

Approved: 3-17-99
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 23, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative Tony Powell - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Carla Stovall, Attorney General
Kyle Smith, Assistant Attorney General & Special Agent Kansas Bureau of Investigation
Nancy Bukar, Nonprescription Drug Manufacturers Association
Steve Montgomery, Dietary & Supplement Safety & Science Coalition
Representative Doug Gatewood

Hearings on **HB 2469 - methamphetamine, chemical control act**, were opened.

Carla Stovall, Attorney General, appeared before the committee and stated that meth labs are the most important epidemic in Kansas. They can cause fires, explosion and produce hazardous waste contamination. She believes that this is the most important bill of the Legislative Session.

Kyle Smith, Assistant Attorney General & Special Agent Kansas Bureau of Investigation, appeared before the committee as a proponent of the bill. He proceed to explain the major sections of the bill. He stated that the most important section of the bill was the chemical control act which would mandate that no one could purchase more than two blister packs that have over 24 grams of ephedrine, pseudoephedrine and phenylpropanolamine at one time. These drugs are used to make the meth. Walmart currently volunteers to limit sales to two packages. (Attachment 1)

Nancy Bukar, Nonprescription Drug Manufacturers Association, appeared before the committee. She was in support of trying to decrease the meth labs by imposing criminal penalties for possession of precursor chemicals with the intent to manufacture meth without sales limits or record keeping requirements. She believes that it would be too hard to enforce a law limiting only two sales at a time. (Attachment 2)

Steve Montgomery, Dietary & Supplement Safety & Science Coalition, also appeared before the committee in support of enhanced penalties for those who make meth, but was concerned that this bill would limit herbal products to the two pack limit, when these products are not used to make meth. He suggested a balloon amendment that would exempt herbal products. (Attachment 3)

Representative Doug Gatewood appeared before the committee in support of the bill. He stated that he has had several meth labs in his district and law enforcement needs every available opportunity it can get to stop the development of the labs. (Attachment 4)

Those representing the Kansas Department of Health & Environment, Kansas Peace Officers' Association & Kansas Association of Chiefs of Police did not appear before the committee but requested that their testimony be included in the minutes. (Attachments 5, 6, & 7)

Hearings on **HB 2469** were closed.

HB 2002 -joint shared child custody and parenting time; concerning child support

The Chairman recommended the following changes:

- changing "visitation" to "parenting time"
- changing "joint custody" to "joint shared custody"
- on page 5 striking "providing civil penalties for those interfering with parenting time"

- on page 6 reinsert the mediation provisions
- on page 7 reinsert supervised parenting time and the language regarding the hearings officers and current law and delete new language in (e) & (f) regarding civil penalties
- delete the new language on page 11, line 14 "determination of amount to be paid by a parent ... is based on the principal that both parents have an equal responsibility to pay support."
- Section 24 amend in the requirement for a temporary parenting plan (Attachment 8)
- Section 25 strike language "determination of amount to be paid by a parent ... is based on the principal that both parents have an equal responsibility to pay support."
- on page 29 add the proposal for the move away provision K.S.A. 60-1620 (Attachment 9)
- on page 30 when the court award equal or near equal custody the courts must list its findings as to why

Representative Carmody made the motion to report **HB 2002** favorably for passage. Representative Lloyd seconded the motion.

Representative Carmody made the substitute motion to include the Chairman's suggested amendments. Representative Lightner seconded the motion. The motion carried.

Representative Crow made the motion to delete the new language on page 30, line 38-41, regarding the listing of findings of facts. Representative Ruff seconded the motion. The motion carried.

Representative Pauls made the motion to amend in a balloon amendment that would grant visitation rights to grandparents. (Attachment10) Representative Haley seconded the motion. The motion carried.

The Chairman announced the House was scheduled to go back into session at 5:00 p.m. Therefore the committee adjourned at 5:00 p.m.

Methamphetamine In Kansas: Controlling the Epidemic

HB 2469 Briefing Book



A comprehensive legislative proposal by:

**Attorney General Carla Stovall
KBI Director Larry Welch**

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House Judiciary Committee
February 23, 1999
Testimony of Kyle G. Smith
Assistant Attorney General and Special Agent
Kansas Bureau of Investigation
Proponent HB 2469

The safety of the people of Kansas is threatened by an epidemic. The plague is the production of methamphetamine. While manmade, this epidemic is no less deadly than any bacteria known to medical science. Meth labs are multiplying across our state at an incredible rate, spreading death and destruction. Clandestine laboratories producing methamphetamine are causing fires, explosions and hazardous waste contamination. The people and children of Kansas are not only becoming addicts and dying from its use, but also are being poisoned and injured unknowingly when their neighbors operate these laboratories.

Chemicals involved include acids, anhydrous ammonia, red phosphorus, lye and acetone. These deadly chemicals are being handled by offenders with no chemistry background, no respect for pollution controls, no respect for life. In short, these criminals are contaminating our state and killing our citizens.

The 'cooks' at clandestine laboratories are willing to expose their own children to these deadly fumes and explosions in pursuit of satisfying their need for profits and a need to fill their addiction. In one case in Kansas, a neighbor observed the operators of a methamphetamine laboratory risking their lives to repeatedly enter their burning trailerhome to recover their precious equipment and drugs while their children were still trapped in inside.

The drug itself is extremely addictive and has a pharmacological side effect of making a person paranoid. In addition, these individuals operate in an underworld where rip-offs are common, competitors are armed and law enforcement is constantly searching for them. Not surprisingly labs are sometimes booby-trapped and meth dealers are frequently heavily armed. A new dangerous turn is for meth cooks to finish their process on deserted country roads or in public parks to avoid the danger of explosion and fire in their homes. Innocent Kansas citizens traveling those roads, enjoying our parks, are at risk to being shot and killed if they interrupt these operations. After a meth cook has been completed, these hazardous chemicals are dumped on the ground, in street gutters or down waterlines, creating hazardous waste sites and polluting ground water. The cost for the cleanup of these sites runs to the hundreds of thousands of dollars.

How big a problem are we facing?

In **1994** there were **4** clandestine laboratories seized in Kansas.

In **1995** that number rose to **7**.

In **1996** it skyrocketed to **71**, a ten-fold increase.

In **1997** there were **99** clandestine laboratories seized.

Last year, **1998** there were **189**.

As of February 16, there have been 63 labs seized in Kansas. If that pace continues, our law enforcement officers will be risking their lives in **over 450** labs in **1999!** In just 5 years we have a hundred times as many meth labs. We can not afford to let this plague continue to run unchecked. Attached are maps showing the numbers and locations of meth labs seized in 1998 and 1997 as well as the labs so far this year. You can see the spread of this epidemic for yourselves.

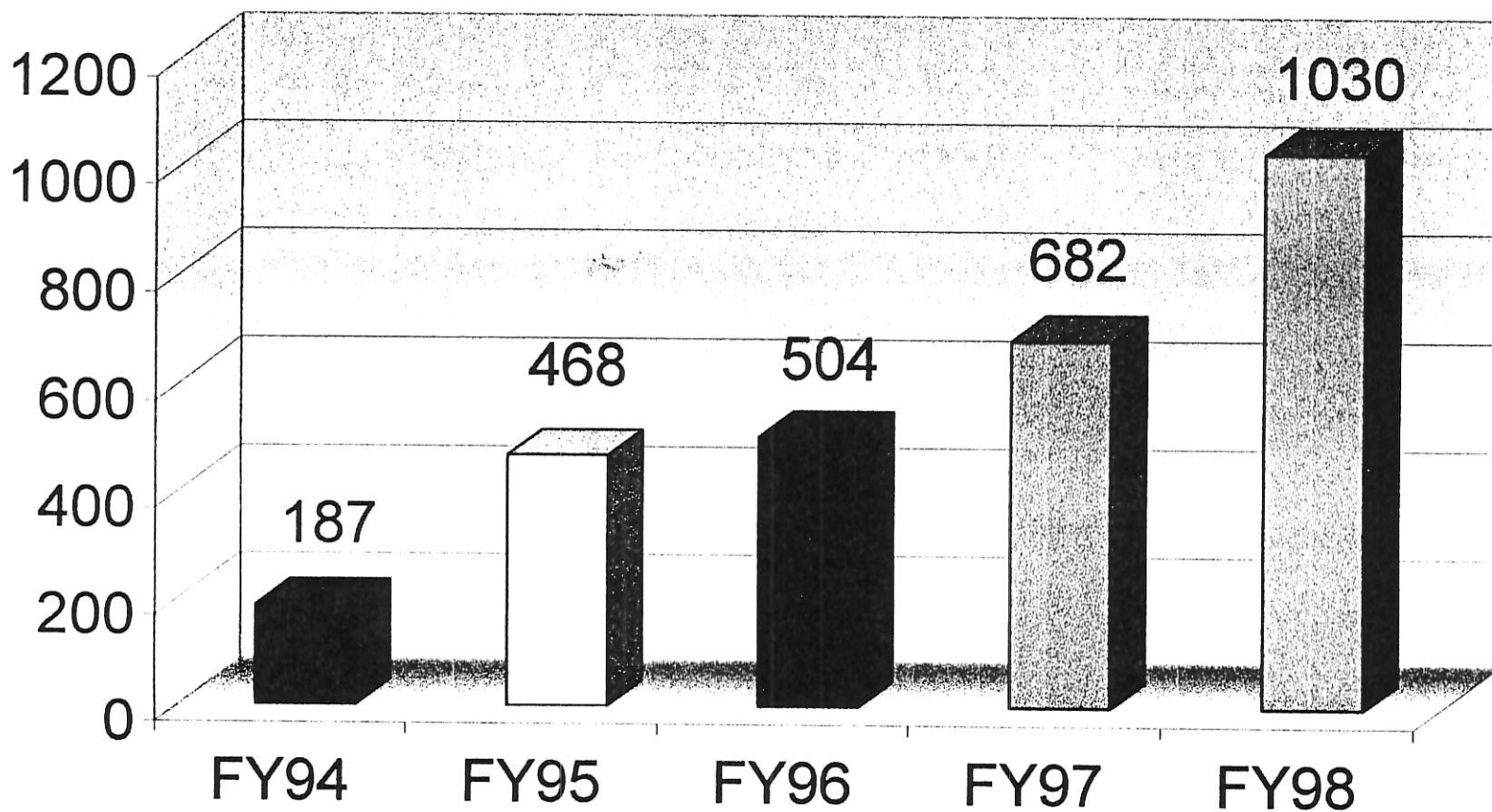
Kansas, Missouri, Iowa and California are reported by the DEA to be the top producers of methamphetamine in the nation. Last year Missouri took steps in their legislature to reverse this trend. Numerous initiatives were adopted by the Missouri legislature trying to attack this epidemic on every possible front. While we applaud Missouri's efforts, the real effect on Kansans is that it makes our state even more attractive to these purveyors of death, because of the increased difficulties and penalties now found in our neighbor to the east. It is imperative that Kansans take strong, decisive action in meeting the threat to our safety posed by methamphetamine.

The proposed legislation is comprehensive in its efforts to make Kansas the least desirable place in the nation to manufacture methamphetamine. We owe it to our children, ourselves and our land to make every effort to stop this plague.

I would be very happy to answer your questions. Due to the limited time available for this hearing I have prepared briefing books on the problem and HB 2469 which should answer any questions we can't cover today. I would note that the over the counter drug industry has expressed some concern about regulating their products. The Attorney General, representatives of the Department of Health and Environment and the KBI met with industry representatives and worked on their concerns. While we were not able to reach agreement on all points (see appendix B) we were able to narrow the remaining issues. Appendix A contains some proposed amendments, primarily ones requested by the drug manufacturers. If there is time we would like to see them adopted, if not then we can address them on the senate side. If you have other questions please contact me at your convenience.

Methamphetamine in Kansas - Primary Problem at Admission

Source: Alcohol and Drug Abuse Services - 1999



Analysis of HB 2469

Sec. 1. Flash Suppressors: Amends K.S.A. 21-4201 to authorize law enforcement officers assigned to tactical teams to lawfully be in possession of flash/sound suppressed weapons. Requires suppressors be owned by the law enforcement agency and be approved by Bureau of Alcohol, Tobacco and Firearms.

Reason: Explosive fumes found at clandestine laboratories may ignite from traditional muzzle blasts if shots are fired. Current law prohibits law enforcement from possessing suppressed weapons.

Sec. 2. Penalties. Enhances the penalties for second and subsequent convictions of manufacturing drugs as well as offenses occurring within 1000 feet of schools, parks and child care centers. New penalty would be "life" which means no probation/parole for 15 years.

Reason: Attempts to bring Kansas penalties to comparable severity of surrounding states and deter manufacturing from areas where children will be put at risk.

Sec. 3. Destruction of hazardous materials seized as evidence. Amends criminal procedure statute regarding the disposition of seized evidence to specifically authorize the court to order the immediate destruction of hazardous materials after sufficient samples have been taken for evidentiary analysis.

Reason: Numerous substances seized at clandestine laboratories are explosive, flammable, corrosive and/or poisonous. Requiring storage of these contaminated items poses an unreasonable risk to health, safety and property.

Sec. 4 Definition of "Manufacture". Clarifies the statutory definition of manufacture within the controlled substance act allows only licensed practitioners to manufacture controlled substances by removing language that could be interpreted as allowing manufacture for personal use by private individuals.

Reason: The risks to children, environment, neighbors and to law enforcement are the same whether the clandestine laboratory is for private or commercial purposes.

Sec. 5 Anhydrous ammonia as drug manufacturing paraphernalia. Anhydrous ammonia possessed with the intent to manufacture drugs and if in an improper container (not approved for holding anhydrous by the Kansas department of Agriculture) would be treated as drug manufacturing paraphernalia under K.S.A. 65-4152, a level 4 drug felony.

Reason: Anhydrous thefts are a sky rocketing problem in rural Kansas as a new method for manufacturing methamphetamine using that dangerous chemical has spread. In order to minimize inconvenience to legitimate agricultural needs it would be preferable not to make the chemical a controlled substance or regulated chemical. By treating anhydrous as drug paraphernalia when found under such circumstances that there is clearly no legitimate use offenders will be successfully prosecuted if caught in possession without the necessity of having to prove the rightful owner of the stolen chemical.

Sec. 6 **Penalties.** Amends K.S.A. 65-4159, drug manufacturing, by raising the penalty from a level 2 drug offense to a level 1 drug offense and expands the concept of drug manufacturing free school zones to also include parks and child care centers where children are commonly found. Such drug manufacturing that endangers children and persons second or subsequent convictions will be treated as “off-grid” violations with a sentence of “life” which means the defendant would not be eligible for parole or probation for 15 years.

