

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on February 17, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters - Office of the Revisor  
Mitch Rice - Office of the Revisor  
Jerry Ann Donaldson - Legislative Research Department  
Martha Dorsey - Legislative Research Department  
Bev Renner - Committee Secretary

Conferees appearing before the committee:

Christopher L. Schneider—Assistant District Attorney, Wyandotte County  
Kevin Graham—Assistant Attorney General-Kansas Attorney General's Office  
Mike Jennings—Chief District Attorney, Sedgwick County  
Tom Stanton—Deputy District Attorney, Reno County  
Kyle Smith—Special Agent, Kansas Bureau of Investigation  
Karen Housholder—Communications Coordinator, Concerned Women for America of Kansas  
John Fritz—District Attorney, Johnson County  
Debbie Riggs

Chairperson Loyd recognized Representative Sydney Carlin who introduced her granddaughter and two other pages serving in the House of Representatives today.

**HB 2312 - Time limitations for defendant to be brought promptly to trial.**

**Chairperson Loyd opened the hearing on HB 2312.**

Chris Schneider, Assistant District Attorney, Wyandotte County appeared before the committee in support of **HB 2312** (Attachment 1). This bill amends current law, K.S.A. 22-3402, to a specific 90-day time limit after delays caused by or requested by a defendant. This would relieve the judge of interpreting "reasonable" on each occasion.

Kevin Graham, Assistant Attorney General spoke in support of **HB 2312** (Attachment 2). Setting specific limits will prevent ambiguity, help to insure defendants are brought to trial in a timely fashion and is intended to protect the rights of defendants.

**Chairperson Loyd closed the hearing on HB 2312.**

**HB 2317 - Drug paraphernalia; manufacturing a controlled substance.**

**Chairperson Loyd opened the hearing on HB 2317.**

Kevin Graham, Assistant Attorney General testified in support of **HB 2317** (Attachment 3). This bill amends Kansas statutes to clarify that offenders convicted for obtaining materials and chemicals necessary to manufacture controlled substances with the intent to manufacture controlled substances should receive presumptive prison sentences. This answers the need emphasized in the *Frazier* case when the court determined that, based on prior case law, in a case where two criminal offenses have identical elements but are classified differently for purposes of imposing a penalty, a defendant convicted of either crime may be sentenced only under the lesser penalty provision.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on February 17, 2003, in Room 526-S of the Capitol.

Mike Jennings, Assistant District Attorney, Eighteenth Judicial District expressed support for **HB 2317** (**Attachment 4**). This legislation is very important in the effort to control the illegal manufacture of methamphetamine. Mr. Jennings suggested two changes in language for improvement; 1) Delete "drug product" from Section 1(c) line 29, and, 2) delete "or compound" Section 4(a) line 41.

Chairperson Loyd recognized Thomas R. Stanton, Deputy Reno County District Attorney in support of **HB 2317** (**Attachment 5**). Methamphetamine is an extremely serious problem in Kansas. The addiction is all-consuming; to the detriment of homes, spouse, children, jobs, and communities. In Reno County, 90-93% of all persons being supervised by Court Services are being supervised either directly for violations of the Uniformed Controlled Substances Act or are cases in which a substance abuse problem has been identified. Mr. Stanton asked that the legislature look past the issues of budgetary constraints and bed space to the real issues of drug abuse in our communities before making decisions to decriminalize the illegal use of drugs in this State.

Christopher L. Schneider, Assistant Wyandotte County District Attorney rose to speak in support of **HB 2317** (**Attachment 6**). This bill would amend the Uniform Controlled Substances Act to carry out the intent of the legislature in making the manufacture of controlled substances a serious violation of the laws of this state. It corrects the conflicts of various provisions amended in 1999.

Kyle G. Smith, Special Agent-Kansas Bureau of Investigation supported the legislation in **HB 2317** (**Attachment 7**). He spoke of universal support for this bill from the Kansas Sheriff's Association, the Kansas County and District Attorney's Association, the Kansas Peace Officer's Association and the Kansas Association of Chiefs of Police. It will also aide the KBI in conducting forensic exams.

**Chairperson Loyd closed the hearing on HB 2317.**

**HB 2313 - Sexual exploitation of a child.**

**Chairperson Loyd opened the hearing on HB 2313.**

Thomas R. Stanton, Deputy Reno County District Attorney returned to the committee in support of **HB 2313** (**Attachment 8**). A judge in Reno County has found K.S.A. 21-3516(a)(2) [Sexual Exploitation of a Child] unconstitutional because of the reference to "child" instead of "real child". This bill would amend that language and change the age of a child from 18 to 16, as it was in legislation previous to 1998.

Karen Housholder, Human and Child Development Specialist with Concerned Women for America of Kansas spoke in opposition to **HB 2313** (**Attachment 9**). The changing of language to "real child" would jeopardize investigations and prosecution of real child porn by allowing defendants to raise doubt by asserting that the child was not real. Lowering the age of a minor from under 18 to 16 leaves 16 and 17 year olds unprotected at an age when they are unable to analyze the consequences of their choices because of the lack of life experiences.

Kyle G. Smith, Special Agent-KBI rose in support of **HB 2313** (**Attachment 10**). The KBI supports the amendments to allow child pornographers to be brought to justice. He suggested a friendly amendment to add "stored digital imaging" in recognition of current technology.

**Chairperson Loyd closed the hearing on HB 2313.**

Representative Donald Betts, Jr. was recognized to introduce his sponsored pages to the House of Representatives today.

**HB 2318 - Exposing a child to the manufacturing of a controlled substance.**

**Chairperson Loyd opened the hearing on HB 2318.**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on February 17, 2003, in Room 526-S of the Capitol.

Mike Jennings, Assistant District Attorney-18th Judicial District, appeared in support of **HB 2318** (Attachment 11). This bill makes it a felony to expose a child to the manufacturing process of a controlled substance because of the risk of injury this presents to a child. A felony sanction emphasizes the severity of possible harm and is appropriate.

Tom Stanton, Deputy District Attorney from Reno County, spoke in support of **HB 2318**. He talked about children's exposure to danger in cases that he had handled and the consequences of a misdemeanor charge to the manufacturers.

Kyle G. Smith, Special Agent for the FBI, gave enthusiastic words of support for **HB 2318** (Attachment 12). He talked about the frustration of discovering the injuries to children and the excuses offered by those who allowed this condition to exist for the children present. It is necessary for this legislation to protect children from those who are supposed to be protecting them.

**Chairperson Loyd closed the hearing on HB 2318.**

**HB 2316 - Aggravated incest added to definition of sexually violent crime.**

**Chairperson Loyd opened the hearing on HB 2316.**

Kevin Graham, Assistant Attorney General appeared on behalf of Attorney General Phill Kline in support of **HB 2316** (Attachment 13). This bill changes current law to add the offense of Aggravated Incest to the list that meets the definition of a "sexually violent crime". If **HB 2316** becomes law, the offender convicted of this crime will be required to abide by the requirements of the Kansas Offender Registration Act.

Mike Jennings, Assistant District Attorney-18th Judicial District added the support of District Attorney Nola Foulston to **HB 2316** (Attachment 14). Registration is appropriate for this offense. It is similar in nature to those listed (e.g., Rape, Sodomy) and the concerns for protecting the public are comparable.

**Chairperson Loyd closed the hearing on HB 2316.**

**HB 2319 - Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverages.**

**Chairperson Loyd opened the hearing on HB 2319.**

John C. Fritz, Johnson County Assistant District Attorney testified in support of **HB 2319** (Attachment 15). This bill would make a person criminally liable who knowingly allows their property to be used for underage drinking.

Debbie Riggs spoke emotionally and with passion about the need for **HB 2319**. Her son was killed after attending a party in a friends home where alcohol was served. A law such as this would hold parents responsible to supervise underage activities in their homes.

**Chairperson Loyd closed the hearing on HB 2319.**

The meeting was adjourned at 3:20 p.m. The next scheduled meeting will be February 18, 2003.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE GUEST LIST

DATE Feb. 17, 2003

NAME	REPRESENTING
Karen Koushalek	Concerned Women for America
Kathleen Bratt	
Tom Stanton	RENO COUNTY DISTRICT ATTY (KCDAA)
Michael White	KCDAA



## Remarks of Christopher L. Schneider, Assistant Wyandotte County District Attorney, regarding H.B. 2312.

Mr. Chairman and members of the committee:

The current version of K.S.A. 22-3402 sets specific time limits in which a defendant must be brought to trial (i.e., ninety days after arraignment if defendant is held in custody solely because of that case, and one hundred eighty days otherwise) but leaves in confusion the question of what time limits apply when a defendant causes a delay in the trial.

Current case law does not do much to help. In *State v. Dreher*, 239 Kan. 259, 261, 717 P.2d 1053 (1986) the court said: "any additional period of time assessed against a defendant due to the necessity of rescheduling a trial because of his fault should be limited to a reasonable time measured by the particular circumstances of the case." However, it is hard to tell in advance what should be considered a "reasonable" time.

The problem is particularly acute in Wyandotte County because of the manner in which criminal trials are set. Instead of a case being set in front of a particular judge who can then have it scheduled whenever he or she chooses, trials here are set by the Court Clerk. They are set randomly in front of various judges who happen to be assigned criminal duty for respective weeks, and these settings are made one month at a time. (For example, all of June's criminal jury trials are set at one time for all divisions assigned to criminal duty.) In order to do this, a particular month's trials are set at least five weeks before the first week of the month in order to give proper notice to the parties to the first week's trials. Thus, if a case set for trial in the second half of March, for example, is continued by defendant or for any other reason, it is already too late to reschedule the trial for April, and probably too late to reschedule it for May. However, the issue can arise in courts throughout the state, especially in multi-county districts.

Another type of problem arises when a defendant fails to appear for trial, or for any pretrial hearings set after arraignment. The case law seems concerned with adding up the days during which a defendant is absent and charging those days to the defendant, and then extending the 90- or 180-day time limit only by that number of days. That being the case, the following situation could easily occur: trial deadline is August 13; trial is set for August 10; on August 10 the state appears, ready for trial, but defendant fails to appear; a

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bench warrant is ordered, but defendant is not arrested on the warrant until the following February 1. In this scenario, If only those days during which defendant was absent are charged to him, then the state will suddenly be obligated to bring defendant to trial by February 4, giving the state three days to find and notify its witnesses and be ready for trial. This is patently absurd and unfair. Similar situations could arise when a delay is caused by a proceeding to determine a defendant's competency to stand trial.

What we propose, then, is to amend K.S.A. 22-3402 to prescribe specific 90-day time limits after delays caused by or requested by defendant. This would eliminate the current confusion over what is a "reasonable" time and also the unfairness which would result from a literal application of the courts' interpretation of the current statute. Here is the proposed change:



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TESTIMONY OF  
ASSISTANT ATTORNEY GENERAL KEVIN GRAHAM  
BEFORE THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

RE: HOUSE BILL 2312  
February 17, 2003

Chairperson Loyd and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Phill Kline to offer support for H.B. 2312. As the representative from the Kansas County and District Attorneys Association will explain in detail today, this bill amends and clarifies provisions of K.S.A. 22-3402, which is commonly thought of as the "speedy trial" statute.

The changes made to current law under the bill provide greater specificity to the courts and attorneys regarding when a criminal trial must take place in cases where certain types of delays occur, such as cases where a defendant fails to appear for a hearing and a bench warrant must be issued for the arrest of the defendant or when a defendant is originally found to be incompetent to stand trial then later is determined to be competent. By imposing specific statutory time limitations for getting these cases to trial the intent is prevent ambiguity, help to insure defendants are brought to trial in a timely fashion and to protecting the rights of defendants.

On behalf of Attorney General Kline I would like to thank you again for the opportunity to appear before the committee and I urge your favorable consideration of House Bill 2312.

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Attachment 2



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TESTIMONY OF  
ASSISTANT ATTORNEY GENERAL KEVIN GRAHAM  
BEFORE THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE  
RE: HOUSE BILL 2317  
February 17, 2003

Chairman Loyd and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Phill Kline to offer support for H.B. 2317. This bill makes several changes to Kansas criminal statutes that are intended to help insure that offenders who try to unlawfully manufacture controlled substances are punished appropriately according to their crime. The changes to the language of current Kansas statutes are necessary in light of the decision of the Kansas Court of Appeals in the case of *State of Kansas v. Troy D. Frazier*, which was decided on March 15, 2002.

