

Approved: March 30, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 11:10 a.m. on March 29, 1999 in Room 313 of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Joyce Allegrucci

Others attending: see attached list

A motion was made by Senator Feleciano to approve the March 24 and March 25 minutes, Senator Donovan seconded, carried.

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

At the request of the Chair for a subcommittee report on **HB 2469**, Subcommittee Chair Senator Vratil deferred to Staff Research Person Heim who discussed the subcommittee's recommended amendments to the bill. The first amendment would make voluntary, a retailer's reporting of suspicious purchases, thefts, or other certain transactions of regulated chemicals or non-regulated drugs. Following discussion Senator Vratil moved to amend the bill so that reporting would be voluntary, Senator Goodwin seconded, carried. Following discussion of the second recommended amendment, an amendment by Barbara Tombs, Kansas Sentencing Commission who suggested "the vehicle for penalty enhancements be made by adding departure criteria to include engaging in the manufacture of methamphetamines rather than by creating off grid crimes and enacting general sentencing enhancements for all illicit drug manufacturing or production" Senator Feleciano moved to adopt the suggested amendment, Senator Vratil seconded, carried. After discussion of the third suggested amendment which clarifies language regarding pharmacists, Senator Vratil moved to adopt the pharmacist clarification amendment, Senator Goodwin seconded, carried. There was detailed discussion regarding the fourth and final recommended amendment from the Kansas Bureau of Investigation (KBI) which contains a provision that allows KDHE to clean up methamphetamine labs after law enforcement has made seizure. Senator Vratil stated that questions were asked in subcommittee about whether this provision could be used as a substitute for obtaining a search warrant and he stated "this provision should never be construed as a substitute for a search warrant." Senator Vratil moved to adopt KBI's amendment #3, Senator Goodwin seconded, carried. Following further discussion Senator Feleciano moved to pass HB 2469 out favorably as amended, Senator Goodwin seconded, carried with Senator Pugh voting nay. (attachment 1)

Written testimony in support of **HB 2469** was submitted by Nancy Bukar, Nonprescription Drug Manufacturers Association. (attachment 2)

SB 286—An act concerning the residential landlord and tenant act; relating to the termination of the rental agreement; expedited eviction procedure act

Senator Vratil summarized the subcommittee's work on **SB 286**. Following discussion it was determined to adopt the subcommittee's recommendation to take no action on the bill. (see attachment 1)

SB 355--an act concerning the Kansas code for care of children; relating to permanent guardians; hearings

Conferee Allegrecci testified in support of **SB 355**. She stated that the bill "provides an alternative for children in need of a safe, permanent family and provides an opportunity to prevent unnecessary out of home placement". She highlighted several sections in the bill. (attachment 3)

Written testimony in support of **SB 355** was submitted by Bruce Linhos, Children's Alliance of Kansas. (attachment 4)

Following brief discussion, Senator Bond moved to pass SB 355 out favorably, Senator Goodwin seconded, carried.

The meeting adjourned at 11:51 a.m. The next scheduled meeting is March 30, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 29, 1999

NAME	REPRESENTING
David Grant	KCCI
Paul Johnson	PACK
S Therese Bangert	Ks. Cath. Conf.
BRAD SMOOT	J&J
Bill Sneed	Mack
Nancy Lindberg	AG
Kyle Smith	KBI
Roslyn James-Martin	SR Children & Family Services
David Miles	Associated Press
Bill Henry	Ks Gov. Consulty
Bm Smith	Ks Bus Assoc
MEUSSA BOISEN	THE FARM, INC.
myrtle myers	Johnson & Johnson
NANCY A. BUKAR	NDMA
Rockelle Chronister	SRS
Janet Schalansky	SRS
Steve Montgomery	Dietary Supplement Coalition
STEVE KEANEY	KOAA
James Clark	KCDAS

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 29, 1999

NAME	REPRESENTING
Bob Williams	KS Pharmacists Assoc
Melissa Ness	Ks. Children's Service League
Beverly Linder	Children's Alliance
Marilyn Jacobson	SRS - CFS
Joyce Allegrucci	SRS - CFS

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att #1

Senator Vratil's Subcommittee

1. S.B. 286 would create an expedited eviction process for tenants involved in serious criminal activity including drug crimes.

Conferees (March 24)

Proponents of the bill included:

Representative Rick Rehorn offered amendments to the bill to address certain items which had generated opposition.

Opponents of the bill included:

Eddie Lorenzo, American Civil Liberties Union of Kansas and Western Missouri
Patrick DeLapp, Shawnee County Landlords Association
Joy Spicer, Soroptomist International
Orville Johnson, Topeka
Ed Jaskinia, Associated Landlords of Kansas

Subcommittee Action

No Action.

2. H.B. 2469 would enact the Kansas Chemical Control Act and make other changes in the law to deal with the production and sale of methamphetamine.

