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METHAMPHETAMINE EPIDEMIC ELIMINATION ACT

NOVEMBER 16, 2005.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 3889]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill H.R. 3889 to further regulate and punish illicit conduct relating to methamphetamine, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENTS

The amendments are as follows:

Strike titles II and III and insert the following (and conform the table of contents accordingly):

TITLE II—INTERNATIONAL REGULATION OF PRECURSOR CHEMICALS

SEC. 201. INFORMATION ON FOREIGN CHAIN OF DISTRIBUTION; IMPORT RESTRICTIONS REGARDING FAILURE OF DISTRIBUTORS TO COOPERATE.

Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971), as amended by section 105(a) of this Act, is further amended by adding at the end the following subsection:

"(g)(1) With respect to a regulated person importing ephedrine, pseudoephedrine, or phenylpropanolamine (referred to in this section as an 'importer'), a notice of importation under subsection (a) or (b) shall include all information known to the importer on the chain of distribution of such chemical from the manufacturer to the importer.

"(2) For the purpose of preventing or responding to the diversion of ephedrine, pseudoephedrine, or phenylpropanolamine for use in the illicit production of methamphetamine, the Attorney General may, in the case of any person who is a manufacturer or distributor of such chemical in the chain of distribution referred to in paragraph (1) (which person is referred to in this subsection as a 'foreign-chain distributor'), request that such distributor provide to the Attorney General information known to the distributor on the distribution of the chemical, including sales.

"(3) If the Attorney General determines that a foreign-chain distributor is refusing to cooperate with the Attorney General in obtaining the information referred to in paragraph (2), the Attorney General may, in accordance with procedures that apply under subsection (c), issue an order prohibiting the importation of ephedrine, pseudoephedrine, or phenylpropanolamine in any case in which such distributor is part of the chain of distribution for such chemical. Not later than 60 days prior to issuing the order, the Attorney General shall publish in the Federal Register a notice of intent to issue the order. During such 60-day period, imports of the chemical with respect to such distributor may not be restricted under this paragraph.".

SEC. 202. REQUIREMENTS RELATING TO THE LARGEST EXPORTING AND IMPORTING COUNTRIES OF CERTAIN PRECURSOR CHEMICALS.

(a) REPORTING REQUIREMENTS.—Section 489(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h(a)) is amended by adding at the end the following new paragraph:

"(8)(A) A separate section that contains the following:

"(i) An identification of the five countries that exported the largest amount of pseudoephedrine, ephedrine, and phenylpropanolamine (including the salts, optical isomers, or salts of optical iso-

mers of such chemicals, and also including any products or substances containing such chemicals) during the preceding calendar year.

"(ii) An identification of the five countries that imported the largest amount of the chemicals described in clause (i) during the preceding calendar year and have the highest rate of diversion of such chemicals for use in the illicit production of methamphetamine (either in that country or in another country).

"(iii) An economic analysis of the total worldwide production of the chemicals described in clause (i) as compared to the legitimate demand for such chemicals worldwide.

"(B) The identification of countries that imported the largest amount of chemicals under subparagraph (A)(ii) shall be based on the following:

"(i) An economic analysis that estimates the legitimate demand for such chemicals in such countries as compared to the actual or estimated amount of such chemicals that is imported into such countries.

"(ii) The best available data and other information regarding the production of methamphetamine in such countries and the diversion of such chemicals for use in the production of methamphetamine.".

(b) ANNUAL CERTIFICATION PROCEDURES.—Section 490(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j(a)) is amended—

(1) in paragraph (1), by striking "major illicit drug producing country or major drug-transit country" and inserting "major illicit drug producing country, major drug-transit country, or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act"; and

(2) in paragraph (2), by inserting after "(as determined under subsection (h))" the following: "or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act".

(c) CONFORMING AMENDMENT.—Section 706 of the Foreign Relations Authorization Act, Fiscal Year 2003 (22 U.S.C. 2291j–1) is amended in paragraph (5) by adding at the end the following:

"(C) Nothing in this section shall affect the requirements of section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) with respect to countries identified pursuant to section clause (i) or (ii) of 489(a)(8)(A) of the Foreign Assistance Act of 1961.".

(d) PLAN TO ADDRESS DIVERSION OF PRECURSOR CHEMICALS.—In the case of each country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of the Foreign Assistance Act of 1961 (as added by subsection (a)) with respect to which the President has not transmitted to Congress a certification under section 490(b) of such Act (22 U.S.C. 2291j(b)), the Secretary of State, in consultation

with the Attorney General, shall, not later than 180 days after the date on which the President transmits the report required by section 489(a) of such Act (22 U.S.C. 2291h(a)), submit to Congress a comprehensive plan to address the diversion of the chemicals described in section 489(a)(8)(A)(i) of such Act to the illicit production of methamphetamine in such country or in another country, including the establishment, expansion, and enhancement of regulatory, law enforcement, and other investigative efforts to prevent such diversion.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of State to carry out this section $1,000,000 for each of the fiscal years 2006 and 2007.

SEC. 203. PREVENTION OF SMUGGLING OF METHAMPHETAMINE INTO THE UNITED STATES FROM MEXICO.

(a) IN GENERAL.—The Secretary of State, acting through the Assistant Secretary of the Bureau for International Narcotics and Law Enforcement Affairs, shall take such actions as are necessary to prevent the smuggling of methamphetamine into the United States from Mexico.

(b) SPECIFIC ACTIONS.—In carrying out subsection (a), the Secretary shall—

(1) improve bilateral efforts at the United States-Mexico border to prevent the smuggling of methamphetamine into the United States from Mexico;

(2) seek to work with Mexican law enforcement authorities to improve the ability of such authorities to combat the production and trafficking of methamphetamine, including by providing equipment and technical assistance, as appropriate; and

(3) encourage the Government of Mexico to take immediate action to reduce the diversion of pseudoephedrine by drug trafficking organizations for the production and trafficking of methamphetamine.

(c) REPORT.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the appropriate congressional committees a report on the implementation of this section for the prior year.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $4,000,000 for each of the fiscal years 2006 and 2007.

TITLE III—ENHANCED CRIMINAL PENALTIES FOR METHAMPHETAMINE PRODUCTION AND TRAFFICKING

SEC. 301. POSSESSION OF SCHEDULED LISTED CHEMICAL WITH INTENT TO MANUFACTURE CONTROLLED SUBSTANCE.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end the following subsection:

"(g) Except as authorized by this title, any person who knowingly or intentionally possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or any of its salts, optical isomers, or salts of optical isomers, with intent to manufacture a controlled substance shall be fined in accordance with title 18, United States Code, or imprisoned for any term of years or life, or both.".

SEC. 302. SMUGGLING METHAMPHETAMINE OR METHAMPHETAMINE PRECURSOR CHEMICALS INTO THE UNITED STATES WHILE USING FACILITATED ENTRY PROGRAMS.

(a) ENHANCED PRISON SENTENCE.—The sentence of imprisonment imposed on a person convicted of an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), involving methamphetamine or any listed chemical that is defined in section 102(33) of the Controlled Substances Act (21 U.S.C. 802(33), shall, if the offense is committed under the circumstance described in subsection (b), be increased by a consecutive term of imprisonment of not more than 15 years.

(b) CIRCUMSTANCES.—For purposes of subsection (a), the circumstance described in this subsection is that the offense described in subsection (a) was committed by a person who—

(1) was enrolled in, or who was acting on behalf of any person or entity enrolled in, any dedicated commuter lane, alternative or accelerated inspection system, or other facilitated entry program administered or approved by the Federal Government for use in entering the United States; and

(2) committed the offense while entering the United States, using such lane, system, or program.

(c) PERMANENT INELIGIBILITY.—Any person whose term of imprisonment is increased under subsection (a) shall be permanently and irrevocably barred from being eligible for or using any lane, system, or program described in subsection (b)(1).

SEC. 303. MANUFACTURING CONTROLLED SUBSTANCES ON FEDERAL PROPERTY.

Subsection (b) of section 401 of the Controlled Substances Act (21 U.S.C. 841(b)) is amended in paragraph (5) by inserting "or manufacturing" after "cultivating".

SEC. 304. INCREASED PUNISHMENT FOR METHAMPHETAMINE KINGPINS.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by adding at the end the following:

"(s) SPECIAL PROVISION FOR METHAMPHETAMINE.—For the purposes of subsection (b), in the case of continuing criminal enterprise involving methamphetamine or its salts, isomers, or salts of isomers, paragraph (2)(A) shall be applied by substituting '200' for '300', and paragraph (2)(B) shall be applied by substituting '$5,000,000' for '$10 million dollars'. ".

SEC. 305. NEW CHILD-PROTECTION CRIMINAL ENHANCEMENT.

(a) IN GENERAL.—The Controlled Substances Act is amended by inserting after section 419 (21 U.S.C. 860) the following:

"CONSECUTIVE SENTENCE FOR MANUFACTURING OR DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE OR DISTRIBUTE, METHAMPHETAMINE ON PREMISES WHERE CHILDREN ARE PRESENT OR RESIDE

"SEC. 419a. Whoever violates section 401(a)(1) by manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 years is present or resides, shall, in addition to any other sentence imposed, be imprisoned for a period of any term of years but not more than 20 years, subject to a fine, or both. ".

(b) CLERICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 419 the following new item:

"Sec. 419a. Consecutive sentence for manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine on premises where children are present or reside.".

SEC. 306. AMENDMENTS TO CERTAIN SENTENCING COURT REPORTING REQUIREMENTS.

Section 994(w) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ", in a format approved and required by the Commission," after "submits to the Commission";

(B) in subparagraph (B)—

(i) by inserting "written" before "statement of reasons"; and

(ii) by inserting "and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission" after "applicable guideline range"; and

(C) by adding at the end the following:

"The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission."; and

(2) in paragraph (4), by striking "may assemble or maintain in electronic form that include any" and inserting "itself may assemble or maintain in electronic form as a result of the".

SEC. 307. SEMIANNUAL REPORTS TO CONGRESS.

(a) IN GENERAL.—The Attorney General shall, on a semiannual basis, submit to the congressional committees and organizations specified in subsection (b) reports that describe—

(1) the allocation of the resources of the Drug Enforcement Administration and the Federal Bureau of Investigation for the investigation and prosecution of alleged violations of the Controlled Substances Act involving methamphetamine; and

(2) the measures being taken to give priority in the allocation of such resources to such violations involving—

(A) persons alleged to have imported into the United States substantial quantities of methamphetamine, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of its salts, optical isomers, or salts of optical isomers;

(B) persons alleged to have manufactured methamphetamine; and

(C) circumstances in which the violations have endangered children.

(b) CONGRESSIONAL COMMITTEES.—The congressional committees and organizations referred to in subsection (a) are—

(1) in the House of Representatives, the Committee on the Judiciary, the Committee on Energy and Commerce, and the Committee on Government Reform; and

(2) in the Senate, the Committee on the Judiciary, the Committee on Commerce, Science, and Transportation, and the Caucus on International Narcotics Control.

Add at the end the following title (and conform the table of contents accordingly):

TITLE V—ADDITIONAL PROGRAMS AND ACTIVITIES

SEC. 501. IMPROVEMENTS TO DEPARTMENT OF JUSTICE DRUG COURT GRANT PROGRAM.

Section 2951 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797u) is amended by adding at the end the following new subsection:

"(c) MANDATORY DRUG TESTING AND MANDATORY SANCTIONS.—

"(1) MANDATORY TESTING.—Grant amounts under this part may be used for a drug court only if the drug court has mandatory periodic testing as described in subsection (a)(3)(A). The Attorney General shall, by prescribing guidelines or regulations, specify standards for the timing and manner of complying with such requirements. The standards—

"(A) shall ensure that—

"(i) each participant is tested for every controlled substance that the participant has been known to abuse, and for any other controlled substance the Attorney General or the court may require; and

"(ii) the testing is accurate and practicable; and

"(B) may require approval of the drug testing regime to ensure that adequate testing occurs.

"(2) MANDATORY SANCTIONS.—The Attorney General shall, by prescribing guidelines or regulations, specify that grant amounts under this part may be used for a drug court only if the drug court imposes graduated sanctions that increase punitive measures, therapeutic measures, or both whenever a participant fails a drug test. Such sanctions and measures may include, but are not limited to, one or more of the following:

"(A) Incarceration.
"(B) Detoxification treatment.
"(C) Residential treatment.
"(D) Increased time in program.
"(E) Termination from the program.
"(F) Increased drug screening requirements.
"(G) Increased court appearances.
"(H) Increased counseling.
"(I) Increased supervision.
"(J) Electronic monitoring.
"(K) In-home restriction.
"(L) Community service.
"(M) Family counseling.
"(N) Anger management classes.".

SEC. 502. GRANTS TO HOT SPOT AREAS TO REDUCE AVAILABILITY OF METHAMPHETAMINE.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

"PART II—CONFRONTING USE OF METHAMPHETAMINE

"SEC. 2996. AUTHORITY TO MAKE GRANTS TO ADDRESS PUBLIC SAFETY AND METHAMPHETAMINE MANUFACTURING, SALE, AND USE IN HOT SPOTS.

"(a) PURPOSE AND PROGRAM AUTHORITY.—

"(1) PURPOSE.—It is the purpose of this part to assist States—

"(A) to carry out programs to address the manufacture, sale, and use of methamphetamine drugs; and

"(B) to improve the ability of State and local government institutions of to carry out such programs.

"(2) GRANT AUTHORIZATION.—The Attorney General, through the Bureau of Justice Assistance in the Office of Justice Programs may make grants to States to address the manufacture, sale, and use of methamphetamine to enhance public safety.

"(3) GRANT PROJECTS TO ADDRESS METHAMPHETAMINE MANUFACTURE SALE AND USE.—Grants made under subsection (a) may be used for programs, projects, and other activities to—

"(A) investigate, arrest and prosecute individuals violating laws related to the use, manufacture, or sale of methamphetamine;

"(B) reimburse the Drug Enforcement Administration for expenses related to the clean up of methamphetamine clandestine labs and related environmental damage;

"(C) support State and local health department and environmental agency services deployed to address methamphetamine; and

"(D) procure equipment, technology, or support systems, or pay for resources, if the applicant for such a grant demonstrates to the satisfaction of the Attorney General that expenditures for such purposes would result in the reduction in the use, sale, and manufacture of methamphetamine.

"SEC. 2997. FUNDING.

"There are authorized to be appropriated to carry out this part $99,000,000 for each fiscal year 2006, 2007, 2008, 2009, and 2010.".

SEC. 503. GRANTS FOR PROGRAMS FOR DRUG-ENDANGERED CHILDREN.

(a) IN GENERAL.—The Attorney General shall make grants to States for the purpose of carrying out programs to provide a comprehensive response to aid children who are living in a home in which methamphetamine or other controlled substances are unlawfully manufactured, administered, or distributed.

(b) CERTAIN REQUIREMENTS.—The Attorney General shall ensure that the procedures and services of programs carried out with grants under subsection (a) include the following:

(1) Coordination among law enforcement agencies, prosecutors, child protective services, and health professionals.

(2) Removal of children from toxic or drug-endangering environments.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be

appropriated $20,000,000 for each of the fiscal years 2006 and 2007. Amounts appropriated under the preceding sentence shall remain available until expended.

PURPOSE AND SUMMARY

H.R. 3889, the "Methamphetamine Epidemic Elimination Act of 2005," is crafted to respond to the alarming increase of methamphetamine abuse across our country. Methamphetamine presents a number of unique challenges as it has been found to be produced on both the large and small scale—mostly as a result of simple production process that involves ingredients that are commonly available household chemicals. The harmful effects of methamphetamine are well documented and present extensive dangers that affect both the physical and mental health of the user. In addition, the volatile chemical reaction used to create methamphetamine can endanger not only the producer, but anyone in the vicinity of the laboratory, including children.

The various factors involved in the methamphetamine epidemic require a multifaceted solution that addresses not only the means by which the user acquires the drug, but also the characteristics associated with its abuse. By maintaining a better control of methamphetamine precursor chemicals, addressing the environmental impact of methamphetamine production, providing enhanced criminal penalties for convictions involving methamphetamine, and authorizing the appropriate funding to assist law enforcement agencies cope with the costs of battling methamphetamine use—H.R. 3889 provides a comprehensive plan at the Federal level to stem the national abuse of this drug.

BACKGROUND AND NEED FOR THE LEGISLATION

What is methamphetamine

Methamphetamine, commonly referred to as "meth", is among the most powerful and dangerous drugs available. Street methamphetamine is referred to by many names, such as "speed," "meth," and "chalk."[1] First synthesized in 1919 in Japan, methamphetamine, a derivative of amphetamine, is a powerful stimulant that affects the central nervous system.

How meth affects the human body

Methamphetamine, as an abused illegal substance, can be smoked, snorted, orally ingested, and injected. Immediately after smoking or intravenous injection, the methamphetamine user experiences an intense sensation, called a "rush" or "flash," that lasts only a few minutes and is both extremely pleasurable and psychologically addictive. This "rush" is the result of a release of high levels of dopamine into the section of the brain that controls the feeling of pleasure. Smoking meth produces a high that lasts 8–24 hours compared to a 20–30 minute high produced by smoking cocaine.[2] Fifty percent of meth remains in the body 12 hours after use compared to fifty percent of cocaine remaining in the body after

[1] See *http://www.nida.nih.gov/Infofacts/methamphetamine.html* (last visited August 23, 2005).

[2] See *http://www.methamphetamineaddiction.com/methamphetamine_meth.html* (last visited August 23, 2005).

only 1 hour.[3] Oral or intra-nasal use produces a euphoric high, but not the rush brought on by smoking or injection. This type of ingestion is common among lower intensity abusers, and serves as a gateway to methamphetamine addiction. Oral ingestion takes about 15 to 20 minutes for the user to feel the effects.[4]

Chronic use of methamphetamine can result in a tolerance for the drug. Consequently, users may try to intensify the desired effects by taking higher doses of the drug, taking it more frequently, or changing their method of ingestion. Some users, while refraining from eating and sleeping, will binge on methamphetamine. During these binges, users will inject as much as a gram of methamphetamine every 2 to 3 hours over several days until they run out of the drug or are too dazed to continue use. Meth produces feelings of euphoria, increases energy, and reduces appetite. Thus, the drug is especially alluring to those who need to stay alert on the job or at school or who are trying to lose weight. Another reason for meth's popularity is its ability to enhance a person's sex drive, although chronic use eventually destroys it.[5] After the initial rush of intense feelings, users are prone to become highly agitated and nervous, which can lead to violent behaviors. Because the effects of meth are usually pleasurable at first, many users wish to repeat the experience, which is the beginning of a cycle of psychological addiction.

Health impacts of meth

The side effects most commonly associated with meth abuse include convulsions, dangerously high body temperature, stroke, cardiac arrhythmia, stomach cramps, and shaking.[6] Methamphetamine releases high levels of the neurotransmitter dopamine, which stimulates brain cells, enhancing mood and body movement. It also appears to have a neurological effect, damaging brain cells that contain dopamine as well as serotonin, another neurotransmitter. Methamphetamine use, therefore, increases energy and alertness and decreases appetite.

The central nervous system (CNS) damage that results from taking even small amounts of methamphetamine include increased wakefulness, increased physical activity, decreased appetite, increased respiration, hyperthermia, and euphoria. Other effects resulting from CNS damage include irritability, insomnia, confusion, tremors, convulsions, anxiety, paranoia, and aggressiveness.

Methamphetamine also causes increased heart rate and blood pressure that can result in irreversible damage to blood vessels in the brain, producing strokes. Over time, methamphetamine appears to cause reduced levels of natural dopamine production, which can result in symptoms like those of Parkinson's disease. Other long term effects of methamphetamine include respiratory problems, irregular heartbeat, and extreme anorexia. If abused regularly its use can even result in cardiovascular collapse and death.

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[3] Id.

[4] See *http://www.whitehousedrugpolicy.gov/publications/factsht/methamph/* (last visited August 23, 2005).

[5] Poovey, B. "Sex Appeal Part of Meth's Charm," Associated Press, October 24, 2004.

[6] Id.

Methamphetamine addiction

Tolerance to methamphetamine develops rapidly, causing users to quickly escalate the doses used in order to experience the high desired. Commonly, over a short period of time, users will arrive to a level of addiction demanding several days of long, sleepless binges. Binges can last for a week or more, and end with sudden crashes with the user collapsing from exhaustion, sleeping for as long as several days in a row.

After a binge the user returns to reality with an onslaught of severe depression. In order to gain relief from the depression, users desperately seek a new binge that will return them to the euphoric, yet increasingly elusive and devastating, meth high.

Psychological impact of methamphetamine

Regular methamphetamine abuse frequently leads to psychotic behavior including intense paranoia, visual and auditory hallucinations, and out-of-control rages that can result in violent episodes. Users can display a number of psychotic features, including paranoia that results in suicidal thoughts, auditory hallucinations, mood disturbances, and delusions. Addicted users at times develop sores on their bodies from scratching at "crank bugs," which describes the common delusion that bugs are crawling under the skin. The shocking results of this delusion to the user's appearance provides a symbolic, poignant example of the overall, ravaging effects of meth abuse as testified to by a former meth user from Pacific Beach:

> It's like selling your soul to the devil. When I was high, I felt alive for the first time in my life. While I was using, I thought nothing could touch me. I was beautiful and perfect in my meth world. In the real world, my body was rotting from the inside out.[7]

Once a cessation of methamphetamine use takes place, several withdrawal symptoms commonly arise. These symptoms include severe depression, anxiety, fatigue, paranoia, aggression, and an intense craving for the drug. Psychotic symptoms can sometimes persist for months or years after use has ceased.[8]

Practical consequences of meth abuse

Amidst the destructive cycle of binging and collapsing, meth makes users more accident prone, more easily confused, and significantly reduces their ability to work constructively and safely. Consequently, users have difficulty finding and holding jobs, they neglect and often abuse their children, and allow their homes to fall into disrepair and filth. All these consequences result from psychological methamphetamine addiction.

"Methamphetamine suddenly becomes this thing in their life that they can't do without," said Det. Cpl. Jake Grellner, Franklin County, Missouri.[9] "They can do without the hamster and the dog and the cat and the kids and the wife and the cars and the house and the job. But they can't do without meth, and they live each day

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[7] See *http://www.no2meth.org/dangers.html*.

[8] See *http://www.whitehousedrugpolicy.gov/publications/factsht/methamph/*.

[9] "Cold Meds: A Rural Drug Epidemic," CBS, March 2, 2005; See *http://www.cbsnews.com/stories/2005/03/01/60II/main677228.html* (last visited August 30, 2005).

to get enough stuff, to manufacture the next batch, so they can get high again. . . . It's that addictive, that bad."[10]

Spread of the meth epidemic

The methamphetamine problem has grown at a dramatic rate, and is now considered the most significant drug abuse problem in the country. In a July 18, 2005 speech to district attorneys, U.S. Attorney General Alberto Gonzales warned, "In terms of damage to children and to our society, meth is now the most dangerous drug in America."[11] The impact of this problem has hit local law enforcement and communities with dramatic consequences.

It is not easy to determine precisely how many Americans use or have used meth. Two commonly used surveys of drug use suggest that about one in twenty Americans has tried meth. According to the Department of Health and Human Services Results From the 2002 National Survey on Drug Use and Health: National Findings, more than 12 million people age 12 and older, or 5.3 percent of the population, reported that they had used methamphetamine at least once in their lifetime. Of those surveyed 597,000 persons age 12 or older reported past month use of methamphetamine. In 2002, estimates of annual methamphetamine use by secondary school students ranged from 2.2 percent among 8th graders, to 3.9 percent among 10th graders, to 3.6 percent among 12th graders.

However, it is unclear whether these surveys, which rely entirely on voluntary reporting by individuals, are able to reach and sample that segment of the population with the highest meth use rates. Other data, such as the Arrestee Drug Abuse Monitoring (ADAM) survey, suggest that meth use rates may be much higher. In some Western cities, nearly one-third to one-half of arrestees for any crime test positive for meth; for example, in Honolulu, 40.3 percent of men jailed tested positive for methamphetamine in 2003.[12]

Mexican super-lab production and trafficking

Beginning around 1994, Mexican drug trafficking organizations operating out of Mexico and California began to take control of the production and distribution of methamphetamine from outlaw motorcycle gangs. The Drug Enforcement Agency (DEA) estimates that the majority of the U.S. methamphetamine production and distribution is controlled by Mexican crime groups operating out of Mexico, California, and the Southwestern United States. Outlaw motorcycle gangs remain active in methamphetamine production, but do not produce anywhere near the quantities now being distributed by the Mexican organizations.

Methamphetamine production appears to have increased sharply in Mexico since 2002. Due to the successes of the DEA investigations between 2002 and 2003, U.S. importation of bulk pseudoephedrine from Canada dramatically dropped and the U.S. price of bulk pseudoephedrine more than doubled. These enforcement successes at the Northern border have forced traffickers to import pseudoephedrine from Hong Kong into Mexico, increasing methamphetamine manufacturing and smuggling of finished meth-

[10] Id.

[11] Prepared Remarks of Attorney General Alberto Gonzales, National District Attorneys Association meeting, Portland, Maine, July 18, 2005.

[12] "Arrestee Drug Abuse Monitoring (ADAM) Program, 2004," National Institute of Justice.

amphetamine from Mexico into the U.S. across the Southwest Border.

The dominant presence of these Mexican methamphetamine trafficking groups can be partially attributed to their access to chemicals and established distribution networks. These trafficking groups are also often involved in the distribution of other illicit drugs such as marijuana, cocaine, and heroin. Through the distribution of these illicit substances, over the years these groups have established transportation and distribution networks throughout the United States. The exploitation of these existing distribution networks and the production capability of their clandestine laboratories has enabled the Mexican groups to establish a national dominance in the manufacture and distribution of methamphetamine.

