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AMERICA'S METHAMPHETAMINE CRISIS: SOLVING ONE OF AMERICA'S LEADING DRUG PROBLEMS THROUGH CHILD ABUSE AND NUISANCE LAWS

Maureen P. Smith[†]

Today, America confronts a methamphetamine¹ crisis.² The issues are numerous, complex, and staggering in scope.³ Because methamphetamine can easily be manufactured from inexpensive and relatively accessible ingredients, it has been deemed “the most dangerous drug in America.”⁴ Furthermore, local and state law enforcement entities

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1. Methamphetamine is often referred to in the colloquial as “meth.” Avi Brisman, *Meth Chic and the Tyranny of the Immediate: Reflections on the Culture-Drug/Drug-Crime Relationships*, 82 N.D. L. REV. 1273, 1275 (2006) (internal quotation marks omitted). Other common names for the drug include: “chalk,” “crank,” “crystal,” “ice,” “poor man’s cocaine,” and “white man’s crack.” *Id.* (internal quotation marks omitted).

2. See James C. Backstrom, *Reflections of a Career Prosecutor on Effectively Addressing the Illegal Drug Problem in America*, PROSECUTOR, Mar.-Apr. 2006, at 26, 27 (“Methamphetamine has been labeled the most dangerous drug in America, and it may well be—at least it easily lends itself to that conclusion given its rapid rise in use across many parts of America.” (footnote omitted)).

3. See CELINDA FRANCO, CONG. RESEARCH SERV., METHAMPHETAMINE: LEGISLATION AND ISSUES IN THE 109TH CONGRESS 3 (2005). Methamphetamine is designated a Schedule II drug under the Controlled Substances Act of 1970. *Id.* Drugs classified as Schedule II substances are found to “(1) have a high potential for abuse, and (2) have a currently accepted medical use in treatment in the U.S or a currently accepted medical use with severe dependence.” *Id.* at 3 n.9.

4. David J. Jefferson, *America's Most Dangerous Drug*, NEWSWEEK, Aug. 8, 2005, at 41, 43 (internal quotation marks omitted) (quoting a speech by Attorney General Alberto Gonzales); see also Brisman, *supra* note 1, at 1288-90 (“Although there has been some debate as to whether meth can properly be considered an ‘epidemic,’ few can dispute that it has presented a particularly vexing problem for lawmakers, law enforcement, and public health officials, in part because its use has not been confined to a specific socioeconomic class of demographic region.” (footnotes omitted)); *Hearing Before the Subcomm. on Criminal Justice, Drug Policy, and Human Resources of the H. Comm. on Gov. Reform*, 109th Cong., 1 (2005) (statement of Scott M. Burns, Deputy Director, White House Office of National Drug Control Policy) [hereinafter Statement of Scott M. Burns] (“Methamphetamine is undeniably a uniquely destructive drug.”); OFFICE OF NAT’L DRUG CONTROL POLICY, FACTS & FIGURES: METHAMPHETAMINE, <http://www.whitehousedrugpolicy.gov/drugfact/methamphetamine/index.html> (last visited Mar. 6, 2008) [hereinafter ONDCP DRUG FACTS] (“According to the 2005 National Survey on Drug Use and Health (NSDUH), an estimated 10.4 million Americans aged 12 or older

consider methamphetamine the most significant problem facing our nation's communities.⁵ Methamphetamine production continues to grow rapidly and the drug presents significant dangers to individual users and local communities.⁶ This Comment will explore the effects of methamphetamine use and production and will consider effective legal solutions to address these problems.

Traditionally found in rural communities in the West,⁷ methamphetamine has spread rapidly across other parts of the country.⁸

used methamphetamine at least once in their lifetimes for nonmedical reasons, representing 4.3% of the U.S. population in that age group.”); OFFICE OF THE INSPECTOR GENERAL, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES METHAMPHETAMINE INITIATIVE, AUDIT REPORT 06-16 (Mar. 2006), <http://www.usdoj.gov/oig/reports/COPS/a0616/intro.htm> [hereinafter COPS AUDIT REPORT] (“Meth is currently the most prevalent manufactured illegal drug produced in the United States . . .”).

According to a recent survey conducted by the National Association of Counties, eighty-eight percent of law enforcement agencies report that methamphetamine related arrests have increased in the past five years. See ANGELO D. KYLE & BILL HANSELL, NAT. ASS'N OF COUNTIES, THE METH EPIDEMIC IN AMERICA: TWO SURVEYS OF U.S. COUNTIES: THE CRIMINAL EFFECT OF METH ON COMMUNITIES THE IMPACT OF METH ON CHILDREN 4 (2005), available at www.naco.org/Content/ContentGroups/publications1/surveys1/special_surveys/MethSurveys.pdf.

5. KYLE & HANSELL, *supra* note 4, at 4. This survey suggests that marijuana remains the number one drug according to federal officials, but that local law enforcement perceives methamphetamine as their “number one drug problem.” *Id.*

6. *Id.* at 5. For every meth lab discovered and terminated, ten more are created. *Id.*; see also *infra* note 12 (describing the effects of meth on users).

7. See FRANCO, *supra* note 3, at 1. The methamphetamine problem is “more pervasive in the West and Midwest than in the Northeastern part of the country,” but meth use “has spread to every state.” *Id.* One of the reasons methamphetamine is so popular in rural communities is the availability of a common fertilizer, anhydrous ammonia, which is a common ingredient for home grown methamphetamine. See Nicole Bettendorf, Note, *Methamphetamine Residue: Lack of Legislation Puts North Dakota and Minnesota Homeowners at Risk*, 81 N.D. L. REV. 525, 530 (2005); see also Rural Assistance Center, Rural Methamphetamine FAQs, http://www.raconline.org/info_guides/meth/methfaq.php (last visited Mar. 6, 2008) [hereinafter Meth FAQs]. According to the Rural Assistance Center, methamphetamine has spread rapidly in rural communities because abandoned farm houses, sheds, and barns provide the perfect locale for methamphetamine labs. *Id.* Additionally, these labs can go undetected for a long time because the fumes and other environmental hazards are not visible to law enforcement agents. *Id.*; see also Bettendorf, *supra*, at 537 (“The vast expanses of land in rural communities furnish the seclusion meth cooks need to go virtually undetected by law enforcement. The environment also allows meth cooks to mask the unpleasant odor and gaseous vapors released during the cooking process.” (footnotes omitted)).

8. NAT'L INST. ON DRUG ABUSE, RESEARCH REPORT SERIES: METHAMPHETAMINE ABUSE AND ADDICTION, at 2-3 (2006), available at <http://www.nida.nih.gov/PDF/RRMetham.pdf> [hereinafter NIDA RESEARCH REPORT]; see also FRANCO, *supra* note 3, at 1 (“While abuse of this drug may vary by region of the country, [methamphetamine] use has spread to every state . . .”); Brisman, *supra* note 1, at 1304-06 (“[M]eth has spread across the country to rural and urban areas in the South and Midwest, and, more recently, to urban areas in the East. Rural areas appear to have been hit the

Recent statistics illustrate that the drug continues to spread across the entire United States.⁹ Additionally, methamphetamine does not have a typical user.¹⁰ The drug is found among diverse populations from various racial, ethnic, and socio-economic backgrounds.¹¹ To each of its users, methamphetamine presents numerous health risks and can cause permanent physical and psychological damage.¹²

Crime statistics also reflect the increased use of methamphetamine. In 2005, 6,090 methamphetamine related arrests were reported by the Drug

hardest by meth manufacture, distribution, use and abuse" (footnotes omitted)); Note, *Cooking Up Solutions to a Cooked Up Menace: Responses to Methamphetamine in a Federal System*, 119 HARV. L. REV. 2508, 2511 (2006) ("The most striking changes in methamphetamine use . . . relate to its geographic scope. Although the West has faced a significant methamphetamine problem since the 1980s, the problem has spread eastward over the past fifteen years This changing geographic pattern is behind perceptions that the methamphetamine problem has suddenly become much more dangerous.").

9. OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, THE NSDUH REPORT: STATE ESTIMATES OF PAST YEAR METHAMPHETAMINE USE 1 (2006), available at <http://oas.samhsa.gov/2k6/StateMeth/StateMeth.cfm> [hereinafter NSDUH REPORT]. According to a recent survey of the Office of Applied Studies, an estimated 1.4 million people ages twelve and older have used methamphetamine in the past year. See *id.* at 2. This number represents 0.6% of the total population. *Id.* According to this report, rates of meth use were highest in Nevada, Montana, and Wyoming, with the lowest rates of use in Connecticut, Maryland, Massachusetts, New Jersey, and New York. *Id.* Comparing particular age groups, young adults ages eighteen to twenty-five were more likely to use methamphetamine than children ages twelve to seventeen and adults over age twenty-six. See *id.* at 1.

10. See Brisman, *supra* note 1, at 1289-90 (noting that the use of meth is not limited to a particular socioeconomic group).