Conferees (March 26)

Dave Debenham, Deputy Attorney General
Bob Alderson and Bob Williams, Kansas Pharmacists Association
Bud Grant, Kansas Chamber of Commerce and Industry
Nancy Baker, Nonprescription Drug Manufacturers Association

Subcommittee Action

The Subcommittee, by a 2-1 vote, recommended H.B. 2469 be amended as follows and passed favorably by the full Judiciary Committee:

1. Adopt Brad Smoot's suggested language regarding a Kansas Bureau of Investigation information program for retail merchants about methamphetamine production.

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2. Adopt Barbara Tombs, Kansas Sentencing Commission, suggestions that the vehicle for penalty enhancements be made by adding departure criteria to include engaging in the manufacture of methamphetamines rather than by creating off grid crimes and enacting general sentencing enhancements for all illicit drug manufacturing or production.
3. Adopt the pharmacist clarifying amendment, *i.e.*, Kyle Smith, Kansas Bureau of Investigation, Amendment No. 1.
4. Adopt Kyle Smith's amendment No. 3 dealing with the Kansas Department of Health and Environment's ability to enter into premises of any alleged illegal drug manufacturing site.

SENATE BILL No. 286

By Committee on Federal and State Affairs

Proposed Amendments to Senate Bill No. 286

2-10

1-3

9 AN ACT concerning the residential landlord and tenant act; relating to
10 the termination of the rental agreement; expedited eviction procedure
11 act; amending K.S.A. 58-2543 and 58-2564 and repealing the existing
12 sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) A landlord or the county or district attorney of
16 the county in which a leased premises is located shall have standing to
17 bring an action pursuant to the residential landlord and tenant act.

18 (b) ~~The county or district attorney may recover the costs of the action~~
19 ~~from the landlord. Costs allowable as provided in this section shall be as~~
20 ~~provided in subsections (1), (2), (3) and (4) of K.S.A. 60-2003 and amend-~~
21 ~~ments thereto. In order to recover costs from the landlord, the county or~~
22 ~~district attorney must request that the landlord first proceed pursuant to~~
23 ~~the expedited eviction provisions of subsection (b) of K.S.A. 58-2564 and~~
24 ~~amendments thereto to evict the person conducting the breach. If the~~
25 ~~landlord fails to proceed pursuant to such expedited eviction provisions~~
26 ~~and the county or district attorney does proceed pursuant to such exped-~~
27 ~~ited eviction provisions, the county or district may recover costs from~~
28 ~~the landlord as provided in this section. If the county or district attorney~~
29 ~~proceeds pursuant to such expedited eviction provisions without first re-~~
30 ~~questing the landlord to proceed pursuant to the expedited eviction pro-~~
31 ~~visions as provided in this subsection, the county or district attorney shall~~
32 ~~not recover costs from the landlord as provided in this subsection.~~

33 (c) This section shall be part of and supplemental to the residential
34 landlord and tenant act.

35 Sec. 2. K.S.A. 58-2543 is hereby amended to read as follows: 58-
36 2543. As used in this act: (a) "Action" includes recoupment, counterclaim,
37 setoff, suit in equity and any other proceeding in which rights are deter-
38 mined, including an action for possession.

39 (b) "Building and housing codes" includes any law, ordinance or gov-
40 ernmental regulation concerning fitness for habitation, or the construc-
41 tion, maintenance, operation, occupancy, use or appearance of any prem-
ises or dwelling unit

(c) "Dwelling unit" means a structure or the part of a structure that

Standing

1 is used as a home, residence or sleeping place by one person who main-
2 tains a household or by two or more persons who maintain a common
3 household; but such term shall not include real property used to accom-
4 modate a manufactured home or mobile home, unless such manufactured
5 home or mobile home is rented or leased by the landlord.

6 (d) "Good faith" means honesty in fact in the conduct of the trans-
7 action concerned.

8 (e) "Landlord" means the owner, lessor or sublessor of the dwelling
9 unit, or the building of which it is a part, and it also means a manager of
10 the premises who fails to disclose as required by K.S.A. 58-2551 and
11 amendments thereto.

12 (f) "Organization" includes a corporation, government, governmental
13 subdivision or agency, business trust, estate, trust, partnership or associ-
14 ation, two or more persons having a joint or common interest, and any
15 other legal or commercial entity.

16 (g) "Owner" means one or more persons, jointly or severally, in whom
17 is vested: (1) All or part of the legal title to property; or (2) all or part of
18 the beneficial ownership and a right to prevent use and enjoyment of the
19 premises; and such term includes a mortgagee in possession.

20 (h) "Person" includes an individual or organization.

21 (i) "Premises" means a dwelling unit and the structure of which it is
22 a part and facilities and appurtenances therein and grounds, areas and
23 facilities held out for the use of tenants generally or the use of which is
24 promised to the tenant.

25 (j) "Rent" means all payments to be made to the landlord under the
26 rental agreement, other than the security deposit.

27 (k) "Rental agreement" means all agreements, written or oral, and
28 valid rules and regulations adopted under K.S.A. 58-2556 and amend-
29 ments thereto, embodying the terms and conditions concerning the use
30 and occupancy of a dwelling unit and premise.

