

Approved: March 29, 1999  
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:15 a.m. on March 24, 1999 in Room 123-S of the Capitol.

All members were present except: Senator Harrington (excused)

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Jerry Donaldson, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigation  
Brad Smoot, Johnson & Johnson

Others attending: see attached list

The minutes of the March 23 meeting were approved on a motion by Senator Bond and seconded by Senator Goodwin; carried.

**HB 2259—relating to motor vehicles; concerning the filing of notice of security interest**

Senator Vratil reviewed this subcommittee bill which was heard in Committee on March 23, 1999 at which time it was decided to investigate the feasibility of amending the bill to include a filing fee. Following discussion Senator Vratil made a motion to amend HB 2259 to provide a \$10 filing fee for the affidavit, Senator Bond seconded, carried. Senator Vratil moved to pass the bill out favorably as amended, Senator Bond seconded, carried.

**HB 2469—an act concerning drugs; relating to methamphetamine and other chemicals; crimes and criminal procedure; enacting the Kansas chemical control act**

Conferee Smith testified in support of **HB 2469**, a bill which addresses the problem of methamphetamine production in Kansas. He summarized the history of methamphetamine traffic in Kansas which he stated has increased to crisis proportions. He stated that Kansas, Missouri, Iowa and California are reported by the DEA to be the top producers of Methamphetamine in the nation and he discussed how the other states are taking steps to reverse this trend. He detailed the bill's provisions and discussed three proposed amendments. (attachment 1) Discussion followed.

The Chair briefly reviewed a Sentencing Commission Impact Statement and a note from the Office of Budget on **HB 2469**. (attachment 2)

Conferee Smoot testified briefly in support of **HB 2469**. He stated that there was some question regarding the proposed second amendment regarding "safe harbor products" which Conferee Smith discussed. He stated "no other state does this; we need our clients to look at this". (no attachment)

The Chair closed the hearing on **HB 2469** and stated that it would be discussed in Conference Committee.

**HB 2440—Concerning crimes, criminal procedure and punishment; relating to sentencing**

The Chair reviewed **HB 2440** stating that the original language that was stricken by the House is language that reflects what the bill purports to address and that the added "laundry list" may have unintended consequences. Discussion followed. Senator Vratil made a motion to amend HB 2440 by restoring the original language, Senator Goodwin seconded. Following consultation with staff and discussion, the motion carried with Senator Pugh voting nay. Senator Goodwin made a motion to amend the contents of SB 131 into HB 2440, Senator Vratil seconded, carried. Senator Vratil moved to pass the HB 2440 out favorably as amended, Senator Goodwin seconded, carried.

The meeting adjourned at 11:01 a.m.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 24, 1999

NAME	REPRESENTING
Jim Schieferocke	K.B.I.
Kyle Smith	KBI
Joan Gross	KDHE
Vicki Lynn Keenan	<del>DOB</del>
Paul Jones	KSC
Karin A. Schul	KSC
Kathy Boree	OLA
Nancy Lindberg	AG
Jimmy Clark	KCPAA
BOB GRANT	KCCI
Chad May	KADA
Ken Smith	Ks Bar Assoc
Pat Allen	CPRF
Duke Delet	Smoot + Associate
Brod Sopot	
Jake Fisher	Whitney Damron
Steve Montgomery	Dietary Supplement Coalition
Jennifer Schmidt	Mag. Roder Glasscock
Bill Long	Ks Gov. Council

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 24, 1999

NAME	REPRESENTING
DONA. MYER	KCVA
Lori Rost	KTEC
Bill Walls	KHOT
Julie Thomas	DOB
John Dameron	Phily Morris



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## Kansas Bureau of Investigation

Larry Welch  
*Director*

**Senate Judiciary Committee  
March 24, 1999  
Testimony of Kyle G. Smith  
Assistant Attorney General and Special Agent  
Kansas Bureau of Investigation  
Proponent House Substitute for HB 2469**

Carla J. Stovall  
*Attorney General*

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Carla Stovall and KBI Director Larry Welch, I ask for your support of House Substitute for 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.

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3-24-99  
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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.

This committee heard me testify last year on SB 667, a chemical control act, that this was the most serious challenge facing public safety in the 17 years that I've been in law enforcement. You heard Assistant Attorney General Katina Kypridakes of California warn this committee that the problem will worsen if decisive action wasn't taken. SB 667 died on the house side and I have to report we were both right, the problem is worse.

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 March 20, there had been 116 meth labs seized in Kansas. If that pace continues, our law enforcement officers will be risking their lives in **over 500** 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.