These groups have established contacts with chemical suppliers in Europe, Canada, Asia and the Far East, who provide access to precursor chemicals, reagents and solvents. The resulting availability of ton quantities of chemicals, such as ephedrine and pseudoephedrine, has permitted these groups to establish and operate large-scale clandestine laboratories in Mexico and California. These laboratories are capable of producing unprecedented quantities of methamphetamine, saturating the wholesale/retail markets throughout the United States. Many of the "super labs" (laboratories capable of producing 10 or more pounds of methamphetamine within a production cycle) seized in the United States have been associated with Mexican traffickers.

Increasing flow of meth from Mexico across southwest border

The recent DEA operations directed at illegal Canadian importation were directed primarily against DEA licensed chemical companies that provided precursors for illegal drug production. These operations proved effective in cutting off the supply of domestic origin pseudoephedrine to the large Mexican controlled "super labs." The DEA's first priority concerning the outbreak of methamphetamine abuse is increased enforcement efforts against Mexican methamphetamine organizations that operate large-scale labs ("super labs") in Mexico, California, and the Southwestern United States. DEA continues to target and seize these "super labs." As a second priority, the DEA is working with our partners around the globe to target international methamphetamine traffickers, particularly Mexican groups that produce the majority of methamphetamine trafficked in the United States.

Four recent large seizures of pseudoephedrine illustrate Mexican traffickers' ability to obtain large quantities of precursor chemicals from international sources and to adapt to changes in the availability of Canadian pseudoephedrine. Between March 21 and April 25, 2003, in excess of 22 million pseudoephedrine tablets were seized in Panama and Laredo, Texas.[13] The tablets were manufactured in Hong Kong and destined for Mexico.

Reporting on the exact number of methamphetamine clandestine laboratories seized in Mexico is inconsistent. Official Government of Mexico figures as reported in the International Narcotics Control

[13] Testimony of Rogelio E. Guevara, Chief of Operations, Drug Enforcement Administration, on July 18, 2003 at Subcommittee on Criminal Justice, Drug Policy and Human Resources hearing entitled: "Facing the Methamphetamine Problem in America."

Strategic Report (INCSR) reflect that 10 labs were destroyed in 2002, down from the 18 seized in 2001. In 2002, according to information provided by Mexican authorities in Baja California, however, 53 labs were seized in Baja alone and Mexico Interpol reports that 13 labs were seized or destroyed.[14] This discrepancy may reflect the limited resources and lack of coordination in Mexico to successfully attack the problem. In any case, the relatively small number of clandestine laboratories seized belies the large-scale production of methamphetamine that is believed to occur in Mexico.

H.R. 3889 contains enhanced criminal penalties against persons trafficking large amounts of precursor chemicals, with intent to manufacture meth. Individuals caught smuggling meth or precursor chemicals through special "fastpass" lanes at border crossings (like NEXUS or SENTRI) will face stiffer penalties. The bill allows for the current penalties for growing illegal drugs on Federal property to be applied in cases when narcotics are being manufactured. H.R. 3889 also makes it easier to apply enhanced penalties against the "kingpins", or ringleaders, of major meth trafficking organizations by lowering triggering thresholds.

Meth: made in the USA

While a majority of the meth used in the United States comes from large labs based in Mexico, small producers across the country can churn out usable quantities of the drug. The National Association of Counties recently published a survey that shows that 60 percent of responding counties stated methamphetamine was their largest drug problem; 67 percent reported increases in meth related arrests. According to the report, "The illicit production of synthetic drugs is a problem that the United States has suffered for years. In the past five years, the use of synthetic drugs has climbed dramatically, a fact that lends urgency to the effort to control them." [15]

Until the late 1980's, methamphetamine's popularity was primarily confined to the west coast and southwest. By the early 1990's, however, methamphetamine was gaining in popularity, spreading west to east across the country, and hitting rural areas particularly hard. Between 1992 and 1994, the purity of meth on the street skyrocketed, from 46 percent all the way up to 73 percent. At the same time, the number of users entering rehabilitation for meth abuse doubled.[16] Of particular concern, methamphetamine use has been emerging in suburban, small town, and rural settings previously thought to be largely unaffected by illicit drug use; the drug is also finding its way into populations not previously known to use this drug.

Methamphetamine use is a particularly serious problem in some rural areas, many of which lack the infrastructures necessary to deal with a major drug problem. For example, many rural jurisdictions do not have local treatment providers or the expertise to respond to methamphetamine abusers. Similarly, law enforcement officials in rural areas lack the training and financial resources to

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[14] Id.

[15] See "National Synthetic Drugs Action Plan," Law Enforcement and the Fight against Methamphetamine hearing before the Subcommittee on Criminal Justice, Drug Policy and Human Resources. Second Session, Nov. 18, 2004. Serial No. 108–287.

[16] Suo, Steve, "Lobbyists and Loopholes," The Oregonian, October 4, 2004.

deal with laboratory cleanup costs associated with the methamphetamine manufacturing in their communities.

The mid-1990's saw the development of two parallel currents in methamphetamine production and trafficking. First, neighborhood small toxic labs (STL's) were developed to facilitate local production of methamphetamine by accessing precursors in cold medicines. Neighborhood STL's have continued to proliferate throughout the country, following the spread of methamphetamine abuse eastward and creating epidemic crime, environmental hazards, and social issues. Second, Mexican criminal organizations, based in Mexico and California, began to produce high-purity, low-cost methamphetamine in super labs for distribution in cities on the West coast and Midwest with Mexican populations.

Small toxic labs

Until the early 1990s, methamphetamine was made mostly in clandestine labs run by drug traffickers in Mexico and California; areas that are still the largest illegal U.S. producers. Since then, however, authorities have discovered increasing numbers of small-scale methamphetamine labs all over the United States. These STL's are commonly located in rural, suburban, or low-income areas spread throughout the U.S. The meth problem is most prevalent in suburban and rural areas of the Southwest and Midwest, but is slowly moving eastward, reportedly having arrived in western parts of Virginia, New Jersey, Pennsylvania, and upstate New York.[17]

Statistics show laboratory seizures are highest in the Pacific Region (particularly in California, Washington, and Oregon) and in Arizona, Missouri, Arkansas, and Oklahoma. Almost every state in the West Central Region is experiencing increases in clandestine laboratory activity, and according to State and local law enforcement, laboratory seizures are on the rise in Texas and throughout the Southeast Region. Generally, local production has followed the appearance of methamphetamine within local drug user populations almost immediately, but local production has not completely displaced outside sources. There are thousands of STLs across the United States: more than 7,700 domestic small-scale labs with capacities under ten pounds in 2001,[18] and possibly as many as 16,000 labs in 2004.[19]

Efforts to estimate domestic production are severely hampered by the lack of a universally accepted definition of a clandestine laboratory and the lack of routine reporting of laboratory seizures to the EPIC's National Clandestine Laboratory Database. Information provided by State and local law enforcement agencies suggests that total laboratory seizures may be underreported.

The materials needed for a clandestine lab are available to almost anyone. There are literally thousands of recipes and easily accessible information about making meth available on the Internet. In addition, with an investment of only a few hundred dollars in

[17] For example, according to one news report, "In Virginia, the number of lab seizures jumped from 8 in 1999 to 73 in 2004. In South Carolina, they surged from 7 in 1999 to 154 in 2004. New York reported just one in 1999 but 28 in 2004." Bivins, Larry and Brogan, Pamela, "Meth Epidemic Advances on Northeast," *Gannett News Service*, August 18, 2005.

[18] See *http://www.usdoj.gov/dea/concern/drug__traffickingp.html* (last visited August 31, 2005).

[19] Id.

over-the-counter medications and commercially available household chemicals, thousands of dollars worth of methamphetamine can be produced. According to a country official from rural Ohio, "Unlike heroin and cocaine, which is produced in foreign countries, everything you would need to make methamphetamine is available right here in Clinton County. Within a half a mile of where we sit, we could find everything we need to start a lab, make enough meth to get high and enough to sell to make some money to make another batch." [20]

Recently mobile methamphetamine and hotel-based labs have caught the attention of both the news media and law enforcement. These have been seen as a public safety issue because of the increased exposure of the general public to hazardous chemicals, explosions and fires. In addition to these serious issues there is also the likelihood of the "cook" being well armed.

In Multnomah County, Oregon, for example, the costs of property crimes, fires, incremental foster care, meth lab clean-ups, and HIV/AIDS and hepatitis-C infection healthcare costs totaled over $102.3 million in 2004. At $363 per household, it was more than the average 2004 Multnomah County income tax. This estimation excludes all substantial costs incurred in treatment, education, law enforcement, adjudication, and incarceration in response to meth abuse.[21]

Child abuse, neglect, and exposure to toxic waste

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.

Beyond methamphetamine abuse by children "reports of child abuse or neglect related to crystal meth have risen dramatically. These increases reflect our systemic response to changing needs and issues, as the complexity of substance-abusing families presents a national challenge, particularly in the area of crystal-methamphetamine." [22]

Aside from the obvious inherent dangers associated with the explosiveness of meth labs—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

[20] Testimony of Randy Riley, Clinton County Commissioner, on August 23, 2005, at Subcommittee on Criminal Justice, Drug Policy and Human Resources hearing entitled: "Law Enforcement and the Fight Against Methamphetamine: Improving Federal, State, and Local Efforts."

[21] Whelan, Robert, and Boggess, Sam, "The Multnomah County Tax," ECONorthwest, April 23, 2005; See *http://www.econw.com/pdf/FINALMethTax.pdf* (last visited August 30, 2005).

[22] Statement of Freida S. Baker, MSW, Deputy Director, Family and Children's Services, Alabama State Department of Human Resources, on July 26, 2005, at Subcommittee on Criminal Justice, Drug Policy and Human Resources hearing entitled: "Fighting Meth in America's Heartland: Assessing the Impact on Local Law Enforcement and Child Welfare Services."

to produce methamphetamine, and 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.

Unlike other forms of drug abuse, which tend to affect only one member of a family, meth abuse most commonly occurs as a family affair in which both parents are users. This places the children of these parents at severe risk. According to a Tennessee children's services official, meth abuse is "the worst form of child endangerment that I have ever seen. It's what happens when methamphetamine takes over a family's life and threatens to destroy everything—especially the children who have the misfortune of living beneath the same roof as their drug-addicted parents."[23]

Child abuse and neglect are tragically resulting from meth abuse at a disturbingly high rate. Forty percent of all child welfare officials from more than 300 counties in 13 states report increased out of home placements because of meth in the last year, and approximately 3,000 children were found during meth lab seizures in 2003.[24]

According to one report, "About 30–35 percent of meth labs seized are in residences where children live. Children are at an increased risk in a meth lab environment because of their physiologic status (higher rates of growth, metabolism, respiration, and development) and their behaviors (hand-to-mouth behaviors and increased contact with their physical environment). At least two reports have demonstrated that 35–70 percent of children removed from labs have a urine drug screen that is positive for methamphetamine at the time of removal from the home."[25]

"Meth plays a role in roughly half the serious child-abuse cases in my 16-county region—720 of 1,469 active, long-term cases. If that ratio applied statewide, Iowa would be experiencing more than 6,000 meth-related child abuse cases per year," according to Carol Gutchewsky, a regional supervisor of Iowa social workers.[26] This reality exponentially aggravates the difficulties with attempting to reconcile neglected and abused children with their parents. Since most child welfare programs are tailored to dealing with individual abuse it is becoming increasingly clear that new treatment and reconciliation models need to be developed in response to meth. "An infant's or a child's brain gets hijacked by the drug."[27] From 1995 to 2002, methamphetamine related emergency room visits involv-

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[23] Statement of Betsy Dunn, Child Protection Services, Tennessee Department of Children's Services, on July 26, 2005, at Subcommittee on Criminal Justice, Drug Policy and Human Resources hearing entitled: "Fighting Meth in America's Heartland: Assessing the Impact on Local Law Enforcement and Child Welfare Services."

[24] See "The Meth Epidemic in America," National Association of Counties, July 5, 2005; "National Synthetic Drugs Action Plan," White House Office of National Drug Control Policy, October 2004.

[25] See *http://www.mappsd.org/meth_child_abuse_wells.htm* (last visited September 15, 2005).

[26] Crary, David, "Kids Suffer from Parent's Meth Addiction," Billings Gazette, March 28, 2005.

[27] "Meth's Toll on Midwest Kids," Associated Press, March 28, 2005; See *http://www.cbsnews.com/stories/2005/03/28/health/main683585.html* (last visited August 30, 2005).

ing patients age 6 to 17 increased 88 percent (from 2,338 to 4,394).[28]

Section 503 of H.R. 3889 authorizes the appropriation of $40 million in grant money over the next two years. These grants will help fund programs that assist children who are living in a home in which meth or other illegal narcotics are manufactured, distributed, or used. Furthermore, H.R. 3889 increases the criminal penalties for those cooking or dealing meth where children live or are present.

Environmental hazards

The proliferation of methamphetamine laboratories in the United States poses a threat to the safety of citizens, especially children, in areas near those laboratories and to law enforcement personnel called upon to remove those laboratories. According to EPIC, law enforcement agencies seized almost 7,200 clandestine methamphetamine laboratories in 1999, although the DEA acknowledges that a significant number of laboratory seizures are not reported to EPIC or Regional Intelligence Sharing Systems.

The average methamphetamine laboratory produces 5 to 7 pounds of toxic waste for every pound of methamphetamine produced. The cost of cleaning laboratory sites places a heavy financial responsibility on law enforcement agencies and governments at all levels. Law enforcement personnel are required by Federal law to be trained and certified to participate in a laboratory cleanup operation.

According to State and local law enforcement agencies, the costs of remediating a methamphetamine laboratory ranges from $2,500 for the smallest laboratories to over $250,000 for the largest. While some remediation costs are borne by the DEA, the expense of removing methamphetamine laboratories is prohibitive for most law enforcement agencies, especially smaller, rural departments with limited staffing, limited funds, and an abundance of local laboratories.

Increasing laboratory seizures nationwide have depleted available remediation funds; one department has reported that it "cannot afford to seize any more meth labs."[29] These labs are created safety hazards in a wide variety of locales: in barns, garages and other outbuildings; back rooms of businesses; apartments; hotel and motel rooms; storage facilities; vacant buildings; trailer homes; residential homes; residential sheds; and vehicles. Simply put, all that is needed is any physical structure with a small, empty space.

A study by the National Jewish Medical and Research Center in Denver, Colorado, measured the toxic fumes meth labs emit and how they contaminate a building up to 24 hours after the drug is manufactured. The Center found that "detectable airborne concentrations of meth and hydrochloric acid and iodine, used to make the drug, remained inside the house for at least 24 hours."[30]

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[28] "Amphetamine and Methamphetamine Emergency Department Visits," The DAWN Report, July 2004.

[29] National Drug Intelligence Center; National Drug Threat Assessment 2001—The Domestic Perspective, October 2000.

[30] Willett, Anslee, "Research finds meth in air 24 hours after it's cooked," The Gazette, October 2, 2005; See in *http://www.gazette.com/display.php?id=1310916&secid=1.*

Toxic waste clean-up and remediation: a unique meth problem

There are two primary Federal agencies available to help clean up a meth lab site: the Environmental Protection Agency (EPA), and the Drug Enforcement Administration (DEA).

(A) Clean-up by EPA

An individual, a local government, or a State or regional entity, can notify EPA about a possible meth lab.[31] The Agency will study the site and its findings will help steer the next actions to be taken. For example, under the Comprehensive Environmental Response, Compensation, and Liability Act (Pub. Law. No. 96–510, also known as CERCLA or Superfund), EPA can respond directly when a pollutant or contaminant may present an imminent or substantial danger to public health or welfare. Most STL's do not rise to this level, however, and other actions may be taken.[32]

(B) Clean-up by DEA

One of the options for local and state enforcement is to contact the DEA. DEA has taken responsibility for cleaning meth lab sites, without the need for an initial payment by State or local governments. The average cost per site generally has been decreasing, largely because of increasing clean-up efficiency resulting from increasing levels of expertise. The numbers of sites and dollar totals are shown in Table 2.[33]

TABLE 2.—UNITED STATES DEA METH LAB CLEAN-UPS AND COSTS, AS OF JUNE 17, 2005

Calendar year	Number of sites	Total dollars spent	Dollars per site
2002	7,534	$21,720,000	$2,883
2003	8,837	16,950,000	1,918
2004	10,037	18,935,000	1,887
2005 [1]	4,684	9,615,000	2,053
Total	31,092	67,220,000	2,162

[1] To date.

H.R. 3889 clarifies existing laws to hold a meth "cook" liable for the cleanup costs of a seized lab site. Furthermore, an individual convicted of meth possession can be billed for the cost of the clean-up of their residence, place of business, or property if a lab is found on it. Thus, the law seeks to place a larger portion of the cleanup costs associated with the dismantling of a meth lab back onto the offenders rather than have law enforcement and environmental agencies bear the total amount, which for some small agencies has presented an overwhelming financial burden.

Regulation of precursor chemicals at home and abroad

Without pseudoephedrine (or two other, similar chemicals, namely ephedrine and phenylpropanolamine) neither small meth lab cooks, nor Mexican drug traffickers, can manufacture this deadly

[31] See *http://www.epa.gov/superfund/programs/er/nrs/nrsworks.htm; http://www.nrc.uscg.mil/nrcback.html* (last visited August 31, 2005).

[32] Federal Register, vol. 63, no. 32, February 18, 1998, pp. 8284–8291. See *http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=651164320413+0+0+0&WAISaction=retrieve* (last visited August 31, 2005).

[33] Id.

drug. Huge amounts of pseudoephedrine products are being shipped all over the world, with little or no tracking or control. Many nations are importing far more than they can legitimately consume, meaning that the excess is probably being diverted to meth production. Mexican imports of pseudoephedrine, the primary meth precursor, have risen from almost 100 tons in 2001 to nearly 224 tons in 2003. Mexican authorities estimate their legitimate demand for pseudoephedrine at only 70 tons per year.[34]

The U.S. and the international community have failed to set up an effective control system for pseudoephedrine and other precursor chemical products. Unlike meth, pseudoephedrine cannot be made clandestinely—it can only be manufactured in large facilities using very sophisticated equipment. As a groundbreaking report by The Oregonian newspaper recently showed, only a few companies worldwide make the chemical, and virtually all of the world's supply comes from three countries: Germany, India, and China.[35] As such, it would not be very difficult for the U.S. and its allies to get better control of the chemical and prevent its large-scale diversion.

Squeezing the balloon: why U.S. anti-meth strategy needs an international component

Although many proposals for Federal anti-meth legislation have focused primarily on the domestic production of the drug—in particular by cutting down on the domestic supply of precursors available for small meth labs—such measures will do little, by themselves, to cut down on the supply of meth. Merely tackling small clandestine labs is like squeezing a balloon—the meth supply will expand elsewhere to meet the demand. Mexican meth will more than replace the supply from small labs, unless Congress addresses the problem in a comprehensive way.

The recent experience of Oklahoma illustrates this problem. Oklahoma passed one of the toughest laws regulating the domestic retail sale of pseudoephedrine products, making it far more difficult for meth cooks to obtain the precursor chemical. Although the Oklahoma law apparently resulted in a significant reduction in local clandestine labs, there has been a corresponding increase in imported Mexican crystal meth to meet the demand.[36] In other words, while laws focusing on local production are specifically vital to curtail the serious problem of the clean-up of local production sites, all other effects to the local community, including crime and child abuse, continue to remain once Mexican methamphetamine replaces local meth. As one U.S. Attorney in Georgia recently put it, "The Mexico cartels will replace the meth supplied by local labs with double the volume, double the purity, and double the quality."

Regulation of precursor chemicals domestically

When Congress enacted the Federal Controlled Substances Act (CSA), it specifically disavowed any intention to "preempt" State law. Hence, States are free to pass drug control laws that differ from the CSA. As a practical matter, however, if Federal law imposes tougher requirements than State law, the Federal law will

[34] Id.
[35] Suo, Steve, "The Mexican Connection," The Oregonian, June 5, 2005.
[36] Suo, Steve, "As Laws Dry Up Home Meth Labs, Mexican Cartels Flood U.S. Market," The Oregonian, September 25, 2005.

become the controlling standard (since retailers and consumers must comply with both the Federal and their State's law). Conversely, if a State adopts requirements that are stronger than the Federal law, the state standard will control—but only within that state.

Since 2004, a number of States have adopted very strict new requirements for the retail sale and distribution of meth precursor chemical products—i.e., those containing pseudoephedrine and similar medicines. The most common of these requirements include requiring these drugs to be placed behind the counter, limiting the amount that can be purchased in a single transaction or over a specified period of time, requiring customers to provide identification and a signature upon purchase, and placing such drug products on the schedule of controlled substances, thus effectively eliminating sales by non-pharmacy retail stores.

The first State to establish such restrictions was Oklahoma, which, in 2004, enacted a new law designed to crack down on the illegal production and abuse of methamphetamine in the state. Under the new law, Oklahoma added drug products containing pseudoephedrine—except for combination products in liquid or gel form—to its list of Schedule V controlled substances and imposed an array of new sales restrictions, including the following: (1) such drug products may only be sold behind the pharmacy counter by, or under the supervision of, a licensed pharmacist or registered pharmacy technician; (2) individuals who purchase such drug products must provide photo identification and must sign a written log of the transaction; and (3) in the absence of a prescription, individuals may not purchase more than 9 grams of such products within any thirty-day period.[37]

Multiple States have followed Oklahoma's lead. At least twelve states have enacted laws that place sales restrictions on cold medications, including Arkansas, Georgia, Illinois, Iowa, Kansas, Kentucky, Mississippi, Oregon, South Dakota, Tennessee, West Virginia, and Wyoming, and legislation has been proposed in at least 20 other states.[38]

Although the Oklahoma and other similar State laws have shown an immediate impact on decreasing the production of methamphetamine in local STL's, a disturbing trend has surfaced in the response of Mexican traffickers.[39] As the local production and supply of meth by STL's has increasingly declined, there has been a corresponding significant increase in the importation of Mexican crystal methamphetamine to meet the new demand.[40] In other words, while laws focusing on local production are vital to curtail certain devastating side effects to the local community it must be acknowledged that such laws are very limited in dealing with the overall, and in particular the international methamphetamine problem.

H.R. 3889 authorizes domestic manufacturing and import quotas on pseudoephedrine (PSE), ephedrine (EPH), and phenylpropanola-

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[37] 63 Okl. St. § 2–212.

[38] Copeland, Larry, "States Limiting Sales of Cold Remedies," USA Today, April 26, 2005, at 1A; Lois Romano, "Cold-Medicine Curbs Cited in Drug Effort"; "Number of Okla. Meth Labs Drops Sharply," Washington Post, Feb. 19, 2005.

[39] Suo, Steve, "As Laws Dry Up Home Meth Labs, Mexican Cartels Flood U.S. Market," The Oregonian, September 25, 2005; See *http://www.oregonlive.com/news/oregonian/index.ssf?/base/front_page/1127559319271250.xml&coll=7.*

[40] Id.

mine (PPA), to prevent oversupply from being diverted to meth production. Regulation of the wholesale "spot market" in PSE, EPH, and PPA, is created by requiring DEA to approve any post-import changes in the distribution of the chemicals. Information on the international "chain of distribution" from foreign manufacturer to domestic importer for these chemicals is also collected. Major foreign exporters and importers of PSE, EPH, and PPA are held accountable if they do not fully cooperate with the U.S. with respect to stopping drug trafficking. In addition, up to $4 million for the State Department to engage Mexico (the largest source of U.S. meth) in cooperative anti-diversion and anti-meth trafficking efforts is authorized.

Schedule V considerations

While many States have moved to designate Pseudoephedrine and other meth precursor chemicals as Schedule V substances, to do so at the Federal the government restricts the sale of common OTC medicines to pharmacists and in some cases may force people who require these medicines for legitimate use to seek a prescription. By classifying pseudoephedrine and similar methamphetamine precursor chemicals as schedule V controlled substances, the government limits the nonprescription sale of products that contain these chemicals to pharmacies alone.[41] Schedule V classification effectively eliminates consumers' ability to get medicines that contain pseudoephedrine and similar precursor chemicals from their local convenience stores or grocery stores, if none have a pharmacy.

Additionally, should the consumer need medicines containing pseudoephedrine at unusual hours, their ability to get them would rely on their access to a 24 hour pharmacy. In as many as 14 states, Federal classification of pseudoephedrine as a schedule V substance would trigger "by prescription only" requirements.[42] This would mean that a consumer would have to have a prescription to purchase a pseudoephedrine containing medicine. Medicines that were formerly available for as little as $6, would now cost the consumer prohibitively more because of the added cost of having to visit a doctor in order to obtain a prescription. The increase will be absorbed in higher medical insurance and Medicare costs due to an overall increase in physician visits.

While making it harder for legitimate use consumers to obtain pseudoephedrine medicines, schedule V classification of this substance leaves gaping holes through which meth cooks will be able to acquire necessary ingredients. Schedule V classification of pseudoephedrine does not address the "spot market" sales of scheduled chemicals. Continued inattention to the pseudoephedrine "spot market" problem, while at the same time restricting the general public's access to pseudoephedrine, will create a large scale illicit market for methamphetamine precursor chemicals. The penalties for criminal diversion of DEA List 1 chemicals, the current classi-

[41] 21 CFR 1306.26.