Reason: Governor Graves and Attorney General Stovall are both very supportive on the need to enhance these penalties and protect our children. Current criminal penalties in Kansas are substantially below that of other states with a methamphetamine manufacturing problem. For example, a first time manufacturer in Missouri is facing 10 to 30 years in prison but only 46 to 51 months in Kansas. These changes would make Kansas penalties comparable with such other states: At a level one drug felony the sentence would be 138 to 154 months, roughly 12 years but minus the 15% ‘good time’ allowed in Kansas the net result is approximately the 10 year minimum under Missouri law. More important than punishment of those who are caught, such sentences make Kansas a hostile place for ‘cooks’ and deter production in our state.

Sec. 7 and 8. **Drug free Children zones.** These sections adopt the language expanding the drug free school zone concept to include public parks and child-care centers where children are frequently found. Statutes amended are K.S.A. 65-4161 and K.S.A. 65-4163, which deal with trafficking offenses of controlled substances.

Reasons: Enhanced sentences for drug dealers who ply their trade where children are commonly found, provide deterrence to such activity and help protect our children.

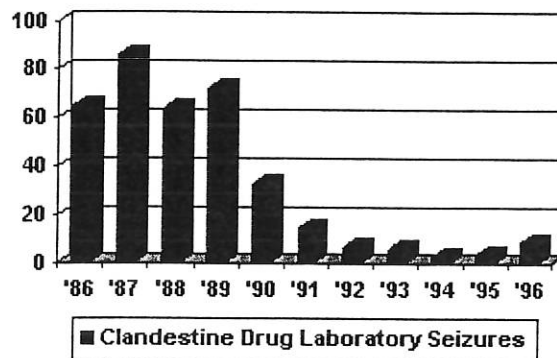
Sec 9. **Unlawful endangerment.** This section creates a new crime of setting a device which causes physical injury (booby trap) to protect the illegal production of a controlled substance. The penalty is a level 4 drug offense unless there is physical injury whereby the penalty goes to a level 3 person felony, or serious physical harm, which is a level 2 person felony. Death would be prosecuted as felony murder.

Reason: The rampant paranoia within the meth trade occasionally results in the setting of booby traps by the manufacturers in an effort to either destroy the evidence or the intruders. Such devices if made from flammables or firearms are not currently illegal.

Sec. 10. **Multi-state drug task forces.** New language would specifically authorize counties along state borders to create multijurisdictional law enforcement task forces and give reciprocal law enforcement powers to members of the task forces.

Reason: A large percentage of the clandestine laboratory locations are found along the Missouri and Oklahoma borders. Like bootleggers of another generation, the meth cooks utilize the limitations of jurisdiction to insulate their operations. Where appropriate this section would allow a county, with the approval of the sheriff, to create a task force that can operate on both sides of state lines.

Sec. 11 to 30. **Chemical control act.** Other states faced with increased numbers of methamphetamine clandestine laboratories have passed 'chemical control acts'. Such legislation regulates manufacturers, distributors and retailers of the basic chemicals used in the illegal production of controlled substances. Since most of these chemicals have legitimate uses as well the legislation is designed to document transactions of significant amounts of these chemicals. Requiring documentation serves two important purposes: First, mandatory positive identification of purchasers deters criminals from acquiring the chemicals and second, the creation of a documented record of transactions provides law enforcement with a valuable investigative resource in identifying both sources of the chemicals to the meth trade and suspiciously large and frequent purchasers. Such systems have worked well in other states. The following graph reflects the experience that Texas had after their act was passed in 1989:



The KBI has been working with Health and Environment and the nonprescription drug industry to produce a workable, efficient and effective chemical control act for Kansas. Last year a somewhat weaker and more intrusive Chemical Control Act (SB 667) passed the Senate 39 to 1. Sections 11 through 30 and the suggested amendments in appendix A set out an improved, simplified but strong control act.

A problem in such regulatory schemes has been the basic ingredients of current methamphetamine recipes: ephedrine, pseudoephedrine and phenylpropanolamine. These three chemicals are commonly found in asthma, cold and sinus medicines (e.g. Sudafed) and to regulate every sale of such common medicines would be intrusive and necessitate the creation of a giant bureaucracy. However, these are the basic ingredients in almost every lab seized today. Some retailers, such as Walmart, have voluntarily limited sales of these products to no more than two packages. This is the approach adopted in HB 2469. Retailers who only sell these three chemicals, of the 19 chemicals controlled by the act, would not need to be registered or keep any paperwork as long as the products are sold in what is defined by federal law as 'safe harbor' packaging. Packaging which makes the products more difficult for meth cooks to use. This provision solves the concern of intrusive bureaucracy for retailers and purchasers. Other chemicals would require record keeping if sold in quantities greater than 24 grams.

However, as the federal government has tightened controls and record keeping on bulk sales (over 24 grams) of these three products the methamphetamine producers have switched over to using the supposedly 'safe harbor' products. In fact in the clandestine

labs seized by the KBI this year almost 90 percent have involved blister pack/safe harbor versions of these three chemicals. This is because the 'safe harbor' packages are exempt from federal regulation and control. The criminals are aware of this loophole and are exploiting it. Section 22 of HB2469 adopts the industry's voluntary limit of two packages and makes it a mandatory limit.

In safe harbor packaging, this bill would allow a person to take the maximum daily dosage of psuedoephedrine (240 mg.) 24 hours a day for 25 days! Purchase of two bottles of 200 bulk tablets each could be up to 24,000 mg. (24 grams) would be enough for every member of a family of four to take the maximum daily dose for 250 days! Clearly, this legislation would not interfere with consumer consumption. While Kansas would be the first state to adopt the two package limit the problem of the use of blisterpack/safe harbor pills is spreading and this solution is being considered by both the National Alliance for Model State Drug Laws and the D.E.A..

Federal statistics show that importation of psuedoephedrine has more than doubled in the last eight years. (see Appendix C) The population has not doubled nor have the number of colds. The manufacturers of the products containing these chemicals have made millions of dollars directly and indirectly providing the basic ingredient to meth labs. We have to control the flow of these chemicals. While there are no perfect cures this bill will make acquisition of the chemicals more difficult for illegal drug manufacturers while minimizing the impact on legitimate industry and consumer uses.

Appendix B reflects the changes we have recommended in response to industry concerns and our response to the remaining disagreements. You will note there is still a policy decision that the legislature will have to determine as the industry does not want limits placed on the sale of their products and we feel it is essential to control these basic ingredients.

METHAMPHETAMINE BACKGROUND (From 1996 D.E.A. report)

Developments in the United States

Methamphetamine trafficking and abuse in the United States have been on the rise over the past few years. As a result, this drug is having a devastating impact on many communities across the nation. Although more common in western areas of the country, methamphetamine increasingly is being seen in areas not previously familiar with the harmful effects of this powerful stimulant. Methamphetamine trafficking is increasing in the Southwest, Midwest, and Southeast.

The Methamphetamine Problem

Historically, the suppliers of methamphetamine throughout the United States have been outlaw motorcycle gangs and numerous other independent trafficking groups. Although these groups continued to produce and distribute methamphetamine in 1996, organized crime polydrug trafficking groups operating from Mexico dominated wholesale methamphetamine trafficking in the United States. Over the past few years, these groups have revolutionized the production of this drug by operating large-scale laboratories-- both in Mexico and the United States--capable of producing unprecedented quantities of methamphetamine. The groups have saturated the western U.S. market with this product, increasingly moving the product to markets in the eastern United States.

Relatively small quantities of methamphetamine are produced by licit drug manufacturers in the United States. There is little diversion of these legitimate products because they are subject to strict controls. Clandestine production accounts for nearly all of the methamphetamine trafficked and abused in the United States.

Domestic methamphetamine production, trafficking, and abuse were concentrated primarily in the western and southwestern regions of the United States. The cities encountering the most significant problems with abuse included Los Angeles, Phoenix, San Diego, San Francisco, and, to a lesser degree, Dallas, Denver, and Seattle. Much of the clandestine laboratory activity was centered in California where the methamphetamine problem was most acute. Methamphetamine also was available consistently in wholesale quantities in some cities in the Midwest and the South.

Within certain areas of Arizona, Colorado, Nevada, Utah, and portions of the Pacific Northwest, methamphetamine traditionally has been the drug of choice among a portion of the illicit drug user population. The involvement of Mexico-based criminal organizations in methamphetamine trafficking clearly has expanded the market in those areas and beyond. Areas of the Pacific Northwest, Midwest, Southeast, and some portions of the South, particularly Georgia and the surrounding States, experienced a dramatic increase in the availability of methamphetamine supplied by organized crime groups operating from Mexico. For example, organized crime drug groups operating from

Mexico transported large quantities of the drug to the Midwest, which led to the expansion of the existing methamphetamine market. Within the Midwest, Kansas and Missouri experienced an increase in the number of methamphetamine laboratories operating in those States, which would indicate that methamphetamine production expanded eastward. However, these laboratories were small-scale operations, particularly when compared to the large-scale laboratories operating in California. The rise in laboratory seizures in these States does not reflect a concerted effort by major traffickers to shift production from sites in California. Rather, it reflects an increasing effort by local entrepreneurs, who operated on the periphery of the methamphetamine market, to exploit the expanding demand for the drug. Laboratories in California, controlled by organized crime drug trafficking groups operating from Mexico, remained the predominant sources of supply for the West, Midwest, and much of the rest of the United States.

Methamphetamine Use

Traditionally, methamphetamine users have suffered the same addiction cycle and withdrawal reactions as those suffered by crack cocaine users. Both drugs, after prolonged use, lead to bingeing, which is consuming the drug continuously for up to 3 days without sleep. The user then is driven into a severe depression, followed by worsening paranoia, belligerence, and aggression, which is a period known as tweaking. Finally, the user collapses from exhaustion, only to awaken days later to begin the cycle again.

The new ephedrine-based methamphetamine, however, has a usage pattern unlike that of traditional methamphetamine or crack cocaine. Several times more potent than its other forms, today's methamphetamine produces a reaction far more severe than even crack cocaine, with sleepless binges that last up to 15 days and end with sudden crashes.

Chronic, high-dose methamphetamine abusers, often called "speed freaks," are generally undernourished and have a gaunt appearance, poor hygiene, and rotten teeth. These individuals inject methamphetamine every 2 to 3 hours and often as much as 1,000 milligrams each time. Due to the high level of methamphetamine in their systems, "speed freaks" are extremely paranoid.

According to the latest information available from the DAWN, the estimated number of nationwide emergency room drug abuse episodes involving methamphetamine decreased from 1994 to 1995. However, despite this decrease, the number of nationwide emergency room episodes remained well above the level of 1992. Moreover, there were preliminary indications that methamphetamine abuse is again increasing. The areas hardest hit by methamphetamine abuse in 1996 included Dallas, Denver, Los Angeles, Phoenix, San Diego, San Francisco, and Seattle.

Pharmacology

Methamphetamine can be a lethal, dangerous, and unpredictable drug. Methamphetamine, like cocaine, is a potent central nervous system stimulant. It can be smoked, snorted, injected, or taken orally; the most frequent method of methamphetamine use is injection. The drug increases the heart rate, blood pressure, body temperature, and rate of breathing; dilates the pupils; produces euphoria, increased alertness, a sense of increased energy, and tremors. High doses or chronic use have been associated with increased nervousness, irritability, and paranoia. Withdrawal from high doses produces severe depression.

Effects: In large doses, methamphetamines frequent effects are irritability, aggressive behavior, anxiety, excitement, auditory hallucinations, and paranoia (delusions and psychosis). Abusers tend to engage in violent behavior. Mood changes are common, and the abuser can change from friendly to hostile rapidly. The paranoia produced by methamphetamine use results in suspiciousness, hyperactive behavior, and dramatic mood swings.

Duration: Compared with cocaine, which is metabolized rapidly in the body, methamphetamine is metabolized slowly; up to 2 days are required to eliminate a single dose. Rapidly absorbed when taken orally, the effects of the drug peak within 2 to 3 hours and are measurably effective in the body for up to 8 hours.

Addiction: One of the main arguments in determining whether or not a substance is capable of producing physical addiction (dependence) is the ability to produce a withdrawal syndrome similar to that of narcotics and central nervous system depressants. Once it was discovered that each drug produces its own unique pattern of effects, more drugs then were identified as having addiction potential. Repeated use of high-dose methamphetamine produces such a pattern. Several hours after the last use, the individual experiences a drastic drop in mood and energy levels. Sleep begins and may last for a long period and, upon awakening, severe depression exists that may last for days. While users are in this depressed state, suicide is a major concern. These symptoms occur after use and may be reversed by taking another dose of methamphetamine, thereby fitting the definition for a withdrawal syndrome.

"Ice" is a large crystal form of high-purity

d-methamphetamine hydrochloride. Ice derives its name from its appearance: large, clear crystals that resemble chunks of ice, shards of broken glass, or rock candy.

It was not until 1988 that ice became widespread in Hawaii. By 1990, ice spread to the U.S. mainland, although distribution remained limited to retail amounts in just a few regions of the country. In the early 1990s, Koreans served as the principal supply source for ice that was smuggled from Asia directly to Hawaii and the U.S. mainland. In 1996, intelligence data indicated that traffickers from Mexico were supplying Asian

organizations/gangs on the West Coast and in Hawaii with methamphetamine for conversion to ice.

Analyses of all samples of ice seized to date in the United States have shown purity levels of 90 to almost 100 percent. In 1996, ice sold for \$200 to \$450 per gram, from \$5,000 to \$8,500 per ounce, and \$35,000 to \$50,000 per kilogram. Abusers in the United States ingested ice almost exclusively by smoking the drug in glass pipes.

Other terms for ice included quartz, glass, crystal meth, shabu, kaksonjae, hanyak, hironon, batu, and crack meth.

Laboratory Seizures

The number of methamphetamine laboratory seizures in the United States reported to DEA increased dramatically during 1996. The significant increase reflects the widespread proliferation in the manufacture, trafficking, and use of the drug across the West, Midwest, and portions of the South. DEA special agents in concert with State and local law enforcement authorities seized a record-breaking 879 methamphetamine laboratories in 1996, the highest figure ever reported by DEA. This compares to 327 laboratories seized in 1995, 263 in 1994, and 218 in 1993. The 1996 figure represents a 169-percent increase over 1995 seizures, and marks the most significant annual increase in the number of seizures ever reported by DEA.

According to seizure data, the manufacture of methamphetamine was based primarily in the West, Midwest, and portions of the South. DEA field divisions in Dallas (77), Denver (88), Los Angeles (52), New Orleans (81), Phoenix (83), St. Louis (292), San Diego (53), and San Francisco (87) accounted for approximately 92 percent of the methamphetamine laboratory seizures nationwide. The significant increase in the number of methamphetamine laboratory seizures was most pronounced in the St. Louis Field Division where 235 laboratories were seized in the State of Missouri alone. Most of these laboratories, however, were capable of producing only small quantities ranging from half an ounce to 1 pound.