31 (l) "Roomer" means a person occupying a dwelling unit that lacks a
32 major bathroom and kitchen facility, in a structure where one or more
33 major facilities are used in common by occupants of the dwelling unit
34 and other dwelling units. As used herein, a major bathroom facility means
35 a toilet, and either a bath or shower, and a major kitchen facility means
36 a refrigerator, stove and sink.

37 (m) "Security deposit" means any sum of money specified in a rental
38 agreement, however denominated, to be deposited with a landlord by a
39 tenant as a condition precedent to the occupancy of a dwelling unit, which
40 sum of money, or any part thereof, may be forfeited by the tenant under
41 the terms of the rental agreement upon the occurrence or breach of
42 conditions specified therein.

43 (n) "Single family residence" means a structure maintained and used

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as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

(o) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

(p) "Partial eviction" means the eviction of specified persons from the leased premises.

Sec. 3. K.S.A. 58-2564 hereby amended to read as follows: 58-2564. (a) Except as otherwise provided in the residential landlord and tenant act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with K.S.A. 58-2555 and amendments thereto materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice, if the breach is not remedied in 14 days. The rental agreement shall terminate as provided in the notice regardless of the periodic rent-paying date, except that if the breach is remediable by repairs or the payment of damages or otherwise, and the tenant adequately initiates a good faith effort to remedy the breach prior to the date specified in the notice, the rental agreement will not terminate. However, in the event that such breach or a similar breach occurs after the 14-day period provided in this subsection, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice without providing the opportunity to remedy the breach. The rental agreement then shall terminate as provided in such notice regardless of the periodic rent-paying date.

(b) (1) *If there is a breach as provided in this subsection that is committed by the tenant, a member of the tenant's household, a guest of the tenant or a person under the control of the tenant on or within 1,000 feet of the leased premises, the landlord or the district or county attorney may deliver a written notice to the tenant advising such tenant that the rental agreement [will be terminated] within three days without the opportunity to remedy the breach. Such notice shall be served as required under subsection (c) of K.S.A. 58-2564, and amendments thereto. The three-day notice period provided for in this subsection shall be computed as three consecutive 24-hour periods. [The rental agreement then shall terminate as provided in such notice regardless of the periodic rent-paying date.] Conduct and offenses giving rise to a breach under this subsection shall include the execution of a search warrant that produces evidence of or arrests for violations of [K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-]*

landlord may terminate the

or that the district or county attorney shall commence an eviction action as provided in this act

*Unif Controlled
Substances Act*

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1 [3410, 21-3411, 21-3414, 21-3415, 21-3420, 21-3421, 21-3426, 21-3427,
2 21-3442, 21-3502, 21-3503, 21-3504, 21-3506, 21-3510, 21-3511, 21-
3 3512, 21-3513, 21-3515, 21-3516, 21-3517, 21-3518, 21-3715, 21-3716,
4 21-3718, 21-3719, subsection (b)(1) or (b)(2) of 21-3731, subsection (a)
5 or (b) of 21-3812, 21-3833, 21-4201, 21-4202, 21-4204, of] article 41 of
6 chapter 65 of the Kansas Statutes Annotated including felonies and mis-
7 demeanors, and amendments thereto. The law enforcement agency who
8 executes the search warrant or arrest pursuant to this subsection shall
9 notify the landlord in the manner provided in subsection (b)(2) within
10 seven days of executing such search warrant or arrest. The law enforce-
11 ment agency in the jurisdiction where the search warrant was served or
12 the arrest made shall state that if the landlord does not commence an
13 eviction action pursuant to this act, the county or district attorney may
14 proceed to evict the tenant [and assess the costs of the action against the
15 landlord]. The court may order a partial eviction if the tenant establishes
16 that such tenant was unable to take action to prevent the breach because
17 of verbal or physical coercion by the person conducting the breach. If the
18 court orders a partial eviction of a person conducting the breach as pro-
19 vided in this section, and the person evicted returns to the premises, such
20 conduct shall constitute a breach pursuant to this subsection by the re-
21 maining tenant or tenants and the provisions of this subsection shall apply
22 to the remaining tenant or tenants.

or that the tenant was without knowledge of
the breach

23 (2) Before filing an eviction action, the county or district attorney
24 shall provide the landlord a final notice that an eviction action shall pro-
25 ceed after the expiration of seven days from the date of final notice. Notice
26 as required in this subsection may be served on the landlord, or, if the
27 landlord cannot be found, by leaving a copy thereof at the landlord's usual
28 place of residence, or by delivering a copy thereof to some person over 12
29 years of age residing at the residence, or, if no person is found upon the
30 residence, by posting a copy of the notice in a conspicuous place thereon,
31 or by registered mail, registered mail return receipt requested, or certified
32 mail, return receipt requested, addressed to the landlord at the landlord's
33 usual place of residence. Proof of service by registered mail may be by
34 the affidavit of the person mailing such notice or by the return receipt.
35 Proof of service by certified mail may be by the return receipt. The seven-
36 day notice period provided in this subsection shall be computed as seven
37 consecutive 24-hour periods.