11. See National Institute on Drug Abuse, *Methamphetamine Abuse Alert*, NIDA NOTES, Mar. 1999, available at http://www.nida.nih.gov/NIDA_Notes/NNVol15N6/tearoff.html ("[Methamphetamine use is] traditionally associated with white male blue-collar workers, methamphetamine reportedly is being used by diverse groups in all regions of the country.").

Hospital admission rates also reflect an increase in methamphetamine related admissions. See Note, *supra* note 8, at 2510-11 (noting that national admission rates illustrate a four-fold increase over the ten year period from 1993 to 2003).

12. See NIDA RESEARCH REPORT, *supra* note 8, at 4-6. According to the National Institute on Drug Abuse, the toxic effects of methamphetamine include damage to nerve terminals in the brain and a potentially dangerous increase in body temperature. See *id.* at 4. Chronic methamphetamine use can cause significant damage to the heart and brain cells, and may result in death. *Id.* at 4-5. After the "rush" of the drug wears off, the user may become highly agitated and the effects can often lead to violent behavior, sometimes producing homicidal or suicidal tendencies. COPS AUDIT REPORT, *supra* note 4, at 2. The user will often become paranoid, highly anxious, and may suffer from insomnia and paranoia. *Id.*; see also NIDA RESEARCH REPORT, *supra* note 8, at 5. In cases of extended use, psychotic symptoms may last several years beyond the use of the drug. NIDA RESEARCH REPORT, *supra* note 8, at 5. Additionally, using methamphetamine can increase the risk of contracting HIV/AIDS and Hepatitis. *Id.* at 6.

Enforcement Administration (DEA).¹³ Beyond the statistical rise of drug-related charges, methamphetamine use causes a statistical increase in other crimes, including robberies, burglaries, domestic violence, assault, and identity thefts.¹⁴

In addition to the growing number of users, the production of methamphetamine presents additional challenges to communities.¹⁵ Methamphetamine is produced in two primary locations—large scale “super labs” and individual “mom and pop” labs.¹⁶ Super labs engage in large scale production of the drug and produce a majority of the methamphetamine consumed in the United States.¹⁷ Mom and pop labs produce the remaining percentage of methamphetamine.¹⁸

Production of methamphetamine generates several collateral effects that further illustrate the particular dangers of the drug.¹⁹ Specifically, its production involves several highly volatile toxic substances which present a great risk for error and explosion, particularly in small laboratories.²⁰

13. ONDCP DRUG FACTS, *supra* note 4. During 2006, there were 5,396 federal defendants for methamphetamine related charges in U.S. Courts. *Id.* Furthermore, these numbers likely represent both an increase in use and trafficking of the drug: in 2006, “[a]pproximately 98% of the [methamphetamine related arrests] involved methamphetamine trafficking.” *Id.*

14. KYLE & HANSELL, *supra* note 4, at 5 (“Although the use of methamphetamines is itself a crime, there are several other crimes that have been increasing because of the prolific use of this drug. Seventy percent of the responding officials say that robberies or burglaries have increased because of meth use, while 62 percent report increases in domestic violence. In addition, simple assaults (53%) and identity thefts (27%) have also increased.”). Recognizing the growing spread of methamphetamine, the federal government has committed funds to address the problem. See COPS AUDIT REPORT, *supra* note 4, at 1, 5. From 1998 through 2005, the federal government committed more than \$385 million to address methamphetamine problems across the nation. See *id.* at 5.

15. See, Note, *supra* note 8, at 2512 (“The harms created by methamphetamine’s production process are potentially tragic and extend to victims far removed from those who use the drug.”).

16. FRANCO, *supra* note 3, at 3 n.8 (“A ‘superlab’ is one that is capable of producing 10 pounds or more of [meth] per production cycle.”); *id.* at 3 (defining “mom-and-pop” labs as “small domestic amateur labs”); see also Jean C. O’Connor, Jamie F. Chriqui & Duane C. McBride, *Developing Lasting Legal Solutions to the Dual Epidemics of Methamphetamine Production and Use*, 82 N.D. L. REV. 1165, 1171 (2006) (“Domestic production of methamphetamine can be broken down into two types: large production facilities . . . referred to by the Drug Enforcement Administration (DEA) as ‘super labs,’ and low-capacity or small toxic laboratories (STLS), often located in home environments.”).

17. See COPS AUDIT REPORT, *supra* note 4, at 1, 5.

18. See Note, *supra* note 8, at 2511.

19. See *id.* at 2512.

20. Lisa Scanga, *Drug Problem: Environmental Solution*, 22 PACE ENVTL. L. REV. 151, 153 (2005) (“The chemical components of methamphetamine are volatile and combustible; mishandling of even small amounts of these chemicals can result in fires and explosions.”). These toxic chemicals include acetone, hydrochloric acid, sodium

Additionally, its production creates substantial environmental harms that may have lasting impacts on the area surrounding a methamphetamine lab.²¹ Furthermore, mistakes in production can cause explosions that result in fires and other property damage.²²

Given the multiple harms that result from methamphetamine production, the drug poses threats to individuals beyond the drug user. More specifically, two classes of individuals most consistently suffer from the harms of methamphetamine production: children exposed to these drug infested environments, and neighbors of methamphetamine producers.²³

Children are affected in two primary ways: neglect from their parent users, and the physical effects of being at or near production of the drug.²⁴ Parental users are often so focused on maintaining their "high" that they neglect caring for their children.²⁵ Additionally, the use of

hydroxide, ether, anhydrous ammonia, cat litter, antifreeze, and drain cleaner. FRANCO, *supra* note 3, at 3; *see also* Geraldine Gardner, *Illegal Drug Laboratories: A Growing Health and Toxic Waste Problem*, 7 PACE ENVTL. L. REV. 193, 194 (1989) (noting the hazards presented by toxic waste from clandestine drug processing laboratories); Note, *supra* note 8, at 2512 ("The noxious mix of chemicals poses a significant danger of explosions. Moreover, these laboratories produce dangerous chemical waste byproducts that permeate the lab's surroundings . . .").

21. *See* Gardner, *supra* note 20, at 194 ("The illegal disposal of chemical waste from drug laboratories contaminates dwellings and pollutes the soil and water.").

22. *See* Scanga, *supra* note 20, at 153 ("Improper ventilation and temperature controls at off-site locations may add to the potential for fire, explosion, and human exposure.").

23. *See id.* at 163 ("Since the majority of 'mom and pop' lab sites are located in homes, children are often present and subjected to harmful chemicals, fumes, and increased risk of danger." (footnotes omitted)); *see also id.* at 158 ("Further, the toxic chemicals and by-products left behind after production are harmful to anyone who may be in the vicinity. Moreover, the general population is at risk of substantial harm due to the fact that environmental implications associated with manufacturing methamphetamine are often concealed and the effects can be far reaching."); Michael T. Flannery et al., *The Use of Hair Analysis to Test Children for Exposure to Methamphetamine*, 10 J. MED. & L. 143, 149 (2006) ("[M]ethamphetamine affects anyone exposed to an environment where methamphetamine is manufactured, possessed, or used. Most commonly, this includes children who live in homes with chronic users of methamphetamine, many of whom cook methamphetamine in the home.").

24. *See* COPS AUDIT REPORT, *supra* note 4; *see also* Flannery et al., *supra* note 23, at 166-83 (engaging in a thorough discussion of the serious effects of methamphetamine on children, including the risks of prenatal exposure, direct ingestion of the drug, environmental exposure, abuse from an adult user, and failure of treatment methods).

25. Mark Ells, Barbara Sturgis & Gregg Wright, *Behind the Drug: The Child Victims of Meth Labs*, 15 NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE (2002), available at <http://www.health.state.mn.us/divs/eh/meth/lab/ellsetal.pdf>; *see also* Brisman, *supra* note 1, at 1284 ("Some judges and child-protection workers refer to meth as the 'walk away' drug because meth-addicted parents, literally and figuratively, walk away from their caretaking duties and responsibilities.").

methamphetamine by pregnant mothers can create serious physical and health related problems for infants.²⁶

Children are particularly susceptible to health risks caused by exposure to methamphetamine production sites. Not only do children have weaker immune systems, they also are likely to play on contaminated surfaces, thus absorbing chemicals through hand-to-mouth contact.²⁷ If children are exposed to the poisonous gases that result from methamphetamine production, they can suffer chemical burns, severe breathing problems, and risk suffocation.²⁸

Methamphetamine production also poses a serious threat to the environment and the surrounding community.²⁹ Its production can

26. KYLE & HANSELL, *supra* note 4, at 4 (“Pregnancies of methamphetamine-addicted mothers can produce defects, low birth weight, attention deficit disorder, and other behavioral disorders.”).