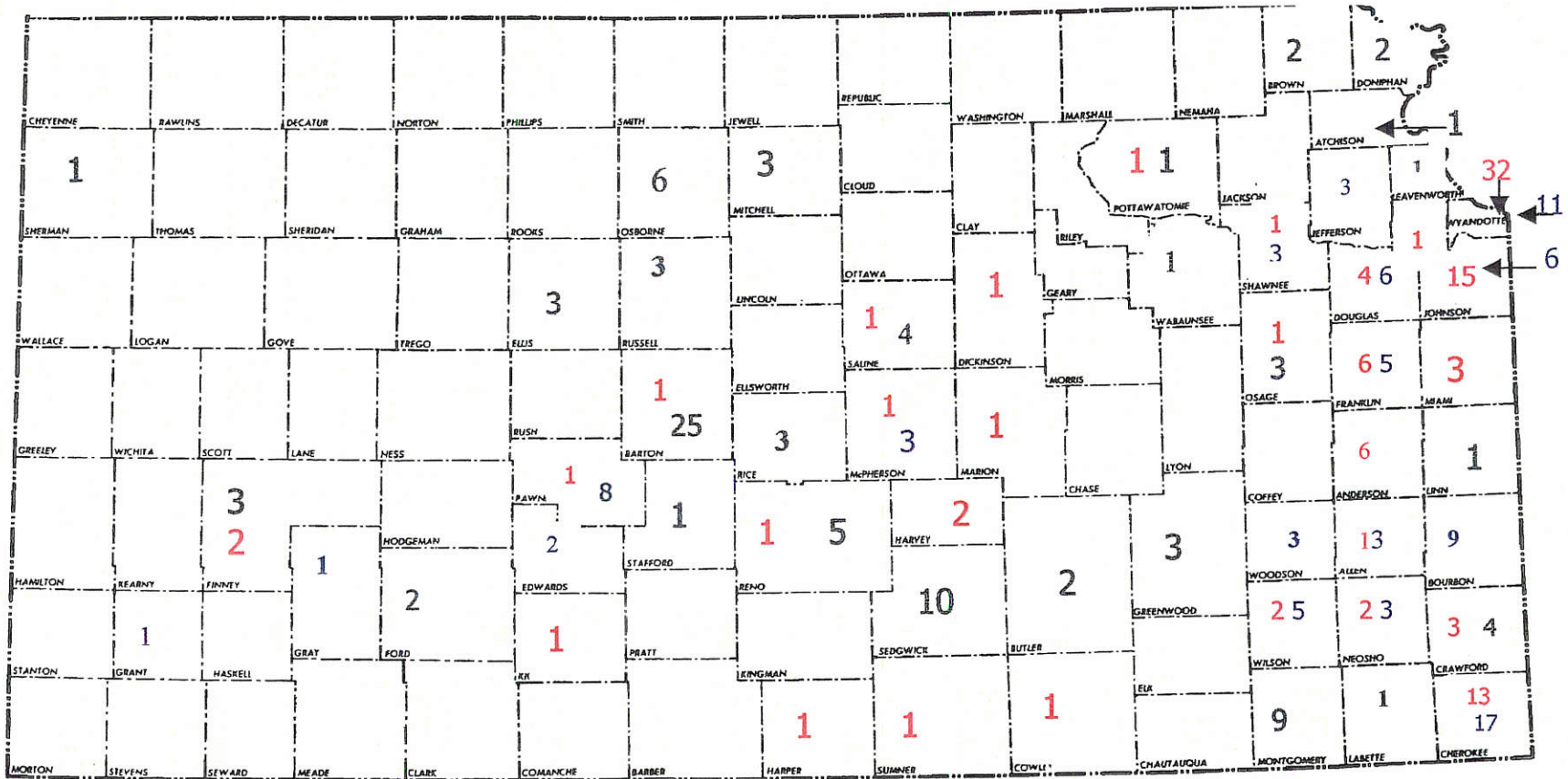
The proposed legislation is comprehensive in its efforts to make Kansas the least desirable place in the nation to manufacture methamphetamine. We owe it to our children, ourselves and our land to make every effort to stop this plague.

I have three requested amendments to the substitute bill. They are: (1) give all licensed practitioners the same right to distribute controlled chemicals, (2) remove the exemption for safe harbor products from the requirement that retailers and distributors report suspicious transactions, and (3) reinstate the authority of the secretary of Health and Environment to enter illegal lab sites to carry out their duty to clean them up. Dec 15

There is attached a comparison between the original bill and the substitute version. As you can see the House Judiciary was not willing to enact a chemical control act that required registration of distributors and retailers or would limit the number of packages of the precursor ephedrine alkaloids that a person could buy at one time. I hope the substitute bill will be effective in addressing the crisis. If not, I'm afraid we'll be back here next year with still worse statistics, to try again.