38 (3) The provisions of this subsection, section 1 and subsection (p) of
39 K.S.A. 58-2543 and amendments thereto shall constitute an expedited
40 eviction procedure and shall be known and may be cited as the expedited
41 eviction procedure act.

42 (c) The landlord may terminate the rental agreement if rent is unpaid
43 when due and the tenant fails to pay rent within three days after written

1 notice by the landlord of nonpayment and such landlord's intention to
2 terminate the rental agreement if the rent is not paid within such three-
3 day period. The three-day notice period provided for in this subsection
4 shall be computed as three consecutive 24-hour periods. When such no-
5 tice is served on the tenant or to some person over 12 years of age residing
6 on the premises, or by posting a copy of the notice in a conspicuous place
7 thereon, the three-day period shall commence at the time of delivery or
8 posting. When such notice is delivered by mailing, an additional two days
9 from the date of mailing should be allowed for the tenant to pay such
10 tenant's rent and thereby avoid having the rental agreement terminated.

11 ~~(e)~~ (d) Except as otherwise provided in the residential landlord and
12 tenant act, the landlord may recover damages and obtain injunctive relief
13 for any noncompliance by the tenant with the rental agreement or K.S.A.
14 58-2555 and amendments thereto.

15 ~~(d)~~ (e) The provisions of this section shall not limit a landlord's or
16 tenant's right to terminate the rental agreement pursuant to K.S.A. 58-
17 2570, and amendments thereto.

18 Sec. 4. K.S.A. 58-2543 and 58-2564 are hereby repealed.

19 Sec. 5. This act shall take effect and be in force from and after its
20 publication in the statute book.

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**American Civil Liberties Union
Of Kansas and Western Missouri
1010 West 39th Street, Suite 103
Kansas City, Missouri 64111
(816) 756-3113, (816) 756-0945 (fax)**

**Testimony of the American Civil Liberties Union of Kansas and
Western Missouri in Opposition to SB 286
By Eddie M. Lorenzo, Legal Director
March 24, 1999**

Good afternoon. My name is Eddie Lorenzo. I am the Legal Director for the American Civil Liberties Union of Kansas and Western Missouri. The ACLU is a non-profit advocacy organization devoted to the defense and promotion of the Bill of Rights. Our office in Kansas City serves all of Kansas and the western half of Missouri. We are a membership organization with over 2,500 members in this region. In Kansas, we have chapters in Wichita and at the University of Kansas.

The right to be treated fairly by the government whenever the loss of liberty or property is at stake is one of our country's most cherished political values. It is because of this traditional American principle that the ACLU opposes SB 286, the Expedited Eviction Procedure Act.

More specifically, the ACLU opposes SB 286 because it denies tenants the right to a hearing before eviction – a rental agreement can be terminated simply upon three days notice by the landlord or district attorney; and it puts innocent and unknowing tenants at risk of being evicted for the bad acts of others because it sets no requirement that the tenant knew or reasonably should have known that members of his household or guests have somehow violated the law.

It is clear that the purpose of this act is to punish civilly those who would violate the laws of this state and those who would contribute to the violation of law. However, while a defendant in a criminal prosecution is entitled to all the constitutional and procedural protections associated with the criminal process, a person facing an expedited eviction under this act would receive none of the constitutional safeguards associated with principles of fairness and due process. Without those safeguards, a completely innocent tenant, unaware of the criminal activities of his guests or members of his household, would have no defense available to him to prevent him from eviction, except a showing of verbal or physical coercion.

While the standard in a criminal case requires that a prosecutor prove beyond a reasonable doubt that a defendant is guilty of crime alleged, no standard exists under this act that would require similar proof of a tenant's liability or knowledge of criminal activity.

At the very least, the ACLU believes that safeguards be added to this act in order to protect those who may be truly innocent. First, the act should provide for a hearing before an eviction can occur. At that hearing, the court, not a landlord or prosecutor, can decide whether there are grounds under the act to evict a tenant. Second, the act should provide a standard of proof – whether that be clear and convincing evidence or preponderance of the evidence – by which a court can determine the liability of a tenant under the act. Lastly, the act must provide an “innocent tenant” defense to protect tenants from eviction who neither have knowledge of criminal activity occurring on or about their premises nor have consented to criminal activity occurring on or about their premises.

Due process and fairness require that legal mechanisms be put in place to protect the innocent. Until those mechanisms are set forth, this proposed act would place law abiding tenants at risk of unjustified eviction.

Thank you.

RE: SENATE BILL No. 286

Dear Committee Members

I am Patrick DeLapp, and I am an Officer with the Shawnee County Landlords Association.

Although we do not want want drugs or other criminal activity in our property we do not support this bill. There are better ways of getting the job done with out stepping on the rights of people.

Problems we have with this Bill are as follows:

-This bill will allow the county or district attorney to evict someone without even telling the owner. (line 28-32)

The eviction is based not on a conviction but only an accusation. A conviction or even prosecution for the purported offense may not even take place, and we are being told to deny housing. Why don't we go ahead and ask Billions not to sell food to them or KPL not to supply utility service?