27. Bettendorf, *supra* note 7, at 532; *see also* N.M. SENTENCING COMM’N, RESEARCH OVERVIEW: METHAMPHETAMINE PRODUCTION, PRECURSOR CHEMICALS, AND CHILD ENDANGERMENT 9 (Jan. 2004), *available at* <http://nmssc.unm.edu/publications/MethReview.pdf> (“A child living in a methamphetamine lab may inhale or swallow toxic substances, receive an injection or accidental skin prick from discarded needles or other drug paraphernalia, or absorb methamphetamine or toxic substances through his skin following contact with contaminated surfaces.”).

28. Bennett Clark, *States Confront Rising Meth Use and Production*, STATELINE.ORG, Sept. 3, 2003, <http://www.stateline.org/live/printable/story?contentId=15366>; *see also* Ells, Sturgis & Wright, *supra* note 25 (discussing the health risks for children exposed to methamphetamine production). The types of chemicals that may be involved in meth production and risk exposure to children include hydrochloric acid, sodium hydroxide, acetone, ether, and methyl alcohol. *Id.*; *see also* Bettendorf, *supra* note 7, at 532 (discussing the health dangers associated with methamphetamine labs).

In 2003, methamphetamine production endangered the lives of almost 3500 children, and sixty percent of children removed from labs tested positive for methamphetamine in their system. CARNEVALE ASSOCIATES LLC, POLICY BRIEF: CHILDREN ENDANGERED BY METHAMPHETAMINE, Oct. 2004, *available at* <http://www.carnevaleassociates.com/CAPolBrief-DEC.pdf>. According to the DEA’s El Paso Intelligence Center (EPIC), an average of 3500 children were affected annually by their proximity to methamphetamine labs from 2002 to 2004. COPS AUDIT REPORT, *supra* note 4.

29. *See* Bettendorf, *supra* note 7, at 544. The environmental effects of methamphetamine have been compared to those of lead-based paint. *Id.* It has been noted that the health risks and environmental hazards are quite similar, despite the distinct characteristics of each item. *Id.* As one commentator noted, communities should consider the effectiveness of clean up standards for lead based paint and consider a similar approach to methamphetamine:

Meth residue, similar to lead-based paint, is a “hidden danger,” threatening public health. Although meth has been in the United States for a substantial amount of time, like lead-based paint studies before the 1960s, the long-term health effects stemming from meth residue are generally unknown to the public. Similar to reports of lead poisoning around 1960, the adverse risks linked to meth residue are becoming a prevailing public health issue as the amount of anecdotal evidence increases. However, unlike lead-based paint legislation, neither federal

potentially produce five to ten pounds of toxic gases for each pound of methamphetamine produced.³⁰ Cooks may toss the toxic liquids down household drains and into the ground illegally,³¹ which can pollute nearby soil and ground water.³² Additionally, the combination of toxic, highly flammable ingredients can often lead to explosions and fires, putting neighbors and first responders at risk.³³ The average cost of clean-up for methamphetamine labs “typically ranges from \$2,000 to \$5,000 for individual sites and up to \$150,000 for a super lab site.”³⁴

In the United States, international methamphetamine trafficking is also on the rise, particularly from Mexico into the United States.³⁵ In the last decade, super labs have entered the illegal drug scene in Mexico and large quantities of methamphetamine have been produced and trafficked throughout the United States.³⁶ Large-scale producers of methamphetamine utilize highly sophisticated drug channels between the U.S.

nor state lawmakers have adequately addressed cleanup and disclosure requirements through meth legislation.

Id. at 548 (footnotes omitted).

30. Clark, *supra* note 28.

31. Meth FAQs, *supra* note 7.

32. Gardner, *supra* note 20, at 194; *see also* Bettendorf, *supra* note 7, at 531 (“Meth produces toxic sludge and liquid waste. These by-products pollute the soil and the meth cook burns or dumps meth residue on the property. For each pound of meth manufactured, approximately five to seven pounds of chemical waste are produced.” (footnotes omitted)).

Methamphetamine produced in small clandestine labs contaminates numerous surfaces at or near a lab site: “The contamination associated with an illegal lab includes floors, walls, ceilings, glassware, countertops, furniture, sinks, commodes, bathtubs, floor drains, fans, chimneys, soil, surface water, groundwater, sewer and stormwater systems, septic systems, cesspools, caves and mines.” Omar Saleem, *Killing the Proverbial Two Birds With One Stone: Using Environmental Statutes and Nuisance to Combat the Crime of Illegal Drug Trafficking*, 100 DICK. L. REV. 685, 699 (1996).

33. Brisman, *supra* note 1, at 1285.

34. COPS AUDIT REPORT, *supra* note 4.

35. *See* S. REP. NO. 106-404, at 6-7 (2000). Most methamphetamine in the United States “is produced in laboratories located in Mexico or California.” FRANCO, *supra* note 3, at 2; *see also* *Breaking the Methamphetamine Supply Chain: Law Enforcement Challenges: Hearing Before the S. Comm. on Finance*, 109th Cong. 1 (2006) (statement of Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration) [hereinafter Statement of Joseph T. Rannazzisi].

According to the DEA, approximately sixty-five to eighty percent of all methamphetamine consumed in the United States originates in Mexico. FRANCO, *supra* note 3, at 2. Mexico illegally imports not only the drug, but also its “precursor chemical,” pseudoephedrine. U.S. DRUG ENFORCEMENT ADMIN., METHAMPHETAMINE, http://www.dea.gov/concern/meth_factsheet.html (last visited Mar. 6, 2008).

36. *See* NAT’L DRUG INTELLIGENCE CTR., U.S. DEP’T OF JUSTICE, NATIONAL DRUG THREAT ASSESSMENT 2005 SUMMARY REPORT 11 (2005).

and Mexico, enabling distribution of the drug throughout America.³⁷ These large-scale Mexican labs often obtain the precursor chemicals from an international wholesale company.³⁸ The illicit methamphetamine market in the United States thus depends in part on the international suppliers of the precursor chemicals.³⁹

The presence of the drug both on the international market and in local clandestine labs creates significant challenges for law enforcement and drug officials who must address the war against methamphetamine on several fronts. This Comment explores the various methods employed to combat methamphetamine. First, this Comment considers the federal and state efforts to combat methamphetamine production. Then, this Comment explores the growing trend of targeting methamphetamine production using child abuse laws. Next, this Comment considers the use of nuisance law in efforts to combat illicit drug use. Finally, this Comment analyzes the effectiveness of using child abuse law and considers the value of employing nuisance theory. This Comment argues that child abuse laws, although helpful, are insufficient to address the external harms associated with methamphetamine production. Nuisance law, on the other hand, presents an opportunity for local communities to address the harms associated with small methamphetamine labs and provides superior remedies as compared to those available under child abuse laws.

I. FEDERAL AND STATE EFFORTS TO COMBAT METHAMPHETAMINE

A. Federal Efforts to Address Methamphetamine Production

Methamphetamine presents unique challenges to the nation and its communities because of the broad effects resulting from the drug's production. The two major arenas in which methamphetamine is produced—methamphetamine super labs and individual clandestine

37. See ONDCP DRUG FACTS, *supra* note 4; see also, MICHAEL M. SIMPSON, METHAMPHETAMINE LAB CLEAN-UP AND REMEDIATION ISSUES 3-4 (Mar. 13, 2006).

38. FRANCO, *supra* note 3, at 2. There are seven known companies that supply wholesale quantities of the precursor chemicals. *Id.* These companies are primarily located in Europe, Asia, and the Far East. *Id.* Once in Mexico, the chemicals are easily smuggled into the United States through pre-established drug channels. *See id.*

39. *See id.* The "super labs" are also distinct from "mom and pop" labs because of the quality of the methamphetamine they produce. The methamphetamine imported from Mexico and produced in the "super labs" is often referred to as "crystal meth." *See* Jane Carlisle Maxwell, *Methamphetamine: Epidemiological and Research Implications for the Legal Field*, 82 N.D. L. REV. 1121, 1122 (2006); *see also* 152 CONG. REC. H423 (daily ed. Feb. 28, 2006) (statement of Rep. Souder). This pure form of methamphetamine is more potent than home-grown methamphetamine. *See* 152 CONG. REC. H423. Although not as dangerous to the environment or to people in its vicinity, this form of methamphetamine is highly addictive and more damaging to the individual user. *Id.*

mom and pop labs—each present unique challenges to state and federal agencies.⁴⁰

1. Addressing Precursor Chemicals

One consistent area of focus for federal efforts is the desire to limit accessibility to the precursor chemicals used in methamphetamine production. The “common denominator” between individual labs and super-labs is their ability to access the precursor chemicals used to make the drug.⁴¹ Precursor chemicals can be easily obtained because they are found in over-the-counter cold medicines that serve legitimate medical purposes.⁴² Much of the federal legislation addressing methamphetamine in the past decade, therefore, has involved the regulation of the chemicals used to produce methamphetamine.