If you have other questions please contact me at your convenience.

# KANSAS CLANDESTINE METHAMPHETAMINE LABORATORY SEIZURES 1997 & 1998



Source: KBI/DEA Records

1997 Seizures - 99 - KBI and DEA  
 1998 Seizures - 189 - (1-1-98 through 01-01-99)  
 KBI and DEA

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## **Analysis of House Substitute for HB 2469 compared to Original Bill.**

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.

**House:** Further restricted exception to apply only in drug manufacturing investigations.

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.

**House:** Struck expansion to public parks and child care centers.

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.

**House:** Unchanged.

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.

**House:** Rewrote existing language to same result.

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.

**House:** Unchanged

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 of 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.

**House:** Left enhancements as to manufacturing, struck as to other trafficking offenses and struck as to public parks and child care centers.

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.

**House:** Struck

Sec 9. (Now section 7) **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.

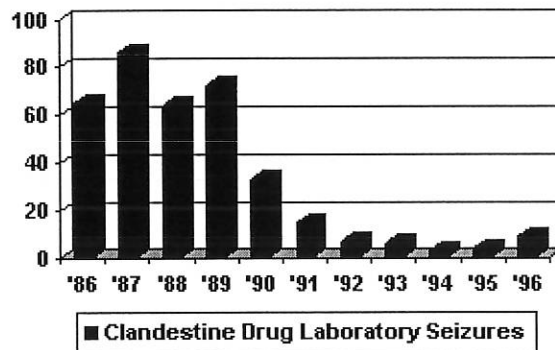
**House:** Reduced penalties for violations.

Sec. 10. (Now Section 8) **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.

**House:** Clarified that powers only apply in drug investigations by task forces.

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, psuedoephedrine 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 **82 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.

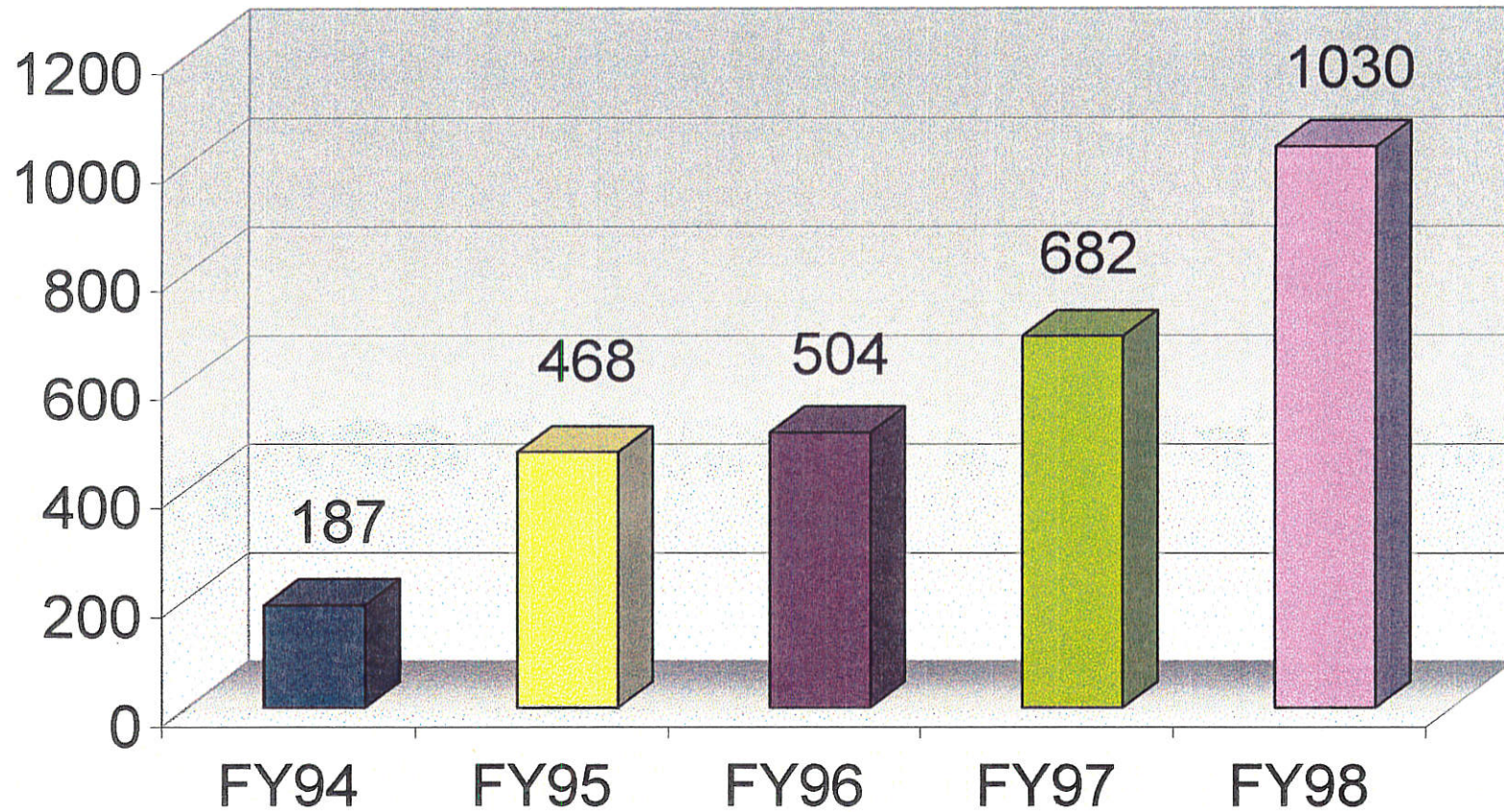
Federal statistics show that importation of psuedoephedrine has more than doubled in the last eight years. (see Appendix C) The population has not doubled nor have the number of colds. The manufacturers of the products containing these chemicals have made millions of dollars directly and indirectly providing 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.