Although there were a large number of seizures reported by the St. Louis Division, California remains the predominant area for methamphetamine production in the United States. According to the Western States Information Network (WSIN), preliminary data indicate that 892 methamphetamine laboratories were seized in California during 1996. (WSIN's figure may include seizures counted by DEA; however, DEA currently does not maintain a system to capture WSIN's data. The development of a nationwide database to capture this data is underway at EPIC). In addition, Mexican-operated laboratories continued to be based in California where they produced large quantities of methamphetamine. According to DEA figures, Mexican-operated laboratories accounted for approximately 26 percent of all laboratories seized in California and, for the most part, were capable of producing anywhere from 10 to 150 pounds per cook.

Production Methods

Methamphetamine is produced most commonly by using either an ephedrine/pseudoephedrine reduction method or a P2P method. However, only 3 percent of the methamphetamine laboratories seized during the year used a P2P method of synthesis. The use of pseudoephedrine for synthesizing methamphetamine increased dramatically over the past several years due to the relative ease of purchasing pseudoephedrine tablets and the subsequent decline in the availability of ephedrine. Preliminary data indicate approximately 51 percent of the laboratories seized in 1996 were identified as, or suspected of, using pseudoephedrine compared to 45 percent for ephedrine. (Initial reporting of ephedrine as a precursor at the laboratory site often is confirmed later through laboratory analysis to be pseudoephedrine.)

Pseudoephedrine/ephedrine was obtained from various sources. Illicit laboratory operators obtained/diverted pseudoephedrine (in tablet form), and in a number of cases ephedrine, from over-the-counter (OTC) products often designed for legitimate use such as OTC cold preparations sold in retail stores and through mail-order distributors. These varied sources indicate the increasing diversion and use of OTC products to manufacture methamphetamine.

The Federal Government has prepared regulations to further reduce the diversion of pharmaceutical products containing chemicals, such as ephedrine and pseudoephedrine, which can be used to produce illegal drugs. DEA has consulted with corporations within the pharmaceutical industry to develop a solution to the diversion problem that does not restrict unduly the availability of these chemicals for legitimate use. The Comprehensive Methamphetamine Control Act of 1996 was formulated so that retail sales of legitimate ephedrine/pseudoephedrine products for normal medical use will not be affected.

Use of the "Nazi method," which uses ephedrine/pseudoephedrine, sodium/lithium, and anhydrous ammonia to produce methamphetamine, has been identified in approximately 12 percent of the laboratories seized in 1996. Use of this method has increased significantly from 5 laboratories in 1995 to 104 in 1996. While most Nazi-method laboratories were seized in Arkansas and Missouri, these operations were encountered in eight other States and as far west as California and Washington. This method has become popular because it is quick, inexpensive, requires little setup time or equipment, and produces a high yield of pure methamphetamine.

The significant rise in the number of methamphetamine laboratory seizures not only demonstrates that increasing numbers of individuals are becoming involved in the methamphetamine trade it also underscores the expanding influence of this drug in many communities across the nation. The growing methamphetamine problem in the United States is one that is not fueled only by Mexico-based organizations but also by a large number of independent traffickers/groups that operate the majority of illicit laboratories in the United States. While these laboratories are small, for the most part, in comparison to the Mexican-operated laboratories in California, they are nonetheless a source of supply to the illicit drug market. In addition, they are extremely hazardous and they endanger the safety and well-being of many citizens.

In addition to domestic manufacture, methamphetamine increasingly is being produced in Mexico and smuggled into the United States. This is confirmed by seizure data from EPIC and the DEA Mexico City Country Office. According to EPIC, the amount of methamphetamine seized in transit from Mexico to the United States increased dramatically beginning in 1993. In 1993, 1994, and 1995, 329, 683, and 697 kilograms, respectively, were seized along the Southwest border. During 1996, 795 kilograms were seized. By comparison, only 6.5 kilograms were seized in all of 1992. Likewise, the amount of methamphetamine seized in Mexico has increased in the past 3 years.

Laboratory Operations

Clandestine methamphetamine laboratories in the United States usually are operated on an irregular basis rather than on a consistent production schedule. Operators often produce a batch of finished product, disassemble the laboratory, and either store it or move it to another location while they acquire additional chemicals. Relocating the laboratory affords some protection against detection by drug law enforcement authorities. Storage facilities often are used to house or safeguard chemicals, glassware, and finished product. It is not uncommon for operators to have multiple laboratory sites.

Cooperative efforts by law enforcement agencies and chemical suppliers have made obtaining the necessary chemicals more difficult for methamphetamine laboratory operators. In order to circumvent these joint efforts, laboratory operators have sought alternative chemicals, routes of synthesis, and sources of supply to fulfill their needs. Laboratory operators have manufactured their own chemicals, employed "runners" to purchase necessary chemicals under the "threshold amount" (the amount at which record-keeping and reporting of chemical transactions are required), or experimented with alternative, nonregulated chemicals. They also have obtained chemicals from rogue chemical companies, from sources of supply located in States without strict chemical regulations, or from other countries.

Locations: Small-scale methamphetamine laboratories are being operated increasingly in single and multifamily residences in urban and suburban neighborhoods, where they pose a significant threat to public health and safety. Although traditionally the laboratories were located in sparsely populated or isolated rural areas in order to avoid detection, as laboratory seizures reported to DEA indicate, 52 percent of the clandestine laboratories seized in 1995 were located in urban and suburban sites. Rural locations were reported in 38 percent of the seizures and industrial or commercial sites in 5 percent. (Locality information was not available for the remaining 5 percent of the laboratory seizures.)

Operators: Methamphetamine laboratory operators often are well-armed, and their laboratories occasionally are booby-trapped and equipped with scanning devices employed as security precautions. Weaponry, ranging from single firearms to arsenals of high-powered weapons and explosives, are found commonly at laboratory sites. Laboratory operators, or "cooks," frequently display little concern for public safety or the environment. Cooks vary from high school dropouts with no real chemistry education to

professionals with graduate degrees in chemistry. Typically, however, these cooks have little formal training. Instead, they follow a handwritten recipe or have learned to produce methamphetamine from underground publications, apprenticeships, or fellow inmates during periods of incarceration.

Chemists: Some laboratory operators act as their own chemists, while others hire chemists to run the laboratories for them. Many manufacturers are independent producers who cook for various organized groups. This is particularly true of larger organizations that may hire or contract chemists to manufacture methamphetamine in return for cash, finished product, or a combination of both. Other cooks manufacture for themselves rather than for a particular organization.

Networks: Leasing storage facilities, procuring chemicals, securing the laboratory site, and setting up glassware and equipment may be the responsibility of one person or many different individuals. Several individuals may work together to combine their expertise, chemicals, etc., on an ad hoc basis. The number of individuals that comprise an operation, and the function each performs, differs from one organization to the next. Illicit manufacturers often develop and maintain associations with other laboratory operators. In certain areas, they function as a loosely interconnected community or network, sharing, selling, or exchanging chemicals, recipes, glassware, or the finished product.

Health and safety hazards, site contamination, and the environmental impact

Not only are methamphetamine laboratories used to manufacture illegal, often deadly drugs, but the clandestine nature of the manufacturing process and the presence of ignitable, corrosive, reactive, and toxic chemicals at the sites, have resulted in explosions, fires, toxic fumes, and irreparable damage to human health and to the environment. Every year, fires or explosions occur at a number of clandestine laboratory sites, which lead to their discovery.

The chemical reactions that occur during the manufacture of illegal drugs may produce toxic vapors that permeate into the plaster and wood of buildings or may be vented outside. The problems are further complicated when the chemicals are stored at off-site locations such as rental lockers. The lack of proper ventilation and temperature controls at these off-site locations adds to the potential for fire, explosion, and exposure to humans.

Methamphetamine laboratories may contaminate water sources and/or soil. In some cases, contamination may spread off-site. Careless or intentional dumping by the laboratory operator is one source of contamination. Spilling chemicals on the floor or dumping waste into bathtubs, sinks, toilets, or on the grounds surrounding the laboratories, and along roads and creeks are common practices. Surface and groundwater drinking supplies could be contaminated, potentially affecting large numbers of people.

Perhaps the greatest risk of long-term exposure is assumed by unsuspecting inhabitants of buildings formerly used by clandestine drug laboratory operators where residual contamination may exist inside and outside the structure.

Operators also dispose of hazardous chemical wastes by pouring the wastes into local sewage systems or septic tanks, or burying them. Law enforcement personnel engaged in clandestine drug laboratory seizure and analysis require specialized training in the investigation of such facilities, including training in appropriate health and safety procedures and in the use of personal protective equipment. Cleaning up a seized clandestine drug laboratory site is complex, dangerous, expensive, and time consuming. The amount of waste material from a clandestine laboratory may vary from a few pounds to several tons depending on the size of the laboratory and its manufacturing capabilities.

When a methamphetamine laboratory is seized, hazardous wastes and materials, such as chemicals, contaminated glassware and equipment, by-products, and the drug products themselves are found at the site and must be disposed of properly. These hazardous materials can weigh from a few pounds to several tons and include solvents, reagents, and precursors. Many of these materials are reactive, explosive, flammable, corrosive, and/or toxic. The danger is compounded by the fact that many Federal, State, and local law enforcement officers lack adequate training in clandestine laboratory safety procedures and regulations, hazards, and other related health and safety issues.

Although the quantities of hazardous materials found at a typical methamphetamine laboratory are relatively small when compared to waste generated from a major industry, the substances to which law enforcement personnel and others may be exposed present very real public health concerns. Methamphetamine laboratories present both acute and chronic health risks to individuals involved in the seizure and cleanup of the facility, to those who live and work nearby, and to the violator operating the facility.

Trafficking

As noted, the suppliers of methamphetamine in the United States traditionally were outlaw motorcycle gangs and other independent trafficking groups. While they continued to produce methamphetamine and controlled a share of the market, in 1996 methamphetamine smuggling into the United States from Mexico was controlled primarily by the same major organizations that dominated the production/trafficking of other illicit drugs from Mexico into the United States.

These groups operating from Mexico were composed of combinations of Mexican nationals residing in Mexico and the United States, Mexican-Americans who operated on either side of the border, and illegal aliens residing in the United States. Often, these organizations were directed by well-established families that have been involved in smuggling contraband for decades. They produced and/or transported large quantities of cocaine, heroin, and marijuana into the United States on a daily basis. They regularly demonstrated their flexibility and adaptability, modifying smuggling routes and methods

as needed to handle virtually any drug. The younger generation within some of these families expanded into methamphetamine trafficking.

There were numerous border points of entry for Mexican-produced methamphetamine into the United States. Most methamphetamine was seized at the San Ysidro, California, port of entry. The most common method of transporting methamphetamine across the border was by passenger vehicles. The passenger vehicles most frequently used to smuggle methamphetamine were cars, but also include pickup trucks and 4-wheel-drive vehicles.

Domestically, methamphetamine was distributed by a wide array of organizations that vary greatly in size, structure, and degree of sophistication--from small, local independent groups that operate on a limited scale to large organizations that controlled all aspects of the traffic. Intelligence indicates that many of the newly established distribution networks around the country were supplied by sources in California. In addition, as previously described, there are organizations involved solely in chemical acquisition.

Organized crime drug groups operating from Mexico dominated distribution in many areas of the West and Southwest in 1996. For example, these groups operating from Mexico have been identified as operating in States such as Arizona, Colorado, Georgia, Florida, Idaho, Iowa, Nebraska, Kansas, Texas, and Washington, beyond their strongholds in California and Mexico.

Unquestionably, the large-scale move by these organized crime drug groups operating from Mexico into methamphetamine production is a conscious decision of the leaders of these powerful organizations. Should demand for methamphetamine in the United States continue to increase, these trafficking organizations are in a position to control the smuggling and distribution of the drug into and within the United States.

Several enforcement events highlight the expanding role of organized crime drug groups from Mexico in trafficking methamphetamine. Mexican criminal drug groups, based typically in California, extended their methamphetamine distribution operations farther eastward. One indicator of the extent to which California-based Mexican criminal groups supply methamphetamine to distributors in other States is seizure data collected through Operation PIPELINE, the U.S. highway interdiction program managed by EPIC. Operation PIPELINE seizure statistics show that of 447 kilograms of methamphetamine seized from vehicles nationwide in 1996, 335 originated in California. The following enforcement actions highlight the increasing presence of Mexican organizations in the trafficking of methamphetamine eastward:

Based on DEA information, the Carroll County, Georgia, Sheriffs Department seized 63 pounds of methamphetamine on October 16, 1996, from a Mexican national traveling by vehicle from Riverside, California.

A DEA investigation in Idaho, in coordination with other Federal, State, and local authorities, terminated in early December 1996, with the arrest of five Mexican nationals.

Authorities confiscated 19 pounds of methamphetamine as well as other drugs in this investigation.

On December 11, 1996, 10 pounds of methamphetamine were seized in Las Vegas by State authorities from a Mexican male traveling by vehicle from California to Omaha, Nebraska.

On December 31, 1996, DEA Atlanta arrested two members of an organization capable of distributing approximately 40 pounds of methamphetamine per month. Subsequently, the source of supply was arrested with 16 pounds of methamphetamine. Further investigation determined the source of supply was linked to a California-based Mexican polydrug trafficking organization. It has been estimated that this source was responsible for wholesaling up to 100 pounds of methamphetamine per month to various retail groups in the Atlanta area. Most of the methamphetamine was transported from California by automobile.

During 1996, methamphetamine prices nationwide ranged from \$4,000 to \$20,000 per pound, \$500 to \$2,700 per ounce, and \$40 to \$200 per gram.

Violence

Drug-related violence usually occurs in one of three ways: by users under the influence of the drug, by users who commit violent acts to obtain money or more of the drug, and by distributors who use violence in the course of conducting their business.

Every community with a methamphetamine abuse problem has experienced violence in some form; most commonly this appears as domestic disputes. The extreme agitation and paranoia associated with use of the stimulant often lead to situations where violence is more likely to occur. Chronic use of methamphetamine can cause delusions and auditory hallucinations that precipitate violent behavior or response.

However, due to the expansion of the methamphetamine trade by organized crime drug groups operating from Mexico, violence associated with distribution of the drug--used as a means of intimidation, retaliation, and discipline--also has been on the rise in many areas of the country.