Congress has passed several pieces of legislation in the last decade to address access to precursor chemicals.⁴³ Congress’ most recent legislation was signed into law by President Bush in 2006.⁴⁴ The Combat Methamphetamine Epidemic Act of 2005 limits the threshold level required for criminal liability for purchases of the precursor chemicals and also imposes other strict limitations such as the required use of a purchaser’s log.⁴⁵ This Act has been described as “the largest and most

40. See Statement of Joseph T. Rannazzisi, *supra* note 35, at 1-2. The individual labs are also referred to as small toxic laboratories (STLs). *Id.* at 2; see also O’Connor, Chriqui & McBride, *supra* note 16, at 1171.

41. Statement of Joseph T. Rannazzisi, *supra* note 35, at 1-2. Three primary chemicals used in the production of methamphetamine are ephedrine, pseudoephedrine, and phenylpropanolamine. *Id.*; see also FRANCO, *supra* note 3, at 2.

42. FRANCO, *supra* note 3, at 2. Common cold medicines that contain these precursor chemicals include Sudafed, NyQuil, and Claritin-D. *Id.* at 2 n.6.

43. See Comprehensive Methamphetamine Control Act of 1996, Pub. L. No. 104-237, 110 Stat. 3099 (codified as amended at 21 U.S.C. § 801 (2000)). The Comprehensive Methamphetamine Control Act amended the Controlled Substances Act of 1970 so that it would also apply to the precursor chemicals. *Id.* § 204(a), 110 Stat. at 3102. The Act also increased penalties for trafficking and manufacturing both methamphetamine and its precursor chemicals. *Id.* §§ 301-03, 110 Stat. at 3105-06.

In 2000, Congress reduced the threshold level required for criminal liability for purchases of the precursor chemicals by passing the Methamphetamine Anti-Proliferation Act. Children’s Health Act of 2000, Pub. L. No. 106-310, 114 Stat. 1101 (codified as amended in scattered sections of 21, 28, and 42 U.S.C. (2000)). This legislation also provided for federal and state training programs for law enforcement officers exposed to clandestine labs. *Id.* § 3623, 114 Stat. at 1231-32.

44. Combat Methamphetamine Epidemic Act of 2005, Pub. L. No. 109-177, 120 Stat. 256 (codified as amended in scattered sections of 21, 22, and 42 U.S.C. (2000)).

45. *Id.* Prior to the passage of this federal legislation establishing national standards for the sale of precursor chemicals, individual states also passed legislation that made it more difficult to purchase the precursor chemicals. See *Drugs in the Midwest: The Other Mexican Wave*, ECONOMIST, Sept. 30, 2006, at 40. These state laws and regulations include: limiting the quantity of drugs containing precursor chemicals that may be

comprehensive legislation ever done by a United States Congress on methamphetamine.”⁴⁶

2. *Attacking International Sources*

Increasingly, national drug policies and DEA efforts have focused on the challenges imposed by super labs, particularly those involved in cross-border activity.⁴⁷ The DEA, in particular, is focusing on the growing international problems arising from methamphetamine production.⁴⁸ The DEA has worked jointly with law enforcement officials in Canada and Mexico to control and monitor the importation of pseudoephedrine into American super labs.⁴⁹ Because Mexico houses some of the largest methamphetamine super labs, the DEA is partnering with Mexican officials to improve training, equipment, and other resources for Mexican law enforcement agents.⁵⁰

purchased, see, for example, ALA. CODE § 20-2-190(c)(3)(2) (LexisNexis 2006) (limiting sales to no more than two packages and not more than six grams per sale); imposing age limits on purchasers, see, for example, 720 ILL. COMP STAT. § 648/20 (West Supp. 2007) (requiring that any person purchasing, receiving, or otherwise acquiring any such substance shall be age eighteen or older, provide proper identification, and sign a purchase log), requiring the drugs to be held in areas with restricted access, see, for example, GA. CODE ANN. § 16-13-30.3(b.1)(1) (2007) (requiring that precursor chemicals be sold from behind a counter or other type of barrier).

46. 152 CONG. REC. H422, (daily ed. Feb. 28, 2006) (statement of Rep. Mark Souder). Representative Souder went on to discuss the concern that the Bush Administration was not “responding aggressively enough” to the threat of the methamphetamine entering the country and produced in “mom and pop” laboratories. *Id.*

47. See Statement of Joseph T. Rannazzisi, *supra* note 35, at 5; see also Brisman, *supra* note 1, at 1347 (noting the coordination between U.S. and Mexican officials regarding methamphetamine trafficking).

48. See Statement of Joseph T. Rannazzisi, *supra* note 35, at 5 (“The manufacture and use of methamphetamine is not a problem confined to the United States but one that has spread to many regions of the world [T]he illicit manufacture of methamphetamine is spreading throughout the world at an alarming rate.”).

49. *Id.* The DEA is also creating partnerships with the international community to target large-scale methamphetamine producers. See Statement by Scott M. Burns, *supra* note 4, at 2 (“DEA officials recently negotiated an arrangement with top officials from Hong Kong, Panama and Mexico. Additionally, various information-sharing arrangements have been negotiated with the countries that supply the largest amounts of otherwise-legal chemicals used in making methamphetamine: China and India.”).

50. Statement of Scott M. Burns, *supra* note 4, at 2. Recently, the DEA hosted a methamphetamine laboratory safety training class for Mexican law enforcement agents in Quantico, Virginia. Press Release, Drug Enforcement Agency, First Mexican Law Enforcement Officials Graduate from DEA Academy Anti-Meth Training in U.S. (Sept. 15, 2006), available at <http://www.dea.gov/pubs/pressrel/pr091506.html>. Forty-nine Mexican law enforcement officers and six prosecutors attended the month-long training. *Id.* In addition to this training, “since July 2006, DEA has trained over 300 Mexican officials in Mexico City on precursor chemical investigations and clan lab familiarization.”

Methamphetamine has also gained the attention of the United Nations. In 2006, the United Nations Commission on Narcotic Drugs adopted a resolution calling for a commitment to limit access to the drug's precursor chemicals.⁵¹ Specifically, the U.N. Commission requested member states to provide annual statistics of their imports of precursor chemicals and share shipment information, and called for ongoing financial assistance from the Secretary-General.⁵²

3. Harsher Penalties Under Drug Laws

Federal efforts have also included harsh sentencing for methamphetamine users.⁵³ The Methamphetamine Trafficking Penalty Enhancement Act of 1998 lowered the quantity thresholds for mandatory minimum penalties,⁵⁴ and the Methamphetamine Anti-Proliferation Act of 2000 directed the United States Sentencing Commission to increase the mandatory minimum for methamphetamine offenses under the federal sentencing guidelines.⁵⁵ In response, the Sentencing Commission revised the Guidelines to allow for a sentence enhancement for any methamphetamine production offense where the prosecution demonstrates that the production created a "substantial risk of harm to [] human life . . . or [] the environment."⁵⁶

Id. The DEA stated that such training programs were planned to continue in future months. *Id.*

The DEA made similar efforts with Canadian officials, though the implementation of Operation Northern Star in 2003, to address the influx of precursor chemicals entering the United States from its northern border. Statement of Scott M. Burns, *supra* note 4, at 3.

51. Strengthening Systems for the Control of Precursor Chemicals Used in the Manufacture of Synthetic Drugs, U.N. Commission on Narcotic Drugs, Res. 49/3, U.N. Doc. E/CN.7/2006/10 (July 10, 2006).

52. *Id.* ¶¶ 1, 9.

53. Note, *supra* note 8, at 2518 ("[The federal government] has been in the vanguard on aggressively sentencing those trafficking in methamphetamine."); see also Lauren Grau, Comment, *Cutting off the Building Blocks to Methamphetamine Production: A Global Solution to Methamphetamine Abuse*, 30 HOUS. J. INT'L. L. 157, 177-78 (2007) (noting federal efforts targeting penalties for methamphetamine users and producers).

54. Pub. L. No. 105-277, 112 Stat. 2681-759 (1998) (codified as amended at 21 U.S.C. §§ 841, 960, and 42 U.S.C. § 13705 (2000)).