-This bill tries to mimic the federal policy of "one strike and you're out", protections of civil rights is addressed in this federal policy but it is hidden in the fine print, and seldom ever mentioned.

Bill being proposed gives the tenants absolute liability for conduct of household members and guests, regardless of whether he or she was personally engaged in the prohibited drug or activity. Should we be fair and give a parent the same absolute liability for action of he or her sons and daughters? Maybe this bill should void thier mortgages.

-In Shawnee county currently, the sheriffs department in a controversy concerning missing drugs from a "safe lock-up" facility. Some are being accused of using the drugs, taking the drugs, or even potential cover up. Should I now based on these accusations throw the officers involved in this out on the street, and how about all of their friends that had them over at their own homes should I throw them out too?

-Interesting the FOP (Fateral Order of Police), just had a new contract which was approved by a local governing body. In that contract is specific provision banning the use of any random drug testing. Why? What are they afraid of? Any honest person would certainly have no problem complying. ?????

Too many rights are being violated in this bill. Let's kill this bill. Vote this bill down.

Patrick DeLapp

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~~The~~ Good afternoon, my name is Joy Spicer, I live in Topeka, KS and I am a member of Soroptimist International.

SOROPTIMIST INTERNATIONAL is a world-wide federation of classified women who are business owners, professionals, or executives in business. We are a service organization, representing a wide range of occupations, professions, and businesses, who enjoy community service and fellowship.

SOROPTIMISTS sponsor & support community service activities locally, in addition to our commitment to projects at the national & international level, which improve the quality of life for people worldwide. Our service goals are accomplished through six major program areas:

- * Human Rights/Status of Women
- * Health
- * Education
- * Environment
- * Economic & Social Development
- * International Goodwill & Understanding

**SOROPTIMIST INTERNATIONAL
OF TOPEKA, KANSAS
SUPPORTS:**

- * Kansas Children's Service League
- * Women's Recovery Center
- * Florence Crittenton Services
- * Battered Women Task Force
- * Topeka Rescue Mission

Our organization works hard to create public awareness to end domestic violence and sexual assault; ^{did you know} someone is abused every 15 seconds.

More women are seriously injured by beating than by car accidents, muggings and rapes combined. You provide in this bill what appears to be some protection for women and children by providing a partial eviction for the one accused of the crime. On the surface, this seems good. But in thinking it through, this is not good!

This bill allows for no attempts at reconciliation. If the abuser gets help and marriage counseling, ~~and~~ ^{and} the couple shows good results, the family is not allowed to remain intact. The family must remain torn apart for if the abuser returns to the residence, the victim is automatically evicted.

Let's say ~~counseling~~ reconciliation is not a possibility, if there are children involved, the non-custodial parent will not be allowed to visit their own children, or even go by to pick them up, go to their birthday party, or comfort them when they are sick. If they set foot on the property,

the custodial parent ~~and~~ and children
are evicted, made to be victims twice.

I do not support this bill.

Bob Alderson

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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 in the course of professional
8 practice or research;

practitioner

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) 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~~

(d)

16 ~~(e) 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.~~

19 New Sec. 13. (a) The secretary is authorized and directed to: (1)
20 Adopt such rules and regulations, standards and procedures as may be
21 necessary to carry out the purposes and provisions of this act;

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

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

26 (4) administer the chemical control program pursuant to provisions
27 of this act;

28 (5) cooperate with appropriate federal, state, interstate and local units
29 of government and with appropriate private organizations in carrying out
30 the duties under this act;

31 (6) issue such orders necessary to implement the provisions of this
32 act, and enforce the same by all appropriate administrative and judicial
33 proceedings;

34 (7) collect and disseminate information and conduct educational and
35 training programs relating to the chemical control program;

36 (8) accept, receive and administer grants or other funds or gifts from
37 public and private entities, including the federal government, for the pur-
38 pose of carrying out the provisions of this act;

39 (9) enter into contracts and agreements with the director of the Kan-
40 sas bureau of investigation, other government agencies or private entities
as necessary to carry out the provisions of this act; and

41 (10) examine and copy records and other information.

42 (b) The secretary may request the attorney general to bring an action

1-15

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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 in the course of professional
8 practice or research; pharmacist

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) 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) 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.~~ (d)

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27 of this act;

28 (5) cooperate with appropriate federal, state, interstate and local units
29 of government and with appropriate private organizations in carrying out
30 the duties under this act;

31 (6) issue such orders necessary to implement the provisions of this
32 act, and enforce the same by all appropriate administrative and judicial
33 proceedings;

34 (7) collect and disseminate information and conduct educational and
35 training programs relating to the chemical control program;

36 (8) accept, receive and administer grants or other funds or gifts from
37 public and private entities, including the federal government, for the pur-
38 pose of carrying out the provisions of this act;

39 (9) enter into contracts and agreements with the director of the Kan-
40 sas bureau of investigation, other government agencies or private entities
41 as necessary to carry out the provisions of this act; and

42 (10) examine and copy records and other information.