Under current law at K.S.A. 2001 Supp. 65-4152(a)(3) it is illegal to possess with intent to use “. . . any drug paraphernalia to. . . manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance.” The penalty for the commission of this offense, under current law, is a Drug Grid, severity level 4, nonperson felony. Conviction under this statute carries a sentence of presumptive probation in the vast majority of cases. However, under current law at K.S.A. 2001 Supp. 65-7006(a) it is “. . . unlawful for any person to possess ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product as a precursor to any illegal substance.” Ephedrine or pseudoephedrine is a critical ingredient necessary to the production of the drug methamphetamine. The penalty for a conviction under K.S.A. 2001 Supp. 65-7006(a) is a Drug Grid severity level 1, nonperson felony, which carries a substantial presumptive prison sentence. Obviously the legislature has set very different penalty levels for these two offenses, and it is apparent that the legislature intended a severe penalty to be imposed on individuals who are in possession of precursor chemicals for the production of methamphetamine with the intent to produce methamphetamine.

In the *Frazier* decision the court analyzed the specific elements of the crimes created by K.S.A. 2001 Supp. 65-4152(a)(3) and K.S.A. 2001 Supp. 65-7006(a) and determined that possession of ephedrine or pseudoephedrine and possession of drug paraphernalia are identical offenses even though the statutes use different language to describe the elements. The court found that both

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offenses prohibit the possession of ephedrine or pseudoephedrine for the manufacture of a controlled substance, and the court found that ephedrine and pseudoephedrine fall within the definition of drug paraphernalia because they are materials used to manufacture a controlled substance. This being the court's finding, the court further determined that, based on prior case law, in a case where two criminal offenses have identical elements but are classified differently for purposes of imposing a penalty, a defendant convicted of either crime may be sentenced only under the lesser penalty provision. Therefore, in the *Frazier* case, the court ordered the case remanded for re-sentencing, and the offender received a probation sentence instead of a prison sentence for the charge.

House Bill 2317 amends the relevant Kansas statutes to make sure the legislature's original intention for K.S.A. 65-7006 is carried out; offenders convicted for obtaining materials and chemicals necessary to manufacture controlled substances with the intent to manufacture controlled substances should receive presumptive prison sentences.

On behalf of Attorney General Kline I would like to thank you again for the opportunity to appear before the committee and I urge your favorable consideration of House Bill 2317.



**WRITTEN TESTIMONY IN SUPPORT OF HOUSE BILL No. 2317  
HOUSE COMMITTEE ON CORRECTIONS  
AND JUVENILE JUSTICE**

February 17, 2003

Office of the District Attorney, Eighteenth Judicial District

Nola Foulston, District Attorney

Submitted by

Mike Jennings, Assistant District Attorney

Chairman Loyd and Members of the Committee:

On behalf of District Attorney Foulston, I want to thank you and the Committee for this opportunity to express our support for House Bill No. 2317.

House Bill No. 2317 is drafted to restore the severity level one penalty for violations of K.S.A. 65-7006, prohibiting the possession of pseudoephedrine, lithium, red phosphorous, and other products intended to be used in the manufacture of methamphetamine. This penalty level has already been approved by the Legislature, once in 1999 and again last session. This Bill restores the level one penalty by removing an overlap in the wording of the Chemical Control Act and the wording of the Drug Paraphernalia Act.

We support House Bill 2317. We believe that keeping the Level 1 penalty is vital to the continued effectiveness of Kansas' efforts to control the illegal manufacture of methamphetamine. Pseudoephedrine is the single most important and necessary chemical precursor to methamphetamine. The other products listed are also necessary ingredients in the manufacturing process. Having these products punished as level one violations allows more cooks to be prosecuted for manufacturing rather than for paraphernalia, a far less serious penalty.

The difference between catching a cook with paraphernalia and catching a cook engaged in manufacturing is often a matter of fortuitous timing; yet paraphernalia is a level 4 probation offense and manufacturing is a level 1 prison offense. The original legislative solution was to treat both the products and the actual manufacturing as level 1 violations. House Bill 2317 will fill the void in the present penalty structure which has allowed several cooks to return to the community basically unpunished and to resume their illegal manufacturing simply because they happen to avoid the attention of law enforcement when they are actively engaged in the manufacturing

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process itself. Eliminating level one penalties will build into the structure of our drug laws inequalities in result for offenders who are doing the same thing - cooking meth. Restoring level one penalties allows similar offenders to be treated similarly with the exact result in a given case to be worked out in the court system. Taking level one penalties out of our drug laws creates permanent disparities.

Section 2 of the Bill is makes an attempt to manufacture a Severity Level One Drug Felony. The Legislature dropped this language from Section 65-4159 in its 1994 amendments. The Supreme Court understood this to mean that an attempt to violate the section was no longer a violation of the manufacturing section. The Bill would make an attempt to manufacture a violation of the section, which violation would be a Severity Level One Drug Felony.

Section 3 of the Bill eliminates the overlap between K.S.A. 65-7006's language prohibiting possession of pseudoephedrine, etc., with the intent to use it as a "precursor" and K.S.A. 65-4160(a)'s language prohibiting the possession of any precursor to methamphetamine (as specified in (f)(1)).

Section 4 of the Bill eliminates the same overlap for K.S.A. 65-4161(a).

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**TESTIMONY BEFORE THE COMMITTEE  
ON CORRECTIONS AND JUVENILE JUSTICE**

House Bill No.2317

House Bill No. 2317 is imperative to the continued strong prosecution of clandestine drug laboratories in the State of Kansas. This legislature previously has taken a strong stand in such cases. As a result of that strong stand, this legislature passed K.S.A. 65-7006 which made Possession of Ephedrine or Pseudoephedrine With the Intent to Use the Product to Manufacture Methamphetamine a level one drug felony. However, in the case of State v. Frazier, the Kansas Court of Appeals determined that the penalty for Possession of Ephedrine or Pseudoephedrine With the Intent to Manufacture a Controlled Substance should not be the sentence dictated by the legislature. Instead, the Court of Appeals determined that ephedrine or pseudoephedrine looked like drug paraphernalia and, therefore, should be sentenced as a crime involving drug paraphernalia. The result has been that all such cases have been sentenced as a level four drug felony since the opinion was filed March 15, 2002.

I have previously testified to this legislature regarding the need to keep the Possession of Ephedrine or Pseudoephedrine With the Intent to Manufacture a Controlled Substance a level one drug felony. The primary reason for this position is that often law enforcement officers will intercept a person who intends to manufacture methamphetamine prior to that person obtaining the anhydrous ammonia needed to complete the reaction. In some instances persons have possessed several ounces of the ephedrine needed to manufacture methamphetamine. If this product is pure ephedrine, a substance which is obtained by removing the drug from cold medications, a person manufacturing methamphetamine can obtain up to a 92%-95% conversion rate. In other words, ten ounces of ephedrine or pseudoephedrine can result in approximately nine ounces of methamphetamine. The fact that these persons are caught before they can complete the process should not result in a sentence considerably less than if they had completed the process.

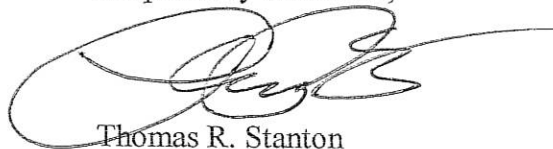
I have found in my prosecution of such cases that persons who have large amounts of ephedrine are experienced cooks who are producing methamphetamine for resale. The legislature should affirm its position regarding possession of ephedrine or pseudoephedrine as a level one drug felony by enacting House Bill No. 2317. In Section 1 of the bill, the language would specifically exclude the items that are listed in K.S.A. 65-7006 from consideration as drug paraphernalia. In Section 3 of the bill, section (f)(1) of K.S.A. 65-4107 is excluded from the possession bill. The purpose for this exclusion is to remove the possibility that a precursor could be included in the simple

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possession statute. Section 4 performs the same function for the crime of possession with intent. Regarding Section 4, I would like to also request that this body consider removing the term "compound" in the fifth line of that statute. If you look at your statute, the word "compound" appears in line 41 of page three of the bill. The reason this is important is because we have recently received appeals from the defense bar alleging that the word "compound" in K.S.A. 65-4161 includes manufacturing and, following the Frazier logic, all level one felony manufacturing charges should be sentenced at level three drug felonies. The changes in Section 5 have been suggested to clean up the language of that statute to conform with other similar statutes.

I understand that the legislature is considering steps to decriminalize drugs in this State. I am well aware of the budget crisis that you face. But before you allow only budgetary and bed space issues to determine the criminal policy of this body, I ask you to consider the damage that results from the use of drugs in our communities. I recently spoke to John Pahl who is the director of our Court Services in Reno County. I asked him if he had any figures regarding the effect of drug abuse on crimes in Reno County. I expected the figures to be high, but the figures he gave me were shocking even to me. According to Mr. Pahl, 90%-93% of all persons being supervised by Court Services are either being supervised either directly for violations of the Uniformed Controlled Substances Act or are cases in which a substance abuse problem has been identified. Ladies and Gentlemen, 90%-93% of the crimes being committed in our community are committed by persons involved with substance abuse. I have also in the past contacted drug and alcohol abuse centers and have been told that a high percentage of the persons who are working drug and alcohol programs are there only because of court commitments. Many people work their programs willingly and diligently only when faced with the concept of the possibility of prison sentences. Before you take action decriminalizing drug crimes in this State, I implore that you look at the effect that drug abuse, and specifically methamphetamine abuse, has in our communities. Methamphetamine is an extremely addictive drug. Person who are addicted to the drug are soon found to be unemployed and unemployable. These people forget about the relationships of the people dearest to them, including spouses and, unfortunately, children. It is not uncommon for law enforcement officers to enter into a home on a search warrant and find absolutely deplorable conditions for the children who live there. There must be a real possibility that a person will go to prison for the use of drugs or we will find ourselves with a problem that cannot be handled by the resources we have within the community. There must be a severe consequence to the use and continued use of drugs. I am asking that you look past the issues of budgetary constraints and bed space to the real issues of drug abuse in our communities before making decisions to decriminalize the illegal use of drugs in this State.

Respectfully submitted,



Thomas R. Stanton

Deputy Reno County District Attorney

# Remarks of Christopher L. Schneider, Assistant Wyandotte County District Attorney, Regarding H.B. 2317

Mr. Chairman and members of the committee:

I appear before you today to encourage enactment of H.B. 2317, which would amend the Uniform Controlled Substances Act to carry out the intent of the legislature in making the manufacture of controlled substances, particularly methamphetamine, a very serious violation of the laws of this State.

As a result of 1999 amendments to the relevant sections of the drug laws which pertain to the manufacture of controlled substances, there are various provisions of the statutes that conflict with each other. The appellate courts have construed these statutes against the State of Kansas and in favor of criminal defendants.

The most notable of these decisions is *State v. Frazier*, \_\_\_ Kan.App.2d \_\_\_, 42 P.3d 188 (2002), in which the Court of Appeals held that Possession of Ephedrine, Pseudoephedrine, or Phenylpropanolamine (P2P) with intent to use as a precursor to an illegal substance, a level one felony under K.S.A. 65-7006, is the same offense as Possession of Drug Paraphernalia with Intent to Use for Manufacture, a level four felony under K.S.A. 65-4152(a)(3). Thus a person who possesses the essential precursor chemical for the manufacture of methamphetamine could not be charged as the legislature of this state intended.

Section 1 of the bill before you changes the definition of "drug paraphernalia" in K.S.A. 65-4150(c) to exclude items covered by K.S.A. 65-7006. This will address the problem found by the Court of Appeals in *Frazier* of K.S.A. 65-7006 and K.S.A. 65-4152 being multiplicitous.

Section 2 of the bill will restore the wording of K.S.A. 65-4159, the statute which makes manufacturing a controlled substance a crime, to where it was before the 1999 amendments to the law. It is important to be able to charge someone making a controlled substance with "manufacture or attempt to manufacture" because of the process involved in manufacturing illegal drugs. It is not an instantaneous process, rather it involves multiple steps. Confusion arises then when a person commences the manufacturing process but does not reach the stage where there is a quantity of the intended product. The question raised is this situation manufacture or attempted manufacture. Experts will say that a person has started the process

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when he begins gathering the necessary ingredients and equipment for producing the intended substance. Defendants will argue to the contrary. The 1999 amendments deleted the attempt language from subsection (a), but not subsection (b). This has caused a great deal of confusion among prosecutors throughout the state as to how the conduct the legislature intended to proscribe should be charged, and among courts throughout the state in how they are to instruct juries deciding manufacturing cases. Restoring the original wording will clear up the confusion which has existed as a result of the 1999 change in subsection (a).