**House:** Struck all registration requirements for transactions involving controlled chemicals. Added duplication of federal language which would require distributors and retailers to report to KBI any "suspicious transactions" involving the listed chemicals but not the over-the-counter "safe harbor" version of the ephedrine alkaloids which are the precursor in 82 % of the meth labs seized today. Also created three new crimes involving possession of precursor ephedrine alkaloids with intent to manufacture, knowingly selling ephedrine alkaloids for methamphetamine manufacture and distributing ephedrine alkaloids that are not listed in a federal monograph.

# Methamphetamine in Kansas - Primary Problem at Admission

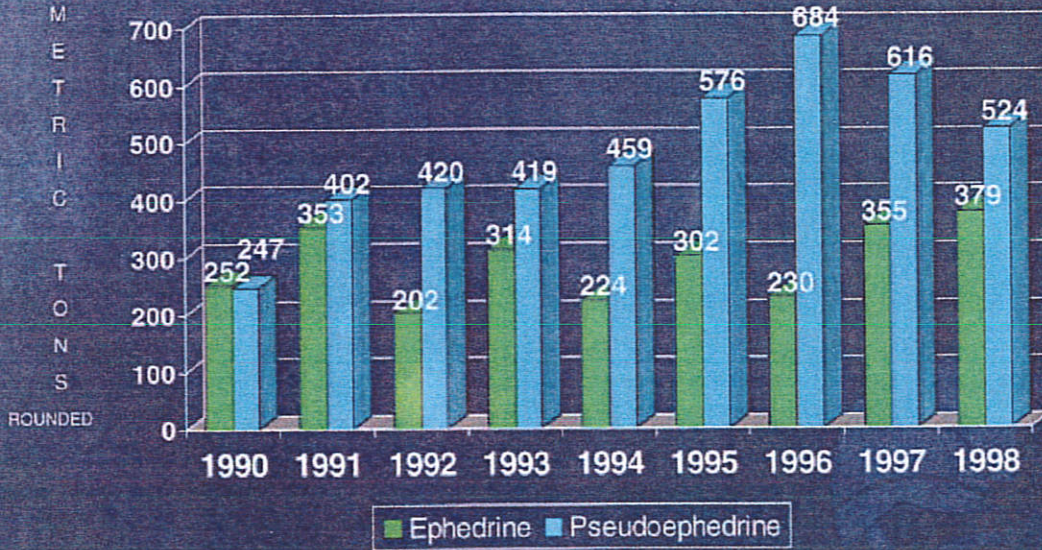
Source: Alcohol and Drug Abuse Services - 1999





## Ephedrine & Pseudoephedrine Imports

Calendar Years  
1990 - 1998



Proposed Amendment #1 (At request of Pharmacists)

- 1       New Sec. 12. The provisions of this act shall not apply to: (a) A dis-  
2       tribution of a regulated chemical to or by a common or contract carrier  
3       for carriage in the lawful and usual course of the business of the common  
4       or contract carrier, or to or by a warehouseman for storage in the lawful  
5       and usual course of the business of the warehouseman;  
6       (b) the lawful administering or dispensing of a regulated chemical by  
7       a licensed ~~physician, dentist, or veterinarian~~ **practitioner** in the course of professional  
8       practice or research;  
9       ~~(c) the lawful dispensing of a regulated chemical that is a controlled~~  
10      ~~substance by a pharmacist in the course of professional practice;~~  
11      **(d)(c)** the purchase, distribution or possession of a regulated chemical  
12      by a local, state or federal law enforcement agency while in the discharge  
13      of official duties unless the Kansas bureau of investigation properly no-  
14      tifies the local law enforcement agency relying on the exclusion that its  
15      investigatory activities are contrary to the public interest; or  
16      **(e)(d)** products containing ephedra or ma haung, which do not contain  
17      any chemically synthesized ephedrine alkaloids, and are lawfully marketed  
18      as dietary supplements under federal law.