55. Pub. L. No. 106-310, § 3612(a)(2), 114 Stat. 1227, 1229 (2000).

56. U.S. SENTENCING GUIDELINES MANUAL § 2D1.1(b)(8)(B) (2006). Although it is not mandatory for a judge to sentence in accordance with the guidelines, sentencing courts still must consider them in making sentencing determinations. See *United States v. Booker*, 543 U.S. 220, 245-46 (2005) ("[T]he federal sentencing statute makes the Guidelines effectively advisory. It requires a sentencing court to consider Guidelines ranges but it permits the court to tailor the sentence in light of other statutory concerns as well." (citations omitted)). For example, in *United States v. Chamness*, 435 F.3d 724 (7th Cir. 2006), the Seventh Circuit affirmed a judge's application of the sentence enhancement to a criminal defendant who pled guilty on two counts of knowingly attempting to manufacture meth. See *id.* at 729. There, a hazardous waste removal team was needed to

4. Federal Funding and Other Support for State Efforts

The DEA, in partnership with other federal and state agencies, has also initiated federal programs that provide both technical assistance and federal grants to directly combat methamphetamine use and production.⁵⁷ For example, in fiscal year 2006, Congress allocated \$63.6 million to the Meth Hot Spots program, a program directly targeting areas with high methamphetamine traffic.⁵⁸ In addition to these targeted funds, other DOJ grant programs have offered financial support to anti-methamphetamine efforts.⁵⁹ The financial assistance provided by these programs is impressive—from 2000 to 2005, the DOJ provided over 470 grants totaling \$263.8 million.⁶⁰

B. State Efforts to Address Methamphetamine Production

States face unique problems associated with the use and production of methamphetamine.⁶¹ Over the past decade, states have supplemented federal efforts by considering creative alternatives to address the uniquely local problems facing their particular communities. In 2005, thirty-eight states passed legislation concerning methamphetamine use or production.⁶² This legislation has addressed availability of precursor chemicals, heightened penalties for individuals convicted of methamphetamine related crimes, created penalties for environmental

disassemble the trailer home in which the meth was being produced. *Id.* at 725. The sentencing judge considered the quantity of the hazardous material and its proximity to other homes and people in reaching his conclusion that Chamness' drug operation presented a substantial risk of harm to others and the environment. *Id.* at 727-29.

57. See FRANCO, *supra* note 3, at 3 (providing an overview of federal programs aimed at combating illicit methamphetamine use and production). For example, the Office of Community Oriented Policing Services (COPS), under the Department of Justice, created the "Meth Hot Spots" initiative. See *id.* at 4. This program exclusively offers grants to state and local law enforcement to support anti-methamphetamine programs and initiatives. *Id.* From 1998 to 2004, the COPS program granted more than \$350 million nationwide. *Id.*

58. H.R. REP. NO. 109-272, at 101 (2005) (Conf. Rep.).

59. See FRANCO, *supra* note 3, at 4. The DEA has also implemented programs addressing the risks associated with exposing children to methamphetamine-using parents. See Statement of Scott M. Burns, *supra* note 4, at 3. For example, the DEA initiated the "Drug Endangered Children" (DEC) program, which provides funding to help children exposed to methamphetamine users. *Id.* So far, twenty-five states have implemented these DEC programs and the DEA hopes to expand the program further. *Id.*

60. See FRANCO, *supra* note 3, at 4.

61. See Note, *supra* note 8, at 2513. It has been noted that many of the local effects of methamphetamine production present challenges that traditionally have been addressed through the states' police power. *Id.* ("Methamphetamine producers endanger the safety of sheriff's deputies and paramedics entering the laboratories; they pollute local water supplies; and they leave local homes unfit for habitation.")

62. *Id.*

harms caused by production of the drug, and supported other policy-related efforts to address the drug's impact in communities.⁶³

1. States Addressing Precursor Chemicals

State efforts to address the precursor chemicals were among the first responses to the growing methamphetamine problem.⁶⁴ States imposed various limits on the sale of precursor chemicals. Some states attempted to limit the amount of precursor chemicals that could be purchased in a single transaction.⁶⁵ Others required pharmacies to keep medicines containing the precursor chemicals behind the counter and under the supervision of store employees.⁶⁶ States have not all followed the same model, but their goals remain consistent with federal efforts to cut off methamphetamine producers' supply of precursor chemicals.⁶⁷

63. *Id.* at 2513-14; *see, e.g.*, 720 ILL. COMP. STAT. 648/20 (West Supp. 2007) (restricting the sale of any medicine containing pseudoephedrine or other methamphetamine precursor chemicals); IOWA CODE ANN. § 124.212 (West 2006) (requiring identification and limiting quantity of pseudoephedrine available for over-the-counter purchases).

64. *See, e.g.*, ALA. CODE § 20-2-190 (LexisNexis 2006); ALASKA STAT. § 11.71.210 (2006); ARIZ. REV. STAT. ANN. § 13-3404.01 (Supp. 2007); CAL. HEALTH & SAFETY CODE § 11383.5 (West 2007); COLO. REV. STAT. § 18-18-412.5 (2007); DEL. CODE ANN. tit. 16, § 4740 (Supp. 2006); FLA. STAT. § 893.1495 (West Supp. 2008); GA. CODE ANN. § 16-13-30.3 (2007); HAW. REV. STAT. ANN. § 329-61 (LexisNexis Supp. 2007); IDAHO CODE ANN. § 37-3302 (Supp. 2007); IND. CODE ANN. § 35-48-4-14.7 (LexisNexis Supp. 2006); IOWA CODE ANN. § 124.213 (West 2007); KY. REV. STAT. ANN. § 218A.1437 (LexisNexis 2007); LA. REV. STAT. ANN. § 40:962.1.2 (Supp. 2008); ME. REV. STAT. ANN. tit. 32, § 13796 (Supp. 2007); MICH. COMP. LAWS ANN. § 333.7340 (West Supp. 2007); MISS. CODE ANN. § 41-29-313 (West 2007); MO. ANN. STAT. § 195.417 (West Supp. 2008); MONT. CODE ANN. § 45-9-107 (2007); NEB. REV. STAT. ANN. § 28-456 (LexisNexis Supp. 2008); N.J. STAT. ANN. § 2C: 35-25 (West Supp. 2007); NY PENAL LAW § 220.72 (McKinney Supp. 2008); N.C. GEN. STAT. § 90-113.52 (2007); N.D. CENT. CODE § 19-03.4-08 (Supp. 2007); OHIO REV. CODE ANN. § 2925.55 (LexisNexis Supp. 2007); OKLA. STAT. ANN. tit. 63, § 2-322 (West 2004); OR. REV. STAT. § 475.973 (2007); S.C. CODE ANN. § 44-53-375(E) (Supp. 2007); S.D. CODIFIED LAWS § 34-20D-1 (Supp. 2007); TENN. CODE ANN. § 39-17-431 (2006); TEX. HEALTH & SAFETY CODE ANN. § 486.013 (Vernon Supp. 2007); UTAH CODE ANN. § 58-37c-20.5 (2007); VT. STAT. ANN. tit. 18, § 4234b (Supp. 2007); VA. CODE ANN. § 18.2-248.8 (Supp. 2007); WASH. REV. CODE ANN. § 69.43.105 (West 2007); W. VA. CODE ANN. § 60A-10-4 (LexisNexis 2005); WIS. STAT. ANN. § 961.235 (West 2007); WYO. STAT. ANN. § 35-7-1059 (2007).

65. *See, e.g.*, MO. ANN. STAT. § 195.417 (West 2004 & Supp. 2007); *see also* Note, *supra* note 8, at 2514 & n.38 (citing the Missouri law).

66. *See, e.g.*, OKLA. STAT. ANN. tit. 63, § 2-212 (West Supp. 2007).

67. *See* Note, *supra* note 8, at 2517-19.

2. *Enhancing Criminal Penalties*

Similar to federal legislation, states have also increased criminal penalties for the use and production of methamphetamine.⁶⁸ Several states have specifically increased prison sentences for individuals convicted of methamphetamine use.⁶⁹ In addition to sentencing increases, Kansas, for example, also increased bail and pre-trial release conditions.⁷⁰

3. *Addressing Environmental Harms*

Several states have also passed legislation to address the environmental harms associated with methamphetamine. Many states have specific clean-up standards when a methamphetamine lab is discovered.⁷¹ Furthermore, states are imposing statutory duties on property owners to disclose whether property has previously been used as a methamphetamine production site.⁷²

4. *Addressing the Effects on Individuals Exposed to the Production of Methamphetamine*

Much of the state legislation passed to address methamphetamine has focused on the particular effects of the drug on children. For example, Missouri passed a law in 2003 making it a felony to produce

68. Clark, *supra* note 28 (“State legislators have responded with laws that stiffen the penalties for making the drug . . .”).

69. See, e.g., TENN. CODE ANN. § 39-17-417 (2005); see also Johnny Brannon, *Mandatory Prison Terms Fail to Fully Deter Ice Users*, HONOLULU ADVERTISER, Jan. 20, 2004, <http://the.honoluluadvertiser.com/article/2004/Jan/20/ln/ln08a.html> (discussing the effectiveness of Hawaii’s increased prison terms for methamphetamine users).

70. KAN. STAT. ANN. § 65-7006(d) (Supp. 2006) (“[T]he court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.”); see also Note, *supra* note 8, at 2515 & n.46 (citing the Kansas statute).