[42] Many States provide that when there is a Federal decision to designate a new controlled substance, that substance automatically becomes controlled under State law, at least pending further legislation or administrative action in the State. Those states, in turn, provide as a matter of their general laws that once a drug is scheduled, it must be limited to prescription use, even when the FDA has determined that the drug should be available over the counter. Some States that could see these effects include: CA, CO, DE, HI, LA, MA, MT NE, NY, ND, OR, PA, RI, VT.

fication of pseudoephedrine, are more substantial than the penalties of the diversion of schedule V. The effect of moving pseudoephedrine to schedule V would be to effectively weaken the current penalties and the effect of having the chemical listed under both schemes creates unwieldy and confusing statutory regulation. The import/export controls on List 1 chemicals are more comprehensive than those on schedule V substances.

H.R. 3889 classifies all pseudoephedrine, ephedrine, and phenylpropanolamine products as "schedule listed chemical" (SLC) products in an effort to avoid the pitfalls of moving precursor chemicals to the schedule system. The legislation requires that any SLC substance be sold from behind the counter, or from a locked cabinet in the store aisles. Furthermore, all transactions in SLCs are to be recorded in a log book, available to law enforcement and purchasers must show I.D. and sign the log book. All sellers of SLCs must certify to DEA that they will comply with all regulations, and that all employees (other than pharmacists) handling the products have undergone training. H.R. 3889 establishes a 3.6 gram per retail transaction, per day limit on the amount of SLCs that may be sold. The bill empowers the DEA to prevent any retailer violating regulations from selling SLC products. All of these provisions are similar to those provided to schedule V substances, but avoid the over regulation the designation would create.

Why gel caps and liquids should not be exempted

Although some states have exempted liquid cold medicines (including "gelcaps") from tougher retail sales restrictions, the Federal government should not do so. Contrary to the expectations of State legislators, meth cooks can still make meth from liquid formulations and gelcaps. The DEA has researched this issue and determined that it is not significantly harder to make meth from liquids and gelcaps. DEA opposes creating an exemption. At least one meth lab using liquids and gelcaps has been seized in Oregon, and DEA believes that the only reason more such labs haven't been found is that pills are still readily available. Furthermore, the viscus form of meth that is created using liquid precursors burns at a relatively cool temperature making it just as useable for meth addicts who smoke the drug. When Congress created the "blister pack" exemption in 1998, it believed that this would deter meth cooks; that didn't happen. Congress should not create new exemptions now that will have to be repealed later.

Special treatment for pharmacies

There is little reason to treat pharmacies differently from non-pharmacy retailers with respect to precursors. Pharmacists are trained to know how medicines will affect people, including potential for addiction or abuse, interactions with other drugs. Pharmacists are NOT specially trained to discern meth cooks from non-meth cooks, nor are they specially trained in how to prevent diversion of precursor chemicals to meth production. While pharmacists do have potentially greater familiarity with the concept of record-keeping for drugs in general, a record-keeping system is uncomplicated for non-pharmacists to understand and implement. A pharmacy-only requirement, or law that gives pharmacies greater ability to sell these products than non-pharmacies, does not produce

any significant law enforcement benefit—but it will needlessly hurt small businesses such as grocery stores in small towns and rural areas, that don't have an easily accessible pharmacy.

Precursor chemicals and internet sales

There is no evidence that legitimate online retailers (such as DrugStore.com) are providing a conduit for diversion—these sellers already limit the amount of a precursor chemical that someone can purchase. Internet sales can be dealt with by requiring verification of the purchaser's identity through criteria to be established by the DEA. It is just as easy for someone to shop multiple pharmacies to obtain PSE, as it is to shop multiple websites to obtain the chemical.

Regulation of the importers of List 1 chemicals by the DEA

The Committee is aware that the U.S. Drug Enforcement Administration (DEA) has systematically denied direct customers of importers (i.e. distributors) of List 1 chemicals the right of judicial review as accorded importers under § 971(c)(2). This is clearly wrong and the DEA is obligated to provide standing to these parties, particularly in light of a recent holding by the U.S. Court of Appeals in *PDK Laboratories, Inc.* v. *United States Drug Enforcement Administration*.

Section 971 of the Controlled Substances Act accords parties the right to a hearing on the record in instances where DEA issues an order terminating or suspending a shipment of List 1 chemicals. Section 971(c)(2) states: "a regulated person to whom an order applies under paragraph (1) is entitled to an agency hearing on the record in accordance with the Administrative Procedure Act." The Committee is aware, however, that in several cases DEA has refused to permit distributors, who are direct customers of the importer, the right to request such a hearing on the record to protest a decision by DEA to terminate or suspend a shipment. DEA is wrong in its approach and should allow the right to request a hearing.

In *PDK* v. *DEA*, PDK Laboratories was a customer of an importer whose economic interest was in buying ephedrine and using it to manufacture pharmaceuticals. The importer's interest was in selling the chemical to PDK. Although DEA's suspension orders were directed to importers, § 971(c)(1) of the statute necessarily regulates the interests of both importers and their domestic customers. If an importer cannot ship a listed chemical, the domestic customer cannot receive it. Therefore, PDK's interests were clearly within the zone of interests § 971(c)(1) regulates.

The Court was particularly critical of DEA's denial of PDK's standing to request a hearing when it stated: Everyone agrees that importers have a right to judicial review. Yet, DEA's argument offers no rational distinction between importers, who may seek judicial review, and domestic customers, who DEA says cannot. In addition, the Deputy Director's ruling in PDK's case would preclude it from buying ephedrine from any importer. On his view, the suspension order rests on what may happen to the finished products after they leave PDK's facilities. No matter which importer sought to supply PDK, a suspension order presumably would issue. A ruling against the validity of the orders in this case, far from being

an academic exercise, therefore has practical future consequences for PDK even if Indace or Malladi [the Importers] cancel their deals.

The Court goes on to hold that:

> In view of the interpretation of statutes applicable to other agencies containing language identical to § 877, we hold that if PDK has Article III standing, which no one doubts, and if its interests are "arguably within the zone of interests" § 971(c)(1) regulates, which we believe they are, PDK is a "person aggrieved" within § 877's meaning and is entitled to prosecute its case in court.

In light of this decision, the Committee directs DEA to follow this Court's decision and provide direct customers of importers standing to protect terminations and suspensions of List 1 chemicals.

Federal legislative history of methamphetamine

The Control Substances Act (CSA) is a Federal statute that establishes criminal and civil sanctions for the unlawful possession, manufacturing, distribution, or importation of controlled substances.[43] The CSA was passed to facilitate the legal distribution of controlled substances for legitimate medical purposes while preventing their diversion for illegal manufacture, distribution, and use. Over the years, however, the scope of the CSA has expanded from controlling illegal drugs to regulating the chemicals that are used as precursors in the production of illegal drugs such as methamphetamine.

Analysis of the legislative history of meth laws presents a strong recurring theme of Congress reactively responding to the current production methods of meth while drug traffickers promptly adapting to new legislation by reorganizing and refocusing their production methods, effectively avoiding the new restrictions. The chronic problem in the fight against meth has been the loopholes that have been left in each new piece of regulatory legislation. It usually takes a year or two before drug traffickers have been able to amend their production methods to exploit the still available sources of precursor chemicals allowed to persist via such loopholes.

Congress needs to cease reacting to the contemporary means of production of meth and decisively take a comprehensive and forward looking legislative approach to all potential uses of chemical precursors. From past experience, such a strategy very well may be able to strike a lethal blow to the production of meth in STL's.

The 1993 Act

In 1993 Congress passed the Domestic Chemical Diversion Control Act to further regulate ephedrine and pseudoephedrine as precursor chemicals. After balancing competing interests, legislators decided to regulate ephedrine in tablet form but to leave pseudoephedrine tablets containing these precursors unregulated. In striking this compromise the resulting regulation of the precursor pseudoephedrine was less stringent. Pseudoephedrine received less regulation and still is legally marketed as a non-controlled ingredient in certain over-the-counter (OTC) drug products,

[43] See 21 U.S.C. § 801 et seq.

particularly cold medicines. This is despite the fact that the CSA establishes criminal and civil sanctions for the unlawful possession, manufacturing, distribution, or importation of pseudoephedrine which is a listed chemical regulated under the CSA.[44]

In addition, the CSA as amended by the 1993 Act made it unlawful for an individual to possess a listed chemical such as ephedrine, pseudoephedrine, or phenylpropanolamine with intent to engage in the unauthorized manufacture of a controlled substance. This includes possessing or distributing a listed chemical where that individual knows or should know that the chemical will be used in the unauthorized manufacture of a controlled substance.[45] The 1993 legislation proved to be initially effective, however drug traffickers quickly replied with new methods of meth production. Since their previous source, ephedrine in tablet form, was now being regulated, drug traffickers adapted their production methods to be able to efficiently utilize pseudoephedrine in pill or tablet form. After a brief though dramatic drop in meth availability following the 1993 Act, meth abuse and its concurrent devastating secondary effects were once again quickly spreading across the country.

The 1996 Act

Once again, Congress sought to address the increasing spread of meth with the Comprehensive Methamphetamine Control Act of 1996. This law mandated that all sellers of pseudoephedrine tablets register with the DEA, maintain identification information entries of customers, and actively assist in enforcement by providing notice of potential illegal activity. This law focused on five areas: (a) the importation of methamphetamine and precursor chemicals; (b) controlling the production of methamphetamine; (c) increased penalties for trafficking and manufacturing of methamphetamine and its precursors; (d) the legal production, distribution, and sale of precursor chemicals; and (e) education and research concerning methamphetamine.

National synthetic drugs action plan

The National Synthetic Drugs Action Plan ("the Action Plan") is the Federal government's response to the production, trafficking, and abuse of Synthetic Drugs and Diverted Pharmaceutical Products. It was produced by the Department of Justice Criminal Division's Narcotic and Dangerous Drug Section, in cooperation with the Drug Enforcement Administration and several other agencies.

The purpose of the Action Plan is to stream the various strands of domestic and international efforts into a coherent plan for attacking and disrupting illegal drugs. Such targeted drugs including methamphetamine, amphetamine, MDMA, GHP, PCP, and LSD, which are sometimes diverted from legitimate commerce, such as ketamine and oxycodone, and the illegally imported depressant flunitrazepam (trade name Rohipnol).

Because meth is the most widely used and clandestinely produced synthetic drug in the United States, it receives the most attention in the Action Plan. Although meth is manufactured legitimately for medical purposes, the vast majority of illegally traf-

[44] See Drug Enforcement Administration, U.S. Chemical Control, *http://www.usdoj.gov/dea/concern/chemical_control.html* (last visited August 24, 2005).
[45] See 21 U.S.C. § 841(c).

ficked methamphetamine is produced illegally in laboratories both here and abroad; therefore, the Action Plan provides the following list of recommendations:

Prevention:

- Develop an Early Warning and Response System (NDIC, DOJ, HHS, ONDCP)
- Enhance Public Outreach Efforts Focusing on Synthetic Drugs (SAMSHA, DOJ, ONDCP)
- Improve Education and Training on Pharmaceuticals
- Develop Best Practices to Assist Drug-Endangered Children
- Research and Develop Targeted Prevention Programs
- Improve Data on Afflicted Geographic Areas
- Examine the Use of Prescription Narcotics

Treatment:

- Increase Treatment capacity
- Research Treatment for Synthetic Drug Abuse
- Develop Guidelines for Juvenile Drug Abuse (NIDA, SAMHSA)
- Develop Early Response Treatment Protocols
- Study Options for Criminal Justice System Treatment
- Expand Dissemination of Treatment Best Practices

Regulation of Chemicals and Drugs:

- Supports stronger State controls on precursor chemicals
- Remove the Blister Pack Exemption
- Regulate Chemical Spot Market
- Determine Licit Chemical Needs
- Enable Import controls on Bulk Ephedrine and Pseudoephedrine
- Limit Online Chemical sales
- Strengthen Cooperation with Mexico
- Enhance coordination and information exchange with Canada
- Strengthen the Multilateral Chemical Control System
- Exchange Information with Chemical Producing Countries
- Educate Store Employees
- Encourage Voluntary Controls by retail pharmacies and stores
- Work with Manufacturers to reformulate abused pharmaceutical products
- Support State prescription monitoring programs

Law Enforcement:

- Target Pseudoephedrine and Iodine smuggling to and from Mexico
- Focus on Canadian synthetics and Chemical smugglers
- Investigate ties between Canadian and Mexican Criminals
- Investigate Asian and European sources of synthetic drugs
- Enhance meth profiling efforts
- Review lab cleanup resources
- Apply updated clandestine lab cleanup guidelines
- Increase prosecutor and LEA training
- Make full use of charging and sentencing options
- Increase access to civil penalty case experts
- Prevent exploitation of mail services
- Improve intelligence efforts related to synthetic drugs

Brief overview of H.R. 3889 as amended by the Committee on the Judiciary

The Committee on the Judiciary made a number of changes to H.R. 3889, which now:

(a) reclassifies pseudoephedrine, PPA and ephedrine as a schedule listed chemical;

(b) imposes a flat 3.6 gram single transaction or daily multiple transaction limit on purchase of meth precursors (pseudoephedrine, PPA, and ephedrine);

(c) restricts purchasers from obtaining more than 7.5 grams in a 30-day period;

(d) requires regulated sellers to store precursors behind the counter, or in a locked storage box on the store floor, and maintain a written log so that purchasers have to show identification, state how much they have purchased, and sign for the product;

(e) requires regulated sellers to submit a certification that it will comply with these requirements and train employees to ensure compliance;

(f) restrict Internet and mobile vendor sales of precursors to these same limitations;

(g) authorizes new import, export, and manufacturing regulations to help prevent diversion of pseudoephedrine and similar meth precursor chemicals;

(h) requires reporting of the international production and export of precursor chemicals, and holds nations accountable for their cooperation (or lack thereof) with United States drug enforcement;

(i) strengthens criminal penalties for methamphetamine manufacturers and traffickers by:

(1) imposing higher penalties for possession of precursors with intent to manufacture methamphetamine;

(2) modifying existing kingpin statute to increase use of kingpin tool against international traffickers;

(3) enhancing the penalty for meth manufacturers who do so in the presence of children; and

(4) imposing an additional criminal penalty on those who smuggle methamphetamine into the United States using the fast-track lane between Mexico and the United States;

(j) authorizes additional treatment program for children endangered by methamphetamine traffickers;

(k) improves drug court program to require more accountability and drug testing of participants; and

(l) authorizes the methamphetamine hot spot program for law enforcement efforts to investigate meth traffickers and clean up meth labs.

HEARINGS

The Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 3889 on September 27, 2005. Testimony was received from four witnesses: the Honorable Mark Souder, Congressman from the 3rd District of Indiana; the Honorable Mark Kennedy, Congressman from the 6th District of Minnesota; Mr. Joseph T. Rannazzisi, Dep-

uty Chief, Office of Enforcement Operations, U.S. Drug Enforcement Administration; Dr. Barry M. Lester, Professor of Psychiatry & Human Behavior and Pediatrics, Brown University Medical School.

COMMITTEE CONSIDERATION

On November 3, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 3889 by a rollcall vote of 8 to 2, a quorum being present. On November 9, 2005, the full Committee met in open session and ordered favorably reported the bill H.R. 3889 as amended by a recorded vote of 31 to 0, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were the following recorded votes during the committee consideration of H.R. 3889:

H.R. 3889 was favorably reported to the full House, as amended, by a vote of 31 to 0.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sanchez	X		
Mr. Van Hollen	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman	X		
Total	31	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the H.R. 3889, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 15, 2005.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has completed the enclosed cost estimate for H.R. 3889, the Combat Methamphetamine Epidemic Act of 2005.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), Melissa Merrell (for the impact on state and local governments), and Fatimot Ladipo (for the impact on the private sector).

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

H.R. 3889—Combat Methamphetamine Epidemic Act of 2005

Summary: H.R. 3889 would authorize appropriations totaling $545 million over the 2006–2010 period to fund several programs in the Department of Justice (DOJ) and the Department of State that aim to combat the abuse of methamphetamine. In addition, the bill would strengthen the regulation of pseudoephedrine, ephedrine, and phenylpropanolamine and would limit retail sales of products that contain those substances. Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3889

would cost $377 million over the 2006–2010 period. Enacting the bill also could affect direct spending and revenues, but CBO estimates that any effects would not be significant for any year.

The bill would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by preempting some state laws that regulate pharmaceutical sales. In addition, the bill would impose an intergovernmental mandate on some publicly owned pharmacies by requiring tighter controls for selling and storing over-the-counter drugs containing pseudoephedrine, ephedrine, or phenylpropanolamine. CBO estimates that the costs, if any, for states, localities, and publicly owned pharmacies to comply with those mandates would be insignificant and well below the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

H.R. 3889 also would impose private-sector mandates, as defined in UMRA, on retail businesses and persons involved in the sale and distribution of certain medications containing ephedrine, pseudoephedrine, or phenylpropanolamine. CBO estimates that the aggregate direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3889 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION [1]						
Spending Under Current Law for Programs Authorized by H.R. 3889:						
Budget Authority [2]	53	0	0	0	0	0
Estimated Outlays	48	49	32	19	8	0
Proposed Changes:						
DOJ Programs:						
Authorization Level	0	119	119	99	99	99
Estimated Outlays	0	26	62	81	93	105
Department of State Programs:						
Authorization Level	0	5	5	0	0	0
Estimated Outlays	0	3	4	2	1	0
Total Changes:						
Authorization Level	0	124	124	99	99	99
Estimated Outlays	0	29	66	83	94	105
Spending Under H.R. 3889:						
Authorization Level [1]	53	124	124	99	99	99
Estimated Outlays	48	78	98	102	102	105

[1] In addition to the amounts shown above, enacting H.R. 3889 also could affect direct spending and revenues, but CBO estimates that any effects would not be significant in any year.

[2] The 2005 level is the amount appropriated for that year for the programs authorized by H.R. 3889. A full-year appropriation for fiscal year 2006 has not yet been enacted.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2005. CBO estimates that implementing H.R. 3889 would cost $377 million over the 2006–2010 period, assuming appropriation of the authorized amounts. Enacting the bill could affect direct spending and receipts, but we estimate that any effects would not be significant in any year.

Spending subject to appropriation

For this estimate, CBO assumes that the amounts authorized by the bill for the programs listed below will be appropriated near the start of each fiscal year and that spending will follow the historical spending patterns for those or similar activities.

For DOJ, the bill would authorize the appropriation of:

- $99 million for each of fiscal years 2006 through 2010 for grants to states for programs to reduce the manufacture, sale, and use of methamphetamine; and
- $20 million for each of fiscal years 2006 and 2007 for grants for programs to assist children endangered by abuse of methamphetamine.

For the Department of State, H.R. 3889 would authorize the appropriation of:

- $4 million for each of fiscal years 2006 and 2007 to prevent the smuggling of methamphetamine from Mexico to the United States; and
- $1 million for each of fiscal years 2006 and 2007 for analysis of and reports on countries that export and import the most pseudoephedrine, ephedrine, and phenylpropanolamine and the cost of developing a plan to prevent the diversion of those chemicals to illegal uses.

In addition, H.R. 3889 would strengthen the regulation of pseudoephedrine, ephedrine, and phenylpropanolamine and would limit retail sales of products that contain those substances. CBO estimates that any resulting increase in administrative or investigative costs for the Drug Enforcement Administration (DEA) would not be significant.

Direct spending and revenues

Enacting H.R. 3889 could increase collections of civil and criminal fines for violations of the bill's provisions relating to methamphetamine production and trafficking as well as those regarding the importation of precursor chemicals. CBO estimates that any additional collections would not be significant because of the relatively small number of additional cases likely to be affected. Civil fines are recorded as revenues. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and subsequently spent without further appropriation.

Estimated impact on state, local, and tribal governments: H.R. 3889 would impose an intergovernmental mandate, as defined in UMRA, by preempting state laws that place less-burdensome requirements than those established in this bill on pharmaceutical dispensers for selling and storing over-the-counter drugs containing pseudoephedrine, ephedrine, or phenylpropanolamine. In addition, the bill would impose an intergovernmental mandate on publicly owned pharmacies by requiring compliance with those sale and storage requirements. Because the preemption would not require states to take any action and because we expect that very few public pharmacies would be affected by the new requirements, CBO estimates that compliance costs would be insignificant and well below the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

State and local governments would benefit from grants that would be authorized to establish statewide programs to monitor the

purchase of controlled substances used to produce methamphetamines and from a variety of programs related to substance abuse, education, and prevention. Any costs to those entities would be incurred voluntarily as a condition of receiving federal aid.

Estimated impact on the private sector: H.R. 3889 would impose private-sector mandates, as defined in UMRA, on retail businesses and persons involved in the sale and distribution of certain medications containing ephedrine, pseudoephedrine or phenylpropanolamine. The bill would reclassify those drugs, which are found in many over-the-counter medications, as "scheduled listed chemical products"—a new category of chemicals under the Controlled Substances Act. The sale and distribution of products containing those substances would be regulated by the Controlled Substances Act, as amended by this bill. Based on information from industry and government sources, CBO estimates that the aggregate direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Retail businesses

The bill would impose private-sector mandates on retail businesses and persons involved in the sale and distribution of certain medications by restricting access to ephedrine, pseudoephedrine, and phenylpropanolamine products and imposing per-transaction and monthly limits on the amount of such products that can be sold per customer. Retail sellers would be required to verify the identification of individuals purchasing those products and maintain a written or electronic record of each sales transaction for not fewer than two years. The bill also would require sellers to submit to the Attorney General certification that certain employees involved in the delivery and direct sales of those products to consumers have undergone specific training.

Under H.R. 3889, certain retail establishments would have to move the location of pharmaceutical products containing those substances behind the counter or store them in locked cabinets, train employees to alert them to the new regulations, and implement new sales and hiring practices. Retail businesses might also reprogram software to signal or block transactions exceeding the threshold, although this would not be explicitly required. In addition, the bill would require sellers to take reasonable measures to guard against hiring people who may present a risk to the theft and diversion of scheduled listed chemical products. Finally, the bill would require sellers who ship (mail order or Internet sales) such medications to confirm the identity of a purchaser prior to shipping in accordance with procedures to be established by the Attorney General.

According to government and industry sources, at least 13 states have already enacted laws that place restrictions on such medications and many large retailers have voluntarily complied with the restrictions in this bill. In addition, similar products that do not contain those substances are readily available to be sold as an alternative or substitute. According to those industry sources, the costs associated with relocating a product, logging the sale, certification, retraining, and implementing new sales and hiring practices

would be small. Therefore, CBO estimates that the direct cost to comply with those mandates would be small relative to UMRA's threshold for private-sector mandates.

Consumers

The bill would require individuals who purchase products containing ephedrine, pseudoephedrine, or phenylpropanolamine to provide photo identification and sign a written log of the transaction. In addition, consumers would be limited to 7.5 grams of such medicines that could be purchased within any 30-day period. CBO expects that the direct cost for individuals to comply with the mandate would be minimal.

Importers and exporters

The bill also would impose a new mandate by expanding the current reporting requirements for certain importers and exporters of listed chemicals such as ephedrine, pseudoephedrine, or phenylpropanolamine. Currently, certain importers and exporters (those that are not regular importers or exporters as determined by the Department of Justice) must file an initial advance notice with the department 15 days before the shipment of such listed chemicals. Under the bill, if an original planned sale of such chemicals falls through, those importers and exporters must file a second advance notice with the department identifying the new purchaser 15 days prior to a new shipment. Finally, the bill would require importers to file a report with federal regulators listing complete information about the chain of distribution of imported chemicals. Based on information from government sources, CBO expects that the cost of complying with the mandate would be small.

Previous CBO estimate: On September 15, 2005, CBO transmitted a cost estimate for S. 103, the Combat Meth Act of 2005, as reported by the Senate Committee on the Judiciary on July 28, 2005. The two bills contain different provisions and the cost estimates reflect those differences. CBO estimated that implementing S. 103 would cost about $90 million over the 2006–2010 period, assuming appropriation of the necessary amounts. Enacting that bill also could affect direct spending, but we estimated that any net effects would not be significant in any year.

Both bills would impose similar mandates on individuals and persons involved in the sale and distribution of certain medications containing pseudoephedrine or ephedrine. S. 103 did not contain any mandates on the sale or distribution of phenylpropanolamine products or on importers or exporters. The aggregate direct cost of complying with the mandates in each bill would fall below the annual threshold established by UMRA for private-sector mandates.

Estimate prepared by: Federal Costs: DOJ—Mark Grabowicz; Department of State—Sam Papenfuss; and Receipts—Emily Schlect. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Fatimot Ladipo and Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3889 is intended to further regulate and punish illicit conduct relating to methamphetamine.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section-by-section analysis describes the bill as reported by the Committee on the Judiciary.

TITLE I—DOMESTIC REGULATION OF PRECURSOR CHEMICALS

Sec. 101. Regulated transactions in methamphetamine precursor chemical products

This section repeals the Federal "blister pack" exemption, reduces the Federal per-transaction sales limit for pseudoephedrine, ephedrine, and phenylpropanolamine products from 9 grams to 3.6 grams, and clarifies current law to include derivatives of each of these chemicals.

This section would preserve the incentive to keep cold pills in blister packs, while subjecting them to the new sales limit. If pseudoephedrine, ephedrine, or phenylpropanolamine products are sold in pill form, they must be in blister packs to be sold over the counter; otherwise, they must be in liquid form. All forms of these products would now be subject to the 3.6 grams per transaction limit, without exception.

Subsections (b) and (c) make conforming amendments to the current law, to accommodate the new sales restrictions. Subsection (d) makes another technical correction to make it clear that these sales limitations apply to drug combinations containing derivatives of pseudoephedrine, ephedrine, or phenylpropanolamine.

Sec. 102. Authority to establish production quotas

This section extends the Attorney General's existing authority to set production quotas for certain controlled substances (see 21 U.S.C. § 826) to pseudoephedrine, ephedrine, and phenylpropanolamine. Currently, domestic production of these chemicals is not very high, as most of our supply is imported. If Congress adopts the import quotas enacted by Section 104 of the bill, however, the Attorney General would need to have corresponding authority within the U.S. if domestic production were to increase. This section would also allow manufacturers to apply for increases in their production quotas (see 21 U.S.C. § 826(e)).