Methamphetamine traffickers disputes, acts of retribution, and attempts to eliminate competition have led to violence and murder that echo the gruesome crack gang turf wars of the mid-1980s. Violence of this magnitude has become an alarming characteristic of the methamphetamine trade. Increasingly, the major methamphetamine traffickers operating from Mexico recruit local U.S. street gangs to distribute methamphetamine in many areas of the country.

Regional trafficking trends in 1996

Northeast

In general, most methamphetamine was transported into the Northeast from outside suppliers. Distribution remained in the hands of traditional outlaw motorcycle gangs, such as the Hells Angels, and the user population remained stable. Nevertheless, there were slight indications of an emerging group of younger, independent entrepreneurs distributing methamphetamine. A handful of investigations, for instance, demonstrated local distributors connections to California- and Mexico-based methamphetamine suppliers.

The regions current methamphetamine problem pales in comparison to that experienced in other regions of the country. Only in the Philadelphia area did methamphetamine surface as a serious concern. Four groups have been identified as active in its manufacture--primarily using the P2P method--and distribution: traditional organized crime groups operating in southern New Jersey as well as Philadelphia; African-American criminal gangs; outlaw motorcycle gangs, namely the Pagans, Breed, and Warlocks; and independent operators. Some production spilled over into New Jersey, where one laboratory was seized in 1996. But, overall, the New Jersey-New York area remained relatively untouched by methamphetamine trafficking. Methamphetamine trafficking in the Boston area was controlled by outlaw motorcycle gangs, but availability remained limited.

Despite limited methamphetamine trafficking and production in the Northeast, the large number of chemical companies in the region made it difficult for law enforcement to deny methamphetamine manufacturers access to precursor chemicals.

Southeast

Methamphetamine availability increased significantly throughout the Southeast over the previous 2 years. Law enforcement agencies in Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, and Tennessee reported increases in methamphetamine seizures and case initiations. In Atlanta, for example, methamphetamine was transformed from "poor mans cocaine" to the drug of choice in upscale nightclubs. It was more profitable for sellers than cocaine.

Methamphetamine supplied from the West Coast surpassed local production as the leading source for regional distribution. Florida law enforcement officials indicated that their methamphetamine problem was fueled by Mexican trafficking groups that engaged California-based suppliers and exploited existing marijuana distribution channels. In Atlanta and other regional cities, Mexican drug trafficking organizations used established cocaine distribution networks to move methamphetamine. Traffickers most commonly transported methamphetamine by vehicle along interstate highways. In addition, operators used couriers traveling on commercial airlines to smuggle the drug from the West Coast, particularly into Florida where couriers using rail services also were encountered.

In contrast to the general regional trend toward reliance on outside suppliers, clandestine methamphetamine production continued in Arkansas, southern Alabama, and sections of Tennessee. Manufacturers in these areas tended to be rural, low-income whites. In Alabama, white supremacists were active in methamphetamine production, while in Tennessee some third-generation bootleggers took to methamphetamine production like their grandfathers took to moonshining and their fathers took to the marijuana trade. Regional groups involved in methamphetamine production were increasingly violent, well-armed, and knowledgeable about explosives.

Midwest

Areas of the upper Midwest were hard hit by the spiraling growth of methamphetamine trafficking and use. In Iowa, methamphetamine was cited as a contributing factor in an estimated 80 percent of domestic violence cases, and as a major reason behind violent crime. The user population consisted primarily of young white adults from lower-middle income families. Many started by snorting methamphetamine and progressed to injecting. Methamphetamine cases now account for 80 percent of the police departments drug investigations. Most of the methamphetamine available in the upper Midwest was trafficked by Mexican-controlled criminal organizations--connected to sources of supply in California and Mexico--that were based in smaller Midwestern cities with existing Mexican-American populations. Smuggling routes into the region incorporate a variety of transportation means, but the profit is a constant--a pound of methamphetamine purchased in California for \$5,000 sells for as much as \$16,000 in Iowa.

Methamphetamine was also a leading drug of abuse in Missouri. Local clandestine manufacture furnished most of the supply, and it was supplemented by California-based sources. Law enforcement agencies regularly seized clandestine methamphetamine laboratories throughout Missouri, where, almost without exception, they encountered caches of weapons. Since 1993, in a trend unique to Southwestern Missouri, clandestine laboratories have been manufacturing methamphetamine by the sodium ammonia or "Nazi" method, previously described.

West

Arizona's methamphetamine problem exploded. Law enforcement officials blamed the upsurge in trafficking and related violence on Mexico-based trafficking groups and their associates. The California-Arizona border became the focus for law enforcement authorities, as interstate highways were used increasingly to move methamphetamine from suppliers in California to Arizona.

In the Pacific Northwest, Mexico-based drug trafficking organizations spearheaded methamphetamine distribution along established black tar heroin and cocaine networks. Since 1993, methamphetamine traffickers have stretched their routes from California to Oregon in 1994 and on to Washington and Idaho in 1995. Outlaw motorcycle gangs, the regions traditional suppliers, purchased their methamphetamine from the Mexican trafficking organizations. Accompanying the influx into the Northwest were drive-by

shootings, assaults, and other acts of violence spawned by the methamphetamine trade. Similarly, parts of Colorado were inundated in methamphetamine and violence. The escalation in local methamphetamine trafficking generated its own criminal subculture. Violence--not only homicides, but also kidnappings, mutilations, and torture--was a core element of methamphetamine trafficking.

Proposed amendments to HB 2469

13 **Sec. 6.** K.S.A. 1998 Supp. 65-4159 is hereby amended to read as
14 follows: 65-4159. (a) Except as authorized by the uniform controlled sub-
15 stances act, it shall be unlawful for any person to manufacture any con-
16 trolled substance or controlled substance analog.

17 (b) Any person violating the provisions of this section with respect to
18 the unlawful manufacturing or attempting to unlawfully manufacture any
19 controlled substance or controlled substance analog, upon conviction, is
20 guilty of:

21 (1) A drug severity level ~~2~~1 felony upon conviction for a first offense;

22 (2) ~~a drug severity level 1 felony~~ *an off-grid person felony* upon con-
23 viction for a second offense or subsequent offense and the sentence for
24 which shall not be subject to statutory provisions for suspended sentence,
25 community work service, or probation.

26 (c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-
27 ments thereto, shall not apply to a violation of attempting to unlawfully
28 manufacture any controlled substance pursuant to this section.

29 (d) Notwithstanding any other provision of law, upon conviction of
30 any person for violating subsection (a), such person shall be guilty of a
31 drug severity level 1 felony if such person is 18 or more years of age and
32 the substances involved were manufactured within 1,000 feet of any
33 school property upon which is located a structure used by a unified school
34 district or an accredited nonpublic school for student instruction or at-
35 tendance or extracurricular activities of pupils enrolled in kindergarten
36 or any of the grades one through 12 *or any public park or child care facility*
37 ~~or retail store.~~

38 Nothing in this subsection shall be construed as requiring that school
39 be in session or that classes are actually being held at the time of the
40 offense or that children must be present within the structure or on the
41 property during the time of any alleged criminal act. If the structure or
42 property meets the description above, the actual use of that structure or
43 property at the time alleged shall not be a defense to the crime charged

2 **Sec. 7.** K.S.A. 1998 Supp. 65-4161 is hereby amended to read as
3 follows: 65-4161. (a) Except as authorized by the uniform controlled sub-
4 stances act, it shall be unlawful for any person to sell, offer for sale or
5 have in such person's possession with intent to sell, deliver or distribute;
6 prescribe; administer; deliver; distribute; dispense or compound any opi-
7 ates, opium or narcotic drugs, or any stimulant designated in subsection
8 (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except
9 as provided in subsections (b), (c) and (d), any person who violates this
10 subsection shall be guilty of a drug severity level 3 felony.

11 (b) If any person who violates this section has one prior conviction
12 under this section or a conviction for a substantially similar offense from

13 another jurisdiction, then that person shall be guilty of a drug severity
14 level 2 felony.

15 (c) If any person who violates this section has two or more prior
16 convictions under this section or substantially similar offenses under the
17 laws of another jurisdiction, then such person shall be guilty of a drug
18 severity level 1 felony.

19 (d) Notwithstanding any other provision of law, upon conviction of
20 any person for a first offense pursuant to subsection (a), such person shall
21 be guilty of a drug severity level 2 felony if such person is 18 or more
22 years of age and the substances involved were possessed with intent to
23 sell, deliver or distribute; sold or offered for sale in or on, or within 1,000
24 feet of any school property upon which is located a structure used by a
25 unified school district or an accredited nonpublic school for student in-
26 struction or attendance or extracurricular activities of pupils enrolled in
27 kindergarten or any of the grades one through 12 *or any public park, or*
28 *child care facility or retail store.*

29 Nothing in this subsection shall be construed as requiring that school
30 be in session or that classes are actually being held at the time of the
31 offense or that children must be present within the structure or on the
32 property during the time of any alleged criminal act. If the structure or
33 property meets the description above, the actual use of that structure or
34 property at the time alleged shall not be a defense to the crime charged
35 or the sentence imposed.

36 (e) It shall not be a defense to charges arising under this section that
37 the defendant was acting in an agency relationship on behalf of any other
38 party in a transaction involving a controlled substance.

39 (f) For purposes of the uniform controlled substances act, the pro-
40 hibitions contained in this section shall apply to controlled substance an-
41 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
42 thereto.

43 (g) The provisions of this section shall be part of and supplemental

HB 2469

11

1 to the uniform controlled substances act.

2 **Sec. 8.** K.S.A. 1998 Supp. 65-4163 is hereby amended to read as
3 follows: 65-4163. (a) Except as authorized by the uniform controlled sub-
4 stances act, it shall be unlawful for any person to sell, offer for sale or
5 have in such person's possession with the intent to sell, deliver or distrib-
6 ute; cultivate; prescribe; administer; deliver; distribute; dispense or
7 compound:

8 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
9 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
10 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

11 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
12 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
13 65-4109, and amendments thereto;

14 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
15 4105, and amendments thereto or designated in subsection (g) of K.S.A.
16 65-4107 and amendments thereto;

17 (4) any substance designated in subsection (g) of K.S.A. 65-4105, and
18 amendments thereto, and designated in subsection (c), (d), (e), (f) or (g)
19 of K.S.A. 65-4111, and amendments thereto; or

20 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
21 4109, and amendments thereto.

22 Except as provided in subsection (b), any person who violates this sub-
23 section shall be guilty of a drug severity level 3 felony.

24 (b) Notwithstanding any other provision of law, upon conviction of
25 any person pursuant to subsection (a) for an offense in which the sub-
26 stances involved were possessed with intent to sell, sold or offered for
27 sale in or on, or within 1,000 feet of any school property upon which is
28 located a structure used by a unified school district or an accredited non-
29 public school for student instruction or attendance or extracurricular ac-
30 tivities of pupils enrolled in kindergarten or any of the grades one through
31 12 *or any public park, or child care facility or retail store* and such person
32 is 18 or more years of age, such person shall be guilty of a drug severity
33 level 2 felony.

32 **New Sec. 16.** (a) The secretary may, by rules and regulations, add
33 chemicals to or delete chemicals from the list of regulated chemicals in
34 subsection (m) of section 13 and amendments thereto. In determining
35 whether to add or delete a chemical, the secretary shall consider the
36 following: (1) Whether the chemical is already controlled under the uni-
37 form controlled substances act;

38 (2) the availability of the chemical for potential illegal diversion;

39 (3) the historical, actual, or potential use of the chemical in the illegal
40 production of a substance controlled under the uniform controlled sub-
41 stances act, including the scope, duration and significance of use;

42 (4) the nature and extent of the legitimate uses of the chemical;

43 (5) the clandestine and legitimate importation, manufacture, or dis-
1 tribution of the chemical; and

2 (6) ~~any other factors relevant to and consistent with public health and~~
3 ~~safety.~~ **Proof from law enforcement officials that the chemical in question**
has become either unused as a illicit precursor for deletions or that there is a
pattern indicating that the chemical in question is being used in the
manufacture on an illicit controlled substance.

The Kansas Bureau of Investigation, Department of Health and Environment and Attorney General's office have met with representatives of the Nonprescription Drug Manufacturers Association in an effort to minimize the opposition to the act. The NDMA had 8 specific issues and the Attorney General's Office agreed to adopt their position on 4 issues.

Below are the issues raised by the NDMA and the responses from the KBI, Health and Environment and the Attorney General's Office. The numbering system used by the NDMA is from a draft of the bill which was provided prior to the session. Responses give the correct section numbers.

**KANSAS CHEMICAL CONTROL ACT
NDMA ISSUES**

CITATION IN BILL	OBJECTIONS	NDMA SOLUTION
<p>Section 3(o), definition of "regulated chemical transaction" p</p>	<p>Includes language applying to transactions "within, into or out of the state."</p>	<p>Change to "within or into or out of the state." No need for the Department to maintain information on shipments out of the state; outside its jurisdiction.</p>

Response: Section 13(p) defining "regulated chemical transactions" needs to cover shipments that start within the state and are made to locations 'out of the state'. Otherwise, Kansas would become a haven for the noncontrolled distribution of controlled chemicals throughout the nation.

<p>Section 4(b) safe harbor language</p>	<p>Base ingredient limit of 1.5 grams per package</p>	<p>Change to 3 grams per package. Consistent with federal MCA and industry standard.</p>
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Response: Agreed to prior to filing. Already incorporated in Section 14(b).

<p>Section 6(a)(6), addition or deletion of chemicals from list of regulated chemicals; subsection states chemicals can be added due to "any other factors relevant and consistent to public safety."</p>	<p>Authority to add chemicals to list is too broad, subject to discretion without burden of proof.</p>	<p>Change phrase to "proof from law enforcement officials that the chemical in question has become either unused as a illicit precursor for deletions OR that there is a pattern indicating that the chemical in question is being used in the manufacture of an illicit controlled substance."</p>
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Response: Accept NDMA proposal; contained in proposed amendments to HB 2469, Section 16(a)(b).

<p>Section 9(c) requires retailers to maintain detailed records of all sales over 24 grams.</p>	<p>Not consistent with federal standard which requires records only for non-safe harbor packaged product.</p>	<p>Exempt safe harbored product from recordkeeping requirement. Add "section 9(c)" to Section 4(b) safe harbor language.</p>
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Response: Illegal drug manufacturers have identified this loophole in the federal law. As bulk ephedrine and pseudoephedrine supplies have become regulated, the meth cooks have gone to using 'safe harbor' products. Almost 90% of the 63 meth labs seized this year in Kansas have been using 'safe harbor' products. Exemption of safe harbor products from reporting requirements would effectively 'gut' the purpose of the act.