Section 3 is a housekeeping amendment to K.S.A. 65-4160.

Section 4, as written, is a housekeeping amendment to K.S.A. 65-4161. However, I would suggest it be amended to remove the word "compound". This word is used in the definition of "manufacture" in K.S.A. 65-4101(n). Recently, the state appellate defender has been arguing in manufacture cases that K.S.A. 65-4159 and K.S.A. 65-4161 are multiplicitous, and thus the person charged can only be charged with a level three felony under K.S.A. 65-4161. The logic is the same as that of the *Frazier* case. The issue has been raised in cases from Wyandotte and Rice counties that I am aware of.

Section 5 makes housekeeping changes to K.S.A. 65-7006. It is the operative statute making possession of precursor ingredients with intent to use for manufacture of a controlled substance a level 1 felony pursuant to K.S.A. 65-7006..



## Kansas Bureau of Investigation

Larry Welch  
Director

Testimony in Support of HB 2317  
Before the House Corrections and Juvenile Justice Committee  
Kyle G. Smith  
Director of Public and Governmental Affairs  
Kansas Bureau of Investigation  
February 17, 2003

Phill Kline  
Attorney General

Representative Lloyd and Members of the Committee:

On behalf of the KBI we would urge your support of HB 2317. This legislation would correct the problems created by the *State v Frazier* decision and return the law to where it was 10 months ago as regards to possessing methamphetamine manufacturing reagents with the intent to manufacture.

K.S.A. 65-7006 was passed in 1999 as an industry sponsored alternative to our proposal to limit the number of packages of precursor chemicals that could be bought at one time. Besides providing a deterrent for illegal precursor sales, the law also turned out to be a very useful law as it sometimes resolves the issue as to whether the person was attempting to manufacture or was involved in just 'mere preparation'. After the *State v Frazier* decision last year, K.S.A. 65-7006 was basically nullified.

Also of importance to the KBI is the fact that it is easier and cheaper to conduct forensic exams under K.S.A. 65-7006 for one of the reagents than to conduct exams and testify about all the items seized at a meth lab for prosecution under K.S.A. 65-4159. With the number of clandestine laboratories seized, any savings in scientists' time and analysis costs are extremely important.

This fall I met with the legislative committees for the Kansas Sheriff's Association, the Kansas County and District Attorney's Association, the Kansas Peace Officer's Association and the Kansas Association of Chiefs of Police. Fixing the Frazier problem was the one piece of legislation that had universal support.

Thank you for your time and I would be happy to stand for any questions.

H. Corr & J.J.  
2-17-03  
Attachment 7

DISTRICT ATTORNEY

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**THE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE**

Testimony regarding House Bill 2313

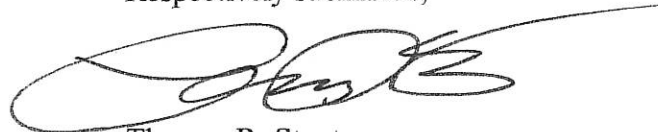
In 1998 the Kansas Legislature amended K.S.A. 21-3516(a)(2) [Sexual Exploitation of a Child] to remove the term "real child" and replace it with the term "child". The legislature also changed the age in the statute in both (a)(1) and (a)(2) from a "child under sixteen years age" to a "child under eighteen years of age." A judge in Reno County has recently found the statute unconstitutional based on the United State Supreme Court decision in Ashcroft, Attorney General, et al v. Free Speech Coalition et al, 122 S.Ct. 1389 (2002). It is clear from that case that the legislative action in changing the requirement from a "real child" to "child" has resulted in an unconstitutional statute. It is therefore a necessity that the legislature return to the language of the statute specifying "real child" prior to the 1998 amendment.

The legislation as currently written also reduces the age of the child from 18 years of age to 16 years of age. While this change is requested by Reno County, it is my understanding that the KCDA is not supportive of that change. The Legislative Committee of the KCDA believes that leaving the age at 18 years promotes the public policy of discouraging promiscuous behavior by persons between the age of 16 and 18 years.

The reason the age change was originally requested is that the change would conform with the legal age of consent. A person could legally have sexual contact with a seventeen-year-old but could be prosecuted for having a nude photograph of that seventeen-year-old in that person's possession. This could lead to an appellate court finding the statute unconstitutional. I have spoken to the Reno County District Attorney on this matter and he believes in the public policy of discouraging promiscuity among young people, but believes the constitutional manner in displaying that policy would be to raise the age of consent to 18 years of age.

Thank you for the opportunity to testify on this bill. Please feel free to contact me if you have any questions regarding this issue.

Respectively submitted,



Thomas R. Stanton

Deputy Reno County District Attorney

H. Carr & J.J.  
2-17-03  
Attachment 8



February 17, 2003

Mr. Chairman and members of the Committee:

My name is Karen Housholder, Human & Child Development Specialist. I am with Concerned Women for America of Kansas, a public policy women's organization that deals with family issues, especially those that impact children. Thank you for allowing me to testify today against changes to statutes as outlined in HB 2313.

Government exists to protect the most innocent and vulnerable in our society. Today there is a justified growing concern about child sexual victimization, highlighting the need for stronger protections. CWA believes the changes to HB 2313 would weaken protections for children and are unnecessary.

First, in section 2, line 25 "visual depiction of a" is crossed out and "real" is inserted followed by the word "child". This change would greatly overburden and jeopardize investigations and prosecutions of real child porn by allowing defendants to raise doubt by asserting that the child was not real. Technology enables any picture to be enhanced. One body could be used with a different face, or even a composite of several children could be used to produce virtual child pornography. In any case a "visual depiction" of child porn is every bit as dangerous as "real" because it is an effective tool in the hands of pedophiles that facilitates future child sexual abuse and exploitation.

In *Osborne v. Ohio* the Court upheld a state statute that criminalized possession of child porn. The Court said: "The State's ban on possession and viewing encourages the possessors of these materials to destroy them. Second, encouraging the destruction of these materials is also desirable because evidence suggests that pedophiles use child pornography to seduce other children into sexual activity." (*Osborne v. Ohio*, 495 U.S. at 111 (1990))

There are consequences to using pornography. "The person who engages in this behavior must eventually go from being a passive spectator to becoming a participant in pornographic acts. The flow of causality is not that pornography causes anti-social or criminal conducts. Rather it is that pornography causes deviant attitudes which in turn cause or predispose to anti-social or criminal conduct. In other words, crimes happen more frequently because pornography predisposes criminals to tolerate and even enjoy such anti-social conduct." (Enough is Enough Newsletter: William A. Stanmeyer, *The Seduction of Society: Pornography and Its Impact on American Life* (Ann Arbor, MI: Servant Books, 1984), p.35)

Dr. Jeffrey Satinover, states that repetitive stimulation releases opioids in the brain (narcotic-like substances) that give pleasure. The more one does the act, the more the desire is to repeat it. The repetitive behavior actually strengthens connections between nerve cells and increases the

CONCERNED WOMEN FOR AMERICA  
OF KANSAS



amount of tissue. Sexual addiction can alter the brain chemistry and increase the brain tissue involved in providing a person with the pleasurable sensation.

(Dr. Jeffrey Satinover, *Homosexuality and the Politics of Truth* (Grand Rapids, Michigan: Baker Book House, 1996), p. 141)

Second, lowering the age of a minor from under 18 to 16 leaves 16 and 17 year olds unprotected at an age where they are unable to analyze the consequences of their choices because of the lack of life experiences. According to the U.S. Department of Justice National Incident-Based Reporting System, 43% of reported sex crimes are against children 12 to 17. A sampling of statistics from the Kansas Register for Sexual Offenders, updated 11/02/03, shows that on average of the counties surveyed, seventy-one percent of the sexual offenses that were committed were against children.

Each one of these reports represents a child whose life has been scarred forever and who may become an abuser himself. Now consider the fact that sex crimes are grossly under-reported, and in particular 68% of sex crimes against persons 12 years and older are never reported.

(Judith Reisman, "FBI Reduces Violence by Ignoring Child Victims", WorldNet Daily, 2000.)

Children who are sexually victimized suffer irreparable harm. "A Quantitative and Qualitative Analysis of Suicidal Preadolescent Children and Their Families" looked at the relationship between child abuse and suicidal tendencies among preadolescents. They reported that sixty percent of these children had been physically or sexually abused by adults.

(Child Psychiatry and Human Development. Vol. 25, Number 4. Summer; 1995. Page(s) 751-52)

As you can see we have a huge problem. Every single child deserves the highest level of protection the law can provide. I urge you to make no changes to the law that would further imperil our children. Thank you.

Karen Housholder,  
RSVP Coordinator, Concerned Women for America of Kansas





## Kansas Bureau of Investigation

Larry Welch  
Director

Testimony in Support of HB 2313  
Before the House Corrections and Juvenile Justice Committee  
Kyle G. Smith  
Director of Public and Governmental Affairs  
Kansas Bureau of Investigation  
February 17, 2003

Phill Kline  
Attorney General

Representative Lloyd and Members of the Committee:

The KBI supports the amendments in HB 2313 as a necessary amendment to allow child pornographers to be brought to justice. We would also like to suggest a friendly amendment. In *State v Donham*, 29 Kan. App 2d 78, 24 P.2d 750 (2001) the Kansas Court of Appeals made a sort of strange ruling that possession of thousands of images on a single hard drive is only one count of child pornography under K.S.A. 21-3516. Using the rule that criminal laws are strictly construed against the state they concluded that these electronically preserved images were not 'photographs', nor 'software' nor 'computer generated image' under the language of the statute.

We would suggest that it makes little sense for a person who has two photographs of child porn to be treated more seriously than the person who has 2000 such images, just in digital format. As such we would suggest adding "stored digital image," at the end of line 21 to fix this anomaly.

Thank you, I would be happy to stand for questions.

H. Corr & J.J.  
2-17-03  
Attachment 10

**WRITTEN TESTIMONY IN SUPPORT OF HOUSE BILL No. 2318  
HOUSE COMMITTEE ON CORRECTIONS  
AND JUVENILE JUSTICE**

February 17, 2003

Office of the District Attorney, Eighteenth Judicial District

Nola Foulston, District Attorney

Submitted by

Mike Jennings, Assistant District Attorney

Chairman Loyd and Members of the Committee:

On behalf of District Attorney Foulston, I want to thank you and the Committee for this opportunity to express our support for House Bill No. 2318.

House Bill No. 2318 makes it a felony to expose a child to the manufacturing process and thereby create a risk of injury to the child. This liability is imposed for the protection of the minor children who may find themselves exposed to the manufacturing process. The dangers of breathing anhydrous ammonia, ether, phosphene gas, methanol vapor and hydrogen chloride are too well known to be disputed. Skin contact is equally risky for the acids used. In addition, the fire and explosion hazards are well documented. Many of these children are dependent on the person exposing them to this harm for their upbringing, and are to this extent captives of the harm created by the manufacturing process. A child killed in a fire started by an exploding meth lab deserves this degree of protection.

Because these risks of harm are severe, a felony sanction is believed to be proportionate to the harm and is therefore appropriate.

H. Corr's J.J.  
2-17-03  
Attachment 11



## Kansas Bureau of Investigation

Larry Welch  
Director

Phill Kline  
Attorney General

Testimony in Support of HB 2318  
Before the House Corrections and Juvenile Justice Committee  
Kyle G. Smith  
Director of Public and Governmental Affairs  
Kansas Bureau of Investigation  
February 17, 2003

Representative Lloyd and Members of the Committee:

I normally start off my remarks by saying how pleased I am to appear in support of this type of legislation. Today I wish I wasn't here. I wish this committee could hear testimony from the burned, abused and neglected children that law enforcement officers find in meth labs all across this state. I wish the law would allow me to pass out photographs of these children. I wish I could subpoena the parents before this committee so you could hear them making excuses as to why their addiction to methamphetamine caused them to endanger and injure their children. But, even if I could, that wouldn't give you a complete picture of the damage being done to Kansas children by methamphetamine manufacturing. That is because we don't know what the true picture is. We have no idea what the long term damage is going to be to the youth of this state from exposure to anhydrous ammonia, red phosphorus, hypophosphorous acid, hydriodic acid and the other chemicals that make up the witches brew known as methamphetamine.