43 (b) The secretary may request the attorney general to bring an action

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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HB 2469

March 26, 1999

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Subcommittee on the Kansas Chemical Control Act

by

Bud Grant
Vice President and General Manager

Mr. Chairman members of the subcommittee:

My name is Bud Grant, Vice President of the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to comment on the proposed "suspicious order" amendment to HB 2469.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

I had the opportunity to review the testimony of the Nonprescription Drug Manufacturers Association (NDMA), and fully endorse the comments of its representative. I will not restate those points, but do want to emphasize the need to work together to address this problem. Wal-Mart has implemented a program to control the sale of certain OTC drugs. Retailers do want to assist, but

ut state imposed sanctions. What works for one retailer, in one setting, may not work for all retailers.

The Kansas Retail Council opposes the proposed "suspicious order" amendment, but stands ready to join with the KBI, NDMA, and others to implement a plan to educate Kansans and eradicate meth labs.

Thank you again and I would be pleased to attempt to answer questions.

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION
TESTIMONY REGARDING HOUSE BILL 2469
THE KANSAS CHEMICAL CONTROL ACT
MARCH 26, 1999

My name is Nancy A. Bukar and I am State Government Counsel to the Nonprescription Drug Manufacturers Association¹. Thank you for this opportunity to testify before the Kansas House Judiciary Subcommittee. On behalf of NDMA, I am here to express our opposition to the Attorney General's proposed changes to Section 15 of House Bill 2469. These changes would require retailers and distributors to submit suspicious order reports to the Kansas Bureau of Investigation (KBI) for sales of any and all products containing regulated chemicals.

Although we do not object to the Attorney General's other proposed changes to H.B. 2469, we are opposed to those in Section 15 because the information that would be reported to KBI is already being reported to local U.S. Drug Enforcement Administration (DEA) offices across the country and is available to KBI through their cooperative efforts with DEA. Under the provisions of the Comprehensive Methamphetamine Control Act of 1996 (CMCA), wholesale drug distributors and regulated chemical distributors are required to submit suspicious order reports to DEA. These reports must be submitted before completion of the sale or as soon as possible thereafter. To require the filing of the additional reports covering the same transactions with KBI would be burdensome and duplicative, especially because KBI can already access this information through DEA.

The CMCA does not require retailers to submit suspicious order reports. Unlike wholesalers, retailers have no experience in preparing and submitting suspicious order reports, let alone determining what "suspicious" would mean. Retailers required to submit suspicious order reports would be faced with the predicament of having their clerks make subjective judgments based on a customer's appearance, mannerisms, perceived socio-economic status of the purchaser and other vague criteria.

Neither DEA nor any other state, including Missouri, has required retailers to submit suspicious order reports. This is due to the fact that the information is readily available from distributor suspicious order reports. An unexplained change in retailer ordering patterns in products containing regulated chemicals would immediately trigger the filing of a report to DEA. Wholesale drug distributors have set up very sophisticated systems for complying with the requirements of the Controlled Substances Act and its amendment, the CMCA. These reports are more than sufficient to provide the necessary enforcement information to KBI.

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.

Besides the vagueness and difficulty of requiring additional suspicious order reports, there is a potentially serious concern that legitimate retailers and other businesses would simply avoid the burden associated with these products by simply choosing not to sell them. This, in turn, would limit the consumer's choice and options in purchasing these products while having little impact on the methamphetamine problem in Kansas.

Before implementing such stringent, untested requirements, NDMA proposes an amendment to H.B. 2469 that would require KBI to set up a retailer education and voluntary compliance program similar to what large retail chains like Wal-Mart are already doing. A copy of proposed language for such an amendment is attached. Before trying to impose harsh criminal sanctions on the retail community, why not try working together to solve this problem?

Finally, I would like to point out that a total of 9 states, including Missouri, have adopted language in precursor chemical control bills that mirror our model language for such proposals. **Not one of these states has required retailers to prepare and submit suspicious order reports.**

Thank you very much for your time and consideration of our views on this matter. I would be pleased to answer any of the committee's questions at this time.

New Section _____. The Bureau shall develop and maintain a program to inform retailers about the methamphetamine problem in Kansas and devise procedures and forms for retailers to use in reporting to the Bureau suspicious purchases, thefts or other transactions involving any products under their control which contain a regulated chemical under the provisions of this act including, but not limited to, nonprescription, over-the-counter medicines described in New Section 15(c)(4) of this act. Reporting by retailers as required by this section shall be voluntary. Retailers reporting information to the Bureau in good faith pursuant to this section shall be immune from civil liability.