Proposed Amendment # 2

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35 New Sec. 15. (a) Each regulated chemical distributor and retailer  
36 shall submit to the bureau:

37 (1) Any regulated transaction involving an extraordinary quantity of  
38 a regulated chemical, an uncommon method of payment or delivery, or  
39 any other circumstance that may indicate that the regulated chemical will  
40 be used in violation of this act.

41 (2) Any proposed regulated transaction with a person whose descrip-  
42 tion or other identifying characteristic the bureau has previously fur-  
43 nished to the regulated chemical distributor or retailer.

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1 (3) Any unusual or excessive loss or disappearance of a regulated  
2 chemical under the control of the regulated chemical distributor or re-  
3 tailer. The regulated person responsible for reporting a loss in-transit is  
4 the distributor.

5 (b) Each report submitted pursuant to subsection (a), whenever pos-  
6 sible shall be made orally to the bureau at the earliest practicable oppor-  
7 tunity after the regulated chemical distributor or retailer becomes aware  
8 of the circumstances involved and as much in advance of the conclusion  
9 of the transaction as possible. Written reports of these transactions shall  
10 subsequently be filed within 15 days after the regulated chemical distrib-  
11 utor or retailer becomes aware of the circumstances of the event. A trans-  
12 action may not be completed with a person whose description or identi-  
13 fying characteristics have previously been furnished to the regulated  
14 distributor by the bureau unless the transaction is approved by the  
15 bureau.

16 (c) This section shall not apply to any of the following:

17 (1) Any pharmacist, pharmacy or other authorized person who sells  
18 or furnishes a substance listed in subsection (l) of section 11 and amend-  
19 ments thereto upon the prescription or order of a practitioner as defined  
20 under subsection (x) of K.S.A. 65-1626 and amendments thereto;

21 (2) any practitioner as defined under subsection (x) of K.S.A. 65-1626  
22 and amendments thereto who administers, dispenses or furnishes a sub-  
23 stance listed in subsection (l) of section 11 and amendments thereto to  
24 such patients within the scope of a practitioner's professional practice.  
25 Such administration or dispensing shall be in the patient record;

~~26 (3) an sale, transfer, furnishing or receipt of any drug which contains  
27 any substance listed in subsection (l) of section 11 and amendments  
28 thereto and which is lawfully sold, transferred or furnished over the  
29 counter without a prescription pursuant to the federal food, drug and  
30 cosmetic act or regulations adopted thereunder; and~~

~~31 (4) a regulated chemical retailer who only sells or distributes regu-  
32 lated chemicals that are nonprescription, over the counter medicines  
33 with less than three grams of base ingredient in the package in the fol-  
34 lowing manner:~~

~~35 (A) Blister packs of not more than two dosage units per blister;~~

~~36 (B) liquid cold or cough medicines;~~

~~37 (C) liquid cold or cough gel capsules; and~~

~~38 (D) nasal drops or sprays.~~



Proposed Amendment # 3

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28 New Sec. 20. (a) The secretary is authorized to: (1) Develop a con-  
29 tract with a hazardous waste response contractor for joint use by the  
30 Kansas department of health and environment and the Kansas bureau of  
31 investigation to conduct investigation and clean up of chemicals, chemi-  
32 cal-contaminated materials, soil, or groundwater resulting from a poten-  
33 tial illegal drug manufacturing site or from an arrest made pursuant to  
34 the provisions of this act;

35 (2) authorize any person to carry out any clean up action in accord-  
36 ance with the directions or requirements of the secretary, if the secretary  
37 determines that the person will commence and complete the clean up  
38 properly and in a timely manner;

39 (3) undertake directly or by contract any cleanup action necessary at  
40 an alleged illegal drug manufacturing site including the cleanup, storage  
41 and disposal of chemicals and chemical contaminated materials located  
42 at an alleged illegal drug manufacturing site;

# # #

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*(j) Any authorized officer, employee or agent of the department or any person under contract with the department may enter onto the premises of any alleged illegal drug manufacturing site, at reasonable times to review information, inspect, examine or gather data, conduct investigations, take remedial or other action where the secretary determines that such action is necessary to protect the public health or the environment;*