These chemicals can severely burn a child's skin before, during or after the manufacturing process. We have found babies crawling on kitchen floors covered with powder and on carpets soaked with chemicals. Used meth chemicals dumped in backyards have burned young children. Frequently, kitchen dishes and utensils are used in the manufacturing process and returned to cabinets to be used for cooking the family meal. Noxious fumes from meth labs can burn children's eyes, nose, mouth and skin. The fumes can damage lungs, cause coughing, chest pain, nausea, headaches, dizziness, vomiting, lack of coordination and even death.

And this is happening in Kansas. A meth lab was seized *in a licensed day care* in Salina. You may remember my testimony where I gave you a briefing on methamphetamine about the incident in southeast Kansas where parents returned to their burning trailer three times to recover glassware and meth laboratory supplies, and only on the third trip rescued their children from the burning trailer. Last year, Kansas law enforcement officials reported finding 120 children at meth labs, 80 of which had been exposed to toxic chemicals. 26 of those children were taken into protective custody. I've attached some sample articles on other cases involving children.

H. Corr & J.J.  
2-17-03  
Attachment 12

Unfortunately, the simple truth is that we need to protect these children from the very people who are supposed to be taking care of them.

And what is the penalty for doing this to children? If a person intentionally caused this injury to another human being, especially a child, they would be charged with aggravated battery, a level 8 to a level 4 person felony. But, because the intent here is "only" to manufacture drugs and the injury is unintentional, the law, endangering a child, K.S.A. 21-3608, treats this as a class A misdemeanor. Of the top 6 states which have the most meth labs, Kansas is the only one without some form of drug endangered children legislation. We believe that exposing children to these dangers should at least be a felony. This will demonstrate to prosecutors and judges that this is a serious situation that deserves the court's attention. A felony would also hopefully prevent a person convicted of this crime from receiving a daycare license.

I have attached some articles and an excellent brochure put out by the U.S. Department of Justice described "Children at Risk". Please try to make time in your busy schedules to review those materials.

It is proposed in HB 2318 to make it a level 9 felony, a presumptive probation felony that should limit the impact on bed space. Obviously, a fair number of persons committing this new crime will also be facing more serious drug manufacturing charges, which will be the controlling sentence. The intent here is not to try to send a person convicted of this crime to prison: We need a felony handle on those mothers to force them into treatment, to force them into counseling so they understand what they have done to their children. The bed impact should be minimal.

The real need for this statute is for parents and custodians who may not be directly involved in manufacturing drugs but allow their children to be exposed to the risks involved. Commonly, we have a male in the house who is the actual meth cook and, while the mother may be addicted, there is little evidence to show that she actually participated in the manufacturing process. Thus, we end up with a situation where the male is arrested and prosecuted for the manufacturing but the mother, who knowingly and intentionally exposed her children to the dangers in meth manufacturing, is not prosecuted 'as it is just a misdemeanor'.

I would note that in today's packet HB 2391 is published. That bill was proposed by Governor Kathleen Sebelius and Attorney General Phill Kline and contains legislation affecting children. Section 4 of HB 2391 also addresses this problem by amending the existing Endangering a Child statute, K.S.A. 21-3608. A copy of section 4 is attached, but in short it would be also making a level 9 person felony to cause permitting a child under 18 years of age to be present where not just manufacturing, but meth trafficking offenses occur, or where methamphetamine chemicals are stored. I don't know if the committee will have time to hold hearings on HB 2391 but I did want to point out some aspects of that bill that you might want to consider on this issue.

HB 2318 requires the state to show that a child was placed in a situation where their life, body or health "may" be injured or endangered – this would require medical and expert testimony. HB 2391's approach might be easier to prosecute as if the state can show trafficking or manufacturing is going on and a person knowingly or intentionally caused the child to be

present, then the offense is complete. Further, HB 2318 is limited to manufacture, while HB 2391 applies to sale, delivery and other trafficking offenses.

On the other hand, HB 2318 applies to all manufacture of any controlled substance, while HB 2391 is limited only to methamphetamine. While probably 98% of our clandestine labs involve meth, we do have the occasional LSD, fentanyl or amphetamine lab - which are just as dangerous to children. However, I do not want to cause any confusion or delay as the legislation is desperately needed and either version would be a massive improvement over the current law. and would help protect Kansas Children.

On behalf of the Kansas Peace Officer's Association and the Kansas Bureau of Investigation, and on behalf of the children we are sworn to protect, I would urge the committee to pass out legislation protecting our children from those who expose them to these dangers. I would be happy to stand for questions.





# INFORMATION BULLETIN

JULY 2002

U. S. D E P A R T M E N T O F J U S T I C E

## Children at Risk

### Overview

An increasing number of children in the United States are exposed to toxic chemicals because methamphetamine laboratories are being operated in or near their homes. In addition, these children often are abused or neglected by the parents, guardians, or others who operate these laboratories. The number of children found at seized methamphetamine laboratory sites in the United States more than doubled from 1999 through 2001.



A 5-year-old boy had to be decontaminated when police found a clandestine methamphetamine laboratory in his Palm Springs home in November 1999. Riverside County Fire Department/ California Department of Forestry Capt. Larry Katuls leads the boy, wearing a protective suit, to a police car.

Methamphetamine laboratory sites typically contain toxic chemicals and waste as well as finished product and drug paraphernalia. Children who inhabit homes where laboratories are present often inhale dangerous chemical fumes or gases or ingest toxic chemicals or illicit drugs. Exposure to these substances can cause serious short- and long-term health problems including damage to the brain, liver, kidneys, lungs, eyes, and skin. Children whose parents or guardians produce or abuse methamphetamine also are likely to develop emotional and behavioral problems stemming from abuse or neglect. In addition, inhaling or ingesting toxic substances such as those present at methamphetamine laboratories may cause cancer or death.

Few areas of the country have programs in place to coordinate the social and legal aspects of cases involving children at methamphetamine laboratories; however, implementation of an effective program is possible, as illustrated by the Drug Endangered Children (DEC) program in California.

### Rates of Exposure

Most, if not all, of the children present at methamphetamine laboratories are exposed to dangerous chemicals including precursor chemicals, reagents used to convert precursor chemicals into methamphetamine, solvents, and the drug itself. The number of children present at seized methamphetamine laboratory sites increased

from 950 in 1999 to 2,028 in 2001, according to the Drug Enforcement Administration (DEA) El Paso Intelligence Center (EPIC) National Clandestine Laboratory Seizure System as of May 15, 2002. In 2001 approximately 35 percent (700) of the 2,028 children found at methamphetamine laboratory sites tested positive for toxic levels of chemicals in their bodies. (See Table 1.) In 2001 the states reporting the highest number of children present at methamphetamine laboratories were California (503), Washington (326), Oregon (241), and Missouri (161). These figures are recognized as underreported because many states do not keep records on children present at laboratory sites or medically evaluate them for the presence of drugs or chemicals.

**Table 1. Children at Methamphetamine Laboratories**

	Present at Seized Laboratories	Tested Positive for Toxic Levels of Chemicals
1999	950	150
2000	1,748	340
2001	2,028	700

Source: DEA EPIC National Clandestine Laboratory Seizure System.

## Effects of Exposure

Chemicals used in methamphetamine production are extremely hazardous (see Table 2 on page 3). The risk of exposure to toxic chemicals at laboratory sites may be much greater for children than for adults. Young children, unlike adults, engage in behavior that can lead to increased incidents of exposure such as placing their hands and objects in their mouths and playing on floors, tabletops, and countertops or outdoors in the dirt. Producers who operate laboratories in or near residences often produce methamphetamine using common household items including kitchen utensils, dishes, appliances, sheets, and other linens. These items may become contaminated and then fall into the hands of unsuspecting children. Toxic chemicals also frequently are discarded outdoors near areas where children play. For example, in April 2002 a methamphetamine laboratory was discovered in the bedroom of a 1-year-old child in Deville,

Louisiana. According to officers from the Deville Police Department, the child was found moving about the home in a walker at the time of the raid. The infant's parents were charged with multiple drug-related crimes as well as child desertion, which includes negligent exposure of a child younger than 10 to dangerous or hazardous situations. Local authorities took custody of the child.

The physical effects resulting from exposure to the toxic chemicals present at methamphetamine laboratories vary based on the manner in which the chemicals are introduced into the body. Children at methamphetamine laboratories may absorb chemicals into their bodies via ingestion, inhalation, skin contact, or accidental injection.

Although exposure most frequently results from inhalation or through contact with the skin, ingestion poses the greatest risk to a child's health. Children may ingest toxic chemicals by eating or drinking contaminated food or beverages—which may be prepared using the same kitchen utensils and appliances used for methamphetamine production—or by placing a contaminated object into their mouths. Children also have consumed various forms of methamphetamine. Ingesting toxic chemicals or methamphetamine may result in potentially fatal poisoning, internal chemical burns, damage to organ function and development, and harm and inhibition to neurological and immunologic development and functioning.

### Long-Term Risks to Children

A child's developing brain and other organs are more susceptible to damage at specific maturational levels, and children may be less able to process and eliminate chemicals than adults. A child exposed to toxic chemicals may develop acute or chronic diseases such as cancer and organ damage. In addition, children who have lived in a home where methamphetamine was produced often exhibit emotional and behavioral problems that may persist indefinitely.

Source: Drug Endangered Children Program.

Inhaling chemical vapors and gases resulting from the methamphetamine production process causes shortness of breath, cough, and chest pain. Exposure to these vapors and gases may also cause intoxication, dizziness, nausea, disorientation, lack of coordination, pulmonary edema, chemical pneumonitis, and other serious respiratory problems when absorbed into the body through the lungs.

The chemicals used to produce methamphetamine may cause serious burns if they come into contact with the skin. Chemicals often are spilled onto surfaces within the household where methamphetamine laboratories are operating, and sometimes the chemicals are spilled directly onto children present in these areas.

Many methamphetamine producers also abuse the drug, sometimes via injection. This increases the risk of a child's being injected accidentally with methamphetamine or other drugs when needles and drug paraphernalia are left within a child's reach. Contact with contaminated needles also can expose children to infectious diseases such as HIV and hepatitis.

Children at methamphetamine laboratories are at risk for other injuries as well. Some chemicals used in methamphetamine production are highly volatile and may ignite or explode if mixed or stored improperly. For example, in February 2001 Catoosa County, Georgia, authorities responded to a fire and explosion in a home. An 11-month-old

**Table 2. Hazardous Chemicals Used in Methamphetamine Production**

Chemical	Hazards
Pseudoephedrine	Ingestion of doses greater than 240 mg causes hypertension, arrhythmia, anxiety, dizziness, and vomiting. Ingestion of doses greater than 600 mg can lead to renal failure and seizures.
Acetone/Ethyl Alcohol	Extremely flammable, posing a fire risk in and around the laboratory. Inhalation or ingestion of these solvents causes severe gastric irritation, narcosis, or coma.
Freon	Inhalation can cause sudden cardiac death or severe lung damage. It is corrosive if ingested.
Anhydrous Ammonia	A colorless gas with a pungent, suffocating odor. Inhalation causes edema of the respiratory tract and asphyxia. Contact with vapors damages eyes and mucous membranes.
Red Phosphorus	May explode on contact or friction. Ignites if heated above 260°F. Vapor from ignited phosphorus severely irritates the nose, throat, lungs, and eyes.
Hypophosphorous Acid	Extremely dangerous substitute for red phosphorus. If overheated, deadly phosphine gas is released. Poses a serious fire and explosion hazard.
Lithium Metal	Extremely caustic to all body tissues. Reacts violently with water and poses a fire or explosion hazard.
Hydriodic Acid	A corrosive acid with vapors that are irritating to the respiratory system, eyes, and skin. If ingested, causes severe internal irritation and damage that may cause death.
Iodine Crystals	Give off vapor that is irritating to the respiratory system and eyes. Solid form irritates the eyes and may burn skin. If ingested, causes severe internal damage.
Phenylpropanolamine	Ingestion of doses greater than 75 mg causes hypertension, arrhythmia, anxiety, and dizziness. Quantities greater than 300 mg can lead to renal failure, seizures, stroke, and death.