71. See, e.g., CAL. HEALTH & SAFETY CODE § 25400.16(a)-(b) (West 2006) (“Property contaminated by methamphetamine laboratory activity is safe for human occupancy for purposes of this chapter only if the level of methamphetamine on any indoor surface is less than, or equal to, 0.1 micrograms per 100 square centimeters.”); 6 COLO. CODE REGS. § 1014-3(7.0) (2005) (“Surface wipe samples and vacuum samples for methamphetamine shall not exceed a [specified] concentration . . .”); see also Note, *supra* note 8, at 2515 & n.50 (citing the California and Colorado statutes).

72. See, e.g., NEV. REV. STAT. ANN. § 40.770(6) (LexisNexis 2006) (noting that information regarding property that was a methamphetamine lab is not material to a transaction so long as the property has been remediated and/or deemed habitable by a government entity); OKLA. STAT. ANN. tit. 60, § 833(B)(1)(h) (West Supp. 2007) (requiring seller to disclose any actual knowledge of defects in the property including the “existence of prior manufacturing of methamphetamine”); see also Note, *supra* note 8, at 2515 & n.50 (citing the Nevada and Oklahoma statutes).

methamphetamine within two thousand feet of a school.⁷³ Several other states have passed legislation that classifies methamphetamine production in the presence of a child as a felony.⁷⁴ Child endangerment has emerged as a significant area of focus for state efforts addressing methamphetamine production.⁷⁵ This Comment will now explore how states are applying child abuse laws to methamphetamine production and why.

II. METHAMPHETAMINE AND CHILD ABUSE

Methamphetamine poses a serious threat to children who are either exposed to the drug's production or are raised by the drug's users.⁷⁶ Although some statistics have shown that methamphetamine users are more likely to commit child abuse,⁷⁷ federal and state efforts to address the issue of child abuse associated with methamphetamine have focused on the production of the drug.⁷⁸ To address the particular concerns raised by child exposure to methamphetamine, states have prosecuted

73. MO. ANN. STAT. § 195.211(2) (West 2004). Hawaii similarly passed a law making the manufacturing of methamphetamine within 750 feet of a school a felony. *See* HAW. REV. STAT. ANN. § 712-1249.6(1)(d) (LexisNexis 2007); *see also* Clark, *supra* note 28.

74. *See, e.g.*, ARK. CODE ANN. § 5-27-230(b)(1) (2006) (establishing child exposure of methamphetamine as a class C felony); CAL. HEALTH & SAFETY CODE § 11379.7(a) (West 2007) (adding two years to the traditional felony sentence for methamphetamine production when a child is present); GA. CODE ANN. § 16-5-73(b)(1) (West Supp. 2006) (establishing intentional child exposure to methamphetamine production as a felony punishable by a minimum of two and a maximum of fifteen year sentence); ILL. COMP. STAT. ANN. 646/50(a)-(b) (West Supp. 2007) (providing methamphetamine related child-endangerment and aggravated methamphetamine related child endangerment as felonies under state law); MINN. STAT. ANN. § 152.137 (West Supp. 2006) (prohibiting an adult from knowingly engaging in the production of methamphetamine in a child's presence or exposing a child to methamphetamine); NEB. REV. STAT. § 28-457(h)(2)-(5) (Supp. 2006) (establishing a first time conviction of exposing a child to methamphetamine as a misdemeanor and any subsequent conviction a felony; if the child suffers serious bodily injury, it is a felony); VA. CODE ANN. § 18.2-248.02 (Supp. 2007) (making it a felony for an adult with a custodial relationship over a child to expose the child to methamphetamine production); WASH. REV. CODE ANN. § 9A.42.100 (West Supp. 2007) (establishing child exposure to methamphetamine and its precursor chemicals as a Class B felony).

75. *See infra* Part II.A.

76. *See supra* notes 24-28 and accompanying text.

77. *See* N.M. SENTENCING COMM'N, *supra* note 27, at 9-10 (noting that "[c]hildren living in methamphetamine labs are also at increased risk for neglect and physical and sexual abuse by members of their own families and other known individuals with access to the site"). Approximately twenty-one states have defined methamphetamine use and production as child abuse or neglect. *See Methamphetamine as Child Abuse Laws Gain Ground, But Do They Help or Hurt?*, STOPTHEDRUGWAR.ORG, July 14, 2006, available at <http://stopthedrugwar.org/chronicle/444/drug-child-abuse-laws.shtml>. Some of these laws focus on the actual production of the drug in the presence of children, while others consider exposure to any drug paraphernalia or other drug-related activity. *Id.*

78. *See* N.M. SENTENCING COMM'N, *supra* note 27, at 10-11.

the offender on both drug and child abuse grounds.⁷⁹ Some states apply the rationale of traditional child abuse law to the particular facts of a case.⁸⁰ Other states are beginning to amend their existing child abuse statutes to explicitly include exposure to methamphetamine.⁸¹

A. Applying Traditional Child Abuse Statutes

In states such as California that have not amended their child abuse statutes to specifically include methamphetamine, courts have nevertheless successfully applied traditional child abuse laws to methamphetamine production.⁸² In *People v. Toney*, a California appeals court upheld a felony child abuse conviction where police found evidence

79. An approach receiving significant attention by local and state officials is the creation of multidisciplinary task forces. See *Fighting Meth in America's Heartland: Assessing the Impact on Local Law Enforcement and Child Welfare Agencies, Hearing Before the Subcomm. on Criminal Justice, Drug Policy and Human Resources of the H. Comm. on Gov't Reform*, 109th Cong. 3 (2005) (statement of Laura J. Birkmeyer, Chair, National Alliance for Drug Endangered Children) [hereinafter statement of Laura J. Birkmeyer]. Several states have created multidisciplinary teams to address the unique challenges affecting drug-endangered children. *Id.* at 5. Conceptually, these teams aim to bring together a network of professionals including law enforcement, child welfare agents, medical personnel, and prosecutors. *Id.* This multidisciplinary team concept was first implemented in Butte County, California, in 1997. *Id.* at 3.

These multidisciplinary teams emerged as a response to the particular challenges associated with the initial discovery of a methamphetamine lab in the presence of children. *Id.* Specific training and attention is required for child abuse professionals to handle the situation created when a child is found at the scene of a methamphetamine lab. *Id.* First responders to methamphetamine labs, however, tend to be criminal law enforcement agents. See *id.* Such narcotic agents may not have adequate training to handle the specific child abuse issues presented when first discovering a methamphetamine lab. *Id.* Furthermore, law enforcement and child service agencies may experience strained relationships in particular jurisdictions. *Id.* Competing goals in prosecutors' offices may lead to charges filed under narcotic laws without considering the availability of child abuse charges. See *id.* ("Often, lacking the appropriate reports and medical records, prosecutors overlook the need to file child endangerment charges or lack the training to put together a successful case.").

As of June 2005, approximately twenty-five states have implemented multidisciplinary teams to address the unique challenges affecting drug-endangered children. *Id.* at 5.

80. See Part I.C.1.

81. See Part I.C.2.

82. See *People v. Marmom*, No. C043559, 2004 WL 2699968, at *1-2 (Cal. Ct. App. Nov. 29, 2004) (upholding defendant's guilty plea to felony child abuse where evidence was found that a child lived in an adjoining unit of a duplex used for the production of methamphetamine); *People v. Michl*, No. C043985, 2003 WL 22476328, at *1 (Cal. Ct. App. Nov. 3, 2003) (holding that exposure to methamphetamine production site was sufficient to establish felony child abuse); *People v. Toney*, 90 Cal. Rptr. 2d 578, 581 (Ct. App. 1999) (same). For California's child abuse statute, see CAL. PENAL CODE § 273(a) (West 1999).

that a child was present at the site of a methamphetamine lab.⁸³ The defendant was also convicted of possession of cocaine and marijuana, and possession of methamphetamine with intent to distribute and was subsequently sentenced to five years in prison.⁸⁴ In this case, evidence that the defendant could manufacture methamphetamine in a location where his step-son visited was sufficient to demonstrate that the defendant willfully placed the child in an environment endangering the child's health.⁸⁵

The *Toney* court also discussed the public policy rationales that supported its findings.⁸⁶ Specifically, the court noted that children should be protected "against risks they cannot anticipate."⁸⁷ The court noted that it is sometimes "impossible to protect the children residing in [a] house from their natural curiosity concerning 'wires, guns, dogs and chemicals,' or the home's general lack of safety precautions."⁸⁸ The court went on to explain that the policy aim behind felony child abuse is "to protect the members of a vulnerable class from abusive situations in which serious injury or death is likely to occur."⁸⁹ According to the *Toney* court, evidence that a child was exposed to methamphetamine production was sufficient to hold a defendant guilty under California's child abuse laws.⁹⁰

To prosecute child exposure to methamphetamine production in California, a prosecutor must charge both felony child abuse and illegal manufacture of methamphetamine.⁹¹ Even though California has not

83. *Toney*, 90 Cal. Rptr. 2d at 580-81. In this case, the prosecutor did not have to prove that meth was actually being produced—only the presence and storage of the chemicals at the location where a child was found. *Id.* at 581. The California felony child abuse statute in part reads:

Any person who, under circumstances or conditions likely to produce great bodily harm or death, . . . having the care or custody of any child, willfully causes or permits the person or health of that child . . . to be placed in a situation where his . . . person or health is endangered, shall be punished by imprisonment . . .