***Kansas Sentencing Commission/Kansas Criminal
Justice Coordinating Council***

Jayhawk Tower
700 S.W. Jackson, Suite 501
Topeka, Kansas 66603

Telephone: (785) 296-0923
Fax: (785) 296-0927
KSC/KCJCC Web Site:
<http://www.ink.org/public/ksc>

Date: March 24, 1999
To: Senator Greta Goodwin, Senate Judiciary Committee
From: Barbara Tombs, Executive Director
Re: Sentencing Concerns Related to HB 2469

In reviewing the HB 2469, I have some concerns regarding the penalties set forth in the bill that appear to be in conflict with some of the sentencing proportionality issues addressed in SB 131, which was passed by the Senate earlier this month. Listed below is a brief summary of those concerns:

- (1) Section 6 of HB 2469 increases the penalty for first and second convictions for manufacture of a controlled substance. In reviewing the bill, this statute would also apply to offenders convicted of manufacturing any controlled substance, not just methamphetamine. Even though the bill was drafted to deal with meth labs, it has a net widening potential since it will give the same penalties for non-meth manufacture.
- (2) Section 6 also increases the penalty for second conviction for manufacture of a controlled substance to an off-grid offense, which under current law is a life sentence with 15 year parole eligibility. This is in direct conflict with SB 131, which attempts to limit off-grid life sentences to only the most serious crimes against a person - murder. Although meth manufacture is a serious offense and does have the potential to create great harm, it does not rise to the level of a planned and deliberate act to deprive an individual of his/or her life. In addition, SB 131 proposes to increase the off-grid life sentence from 15 to 20 years to reinforce the level of harm and violence associated with the act of murder. Placing a drug manufacture offense as an off-grid life sentence is not proportional to the other off-grid offenses.
- (3) Under current law, an offender convicted for the first time under the manufacture of a controlled substance statute could serve between 3.9 years and 6.9 years, depending on the offenders criminal history. Even if the offender earned all his good time, the time spent incarcerated would

only be decreased by 6 months to 1 year, depending on length of the sentence imposed. The proposed penalty increase from level 2 to level 1 would result in a sentence of between 11.5 years and 17 years, with maximum good time credits of 1.7 years and 2.6 months respectively. The proposed penalty increase would almost triple the sentence length.

(4) Section 6 also increases the penalty for second conviction for manufacture of a controlled substance from a severity level 1 offense to an off-grid life sentence. This change would result in an increase from the current 11.5 yrs to 17 years to a life sentence of 15 years before parole eligibility. Under current law, if the offender earns all his/her goodtime (which is unlikely) they would still serve 9.8 to 14.4 years in prison, which is just under the off-grid life sentence. Although it is true that the offender is only eligible for parole at 15 years, there is still an equity issue surrounding life sentences for murder and life sentences for drug manufacture. Kyle Smith indicated in his testimony that Missouri's new Meth law enacted sentences of a 10 year minimum and 30 year maximum. Kansas current law very nearly fits into this sentence range.

(5) It should be noted that a Judge does have the option to depart upward and double the underlying prison sentence. If you wanted to increase the sentence length but limit the net widening impact of this bill, add something to address meth labs as factor for upward departures. You could still leave the second conviction for manufacture of a controlled substance as a level 1 and allow for doubling of the underlying sentence (The double rule where you can depart upward when certain aggravating factors are present and double the underlying prison sentence). You could even use this departure factor for the first manufacturing conviction. Rationally, this would enable you to address those types of situations that warrant very serious sentences without creating a sentencing structure that would include everyone convicted for a manufacture of a controlled substance.

If you departed upward and doubled the underlying prison sentence for drug severity level 1 the sentence lengths would increase from 11.5 - 17 yrs to 23 - 34 yrs - even exceeding Missouri's law. If the intent of this bill is to provide long sentences you can achieve this result without going off-grid. This sentencing option would be similar to what we do with doubling the underlying sentence in the sentencing of sex predators. If you have any questions, just give me a call.

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 # 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;



Better Health
Through Responsible
Self-Medication

March 29, 1999

The Honorable Tim Emert
Chair, Senate Judiciary Committee
Kansas Senate
Room 356E Statehouse
300 SW 10th Avenue
Topeka, Kansas 66612-1504

Re: Kansas Chemical Control Act, HB 2469

Dear Senator Emert:

I am writing to you in support of the objectives of House Bill 2469. NDMA supports House Substitute Bill 2469, as passed by the House, or the amended version which was recommended by the Senate Judiciary Subcommittee on March 26. In either form, H.B. 2469 will provide KBI with the necessary authority to prosecute methamphetamine manufacturers to the fullest extent of the law while also allowing consumers access to these legitimate and needed products.

As a reminder, a total of 9 states (including Missouri) have adopted language in precursor chemical control bills that mirror our association's model language for such proposals. **None of these states have required retailers or distributors to prepare and submit suspicious order reports.** There is a necessity in Kansas to have stricter laws in place to combat the methamphetamine problem and this legislation will do just that. Targeting the criminals without imposing unnecessary restrictions on sales to legitimate customers and burdensome reporting requirements on retailers is a reasonable and workable solution to this problem.

Thank you for your consideration on this important legislation. If you have any questions, please don't hesitate to contact me.