Source: DEA Office of Diversion Control.

infant was rushed to the hospital in critical condition with burns and other injuries. The infant passed away after several months. The parents, who were fugitives, were captured in July 2001 while attempting to purchase precursor chemicals.

## **Related Abuse and Neglect**

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Methamphetamine producers and abusers typically become so preoccupied with the drug that they abuse or neglect their children. According to Inland Narcotics Clearing House data, nearly 70 percent of the child abuse cases reported in Riverside and San Bernardino Counties, California, during 2001 were methamphetamine-related. Children whose parents or guardians produce or abuse methamphetamine typically lack proper immunizations, medical care, dental care, and necessities such as food, water, and shelter. For example, in March 2002 Los Angeles County Sheriff's deputies found four children who were begging for food in their neighborhood in Diamond Bar, California. The deputies found that the children had been left alone in their home, which had no food, water, or electricity. The children led the deputies to a methamphetamine laboratory in the family's garage. The children frequently were present at the laboratory because they were being homeschooled in the same garage.

## **Strategies to Assist Children at Risk**

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Law enforcement authorities, prosecutors, social workers, medical professionals, and hazardous materials cleanup crews are increasingly aware of the serious risks faced by children who are present at methamphetamine laboratories. However, many communities have not yet implemented strategies that allow legal, social, and medical professionals to combine their resources effectively and break the cycle of child endangerment.

Butte County, California, developed a collaborative effort to improve the safety and health

of children endangered by drug production, distribution, and abuse in 1993 when it initiated the Drug Endangered Children (DEC) program. DEC brings together law enforcement officers, social workers, public health nurses, and district attorneys in a cooperative effort to remove children from homes where methamphetamine is produced and to safeguard the children from further abuse and neglect.

The DEC program is a model by which many agencies can learn how to best address the legal, medical, and social issues associated with children present at methamphetamine laboratories and other hazardous drug production and abuse environments. A key component of the DEC program is a response team that is on call 24 hours a day. The DEC Response Team—which includes social

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### **Four-Year-Old Child Found at Methamphetamine Production Site**

In March 2000 narcotics task force officers and a DEC social worker in Butte County discovered a methamphetamine laboratory at a residence while conducting a probation search. Upon arrival, they discovered a 4-year-old girl, naked, playing outdoors beside laboratory waste and a dead cat. It was discovered that her mother had been producing methamphetamine in a travel trailer located on the property. The child drew pictures and spoke clearly about a glass smoking pipe and numerous incidents of domestic violence she had witnessed in the home. The mother was arrested for manufacturing methamphetamine, maintaining a residence to manufacture, being armed in commission of a felony, and child endangerment. The child was taken to a local hospital for lab work and a physical exam where toxicology screens were positive for methamphetamine and other illicit drugs. She was infested with head lice and was suffering from infections in both ears, which required immediate medical attention. The child, who was developmentally delayed, was placed in a foster home that deals specifically with drug exposed, at-risk children.

Source: DEC.

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workers, trained fire department personnel (members of the hazardous materials unit, in particular), public health nurses, and law enforcement personnel—is called upon frequently to treat and care for children found at laboratory sites and assist with the criminal investigation. The entire DEC Response Team receives specialized training regarding methamphetamine production and the circumstances specific to drug endangered children, and all personnel have experience or receive training in criminal investigations related to evidence collection in child endangerment cases.

In Butte County, California, where the DEC program was informally developed in 1993, the team has removed 80 to 100 children from drug-related endangerment situations each year since its inception and has successfully prosecuted hundreds of cases of child endangerment. Other counties in California have had similar success, and nine other states (Washington, Oregon, Idaho, Nevada, Utah, Arizona, Oklahoma, Missouri, and Illinois) have begun to replicate DEC Response Teams in their local communities. In Riverside County the DEC program was officially begun in 1999. During the initial 18 months, 33 methamphetamine laboratories were seized where children were present. Eighty-three children were taken into custody, and felony charges were filed against 75 individuals. In Orange County the DEC team has coordinated the removal of children from methamphetamine laboratories and has assisted the Orange County District Attorney's Office with charging their parents with felony child endangerment.

Due to the success of the program in California where it is now operating in 15 counties, the National Methamphetamine Chemical Initiative (NMCI) will fund the travel of DEC instructors to other states interested in starting a program. (See DEC Points of Contact on page 6.)

## **Outlook**

The number of children present at methamphetamine laboratories, which more than doubled from 1999 through 2001, is expected to continue to increase at an even higher rate. As the number of children present at methamphetamine laboratories increases, more will suffer the physical and psychological effects associated with exposure to dangerous chemicals, and the number of related abuse and neglect cases will increase. Law enforcement agencies, medical personnel, and social workers will continue to be challenged to develop innovative solutions such as the DEC program to address this problem.



## **DEC Points of Contact**

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California Precursor Committee and NMCI Coordinator  
DEC Training  
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## **Sources**

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### *Associated Press*

Catoosa County, Georgia, Sheriff's Office  
Columbia University  
National Center on Addiction and Substance Abuse  
Department of Justice  
Drug Enforcement Administration  
El Paso Intelligence Center  
National Clandestine Laboratory Seizure System  
Deville, Louisiana, Police Department  
Drug Endangered Children Program  
Inland Narcotics Clearing House (CA)  
Los Angeles County Sheriff's Office  
*Los Angeles Times*

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12-10

(2) Promoting prostitution when the prostitute is 16 or more years of age is a severity level 7, person felony if committed by a person who has, prior to the commission of the crime, been convicted of promoting prostitution.

(3) Promoting prostitution is a severity level 6 5, person felony when the prostitute is under 16 years of age.

Sec. 4. K.S.A. 21-3608 is hereby amended to read as follows: 21-3608. (a) Endangering a child is:

(1) Intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered; or

(2) knowingly and intentionally causing or permitting a child under the age of 18 years to be present where:

(A) A person is selling, offering for sale or having in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; dispense; compound; unlawfully manufacturing; or attempt to unlawfully manufacture any methamphetamine as defined by subsections (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

(B) drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of unlawfully manufacturing or attempting to unlawfully manufacture any methamphetamine as defined by subsections (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

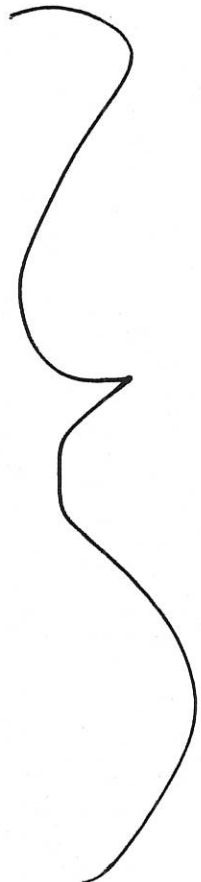
(b) Nothing in this section shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(c) Endangering a child as described in subsection (a)(1) is a class A person misdemeanor. Endangering a child as described in subsection (a)(2) is a severity level 9, person felony.

(d) As used in this section, "manufacture" shall have the meaning ascribed to that term in K.S.A. 65-4101, and amendments thereto, and "drug paraphernalia" shall have the meaning ascribed to that term in K.S.A. 65-4150, and amendments thereto.

Sec. 5. K.S.A. 2002 Supp. 21-4635 is hereby amended to read as follows: 21-4635. (a) Except as provided in K.S.A. 21-4634 and amendments thereto, if a defendant is convicted of:

(1) The crime of capital murder and a sentence of death is not imposed, or if a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, the court shall determine whether the defendant shall be required to serve a mandatory term of



12-10

# Denver Post

## Methamphetamine's young victims

### Homes doubling as drug labs pose serious dangers to kids

By Amy Herdy  
Denver Post Staff Writer

**Sunday, October 20, 2002** - Outside the yellow police tape that surrounds her grandma's house, 4-year-old Kayla holds court.

Freshly scrubbed, she sports clothes plucked out of police supply: red sweat pants, a white Winnie-the-Pooh T-shirt and small canvas shoes painted with fruit.

As she chatters with strangers, Kayla offers a disturbing glimpse of her world.

"Does anyone smoke at your house?" Thornton police Lt. Lori Moriarty asks.

"Mom and Grandma," replies the Adams County girl with deep brown eyes and wavy hair. "They smoke weed and cigarettes."

And sometimes Grandma cooks in the bathroom, black and brown stuff that goes into a pipe, Kayla tells Moriarty. "She cooks and then she smokes it."

Moriarty sighs, hoists the girl to her right hip - her 9mm Smith & Wesson rests on the left - and plans to have Kayla become a belated first in Colorado: a child tested for exposure to methamphetamine and the toxic chemicals used to manufacture it.

For years, law enforcement officials say, Colorado has been developing a serious methamphetamine problem, yet only recently has any focus been given to the children who live in these homes.

Until this month, there was no protocol in Colorado for what to do with a child found in a home with a meth lab, despite the fact that drug task forces across the state are funded by a federal grant that requires it. Children were not interviewed or medically evaluated. Often, they were placed with relatives and then allowed to go back into the home.

Modeled after a program begun in 1993 in California called Drug Endangered Children, Moriarty and Dr. Kathryn Wells of the Kempe Children's Center in Denver have begun to develop a local protocol. Still a work in progress, it begins with removing children from the home, decontaminating them by bathing them head to toe and dressing them in new clothes, and having them thoroughly medically evaluated. The children are also interviewed to determine any physical, emotional or sexual abuse.

A highly addictive stimulant, methamphetamine can cause confusion, anxiety, paranoia and violence. Children who live in homes with users of the drug are at risk for neglect and abuse, officials say, in addition to the risks posed by exposure to the drug itself and its manufacturing process.

"I would venture to say, we've had kids who have been seriously injured or died and we didn't recognize it as being linked to their parents' drug abuse," Wells said. "And that's a real problem."

The numbers of children at risk are sketchy. Due to sporadic reporting across the state, different agencies give different statistics for how many methamphetamine labs are seized in Colorado, and the number of those where children were present.

'A lot of gaps'

Ten days ago, playing on the police-issued purple and white floral blanket spread on a sidewalk near her grandma's home, Kayla offered a story of a child often left to fend for herself.

She does not go to preschool, Kayla told Moriarty, and except for the nice firefighter who washed her this morning, does not remember the last time she had a bath.

Breakfast? She got it herself: vanilla ice cream and cold macaroni and cheese.

Lots of people visit Grandma, who keeps a gun that is bigger than the silver one Daddy has.

"There's no question these kids are at risk," Moriarty said. "They are in danger of explosions, fires, burns, weapons and the other elements you find in a typical meth home."

And Colorado law, officials say, is weak when it comes to prosecuting parents who put their children at risk by exposing them to meth. Under current law, a child has to be seriously injured or killed before a parent can face felony child abuse charges.

"There are a lot of gaps," said Tom Gorman, director of the local High Intensity Drug Trafficking Area in Denver.

Estimates vary among police agencies on the number of labs seized, but Gorman put it at 336 statewide in 2000. In 2001, the number jumped to 452.

"The vast majority have evidence of children living in the home," he said. Whether any of those children have been injured or killed from the dangers of living in a meth home is impossible to measure, he said, because no one has been tracking them and paramedics and other first responders have not been trained to recognize the signs.

#### Raising awareness

Colorado's meth problem has begun to mirror that of other states, such as Arizona, Washington, Utah and California, Gorman said, states that have had horrible cases of child injuries and deaths related to the drug.

"We don't want that to be the trigger here in Colorado," said Gorman, who noted that two adults died from a methamphetamine-related explosion in Denver in January. "We want to get a handle on meth before that happens."

During their raid of her grandma's house, police found methamphetamine on the headboard where Kayla slept. They also found two gallons of muriatic acid on the floor of the garage, beakers, bottles, pipes and other evidence of manufacturing.

In other states, such as California, merely the presence of such a lab could result in felony child abuse charges. In Colorado, such exposure is only a misdemeanor.

"We need stiffer penalties," Moriarty said, and more statewide education about the dire domino effects of methamphetamine.

Toward that end, a consortium of law enforcement, physicians, district attorneys, judges, social workers, paramedics and others are scheduled to meet Friday at the Douglas County Fairgrounds.

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Moriarty hopes the conference will raise awareness of the methamphetamine problem in Colorado and its effect on children.