KANSAS CHEMICAL CONTROL ACT
NDMA ISSUES
PAGE 2

CITATION IN BILL	OBJECTIONS	NDMA SOLUTION
Section 9(d) requires record retention of retailer sales over 24 grams for 3 years.	Inconsistent with federal recordkeeping requirement of 2 years; 3 year old records of no value to law enforcement, burdensome record retention.	Change record retention requirement to 2 years.

Response: Agreed to NDMA position, change made prior to introduction in Section 19(d).

Section 10 requires submission of all prior years' sales records for non-safe harbored product.	Burdensome paperwork requirement, duplicates existing information.	Delete section in its entirety and add suspicious order reporting requirement in its place using language from federal MCA.
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Response: This is not duplicitous as there are no other reporting requirements under this act. Submission of the reports yearly will minimize inconvenience to distributors and retailers while still providing law enforcement with the raw data necessary to identify unusually large shipments and distributions. Knowing that all reportable transactions will be given to the state provides substantial deterrence to clandestine lab operators.

<p>Section 12(c) places 2 package sales limit on <u>all</u> products containing precursor chemicals.</p>	<p>Inconsistent with federal standard; imposes unreasonable burden on retail clerks; encourages theft; easily circumvented by multiple purchasers at different locations; criminal liability should remain on meth operators.</p>	<p>Delete retail sales limit and enforce 24 gram recordkeeping requirement for non-safe harbor products.</p>
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Response: As indicated by several retailers adopting voluntary limits of two packages, the restriction in Section 22(c) prohibiting sales of more than two packages of products containing ephedrine, pseudoephedrine or phenylpropanolamine is not an unreasonable amount nor is it unreasonable for store clerks to handle. There will always be the problem of multiple purchases, but the more difficult the process, the greater the deterrent factor. Further, meth producers multiply their exposure, and risk of notice when making repeated purchases.

To adopt the proposed 'no limit' for safe harbor products will continue the present practice that has resulted in the present crisis. Why should we control cigarette sales, but let meth cooks buy as much product as they need?

<p>Section 16(b)(4) places responsibility for environmental clean up on "any person who, by any acts or omissions, caused or contributed to the alleged illegal drug manufacturing site, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits . . ."</p>	<p>Authority to attribute liability is too broad and could be interpreted to include legitimate retailers.</p>	<p>Add at end of sentence after "permit": ". This section shall not apply to manufacturers, distributors and retailers who are registered with the Department and acted or failed to act without knowledge of the existence of an illegal drug manufacturing site or without the intent to furnish supplies to an illegal drug manufacturing site;"</p>
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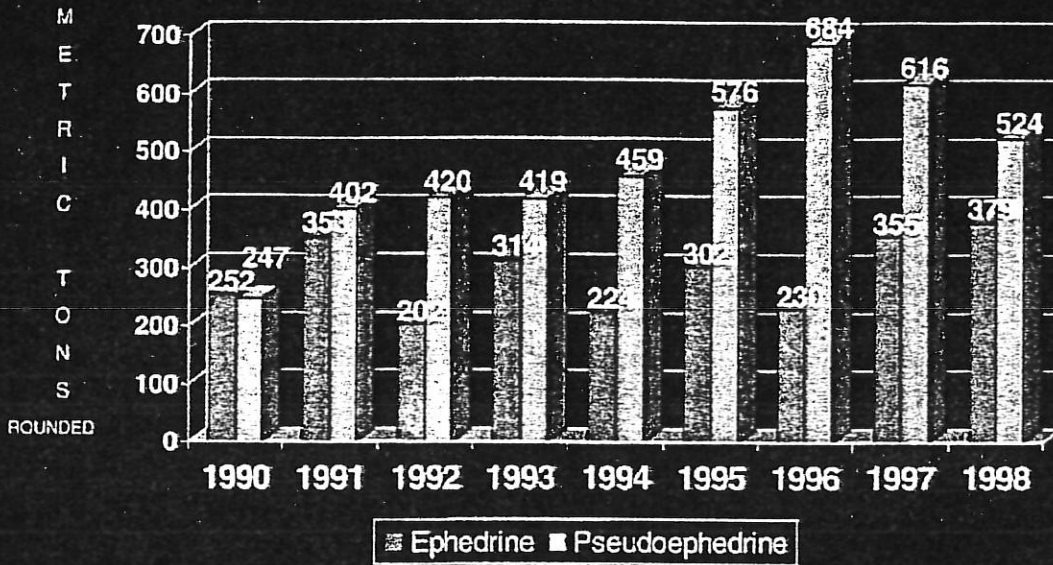
Response: Language is a little overbroad in administrative law area. At this time it is unacceptable to Health & Environment, but compromise language might be worked out.

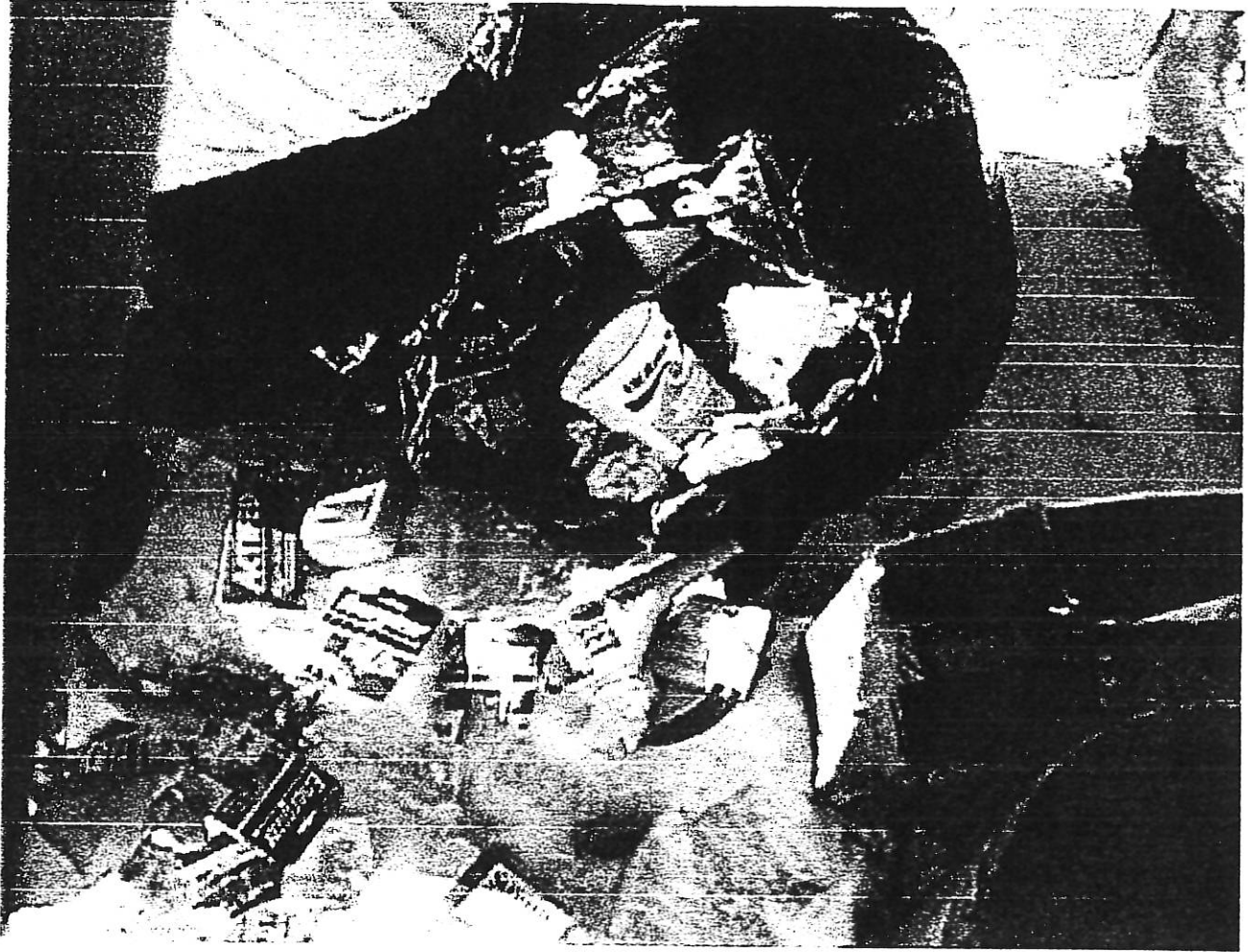
U.S. Department of Justice
Drug Enforcement Administration
Office of Diversion Control
Chemical Investigations Section

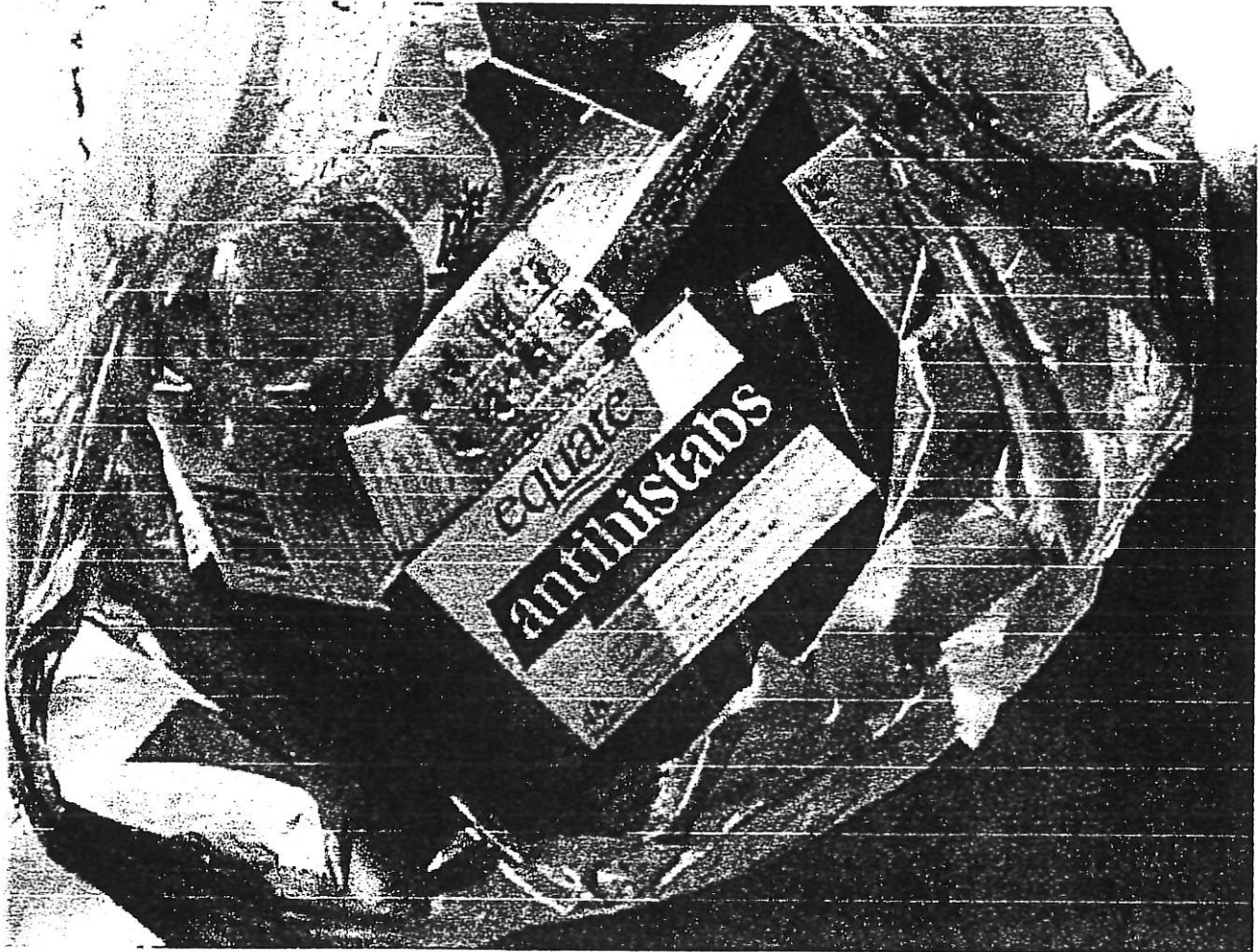


Ephedrine & Pseudoephedrine Imports

Calendar Years
1990 - 1998









Better Health
Through Responsible
Self-Medication

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

**TESTIMONY IN OPPOSITION TO HOUSE BILL 2469
KANSAS HOUSE JUDICIARY COMMITTEE
FEBRUARY 23, 1999**

My name is Nancy A. Bukar and I am State Government Counsel to the Nonprescription Drug Manufacturers Association (NDMA)¹. Thank you for this opportunity to testify before the Kansas House Judiciary Committee. On behalf of NDMA, I am here to express our opposition to the proposed Kansas Chemical Control Act (House Bill 2469), legislation that would require recordkeeping and reporting for products containing precursor chemicals, as well as imposing sales limits on these products.

NDMA and its members are opposed to a number of provisions in this bill. **Legislation to limit access to products containing precursor chemicals should target the crimes associated with methamphetamine, not the consumer or the businesses providing these products.** This bill has the opposite effect and would severely limit consumer's access to legitimate and necessary products.

NDMA members account for approximately ninety-five percent of all nonprescription or over-the-counter (OTC) drugs sold in the United States in thousands of traditional retail outlets such as drug stores, grocery stores, mass retail stores, convenience stores, hotel gift shops and other legitimate retail locations. Some of the products that would be impacted by this bill include bronchodilators and decongestants containing ephedrine, pseudoephedrine and phenylpropanolamine. Medicines in this category make up the vast majority of products in the cough/cold/allergy aisle of the store and includes such products as Sudafed®, Tylenol® Cold and Sinus, Contac®, NyQuil® and hundreds of other private label or store brand products.

COSTS WITHOUT PROOF OF EFFECTIVENESS

The products affected by the provisions of this bill are common and often used as remedies for everyday ailments. The provisions of House Bill 2469, as drafted, have the potential to impose some serious burdens on legitimate businesses and unnecessary restrictions upon consumers by limiting access without a proven necessity for doing so. Furthermore, the cost of compliance could be quite high (training clerks, keeping records, redesigning computer systems) without any proof that they could be effective in combating Kansas' methamphetamine problem. This bill also has the potential to create additional layers of state bureaucracy by implementing provisions that will require the hiring of a number of new employees to process registrations and reports.

¹ The Nonprescription Drug Manufacturers Association (NDMA) is the 118-year-old trade association which represents manufacturers – both large and small – of nonprescription or over-the-counter (OTCs) medicines such as cold remedies, antacids, pain relievers, and dietary supplements. The Association's members account for approximately 95 percent of all OTC medicines sold in the United States. A nonprescription drug is one that the U.S. Food and Drug Administration has found to be safe and effective for direct consumer use based on the required label direction and warnings.