CAL. PENAL CODE § 273a(a).

84. *Toney*, 90 Cal. Rptr. 2d at 580.

85. *Id.* at 581.

86. *Id.*

87. *Id.*

88. *Id.* (quoting *People v. Odom*, 277 Cal. Rptr. 265, 267 (Ct. App. 1991)).

89. *Id.* (internal quotation marks omitted) (quoting *People v. Heitzman*, 886 P.2d 1229, 1238 (Cal. 1994)) (discussing the similarities between the elder abuse and felony child abuse statutes).

90. *Id.*

91. See CAL. HEALTH & SAFETY CODE § 11379.6 (West 2007) (providing that the manufacturing or production of methamphetamine shall be punishable by a sentence of three, five, or seven years and a fine not exceeding \$50,000); CAL. PENAL CODE § 273a(a) (providing that child abuse shall be punishable by a sentence of not more than one year in a county jail or two, four, or six years in state prison).

explicitly amended its child abuse laws, the state code does establish that producing methamphetamine in a minor's presence is an aggravating factor to be considered in sentencing.⁹² As the court in *Toney* noted, compelling public policy rationales support using child abuse laws in methamphetamine production cases.

B. Amending Child Abuse Statutes to Include Methamphetamine

Several states have passed specific legislation to address the problems methamphetamine causes children. In Arizona, for example, a state law imposes strict liability when a person places a child in a location used to manufacture methamphetamine.⁹³ The State of Washington created a felony charge applicable to anyone who exposes a child to methamphetamine or its precursor chemicals.⁹⁴ North Dakota and Tennessee have similar laws.⁹⁵

Tennessee courts have frequently used the state's amended statute to prosecute child abuse cases involving methamphetamine.⁹⁶ In *In re Meagan E.*, the court terminated a mother's parental rights after conclusive evidence showed that the mother exposed her child to a methamphetamine lab while living with her boyfriend.⁹⁷ When police conducted a consensual search of the home, they found that methamphetamine had been cooked within the previous twenty-four hours and that many of the ingredients were within the child's reach.⁹⁸ The court held that the mother was guilty of severe child abuse under the Tennessee child abuse statute.⁹⁹ In its discussion, the court noted that it

92. See CAL. HEALTH & SAFETY CODE § 11379.6(b).

93. ARIZ. REV. STAT. ANN. § 13-3623(C) (Supp. 2006). This section creates a presumption of endangerment whenever a toxic substance is being produced in the presence of a child or vulnerable adult. *Id.*

94. WASH. REV. CODE ANN. § 9A.42.100 (West Supp. 2007) ("A person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers, that are being used in the manufacture of methamphetamine, including its salts, isomers, and salts of isomers. Endangerment with a controlled substance is a class B felony.").

95. N.D. CENT. CODE § 19-03.1-22.2 (2004); TENN. CODE ANN. § 37-1-102(21) (2006) (classifying exposure to methamphetamine production as severe child abuse). Under Tennessee law, severe child abuse includes physical abuse, mental or emotional abuse, sexual abuse, and exposure to methamphetamine production. TENN. CODE ANN. § 37-1-102(21).

96. See, e.g., *In re Meagan E.*, No. E2005-02440-COA-R3-PT, 2006 WL 1473917, at *4-5 (Tenn. Ct. App. May 30, 2006); see also *In re E.H.*, No. W2004-00514-COA-R3-PT, 2005 WL 181665, at *3 (Tenn. Ct. App. Jan. 26, 2005).

97. *In re Meagan E.*, 2006 WL 1473917, at *1.

98. *Id.*

99. *Id.* at *4-5.

was irrelevant whether the child was actually present at the time the drug was manufactured.¹⁰⁰ Instead, the court noted that the goal of the statute was “to protect children from being present in structures containing meth labs.”¹⁰¹ The court went on to note that “[t]he harmful effects of meth linger long after the actual creation has been completed.”¹⁰² In this case, the young child had suffered severe sinus problems, upper respiratory infections, and other symptoms consistent with methamphetamine exposure, all of which lend credence to the court’s decision.¹⁰³

C. Remedies Available When Applying Child Abuse Law

One of the key features of using child abuse laws to prosecute methamphetamine producers is the opportunity to increase the range of penalties imposed on a defendant. Traditionally, prosecutors would charge methamphetamine producers with production of an illegal substance under state narcotics laws.¹⁰⁴ Although states vary greatly in the range of time sentenced, most statutes carry a prison sentence of some length.¹⁰⁵ By applying child abuse laws to these offenders, states are introducing a penalty not typically available under narcotics laws—termination of parental rights.¹⁰⁶

100. *Id.* at *5.

101. *Id.*

102. *Id.*; *see also id.* (“Officer Hill testified that meth absorbs into ‘anything porous,’ such as carpet, sheetrock, stuffed toys, and bedding.”).

103. *Id.*

104. *See, e.g.,* ARK. CODE ANN. § 5-64-401 (2005) (providing sentences ranging from ten to forty years); CAL. HEALTH & SAFETY CODE § 11379.6 (West 2007) (providing sentences of either three, five, or seven years and up to a \$50,000 fine); COLO. REV. STAT. § 18-18-405 (1)(a) (2006) (providing that the manufacture, distribution, or possession of a controlled substance shall be unlawful).

105. *See supra* note 68 and accompanying text.

106. *See, e.g.,* ALA. CODE § 26-18-7(a) (LexisNexis 1992) (“If the court finds from clear and convincing evidence, competent, material and relevant in nature, that the parents of a child are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents is such as to render them unable to properly care for the child and that such conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parents.”); KAN. STAT. ANN. § 38-2269(a) (Supp. 2006) (“When the child has been adjudicated to be a child in need of care, the court may terminate parental rights or appoint a permanent custodian when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.”).

III. NUISANCE LAW

Methamphetamine labs also pose health, safety, and environmental risks to local communities.¹⁰⁷ It has been argued that nuisance law is a valuable tool to address illicit drug use.¹⁰⁸ Generally, nuisance law addresses the invasion of another's interest in the private use and enjoyment of his or her real property.¹⁰⁹ There are two primary forms of nuisance law: public and private nuisances. Public nuisance claims are actions brought by the state to address the invasion of rights common to all members of the public.¹¹⁰ Public nuisance actions can be brought either civilly or criminally.¹¹¹ Although both actions are typically brought

107. See Gardner, *supra* note, 20 at 194-95 (discussing examples where neighbors to methamphetamine labs were harmed by explosions and fires).

108. See Suzanne G. Lieberman, Note, *Drug Dealing and Street Gangs—The New Nuisances: Modernizing Old Theories and Bringing Neighbors Together in the War Against Crime*, 50 WASH. U. J. URB. & CONTEMP. L. 235, 259-64 (1996). “Historically, nuisance law was used to close down brothels, speak-easies, and gambling dens. Today, nuisance law may be used to close down drug houses and gang headquarters.” *Id.* at 244.

109. See generally, RESTATEMENT (SECOND) OF TORTS § 821A-827 (1979) (delineating the types of nuisance and elements of liability). See also Lieberman, *supra* note 108, at 239-44.

110. See RESTATEMENT (SECOND) OF TORTS § 821B. As the comments to the Restatement suggest, examples of public nuisances include general dangers to the public health, such as the presence of diseased animals, contaminated water, or the containment of explosives. See *id.* cmt. b. Public morals are also included in this area of nuisance law, such as the presence of a prostitution house or the presence of loud noises and obscene odors. *Id.* Private parties may also bring public nuisance claims; however, they must demonstrate special injury to themselves or their property. *Id.* § 821C; see also Lieberman, *supra* note 108, at 242-43 (“A public or common nuisance affects the rights of the entire community. The remedy is traditionally sought by the state. . . . A private person may only maintain an action for public nuisance if the public nuisance is ‘specially injurious’ to himself or his property.” (footnotes omitted)).