A bust on a chilly April day

It is an issue she has passionately embraced since a chilly day in April, when SWAT team members emerged from a meth lab home on Hudson Street in Thornton, gingerly carrying a diaper-clad 14-month-old boy.

Moriarty, who was on scene, remembers looking at the toddler and thinking, "What are we going to do with him?"

In addition to methamphetamine, police found propane fuel, acetone, alcohol, toluene, hydrochloric acid, funnels, a propane torch and several glass pipes in the home.

A diaper bag found in the toddler's room held tubing, Red Devil lye, chemistry flasks, funnels, iodine and bottles of acid.

The boy's father, Keith Strickland, 25, had dropped his son off at the home that morning for a court-ordered visit with the boy's mother, 26-year-old Heather Campbell.

Social services took custody of the toddler, Brandon, releasing him to his father later that night.

"I said, 'Is he OK?' They were like, 'We can't tell you that,'" Strickland, a machinist, said.

"They said they had a physician check him out for a moment, and nothing was wrong."

In the car on the way home, he said, the toddler shook his finger at his father.

"He said, 'Bad, bad, bad da-da!' I said, 'Whoa, buddy, I'm sorry.' I'll kick myself for the rest of my life for dropping you off," said Strickland, who says he never would have allowed the visit had he seen signs of drugs. He estimates that his son visited Campbell at the home about a half-dozen times, once overnight.

Concerned, Strickland said he took Brandon to a pediatrician the next day, and the boy was given a clean bill of health. So far, he said, his son appears to be healthy, although at times Brandon awakes at night, shaking, sweating from head to toe and crying.

Until a reporter talked to him, Strickland did not know about the contents of the clandestine drug lab in the home his son had visited. No one in social services or law enforcement had told him, he said.

Campbell, the boy's mother, was charged with felony counts of manufacturing and possession of methamphetamine, as well as misdemeanor child abuse. She was sentenced in August to 30 days in jail, two years' probation and community service.

Outside the courtroom, Campbell's 21-year-old boyfriend, Jared Herman, said her punishment was unfair.

"She was doing it because I was doing it," he said of Campbell's meth use, "trying to make me love her."

Brandon was never in danger, Herman said. "When he'd come around, we'd stop using."



In an interview from jail last month, Campbell told The Denver Post her addiction to methamphetamine took over her life.

She began using it in February, shortly after moving into the house where six other people, including Herman, lived.

At first she resisted smoking meth, she said, but everyone would "pass the pipe around, and only so many times can you say no."

As her addiction grew, Campbell's weight dropped to 112 pounds on her 5-foot-11 frame.

"I couldn't sleep for days, couldn't eat. I would smoke weed to get high," said Campbell, adding that she is now drug-free.

"I wasn't paying enough attention to the baby. ... When I did meth, the baby would go downstairs."

Others cooked meth in the home, she said.

"Jared would bring down the pills, and put them in a glass bottle and heat two layers of liquid. Then (someone else) would cook it in the microwave - cook it and scrape it."

As for her son, "I'm sure he was there a couple of times while they were doing it (cooking meth). I feel like (expletive deleted) about that."

Strangers often trooped in and out of the house, she said, buying drugs.

"I got to know some of them. Jared hit somebody once, he was flicking my ear while I was sleeping," she said.

Soon, she said, she and Herman stopped leaving their room.

"I threatened to kill myself every day. I said it a lot to get to him."

Then, Campbell said, she thought of a way to get Herman to notice her.

"I was in dire need of his love, so I went out and stole large boxes of pills, Sudafed, so (they) could make more meth," Campbell said.

That was the day before the raid.

The next morning, Campbell said, she decided to flush her share of meth down the toilet. As she stood up, Herman moved to stop her, she said, and at that moment they saw the police.

"That was my wake-up call," she said of the raid.

Stories echo across state

Across the state, narcotics investigators have their own anecdotes of children found in meth homes.

In Lafayette, there is the case of the men videotaping their home-cooking of the drug, the video showing a baby in a nearby high chair and a toddler running around the room.

There is the 12-year-old Montrose County boy who lived in the front of the house where his father

and uncle produced meth.

Or the case in Craig where officers had to shoot and kill three pit bulls who attacked them during a search of a home with a suspected methamphetamine lab. Although 44 grams of the drug was found, along with pipes, scales and a collection of guns and knives, none of the three young children in the home were tested for drug exposure or interviewed by police for potential abuse or neglect.

National experts say the system needs to change.

"We worry about kids who don't eat breakfast, what about kids who are exposed to hydrochloric acid every day before school?" said Laura Birkmeyer of San Diego, director of the National Methamphetamine Chemicals Initiative.

"If children are being cared for by heavy meth users, those caregivers have poor judgment, are sleep-deprived, can be paranoid and turn violent," Birkmeyer said.

"And many kids test positive for meth when taken from a meth home because they breathe it, eat it and get cross-contamination of food."

So far, there are no studies of the long-term effects of methamphetamine exposure in children, Birkmeyer said.

In her jail interview, Campbell said she hoped her son would have a better life.

"I don't want him to be like I am," she said. "I don't want him to go through what I went through."

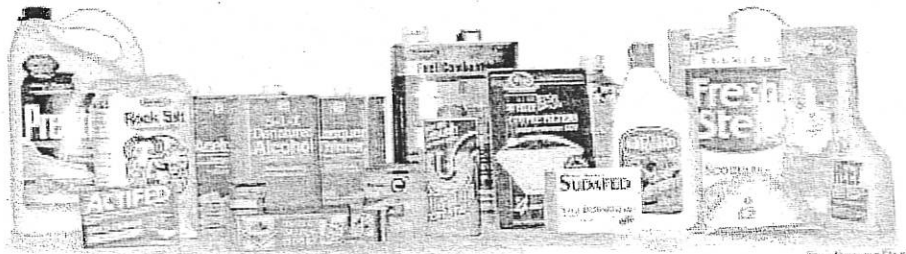
Now out on probation, Campbell called The Denver Post last week.

She just learned that police have issued a warrant for her boyfriend's arrest, she said, for charges of possession and manufacturing of methamphetamine, as well as misdemeanor charges of child abuse, in relation to the raid on their Thornton home in April.

She is worried, she said, in part because she is pregnant with his child.

### The hazards of meth

Even though children may not ingest methamphetamine, the chemicals used to make the drug can be deadly to them. Spills of chemicals can cause burns, and vapors can lead to serious respiratory problems and pulmonary edema. In addition, some of the chemicals are highly volatile and can explode. Here are some of the common household products used in making methamphetamine.



Source: Post research

The Denver Post

12-15

# Child found in home with alleged meth lab

Following medical  
evaluation, girl is released  
to her natural mother

By **JOE NOGA**

Morning Sun Staff Writer

A young girl was found in a Pittsburg home where law officers also reportedly found chemicals used to make methamphetamine.

At 4:25 p.m. Sunday, Pittsburg police were dispatched to 213 W. 20th St. on a report of a domestic argument between a man and a woman inside the home.

While investigating the domestic argument, officers noticed a chemical smell permeating from inside the residence. When the officers finished probing the domestic dispute, the chemical smell was strong enough to cause police to investigate the source of the odor. An initial investigation revealed that the remnants of an alleged working meth lab.

Officers cleared three adults and the child from the house and obtained a search warrant.

Arrested at the scene was Jeffery R. Montanelli. Montanelli was booked into the county jail at 11:46 p.m. on Feb. 9 for possession of pseudoephedrine, no drug tax stamp, felony possession of paraphernalia, manufacturing methamphetamine, possession of methamphetamine and child endangerment. Montanelli remains in custody in lieu of \$64,000 bond.

The girl was taken into police custody as a child in need of care and taken to Mt. Carmel Regional Medical Center for evaluation.

"In this situation, because the child was exposed to chemicals, generally speaking we take them out to the hospital for evaluation just as a precautionary measure," said Deputy Chief Mendy Hulvey. "If the doctors deem it necessary they will actually do chemical testing on the child. We really don't know what the long term effects of exposure to these chemicals is on children. This is definitely a concern, a growing concern."

After her evaluation, the child was released to her natural mother, who was neither present in the house nor involved in the alleged drug incident.

The Kansas Bureau of Investigation, the Southeast Kansas Drug Task Force, the Pittsburg Fire Department and Crawford County EMS also responded to the incident.

The investigation is ongoing and further charges may be levied.

Staff Writer Joe Noga can be reached at [jnoga@morningsun.net](mailto:jnoga@morningsun.net) or at 231-2600, Ext. 132.

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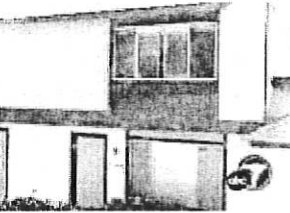
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SOUTHERN CALIFORNIA'S NEWS LEADER

Friday, February 14,

# Four Children Found Hungry Lead to Meth Lab Bust



DIAMOND BAR — Four hungry children looking for food lead deputies to the discovery of a methamphetamine lab in Diamond Bar.

This home in Diamond Bar is where authorities found four children left by themselves. The mother was in the hospital having a baby. Authorities also found another surprise, a meth lab.

Someone called authorities about the children, apparently after the four children went door-to-door asking for food. Sheriff's deputies were sent to find out what was going on. They learned that their mother was in a hospital giving birth, according to Agent Shirley Lessiak of the state Department of Justice.

The deputies also discovered a meth lab in the garage of the family's home at 2357 Canyon Park Drive, she said.

Two boys, 13 and 14, and two girls, 3 and 6, were placed in the protective custody of the county, Lessiak said.

The mother, whose name was unavailable, will be booked on suspicion of manufacturing a controlled substance and child endangerment, Lessiak said, adding that she was at a hospital with her baby tonight.

A search warrant served about 6 p.m. confirmed that the home contained such meth-making materials as psuedoephedrine, acetone, muriatic acid, Drano, red phosphorous and glassware, she said.

The children had access to the garage, the heart of the operation, Lessiak said. A county hazardous-materials team was at the scene tonight to dismantle the operation, she said.

*Last Updated: Mar 22, 2002*

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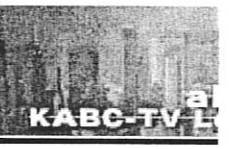
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**Carthage man charged in son's death**  
**Police say baby ingested leftovers from meth 'cook'**  
**By Jeff Lehr**  
**Globe Staff Writer**

CARTHAGE, Mo. — When his parents, Dennis and Maranda Doubet, took him to the emergency room at McCune-Brooks Hospital in Carthage on Sept. 23, 11-month-old Zarrin Doubet reportedly was foaming at the mouth and reeking of fuel.

The father said his son apparently had choked on something.

While doctors and nurses worked feverishly to save the boy, police were called.

The father left the hospital on foot just as officers were arriving — and as Zarrin was dying — raising the suspicions of authorities.

Carthage detectives went to the Doubets' home at 418 Clevenger St., just a few blocks from the hospital, to retrieve the boy's father for death notification purposes. Police said that when they eventually obtained consent to search the home that day for evidence of a cause of death, they found a partially filled can of Coleman camp fuel, empty bottles of acetone and Heet, iodine-stained filters and paper, a used syringe, boxes of matches with their strike plates scraped clean of phosphorus, and a single-burner stove.

They began to suspect the child had died from ingestion of leftover fuel from a methamphetamine "cook." The Missouri Division of Family Services was called and took custody of the Doubets' two other children, one of school age and the other a preschooler.

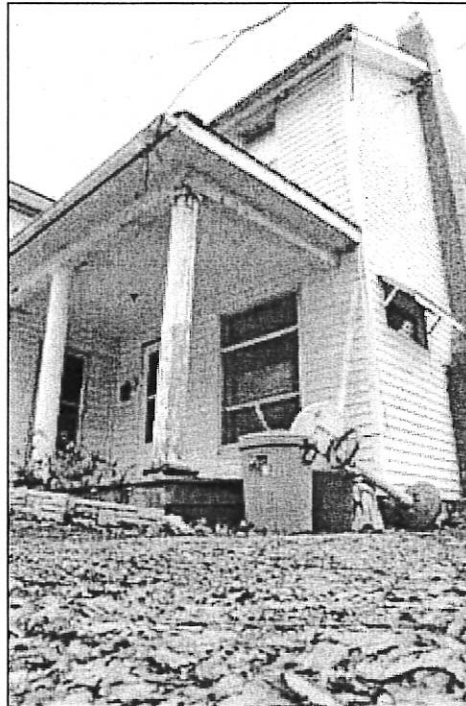
But no charges were filed against either parent, pending an autopsy and toxicology tests.

