufacturing are always a dangerous business, I don't see that as much of a problem.

However, I have more concern about when the parents are drug users. Does a bag of weed for personal use give an officer a reasonable belief that such violation threatens the safety of the child? What happens where the parents are arrested and we take the weed but don't remove the children. Then after the parents bond out of jail they buy another bag of weed and, due to their lack of parenting skills something bad does happen to the child. The ex-spouse or Grandparents will probably sue the officers and agency claiming they violated a duty. The presence of a statutory duty makes it easier for Grandparents to get their case to a jury where the parties will argue about whether the presumed violation was foreseeable or caused the harm, or whether the officer's actions were reasonable under the circumstances.

Additionally, some concern has been voiced about the similarities but slight differences between (b)(1) and (b)(4). Subsection (b)(1) uses ". . .the child will be harmed if not immediately removed. . ." and subsection (b)(4) uses ". . .such violation threatens the safety of the child. . ." creating two different standards to apply in similar situations. Will the addition of (b)(4) unintentionally alter the interpretation of (b)(1) when we are dealing with a situation not involving drugs? What is the difference between conditions that will "harm the child if not immediately removed" versus conditions

that “threatens the safety of the child,” without the clause “if not immediately removed?” Is this saying in (b)(4) the risk may not be immediate but may be a future risk? If that is the case, is there time to seek a court order prior to removal of the child if the risk is not immediate?

In summary, our members believe we are able to carry out the objective of this bill with current law in most cases. While we are not opposed to this section of the bill, we are concerned to some degree with unintended consequences. It is a question of whether the advantages of the addition of (b)(4) outweigh any disadvantages it presents, and we are struggling with projecting how those competing issues will balance in the view of the courts.

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