State of Kansas  
KANSAS SENTENCING COMMISSION

Honorable Richard D. Walker, Chair  
District Attorney Paul Morrison, Vice Chair  
Barbara S. Tombs, Executive Director

**MEMORANDUM**

**To:** Duane A. Goossen, Director of the Budget  
**ATTN: Julie Thomas**

**From:** Barbara S. Tombs  
Executive Director

**Date:** March 19, 1999

**RE:** **Fiscal Note on HB 2469**

**SUMMARY OF BILL:**

\* An Act concerning drugs; relating to methamphetamine and other chemicals; crimes and criminal procedure; enacting the Kansas chemical control act; prescribing certain penalties.

\* This proposed bill amends several statutes related to the enforcement of drug laws and sentencing for violations of drug laws in Kansas, mainly focused on Meth labs.

**IMPACT ON KANSAS SENTENCING COMMISSION:**

**Based on the current duties of the Kansas Sentencing Commission, the change proposed in this bill will not effect any of the following:**

1. The current operation or responsibilities of the Commission
2. The current budget of the Commission.
3. The current staffing and operating expenditure levels of the Commission.
4. The long-range fiscal estimates of the Commission.

**IMPACT ON PRISON ADMISSIONS:**

- Increase by an estimated: **2 to 20 per year**
- Potential to increase but cannot quantify
- Decrease by an estimated:
- Potential to decrease but cannot quantify
- Remain the same

Note: This bill will increase prison admissions since Section 7 of the bill creates a new offense

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entitled "unlawful endangerment" and contains three levels of punishment: a severity level 8, nonperson felony; a severity level 7 person felony and a severity level 5, person felony. The severity level 5 penalty has the highest probability of resulting in a prison admission, since all grid cells on that level are presumptive prison, although the two border boxes do allow for the imposition of a nonprison sentence. In addition, Section 14 of the bill establishes a new drug severity level 1 felony which would also contribute to an increase in prison admissions. Since the increase in admissions would be associated with the enactment of new offenses, there is no historical data on which to base the projected increase but given the information available, it is estimated that prison admissions would increase between 2 and 20 offenders per year.

#### **IMPACT ON OFFENDER POPULATION LEVELS:**

- have impact on offender population as noted below.
- have the potential to impact offender population as noted below.
- have minimal or no impact on offender population.
- have impact but cannot be quantified with data available.

Note: This bill impacts prison population in two ways. The first impact will be directly correlated with the increase in admissions. The second impact will result from the increase in current penalties for various offenses. Since this bill has multiple sections that either elevate penalties or create new ones, the impacts will be presented by individual sections.

**Section 5:** Amends K.S.A. 1998 Supp. 65-14152(a)(4) to add "*anhydrous ammonia for the illegal production of a controlled substance in a container not approved for that chemical by the Kansas department of agriculture*" to the list of substances that it is illegal to possess. The penalty for this crime is designated as a severity level 4 felony.

**Bed Space Impact Assessment  
House Bill No. 2469 Section 5  
K.S.A. 65-4152(a)(4) Add a New Drug Severity Level 4**

#### **KEY ASSUMPTIONS**

- ◆ Projected admissions to prison are assumed to increase by an annual average of one percent. Bed space impacts are in relation to the baseline forecast produced in August 1998 by the Kansas Sentencing Commission.
- ◆ Percentage of targeted inmate sentences served in prison are assumed to be 85 percent, less estimated good time lost and jail credits under current policy for all scenarios.

#### **FINDINGS**

- ◆ In FY 1998, there was no offenders admitted to prison under K.S.A. 65-4152(a)(4). Thus, it is assumed that the number of offenders admitted to prison under 65-4152(a)(4) will be the same as 65-4152(a)(3). During FY 1998, there were 4 offenders admitted to prison under 65-4152(a)(3) with an average length

of stay of 17.25 months.

- ◆ If K.S.A. 1998 Supp. 65-4152(a)(4) is amended to add "anhydrous ammonia for the illegal production of a controlled substance in a container not approved for that chemical by the Kansas Department of Agriculture" to the list of substances that it is illegal to possess and makes the unlawful possession of anhydrous ammonia a drug severity level 4 felony, by the year 2009, **a total of 7 additional beds will be needed.**

### Bed Space Impact Assessment

June of Each Year	Impact Forecast
2000	4
2001	6
2002	6
2003	6
2004	6
2005	6
2006	7
2007	7
2008	7
2009	7

**Section 6:** Increases the penalties for manufacture or attempted manufacture of a controlled substance. A conviction for a first offense is raised from severity level 2 to severity level 1. A conviction for a second offense is raised from a severity level 1 to an off-grid life sentence.