Sec. 103. Penalties; authority for manufacturing; quota

This section would expand the existing penalty for illegal production beyond established quotas (see 21 U.S.C. § 842(b)) to take into account the Attorney General's new authority to set quotas for meth precursors.

Sec. 104. Restrictions on importation; authority to permit imports for medical, scientific, or other legitimate purposes

This section would extend the Attorney General's existing authority to set import quotas for controlled substances (see 21 U.S.C. § 952) to pseudoephedrine, ephedrine, and phenylpropanolamine. This section contains provisions allowing registered importers to apply for temporary or permanent increases in a quota to meet legitimate needs, which would have to be acted on within 60 days.

Sec. 105. Notice of importation or exportation; approval of sale or transfer by importer or exporter

This section would address a loophole in the current regulatory system for imports and exports of precursor chemicals for methamphetamine and other synthetic drugs. Under current law, an importer or exporter who wishes to import pseudoephedrine or other precursor chemicals must either (1) notify the Department of Justice 15 days in advance of the import or export, or (2) be a regular importer or exporter (i.e., a company that the Department has previously allowed to import or export), and planning to sell the chemicals to a regular customer (again, one that the Department has previously permitted to take delivery). (See 21 U.S.C. § 971(a) and (b)).

A problem can arise, however, when the sale that the importer or exporter originally planned on falls through. When this happens, the importer or exporter must quickly find a new buyer for the chemicals on what is called the "spot market"—a wholesale market. Sellers are often under pressure to find a buyer in a short amount of time, meaning that they may be tempted to entertain bids from companies without a strong record of preventing diversion. More importantly, the Department of Justice has no opportunity to review such transactions in advance and suspend them if there is a danger of diversion to illegal drug production.

This section would extend the current reporting requirements—as well as the current exemption for regular importers, exporters, and customers—to post-import or export transactions. If an importer or exporter was required to file an initial advance notice with the Department of Justice 15 days before the shipment of chemicals, and the originally planned sale fell through, the importer or exporter would then have to file a second advance notice with the Department identifying the new proposed purchaser. The Department would then have 15 days to review the new transaction and decide whether it presents enough of a risk of diversion to warrant suspension. As is the case under existing law, a suspension can be appealed through an administrative process. (See 21 U.S.C. § 971(c)(2)).

If, however, an importer or exporter was exempted from filing an initial advance notice because it qualifies as a "regular" importer or exporter under existing law, that importer or exporter would not have to file the second advance notice, as long as the new proposed purchaser also qualifies as a "regular" customer under existing law. (Note that under current law, the Department does receive a record of these transactions after the fact, see 21 U.S.C. § 971(b)(1)).

Sec. 106. Enforcement of restrictions on importation and of requirement of notice of transfer

This section makes a conforming amendment to current law, to extend existing penalties for illegal imports or exports to the new regulatory requirements added by sections 104 and 105 of the bill.

TITLE II—INTERNATIONAL REGULATION OF PRECURSOR CHEMICALS

Sec. 201. Information on foreign chain of distribution; import restrictions regarding failure of distributors to cooperate

This provision would further amend the reporting requirements for importers of meth precursor chemicals, by requiring them to file with Federal regulators complete information about the chain of distribution of imported chemicals (from the manufacturer to the shores of the U.S.). This will help U.S. law enforcement agencies to better track where meth precursors come from, and how they get to the U.S. At present, very little information exists about the international "chain of distribution" for these chemicals, hindering effective controls.

Sec. 202. Requirements relating to the largest exporting and importing countries of certain precursor chemicals

This provision would mandate a separate section of the current State Department report on major drug producing and transit countries (see 22 U.S.C. § 2291h), identifying the five largest exporters of major methamphetamine precursor chemicals, and the five largest importers that also have the highest rate of meth production or diversion of these chemicals to the production of meth. If any of those countries were not fully cooperating with U.S. law enforcement in implementing their responsibilities under international drug control treaties, there would be consequences for their eligibility for U.S. aid, similar to those faced by the major drug trafficking nations under current law.

There is an added provision clarifying the original intent of this legislation, to apply the "fully cooperates" standard (and not the lesser standard under another, separate provision of law). This standard would only have to be applied with respect to the listed countries' cooperation with respect to meth precursor chemicals; cooperation with respect to other drugs would continue to be evaluated under existing law.

The provision also includes an authorization of $1 million for implementation.

Sec. 203. Prevention of smuggling of methamphetamine into the United States from Mexico

This amendment would require the State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) to provide assistance to Mexico to prevent the production of methamphetamine in that country, and to encourage Mexico to stop the illegal diversion of meth precursor chemicals. The amendment would authorize the use of $4 million of the $5 million recently approved by the House for these purposes.

TITLE III—ENHANCED CRIMINAL PENALTIES FOR METHAMPHETAMINE PRODUCTION AND TRAFFICKING

Sec. 301. Possession of schedule listed chemical with intent to manufacture controlled substance

This section would create a new criminal provision for possession with intent to manufacture a schedule listed chemical and impose a maximum punishment of life imprisonment. This provision would increase the currently applicable provision (21 U.S.C. § 841(c), which imposes a maximum of 20 years imprisonment).

Sec. 302. Smuggling methamphetamine or methamphetamine precursor chemicals into the United States while using facilitated entry programs

Even as more meth is being smuggled across the border, increased legitimate international traffic has forced the Bureau of Customs and Border Protection (CBP) to rely on facilitated entry programs—so-called "fastpass" systems like SENTRI (for passenger traffic on the Southwest border), FAST (for commercial truck traffic), and NEXUS (for passenger traffic on the Northern border). These systems allow pre-screened individuals to use dedicated lanes at border crossings, subject only to occasional searches to test compliance with customs and immigration laws.

These programs can be a powerful tool for CBP to manage heavy traffic at major border crossings, but they can also create potential risks. If a drug trafficking organization were to hire someone cleared for a "fastpass" system, it could smuggle large amounts of drugs through only minimal security. The problem is compounded by the fact that computerized criminal background checks cannot be performed in Mexico, meaning that our ability to screen Mexican citizens who apply for a fastpass system is minimal at best.

This section would create an added deterrent for anyone to misuse a facilitated entry program to smuggle methamphetamine or its precursor chemicals. An additional penalty of up to 15 years imprisonment would be added to the punishment for the base offense. If convicted, an individual would also be permanently barred from using a fastpass system again.

Sec. 303. Manufacturing controlled substances on Federal property

This provision would clarify that current penalties for cultivating illegal drugs on Federal property also apply to manufacturing synthetic drugs (such as meth). Meth cooks have frequently moved their operations to parks, national forests, and other public lands, causing serious environmental damage. This criminal penalty will help deter such destructive conduct.

Sec. 304. Increased punishment for methamphetamine kingpins

This provision would allow for easier application of the enhanced penalties of the "continuing criminal enterprise" section of the Controlled Substances Act (21 U.S.C. § 848). That section (commonly referred to as the "kingpin" statute) imposes life imprisonment on a leader of a drug trafficking organization convicted of trafficking in very large quantities of a drug, and receiving very large profits from that activity. This new provision would reduce the threshold amount of meth (from 300 to 200 times the threshold for base vio-

lations) and profits from meth (from $10 million to $5 million), while still applying the life imprisonment penalty only to true "kingpins"—the ringleaders of meth trafficking organizations.

Sec. 305. New child protection criminal enhancement

This provision would punish an offender who manufactures methamphetamine at a location where a child resides or is present, and would impose a consecutive sentence of 0 to 20 years.

Sec. 306. Amendments to certain sentencing court reporting requirements

This provision authorizes the United States Sentencing Commission to establish a form to be used by United States District Judges when imposing criminal sentences in order to facilitate data gathering and reporting by the Sentencing Commission.

Sec. 307. Semiannual reports to Congress

This section requires the Attorney General to submit a report to Congress every six months outlining how it is allocating certain resources to increase prosecution of large meth traffickers, meth lab operators, and meth traffickers who endanger children.

TITLE IV—ENHANCED ENVIRONMENTAL REGULATION OF METHAMPHETAMINE BY-PRODUCTS

Sec. 401. Designation of by-products of methamphetamine laboratories as hazardous materials and waste under Hazardous Materials Transportation Act and Solid Waste Disposal Act

This provision would give additional authority to the Transportation Department and the Environmental Protection Agency (EPA) to enforce environmental regulations against meth cooks who cause pollution with meth by-products. The DEA is directed to submit a list of such by-products to the Transportation Department and EPA, to help them implement this section.

Sec. 402. Cleanup costs

This provision would clarify existing law imposing the obligation of restitution for environmental cleanup costs on persons involved in meth production and trafficking. The recent decision of the Eighth Circuit Court of Appeals in *United States* v. *Lachowski* (405 F.3d 696) (8th Cir. 2005) has undermined the ability of the Federal government to seek cleanup costs from meth traffickers who are convicted only of meth possession—even when the meth lab in question was on the defendant's own property. This provision would also ensure that any person convicted of a meth-related offense can be held liable for clean-up costs for meth production that took place on the defendant's own property, or in his or her place of business or residence.

TITLE V—ADDITIONAL PROGRAMS AND ACTIVITIES

Sec. 501. Improvements to Department of Justice Drug Court Grant Program

This section revises the Drug Court program statute to clarify the requirement for periodic testing, graduated sanctions when an

offender tests positive, and a list of potential sanctions when a positive test occurs.

Sec. 502. Grants to hot spot areas to reduce availability of methamphetamine

This section authorizes at $99 million for fiscal years 2006 to 2010 grants to State and local law enforcement agencies to assist in the investigation of meth traffickers and to reimburse the DEA for assistance in cleaning up meth labs.

Sec. 503. Grants for programs for drug-endangered children

This section authorizes grants to States to assist in treatment of children who have been endangered by living at a residence where methamphetamine has been manufactured or distributed.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Pursuant to the terms of the referral of the bill to the Committee, the Committee adopted an amendment striking those provisions which were referred to the Committee and inserting new text.

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the provisions of the bill referred to the Committee, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1018 OF THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

NOTIFICATION, SUSPENSION OF SHIPMENT, AND PENALTIES WITH RESPECT TO IMPORTATION AND EXPORTATION OF LISTED CHEMICALS

SEC. 1018. (a) * * *

* * * * * * *

(g)(1) With respect to a regulated person importing ephedrine, pseudoephedrine, or phenylpropanolamine (referred to in this section as an "importer"), a notice of importation under subsection (a) or (b) shall include all information known to the importer on the chain of distribution of such chemical from the manufacturer to the importer.

(2) For the purpose of preventing or responding to the diversion of ephedrine, pseudoephedrine, or phenylpropanolamine for use in the illicit production of methamphetamine, the Attorney General may, in the case of any person who is a manufacturer or distributor of such chemical in the chain of distribution referred to in paragraph (1) (which person is referred to in this subsection as a "foreign-chain distributor"), request that such distributor provide to the Attorney General information known to the distributor on the distribution of the chemical, including sales.

(3) If the Attorney General determines that a foreign-chain distributor is refusing to cooperate with the Attorney General in obtaining the information referred to in paragraph (2), the Attorney General may, in accordance with procedures that apply under subsection (c), issue an order prohibiting the importation of ephedrine, pseudoephedrine, or phenylpropanolamine in any case in which

such distributor is part of the chain of distribution for such chemical. Not later than 60 days prior to issuing the order, the Attorney General shall publish in the Federal Register a notice of intent to issue the order. During such 60-day period, imports of the chemical with respect to such distributor may not be restricted under this paragraph.

* * * * * * *

FOREIGN ASSISTANCE ACT OF 1961

PART I

* * * * * * *

CHAPTER 8—INTERNATIONAL NARCOTICS CONTROL

* * * * * * *

SEC. 489. REPORTING REQUIREMENTS.

(a) INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT.—Not later than March 1 of each year, the President shall transmit to the Speaker of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a report containing the following:

(1) * * *

* * * * * * *

(8)(A) A separate section that contains the following:

(i) An identification of the five countries that exported the largest amount of pseudoephedrine, ephedrine, and phenylpropanolamine (including the salts, optical isomers, or salts of optical isomers of such chemicals, and also including any products or substances containing such chemicals) during the preceding calendar year.

(ii) An identification of the five countries that imported the largest amount of the chemicals described in clause (i) during the preceding calendar year and have the highest rate of diversion of such chemicals for use in the illicit production of methamphetamine (either in that country or in another country).

(iii) An economic analysis of the total worldwide production of the chemicals described in clause (i) as compared to the legitimate demand for such chemicals worldwide.

(B) The identification of countries that imported the largest amount of chemicals under subparagraph (A)(ii) shall be based on the following:

(i) An economic analysis that estimates the legitimate demand for such chemicals in such countries as compared to the actual or estimated amount of such chemicals that is imported into such countries.

(ii) The best available data and other information regarding the production of methamphetamine in such countries and the diversion of such chemicals for use in the production of methamphetamine.

SEC. 490. ANNUAL CERTIFICATION PROCEDURES.

(a) WITHHOLDING OF BILATERAL ASSISTANCE AND OPPOSITION TO MULTILATERAL DEVELOPMENT ASSISTANCE.—

(1) BILATERAL ASSISTANCE.—Fifty percent of the United States assistance allocated each fiscal year in the report required by section 653 for each [major illicit drug producing country or major drug-transit country] *major illicit drug producing country, major drug-transit country, or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act* shall be withheld from obligation and expenditure, except as provided in subsection (b). This paragraph shall not apply with respect to a country if the President determines that its application to that country would be contrary to the national interest of the United States, except that any such determination shall not take effect until at least 15 days after the President submits written notification of that determination to the appropriate congressional committees in accordance with the procedures applicable to reprogramming notifications under section 634A.

(2) MULTILATERAL ASSISTANCE.—The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vote, on and after March 1 of each year, against any loan or other utilization of the funds of their respective institution to or for any major illicit drug producing country or major drug-transit country (as determined under subsection (h)) *or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act*, except as provided in subsection (b). For purposes of this paragraph, the term "multilateral development bank" means the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the European Bank for Reconstruction and Development.

* * * * * * *

SECTION 706 OF THE FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 2003

SEC. 706. INTERNATIONAL DRUG CONTROL CERTIFICATION PROCEDURES.

During any fiscal year, funds that would otherwise be withheld from obligation or expenditure under section 490 of the Foreign Assistance Act of 1961 may be obligated or expended beginning October 1 of such fiscal year provided that:

(1) * * *

* * * * * * *

(5) APPLICATION.—(A) * * *

* * * * * * *

(C) Nothing in this section shall affect the requirements of section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) with respect to countries identified pursuant to section

clause (i) or (ii) of 489(a)(8)(A) of the Foreign Assistance Act of 1961.

* * * * * * *

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

TABLE OF CONTENTS

TITLE II—CONTROL AND ENFORCEMENT

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

Sec. 100. Short title.

* * * * * * *

PART D—OFFENSES AND PENALTIES

Sec. 401. Prohibited acts A—penalties.

* * * * * * *

Sec. 419a. Consecutive sentence for manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine on premises where children are present or reside.

* * * * * * *

TITLE II—CONTROL AND ENFORCEMENT

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

SHORT TITLE

SEC. 100. This title may be cited as the "Controlled Substances Act".

* * * * * * *

PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) * * *

(b) Except as otherwise provided in section 409, 418, 419, or 420 any person who violates subsection (a) of this section shall be sentenced as follows:

(1) * * *

* * * * * * *

(5) Any person who violates subsection (a) of this section by cultivating *or manufacturing* a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

(A) * * *

* * * * * * *

(g) Except as authorized by this title, any person who knowingly or intentionally possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or any of its salts, optical isomers, or salts of optical isomers, with intent to manufacture a controlled substance shall be

fined in accordance with title 18, United States Code, or imprisoned for any term of years or life, or both.

* * * * * * *

CONTINUING CRIMINAL ENTERPRISE

SEC. 408. (a) * * *

* * * * * * *

(s) SPECIAL PROVISION FOR METHAMPHETAMINE.—For the purposes of subsection (b), in the case of continuing criminal enterprise involving methamphetamine or its salts, isomers, or salts of isomers, paragraph (2)(A) shall be applied by substituting "200" for "300", and paragraph (2)(B) shall be applied by substituting "$5,000,000" for "$10 million dollars".

* * * * * * *

CONSECUTIVE SENTENCE FOR MANUFACTURING OR DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE OR DISTRIBUTE, METHAMPHETAMINE ON PREMISES WHERE CHILDREN ARE PRESENT OR RESIDE

SEC. 419a. Whoever violates section 401(a)(1) by manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 years is present or resides, shall, in addition to any other sentence imposed, be imprisoned for a period of any term of years but not more than 20 years, subject to a fine, or both.

* * * * * * *

SECTION 994 OF TITLE 28, UNITED STATES CODE

§ 994. Duties of the Commission

(a) * * *

* * * * * * *

(w)(1) The Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission*, in a format approved and required by the Commission,* a written report of the sentence, the offense for which it is imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include—

(A) the judgment and commitment order;

(B) the *written* statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range *and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission*);

* * * * * * *

The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission.

* * * * * * *

(4) The Commission shall make available to the Attorney General, upon request, such data files as the Commission [may assemble or maintain in electronic form that include any] *itself may assemble or maintain in electronic form as a result of the* information submitted under paragraph (1). Such data files shall be made available in electronic form and shall include all data fields requested, including the identity of the sentencing judge.

* * * * * * *

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

TITLE I—JUSTICE SYSTEM IMPROVEMENT

* * * * * * *

PART EE—DRUG COURTS

SEC. 2951. GRANT AUTHORITY.

(a) * * *

* * * * * * *

(c) MANDATORY DRUG TESTING AND MANDATORY SANCTIONS.—

(1) MANDATORY TESTING.—Grant amounts under this part may be used for a drug court only if the drug court has mandatory periodic testing as described in subsection (a)(3)(A). The Attorney General shall, by prescribing guidelines or regulations, specify standards for the timing and manner of complying with such requirements. The standards—

(A) shall ensure that—

(i) each participant is tested for every controlled substance that the participant has been known to abuse, and for any other controlled substance the Attorney General or the court may require; and

(ii) the testing is accurate and practicable; and

(B) may require approval of the drug testing regime to ensure that adequate testing occurs.

(2) MANDATORY SANCTIONS.—The Attorney General shall, by prescribing guidelines or regulations, specify that grant amounts under this part may be used for a drug court only if the drug court imposes graduated sanctions that increase punitive measures, therapeutic measures, or both whenever a participant fails a drug test. Such sanctions and measures may include, but are not limited to, one or more of the following:

(A) Incarceration.

(B) Detoxification treatment.

(C) Residential treatment.

(D) Increased time in program.

(E) Termination from the program.

(F) Increased drug screening requirements.

(G) Increased court appearances.
(H) Increased counseling.
(I) Increased supervision.
(J) Electronic monitoring.
(K) In-home restriction.
(L) Community service.
(M) Family counseling.
(N) Anger management classes.

* * * * * * *

PART II—CONFRONTING USE OF METHAMPHETAMINE

SEC. 2996. AUTHORITY TO MAKE GRANTS TO ADDRESS PUBLIC SAFETY AND METHAMPHETAMINE MANUFACTURING, SALE, AND USE IN HOT SPOTS.

(a) PURPOSE AND PROGRAM AUTHORITY.—

(1) PURPOSE.—It is the purpose of this part to assist States—

(A) to carry out programs to address the manufacture, sale, and use of methamphetamine drugs; and

(B) to improve the ability of State and local government institutions of to carry out such programs.

(2) GRANT AUTHORIZATION.—The Attorney General, through the Bureau of Justice Assistance in the Office of Justice Programs may make grants to States to address the manufacture, sale, and use of methamphetamine to enhance public safety.

(3) GRANT PROJECTS TO ADDRESS METHAMPHETAMINE MANUFACTURE SALE AND USE.—Grants made under subsection (a) may be used for programs, projects, and other activities to—

(A) investigate, arrest and prosecute individuals violating laws related to the use, manufacture, or sale of methamphetamine;

(B) reimburse the Drug Enforcement Administration for expenses related to the clean up of methamphetamine clandestine labs and related environmental damage;

(C) support State and local health department and environmental agency services deployed to address methamphetamine; and

(D) procure equipment, technology, or support systems, or pay for resources, if the applicant for such a grant demonstrates to the satisfaction of the Attorney General that expenditures for such purposes would result in the reduction in the use, sale, and manufacture of methamphetamine.

SEC. 2997. FUNDING.

There are authorized to be appropriated to carry out this part $99,000,000 for each fiscal year 2006, 2007, 2008, 2009, and 2010.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, NOVEMBER 9, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will come to order.

The Chair recognizes the gentleman from North Carolina, Mr. Coble, the Chair of the Subcommittee on Crime, Terrorism, and Homeland Security, for a motion.

Mr. COBLE. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably H.R. 3889, the "Methamphetamine Epidemic Elimination Act of 2005." On September 27, the Subcommittee held a hearing on the bill and reported it favorably on November 3, 2005. I move its passage.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 3889, follows:]

I

109TH CONGRESS
1ST SESSION

H. R. 3889

To further regulate and punish illicit conduct relating to methamphetamine, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2005

Mr. SOUDER (for himself, Mr. SENSENBRENNER, Mr. BLUNT, Mr. COBLE, Mr. CALVERT, Mr. LARSEN of Washington, Mr. BOSWELL, Mr. KENNEDY of Minnesota, Mr. CANNON, Ms. HOOLEY, Mr. BAIRD, Mr. OSBORNE, Mr. CARDOZA, Mr. CASE, Mr. ROGERS of Alabama, Mr. LEWIS of Kentucky, Mr. BURTON of Indiana, Mr. SMITH of Texas, Mr. BACHUS, Mr. PETERSON of Pennsylvania, Mr. BOREN, Ms. HERSETH, Mr. FRANKS of Arizona, Mr. ABERCROMBIE, Mr. WALDEN of Oregon, Mr. REICHERT, Mr. WAMP, Mr. MCHENRY, Mr. GRAVES, Mr. PETERSON of Minnesota, Mr. TERRY, Mr. SCHWARZ of Michigan, Miss MCMORRIS, and Ms. GRANGER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on the Judiciary, International Relations, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To further regulate and punish illicit conduct relating to methamphetamine, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled*,

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 ''Methamphetamine Epidemic Elimination Act''.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DOMESTIC REGULATION OF PRECURSOR CHEMICALS

Sec. 101. Regulated transactions in methamphetamine precursor chemical products.
Sec. 102. Authority to establish production quotas.
Sec. 103. Penalties; authority for manufacturing; quota.
Sec. 104. Restrictions on importation; authority to permit imports for medical, scientific, or other legitimate purposes.
Sec. 105. Notice of importation or exportation; approval of sale or transfer by importer or exporter.
Sec. 106. Enforcement of restrictions on importation and of requirement of notice of transfer.

TITLE II—INTERNATIONAL REGULATION OF PRECURSOR CHEMICALS

Sec. 201. Information on foreign chain of distribution; import restrictions regarding failure of distributors to cooperate.
Sec. 202. Requirements relating to the largest exporting and importing countries of certain precursor chemicals.
Sec. 203. Prevention of smuggling of methamphetamine into the United States from Mexico.

TITLE III—ENHANCED CRIMINAL PENALTIES FOR METHAMPHETAMINE PRODUCTION AND TRAFFICKING

Sec. 301. Enhanced penalties for methamphetamine production, possession, or trafficking.
Sec. 302. Smuggling methamphetamine or methamphetamine precursor chemicals into the united states while using facilitated entry programs.
Sec. 303. Manufacturing controlled substances on Federal property.
Sec. 304. Increased punishment for methamphetamine kingpins.

TITLE IV—ENHANCED ENVIRONMENTAL REGULATION OF METHAMPHETAMINE BY-PRODUCTS

Sec. 401. Designation of by-products of methamphetamine laboratories as hazardous materials and waste under Hazardous Materials Transportation Act and Solid Waste Disposal Act.
Sec. 402. Cleanup costs.

TITLE I—DOMESTIC REGULATION OF PRECURSOR CHEMICALS

SEC. 101. REGULATED TRANSACTIONS IN METHAMPHETAMINE PRECURSOR CHEMICAL PRODUCTS.

(a) REDUCTION OF RETAIL SALES THRESHOLD.—Section 102(39)(A)(iv)(II) of the Controlled Substances Act (21 U.S.C. 802(39)(A)(iv)(II)) is amended by striking ''shall be 9 grams'' and all that follows and inserting the following: ''shall be any quantity of pseudoephedrine over 3.6 grams in a single transaction, or any quantity of phenylpropanolamine over 3.6 grams in a single transaction, and in addition shall be, in the case of such products in nonliquid form, that the products be packaged in blister packs, each blister containing not more than 2 dosage units, or where the use of blister packs is technically infeasible, packaged in unit dose packets or pouches.''

(b) ELIMINATION OF BLISTER PACK EXEMPTION.—

(1) REGULATED TRANSACTION.—Section 102(39)(A)(iv)(I)(aa) of the Controlled Substances Act (21 U.S.C. 802(39)(A)(iv)(I)(aa)) is amended by striking '', except that'' and all that follows through ''1996)''.

(2) DEFINITION; CONFORMING AMENDMENTS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(A) in section 102—

(i) by striking paragraph (45); and

(ii) by redesignating paragraph (46) as paragraph (45);

(B) in section 204(e), by striking ''shall'' the first time it appears and inserting ''may''; and

(C) in section 310(b)(3)(D)(ii), by striking ''102(46)'' and inserting ''102(45)''.

(c) PUBLIC LAW 104–237.—Section 401 of the Comprehensive Methamphetamine Control Act of 1996 (21 U.S.C. 802 note) (Public Law 104–237) is amended by striking subsections (d), (e), and (f).