NDMA is aware of information compiled last year in California, the state with the worst methamphetamine problem in the country, which indicated that it costs **over \$3 million** to run their precursor chemical program, a program which does not restrict access to any of these products. *Say something about how they don't go nearly as far as Kansas is trying to do* Is the state of Kansas prepared to take on a financial burden of this magnitude without proof of its effectiveness?

RETAIL SALES LIMIT AND RECORDKEEPING REQUIREMENTS ARE UNWORKABLE

In its current form, Section 19(c) requires retailers to keep records for all sales over 24 grams and, unlike the federal standard, there is no exemption for sales of safe harbor products. The federal Comprehensive Methamphetamine Control Act of 1996 (MCA) specifically exempts safe harbored product from recordkeeping requirements. A safe harbor exemption works to protect those products packaged or manufactured in such a way as to avoid diversion and still make needed over-the-counter (OTC) remedies available to the legitimate consumer without imposing unnecessary burdens on these types of sales. If the exemption is to have any effect, it must be applied to all sales of these products. Otherwise, the sale of thousands of legitimate OTC products will be subject to recordkeeping requirements for retailers.

The recorded information would also be unnecessary and of little, if any, use to law enforcement. Suspicious orders are regularly provided by distributors to the local offices of the U.S. Drug Enforcement Administration, as required by the MCA, and serve as the most effective tool for flushing out methamphetamine labs. Distributors are under an obligation to provide these reports to DEA before the completion of the sale or as soon as practicable thereafter. Suspicious orders provide all the information necessary to detect attempts to manufacture methamphetamine and any additional recordkeeping requirements would merely duplicate existing efforts.

In addition, Section 22(c) goes even further and imposes a **2 package limit on sales of all products** containing ephedrine, pseudoephedrine and phenylpropanolamine, again without an exemption for sales of safe harbor products. This section appears to be inconsistent with Section 19(c) – how could a retailer sell more than 24 grams if there is a 2 package limit? We are requesting that the 2 package sales limit in Section 22(c) be removed from the bill and that the reporting requirement for sales over 24 grams in Section 19(c) be subject to the safe harbor exemption.

We are concerned that the imposition of sales limits and reporting requirements could cause legitimate retailers and other businesses to avoid the burden associated with selling these products by removing them from their inventory. This would, in turn, limit the consumer's choice and options in purchasing legitimate drug products while having little impact on the methamphetamine problem in Kansas. Methamphetamine can be made using a number of common household products that can be purchased in retail outlets around the state and **there is a substitute for every chemical that is used**. Retaining these provisions will simply force criminals to use other ingredients that will not be regulated by the bill.

ENVIRONMENTAL LIABILITY IS TOO BROAD

Section 16(b)(4), as written, could place responsibility for environmental clean up on “any person who, by any acts or omissions, caused or contributed to the alleged illegal drug manufacturing site, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.” NDMA is concerned that the authority to attribute liability is too broad (“or contributed to”) and could be interpreted to include legitimate retailers. We suggest adding at the end of this sentence, after “permit”:

This section shall not apply to manufacturers, distributors and retailers who are registered with the Department or the U.S. Drug Enforcement Administration and acted or failed to act without knowledge of the existence of an illegal drug manufacturing site or without the intent to furnish supplies to an illegal drug manufacturing site;

NDMA EXPERIENCE WITH PRECURSOR CHEMICAL BILLS

Since the emergence of the methamphetamine problem in the United States, NDMA has worked closely with law enforcement and educators in joint efforts to educate distributors and retailers. In 1998, we conducted educational seminars in Arizona, California, Idaho, Nevada and Utah. At each of our seminars, local and state law enforcement gave presentations and spoke with members of the regulated community. These sessions provide an open forum to discuss the problems and seek solutions without burdensome regulations. We will continue to conduct these sessions and would welcome the chance to do so in Kansas.

Finally, it is important to note that a total of 9 states have adopted language in precursor chemical control bills that mirror NDMA’s model language (copy attached) for such proposals. Some of the states in question (California and Missouri, for example) have experienced severe problems with methamphetamine. These states, like Kansas, have found it necessary to enact provisions that impose harsh sanctions on the criminals but have managed to do so without imposing sanctions on retailers and consumers. Their solution was to target the criminals and adopt language that would allow prosecution for possession of precursor chemicals with intent to manufacture methamphetamine, instead of imposing restrictions on sales to legitimate customers and burdensome recordkeeping requirements on retailers. **NDMA has supported and will continue to support legislation that imposes criminal penalties for possession of precursor chemicals with intent to manufacture methamphetamine without sales limits or recordkeeping requirements.**

Again, thank you very much for your consideration of our views on this matter. I would be happy to answer any of the committee’s questions at this time.

2-14

**KANSAS CHEMICAL CONTROL ACT
HB 2469
NDMA ISSUES**

CITATION IN BILL	OBJECTIONS	NDMA SOLUTION
Section 3(o), definition of "regulated chemical transaction"	Includes language applying to transactions "within, into or out of the state." No need for the Department to maintain information on shipments out of the state; outside its jurisdiction.	Change to "within <u>or</u> , into or out of the state."
Section 9(c) requires retailers to maintain detailed records of all sales over 24 grams.	Not consistent with federal standard which requires records only for non-safe harbor packaged product.	Exempt safe harbored product from recordkeeping requirement. Add "section 9(c)" to Section 4(b) safe harbor language.
Section 10 requires submission of all prior years' sales records for non-safe harbored product.	Burdensome paperwork requirement, duplicates existing information.	Delete section in its entirety and add suspicious order reporting requirement in its place using language from federal MCA.
Section 16(b)(4) places responsibility for environmental clean up on "any person who, by any acts or omissions, caused or contributed to the alleged illegal drug manufacturing site, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits . . . "	Authority to attribute liability is too broad and could be interpreted to include legitimate retailers.	Add at end of sentence after "permit": ". This section shall not apply to manufacturers, distributors and retailers who are registered with the Department and acted or failed to act without knowledge of the existence of an illegal drug manufacturing site or without the intent to furnish supplies to an illegal drug manufacturing site;"

Nonprescription Drug Manufacturers Association

This is a list of some of the chemicals or apparatus that can be used to manufacture methamphetamine. The list was compiled and distributed by the San Bernardino County (California) Sheriff's Department. All of these items can be purchased at traditional retail outlets.

1. Acetone (Solvent) (washes reactions)
2. Liquid Chlorine (used in salting process)
3. Liquid Acid (Sulfuric Acid) (reagent) (makes HCL gas/rock salt)
4. Baking Dishes (Reaction vessels)
5. Starting Fluid (Ether)
6. Camp Fuel (Solvent)
7. Diet Aid Tablets (Phenylpropanolamine)
8. Nasal Decongestant and Bronchodilator Tablets (Pseudoephedrine, Ephedrine)
9. Gloves, rubber and latex (cover hands, semi-protection)
10. Lye, Powdered Sodium Hydroxide (base out reaction)
11. Liquid Drain Cleaners, Liquid Sodium Hydroxide (base out reaction)
12. Rock Salt (add to sulfuric acid to make HCL gas)
13. Plastic Baggies, various ziplocks (packaging)
14. Rubbing Alcohol, Isopropyl (use to break down pills)
15. Cat Litter (filter out smell)
16. Glass Jars (reaction vessels)
17. Coffee Filters, all types (filter mixes)
18. Glass Coffee Pots (reaction vessels)
19. Distilled Water (used to break down pills)
20. Charcoal Fluid (Solvent) (substitute for solvent such as freon)
21. Ice (cooling reactions)
22. Funnels (separation of liquids)

KJK/kb--2/4/99

*Nonprescription Drug Manufacturers Association
Explanation & Rationale for Model Legislation:*

**Restrictions on Marketing of Precursor Chemicals
and the Possession of Those Substances With Intent
to Manufacture Methamphetamine**

The Nonprescription Drug Manufacturers Association (NDMA) has developed model legislation for states seeking to place restrictions on certain kinds of nonprescription medicines that can be diverted and used for the illicit production of methamphetamine.

This model legislation responds to the increasing reports that some drug traffickers are diverting large quantities of ephedrine, pseudoephedrine or phenylpropanolamine (PPA) as raw precursors to the production of methamphetamine, a highly dangerous and illicit drug. At the same time, this model legislation recognizes that all three chemicals have legitimate therapeutic uses and are approved by FDA as safe and effective over-the-counter medications. Millions of consumers depend on these products for relief from everyday problems like flu, common colds, hay fever, allergies, mild asthma attacks and sinus conditions. Over broad or draconian restrictions on these products would deny consumers access to these products and drive up health care costs.

Section 1: Criminal Sanctions for the Possession of Certain Precursor Chemicals With Intent to Make Illicit Drugs

Section 1 makes unlawful the possession of ephedrine, pseudoephedrine or PPA with the intent to manufacture methamphetamine. The federal Drug Enforcement Administration (DEA) has determined that all three of these chemicals can be used in large quantities to produce methamphetamine, an illicit drug. A recently-enacted federal law will require registration and reporting of manufacturers and wholesale distributors of these drugs and will establish strong, new penalties for possession of “meth.”

Nevertheless, state law enforcement officials have indicated a need to be able to prevent illicit production of “meth” by charging people who possess large quantities of the precursor materials or certain paraphernalia for the creation of “meth” even before the transformation process has begun. Section 1 criminalizes such possession of the precursor materials while also recognizing that possession of ephedrine, pseudoephedrine and PPA for other uses (like treating a cold or flu) is hardly criminal behavior. This provision permits continued retail sale of normal consumer quantities of these nonprescription medicines but allows law enforcement to respond when other circumstances and evidence establish the likelihood that these drugs are being diverted to create an illicit substance.

Arkansas, California, Iowa, Missouri and Washington have enacted similar laws.

Section 2: Prohibiting the Sale of Certain Precursor Chemicals With Knowledge that They Will be Used to Make Illicit Drugs

This section prohibits the sale of ephedrine, pseudoephedrine and PPA by merchants who “know or reasonably should know” that the products are being purchased for the purpose of making an illicit substance. The federal Comprehensive Methamphetamine Control Act of 1996 does not place a quantity limit on retail sales of pseudoephedrine or PPA, but it does require manufacturers, wholesalers and retailers of these chemicals to report suspicious transactions involving these products, most typically, significantly large purchases or repeated purchases within a short time of products containing ephedrine, pseudoephedrine and PPA.

This proposed legislation is intended to insulate innocent or unsuspecting sellers from the criminal sanctions by requiring either actual criminal intent or a “reasonably should know” standard. However, it also recognizes that manufacturers, distributors and retailers cannot turn a “blind eye” to purchases or theft of their products or profit from such sales if they reasonably should know the intended use of the drug is the production of methamphetamine.

Similar language was enacted in Iowa in 1996.

For more information about this NDMA model legislation, contact Steve Mister or Nancy Bukar at NDMA, (202) 429-9260.

Nonprescription Drug Manufacturers Association
Proposed Model State Legislation:

**Restrictions on
Possession, Sale & Marketing
of Precursors To Methamphetamine**

(1) **Possession For Illicit Purposes Prohibited.** It shall be unlawful for a person to possess ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product as a precursor to any illegal substance. A violation of this section shall be a Class ___ [*misdemeanor/felony*] punishable by _____.

(2) **Sales For Illicit Purposes Prohibited.** It shall be unlawful for any person to sell, distribute, or otherwise make available any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product as a precursor to any illegal substance. A violation of this section shall be a Class ___ [*misdemeanor/felony*] punishable by _____.

(3) **Effective Date.** This law shall become effective on _____.



Better Health
Through Responsible
Self-Medication

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

NDMA¹

RESPONSIBILITIES UNDER THE COMPREHENSIVE METHAMPHETAMINE CONTROL ACT

The federal Comprehensive Methamphetamine Control Act of 1996 (MCA) was enacted in response to the increased production and abuse of methamphetamine in the United States. The MCA imposed stringent requirements upon the sale or transfer of products containing precursor chemicals but also created a retail exemption for sales of “**safe harbor**” packaged products. Safe harbor packages are those containing pseudoephedrine and phenylpropanolamine with 3 grams or less in each package and no more than 2 tablets in each blister of the package. Liquid products, such as cough medicine, containing under 3 grams of pseudoephedrine or phenylpropanolamine are also considered safe harbored products.

Under the MCA, retailers and distributors must adhere to strict requirements imposed on sales of products containing ephedrine, pseudoephedrine and phenylpropanolamine. Retailers who sell only safe harbor products directly to consumers for personal use are exempted from the recordkeeping, registration and reporting requirements of the MCA.

Distributors

REPORTING: There are no periodic reporting requirements for distributors. However, distributors must report any and all “**suspicious orders**” to DEA before completion of the sale or as soon as possible thereafter. A suspicious order is described as a transaction involving an extraordinary quantity of a precursor chemical, a transaction involving an uncommon method of payment or delivery, or any other types of sales that would indicate that the purchased product will be used to manufacture illicit controlled substances

RECORDS: The distributor must keep records of all sales that exceed distributor threshold amounts set by the MCA. The safe harbor exemption does not apply to distributor transactions. The thresholds are calculated by the amount a customer purchases cumulatively over the course of a month. For single entity ephedrine, there is no threshold and the distributor must keep a record for all sales. For combination ephedrine and pseudoephedrine, the threshold is 1 kilogram each and for phenylpropanolamine, the threshold is 2.5 kilograms. These records must be kept for 2 years and be available for inspection.

¹ The Nonprescription Drug Manufacturers Association (NDMA) is the 118-year-old trade association which represents manufacturers -- both large and small -- of nonprescription or over-the-counter (OTCs) medicines such as cold remedies, antacids, pain relievers, and dietary supplements. The Association’s members account for approximately 95 percent of all OTC medicines sold in the United States. A nonprescription drug is one that the U.S. Food and Drug Administration has found to be safe and effective for direct consumer use based on the required label direction and warnings.

REGISTRATION: If not already registered with DEA as a controlled substance registrant, the distributor must obtain a list chemical registration from DEA. Persons applying for a DEA controlled substance or list chemical registration must provide detailed background information before receiving the registration and DEA personnel must also inspect the distribution facility or warehouse prior to issuing the registration.

IDENTIFICATION: The distributor must verify and know the purchaser's identity, no matter the amount of product purchased (one box or many cases). Proof of identity would include a valid driver's license or other photo identification.

SECURITY: The distributor must provide adequate security against theft or diversion of drug products containing precursor chemicals. They must "exercise caution" in screening employees who will have access to these products and inform the employees of their responsibility to report information on diversion by a fellow employee to the distributor's security personnel.