Sincerely,

Nancy A. Bukar
State Government Counsel

cc: Assistant Attorney General Kyle Smith
Members of the Senate Judiciary Committee

NAB/s

Sen Jud
3-29-99
att

**State of Kansas
Department of Social
& Rehabilitation Services**

Rochelle Chronister, Secretary
Janet Schalansky, Deputy
Secretary

For additional information, contact:

SRS Office of the Secretary

Laura Howard, Special Assistant
915 SW Harrison Street, Sixth Floor
Topeka, Kansas 66612-1570
☎785.296.6218 / Fax 785.296.4685

For fiscal information, contact:

SRS Finance Office

Diane Duffy, CFO
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**Senate Judiciary
March 29, 1999
Room 313-S**

Testimony: Concerning SB 355

**Children and Family Services
Joyce Allegrucci, Commissioner
785.368.6448**

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Testimony Concerning SB 355

**Kansas Department of Social and Rehabilitation Service
Rochelle Chronister, Secretary**

Senate Judiciary

March 29, 1999

Mr. Chair and Members of the committee, I am Joyce Allegrucci representing the Children and Family Services Commission. Thank you for the opportunity to testify regarding Senate Bill 355. I appear here today in support of this bill because it provides an alternative for children in need of a safe, permanent family and provides an opportunity to prevent unnecessary out of home placement.

All children deserve to have permanency. This can be accomplished through reintegration with their birth family, adoption, or permanent guardianship. Permanent guardianship is an appropriate permanency option for children in kinship arrangements. These arrangements enable a child to have a safe permanent home without severing all ties to birth parents and extended families. Permanent guardianship is also viable for those situations in which a parent has a strong bond with the child but is unable to meet the child's daily needs. SB 355 completes the work begun last session of creating the legal framework necessary to support these arrangements. It provides that parents may agree to the appointment of a permanent guardian and clarifies that state oversight ends when the permanent guardianship is established. An annual report will be necessary when the permanent guardianship is subsidized by the state.

Additionally, this bill, expands protective custody from 48 to 72 hours, providing an opportunity to prevent unnecessary out of home placement. Currently when a child is placed in protective custody, a hearing must be held within 48 hours. All too often the information necessary to provide the court with options other than out of home placement simply can not be gathered that quickly. Protective custody requires evidence that the child will be harmed if not taken into custody. If there is no additional evidence to present, the court is compelled to continue custody in order to assure the child is safe. Additional time at this stage protects the child's physical safety and gives an opportunity for the child to return safely to their family.

I would like to highlight several sections of this bill for you.

Section 1 clarifies that, when parental rights are not terminated, the parents continue to have financial responsibility for the child; a permanent guardian may be appointed after parental rights are terminated and requires dismissal of the child in need of care proceedings. This would benefit children already in the system with parental rights terminated.

Sections 2, 3 and 4 expand protective custody from 48 hours to 72 hours in order to provide sufficient time to prevent intervention by the court and loss of parental custody when the child may be safely returned home or placed by the parents.

Section 5 and 6 provide that no hearing to find the parents unfit, terminate parental rights or appoint a permanent guardian is necessary when the parents relinquish their rights or agree to the appointment of a permanent guardian.

Section 7 reiterates that parents may voluntarily agree to the appointment of a permanent guardian and that court jurisdiction ends upon the appointment of a permanent guardian allowing the child to grow up in a family free of state intrusion. However, for families receiving a subsidy, an annual report will be necessary.

Toni Schuckman, M.S.
The Salvation Army
President



Bruce Linhos
Executive Director

Community Agencies Serving Children and Families

212 S.W. 7th Street Topeka, Kansas 66603
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Senate Judiciary Committee
SB 355
March 29, 1999

I appreciate the opportunity to appear before this committee this morning. My name is Bruce Linhos and I am the Director of the Children's Alliance. The Children's Alliance is the association of non-profit child welfare agencies in Kansas. Our members provide an array of services to the families and children they assist, including foster and residential care, emergency services, adoption, family preservation, juvenile intake and assessment, day treatment, drug and alcohol services, educational services, family counseling and many more.

Currently the association has 22 member agencies representing better than 80% of the not-for-profit child welfare services provided in Kansas. With privatization, members of the association represent both contractors and subcontracting agencies. Members of our association are also providing services to youth that are being served through Juvenile Justice.

Briefly this morning I would like to speak in support of SB 355. The members of our association are supportive and optimistic about the additional options that can be made available for children through permanent guardianship. We understand this bill to clarify some of the outstanding issues relative to permanent guardianship.

We are furthermore very supportive of the extension of protective custody from 48 to 72 hours. This is an issue that emergency shelters have identified as needing to be changed for years. The time frame created by the 48 hour rule frequently works to the disadvantage of the child. We believe that with an additional day for SRS to do background investigations and to identify resources for the child, if those are necessary, that numbers of children could avoid being placed in SRS custody. As experience has taught us, once a child enters custody it will be increasingly difficult for that child to be reintegrated into their family or to find permanence. We believe that the extension of this time frame for protective custody will better serve the permanency needs of children.

Submitted by:
Bruce Linhos
Executive Director
March 29, 1999

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