(d) COMBINATIONS INVOLVING DERIVATIVES.—Section 102(39) of the Controlled Substances Act (21 U.S.C. 802(39)) is amended—

(1) in subparagraph (A)(iv)(I)(aa), by striking ''the drug contains'' and all that follows through ''unless otherwise provided'' and inserting the following: ''the drug contains ephedrine, pseudoephedrine, or phenylpropanolamine unless otherwise provided''; and

(2) by inserting after and below subparagraph (B) the following:

''Each reference in subparagraph (A)(iv) to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.''.

SEC. 102. AUTHORITY TO ESTABLISH PRODUCTION QUOTAS.

Section 306 of the Controlled Substances Act (21 U.S.C. 826) is amended—

(1) in subsection (a), by inserting ''and for ephedrine, pseudoephedrine, and phenylpropanolamine'' after ''for each basic class of controlled substance in schedules I and II'';

(2) in subsection (b), by inserting ''or for ephedrine, pseudoephedrine, or phenylpropanolamine'' after ''for each basic class of controlled substance in schedule I or II'' each place such term appears;

(3) in subsection (c), in the first sentence, by inserting ''and for ephedrine, pseudoephedrine, and phenylpropanolamine'' after ''for the basic classes of controlled substances in schedules I and II'';

(4) in subsection (d), by inserting ''or ephedrine, pseudoephedrine, or phenylpropanolamine'' after ''that basic class of controlled substance'';

(5) in subsection (e), by inserting ''or for ephedrine, pseudoephedrine, or phenylpropanolamine'' after ''for a basic class of controlled substance in schedule I or II'' each place such term appears;

(6) in subsection (f)—

(A) by inserting ''or ephedrine, pseudoephedrine, or phenylpropanolamine'' after ''controlled substances in schedules I and II'';

(B) by inserting ''or of ephedrine, pseudoephedrine, or phenylpropanolamine'' after ''the manufacture of a controlled substance''; and

(C) by inserting ''or chemicals'' after ''such incidentally produced substances''; and

(7) by adding at the end the following subsection:

''(g) Each reference in this section to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.''.

SEC. 103. PENALTIES; AUTHORITY FOR MANUFACTURING; QUOTA.

Section 402(b) of the Controlled Substances Act (21 U.S.C. 842(b)) is amended by inserting after ''manufacture a controlled substance in schedule I or II'' the following: '', or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical,''.

SEC. 104. RESTRICTIONS ON IMPORTATION; AUTHORITY TO PERMIT IMPORTS FOR MEDICAL, SCIENTIFIC, OR OTHER LEGITIMATE PURPOSES.

Section 1002(a) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a)) is amended—

(1) in the matter preceding paragraph (1), by inserting ''or ephedrine, pseudoephedrine, or phenylpropanolamine,'' after ''schedule III, IV, or V of title II,'';

(2) in paragraph (1), by inserting '', and of ephedrine, pseudoephedrine, and phenylpropanolamine, '' after ''coca leaves''; and

(3) by adding at the end the following subsections:

''(d)(1) With respect to a registrant under section 1008 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an

increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

"(2) With respect to the application under paragraph (1):

"(A) Not later than 60 days after receiving the application, the Attorney General shall approve or deny the application.

"(B) In approving the application, the Attorney General shall specify the period of time for which the approval is in effect, or shall provide that the approval is effective until the registrant involved is notified in writing by the Attorney General that the approval is terminated.

"(C) If the Attorney General does not approve or deny the application before the expiration of the 60-day period under subparagraph (A), the application is deemed to be approved, and such approval remains in effect until the Attorney General notifies the registrant in writing that the approval is terminated.

"(e) Each reference in this section to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.".

SEC. 105. NOTICE OF IMPORTATION OR EXPORTATION; APPROVAL OF SALE OR TRANSFER BY IMPORTER OR EXPORTER.

(a) IN GENERAL.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971) is amended—

(1) in subsection (b)(1), in the first sentence, by striking "or to an importation by a regular importer" and inserting "or to a transaction that is an importation by a regular importer";

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(3) by inserting after subsection (c) the following subsection:

"(d)(1)(A) Information provided in a notice under subsection (a) or (b) shall include the name of the person to whom the importer or exporter involved intends to transfer the listed chemical involved.

"(B) In the case of a notice under subsection (b) submitted by a regular importer, if the transferee identified in the notice is not a regular customer, such importer may

not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the notice is submitted to the Attorney General.

"(C) After a notice under subsection (a) or (b) is submitted to the Attorney General, if circumstances change and the importer or exporter will not be transferring the listed chemical to the transferee identified in the notice, the importer or exporter shall update the notice to identify the most recent prospective transferee and may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the update is submitted to the Attorney General, except that such 15-day restriction does not apply if the prospective transferee identified in the update is a regular customer. The preceding sentence applies with respect to changing circumstances regarding a transferee identified in an update to the same extent and in the same manner as such sentence applies with respect to changing circumstances regarding a transferee identified in the original notice under subsection (a) or (b).

"(D) In the case of a transfer of a listed chemical that is subject to a 15-day restriction under subparagraph (B) or (C), the transferee involved shall, upon the expiration of the 15-day period, be considered to qualify as a

regular customer, unless the Attorney General otherwise notifies the importer or exporter involved in writing.

"(2) With respect to a transfer of a listed chemical with which a notice or update referred to in paragraph (1) is concerned:

"(A) The Attorney General, in accordance with the same procedures as apply under subsection (c)(2)—

"(i) may order the suspension of the transfer of the listed chemical by the importer or exporter involved, except for a transfer to a regular customer, on the ground that the chemical may be diverted to the illegal or clandestine manufacture of a controlled substance, subject to the Attorney General ordering such suspension before the expiration of the 15-day period referred to in paragraph (1) with respect to the importation or exportation (in any case in which such a period applies); and

"(ii) may, for purposes of clause (i) and paragraph (1), disqualify a regular customer on such ground.

"(B) From and after the time when the Attorney General provides written notice of the order under subparagraph (A) (including a statement of

the legal and factual basis for the order) to the importer or exporter, the importer or exporter may not carry out the transfer.

''(3) For purposes of this subsection:

''(A) The terms 'importer' and 'exporter' mean a regulated person who imports or exports a listed chemical, respectively.

''(B) The term 'transfer', with respect to a listed chemical, includes the sale of the chemical.

''(C) The term 'transferee' means a person to whom an importer or exporter transfers a listed chemical.''.

(b) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 1010(d)(5) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)(5)) is amended by striking ''section 1018(e)(2) or (3)'' and inserting ''paragraph (2) or (3) of section 1018(f)''.

(2) CONTROLLED SUBSTANCES ACT.—Section 310(b)(3)(D)(v) of the Controlled Substances Act (21 U.S.C. 830(b)(3)(D)(v)) is amended by striking ''section 1018(e)(2)'' and inserting ''section 1018(f)(2)''.

SEC. 106. ENFORCEMENT OF RESTRICTIONS ON IMPORTATION AND OF REQUIREMENT OF NOTICE OF TRANSFER.

Section 1010(d)(6) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)(6)) is amended to read as follows:

"(6) imports a listed chemical in violation of section 1002, imports or exports such a chemical in violation of section 1007 or 1018, or transfers such a chemical in violation of section 1018(d); or".

TITLE II—INTERNATIONAL REGULATION OF PRECURSOR CHEMICALS

SEC. 201. INFORMATION ON FOREIGN CHAIN OF DISTRIBUTION; IMPORT RESTRICTIONS REGARDING FAILURE OF DISTRIBUTORS TO COOPERATE.

Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971), as amended by section 105(a) of this Act, is further amended by adding at the end the following subsection:

"(g)(1) With respect to a registered person importing ephedrine, pseudoephedrine, or phenylpropanolamine (referred to in this section as an 'importer'), a notice of importation under subsection (a) or (b) shall include all information known to the importer on the chain of distribu-

1 tion of such chemical from the manufacturer to the im-
2 porter.

3 "(2) For the purpose of preventing or responding to
4 the diversion of ephedrine, pseudoephedrine, or phenyl-
5 propanolamine for use in the illicit production of meth-
6 amphetamine, the Attorney General may, in the case of
7 any person who is a manufacturer or distributor of such
8 chemical in the chain of distribution referred to in para-
9 graph (1) (which person is referred to in this subsection
10 as a 'foreign-chain distributor'), request that such dis-
11 tributor provide to the Attorney General information
12 known to the distributor on the distribution of the chem-
13 ical, including sales.

14 "(3) If the Attorney General determines that a for-
15 eign-chain distributor is refusing to cooperate with the At-
16 torney General in obtaining the information referred to in
17 paragraph (2), the Attorney General may, in accordance
18 with procedures that apply under subsection (c), issue an
19 order prohibiting the importation of ephedrine,
20 pseudoephedrine, or phenylpropanolamine in any case in
21 which such distributor is part of the chain of distribution
22 for such chemical. Not later than 60 days prior to issuing
23 the order, the Attorney General shall publish in the Fed-
24 eral Register a notice of intent to issue the order. During
25 such 60-day period, imports of the chemical with respect

to such distributor may not be restricted under this paragraph.''.

SEC. 202. REQUIREMENTS RELATING TO THE LARGEST EXPORTING AND IMPORTING COUNTRIES OF CERTAIN PRECURSOR CHEMICALS.

(a) REPORTING REQUIREMENTS.—Section 489(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h(a)) is amended by adding at the end the following new paragraph:

''(8)(A) A separate section that contains the following:

''(i) An identification of the five countries that exported the largest amount of pseudoephedrine, ephedrine, and phenylpropanolamine (including the salts, optical isomers, or salts of optical isomers of such chemicals, and also including any products or substances containing such chemicals) during the preceding calendar year.

''(ii) An identification of the five countries that imported the largest amount of the chemicals described in clause (i) during the preceding calendar year and have the highest rate of diversion of such chemicals for use in the illicit

production of methamphetamine (either in that country or in another country).

"(iii) An economic analysis of the total worldwide production of the chemicals described in clause (i) as compared to the legitimate demand for such chemicals worldwide.

"(B) The identification of countries that imported the largest amount of chemicals under subparagraph (A)(ii) shall be based on the following:

"(i) An economic analysis that estimates the legitimate demand for such chemicals in such countries as compared to the actual or estimated amount of such chemicals that is imported into such countries.

"(ii) The best available data and other information regarding the production of methamphetamine in such countries and the diversion of such chemicals for use in the production of methamphetamine.".

(b) ANNUAL CERTIFICATION PROCEDURES.—Section 490(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j(a)) is amended—

(1) in paragraph (1), by striking "major illicit drug producing country or major drug-transit country" and inserting "major illicit drug producing

country, major drug-transit country, or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act''; and

(2) in paragraph (2), by inserting after ''(as determined under subsection (h))'' the following: ''or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act''.

(c) CONFORMING AMENDMENT.—Section 706 of the Foreign Relations Authorization Act, Fiscal Year 2003 (22 U.S.C. 2291j-1) is amended in paragraph (5) by adding at the end the following:

''(C) Nothing in this section shall affect the requirements of section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) with respect to countries identified pursuant to section clause (i) or (ii) of 489(a)(8)(A) of the Foreign Assistance Act of 1961.''.

(d) PLAN TO ADDRESS DIVERSION OF PRECURSOR CHEMICALS.—In the case of each country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of the Foreign Assistance Act of 1961 (as added by subsection (a)) with respect to which the President has not transmitted to Congress a certification under section 490(b) of such Act (22 U.S.C. 2291j(b)), the Secretary of State, in consultation with the Attorney General, shall, not later

than 180 days after the date on which the President transmits the report required by section 489(a) of such Act (22 U.S.C. 2291h(a)), submit to Congress a comprehensive plan to address the diversion of the chemicals described in section 489(a)(8)(A)(i) of such Act to the illicit production of methamphetamine in such country or in another country, including the establishment, expansion, and enhancement of regulatory, law enforcement, and other investigative efforts to prevent such diversion.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of State to carry out section 489(a)(8) of the Foreign Assistance Act of 1961 (as added by subsection (a)) $1,000,000 for each of the fiscal years 2006 and 2007.

SEC. 203. PREVENTION OF SMUGGLING OF METHAMPHETAMINE INTO THE UNITED STATES FROM MEXICO.

(a) IN GENERAL.—The Secretary of State, acting through the Assistant Secretary of the Bureau for International Narcotics and Law Enforcement Affairs, shall take such actions as are necessary to prevent the smuggling of methamphetamine into the United States from Mexico.

(b) SPECIFIC ACTIONS.—In carrying out subsection (a), the Secretary shall—

(1) improve bilateral efforts at the United States-Mexico border to prevent the smuggling of methamphetamine into the United States from Mexico;

(2) seek to work with Mexican law enforcement authorities to improve the ability of such authorities to combat the production and trafficking of methamphetamine, including by providing equipment and technical assistance, as appropriate; and

(3) encourage the Government of Mexico to take immediate action to reduce the diversion of pseudoephedrine by drug trafficking organizations for the production and trafficking of methamphetamine.

(c) REPORT.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the appropriate congressional committees a report on the implementation of this section for the prior year.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $4,000,000 for each of the fiscal years 2006 and 2007.

TITLE III—ENHANCED CRIMINAL PENALTIES FOR METHAMPHETAMINE PRODUCTION AND TRAFFICKING

SEC. 301. ENHANCED PENALTIES FOR METHAMPHETAMINE PRODUCTION, POSSESSION, OR TRAFFICKING.

(a) MANUFACTURE, DISTRIBUTION, DISPENSATION, OR CERTAIN POSSESSION OF METHAMPHETAMINE.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) in subsection (b)(1)(A)(viii)—

(A) by striking ''50 grams'' and inserting ''5 grams''; and

(B) by striking ''500 grams'' and inserting ''50 grams''; and

(2) in subsection (b)(1)(b)(viii)—

(A) by striking ''5 grams'' and inserting ''3 grams''; and

(B) by striking ''50 grams'' and inserting ''30 grams''.

(b) IMPORTATION OR EXPORTATION OF METHAMPHETAMINE.—Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended—

(1) in subsection (b)(1)(H)—

(A) by striking ''50 grams'' and inserting ''5 grams''; and

(B) by striking ''500 grams'' and inserting ''50 grams''; and

(2) in subsection (b)(2)(H)—

(A) by striking ''5 grams'' and inserting ''3 grams''; and

(B) by striking ''50 grams'' and inserting ''30 grams''.

SEC. 302. SMUGGLING METHAMPHETAMINE OR METHAMPHETAMINE PRECURSOR CHEMICALS INTO THE UNITED STATES WHILE USING FACILITATED ENTRY PROGRAMS.

(a) ENHANCED PRISON SENTENCE.—The sentence of imprisonment imposed on a person convicted of an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), involving methamphetamine or any listed chemical that is defined in section 102(33) of the Controlled Substances Act (21 U.S.C. 802(33), shall, if the offense is committed under the circumstance described in subsection (b), be increased by a consecutive term of imprisonment of not more than 15 years.

(b) CIRCUMSTANCES.—For purposes of subsection (a), the circumstance described in this subsection is that the offense described in subsection (a) was committed by a person who—

(1) was enrolled in, or who was acting on behalf of any person or entity enrolled in, any dedicated commuter lane, alternative or accelerated inspection system, or other facilitated entry program administered or approved by the Federal Government for use in entering the United States; and

(2) committed the offense while entering the United States, using such lane, system, or program.

(c) PERMANENT INELIGIBILITY.—Any person whose term of imprisonment is increased under subsection (a) shall be permanently and irrevocably barred from being eligible for or using any lane, system, or program described in subsection (b)(1).

SEC. 303. MANUFACTURING CONTROLLED SUBSTANCES ON FEDERAL PROPERTY.

Subsection (b) of section 401 of the Controlled Substances Act (21 U.S.C. 841(b)) is amended in paragraph (5) by inserting ''or manufacturing'' after ''cultivating''.

SEC. 304. INCREASED PUNISHMENT FOR METHAMPHETAMINE KINGPINS.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by adding at the end the following:

"(s) SPECIAL PROVISION FOR METHAMPHETAMINE.—For the purposes of subsection (b), in the case of continuing criminal enterprise involving methamphetamine or its salts, isomers, or salts of isomers, paragraph (2)(A) shall be applied by substituting '100' for '300', and paragraph (2)(B) shall be applied by substituting '$1,000,000' for '$10 million dollars'.".

TITLE IV—ENHANCED ENVIRONMENTAL REGULATION OF METHAMPHETAMINE BY-PRODUCTS

SEC. 401. DESIGNATION OF BY-PRODUCTS OF METHAMPHETAMINE LABORATORIES AS HAZARDOUS MATERIALS AND WASTE UNDER HAZARDOUS MATERIALS TRANSPORTATION ACT AND SOLID WASTE DISPOSAL ACT.

(a) HAZARDOUS MATERIALS TRANSPORTATION ACT.—The Secretary of Transportation, after consultation with the Attorney General, shall utilize the authority provided by section 5103 of title 49, United States Code, to designate as hazardous materials for purposes of chap-

ter 51 of such title those by-products of the methamphetamine-production process that the Secretary determines may pose an unreasonable risk to health and safety or property when transported in commerce in a particular amount and form.

(b) SOLID WASTE DISPOSAL ACT.—The Administrator of the Environmental Protection Agency, after consultation with the Attorney General, shall utilize the authority provided by section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921) to designate as hazardous waste for purposes of such Act (42 U.S.C. 6901 et seq.) those by-products of the methamphetamine-production process that the Administrator determines are likely to cause long-term harm to the environment in the event of improper disposal and inadequate remediation.

(c) TIME FOR DESIGNATION; ADDITIONAL DESIGNATIONS.—The designations required by subsections (a) and (b) shall be completed not later than 18 months after the date of the enactment of this Act. After the expiration of such 18-month period, if the Secretary of Transportation or the Administrator of the Environmental Protection Agency determines that additional by-products of the methamphetamine-production process meet the criteria for designation pursuant to subsection (a) or (b), respectively, then the Secretary or the Administrator (as the case may

be), after consultation with the Attorney General, shall designate the by-products accordingly.

SEC. 402. CLEANUP COSTS.

Section 413(q) of the Controlled Substances Act (21 U.S.C. 853(q)) is amended—

(1) in the matter preceding paragraph (1), by inserting ‘‘, the possession, or the possession with intent to distribute, ’’ after ‘‘manufacture’’; and

(2) in paragraph (2), by inserting ‘‘, or on premises or in property that the defendant owns, resides, or does business in’’ after ‘‘by the defendant’’.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from North Carolina, Mr. Coble, to strike the last word.

Mr. COBLE. I won't take the full 5 minutes, Mr. Chairman.

As I said, on September 27, 2005, the Subcommittee did conduct a hearing and reported favorably this bill. The hearing examined the problem of methamphetamine abuse in our country and the need to address the problem. Meth abuse, as we all know, is a true epidemic in our country with disastrous effects on our respective communities, our environment, and particularly our children.

I am told that the Chairman intends to offer a manager's amendment which addresses a number of important issues related to this problem, and I thank you for that, Mr. Chairman, on your leadership on this issue, and I urge my colleagues to support this important bill, and yield back.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes for an opening statement.

Mr. SCOTT. Thank you, Mr. Chairman. I thank you for holding the markup of H.R. 3889. I want to first thank you and the Subcommittee Chairman for the substantial improvements that have been made in the bill since it was first considered in Subcommittee. While there are still provisions in the bill which I do not support, such as a mandatory life sentence for drug kingpins and mandatory testing requirements for the drug program, however, in the case of the drug kingpin provision, I recognize that now represents a significant improvement over where it started in that the death penalty has been removed, and lowering the financial threshold to 10 percent of the amount currently in statute, that has been raised to 50 percent. The quantity threshold has been raised from one-third of the current statutory amount to two-thirds of that amount. Given that the kingpin provision only applies to principal administrators, organizers, or leaders, current Sentencing Guidelines would require a life sentence anyway. Although I prefer that we do not have a mandatory life sentence, I agree with the lowering threshold amounts to the levels now before us because I agree, Mr. Chairman, that we should signal to the DEA that Congress is not happy with the practice of concentrating on the so-called low-hanging fruit of bit players and drug-addicted dealers who are primarily working to supply their habit. Those cases are best left to the States in demand reduction approaches, such as drug treatment, which have been shown to be many times more effective and less costly in reducing drug use and prosecution and incarceration.

I want to see the DEA focus its resources on going after real kingpins who are taking advantage of the local lab seizures and closures to identify their next market and making more drugs available than the local labs were producing.

I understand, Mr. Chairman, that our staffs have been looking at potential ways to assist or incentivize the DEA to concentrate more in this area, and I think this is a worthwhile approach.

On the drug court provision, I'm concerned that mandating conditions will only result in more people failing the drug court program. I realize the intent is to ensure participants get early attention with his or her difficulties to avoid a failure, but I fear it will not work out that way. Indications I have from attending drug court graduation ceremonies and from drug court professionals is that initial failures are an expected part of the long haul in over-

coming an addiction, so it is not helpful to mandate results early on.

I hope that we'll move this bill forward so we can check with the drug court professionals to be sure that this provision does not hamper the success of participants. And speaking of drug courts, Mr. Chairman, I'm concerned that with the news of the drug court program has been cut $25 million in the Science, State, Justice, and Commerce appropriations bill. Since it is not feasible or good public policy to address the meth problem or other drug issues with prosecution and incarceration alone, other effective approaches must be applied as well. The drug court program has been an effective tool in turning lives around and helping to stem the demand for illegal drugs. Reports are that it is equally effective for meth addiction as for other drug addictions, so we should be increasing the funds and expanding the program.

Accordingly, Mr. Chairman, for purposes of getting it on the table and discussing the prospects, I will offer amendments to study the feasibility of establishing a Federal drug court program and to increase authorization level for the drug court program by $10 million, with the notion that we would—that it would be for meth-addicted drug court participants. I hope we would discuss these amendments as possible additions to the bill by agreement between now and floor action.

Mr. Chairman, I continue—while I continue to have problems with the bill as noted, under the circumstances it is a worthwhile compromise on the bill we started with, and I'll work with it to hope that we can continue to discuss and possibly address the problems as the bill moves forward.

Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will be placed in the record at this point.

Are there amendments? The Chair has an amendment.

The CLERK. Amendment to H.R. 3889 offered by Chairman Sensenbrenner. Strike Titles II and III, insert the following: Title II——

Chairman SENSENBRENNER. Without objection—would somebody have the mikes turned on? Thank you.

Without objection, the amendment will be considered as read and open for amendment at any point.

[The amendment follows:]

AMENDMENTS TO H.R. 3889

OFFERED BY MR. SENSENBRENNER

Strike titles II and III insert the following:

TITLE II—INTERNATIONAL REGULATION OF PRECURSOR CHEMICALS

SEC. 201. INFORMATION ON FOREIGN CHAIN OF DISTRIBUTION; IMPORT RESTRICTIONS REGARDING FAILURE OF DISTRIBUTORS TO COOPERATE.

Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971), as amended by section 105(a) of this Act, is further amended by adding at the end the following subsection:

''(g)(1) With respect to a regulated person importing ephedrine, pseudoephedrine, or phenylpropanolamine (referred to in this section as an 'importer'), a notice of importation under subsection (a) or (b) shall include all information known to the importer on the chain of distribution of such chemical from the manufacturer to the importer.

''(2) For the purpose of preventing or responding to the diversion of ephedrine, pseudoephedrine, or phenylpropanolamine for use in the illicit production of meth-

amphetamine, the Attorney General may, in the case of any person who is a manufacturer or distributor of such chemical in the chain of distribution referred to in paragraph (1) (which person is referred to in this subsection as a 'foreign-chain distributor'), request that such distributor provide to the Attorney General information known to the distributor on the distribution of the chemical, including sales.

"(3) If the Attorney General determines that a foreign-chain distributor is refusing to cooperate with the Attorney General in obtaining the information referred to in paragraph (2), the Attorney General may, in accordance with procedures that apply under subsection (c), issue an order prohibiting the importation of ephedrine, pseudoephedrine, or phenylpropanolamine in any case in which such distributor is part of the chain of distribution for such chemical. Not later than 60 days prior to issuing the order, the Attorney General shall publish in the Federal Register a notice of intent to issue the order. During such 60-day period, imports of the chemical with respect to such distributor may not be restricted under this paragraph.".

SEC. 202. REQUIREMENTS RELATING TO THE LARGEST EXPORTING AND IMPORTING COUNTRIES OF CERTAIN PRECURSOR CHEMICALS.

(a) REPORTING REQUIREMENTS.—Section 489(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h(a)) is amended by adding at the end the following new paragraph:

"(8)(A) A separate section that contains the following:

"(i) An identification of the five countries that exported the largest amount of pseudoephedrine, ephedrine, and phenylpropanolamine (including the salts, optical isomers, or salts of optical isomers of such chemicals, and also including any products or substances containing such chemicals) during the preceding calendar year.

"(ii) An identification of the five countries that imported the largest amount of the chemicals described in clause (i) during the preceding calendar year and have the highest rate of diversion of such chemicals for use in the illicit production of methamphetamine (either in that country or in another country).

"(iii) An economic analysis of the total worldwide production of the chemicals described

in clause (i) as compared to the legitimate demand for such chemicals worldwide.

''(B) The identification of countries that imported the largest amount of chemicals under subparagraph (A)(ii) shall be based on the following:

''(i) An economic analysis that estimates the legitimate demand for such chemicals in such countries as compared to the actual or estimated amount of such chemicals that is imported into such countries.

''(ii) The best available data and other information regarding the production of methamphetamine in such countries and the diversion of such chemicals for use in the production of methamphetamine.''.