Retailers

Retailers who sell only safe harbor products directly to consumers for personal use are exempted from the recordkeeping, registration and reporting requirements of the MCA.

For those retailers selling products not covered by the MCA's safe harbor exemption, they must keep of a record of all sales over 24 grams.

Although exempted by the MCA, many retailers have chosen to implement a variety of control measures to reduce diversion of legitimate products. These measures include voluntary reporting of suspicious transactions, employee education programs and voluntary limits on sales.

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**House Judiciary Committee
Testimony on HB 2469
On Behalf of the Dietary Supplement Safety and Science Coalition
February 23, 1999**

The DSSSC is a coalition of companies involved in the nationwide manufacture and marketing of products containing the herb Ephedra and sold as dietary supplements. These products contain small amounts of ephedrine. This Coalition has been a regular participant in the dialogue with the Drug Enforcement Administration (DEA) concerning how to eliminate the methamphetamine problem without unnecessarily impacting legitimate businesses, such as dietary supplement manufacturers. Since the companies that make up the DSSSC are direct sales companies with hundreds of thousands of independent distributors, the potential impact of laws intended to control methamphetamine production that unintentionally impact the sales of dietary supplements is enormous.

The Coalition Supports Enhanced Penalties on Methamphetamine Production Without Restricting Legitimate Products.

HB 2469 attempts to address the criminal and safety concerns presented by methamphetamine production. However, without the amendments offered

here, it will penalize the general public and the dietary supplement industry by unreasonably restricting legal products that are not part of the problem. The Coalition suggests that by inserting simple exemption language, the bill will fulfill its goals without raising public concerns regarding why the purchase of dietary supplements and other products safely consumed on a daily basis must be restricted.

Herbal Products Are Not Utilized in the Manufacture of Methamphetamines.

An empirical study has confirmed that herbal dietary supplement products, which are composed of a number of herbal ingredients and which contain small amounts of ephedrine, have chemical impediments which prevent their use in methamphetamine production. The 1998 study of Hauser Laboratory Services is attached. The findings of this study are confirmed by the lack of "recipes" on the Internet for making methamphetamine from dietary supplements, and the lack of evidence of use of these products from the thousands of clandestine laboratories that are seized each year throughout the United States.

The balloons attached to this testimony will exempt dietary supplements from the needless restrictions proposed by HB 2469, while enacting further tools to protect the public from methamphetamine manufacture.

CLIENT: Metabolife International Inc.
5070 Santa Fe Street
San Diego, CA 92109

Attn: Mike Ellis

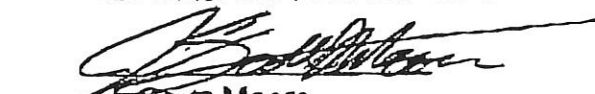
SAMPLES: One case of Metabolife Dietary Supplement 356 was received March 23, 1998. The label listing the ingredients in this product is attached.

TESTS: It was requested that we attempt to produce methamphetamines from the Metabolife Dietary Supplement using the "street" method published in The Journal of Forensic Sciences, Vol. 40, No. 4, July 1995.


RESULTS: The tablets were initially analyzed for ephedra content by High Performance Liquid Chromatography (HPLC). Each tablet was found to contain 13.1 mg/tablet on average of ephedra alkaloids. The contents of the 12 bottles of Metabolife Dietary Supplement 356 were ground resulting in approximately 1.3 kg of starting material (13.7 g ephedra alkaloids). The material was extracted into methanol and the extract was reacted with red phosphorus and hydriodic acid for five hours. The resulting mixture was basified and extracted into freon. The freon was then acidified using hydrogen chloride gas. This should have resulted in the production of methamphetamine crystals, however it formed a black tar like material. The material was tested by Gas Chromatography/Mass Spectroscopy (GC/MS) and found to contain mostly ephedra alkaloids and caffeine, the presence of methamphetamine was not detected.

CONCLUSION: The procedure described above was performed according to the method published in The Journal of Forensic Sciences, Vol. 40, No 4, July 1995, titled "Ephedra's Role As a Precursor in the Clandestine Manufacture of Methamphetamine" by K.M. Andrews. Based on our analysis, it does not appear that this published method can be used to make methamphetamine from Metabolife's Dietary Supplement 356.

**REPORT WRITTEN
& ANALYSIS PERFORMED BY:**


J. Scott Moore
Technician III

REPORT REVIEWED BY:


Nicole M. Enderle
Chemist

This report applies only to the sample, or samples, investigated and is not necessarily indicative of the quality or condition of apparently identical or similar products. As a mutual protection to clients, the public and these Laboratories, this report is submitted and accepted for the exclusive use of the client to whom it is addressed and upon the condition that it is not to be used, in whole or in part, in any advertising or publicity matter without prior written authorization from Hauser Laboratories. This report may be copied only in its entirety.

SUGGESTED USE: As a Dietary supplement, orally, adults, ONE to TWO caplets two to three times per day, or every four hours, on an empty stomach one hour before meals. DO NOT EXCEED EIGHT CAPLETS PER DAY.

CAUTION: AS WITH ANY DIETARY SUPPLEMENT, SEEK ADVICE FROM A HEALTH CARE PRACTITIONER PRIOR TO USE IF YOU ARE PREGNANT OR NURSING, OR IF YOU HAVE HIGH BLOOD PRESSURE, HEART OR THYROID DISEASE, DIABETES, DIFFICULTY IN URINATION DUE TO PROSTATE ENLARGEMENT, OR IF TAKING A MAO INHIBITOR OR ANY OTHER PRESCRIPTION DRUG, OR INTEND ON TAKING TO REDUCE WEIGHT. REDUCE IF NERVOUSNESS, TREMOR OR NAUSEA OCCUR. NOT INTENDED FOR USE BY PERSONS UNDER THE AGE OF 18. KEEP OUT OF THE REACH OF CHILDREN.

*Based on multi-species clinical laboratory testing.

Natural Herbs
Metabolife™
 Dietary Supplement 356

Herbal formula to enhance your

DIET

and provide
Energy

90 Caplets



INDEPENDENTLY
 LABORATORY
 TESTED FOR
 SAFETY

Supplement Facts
 Serving Size: 1 Caplet

Amount Per Serving	% Daily Value
Vitamin E..... 6 IU.....	120%
Magnesium (as Magnesium Oxide)..... 76 mg.....	18%
Zinc (as Zinc Citrate)..... 3 mg.....	33%
Chromium (as Chromium Picolinate)..... 75 mcg.....	62%
Proprietary Blend..... 720 mg	
Ginseng Concentrate (10:1).....	
(40 mg naturally-occurring ginsenosides)	
Ma Huang Concentrate (herbal part).....	
(12 mg naturally-occurring ephedrine)	
Bee Pollen.....	
Ginseng (10:1).....	
Ginger (10:1).....	
Lectin.....	
Biotin Complex.....	
Oenothera (leaf).....	
Sarsaparilla (root).....	
Golden Seal (herbal part).....	
Fenugreek (seed).....	
Oahu Kava (herbal part).....	
Spirulina Algae.....	
Royal Jelly.....	

* Daily Value not established

Other ingredients: Methocel, silica, croscarmellose sodium, magnesium stearate.
 Metabolife International, Inc.
 5070 Santa Fe Street San Diego, CA 92109
 (619) 450-1222

738

Product Name: Golden Ginseng
Product Number: 82
Statement of Identity: Dietary Supplement
Package Count/Type: 2 Tablets
Suggested Use: One tablet, one hour before activity or workout.

Supplement Facts

Serving Size 1 tablet
Servings Per Container 2

Amount Per Serving		%Daily Value
Calcium (carbonate)	139 mg	14%
Proprietary Blend	661 mg	
Ephedra (standardized plant body extract supplying 24 mg ephedrine alkaloids)		*
Siberian Ginseng (root)		*
Korean Ginseng (root, rhizomes)		*
Gotu Kola (aerial portion 4:1 extract)		*
Passion Flower (aerial portion 5:1 extract)		*
Schizandra (fruit)		*
Ho Shou Wu / Fo Ti (root)		*
American Ginseng (root)		*

* Daily Value not established

Other Ingredients: Cellulose, Stearic Acid, Magnesium Stearate, Silicon Dioxide.

1 professional practice; or

2 (2) by a practitioner, or by the practitioner's authorized agent under
3 the practitioner's supervision, for the purpose of, or as an incident to
4 research, teaching or chemical analysis and not for sale;

5 (k) "person" means individual, corporation, business trust, estate,
6 trust, partnership, association, joint venture, government, governmental
7 subdivision or agency, or any other legal or commercial entity;

8 (l) "practitioner" means a physician, dentist, veterinarian, pharmacist,
9 pharmacy, hospital or other person licensed, registered or otherwise per-
10 mitted, by the state, to distribute, dispense, conduct research with respect
11 to or administer a regulated chemical in the course of professional prac-
12 tice or research;

13 (m) "regulated chemical" means a chemical that is used directly or
14 indirectly to manufacture a controlled substance or other regulated chem-
15 ical in violation of the state controlled substances act or this act. The fact
16 that a chemical may be used for a purpose other than the manufacturing
17 of a controlled substance or regulated chemical does not exempt it from
18 the provisions of this act. Regulated chemical includes:

19 (1) Acetic anhydride (CAS No. 108-24-7);

20 (2) benzaldehyde (CAS No. 100-52-7);

21 (3) benzyl chloride (CAS No. 100-44-7);

22 (4) benzyl cyanide (CAS No. 140-29-4);

23 (5) diethylamine and its salts (CAS No. 109-89-7);

24 (6) ephedrine, its salts, optical isomers and salts of optical isomer
25 (CAS No. 299-42-3);

26 (7) hydriodic acid (CAS No. 10034-85-2);

27 (8) iodine (CAS No. 7553-56-2);

28 (9) lithium (CAS No. 7439-93-2);

29 (10) methylamine and its salts (CAS No. 74-89-5);

30 (11) nitroethane (CAS No. 79-24-3);

31 (12) chloroephedrine, its salts, optical isomers, and salts of optic
32 isomers (CAS No. 30572-91-9);

33 (13) phenylacetic acid, its esters and salts (CAS No. 103-82-2);

34 (14) phenylpropanolamine, its salts, optical isomers, and salts of op
35 tical isomers (CAS No. 14838-15-4);

36 (15) piperidine and its salts (CAS No. 110-89-4);

37 (16) pseudoephedrine, its salts, optical isomers, and salts of optic
38 isomers (CAS No. 90-82-4);

39 (17) red phosphorous (CAS No. 7723-14-0);

40 (18) sodium (CAS No. 7440-23-5); and

41 (19) thionylchloride (CAS No. 7719-09-7);

42 (n) "regulated chemical distributor" means any person subject to t
43 provisions of the Kansas chemical control act who manufactures or d

, except products containing ephedra
or ma huang and lawfully marketed as
dietary supplements under federal law.

1 tributes a regulated chemical;
 2 (o) "regulated chemical retailer" means any person who sells regu-
 3 lated chemicals directly to the public;
 4 (p) "regulated chemical transaction" means the manufacture of a reg-
 5 ulated chemical or the distribution, sale, exchange or other transfer of a
 6 regulated chemical within, into, or out of the state; and
 7 (q) "secretary" means the secretary of health and environment.

8 New Sec. 14. (a) The provisions of this act shall not apply to: (1) A
 9 distribution of a regulated chemical to or by a common or contract carrier
 10 for carriage in the lawful and usual course of the business of the common
 11 or contract carrier, or to or by a warehouseman for storage in the lawful
 12 and usual course of the business of the warehouseman;

13 (2) the lawful administering or dispensing of a regulated chemical by
 14 a licensed physician, dentist, or veterinarian in the course of professional
 15 practice or research;

16 (3) the lawful dispensing of a regulated chemical that is a controlled
 17 substance by a pharmacist in the course of professional practice; or

18 (4) the purchase, distribution or possession of a regulated chemical
 19 by a local, state or federal law enforcement agency while in the discharge
 20 of official duties unless the Kansas bureau of investigation properly no-
 21 tifies the local law enforcement agency relying on the exclusion that its
 22 investigatory activities are contrary to the public interest

; or

(5) products containing ephedra or
 ma huang and lawfully marketed as dietary
 supplements under federal law.

23 (b) The registration, recordkeeping and reporting requirements con-
 24 tained in sections 17, subsections (a) and (b) of 19 and 20 and amend-
 25 ments thereto shall not apply to a regulated chemical retailer who only
 26 sells or distributes regulated chemicals that are nonprescription, over-
 27 the-counter medicines with less than three grams of base ingredient in
 28 the package in the following manner:

- 29 (1) Blister packs of not more than two dosage units per blister;
- 30 (2) liquid cold or cough medicines;
- 31 (3) liquid cold or cough gel capsules; and
- 32 (4) nasal drops or sprays.

33 New Sec. 15. (a) The secretary is authorized and directed to: (1)
 34 Adopt such rules and regulations, standards and procedures as may be
 35 necessary to carry out the purposes and provisions of this act;

36 (2) expend and authorize the expenditure of moneys from the chem-
 37 ical control act fund;

38 (3) report to the legislature on further assistance needed to admin-
 39 ister the chemical control program;

40 (4) administer the chemical control program pursuant to provisions
 41 of this act;

42 (5) cooperate with appropriate federal, state, interstate and local units
 43 of government and with appropriate private organizations in carrying out

DOUG GATEWOOD

REPRESENTATIVE, 1ST DISTRICT

HOME ADDRESS: P. O. BOX 306

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(316) 429-3690

OFFICE ADDRESS: STATE CAPITOL, SUITE 273-W

TOPEKA, KANSAS 66612-1504

(785) 296-7697



TOPEKA

HOUSE OF
REPRESENTATIVES**TESTIMONY****House Bill 2469**

COMMITTEE ASSIGNMENTS

MEMBER: TAXATION
KANSAS 2000
TOURISM
ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON
ECONOMIC DEVELOPMENT
HOTLINE NUMBER: 1-800-432-3924
SPEECH/HEARING IMPAIRED: (785) 296-8430**Mr. Chairman and members of the Committee:**

The safety of people in Kansas is threatened by an epidemic. The plague is the production of methamphetamine.

My name is Doug Gatewood and I am representing the people of the first district, Cherokee County to be exact.

Cherokee County has unfortunately been a targeted area for methamphetamine manufacturers. When you hear the story of a child losing the skin on the bottom of their feet due to lye on the carpet, that was my district. When you hear about two murders in the same house within one year due to drug trafficking, that was my district. It can and does happen in your districts too! I came to the Legislature after having served as Mayor of Columbus. I have seen first hand the tragic affects of methamphetamine in our communities.