Those test results came back this week, and Dennis D. Doubet, 33, was arrested Wednesday night and charged with second-degree murder and creation of a controlled substance. He has posted \$25,000 bond and been released.

"This clearly was a tragic event," Carthage Police Chief Dennis Veach said at a news conference called Thursday to announce the results of the three-month investigation.

He said authorities believe it is the first known instance in Southwest Missouri, if not the entire state, of a child dying from ingestion of chemicals used to make methamphetamine. He called it a case "that has raised the bar on the meth problem" in the region.

"It's way past a wake-up call," Veach said.



**Globe/T. Rob Brown**  
**A house at 418 Clevenger St. in Carthage, where an 11-month-old boy is believed to have ingested leftover fuel from a meth-making operation on Sept. 23, is now vacant. The child died that day at a Carthage hospital.**

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"If you're parents, and you're doing drugs, and you're cooking drugs in the house, you're not good parents."

Jasper County Coroner Ron Mosbaugh said the toxicology tests showed Zarrin died from ingestion of Coleman fuel and other substances mixed in with the fuel. The deadly mix, which caused hemorrhaging and massive congestion in his lungs, was found in the boy's stomach contents and brain tissue, Mosbaugh said.

Camp fuel is commonly used to help separate the final product when methamphetamine is cooked.

Dean Dankelson, county prosecutor, said the father will be prosecuted under Missouri's felony murder rule. The law permits a defendant to be prosecuted for second-degree murder if someone dies during the defendant's commission of another felony crime. In this case, Dankelson said, Doubet is accused of felony manufacturing of a controlled substance that led to the death of his son.

Second-degree murder carries possible sentences of 10 to 30 years in prison or life in prison, the prosecutor said.

Maranda Doubet has not been charged with a crime. Dankelson and Veach declined to discuss why one parent would be charged and not the other.

"The mother has not been charged," Veach said. "That's all I'm going to say on that."

He said police searched the couple's home and other buildings, not only the day of Zarrin's death, but also the next day and two days after. He said the couple's garage and two abandoned buildings on other people's property were searched in connection with the investigation.

"The searches of the residence and other buildings in the area confirmed that methamphetamine activity had been occurring at the residence for some time," Veach said.

He said the searches turned up evidence of a meth-making operation in an upstairs bedroom of the home.

The coroner had said in September that the father told authorities he was in the living room and his son was in the kitchen when he heard the boy making strange noises. Mosbaugh said the father told authorities that he believed the boy had choked on something.

Dennis and Maranda Doubet could not be reached for comment Thursday.

Police said Doubet was unemployed at the time of his son's death but currently works at a Carthage factory.

Veach said the father had some "minor" scrapes with the law in the past, and that officers had received some "limited information" about activities at the couple's home several years ago. But nothing was ever confirmed, he said.

The couple no longer reside at the Clevenger Street address. A sign on the door Thursday indicated that they may have moved to a home on Cedar Street, but no one answered the door at that address either.

Brian Doubet, a brother of the defendant, told the Globe that police are trying to make his brother a scapegoat.

"If you knew him as well as I do, you'd know he would never hurt his child," Brian Doubet said.

He declined to discuss any details of the case.

12-19



## **Drug Labs and Endangered Children**

by Tom Manning, J.D.

Drugs, guns, and money - the usual seizures by law enforcement officers during a raid on a suspected methamphetamine producer - are being joined by a new and, sadly, ever-increasing [victims-kids.html](#)

[victims-kids.html](#) phenomenon, the children left behind when officers arrest their parents for illegally manufacturing or using this drug. More often than not, officers end up changing dirty diapers, comforting screaming babies, and entertaining these children for hours.

Officers in San Diego, California, understand this scenario all too well. Because of the high rate of methamphetamine use and production, San Diego held the title of the Methamphetamine Capital for several years. From 1988 to 1995, county-funded drug treatment programs reported an increase of more than 500 percent in cases where methamphetamine was reported as the primary drug problem. In 1996, methamphetamine-related arrests totaled 5,218. Tragically, an estimated 20 percent of these cases had children associated with them. Also, methamphetamine manufacturing labs ranged in operation from large multilayered organizations to small "mom and pop" shops producing the drug on kitchen stoves.

Local government, law enforcement, and community groups have worked hard to change San Diego's unfortunate but deserved reputation. Recently, however, methamphetamine use and production have spread rapidly, not only within the entire state, but throughout the nation, as well.

### **METHAMPHETAMINE PRODUCTION DANGERS**

The methamphetamine production process involves three basic stages. First, the cooking stage where the chemicals ephedrine, hydriodic acid, and red phosphorous are mixed and heated at various stages for about 12 hours and then strained to remove the red phosphorous, which is not water soluble and is fatal in large doses. Then the extraction stage involves adding sodium hydroxide to convert the acidic mixture to a basic one and then adding Freon to extract the methamphetamine from the base. Finally, the salting or drying stage includes adding hydrogen chloride gas to the mixture to convert it from an oil into a crystalline powder. All of the stages involve highly flammable and toxic substances.<sup>1</sup>

The danger to children becomes obvious when a methamphetamine lab explodes, killing or injuring them, or when authorities discover neglected children as a result of their parents' methamphetamine use. However, chemical burns and exposure to hazardous chemicals and deadly gases represent some of the more insidious and overlooked injuries caused by living in a methamphetamine lab environment. For example, authorities have found babies crawling on carpets where toxic chemicals used to make methamphetamine have spilled. They have seen children cooking their own meals in the same microwave ovens that their parents used to produce methamphetamine. Also, they have discovered chemicals used in methamphetamine production stored in open or improperly sealed containers in areas where children played. These chemicals emit hazardous fumes toxic enough to burn lungs; damage the brain, kidneys, and liver; or even kill these children. In a recent case, two boys received second-degree chemical burns on their arms when they fell off their bikes onto a patch of dirt in their backyard. Police officers discovered that their parents had dumped leftover waste from their methamphetamine production in the yard.

What can be done to protect these children? The available options do not always provide these children with the safest alternatives. For example, leaving the children with a neighbor or family member may prove risky because such individuals may not possess the ability to care for a child. Also, calling child protective services may result in lengthy delays because these agencies often are overworked and poorly equipped to handle emergency situations. Therefore, in many

instances, children return time and again to their unsafe, unstable homes because of the lack of available intervention resources. Further, often stymied in their attempts to get the children to a safe environment, police officers cannot focus on their primary missions of gathering evidence, putting offenders in jail, and preparing these cases for prosecution. Both kids and officers get caught in the middle of parental drug use and profiteering.

## **THE SOLUTION**

For years, the concept of children as victims of the methamphetamine epidemic remained unknown. However, in 1995, the issue gained national attention when a Riverside County methamphetamine lab exploded, killing three small children. Their mother received a conviction for second-degree murder and appealed the verdict. In March 1998, the Fourth District Court of Appeals ruled that manufacturing methamphetamine is an inherently dangerous felony for the purpose of the second-degree felony-murder rule.<sup>2</sup> This case sparked state legislation that added prison enhancements for the presence of children at methamphetamine labs. As of January 1998, defendants found guilty of manufacturing methamphetamine in the presence of children under 16 face a 2-year prison enhancement. The methamphetamine producer can expect an additional 5-year penalty enhancement when a child is injured as a result of the methamphetamine production process.

### **The Drug Endangered Children Program**

In conjunction with strengthening state law, California awarded grants to four counties (San Diego, Los Angeles, Santa Cruz, and Orange) to identify issues, establish protocol, and implement a multidisciplinary approach to protecting children victimized by exposure to methamphetamine manufacturing. In each county, the district attorney's office developed a program employing the skills, knowledge, and experience of individuals from law enforcement, health care, and social services.

### **Program Description**

In San Diego County the district attorney's office used the successful Jurisdictions Unified for Drug/Gang Enforcement (JUDGE) program as an umbrella organization and model to launch the Drug Endangered Children (DEC) program in January 1998.<sup>3</sup> Besides fostering greater cooperation and coordination between social services and law enforcement, DEC studies and documents the environmental hazards that children are exposed to in these methamphetamine "kitchens of death." Health care workers establish the medical procedures and document the testing of these children. Prosecutors then use this information to add child endangerment enhancements targeting methamphetamine manufacturers.

After reviewing area drug statistics, the San Diego district attorney decided that North San Diego County represented the logical place to implement the program. Over the past 2 years, 90 percent of methamphetamine lab seizures occurred in North County. In 1997 alone, police discovered 62 methamphetamine labs, and 40 percent of these had children present or living at the site.<sup>4</sup> In one case, a mother and her boyfriend were cooking methamphetamine in their apartment's only bathroom when the substance ignited. Fortunately, the mother and her 2-year-old son escaped the fire without injury. Her boyfriend also fled the scene, but officers later captured and identified him by the burns on his arms.

### **Coordinated Efforts**

In the past, police officers who encountered children in a methamphetamine lab environment attempted to contact the Children's Services Bureau to remove the children. However, the officers either had to transport the children to a facility or find someone who could care for them. In these situations, even when social workers responded, no specific procedures existed. Often the children did not receive proper medical testing, examinations or interviews.

Unfortunately, lack of communication and sometimes-unclear jurisdictional parameters existed among law enforcement, social services, and health care providers.

Under DEC, however, social workers and health care providers have joined police officers in helping children involved in methamphetamine arrests. Social workers can respond to the scene and transport children exposed to toxic chemicals to the proper medical facility. Health care providers have created guidelines so that children found in methamphetamine lab environments will receive all of the necessary testing and treatment procedures. Also, once medical authorities have verified that these children have been exposed to methamphetamine and the toxins associated with its productions, they track the children's progress to ensure their continued health and safety. Additionally, before DEC started, concern for children living or present at the site of a methamphetamine lab did not represent a prosecutorial priority. Usually, police officers would note the extremely poor living conditions when they arrested the parents but seldom documented these circumstances, unless they did so accidentally in photographs of the lab site.

Now, as part of DEC, officers complete forms that describe the conditions and hazards present in the home or at the lab site. The forms also direct officers to interview children and collect evidence for endangerment prosecution. Moreover, the deputy district attorney assigned to the team can assist police officers in their investigation and prosecute these cases, including child endangerment charges if warranted.

### **Program Results**

Local police officers in San Diego County have responded favorably to the team concept of DEC. The program allows officers and social workers to use their collective experience to work together on a joint mission – removing children from dangerous environments. At the same time, it permits officers to concentrate most of their efforts on the critical law enforcement matters associated with these incidents. A recent DEC case involving a methamphetamine-producing parole violator illustrates how some officers feel about this program. When deputies arrived at the residence, they found two small children running around a filthy house littered with old food and dirty diapers. In a back bedroom, they discovered a crying 6-month-old baby obviously in desperate need of a diaper change. One deputy stopped the baby's crying by changing her diaper and then picked her up and comforting her. While waiting for a social worker to arrive, another deputy took the handcuffs off the baby's mother so she could care for her baby. However, when the deputy placed the baby in her mother's lap, the baby began crying, and the mother had no idea how to comfort her. The deputy picked up the baby again, and she immediately calmed down. The deputy later said that the baby seemed to know that the police were there to help her. Another deputy noted that helping a little child made his job worthwhile.

### **CONCLUSION**

Methamphetamine manufacturing has added a new casualty to its long list of victims caught in the morass of drug abuse. In increasing numbers, children of methamphetamine producers have become victimized by their parents' illegal manufacture and use of this substance. These parents neglect their children's development and place them in hazardous living conditions that can cause serious health problems, even death.

Law enforcement officers have found it increasingly difficult to find safe havens for these children left behind by their parents' arrest. The San Diego District Attorney's Office brought together the necessary resources to design and implement a solution. By coordinating the efforts of law enforcement, health care, and social services under one centralized program, the Drug Endangered Children program has helped to handle this sad but mushrooming situation. Agencies responsible for the public's safety may want to consider developing similar programs

for the children of arrested methamphetamine users and producers before their communities face the same crisis.?