### Bed Space Impact Assessment

#### House Bill No. 2469 Section 6

#### K.S.A. 65-4159(b)(1) Raised from Drug Severity Level 2 to Drug Severity Level 1

#### KEY ASSUMPTIONS

- ◆ Projected admissions to prison are assumed to increase by an annual average of one percent. Bed space impacts are in relation to the baseline forecast produced in August 1998 by the Kansas Sentencing Commission.
- ◆ Percentage of target inmate sentences served in prison is assumed to be 85

percent, less estimated good time lost and jail credits under current policy for all scenarios.

**FINDINGS**

- ◆ In FY 1998, there were 16 inmates admitted to prison for the offense of first conviction for manufacture or attempted manufacture of a controlled substance (K.S.A. 65-4159(b)(1)).
- ◆ If the current policy remains unchanged, by the year 2009, a total of 61 beds will be needed. If the current number of offenders sentenced on drug severity level 2 are raised to drug severity level 1, by the year 2009, a total of 168 beds will be needed. This impact will result in the need for an **additional 107 beds by the year 2009.**

**Bedspace Impact Assessment**

June of Each Year	Scenario #1 Baseline Forecast	Scenario #2 Impact Forecast	Additional Beds Needed
2000	16	16	0
2001	28	32	4
2002	36	48	12
2003	41	65	24
2004	48	82	34
2005	44	99	55
2006	50	116	66
2007	51	133	82
2008	53	150	97
2009	61	168	107

**Bed Space Impact Assessment  
House Bill No. 2469 Section 6**

**K.S.A. 65-4159(b)(2) Raised from Drug Severity Level 1 to Off-Grid**

**KEY ASSUMPTIONS**

- ◆ Projected admissions to prison are assumed to increase by an annual average of one percent. Bed space impacts are in relation to the baseline forecast produced in August 1998 by the Kansas Sentencing Commission.
- ◆ Percentage of targeted inmate sentences served in prison is assumed to be 85

percent, less estimated good time lost and jail credits under current policy for the baseline scenario.

- ◆ Percentage of the length of stay in prison for the impact target inmates is assumed to be 100 percent, with no good time allocations nor eligible for parole for 15 years.

**FINDINGS**

- ◆ In FY 1998, there was one inmate admitted to prison for the crime of second conviction for manufacture or attempted manufacture of a controlled substance (K.S.A. 65-4159(b)(2)).
- ◆ If the current policy remains unchanged, by the year 2009, a total of 4 beds will be needed. If the penalty for the **one offender** convicted of the above offense is raised from drug severity level 1 to life, an off-grid penalty by the year 2009, a total of 10 beds will be needed. This penalty change would result in the need for **an additional 6 beds by the year 2009.**
- ◆ If **two offenders** are admitted to prison each year under K.S.A. 65-4159(b)(2) and sentenced to life off-grid, by the year 2009, a total of 20 beds will be needed. This penalty change would result in the need for **an additional 16 beds by the year 2009.**
- ◆ If **five offenders** were admitted to prison each year under K.S.A. 65-4159(b)(2) and sentenced to life off-grid, by the year 2009, a total of 50 beds will be needed. This penalty change would result in the need for **an additional 46 beds by the year 2009.**

**Bed Space Impact Assessment**

June of Each Year	Scenario #1 Baseline Forecast	Scenario #2 One Person Per Year	Scenario #3 Two Persons Per Year	Scenario #4 Five Persons Per Year
2000	1	1	2	5
2001	2	2	4	10
2002	3	3	6	15
2003	3	4	8	20
2004	4	5	10	25
2005	4	6	12	30
2006	4	7	14	35
2007	3	8	16	40
2008	4	9	18	45
2009	4	10	20	50
<b>Additional Beds Needed by Year 2009</b>	<b>0</b>	<b>6</b>	<b>16</b>	<b>46</b>

**Section 7:** This section creates a new crime called "unlawful endangerment" that would apply to anyone who attempts to protect the production of a controlled substance by setting up, building, erecting or using any device or weapon to cause damage or injury to another person. There are three levels of punishment for this offense, including a severity level 8 person felony, severity level 7 person felony and a severity level 5 person felony. The severity level classification is dependent on the degree of harm or injury the device or weapon causes.