(b) ANNUAL CERTIFICATION PROCEDURES.—Section 490(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j(a)) is amended—

(1) in paragraph (1), by striking ''major illicit drug producing country or major drug-transit country'' and inserting ''major illicit drug producing country, major drug-transit country, or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act''; and

(2) in paragraph (2), by inserting after ''(as determined under subsection (h))'' the following: ''or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act''.

(c) CONFORMING AMENDMENT.—Section 706 of the Foreign Relations Authorization Act, Fiscal Year 2003 (22 U.S.C. 2291j-1) is amended in paragraph (5) by adding at the end the following:

''(C) Nothing in this section shall affect the requirements of section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) with respect to countries identified pursuant to section clause (i) or (ii) of 489(a)(8)(A) of the Foreign Assistance Act of 1961.''.

(d) PLAN TO ADDRESS DIVERSION OF PRECURSOR CHEMICALS.—In the case of each country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of the Foreign Assistance Act of 1961 (as added by subsection (a)) with respect to which the President has not transmitted to Congress a certification under section 490(b) of such Act (22 U.S.C. 2291j(b)), the Secretary of State, in consultation with the Attorney General, shall, not later than 180 days after the date on which the President transmits the report required by section 489(a) of such Act (22 U.S.C. 2291h(a)), submit to Congress a comprehensive

plan to address the diversion of the chemicals described in section 489(a)(8)(A)(i) of such Act to the illicit production of methamphetamine in such country or in another country, including the establishment, expansion, and enhancement of regulatory, law enforcement, and other investigative efforts to prevent such diversion.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of State to carry out this section $1,000,000 for each of the fiscal years 2006 and 2007.

SEC. 203. PREVENTION OF SMUGGLING OF METHAMPHETAMINE INTO THE UNITED STATES FROM MEXICO.

(a) IN GENERAL.—The Secretary of State, acting through the Assistant Secretary of the Bureau for International Narcotics and Law Enforcement Affairs, shall take such actions as are necessary to prevent the smuggling of methamphetamine into the United States from Mexico.

(b) SPECIFIC ACTIONS.—In carrying out subsection (a), the Secretary shall—

(1) improve bilateral efforts at the United States-Mexico border to prevent the smuggling of methamphetamine into the United States from Mexico;

(2) seek to work with Mexican law enforcement authorities to improve the ability of such authorities to combat the production and trafficking of methamphetamine, including by providing equipment and technical assistance, as appropriate; and

(3) encourage the Government of Mexico to take immediate action to reduce the diversion of pseudoephedrine by drug trafficking organizations for the production and trafficking of methamphetamine.

(c) REPORT.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the appropriate congressional committees a report on the implementation of this section for the prior year.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $4,000,000 for each of the fiscal years 2006 and 2007.

TITLE III—ENHANCED CRIMINAL PENALTIES FOR METHAMPHETAMINE PRODUCTION AND TRAFFICKING

SEC. 301. POSSESSION OF SCHEDULED LISTED CHEMICAL WITH INTENT TO MANUFACTURE CONTROLLED SUBSTANCE.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end the following subsection:

''(g) Except as authorized by this title, any person who knowingly or intentionally possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or any of its salts, optical isomers, or salts of optical isomers, with intent to manufacture a controlled substance shall be fined in accordance with title 18, United States Code, or imprisoned for any term of years or life, or both.''.

SEC. 302. SMUGGLING METHAMPHETAMINE OR METHAMPHETAMINE PRECURSOR CHEMICALS INTO THE UNITED STATES WHILE USING FACILITATED ENTRY PROGRAMS.

(a) ENHANCED PRISON SENTENCE.—The sentence of imprisonment imposed on a person convicted of an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export

Act (21 U.S.C. 951 et seq.), involving methamphetamine or any listed chemical that is defined in section 102(33) of the Controlled Substances Act (21 U.S.C. 802(33), shall, if the offense is committed under the circumstance described in subsection (b), be increased by a consecutive term of imprisonment of not more than 15 years.

(b) CIRCUMSTANCES.—For purposes of subsection (a), the circumstance described in this subsection is that the offense described in subsection (a) was committed by a person who—

(1) was enrolled in, or who was acting on behalf of any person or entity enrolled in, any dedicated commuter lane, alternative or accelerated inspection system, or other facilitated entry program administered or approved by the Federal Government for use in entering the United States; and

(2) committed the offense while entering the United States, using such lane, system, or program.

(c) PERMANENT INELIGIBILITY.—Any person whose term of imprisonment is increased under subsection (a) shall be permanently and irrevocably barred from being eligible for or using any lane, system, or program described in subsection (b)(1).

SEC. 303. MANUFACTURING CONTROLLED SUBSTANCES ON FEDERAL PROPERTY.

Subsection (b) of section 401 of the Controlled Substances Act (21 U.S.C. 841(b)) is amended in paragraph (5) by inserting ''or manufacturing'' after ''cultivating''.

SEC. 304. INCREASED PUNISHMENT FOR METHAMPHETAMINE KINGPINS.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by adding at the end the following:

''(s) SPECIAL PROVISION FOR METHAMPHETAMINE.—For the purposes of subsection (b), in the case of continuing criminal enterprise involving methamphetamine or its salts, isomers, or salts of isomers, paragraph (2)(A) shall be applied by substituting '200' for '300', and paragraph (2)(B) shall be applied by substituting '$5,000,000' for '$10 million dollars'. ''.

SEC. 305. NEW CHILD-PROTECTION CRIMINAL ENHANCEMENT.

(a) IN GENERAL.—The Controlled Substances Act is amended by inserting after section 419 (21 U.S.C. 860) the following:

"CONSECUTIVE SENTENCE FOR MANUFACTURING, POSSESSION WITH INTENT TO MANUFACTURE OR DISTRIBUTE METHAMPHETAMINE ON PREMISES WHERE CHILDREN ARE PRESENT OR RESIDE

"SEC. 419a. Whoever violates section 401(a)(1) by manufacturing, distributing or possessing with intent to manufacture or distribute methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 years is present or resides, shall, in addition to any other sentence imposed, be imprisoned for a period of any term of years but not more than 20 years, subject to a fine, or both. ".

(b) CLERICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 419 the following new item:

"419a. Consecutive sentence for manufacturing, possession with intent to manufacture or distribute methamphetamine on premises where children are present or reside.".

SEC. 306. AMENDMENTS TO CERTAIN SENTENCING COURT REPORTING REQUIREMENTS.

Section 994(w) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ", in a format approved and required by the Commission," after "submits to the Commission";

(B) in subparagraph (B)—

(i) by inserting ''written'' before ''statement of reasons''; and

(ii) by inserting ''and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission'' after ''applicable guideline range''; and

(C) by adding at the end the following: ''The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission.''; and

(2) in paragraph (4), by striking ''may assemble or maintain in electronic form that include any'' and inserting ''itself may assemble or maintain in electronic form as a result of the''.

SEC. 307. SEMIANNUAL REPORTS TO CONGRESS.

(a) IN GENERAL.—The Attorney General shall, on a semiannual basis, submit to the congressional committees and organizations specified in subsection (b) reports that—

(1) describe the allocation of the resources of the Drug Enforcement Administration and the Fed-

eral Bureau of Investigation for the investigation and prosecution of alleged violations of the Controlled Substances Act involving methamphetamine; and

(2) the measures being taken to give priority in the allocation of such resources to such violations involving—

(A) persons alleged to have imported into the United States substantial quantities of methamphetamine, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of its salts, optical isomers, or salts of optical isomers;

(B) persons alleged to have manufactured methamphetamine; and

(C) circumstances in which the violations have endangered children.

(b) CONGRESSIONAL COMMITTEES.—The congressional committees and organizations referred to in subsection (a) are—

(1) in the House of Representatives, the Committee on the Judiciary, the Committee on Energy and Commerce, and the Committee on Government Reform; and

(2) in the Senate, the Committee on the Judiciary, the Committee on Commerce, Science, and Transportation, and the Caucus on International Narcotics Control.

Strike title V and insert the following:

TITLE V—ADDITIONAL PROGRAMS AND ACTIVITIES

SEC. 501. IMPROVEMENTS TO DEPARTMENT OF JUSTICE DRUG COURT GRANT PROGRAM.

Section 2951 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797u) is amended by adding at the end the following new subsection:

"(c) MANDATORY DRUG TESTING AND MANDATORY SANCTIONS.—

"(1) MANDATORY TESTING.—Grant amounts under this part may be used for a drug court only if the drug court has mandatory periodic testing as described in subsection (a)(3)(A). The Attorney General shall, by prescribing guidelines or regulations, specify standards for the timing and manner of complying with such requirements. The standards—

"(A) shall ensure that—

"(i) each participant is tested for every controlled substance that the partici-

1 pant has been known to abuse, and for any
2 other controlled substance the Attorney
3 General or the court may require; and
4 ''(ii) the testing is accurate and prac-
5 ticable; and
6 ''(B) may require approval of the drug
7 testing regime to ensure that adequate testing
8 occurs.
9 ''(2) MANDATORY SANCTIONS.—The Attorney
10 General shall, by prescribing guidelines or regula-
11 tions, specify that grant amounts under this part
12 may be used for a drug court only if the drug court
13 imposes graduated sanctions that increase punitive
14 measures, therapeutic measures, or both whenever a
15 participant fails a drug test. Such sanctions and
16 measures may include, but are not limited to, one or
17 more of the following:
18 ''(A) Incarceration.
19 ''(B) Detoxification treatment.
20 ''(C) Residential treatment.
21 ''(D) Increased time in program.
22 ''(E) Termination from the program.
23 ''(F) Increased drug screening require-
24 ments.
25 ''(G) Increased court appearances.

"(H) Increased counseling.

"(I) Increased supervision.

"(J) Electronic monitoring.

"(K) In-home restriction.

"(L) Community service.

"(M) Family counseling.

"(N) Anger management classes.".

SEC. 502. GRANTS TO HOT SPOT AREAS TO REDUCE AVAILABILITY OF METHAMPHETAMINE.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

"PART II—CONFRONTING USE OF METHAMPHETAMINE

"SEC. 2996. AUTHORITY TO MAKE GRANTS TO ADDRESS PUBLIC SAFETY AND METHAMPHETAMINE MANUFACTURING, SALE, AND USE IN HOT SPOTS.

"(a) PURPOSE AND PROGRAM AUTHORITY.—

"(1) PURPOSE.—It is the purpose of this part to assist States—

"(A) to carry out programs to address the manufacture, sale, and use of methamphetamine drugs; and

"(B) to improve the ability of State and local government institutions of to carry out such programs.

"(2) GRANT AUTHORIZATION.—The Attorney General, through the Bureau of Justice Assistance in the Office of Justice Programs may make grants to States to address the manufacture, sale, and use of methamphetamine to enhance public safety.

"(3) GRANT PROJECTS TO ADDRESS METHAMPHETAMINE MANUFACTURE SALE AND USE.—Grants made under subsection (a) may be used for programs, projects, and other activities to—

"(A) investigate, arrest and prosecute individuals violating laws related to the use, manufacture, or sale of methamphetamine;

"(B) reimburse the Drug Enforcement Administration for expenses related to the clean up of methamphetamine clandestine labs and related environmental damage;

"(C) support State and local health department and environmental agency services deployed to address methamphetamine; and

"(D) procure equipment, technology, or support systems, or pay for resources, if the applicant for such a grant demonstrates to the

1 satisfaction of the Attorney General that ex-
2 penditures for such purposes would result in
3 the reduction in the use, sale, and manufacture
4 of methamphetamine.

5 **"SEC. 2997. FUNDING.**

6 ''There are authorized to be appropriated to carry out
7 this part $99,000,000 for each fiscal year 2006, 2007,
8 2008, 2009, and 2010.''.

9 **SEC. 503. GRANTS FOR PROGRAMS FOR DRUG-ENDAN-**
10 **GERED CHILDREN.**

11 (a) IN GENERAL.—The Attorney General shall make
12 grants to States for the purpose of carrying out programs
13 to provide a comprehensive response to aid children who
14 are living in a home in which methamphetamine or other
15 controlled substances are unlawfully manufactured, ad-
16 ministered, or distributed.

17 (b) CERTAIN REQUIREMENTS.—The Attorney Gen-
18 eral shall ensure that the procedures and services of pro-
19 grams carried out with grants under subsection (a) include
20 the following:

21 (1) Coordination among law enforcement agen-
22 cies, prosecutors, child protective services, and
23 health professionals.

24 (2) Removal of children from toxic or drug-en-
25 dangering environments.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 and 2007. Amounts appropriated under the preceding sentence shall remain available until expended.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to discuss the amendment.

The manager's amendment to this bill reflects important changes I have crafted on provisions within this Committee's jurisdiction. I understand that the Committee on Energy and Commerce has tentatively scheduled a markup on the provisions within its jurisdiction for some time early next week. All of the provisions represent a joint effort in consultation with Members of this Committee, Rep. Souder, the Chairman of the Meth Caucus and the Subcommittee on Drug Policy of the House Committee on Government Reform, and Representative Barton, the Chairman of the Energy and Commerce Committee.

The manager's amendment contains key provisions in this Committee's jurisdiction to combat the scourge of meth. Specifically, it reforms existing laws relating to international regulation of meth precursors; imposes needed certification for Mexico, which has been the source of nearly 80 percent of the meth in this country; enhances criminal penalties by targeting large meth kingpins and meth smugglers along the Southwest border. The manager's amendment also authorizes additional treatment programs for children endangered by meth traffickers, improves drug court programs to require more accountability in drug testing of participants, and authorizes meth hot spot programs for law enforcement efforts to investigate meth traffickers and clean up the labs.

As many of you know, the Senate has passed their own Combat Meth Act as a part of the Commerce, State, and Justice appropriation bill. While we came close to reaching a substantive agreement, a final compromise was elusive. The manager's amendment I am offering today reflects consensus on issues within our Committee's jurisdiction.

Let me take a moment to highlight one important difference we reached with the Senate in their Combat Meth Act. While we are not marking up this part of the overall consensus package, I believe it's important that the policies reached by the House group which has been supported by the leadership, the Meth Caucus, and Representatives Barton and Souder. The Senate bill treats precursors as a Schedule V controlled substance, which restricts the sale of common, over-the-counter medicines to pharmacies, and in some cases may force people who require these medicines for legitimate use to seek a prescription. By classifying pseudoephedrine and similar meth precursor chemicals as Schedule V controlled substances, the Government would limit non-prescription sales of products that contain these chemicals to pharmacies alone. Schedule V classification effectively eliminates a consumer's ability to get medicines that contain pseudoephedrine and other similar precursor chemicals from their local convenience or grocery stores if none have pharmacies.

Additionally, should the consumer need medicines containing pseudoephedrine at unusual hours, they would be forced to rely on a 24-hour pharmacy. In as many as 14 States, a classification of pseudoephedrine as a Schedule V substance would trigger by-prescription-only requirements. As a result, medicines that were formerly available for as little as $6 would now cost the consumer prohibitively more because of the added cost of having to visit a doctor in order to obtain a prescription. The attendance increase in med-

ical visits would result in higher medical insurance and Medicare costs.

Finally, by moving pseudoephedrine to Schedule V would effectively weaken current penalties for its illegal purchase. As the matters that we are addressing today, let me point out that some of the important provisions which provide law enforcement with additional tools and resources needed to fight this battle. The manager's amendment revises and expands criminal penalties that target real criminals: Mexican kingpins, small lab operators who rely on large quantities of precursors, and meth operators who endanger our Nation's children. Smart criminal policies require the DEA to further concentrate its efforts on significant traffickers, not easy statistics, and low-level meth traffickers.

The meth epidemic is a clear danger that Congress must directly confront. Legislation to address this problem has been thoroughly examined on a bipartisan basis by several Committees of jurisdiction. The bipartisan Meth Caucus has conducted several hearings on the issue and helped galvanize the congressional response to the sweeping national tragedy. Legislation to address the Nation's meth epidemic has been the subject of extensive formal consideration. The scope of the problem is clear, and the urgency of prompt action is overwhelming. Our communities are suffering, and Congress must provide law enforcement with the tools needed to protect children and communities from this ugly epidemic.

I urge everyone on the Committee to support the manager's amendment. I yield back the balance of my time.

Are there any second degree amendments to the manager's amendment?

Mr. KING. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I have an amendment to the—a second degree amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SMITH. Mr. Chairman, I'll reserve a point of order.

Chairman SENSENBRENNER. A point of order is reserved by the gentleman from Texas. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3889, offered by Mr. King of Iowa. Strike sections 101 and 102. Insert before title I the following——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3889 OFFERED BY MR. KING OF IOWA

Strike sections 101 and 102.

Insert before title I the following (and redesignate titles, sections, and cross-references accordingly):

TITLE I—RETAIL SALES OF EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE

SEC. 101. TRANSFER TO SCHEDULE V; EXCEPTION FOR LIST I PSEUDOEPHEDRINE PRODUCTS.

(a) TRANSFER TO SCHEDULE V; EXCEPTION.—Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended in schedule V—

(1) by inserting ''(a)'' before ''Any compound''; and

(2) by adding at the end the following:

''(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their salts, optical isomers, and salts of optical isomers:

"(1) Ephedrine.

"(2) Pseudoephedrine.

"(3) Phenlypropanolamine.

"(c) Pseudoephedrine, including its salts, optical isomers, and salts of optical isomers, is excepted from this schedule when contained in a product that—

"(1) is in the form of a liquid, liquid capsule, or liquid-filled gel capsule;

"(2) does not contain more than 360 milligrams of pseudoephedrine; and

"(3) is approved under section 505 of the Federal Food, Drug, and Cosmetic Act.".

(b) CONFORMING AMENDMENTS REGARDING LIST I CHEMICALS.—

(1) DEFINITION; STRIKING OF PROVISIONS RELATING TO EPHEDRINE AND PHENYLPROPANOLAMINE.—Section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) is amended—

(A) by striking subparagraphs (C) and (I);

(B) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively;

(C) by redesignating subparagraphs (J) through (Y) as subparagraphs (H) through (W), respectively; and

(D) by moving subparagraphs (N), (Q), and (S) (as so redesignated) two ems to the left.

(2) LIST I PSEUDOEPHEDRINE PRODUCT.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(A) in paragraph (34), by amending subparagraph (I) (as redesignated by paragraph (1)(C) of this subsection) to read as follows:

''(I) Pseudoephedrine, and its salts, optical isomers, and salts of optical isomers, when contained in a list I pseudoephedrine product (as defined in paragraph (45)).'';

(B) by striking paragraph (45) and inserting the following:

''(45) The term 'list I pseudoephedrine product' means a chemical specified in paragraph (34)(I) when contained in a product referred to in schedule V(c).''; and

(C) in paragraph (46)—

(i) in subparagraph (A), by striking ''or phenylpropanolamine'';

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B).

(3) REGULATED TRANSACTIONS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(A) in section 102(a)(39)(A), by amending clause (iv) to read as follows:

"(iv)(I) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (other than a list I pseudoephedrine product) unless—

"(aa) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

"(bb) the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General; or

"(II) any transaction in a list I pseudoephedrine product by a retail distributor, unless the Attorney General has determined under section 204 that the product is being di-

verted to obtain pseudoephedrine for use in the illicit production of methamphetamine; or''; and

(B) in section 204, by striking subsection (e).

SEC. 102. REQUIREMENTS REGARDING LIST I PSEUDOEPHEDRINE PRODUCTS.

Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended—

(1) in subsection (b), by striking paragraph (3); and

(2) by adding at the end the following subsection:

''(d) LIST I PSEUDOEPHEDRINE PRODUCTS.—

''(1) REQUIREMENTS REGARDING RETAIL SALES.—Each person who sells at retail a list I pseudoephedrine product shall ensure that sales of such product are made in accordance with the following requirements:

''(A) In offering the product for sale, the person places the product such that customers do not have direct access to the product before the sale is made (commonly known as behind-the-counter).

"(B) The person delivers the product directly to the purchaser, and not through use of the mails or any private or commercial carrier.

"(C) The person does not sell such a product that is in the form of a package that can be further broken down or subdivided into two or more separate and distinct packages.

"(D) The person does not knowingly sell to an individual more than one such product during a 24-hour period.

"(E) The person maintains a written list of sales of such products that identifies the products, the purchasers, and the dates and times of the sales (which list is referred to in this paragraph as the 'logbook)').

"(F) The person does not sell such a product unless—

"(i) the prospective purchaser—

"(I) is 18 years of age or older;

"(II) presents an identification card that provides a photograph and is issued by a State or the Federal Government; and

"(III) signs the logbook and legibly prints in the logbook his or her

name, address, and the date and time of the sale; and

''(ii) the person determines that the name signed and printed in the logbook corresponds to the name provided on such identification and that the date and time entered are correct.

''(G) The person maintains possession of each logbook for not fewer than two years after the date of the last sale entered in the logbook.

''(H) The person does not offer a promotion in which, as part of a purchase transaction, such a product is provided without charge.

''(I) On the premises of the location involved, the person posts a clear and conspicuous notice providing as follows: 'Federal law prohibits the over-the-counter purchase of more than one product containing pseudoephedrine in a 24-hour period, and prohibits the over-the-counter purchase of more than 7,500 milligrams of pseudoephedrine within a 30-day period. If you make an over-the-counter purchase of such a product, you are required to sign a

logbook that may be accessible to law enforcement officers.'

''(2) AUTHORITY TO REQUIRE CERTAIN REPORTS.—

''(A) IN GENERAL.—With respect to each person who manufactures a list I pseudoephedrine product, or who distributes such a product (including a sale at retail), the Attorney General may by regulation require the person to report to the Attorney General—

''(i) any uncommon method of payment or delivery, or any other circumstance that the person believes may indicate that the product will be used in violation of this title;

''(ii) any proposed transaction with an individual or organization whose description or other identifying characteristic the Attorney General furnishes in advance to the person; and

''(iii) any unusual or excessive loss or disappearance of supplies of the product that are under the control of the person.

''(B) ADDITIONAL REPORTS FOR MANUFACTURERS AND DISTRIBUTORS AT WHOLE-

SALE.—With respect to each person who manufactures a list I pseudoephedrine product, or who distributes such a product at wholesale, the Attorney General may by regulation require the person to report to the Attorney General any transaction involving an extraordinary quantity of the product.

"(C) CERTAIN REGULATIONS.—Regulations under subparagraphs (A) through (C) of subsection (b)(1) apply to subparagraphs (A) and (B) of this paragraph to the extent that the provisions of such subparagraphs of subsection (b)(1) are identical to the provisions of such subparagraphs of this paragraph. Subparagraphs (A) and (B) of this paragraph do not require the Secretary to promulgate regulations with respect to such identical provisions.

"(D) RELATION TO CERTAIN EXEMPTION.—Subparagraphs (A) and (B) apply notwithstanding the exemption for list I pseudoephedrine products under section 102(39)(A)(iv)(II).

"(3) REMOVAL OF EXCEPTION REGARDING STATUS AS LIST I CHEMICAL.—

"(A) IN GENERAL.—If the Attorney General determines that list I pseudoephedrine products are being diverted for use in the illicit production of methamphetamine, the Attorney General may by regulation remove the exception under schedule V(c).

"(B) RELATION TO SECTION 204.—The authority established for the Attorney General under subparagraph (A) is in addition to the authority under section 204. The Attorney General may apply such section in lieu of applying subparagraph (A).".

SEC. 103. REQUIREMENTS REGARDING SCHEDULE V METHAMPHETAMINE-RELATED PRODUCTS.

(a) IN GENERAL.—Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following subsection:

"(i) With respect to schedule V methamphetamine-related products that do not require prescriptions, a registration under this section for a pharmacy shall provide that, for the general physical location involved, the registration is subject to the condition that a sale of such a product at retail be made in accordance with the same requirements as apply under subparagraphs (B) through

(I) of section 310(d)(1) for the sale at retail of list I pseudoephedrine products.''.

(b) CONFORMING AMENDMENT.—Section 201(g)(1) of the Controlled Substances Act (21 U.S.C. 811(g)(1)), as amended by section 2(b)(1) of Public Law 108–358 (118 Stat. 1663), is amended—

(1) by striking ''titles II and III of the Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C. 802 et seq.)'' and inserting ''this title and title III''; and

(2) by adding at the end the following: ''The preceding sentence does not apply to controlled substances specified in schedule V(b).''.

(c) DEFINITIONS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by redesignating paragraph (46) (as amended by section 2(b)(2)(C) of this Act) as paragraph (47); and

(2) by inserting after paragraph (45) the following paragraph:

''(46)(A) The term 'schedule V methamphetamine-related product' means a product that is approved under section 505 of the Federal Food, Drug, and Cosmetic Act and—

''(i) contains ephedrine or phenylpropanolamine; or

"(ii)(I) contains pseudoephedrine; and

"(II) is not a list I pseudoephedrine product.

"(B) The term 'schedule V pseudoephedrine product' means a product described in subparagraph (A) to which clause (ii) of such subparagraph applies.".

SEC. 104. ENFORCEMENT.

(a) SALES AT RETAIL OF METHAMPHETAMINE-RELATED PRODUCTS.—

(1) IN GENERAL.—Section 402 of the Controlled Substances Act (21 U.S.C. 842) is amended—

(A) in subsection (a)—

(i) in paragraph (5), by inserting ", other than section 310(d)(2)" before the semicolon;

(ii) in paragraph (10), by striking "section 310; or" and inserting "section 310, other than subsection (d)(2);";

(iii) in paragraph (11), by striking the period at the end and inserting a semicolon; and

(iv) by inserting after paragraph (11) the following paragraphs:

"(12) who is a retail distributor to knowingly or negligently sell at retail a list I pseudoephedrine

product in violation of a requirement under section 310(d)(1), or who is a manufacturer or distributor (retail or wholesale) to fail to submit a report regarding such a product that is required under section 310(d)(2) or regulations under such section; or

"(13) who is a pharmacy or pharmacist registered under section 303(f) to knowingly or negligently sell at retail a schedule V methamphetamine-related product in violation of any requirement under section 303(i);"; and

(B) in subsection (c)(1)(B), by inserting before the period the following: ", except that this subparagraph does not apply to a violation of subsection (a) or (b) of section 310 with respect to a list I pseudoephedrine product by a person who is not a retail distributor".