### **Endnotes**

1 U.S. Department of Justice, National Drug Intelligence Center, Hazards of D-Methamphetamine Production, June 1995.

2 People v. James, 62 Cal. App. 4th 244 (1998)

3 Formed in 1987, JUDGE uses a multijurisdictional approach to target gangs and drug dealers. Because of the high volume of methamphetamine trafficking and lab cases prosecuted, JUDGE proved the logical organization to implement the DEC program.

4 Statistics compiled by DEA South West regional Lab and California Bureau of Narcotic Enforcement, San Diego Office.

**Kyle Smith**

**From:** David Hutchings

**Sent:** Tuesday, November 12, 2002 2:09 PM

**To:** Kyle Smith

**Cc:** Rod Page; Kirk Thompson; Al Keil; Steve Rosebrough

**Subject:** FW: DEC Question

Knowingly placing a child in the proximity of a methamphetamine lab is knowingly placing a child in an environment where that child will be exposed to fumes and chemicals which are either poisonous, flammable, explosive, corrosive, carcinogenic... or some combination thereof. The result may be severe and permanent physical damage, if not a life threatening exposure.

Existing legislation which addresses grave bodily harm or the potential for it has been has been termed as *aggravated* and classified as a felony. It would seem to follow logically that, when we are addressing an intentional act of placing a child in an environment where they will be exposed to varying levels of dangerous substances that could endanger the child's life or well being, we would place that act at the level of a felony. Other legislation which deals with acts committed against a child by a parent or caregiver have also been termed as aggravated, as have acts where an individual acts against someone over whom they exert authority. Clearly a child often has no ability to exercise the privilege of removing themselves from that environment.

Methamphetamine labs specifically, and illegal drug activity in general, are inherently dangerous, as is demonstrated by the great precautions taken by investigators when conducting search warrants, undercover purchases, surveillances...

I feel that Kansas needs a law which adequately addresses the situation where children are intentionally placed in situations which are clearly a danger to their life and health, and that a violation of that law should follow past logic and be placed at the level of a felony. I also think that it would be appropriate, since all labs are inherently dangerous, that it be considered presumptive that a child knowingly placed in that environment would be considered to have been endangered.





State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

PHILL KLINE  
ATTORNEY GENERAL

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TESTIMONY OF  
ASSISTANT ATTORNEY GENERAL KEVIN GRAHAM  
BEFORE THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE  
RE: HOUSE BILL 2316  
February 17, 2003

Chairman Loyd and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Phill Kline to offer support for H.B. 2316. This bill makes a single, necessary change to current law by adding the offense of Aggravated Incest, K.S.A. 21-3603, to the list of offenses that meet the definition of a "sexually violent crime" under the Kansas Offender Registration Act. If this change is law occurs, offenders who are convicted for the crime of Aggravated Incest will be required to abide by the requirements of the Kansas Offender Registration Act. This change in law corrects what appears to be an oversight in the current statute, and clearly follows the intent of the Kansas Offender Registration Act to require registration of individuals convicted of aggravated sex crimes.

On behalf of Attorney General Kline I would like to thank you again for the opportunity to appear before the committee and I urge your favorable consideration of House Bill 2316.

Reference Material for the Committee:

**K.S.A. 21-3603. Aggravated incest.** (a) Aggravated incest is: (1) Marriage to a person who is under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or (2) engaging in: (A) Otherwise lawful sexual intercourse or sodomy as defined by K.S.A. 21-3501 and amendments thereto; or (B) any lewd fondling, as described in subsection (a)(1) of K.S.A. 21-3503 and amendments thereto, with a person who is 16 or more years of age but under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece. (b) Aggravated incest as described in subsection (a)(2)(A) is a severity level 5, person felony. Aggravated incest as described in subsections (a)(1) and (a)(2)(B) is a severity level 7, person felony.

H. Corr : J.J.  
2-17-03 13  
Attachment



**WRITTEN TESTIMONY IN SUPPORT OF HOUSE BILL No. 2316  
HOUSE COMMITTEE ON CORRECTIONS  
AND JUVENILE JUSTICE**

February 17, 2003

Office of the District Attorney, Eighteenth Judicial District

Nola Foulston, District Attorney

Submitted by

Mike Jennings, Assistant District Attorney

Chairman Loyd and Members of the Committee:

On behalf of District Attorney Foulston, I want to thank you and the Committee for this opportunity to express our support for House Bill No. 2316.

House Bill No. 2316 adds Aggravated Incest to the list of crimes deemed "sexually violent" and requiring registration under the Kansas Offender Registration Act as a consequence. There is no meaningful distinction between Aggravated Incest and the other crimes for which registration is presently required. The victim of crimes presently listed (e.g., Rape, Sodomy,) may well be a member of the same household as the person required to register. The concerns for protecting the public are comparable. The nature of the offenses is similar. The result is that registration is appropriate for those convicted of Aggravated Incest.

H. Carr § J.J.  
2.17.03  
Attachment 14

Legislative Testimony In Support of  
HB 2319

Summary of Testimony to the House Committee on Corrections and Juvenile Justice  
February 17, 2003

John C. Fritz  
Assistant District Attorney  
Johnson County, Kansas  
913-715-3030  
[John.Fritz@jocoks.com](mailto:John.Fritz@jocoks.com)

It is a well-known fact that juveniles are at risk when they consume alcohol or other drugs. Socially, kids that drink are more likely to have problems with education, depression and suicide. In addition, kids that drink suffer from impaired judgement, and are more likely to engage in criminal behavior. Just as concerning, a juvenile under the influence is more vulnerable to being the victim of an assault or battery, or a sexual offense or even a vehicular accident.

In prosecuting juvenile cases for over 15 years, I have found that in spite of laws, courts and educational programs, juveniles will still seek out people and places where they can gather to drink. Sometimes it's a sibling that lives on their own, or a parent willing to look the other way. But when our youth are allowed to gather and illegally consume alcohol, bad things can happen.

HB 2319 is a small-step towards effectively dealing with these issues. If passed, HB 2319 would make a person criminally liable who knowingly allows their property to be used for under-age drinking.

This law is needed because currently, K.S.A. 21-3610 only prohibits "directly or indirectly selling to, buying for, giving or furnishing" alcohol to a minor. K.S.A. 21-3610 therefore covers direct acts of physically supplying alcohol to minors, but does not adequately deal with the common scenario of adults knowingly allowing their residence or property to be used for the purpose of underage drinking.

This proposed legislation is a simple way to impose minimal criminal liability, and give law enforcement additional tools to combat underage drinking. Currently, an officer responding to an out-of-control teen alcohol party may not have any recourse against an adult that has knowledge, but chooses not to do anything to stop it. Now, the officer has the ability, under the appropriate circumstances, to refer that adult for prosecution.

Let's also discuss what this law is not about. First, this is not a "social host" law (common in other states) that imposes civil liability for serving minors or intoxicated persons. Second, this law does not impose "absolute liability" on land or homeowners. This law reasonably requires a "knowing" element prior to the imposition of criminal liability.

Our kids are important. Unfortunately, some adults out there send the wrong message by allowing teen drinking parties. I respectfully submit that we can send a different message that tells them that their safety and well-being are too important to risk.

**Attachments:**

- A. Current K.S.A. 21-3610.
- B. Proposed HB 2319.
- C. Similar statutes in other states.

H. Corr & J.J.  
2-17-03  
Attachment 15

Current K.S.A. 21-3610

21-3610. Furnishing alcoholic liquor or cereal malt beverage to a minor.

(a) Furnishing alcoholic liquor or cereal malt beverage to a minor is directly or indirectly, selling to, buying for, giving or furnishing any alcoholic liquor or cereal malt beverage to any minor.

(b) Except as provided by subsections (d) and (e), furnishing alcoholic liquor or cereal malt beverage to a minor is a class B person misdemeanor for which the minimum fine is \$200.

(c) (1) Except as provided by paragraph (2) of this subsection, as used in this section, terms have the meanings provided by K.S.A. 41-102, and amendments thereto.

(2) As used in this section, "cereal malt beverage," "retailer" and "legal age for consumption of cereal malt beverage" have the meanings provided by K.S.A. 41-2701, and amendments thereto.

(d) It shall be a defense to a prosecution under this section if: (1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; (2) the defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and (3) to purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

(e) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward.

History: L. 1969, ch. 180, § 21-3610; L. 1988, ch. 165, § 7; L. 1989, ch. 91, § 1; L. 1993, ch. 173, § 1; L. 2001, ch. 189, § 1; May 24.

**HOUSE BILL No. 2319**

By Committee on Corrections and Juvenile Justice

2-12

AN ACT concerning crimes and punishment; relating to unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage.

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

Section 1. (a) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is permitting a person's residence or any land, building, structure or room procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the possession or consumption therein of alcoholic liquor or cereal malt beverages by persons under the age of 21.

(b) A person is deemed to have permitted such person's residence, land, building, structure or room to be used in violation of this section if such person knowingly authorizes, enables or permits such use to occur or fails to control access to either the residence, land, building, structure or room or to the alcoholic liquor or cereal malt beverage contained therein.

(c) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a class B nonperson misdemeanor. In addition to any term of imprisonment which may be imposed, the minimum fine for such violation is \$200.

(d) As used in this section, terms have the meanings provided by K.S.A. 41-102, and amendments thereto.

(e) This section shall be a part of and supplemental to the Kansas criminal code.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Statutes From Three Different States

I. Rev. Code Washington (ARCW) § 66.44.270 (2002)

§ 66.44.270. Furnishing liquor to minors -- Possession, use -- Penalties -- Exhibition of effects -- Exceptions

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years *or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control*. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(2) (a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

...

HISTORY: 1998 c 4 § 1; 1993 c 513 § 1; 1987 c 458 § 3; 1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1); prior: Code 1881 § 939; 1877 p 205 § 5.

II. Florida Statute § 856.015 (2002)

§ 856.015. Open house parties

(1) Definitions. --As used in this section:

...

(e) "Open house party" means a social gathering at a residence.

...

(2) *No person having control of any residence shall allow an open house party to take place at said residence if any alcoholic beverage or drug is possessed or consumed at said residence by any minor where the person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at said residence and where the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.*

...

HISTORY: ss. 4, 5, 6, 7, ch. 88-196; ss. 64, 65, 66, 67, ch. 88-381; s. 45, ch. 91-110; s. 217, ch. 91-224; s. 103, ch. 97-264; s. 9, ch. 99-186; s. 19, ch. 2000-320; s. 1, ch. 2002-60; s. 9, ch. 2002-78.

III. Ohio ORC Annotated 4301.69 (Anderson 2002)  
§ 4301.69 Offenses involving underage persons.

. . . .  
**(B) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian and the parent, spouse who is not an underage person, or legal guardian is present at the time of the person's possession or consumption of the beer or intoxicating liquor.**

An owner of a public or private place is not liable for acts or omissions in violation of this division that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

**(C) No person shall engage or use accommodations at a hotel, inn, cabin, campground, or restaurant when the person knows or has reason to know either of the following:**

(1) That beer or intoxicating liquor will be consumed by an underage person on the premises of the accommodations that the person engages or uses, unless the person engaging or using the accommodations is the spouse of the underage person and who is not an underage person, or is the parent or legal guardian of all of the underage persons, who consume beer or intoxicating liquor on the premises and that person is on the premises at all times when beer or intoxicating liquor is being consumed by an underage person;

(2) That a drug of abuse will be consumed on the premises of the accommodations by any person, except a person who obtained the drug of abuse pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and has the drug of abuse in the original container in which it was dispensed to the person.

. . . .  
**(F) No parent, spouse who is not an underage person, or legal guardian of a minor shall knowingly permit the minor to violate this section or section 4301.63, 4301.633 [4301.63.3], or 4301.634 [4301.63.4] of the Revised Code.**

. . . .  
HISTORY: RS § 6943; 63 v 149, § 2; GC § 12960; 113 v 495; 115 v PtII, 118(161), § 62; 116 v 279; Bureau of Code Revision, 10-1-53; 132 v S 128 (Eff 11-24-67); 136 v H 315 (Eff 4-25-75); 139 v H 357 (Eff 8-19-82); 142 v H 419 (Eff 7-31-87); 142 v H 306 (Eff 6-9-88); 143 v H 22 (Eff 8-1-89); 145 v S 82 (Eff 5-4-94); 147 v S 66 (Eff 7-22-98); 149 v H 17. Eff 10-11-2002.