**Bed Space Impact Assessment  
House Bill No. 2469 Section 7  
New Crime - Unlawful Endangerment**

**KEY ASSUMPTIONS**

- ◆ Projected admissions to prison are assumed to increase by an annual average of one percent. Bed space impacts are in relation to the baseline forecast produced in August 1998 by the Kansas Sentencing Commission.
- ◆ Percentage of target inmate sentences served in prison is assumed to be 85 percent, less estimated good time lost and jail credits under current policy for all scenarios.
- ◆ **Scenario One:** It is assumed that 10% of the unlawful endangerment offenders will be classified as a severity level 5, person felony. Based on current sentencing practice, it is assumed that all of these offenders will be incarcerated in prison.
- ◆ **Scenario Two:** It is assumed that 45% of the unlawful endangerment offenders will be classified as a severity level 7, person felony. Based on current sentencing practice, it is assumed that 10% of these offenders will be sentenced to prison and 90% will receive presumptive nonprison sentences
- ◆ **Scenario Three:** It is assumed that 45% of the unlawful endangerment offenders will be classified as severity level 8, nonperson felony. Based on current sentencing practice, 10% of these offenders will be incarcerated in prison and the other 90% will be sentenced to presumptive nonprison.

**FINDINGS**

- ◆ In FY 1998, there was no inmate admitted to prison under the new crime of "unlawful endangerment" since this is a new offense. According to information provided by the KBI, there were 71 labs in 1996, 99 labs in 1997, and 189 labs in 1998. The average yearly number of meth lab cases for the past three years is 120.
- ◆ **Scenario One:** If 10% of the average 120 cases are classified as severity level 5 person felony offenders and sentenced to prison under current sentencing practice, by the year 2009, **a total of 43 beds will be needed.**

- ◆ **Scenario Two:** If 45% of the average 120 cases are sentenced as severity level 7 person felony offenders and 10% of those offender will be sentenced to prison and the other 90% will be on probation under current sentencing practice, by the year 2009, **a total of 21 beds will be needed.**
- ◆ **Scenario Three:** If 45% of the average 120 cases are sentenced as severity level 8 nonperson felony offenders and 10% are sentenced to prison and the other 90% are sentenced to probation under current sentencing practice, by the year 2009, **a total of 18 beds will be needed.**
- ◆ **Implementation of this new offense will result in a total of 82 additional prison beds by the year 2009.**

**Section 14:** This section creates a new drug grid severity level 1 felony for individuals who possess the chemicals necessary to produce methamphetamine with the intent to use those chemicals to produce methamphetamine. The new penalty would also apply to individuals who market or sell the drugs necessary to produce meth, if the person doing the marketing or selling "knows or reasonably should know that the purchaser will use the product as a precursor to any illegal substance." Finally this penalty would also apply to anyone who markets, sell, advertises distributes or labels any product containing the drugs necessary to produce meth.

**Bed Space Impact Assessment  
House Bill No. 2469 Section 14  
New Drug Level 1 Crime**

**KEY ASSUMPTIONS**

- ◆ Projected admissions to prison are assumed to increase by an annual average of one percent. Bed space impacts are in relation to the baseline forecast produced in August 1998 by the Kansas Sentencing Commission.
- ◆ Percentage of target inmate sentences served in prison is assumed to be 85 percent, less estimated good time lost and jail credits under current policy.

**FINDINGS**

- ◆ If one offender per year was admitted to prison under this new drug severity level 1 crime, by the year 2009, **a total of 10 beds will be needed.**
- ◆ If three offenders were admitted to prison under the new drug severity level 1 crime, by the year 2009, **a total of 30 beds will be needed.**
- ◆ If five offenders were admitted to prison under the new drug severity level 1 crime, by the year 2009, **a total of 50 beds will be needed.**



### Bed Space Impact Assessment

June of Each Year	Scenario #1 One Person Per Year	Scenario #2 Three Persons Per Year	Scenario #3 Five Persons Per Year
2000	1	3	5
2001	2	6	10
2002	3	9	15
2003	4	12	20
2004	5	15	25
2005	6	18	30
2006	7	21	35
2007	8	24	40
2008	9	27	45
2009	10	30	50

#### SUMMARY OF IMPACT:

HB 2469 defines a series of criminal acts associated with meth labs and designates penalties for violation of these offenses. The impact of this bill on prison admissions is projected to be an increase of between 2 to 20 offenders since the bill does create some new crimes for which an increase in admissions could occur. The impact of prison population is summarized in the table below, by individual sections of the bill. Since there is no historical data available for some of the crimes, a range is provided to allow for estimation of the impact on prison bed needs.

<b>Bedspace Impact of HB 2469 by FY 2009</b>		
Section	Minimum Bedspace Impact	Maximum Bedspace Impact
Section 5	7	7
Section 6: Level 2 to Level 1	107	107
Level 1 to Offgrid	6	46
Section 7	82	82
Section 14	10	50
<b>Total Bedspace Impact FY 2009</b>	<b>212 Beds Needed</b>	<b>292 Beds Needed</b>