(2) CONFORMING AMENDMENTS.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(A) in subsection (b)(3), in the first sentence, by inserting after "shall" the following: ", except to the extent that section 402(a)(13) applies,"; and

(B) in subsection (f)—

(i) in paragraph (1), by inserting after "shall" the following: ", except to the extent that section 402(a)(12) applies,"; and

(ii) in paragraph (2), by inserting ", other than subsection (d)(2)," after "section 310".

(b) RESTRICTIONS ON RETAIL PURCHASES OF PSEUDOEPHEDRINE PRODUCTS; VIOLATION OF LOGBOOK REQUIREMENTS FOR METHAMPHETAMINE-RELATED PRODUCTS.—Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the second sentence the following: "It shall be unlawful for any person to knowingly or intentionally purchase at retail without a prescription more than one schedule V or list I pseudoephedrine product during a 24-hour period, or more than 7,500 milligrams of pseudoephedrine in such products during a 30-day period, or to knowingly or intentionally purchase a schedule V methamphetamine-related product or a list I pseudoephedrine product without signing the appropriate logbook and printing information in accordance with section 310(d)(1)(F)(i)(III) or 303(i).".

(c) CONTROLLED SUBSTANCES; UNAUTHORIZED MANUFACTURING-RELATED POSSESSION OR DISTRIBUTION OF EPHEDRINE, PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE; DISTRIBUTION IN GENERAL.—Section

401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) in subsection (b)(3) (as amended by subsection (a)(2)(A) of this section), in the first sentence, by inserting ''subsection (g) or'' before ''section 402(a)(13)'' ; and

(2) by adding at the end the following:

''(g)(1) Any person who possesses a controlled substance specified in schedule V(b) with intent to manufacture a controlled substance except as authorized by this title, or who possesses, distributes, or dispenses such a substance knowing, or having reasonable cause to believe, that the substance will be used to manufacture a controlled substance except as authorized by this title, shall be sentenced in accordance with the same provisions as apply under subsection (c).

''(2) Any person who knowingly distributes or dispenses a controlled substance specified in schedule V(b) in violation of this title shall, except to the extent that section 402(a)(13) applies, be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.''.

Chairman SENSENBRENNER. The gentleman from Iowa will be recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I offer this amendment today to crack down on small meth labs. My amendment is modeled on H.R. 3955, the "Meth Lab Eradication Act," which I introduced in September. Unfortunately, Iowa has been leading the Nation with a high number of meth labs. We paid the costs for our meth problem in human lives, children in foster care suffering from meth addicts, broken families, crime in small towns.

In response to the meth problem in Iowa, the Iowa Legislature passed a law to restrict meth precursors. These chemicals are essential ingredients for meth cooks. The Iowa law caused meth labs to decline by 80 percent. It is an effective law. My amendment adapts the Iowa law for the Federal landscape. It does this: It puts meth precursors behind the pharmacy counter where they are sold for a—by a pharmacist. There's an exception for retailers. No prescription is required unless the State law requires it. It requires a person to show an ID and sign a log book, which is also in the underlying bill. It allows an individual to buy up to 7.5 grams, or 7500 milligrams, or the precursor, the active ingredient, in 30 days. In the event that it's inconvenient to go to a pharmacy, then people can buy up to 360 milligrams of liquid, liquid capsule and liquid-filled gel. They can do this every 24 hours. This is enough for 12 children's doses, 6 adult doses. Retailers also ask for ID and keep a log book.

By giving pharmacists the responsibility to dispense meth precursors without a prescription, then we know we are in good hands. It's also too easy for a convenience store clerk to accidentally or even knowingly break the law and sell large amounts of precursors to meth cooks. Pharmacists are trained and accountable for their practices. With their license on the line, they will do their best.

My bill also allows the Attorney General to ask pharmacists and retailers to report sales with characteristics that point to smurfing—illegal use of other violations of this anti-meth law.

Mr. Chairman, I appreciate the thought and work that has gone into this underlying bill, your manager's amendment, but I believe that there is a fatal flaw in the 3.6 grams that are allowed, and those 3.6 grams will allow an individual to go out and make 19 retail stops. There is not a check between retailer to retailer. And in those 19 stops, they can pick up enough meth precursor to produce an entire ounce of methamphetamines which will last an average addict 90 days, and in the next 89 days, that meth addict then can go out and cook a 90-day supply every day for 89 days and sell that. So one day's work out of 90 days for a meth lab cook, and he gets 89 days that he can work for pure profit. And I think that's the hole and the flaw in this, and I understand the challenge and the question to the germaneness of this substitute amendment that I've offered here this morning, and I want to announce that I will seek to get this language into the bill, either in the Commerce Committee or on the floor, because I think that we'll be back dealing with this in another 2 to 3 years when we find out that where Iowa has had an 80-percent reduction in our meth labs, that means about 1,200 and some meth busts in that same period of time a year ago, now it's down to around 240, 1,011 fewer meth labs in Iowa, 455 fewer abused children, and about $2.4 million in law en-

forcement costs for cleaning up meth labs that have all been saved. And, by the way, the retail adjustment to this, the parental adjustment to this, has been nil. I spoke last night on the phone to the chief author of this bill in the Iowa Legislature, whom I've worked with for 10 years, who told me that even though they heard resistance from the retailers, resistance from the drug companies, and resistance from the parents until the bill was passed, once it was passed and we're living under the law in Iowa, the adjustment has been so easy that it has been pathetic.

So I will seek to accomplish this because I think it's the right policy. We all want to put meth labs out of business in America. We seek to do that here today. But I don't think we get there. I will continue to work on that task, and I look forward to working with my colleagues, and at this point I'd ask unanimous consent to withdraw my substitute amendment.

Chairman SENSENBRENNER. Without objection, the amendment is withdrawn.

Are there further second degree amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have two amendments at the desk that I'd ask unanimous consent to take up en bloc.

Chairman SENSENBRENNER. Without objection, the amendments will be considered en bloc. The clerk will report the two amendments en bloc.

The CLERK. Amendment to H.R. 3889, offered by Mr. Scott of Virginia. Add at the end the following: Section——

Mr. SCOTT. Mr. Chairman, I'd ask unanimous consent that the amendments——

The CLERK. —Feasibility Study on Federal Drug Court——

Mr. SCOTT. Mr. Chairman, I ask unanimous consent that the amendments be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendments follow:]

Amendment to HR 3889
Offered by Mr. Scott of Virginia

Add at the end the following:

SEC. ___. FEASIBILITY STUDY ON FEDERAL DRUG COURTS.

The Attorney General shall, by contract with a non-governmental entity, obtain a feasibility study on the desirability of a drug court program for Federal offenders who are addicted to controlled substances. The Attorney General shall report the results of that study to Congress not later than June 30, 2006.

AMENDMENT TO H. R. 3889

OFFERED BY MR. SCOTT OF VIRGINIA

At th end of the bill, insert the following:

TITLE DRUG COURTS

SEC. _____. DRUG COURTS.

Section 1001(25)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 2591(25)(A)) is amended by adding at the end the following:

"(v) $70,000,000 for fiscal year 2006.".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, these two amendments—one studies the feasibility of a Federal drug court and the other increases the authorization for drug courts. Research has shown that drug courts work, and they work for meth as well as other drugs. If we're going to have Federal drug prosecutions, we ought to have a Federal—access to a Federal drug court for meth. These drug courts are cost-effective. They're less expensive and more successful than just incarceration. In other words, if there's no drug court, we will pay more and get an increase in drugs. So we should at least study the feasibility of setting up drug courts.

The other amendment just increases the funding for drug courts with the understanding that the increase will go to meth drug-addicted defendants. If we're serious about actually reducing meth, we should put our money where our mouth is and do something in a cost-effective manner. I'd hope it would be the pleasure to adopt the two amendments.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. I'll give you a commitment that on both of these issues we'll work with you between now and the floor. I think that in terms of doing the funding of this, it's a little bit premature because we want to find out where the money is, and as you know, that isn't in the jurisdiction of our Committee.

Mr. SCOTT. Well, thank you, Mr. Chairman. With that commitment, we will—I will ask unanimous consent to withdraw the amendment and hope that we can increase the utilization of these very effective crime-fighting initiatives.

Chairman SENSENBRENNER. Without objection, the amendment is withdrawn.

Are there further second degree amendments? The gentlewoman from California, for what purpose do you seek recognition.

Ms. WATERS. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3889, offered by Ms. Waters of California——

Mr. SMITH. Mr. Chairman, I reserve a point of order.

The CLERK. —Strike Section 305 in its entirety.

Mr. SMITH. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. A point of order is reserved.

[The amendment follows:]

AMENDMENT TO H.R. 3889

OFFERED BY MS. WATERS OF CALIFORNIA

Strike Section 305 in its entirety.

Chairman SENSENBRENNER. The gentlewoman from California is recognized for 5 minutes.

Ms. WATERS. Thank you very much. Mr. Chairman and Members, this amendment that I'm offering may not be indicated correctly in terms of the page number and the section number. I have my staff checking on that. But this amendment is intended to strike what I believe is that section in the managers' amendment on page 11, go 1 through 16. That would include sections 419(a). And the reason for this amendment, Mr. Chairman and Members, is this—in this section of the bill, it indicates that whoever violates Section 401 by manufacturing, distributing, or possessing with intent to manufacture or distribute methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 is present or resides, shall, in addition to any other sentence imposed, be imprisoned for any terms of years but not more than 20 years, subject to a fine, or both.

I first want to say that I really do appreciate all of the work that was done on this legislation, and I particularly appreciate that the section about kingpins was changed, and it helps to put the emphasis on kingpins. It lowers the amount of money involved and perhaps the amount of drugs, and that's okay. It's a bill that I think I could support, particularly as it relates to kingpins and to mandatory minimum sentencing. But what I'm worried about is this section.

This is a section that basically says if you are a single parent, usually women, that somehow you're going to be penalized more than a man because you have children in the location where you are manufacturing or you intend to manufacture or you have in your possession methamphetamine.

Now, the reason this bothers me is I find that many of the women on drugs—this is crack cocaine and methamphetamine—get started on these drugs because of their relationships with men who oftentimes get them involved. And while we certainly don't want to have women taking up the use of drugs and the possession of drugs or the manufacture of drugs, we want to rehabilitate these women. We want to get them out from under drug use, and we want them to be parents to their children. We don't simply want to lock them up and take the children, create another burden on society for the care of the children for the next 20 years. That's for the rest of their lives. We want to get these women rehabilitated.

I don't want a woman who happens to have a mate who got her started on drugs and may live in other locations doing the same thing with other women being able to escape these penalties while this woman who's stuck with the children—and in these cases, it's the woman who usually is caring for the children—is now under stiffer penalties and lessens the opportunity for rehabilitation and takes the children for the rest of their lives.

If you take these children and this woman is sentenced to 20 years, this means that they are taken at the age of 1 or 2 years old and they will never, ever be reconnected with the parents again. The mother will never have the opportunity for rehabilitation, and the man is free and out getting other women involved with drugs.

So I would like to strike this section. Did my staff correct the reference to the section in the amendment?

That would be page 10, line 18 through——

Chairman SENSENBRENNER. Without objection, the modifications suggested by the gentlewoman——

Ms. WATERS. Page 11, line 16.

Chairman SENSENBRENNER. Without objection, the modification suggested by the gentlewoman from California is agreed to, and the time of the gentlewoman has expired.

The Chair recognizes himself for 5 minutes in opposition to the amendment. What the amendment of the gentlewoman from California proposes to do is to strike the increased penalty for manufacturing meth in the presence of children. It's called the "Children's Endangerment" section. Manufacturing meth is an incredibly dangerous process. There are explosions in meth labs. People who are in and around meth labs have exposure to toxic chemicals. And that's why the children's endangerment section is in there. People who do this are exposing those who are in the neighborhood and in the house to incredible dangers, and there are dangers that are probably greater than the manufacturing or refining of any other kind of illegal drugs.

The original bill that was introduced by Representative Souder and myself contained a mandatory minimum penalty. I like mandatory minimums. The gentleman from Virginia hates them. We made a compromise, and instead of having a mandatory minimum penalty, instead there is in this bill a consecutive sentence for children's endangerment of up to 20 years. I think that's an appropriate compromise. It ought to stay in the bill. We shouldn't adopt the amendment that strikes the increased penalties out, and I would hope that the amendment would be rejected.

Mr. SCOTT. Mr. Chairman? Will the Chairman yield?

Chairman SENSENBRENNER. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, for the provision—for the situation outlined in the amendment, are there presently in the Sentencing Guidelines enhancements for that activity, sentencing enhancements?

Chairman SENSENBRENNER. Yes, there are. And reclaiming my time further, what will happen is that the commission will further increase the guidelines if the bill is passed in its present form without the gentlewoman from California's amendment.

Ms. WATERS. Will the gentleman yield?

Chairman SENSENBRENNER. I'm happy to yield.

Ms. WATERS. As I read the amendment, it says "by manufacturing, distributing, or possessing with the intent to manufacture or distribute."

As you described the amendment, you described it in terms of manufacturing methamphetamine. But this amendment says that, in essence, if someone comes by your house and leaves a package and that package of methamphetamines is on the premises where there are children, that you could have enhanced sentencing because of the intent to distribute, not simply manufacturing. Is that the intent of the author?

Chairman SENSENBRENNER. If the gentlewoman will read page 11, lines 5, 6, and 7 of the manager's amendment, it says "manufacturing, distributing, or possessing with intent to manufacture." If you possess with intent to manufacture and you're in the vicinity of children, then you're going to get hit with a consecutive additional sentence of up to 20 years.

Ms. WATERS. Will the gentleman yield?

Chairman SENSENBRENNER. I yield further.

Ms. WATERS. Will you continue to read the sentence where it says "or"?

Chairman SENSENBRENNER. "Distribute methamphetamine or its salts"——

Ms. WATERS. "Intent to distribute." That's what it says. It says "with intent to manufacture or intent to distribute."

Chairman SENSENBRENNER. No, that's not in line 7. It is "with intent to manufacture or distribute." The word "intent" is not in there the second time.

Ms. WATERS. Well, but "intent," sir, applies to manufacture or distribute.

Chairman SENSENBRENNER. Well, if it does apply to manufacture or distribute and you're around kids, I think you ought to be spending more time in the slammer. I guess you and I disagree in this.

Ms. WATERS. Well, I think we don't disagree on what you're trying to do. What we probably disagree on, Mr. Chairman, is that if it is believed that there is an intent to distribute, not manufacture, and if it is a woman with children, that this woman can have enhanced sentencing that would take the children for 20 years and lock her up for 20 years.

Chairman SENSENBRENNER. Well, reclaiming my—reclaiming my time, I don't see anything that zeros in on one gender or the other. The criminal statute is gender neutral, as criminal statutes ought to be. I yield back the balance of my time.

Ms. WATERS. Will the gentleman yield before he——

Chairman SENSENBRENNER. I have 6 seconds left.

Ms. WATERS. —yields back his time?

Chairman SENSENBRENNER. I have 6 seconds left.

Ms. WATERS. I'll take the 6 seconds. Mr. Chairman, you know full well that the women are left with the children. It is discriminatory.

Chairman SENSENBRENNER. The time of the Chairman has expired.

Mr. LUNGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. I rise in opposition to the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. Mr. Chairman, during the 8 years I was privileged to be Attorney General of the State of California and was responsible for multiple anti-drug task forces, we ran into the problem of meth production and meth distribution as no other State did. One of my agents did a master's thesis on the question of children's exposure to methamphetamine at these sites and discovered that more—it was more often than not that the children would, in fact, be physically affected by the presence of methamphetamine and the products in the area.

Not once in those 8 years do I ever recall anybody saying that there was disproportionate investigation or prosecution of women versus men. All I recall is that we had children, both male and female, who were affected. We adopted a slogan in our department, which was "Meth use equals child abuse." The worst example of child abuse my agents ever saw were at the hands of parents who were involved with methamphetamine. And while you might talk about how their conduct was affected by the fact that they were under the influence, the impact on the children was devastating.

This particular section of the bill, in my judgment, is perhaps the single most important section of this bill. Our children ought to be a priority. And whether it's a mother, a father, a male or female who has any jurisdiction over the children, we ought to bring the full effects of the law against them.

Methamphetamine not only destroys the people who are using it, it destroys the people around it. And the most vulnerable of those who are exposed to this are the children who don't ask to be in these sites, and the suggestion that somehow this is a gender question escapes me, frankly. We're talking about protecting the children, giving them an additional level of protection and taking out of action some people who already have exposed children to unbelievable damage and danger. And I would support the Chairman in opposing this amendment. There is nothing more that we could do on behalf of the children than support this section of this bill.

And I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on agreeing to the second degree amendment offered by the gentlewoman from California, Ms. Waters. Those in favor will say aye? Those opposed, no?

The noes appear to have it. The noes have it and the amendment is not agreed to.

Are there further amendments?

Mr. GOODLATTE. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Chairman, thank you for marking up this important legislation——

Chairman SENSENBRENNER. Does the gentleman strike the last word?

Mr. GOODLATTE. I move to strike the last word. I'm sorry.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOODLATTE. I thank the Chairman.

Meth use and trafficking are serious problems that must be stopped. Meth is now one of the most frequently investigated drugs. In my district, investigators estimate that it accounts for about 75 percent of drug cases in one of my counties and believe that gang members have moved more than 9,000 grams of the drug in the area during a 2-year period.

With increased penalties for offenders and coordination with manufacturers and retailers, this legislation will go a long way toward combatting this serious problem. I do, however, have a concern about the effective date of provision for the bill. The June 30, 2006, effective date may pose an undue burden on some manufacturers and retailers who are acting in good faith to reformulate some of their products and prepare the marketplace for the changes we are implementing in this bill. What they are doing is valuable to America's consumers, the legitimate users of the end products that are used for cold remedies and other purposes.

It's my understanding that an extension of the effective day by 3 months would be sufficient for manufacturers and retailers to prepare for these changes, and, Mr. Chairman, I know the Committee is aware of this problem, and it's my hope that the Committee would be willing to address this concern as we move forward toward the floor and in our discussions with the Senate on the legislation.

With that, Mr. Chairman, I yield back the balance of my time.

Chairman SENSENBRENNER. Are there further amendments in the second——

The gentlewoman from Texas, Ms. Jackson Lee, for what purpose do you seek recognition?

Ms. JACKSON LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. JACKSON LEE. Number 178, please.

The CLERK. Amendment to H.R. 3889, offered by Ms. Jackson Lee of Texas. Add at the end the following new section: Section—Reports on bills increasing or adding controlled substances act Penalties——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 3889

OFFERED BY MS. JACKSON-LEE OF TEXAS

Add at the end the following new section:

SEC. ___. REPORTS ON BILLS INCREASING OR ADDING CONTROLLED SUBSTANCES ACT PENALTIES.

The Attorney General shall examine each public bill introduced in either House of Congress and determine whether that bill adds or increases a penalty for a violation of the Controlled Substances Act. If the Attorney General determines it does, the Attorney General shall report to Congress not later than 60 days after the bill is introduced. The report shall contain the following:

(1) How would the enhanced sentencing affect the Federal prison population by an estimated number.

(2) An estimated number of offenders that would be prosecuted under any enhanced sentencing guidelines that fall under the Controlled Substances Act.

(3) An estimated financial impact statement which reflects the number of persons that may be incarcerated and prosecuted as a result of the sentencing enhancement.

(4) An estimate of how much it will cost to house each inmate under the enhanced guidelines that fall under the Controlled Substances Act, in each individual Federal penitentiary.

Chairman SENSENBRENNER. The gentlewoman——

Ms. JACKSON LEE. I'm sorry. 178 is——

Chairman SENSENBRENNER. This is 178.

Ms. JACKSON LEE. Let me look at the number because——

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. We will act accordingly, Mr. Chairman. Let me say to the colleagues that I have on occasion voted for mandatory sentencing, and I have on occasion, on many occasions, asked a question as to whether or not we need such sentencing.

This amendment I think is a studied and thoughtful amendment on this very issue, and it asks that the Attorney General examine each public bill introduced into either House of Congress and determine whether that bill adds or increases a penalty for a violation of the Controlled Substances Act. If the Attorney General determines it does, the Attorney General shall report to Congress not later than 60 days after the bill is introduced. The bill shall contain the following: how would the enhanced sentencing affect the Federal prison population by an estimated number; an estimated number of offenders that would be prosecuted under any enhanced Sentencing Guidelines that fall under the Controlled Substances Act; an estimated financial impact statement which reflects the number of persons that may be incarcerated and prosecuted as a result of the sentencing enhancement; and an estimate of how much it will cost to house each inmate under the enhanced guidelines that fall under the Controlled Substances Act in each individual Federal penitentiary.

I believe that methamphetamine use is an epidemic, and I join my colleague in her analysis of the impact of mandatory sentencing, in one instance the impact on, in her instance, women who will be responsible for children.

This is an amendment that gives information as to impact of mandatory sentencing. H.R. 3889 lowers the amount of methamphetamine it takes to get a 10-year mandatory minimum sentence from 50 grams to 5 grams, a sugar packet's worth. In comparison, it takes 5,000 grams of pot or cocaine to receive a 10-year sentence. Poor people will get 10 years for 5 grams of meth, while rich people will get 10 years unless they have 5,000 grams of powder cocaine. It lowers the amount of methamphetamine it takes to get a 5-year mandatory minimum sentence from 5 grams to 3 grams.

Yes, we want to stop this devastating problem, but we also know that this problem is intertwined with poverty. We know it's intertwined as well with addiction. So it's important, I think, to have this study.

The DEA spokesperson who testified at the Subcommittee hearing said that 5 grams of meth would be—would last a hard-core meth addict about 3 to 4 days, meaning that a lot of meth addicts are going to end up getting a decade in prison when they really need to be treated. The trigger thresholds are so low that low-level non-violent offenders who are currently being prosecuted at the State level will be prosecuted at the Federal level, wasting Federal resources and further expanding the Federal prison system.

Living in the Southern District of Texas, I can tell you that other legitimate cases are hard-pressed to get their day in court in the

Southern District, immigration cases and other cases, because of the overload of drug cases. So I think this amendment gives us the information necessary to contribute to our thinking on mandatory sentencing, and, of course, we have heard from our Judicial Conferences their concerns about the overburdening mandatory sentencing. This information I believe is extremely helpful.

Finally, the sentencing reform movement has made tremendous gain at the State level in recent years. Support for Federal reform is growing as well. Even conservatives like former Attorney General Ed Meese are beginning to support reform. It would be a major step backwards for both the sentencing reform movement and the idea of making sure that we do penalize those who deserve to be penalized and stop the methamphetamine epidemic clash with each other. This amendment simply allows the Attorney General to provide us with the information that I think will be very helpful in our further deliberations. I ask my colleagues to support this amendment.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. JACKSON LEE. I'd love to reserve my time, if I could.

Chairman SENSENBRENNER. You can't.

Ms. JACKSON LEE. I yield back, Mr. Chairman. [Laughter.]

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes in opposition to the amendment.

My colleagues, what ever happened to the concept of separation of powers? This amendment throws that concept, which has served our country so well, right into the trash can of history. It's our job as elected representatives of the people exercising legislative responsibility to determine what actions are criminal and to prescribe the penalties for those actions. It's not the job of the executive branch to do that. And it's not the job of the executive branch to muddle up legislative deliberations. If they want a report on something, they have free speech and they're perfectly able to do it. But the way this amendment is drafted is that it has the executive branch weighing in on something that is exclusively a legislative responsibility.

Now, if the gentlewoman from Texas wants to have the Department of Justice end up spending their time doing lengthy analyses that duplicate what we get from the Congressional Budget Office, which we have to file before a bill is brought up by rule, her amendment does that. I'd like to see the DOJ use its resources to actually go out and catch people who are making meth and to throw them in jail so that they aren't poisoning anybody else, child or adult. And that's why this amendment ought to go down.

The other thing is that this 60-day requirement can be used by anybody that wants to slow down any piece of legislation that amends the Controlled Substances Act or establishes a penalty for violation of the Controlled Substances Act.

This bill was introduced with a lot of cosponsors on a bipartisan basis on September 22. Today is November 9th. And if her amendment were the law today, I can just see somebody raising a point of order that this Committee can't consider the bill because the 60 days for the AG to report has not expired.

We set our own schedule here. We shouldn't let the Attorney General or any executive branch official set our schedule. The

amendment is a bad one and ought to be defeated, and I yield back the balance of my time.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I'd like to make an observation.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. Move to strike the last word.

I'd like to make an observation relative to the markup that was conducted in Mr. Coble's Committee. I thought that it was a very fruitful and beneficial and informative discussion about mandatory sentences. And I intend to support this bill because of the adjustments that have been made.

But I would encourage you, Mr. Chairman, to authorize or to encourage the Chair of the Crime Subcommittee to conduct hearings on the issue or the concept of mandatory sentencing so we can lay things out and we as a legislative body reach our own conclusions as to the efficacy of mandatory sentences and its implications for the entire criminal justice system.

You know, we just have, I believe, approached it on an ad hoc basis in proposals that come before the Committee in terms of particular discrete legislative proposals as opposed to stepping back, taking a look at the entire issue. And I would hope that you, Mr. Chairman, would encourage all of us to bring some folks in from the Sentencing Commission and from elsewhere to take a whole look at the sentencing approach and what our role ought to be.

With that, I yield back the balance of my time.