Other states are exporting their drug manufacturers to Kansas. As meth production grows in an area, so do other crimes. Burglaries and thefts increase as users seek ways to finance their habit. The anhydrous used in the process is generally stolen. Meth manufacturers prey on nurse tanks of ammonia. Even tanks that are "empty" for farming purposes contain enough ammonia in the lines for producing meth. Valves will be knocked off or hoses cut to let anhydrous drain into various containers including water coolers and LP gas bottles. More and more, the production activities are moving into rural areas. This, along with the fact that anhydrous ammonia is a critical component in manufacturing of meth, causes real concern for agriculture and rural Kansans.

In addition to the anhydrous, other compounds such as acids, lye, acetone, red phosphorus and cold medicine are used.

These are extremely volatile chemicals. Many are dangerous to handle, are extremely flammable and can even cause explosions. A serious threat to law enforcement, first responders, neighbors and communities is the fumes given off during the manufacturing process, sometimes referred to as a "cook." The chemicals can cause severe skin and respiratory tract damage. Too often, officers and first responders are surrounded by toxins before they even realize it.

The toxic nature of the chemicals used to produce meth, also known as speed and crank, often results in the lab area being designated as a hazardous waste site under EPA guidelines. This means expensive clean-up and remediation efforts may be required. The by-products of the cook may have been dumped on the ground or down street gutters, contaminating the soil and possibly threatening ground water.

According to KBI officials, meth producers are generally meth users. The drug is highly addictive and users can suffer extreme paranoia. Many are heavily armed, some even booby-trap their labs. Because of the highly explosive nature of the chemical ingredients, meth cooks are taking their labs

into less populated areas. They set up portable labs along rural roads and fields. There is growing concern for unsuspecting citizens who might accidentally encounter one of these dangerous operations while traveling down a road or checking fields.

Just five years ago, four meth labs were seized in Kansas. There were 189 meth labs seized by law enforcement officers in Kansas last year and there is no sign that the problem will be contained any time soon.

Six weeks into the new year, the figure already is 50 ... If that pace continues, that means some 450 meth labs will be seized in Kansas this year.

So why the dramatic increase?

Last year, Missouri, which was the leading meth producing state, enacted a series of strict laws to combat meth manufacturing in that state. While that is good for Missouri, it means criminals are moving their operations to Kansas and other states where the laws against meth making aren't as strict.

Due to the time limit and my emotions toward this plague of drug use and manufacturing and the atrocities it has created for this great state, I will not address what it has done to families. I do want to say, though, that if you want to return to your district and tell your constituents you value families, please support this bill. Thank you for your concern and support.



Doug Gatewood
State Representative
District #1



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

Testimony presented to

House Judicial Committee

February 23, 1999

by

Ronald F. Hammerschmidt, Ph.D.
Director, Division of Environment
Kansas Department of Health and Environment

House Bill 2469

The Department has worked in cooperation with representatives of the Kansas Bureau of Investigation and the Office of the Attorney General in recent months to craft a bill which we believe will help address methamphetamine production and the associated problems it brings. We have endeavored to create a bill which balances reasonable access to the products that people use every day, against allowing the manufacture of illegal drugs.

House Bill 2469 would create a chemical monitoring program for precursor chemicals used in the illicit manufacture of methamphetamine. The provisions of the bill would be implemented jointly by the Kansas Department of Health and Environment and the Kansas Bureau of Investigation. Methamphetamine is a chemical that is easily manufactured by using a combination of over-the-counter medicines and readily available household and industrial chemicals. Several methamphetamine precursor chemicals are contained in over-the-counter cold and sinus medicines that are widely sold in pharmacies, grocery stores, convenience stores, and other retail outlets. These precursor chemicals are modified in chemical reactions using other common chemicals to form methamphetamine.

The proposed bill would establish a list of regulated chemicals including both the precursor chemicals and other chemicals commonly used in the methamphetamine manufacturing process. KDHE would be required to establish a registration program for distributors and retailers of the chemicals on the list. Those distributors and retailers required to register would also have to maintain purchase records for regulated chemicals and to submit annual reports to KDHE.

LOREN C. ANDERSON
SHERIFF



KENNETH L. MASSEY
UNDERSHERIFF

111 EAST 11th
LAWRENCE, KANSAS 66044
PHONE (785) 841-0007
February 23, 1999

House Judiciary Committee
Kansas Statehouse
Topeka, Kansas

RE: In support of HB 2469

Chairman O'Neal
Members of the Judiciary Committee

The Kansas Sheriffs Association would appreciate your support of the comprehensive methamphetamine laboratory bill, HB 2469, before your committee. I understand that time is very limited but let me assure you that this is as important an issue as you will have before you this session. The people of Kansas are dying, literally, from both the drug itself and the hazardous chemicals dumped into our air, soil, and water. If you have any doubts as to the seriousness of this problem, please, just call your local sheriff.

Missouri passed similar legislation last year and we are suffering the fallout from their initiative. Missouri controls access to the chemicals, has penalties up to life in prison, and makes theft of any amount of anhydrous ammonia a felony. Is it any wonder that we are suffering a doubling of the number of meth labs almost every year?

Kansas must catch up in the efforts to deter methamphetamine production or else spend literally millions of dollars in cleaning up hazardous waste sights, incarcerating offenders, treating the addicts, caring for the injured and burying the dead. On behalf of the sheriffs and deputies of Kansas I urge your support of HB 2469. Thank you.

Loren C. Anderson

Loren Anderson
Douglas County Sheriff
Chairman Kansas Sheriffs Association
Legislative Committee

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Iola Police Department
Iola, Kansas 66749

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-946-KPOA

FAX 316-946-0570

P.O. BOX 2592 • WICHITA, KANSAS 67201



MEMORANDUM

TO: Chairman Michael O'Neal, and
Members of the House Judiciary Committee

FROM: Bill Sneed
Kansas Peace Officers Association

DATE: February 23, 1999

RE: Support for House Bill 2469

The Kansas Peace Officers Association would like to be on record supporting the passage of HB 2469-chemical control act. This legislation contains several desperately needed provisions that will help protect the public and the officers of Kansas.

The headlines of newspapers all over Kansas bear all to frequent witness to the exploding growth of the illicit industry of methamphetamine production. Kansas has weaker penalties than many of our neighboring states, no effective control over sales of the precursor chemicals, no response to the growing problem on anhydrous ammonia thefts, or statutory authority for multistate task forces. HB 2469 provides good, workable solutions to all these problems.

House Judiciary
2-23-99
Attachment 7

In Unity There Is Strength

We would be happy to attend in person and let the committee hear first hand the dangers and tragedies resulting from this growing plague. We understand there is limited time available for today's hearing and this letter of support will have to suffice. However, please remember the urgency of the problem. We supported the passage of a chemical control act last year. SB 667 passed the Senate 39 to 1 but ran out of time on the House side. In the intervening time the number of meth labs has almost doubled. Kansas cannot afford any more delays.

Thank you for your consideration.

7

AMENDMENT C

Substitute amendment for "equal parenting time" within HB 2002

**POSSIBLE AMENDMENT TO KSA 60-1607
TO INCLUDE "PARENTING PLAN REQUIREMENT"**

HB 2002

Page 26

25 Sec. 24. K.S.A. 1998 Supp. 60-1607 is hereby amended to read as
26 follows: 60-1607. (a) *Permissible orders*. After a petition for divorce, an-
27 nulment or separate maintenance has been filed, and during the pen-
28 dency of the action prior to final judgment the judge assigned to hear the
29 action may, without requiring bond, make and enforce by attachment,
30 orders which:

31 (1) Jointly restrain the parties with regard to disposition of the prop-
32 erty of the parties and provide for the use, occupancy, management and
33 control of that property;

34 (2) restrain the parties from molesting or interfering with the privacy
35 or rights of each other;

36 (3) provide for the *joint shared* custody of the minor children and the
37 support, if necessary, of either party and of the minor children during the
38 pendency of the action. ~~Such custody shall include equal parenting time;~~

**Within 15 days of an order of custody, both parties, acting individually or in
concert, shall submit a temporary parenting plan to the court. If they
cannot agree on an appropriate temporary parenting plan, the court, or
upon request of one of the parties, may order mediation. In the event a
mutually agreeable parenting plan cannot be agreed upon, the court will
issue a temporary parenting plan appropriate to the parties' circumstances,
and consistent with the best interest of the children.**

39 (4) make provisions, if necessary, for the expenses of the suit, includ-
40 ing reasonable attorney's fees, that will insure to either party efficient
41 preparation for the trial of the case; or

42 (5) require an investigation by court service officers into any issue
43 arising in the action.

Proposed amendment to K.S.A. 60-1620

(a) Except as provided in subsection (d), a parent with custody, primary residential custody or joint shared custody pursuant to K.S.A. 60-1610 and amendments thereto shall give written notice to the other parent not less than 21 days prior to changing residence to another state or to another county or community within the state, and shall give notice to the other parent not less than 21 days prior to removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) [same]

(c) A change of residence or removal of the child from the state as described in subsection (a) may be considered a material change of circumstances which justifies modification of a previous order for child support, custody or parenting time. In considering a motion alleging a material change of circumstances the court shall consider but not be limited to the following factors:

(1) whether the change of residence or extended removal from the state will adversely effect the current parenting plan such that a modification of the plan or custody order is in the best interests of the child;

(2) whether a modified parenting plan will be adequate to address the effect of the change of residency or extended removal from the state;

(3) whether the increased costs of transportation, if any, occasioned by the change of residence or extended removal from the state justify a modification of a support order, parenting plan order or agreement.

(d) [same]

60-1620. Change in child's residence; notice; effect. (a) A parent entitled to the custody of a child pursuant to K.S.A. 60-1610 and amendments thereto shall give written notice to the other parent not less than 21 days prior to changing the residence of the child to a place outside this state or removing the child from this

state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence of a child to another state or removal of a child from this state for a period of time exceeding 90 days may be considered a material change of circumstances which justifies modification of a prior order of child support or custody.

History: L. 1984, ch. 213, § 1; July 1.

Research and Practice Aids:

Divorce — 300.

C.J.S. Divorce §§ 629, 635.

House Judiciary

2-23-99

Attachment 9

PROPOSED AMENDMENT TO HOUSE BILL NO. 2002

On page 9, following line 22, by inserting a new section as follows:

"Sec. 12. K.S.A. 38-129 is hereby amended to read as follows: 38-129. (a) ~~The district court may grant the grandparents of an unmarried minor child reasonable visitation rights to the child during the child's minority upon a finding that the visitation rights would be in the child's best interests and when a substantial relationship between the child and the grandparent has been established.~~

(b) The district court ~~may~~ shall grant the parents of a deceased person visitation rights, or may enforce visitation rights previously granted, pursuant to this section, even if the surviving parent has remarried and the surviving parent's spouse has adopted the child. Visitation rights shall be granted pursuant to this subsection unless the court, after a hearing, finds that visitation would seriously endanger the child's physical, mental, moral or emotional health. Visitation rights ~~may~~ shall be granted pursuant to this subsection without regard to whether the adoption of the child occurred before or after the effective date of this act.

(b) The district court shall grant grandparents reasonable visitation rights unless the court, after a hearing, finds that visitation would seriously endanger the child's physical, mental, moral or emotional health."

By renumbering sections 12 through 16 as sections 13 through 17, respectively;

On page 13, following line 37, by inserting a new paragraph as follows:

"(g) "Interested party" means the state, the contestant, the child, any parent, any person acting as parent, any grandparent and any person found to be an interested party pursuant to K.S.A. 38-1541 and amendments thereto."

Also on page 13, in line 38, by striking "(g)" and inserting

"(h)"; in line 41, by striking "(h)" and inserting "(i)"; in line 42, by striking "(i)" and inserting "(j)";

On page 14, in line 2, by striking "(j)" and inserting "(k)"; following line 39, by inserting a new section as follows:

"Sec. 18. K.S.A. 1998 Supp. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-4204a and amendments thereto, does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other

custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused; or

(12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a and amendments thereto.

(b) "Physical, mental or emotional abuse or neglect" means the infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

(c) "Sexual abuse" means any act committed with a child which is described in article 35, chapter 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or 21-3603, and amendments thereto, regardless of the age of the child.

(d) "Parent," when used in relation to a child or children, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the child.

(e) "Interested party" means the state, the petitioner, the

child, any parent, any grandparent and any person found to be an interested party pursuant to K.S.A. 38-1541 and amendments thereto.

(f) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(g) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(h) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for the care of children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(i) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(j) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(k) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(l) "Ward of the court" means a child over whom the court has acquired jurisdiction by the filing of a petition pursuant to this code and who continues subject to that jurisdiction until the petition is dismissed or the child is discharged as provided

in K.S.A. 38-1503 and amendments thereto.

(m) "Custody," whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(n) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(o) "Secretary" means the secretary of social and rehabilitation services.

(p) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(q) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 38-1505a and amendments thereto, in a proceeding pursuant to this code.

(r) "Multidisciplinary team" means a group of persons, appointed by the court or by the state department of social and rehabilitation services under K.S.A. 38-1523a and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(s) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general

living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(t) "Kinship care" means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

(u) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(v) "Abandon" means to forsake, desert or cease providing care for the child without making appropriate provisions for substitute care.

(w) "Permanent guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent.

(x) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(y) "Permanency hearing" means a notice and opportunity to be heard is provided to interested parties, foster parents, preadoptive parents or relatives providing care for the child. The court, after consideration of the evidence, shall determine whether progress toward the case plan goal is adequate or reintegration is a viable alternative, or if the case should be referred to the county or district attorney for filing of a petition to terminate parental rights or to appoint a permanent guardian.

(z) "Extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed

from the home.

(aa) "Educational institution" means all schools at the elementary and secondary levels.

(bb) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A. 72-89b03 and amendments thereto."

By renumbering sections 17 through 35 as sections 19 through 37, respectively;

On page 35, in line 1, by striking all before the period and inserting "are entitled to reasonable visitation rights unless the court, after a hearing, finds that visitation would seriously endanger the child's physical, mental, moral or emotional health";

Also on page 35, in line 7, after the period, by inserting "Actions to enforce grandparents and stepparents visitation rights shall be considered domestic relation cases and not juvenile cases unless ordered by the administrative judge.";

On page 40, in line 42, before "38-1302", by inserting "38-129,";

On page 41, in line 1, after "38-1138,", by inserting "38-1502, 38-1502c";

In the title, in line 10, before "amending", by inserting "visitation rights of grandparents;"; in line 11, after "23-701,", by inserting "38-129,"; in line 13, after "38-1138,", by inserting "38-1502,"; in line 16, after "sections", by inserting "; also repealing K.S.A. 1998 Supp. 38-1502c"