Ms. WASSERMAN-SCHULTZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Florida, Ms. Wasserman-Schultz.

Ms. WASSERMAN-SCHULTZ. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WASSERMAN-SCHULTZ. And I'd like to yield to the gentlewoman from Texas.

Ms. JACKSON LEE. I thank the distinguished gentlelady, and I know the work that she has done over the course of her time in Congress and as well in the work that she did as a State senator. I recall the great debate on the Terry Schiavo case which clearly indicated that in many instances we breach the lines of demarcation of the three branches of Government. I am not here to advocate that breach, but it has certainly occurred when we have found it to be convenient.

In this instance, let me say that I associate myself with the words of Mr. Delahunt, Mr. Chairman. I hope we will have hearings because I indicated to you I voted in some instances of mandatory sentencing, but—and this—I think in an analysis we will find that this is a thoughtful way of allowing some reason to come into this discussion. And I would suggest that the Attorney General could act expeditiously. I'd welcome an amendment of suggesting a lower time frame than the 60 days. But though this bill is bipartisan, it is bipartisan because we are all in agreement about the epidemic proportions of methamphetamine use. But we're certainly

not in agreement, as evidenced by a number of amendments, about the impact of the mandatory sentencing.

I would suggest to my colleagues that this is an approach that can better educate us, and you would probably have and I feel that we would have the support of many of those, conservatives and others, who have questioned the value of mandatory sentencing, to take individuals who are obviously addicted and to put them and incarcerate them, costing thousands upon thousands upon thousands of dollars in the Federal system with no treatment for no results. And these individuals after 10 years mandatory are then returned to society with no training, families have been dispersed and devastated, and what results do we get?

And so I think that the effort here is to make a very strong statement at methamphetamine use. Very strong statement. But at the same time, to be able to argue the case that the impact needs to be assessed. And there's nothing in the amendment—excuse me, nothing in the legislation that assesses the impact, the far-reaching impact.

And so I would hope my colleagues would support this amendment, and I thank the distinguished gentlelady for yielding this time to make the argument that this amendment would add to this legislation and give reason to this legislation and allow us to step back and ask the question: Do we want to put the mother, the teenager, the addicted person in the lines of incarceration for 10 years for the minimal use, the same problem that we've had with crack cocaine and cocaine just does not make sense, and we need some independent assessment to give some idea of the impact that this would have.

With that, I would also like to reserve her time, but I will yield back to the distinguished gentlelady.

Ms. WASSERMAN-SCHULTZ. Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment in the second degree offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will say aye? Opposed, no?

The noes clearly have it. The noes have it, and the amendment is not agreed to.

Are there further——

Ms. JACKSON LEE. I have an amendment at the desk, Mr. Chairman.

Chairman SENSENBRENNER. Does anybody else want to have a turn?

Ms. WATERS. No, just those with their hands up.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman.

Chairman SENSENBRENNER. The clerk will report her amendment.

Ms. WATERS. I have an amendment at the desk.

The CLERK. Amendment to H.R. 3889, offered by Ms. Waters. On page 11, line 12, strike "20" and insert "5."

[The amendment follows:]

Amendment

Offered by Ms. Waters

On page 11, line 12, strike "20" and insert "5".

Chairman SENSENBRENNER. The gentlewoman from California is recognized for 5 minutes.

Ms. WATERS. Mr. Chairman, I'd like to go back to my earlier discussion about the enhanced sentencing for the presence of children where there is the manufacture, possession, or intent to distribute. I certainly agree with the gentleman from California that we're all very, very concerned about children and we want to do everything that we can to protect children, and certainly children should not be in environments where there are drugs of any kind.

Having said that, I spent many years as a social worker, and I know the relationship between women and men and drugs. I also understand very, very well that many of the women who end up on drugs end up on drugs because they fall in love with a man who's involved with drugs, either possessing, trafficking, or manufacturing. And I also know that many of these are single women, some of them are on welfare, but in all cases the women were the ones who were in possession of the children. They are the ones who rear, they're the ones who take care of, they're the ones who have children in the homes.

Most of the men visit the homes. They're in and out of the homes. If they talk a woman into using her home to manufacture or simply to be a storage or to be a place where they can leave drugs, you're right, those drugs are going to be in that house where there are children. And under the bill that you have before you, you would enhance the sentencing for that woman under these conditions to 20 years while the man who's responsible in most cases for the drugs will not have an enhanced sentence, maybe not even have any sentence whatsoever.

And so recognizing and understanding what happens in the real world, I do believe that this is discriminatory, that this will impact women, that you will have mothers who will end up in prison and children in the system, the foster care system, for their entire lives. I don't think that's good public policy. I think we should punish those who manufacture or sell drugs, and I think the punishment should fit the crime. But we should also be concerned about rehabilitation.

If there is a woman who has drugs in her home and there are children, we should punish her, but we should want to rehabilitate her because most of the time these women are addicted also or they're on their way to addiction. We should rehabilitate them.

They should do some time, and they should come back out. They should get their children, and they should raise them. But to enhance the sentencing for 20 years and place children in the system for the rest of their lives just does not make good public policy sense.

So my amendment would strike 20 years and insert 5 years, at least reduce the sentencing to something that makes good sense that would punish for a substantial period of time but would anticipate that this woman could have learned her lesson, to be rehabilitated and reconnected with the children.

I yield back the balance of my time.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes in opposition to the amendment.

This amendment is very similar to the previous amendment by the gentlewoman from California. What it does do is it reduces the judge's opportunity to sentence someone consecutively for endangering children from an additional 20 years to an additional 5 years.

Now, I guess this is a value judgment that the committee is going to have to make. It's not a mandatory minimum penalty. So what the gentlewoman from California's amendment is doing is taking away the opportunity for a judge who presides over the trial and sentences someone following the jury's conviction of that person to 15 more years if the circumstances warrant.

I hear an awful lot about judicial discretion on the other side of the aisle, and we ought to give judges responsibility rather than requiring them to do something. What this amendment does is it gives the judge less discretion when there is a defendant who has committed a particularly egregious crime. And I think the judge ought to have the additional discretion for the additional 15 years.

And I'd just point out that Newsweek ran a cover story about meth in its August 8th issue, and it talks about meth labs exploding. And one of their articles says, "I just felt my"—or "I felt my face just melting."

Now, what this amendment does is if it's a child's face that is just melting because they happen to be around a meth lab when it exploded, then the person who endangered that child has the potential of getting 15 years less in jail. They shouldn't have that potential of 15 years less in jail. They should have the potential of the additional 15 years in jail that the amendment in the nature——

Ms. WATERS. Will the gentleman yield?

Chairman SENSENBRENNER. I'm happy to yield to the gentlewoman from California.

Ms. WATERS. Thank you very much. I want to first deal with your argument about judges' discretion. I do not take away judges' discretion. The judge has the discretion in my amendment between nothing and 5 years. What you're describing is broadened discretion where the judge would have between 0 and 20 years. I do not take away discretion. That's number one.

Number two, of course——

Chairman SENSENBRENNER. I'll reclaim my time. I just give the judge more discretion.

Ms. WATERS. Of course. Don't be funny, Mr. Chairman. We know exactly what you're saying, and you know exactly what I'm doing.

I appreciate that. But if I may, if I could continue, if you would yield to me——

Chairman SENSENBRENNER. Oh, I'm happy to yield to the gentlewoman——

Ms. WATERS. Thank you very much, Mr. Chairman.

On the second point, of course, we do not want children in any environment where their lives are endangered. We know that we're all working to try and eliminate the manufacture of methamphetamines, and we're trying to rehabilitate people. We're trying to do good public policy that makes good sense.

If a house blows up, if people are harmed, or if there's a death, there are all kinds of other additional penalties that are operable at that point. You have the penalty for the explosion. You have penalties for the death, on and on and on.

Chairman SENSENBRENNER. I'll reclaim my time once again, and then I'm going to yield back.

With all of these other penalties, the gentlewoman from California could reduce those. What the gentlewoman from California is reducing is the ability of the judge to impose a consecutive sentence for somebody who's endangering children and who has been convicted of endangering children. And why does the gentlewoman from California want to reduce the ability of the judge to sentence someone who has been convicted of endangering children because they're operating a meth lab by 15 years? This is a value decision. I respect the gentlewoman from California's attempt to reduce the ability of the judges to impose a consecutive sentence. I just disagree with her and think she's wrong, and that's why the amendment ought to be rejected, and I——

Ms. WATERS. Will the gentleman——

Chairman SENSENBRENNER. —yield back the balance of my time.

Ms. WATERS. Will the gentleman yield?

Chairman SENSENBRENNER. I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I rush to the aid of the gentlelady from California.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes to do that.

Mr. CONYERS. Thank you, sir.

First of all, before this discussion gets too far off track, I want to thank you for the managers' amendment. I think it's important and I think we all do.

But now we come to some closer questions here that require a little bit more scrutiny, and I think it's very important that we do have the discussion without reference to whether this amendment is going to carry the day or whether it isn't, because important things are being said that, unfortunately for me, they may not have been said at earlier times when we were having discussions about the criminal justice system.

So with that, I would yield to the gentlelady from California to continue her discussion.

Ms. WATERS. Well, thank you very much. I appreciate that, Mr. Conyers.

The Chairman said he just does not know why the gentlelady from California would be concerned about this issue. And make it

clear, I'm not taking away judges' discretion. I'm giving them discretion within a limited period of time from 0 to 5 years rather than up to 20 years. And I'm doing that because I recognize that there should be punishment and that punishment should fit the crime.

So, in addition to the sentencing that this woman would get for being in possession of manufacturing, et cetera, we're talking about putting—giving the judge the discretion to put another 20 years on top of that. And let me tell you that many judges will use the full discretion to put 20 years on top of that.

It doesn't make good sense to have children in the criminal justice—in the foster care system for 5, 10, 15, 20 years, babies who may be, you know, in this situation. It overburdens the criminal justice system. It places children in a situation where they will not be with any parents for the entire lifetime. And it is not good public policy. That is why I am trying to help the men on this Committee understand how they can help society, how they can help these mothers, how they can do a better job of strengthening our ability to change people's lives and to give children a chance.

I mean, all of those are concerns and issues that I have, not theoretical, but because of my experience as a social worker, working on these issues and understanding how these women get into situations in the first place, and understanding how most of them who get addicted want very much to be rehabilitated and to get back with their children, even when the children are taken. I think the discretion that I'm outlining is sufficient.

I will yield to the gentleman from—were you trying to get my attention?

Mr. CONYERS. Who wants to be——

Ms. WATERS. I'm sorry. I yield back to the gentleman from——

Mr. CONYERS. Well, I can understand the gentlelady's concern about this matter, and we all agree that the changes that Chairman Sensenbrenner made take it out of the mandatory category. But it still raises the objections based on the analysis of the gentlelady from California.

I'm going to support Ms. Waters, and I think that this discussion, and others like it, need to be gone into as we continue along this re-examination of criminal justice issues before the Committee.

I will return the unused time, Chairman Sensenbrenner.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. Move to strike the last world.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOHMERT. It is ironic that you mentioned this 15-year period because it recalls a case where a woman was before me for assisting her husband in cooking a meth lab. The husband had fled. She was no assistance whatsoever in trying to establish where her husband had gone, and she could have been. And so I had indicated that sentences—she was blown away that I was looking at a sentence that was 15 years more than she ever anticipated. And I said we'd hold that open until—and reset the hearing. In the meantime, she turned around and not only helped establish where her husband had gone, she gave positive information about a hit that had

been placed on one of our local drug enforcement agents. And as testimony later indicated at the subsequent hearing, it saved his life because she was so specific. She gave up enough individuals and enough information that that extra 15-year threat she was looking at really solved a lot of cases and saved a lot of people from getting hooked on meth in the future from a Dallas contact that had been found in East Texas.

So I sure like having that extra 15 years in there for the judge as a minimum. It just can encourage people to help law enforcement in ways that even law enforcement never dreamed.

I yield back——

Ms. WATERS. Would the gentleman yield for a moment?

Mr. GOHMERT. I yielded back.

Chairman SENSENBRENNER. The time is yielded back.

The question is on agreeing to the second degree amendment offered by the gentlewoman from California, Ms. Waters. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it; the amendment's not agreed to.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. I believe I have an amendment at the desk. It's 179.

Chairman SENSENBRENNER. The clerk will report amendment 179.

The CLERK. Amendment to H.R. 3889, offered by Ms. Jackson Lee of Texas. At the end of the bill——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 3889, AS REPORTED

OFFERED BY MS. JACKSON-LEE OF TEXAS

At the end of the bill, insert the following:

TITLE xxx—DEPARTMENT OF JUSTICE SUBSTANCE ABUSE AND CRIMINAL JUSTICE COLLABORATION PROGRAM

SEC. xxx. AUTHORITY TO AWARD COMPETITIVE GRANTS TO ADDRESS METHAMPHETAMINE USE BY PREGNANT AND PARENTING WOMEN.

(a) PURPOSE AND PROGRAM AUTHORITY.—

(1) GRANT AUTHORIZATION.—The Attorney General, in consultation with the Secretary of Health and Human Services, may award competitive grants to address the use of methamphetamine among pregnant and parenting women offenders to promote public safety, public health, family permanence and well being.

(2) PURPOSES AND PROGRAM AUTHORITY.—Grants awarded under this title shall be used to facilitate or enhance and collaboration between the State substance abuse, criminal justice, and child welfare systems in order to—

(A) carry out programs to address the use of methamphetamine drugs by pregnant and parenting women offenders; and

(B) improve the ability of States, territories and Indian tribal governments to carry out such programs.

(b) APPLICATIONS.—

(1) IN GENERAL.—No grant may be awarded under this title unless an application has been submitted to, and approved by, the Attorney General.

(2) APPLICATION.—An application for a grant under this title shall be submitted in such form, and contain such information, as the Attorney General may prescribe by regulation or guidelines.

(A) ELIGIBLE ENTITIES.—The Attorney General shall make grants to States, territories, and Indian Tribes.

(B) APPLICANTS.—To be considered for a grant, an applicant shall demonstrate extensive collaboration with the State criminal justice agency and child welfare agency in the planning and implementation of the program.

(3) CONTENTS.—In accordance with the regulations or guidelines established by the Attorney General, each application for a grant under this title

shall include a plan to expand the State's capacity to offer treatment and related services for pregnant and parenting women offenders who use methamphetamine or methamphetamine and other drugs, including alcohol. Such plan shall also include—

(A) a description of how the single State authority for substance abuse will work jointly with the state criminal justice and child welfare agencies for the duration of a three-year grant period to implement a range of activities to meet the substance abuse treatment and other related needs associated with the use of methamphetamine or methamphetamine and other drugs, including alcohol to promote safety, self-sufficiency, family stability and permanence;

(B) a description of the nature and the extent of the problem of methamphetamine use by pregnant and parenting women offenders;

(C) an explanation of current collaborative activities undertaken by the single State authority for substance abuse, child welfare agency, and criminal justice agency to address methamphetamine use;

(D) identification of other related governmental and community initiatives which com-

1 plement or will be coordinated with in the im-
2 plementation of the program;
3 (E) certify that the State has involved
4 counties and other units of local government,
5 when appropriate, in the development, expan-
6 sion, modification, operation or improvement of
7 proposed programs to address the use, manu-
8 facture, or sale of methamphetamine;
9 (F) explain the applicant's inability to ad-
10 dress the need without Federal assistance;
11 (G) specify plans for obtaining necessary
12 support and continuing the proposed program,
13 project, or activity following the conclusion of
14 Federal support; and
15 (H) certify that funds received under this
16 title will be used to supplement, not supplant,
17 other Federal, State, and local funds;
18 (I) a description of clinically appropriate
19 practices and procedures to—
20 (i) screen for alcohol and drug treat-
21 ment needs, including methamphetamine;
22 (ii) assess such needs [what needs?];
23 (iii) assess the risks to the safety of
24 the mothers and children and the need for

1 permanency with respect to the placement
2 of the children;
3 (iv) provide addiction treatment for
4 pregnant offenders;
5 (v) provide comprehensive family
6 treatment for parenting women offenders
7 with their children together in the same lo-
8 cation with appropriate services to attain
9 self-sufficiency, including parenting skills,
10 job training or similar employment related
11 services, domestic violence education, pre-
12 ventive and early intervention services for
13 children of parents with addiction prob-
14 lems;
15 (vi) after-care support for families in
16 recovery, including housing; and
17 (vii) a process to enhance or ensure
18 the abilities of the single State authority
19 for substance abuse, child welfare agency,
20 and criminal justice agency to share data
21 in order to monitor the progress of pro-
22 gram participants, including arrangements
23 for addressing appropriate confidentiality
24 considerations.

(c) PERIOD OF GRANT.—A grant under this title shall be for a three-year period. A grantee may re-apply for only 1 additional 3-year funding cycle and the Attorney General may approve an additional three-year grant period.

(d) PERFORMANCE ACCOUNTABILITY; REPORTS AND EVALUATIONS.—

(1) ACCOUNTABILITY.—To be eligible to receive a grant under this title, an applicant shall identify a methodology for outcome measures **[**do you need a verb - to establish/assess?**]**, in coordination with the Attorney General to be used in evaluating the effectiveness of treatment and the impact of the program on families.

(2) ANNUAL REPORTS.—Not later that the end of each fiscal year in which funds are received under this title a grantee shall submit to the Attorney General a report on the activities carried out with such funds.

(3) EVALUATIONS.—Not later than 12 months after the end of the three-year funding cycle under this title, the Attorney General shall submit a report to the appropriate committees of Congress that summarizes the results of the evaluations conducted by

recipients and recommendations for further legislative action.

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) SINGLE STATE AUTHORITY FOR SUBSTANCE ABUSE.—The term ''single State authority for substance abuse'' means the unit of State government responsible for the administration of the substance abuse and prevention treatment block grant provided under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).

(2) CHILD WELFARE AGENCY.—The term ''child welfare agency'' means the state agency responsible for child or family services and welfare.

(3) CRIMINAL JUSTICE AGENCY.—The term ''criminal justice agency'' means an agency of the State or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.

(4) APPLICANT.—The term ''applicant'' means a State working through the single State authority for substance abuse. a territory, or an Indian tribe.

(f) AUTHORIZATION OF FUNDS.—There are authorized to be appropriated to carry out this title such sums as necessary.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the distinguished Chairman. I think as we have indicated, we all committed singularly to the understanding that methamphetamine is an epidemic, and I have—associate myself with the arguments that my colleague and friend from California has made previously. My amendment recognizes that women get caught up in this devastation and impact negatively on unborn children and dependent children. And so my amendment specifically would like to help address the question of methamphetamine use among pregnant women and women with dependent children who come in contact with the criminal justice system. More specifically, my amendment would authorize the Attorney General, in consultation with the Secretary of Health and Human Services, to make grants to agencies in charge of drug abuse, criminal justice, and child welfare so that they can work together, in a coordinated way, to treat pregnant women, pregnant offenders or offenders with dependent children who get caught up in the web of methamphetamine and help moms and kids stay together as a family.

In fact, we have a system of law enforcement in our community—and some of my colleagues may have a similar structure—the constable system, where we have constables who are in close contact with individuals who are engaged in this kind of devastating behavior, socially unfit behavior and criminal behavior. These agencies would be in line to receive assistance from these grants.

We know that methamphetamine tears apart our Nation's families like few other drugs. The data is there. Law enforcement officials bust up meth labs across the country and find children sitting in squalor, inches away from the toxic chemicals that can burn or maim, leaving families both literally and figuratively and forever scarred.

This amendment——

Chairman SENSENBRENNER. Would the gentlewoman yield?

Ms. JACKSON LEE. I'd be happy to yield to the distinguished gentleman.

Chairman SENSENBRENNER. I thank the gentlewoman for yielding. I think the gentlewoman has a good idea. I think this amendment needs to be further refined, particularly so we can get it into a final product on this subject. And if the gentlewoman will withdraw the amendment, I'll be happy to work with her as the process progresses in getting this bill enacted into law.

Ms. JACKSON LEE. Mr. Chairman, I think that is a very important step that I would be very happy to accept because I believe that in the midst of what we're trying to do, we have a number of victims. It also speaks to the amendment that I had before, and maybe I can convince the Chairman forthright with other aspects of my earlier amendment. But I thank the Chairman very much, and I would ask unanimous consent to be able to withdraw this amendment, to be able to work with the Chairman to make sure that this language is included in the legislation to help many of our agencies and the victims caught up in this devastation.

Chairman SENSENBRENNER. Without objection, the amendment is withdrawn.

Are there further second degree amendments to the manager's amendment offered by——

Mr. GOHMERT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. I have an amendment that's not at the desk, but I'd move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes to strike the last word.

Mr. GOHMERT. Thank you, Mr. Chairman.

I really applaud the efforts to try to rein in this terrible epidemic of methamphetamine. I've seen firsthand the devastating effects it has on individuals and families, and that's why I'm so proud that we're making this effort.

At the same time, I am concerned and I have an amendment that would raise the 3.6 grams back to 9 grams under the bill. I have been informed that would be held as not being germane, so I'm not offering it at this time. But I just would like to express—and I really appreciate the opportunity to express—I'm concerned with people like some of us who have been born with—my youngest daughter—sinus problems that Sudafed, pseudoephedrine, has been found to help. And you get a 12-hour dose, 120 milligrams. You buy a package like I did the other day. It's 20 tablets, 120 grams each, that would—actually, if my daughter and I both were needing them at the same time with a bad cold, that would hold us for 5 days. By raising it, it would make it easier for us law-abiding folks to be able to get that.

I'm concerned we're moving toward a day when medicines like this, like the best cold remedy on the market that's contained in most of the effective cold remedies, is not going to be as readily available. I was trying to find actual numbers and was told by somebody that's supposed to know yesterday there are 40 to 45 million purchases of cold remedies that contain pseudoephedrine every week. And I would like to encourage the Federal Government to work—the FDA to work with drug manufacturers to develop new drugs that will work and not be tempting to meth addicts so that we can both come out win-win.

I'm also sorry to see the effect that this has on law-abiding people in that pseudoephedrine is generic, can be produced generically. You can buy it so cheaply now as a generic, and I am concerned we could end up moving to a day like when the Democrats were in the majority and this horrible thing called freon was outlawed just before the patent expired, and it was going to become generic and people could get it a lot cheaper, and then we went to something not nearly as effective or efficient, and so there were more profits made. I don't mind people making profits, but, you know, I like having generic drugs that we can purchase.

I am also worried that this—in a way, it punishes law-abiding citizens rather than the meth cookers by forcing them to go through a more arduous process to purchase pseudoephedrine for those that need it every day for non-criminal purposes. And I would just urge the Chairman to take that into consideration. I understand it may go to a conference if passed, and take that into consideration for those of us that are law-abiding. Whether it's our

guns or our pseudoephedrine, we just don't like to go register with anybody.

So I thank you, Mr. Chairman, and I yield back.

Chairman SENSENBRENNER. Are there further amendments? If there are none, the question is on the manager's amendment offered by the Chair. All in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it; the manager's amendment is adopted.

A reporting quorum is present. The question occurs on the motion to report the bill H.R. 3889 favorably as amended. All in favor say aye? Opposed, no?

The ayes appear to have it.

Mr. WATT. rollcall.

Chairman SENSENBRENNER. A rollcall is demanded by the gentleman from North Carolina. Those in favor of reporting the bill favorably will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

[No response.]

The CLERK. Mr. Lungren?

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus?

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye. Mr. Inglis?

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis, aye. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Mr. Issa?

[No response.]

The CLERK. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

[No response.]

The CLERK. Mr. Forbes?

[No response.]

The CLERK. Mr. King?

Mr. KING. Aye.

The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
[No response.]
The CLERK. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman-Schultz?
Ms. WASSERMAN-SCHULTZ. Aye.
The CLERK. Ms. Wasserman-Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Members in the chamber who wish to cast or change their votes? The gentleman from Ohio, Mr. Chabot.
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye.
Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Forbes.
Mr. FORBES. Aye.

The CLERK. Mr. Forbes, aye.

Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Aye.

The CLERK. Mr. Flake, aye.

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

Mr. ISSA. Aye.

The CLERK. Mr. Issa, aye.

Chairman SENSENBRENNER. Further—the gentleman from Massachusetts, Mr. Meehan.

Mr. MEEHAN. Aye.

The CLERK. Mr. Meehan, aye.

Chairman SENSENBRENNER. Further Members in the chamber who wish to cast or change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 31 ayes and zero noes.

Chairman SENSENBRENNER. And the amendment to report the bill favorably as amended is agreed to.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today. Without objection, the staff is directed to make any technical and conforming changes. And without objection, all Members will be given 2 days as provided by House rules in which to submit additional, dissenting, supplemental, or minority views.

For what purpose does the gentleman from—the gentlewoman from Texas seek recognition? For what purpose does the——

Ms. JACKSON LEE. Thank you, Mr. Chairman. If I may strike the last word and speak out of order for introductions.

Chairman SENSENBRENNER. The gentlewoman is recognized for 1 minute.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

This Committee has worked very hard on issues of homeland security, and I'm just delighted that we have two first responders who were on the front lines in Hurricane Katrina—Hurricane Katrina somewhat and Hurricane Rita, because they're from Texas. That is Captain Gilbert Bennett of the Houston Fire Department, who's with us today, and Constable Mae Walker, Precinct 7. These are our first responders on the front line of Hurricane Rita, and I'm just delighted of their presence. [Applause.]

Chairman SENSENBRENNER. On behalf of the Committee, the Chair would like to welcome our two guests and thank them for their service.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

[Intervening business.]

Chairman SENSENBRENNER. This concludes the business for which this markup was called. The Chair thanks everybody for dealing with these matters expeditiously, and without objection, the Committee stands adjourned.

[Whereupon, at 11:37 a.m., the Committee was adjourned.]

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