111. Compare CAL. PENAL CODE § 373a (West 1999) (“Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney or city attorney or prosecuting attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney, or the city attorney of any city the charter of which imposes the duty upon the city attorney to prosecute state misdemeanors, to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed.”), with S.D. CODIFIED LAWS § 21-10-9 (2004) (“The remedy by civil action against public nuisance may be maintained by any public body or officer authorized thereto by law or official duty, or by any private person if it is specially injurious to himself. Such remedy also may be used by any person whose property is injuriously affected or whose personal enjoyment is lessened by any nuisance public or private. In all such actions the nuisance may be enjoined, or ordered abated, and damages recovered in addition.”).

by the state, in criminal nuisance, the sanctions are criminal penalties as opposed to civil fines or abatement.¹¹² Alternatively, private nuisance law allows claims between private individuals that result from a “nontrespassory invasion of [one’s] interest in the private use and enjoyment of land.”¹¹³

A. Use of Nuisance Law to Combat Illicit Drugs

Nuisance law has a history of use in connection with drug houses, primarily in efforts to combat cocaine use.¹¹⁴ For years prior to the emergence of methamphetamine, cocaine represented the greatest drug threat to law enforcement.¹¹⁵ As a direct result of cocaine use, “crack house[s]” developed as meeting places for individuals to gather and smoke the drug, and also provided locations for the purchase and sale of cocaine.¹¹⁶ The threat posed by the concentration of illicit drug use in local neighborhoods resulted in the emergence of nuisance law as a tool to combat crack houses.¹¹⁷

For example, an Alabama court held that a private residence “maintained as a place of business for selling and storing cocaine on a

112. See, e.g., ARIZ. REV. STAT. § 13-2908 (A) – (B) (“A person commits criminal nuisance: [(1)] If, by conduct either unlawful in itself or unreasonable under the circumstances, such person recklessly creates or maintains a condition which endangers the safety or health of others. [(2)] By knowingly conducting or maintaining any premises, place or resort where persons gather for purposes of engaging in unlawful conduct. . . . B. Criminal nuisance is a class 3 misdemeanor.”); Lieberman, *supra* note 108, at 240-44.

113. RESTATEMENT (SECOND) OF TORTS, § 821D.

114. Lieberman, *supra* note 108, at 244. Portland, Oregon, was one of the first cities to employ nuisance law as a tool against drug houses. *Id.* at 244 n.48.

115. Mark H. Moore, *Drugs: Getting a Fix on the Problem and the Solution*, 8 YALE L. & POL’Y REV. 8, 10-14 (1990) (providing a general overview of the rise of cocaine use in the 1980s and 1990s).

116. Robert F. Ewald, *The Lawful Scope of a Search Warrant Issued for a “Premises”*, 8 J. SUFFOLK ACAD. L. 19, 19 (1992) (“The growth of crack and the ease with which it was manufactured from the powdered cocaine led to the rise of the crack house. Any house or building had the potential to be transformed into a crack house. Enterprising dealers ‘cooked’ the cocaine into crack on the kitchen stove and sold it from there or distributed it in bulk for resale on the street. Some houses were used solely for distribution purposes. The dealers attempted to avoid the glare and attention of the streets. Whatever the motive, a substantial amount of crack was being stored in these locations.”).

117. *Porter v. State*, 570 So.2d 823, 827 (Ala. Crim. App. 1990); *People v. Lot 23*, 735 P.2d 184, 190 (Colo. 1987) (en banc); *Salzman v. State*, 430 A.2d 847, 865 (Md. Ct. Spec. App. 1981); *Jones v. State*, 466 A.2d 895, 904-05 (Md. Ct. Spec. App. 1983) (holding that use of an automobile can also be considered a common nuisance if the activities meet the other criteria set forth for finding a common nuisance). These types of laws are similar to 21 U.S.C. § 856 which was termed “[t]he federal ‘crack-house Statute.’” See Richard Belfiore, *Validity, Construction, and Application of Federal “Crack-House Statute” Criminalizing Maintaining Place for Purpose of Making, Distributing, or Using Controlled Drugs (21 USCS § 856)*, 116 A.L.R. FED. 345, 345 (1993).

continuing and recurring basis constitutes a public nuisance.”¹¹⁸ Similarly, Alaska passed a crack house statute that states that any individual who “knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is used for keeping or distributing controlled substances” is guilty of misconduct.¹¹⁹

Additionally, the power of organized citizens can be quite effective in addressing local drug crimes through nuisance law. In *Lew v. Superior Court*, neighbors in a California apartment complex sued their landlords under a nuisance theory.¹²⁰ There, plaintiffs were members of a thirty-six-unit housing complex in Berkley, California.¹²¹ The plaintiffs claimed that the landlord’s failure to address drug problems in the complex created a nuisance and caused them emotional and mental distress.¹²² The superior court entered judgment in favor of the plaintiffs for \$218,325.¹²³ On appeal, the petitioners, owners of the complex, sought to set aside the court’s judgment, but the appeals court upheld the superior court’s decision.¹²⁴ The collective mental and emotional distress caused to the individual plaintiffs was sufficient to demonstrate a nuisance under California’s Health and Safety Code.¹²⁵

In addition to community prosecution of drug crimes through the use of nuisance law, states may also bring criminal nuisance claims against an individual. In the New York case of *People v. Schriber*, it was a criminal nuisance charge that allowed a conviction despite insufficient evidence

118. *Porter*, 570 So.2d at 827.

119. ALASKA STAT. § 11.71.040(a)(5) (2006). For a case analyzing and summarizing the elements of this statute, see *Dawson v. State*, 894 P.2d 672 (Alaska App. Ct. 1995), which reversed a defendant’s conviction under the Alaska “crack house” statute, holding that the use of his house for a single drug sale was insufficient to prove the “continuing offense” element of the statute.

120. *Lew v. Superior Court*, 25 Cal. Rptr. 2d 42, 43-44 (Ct. App. 1993).

121. *Id.* at 43.

122. *Id.*

123. *Id.* at 44.

124. *See id.* at 47. The court relied on California’s Health and Safety Code section 11570 which states:

Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

CAL. HEALTH & SAFETY CODE § 11570 (West 2007), *quoted in Lew*, 25 Cal. Rptr. 2d at 44-45.

125. *Lew*, 25 Cal. Rptr. 2d at 46.

regarding criminal possession charges.¹²⁶ The appellant was charged with drug possession, possession of an implement adapted for administration of narcotic drugs, and criminal nuisance.¹²⁷ He was not home when police found evidence of illegal drug use in his apartment.¹²⁸ At the time the police approached the premises, four of appellant's friends were present and there was no evidence that drug use was currently taking place.¹²⁹ A search of the apartment turned up pipes containing drug residue and plastic bags and containers holding marijuana.¹³⁰ The court held that the evidence was insufficient to sustain the possession charges, but was enough to uphold the conviction for criminal nuisance.¹³¹ Under New York's criminal nuisance statute, as applied in this case, evidence that an individual has knowledge that his or her premises are used for the purpose of engaging in unlawful conduct is sufficient, as long as the individual also acquiesced to the use of his premises for that purpose.¹³² *Schriber* thus demonstrates that the required showing for criminal nuisance is lower than that for other criminal possession charges that can be brought against an individual.¹³³

B. Available Remedies under Nuisance Law

Nuisance law presents several types of remedies that the individual bringing forth the claim can request. Courts usually grant equitable relief in the form of an injunction or abatement of the property.¹³⁴ Injunctions offer an opportunity to prevent the spread of criminal activity and rectify the community harm rather than punish the criminal act.¹³⁵ Courts may also impose monetary damages, which compensate individuals for the harm caused by the nuisance.¹³⁶ Finally, criminal nuisance statutes provide criminal sanctions for conduct that invades the public rights of others.¹³⁷ For example, Maryland's recently revised nuisance statute holds that a "common nuisance" involving illegal drugs

126. See *People v. Schriber*, 310 N.Y.S.2d 551, 552-53 (App. Div. 1970).

127. *Id.* at 552.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 552-53.

132. *Id.*

133. *Cf. id.* (affirming an order of abatement as a relief for nuisance).

134. See Bergen Herd, Note, *Injunctions as a Tool to Fight Gang-Related Problems in California After People ex Rel Gallo v. Acuna: A Suitable Solution?*, 28 GOLDEN GATE U. L. REV. 629, 639 (1998) (discussing the availability of a preliminary or permanent injunction as an equitable remedy for nuisance).

135. See *id.* at 637.

136. *Id.* at 639-40.

137. *Id.* at 639.

constitutes a felony.¹³⁸ Nuisance law, as it has been used in other contexts, can provide a helpful tool for communities to address the growing problems resulting from methamphetamine production, as will be discussed in the next part of this Comment.

IV. A MULTI-PRONGED APPROACH IS NECESSARY TO ADDRESS THE DANGEROUS EFFECTS OF METHAMPHETAMINE

A. *The Continuing Importance of Traditional Drug Laws*

The federal government continues to address the growing problems facing methamphetamine production.¹³⁹ National law enforcement officials are optimistic that federal and state efforts are working.¹⁴⁰ As noted by Karen Tandy, former Administrator of the DEA, “[i]n just [one] year of tough state legislation, we have seen mom and pop meth labs slashed 40% nationally.”¹⁴¹ Furthermore, Tandy described the two key goals of the Combat Methamphetamine Epidemic Act of 2005, discussed above, as “preventing America from becoming a toxic waste dump, [and] saving thousands of innocent children from contamination.”¹⁴²

The effectiveness of increased penalties for methamphetamine use and production remains a concern for some states. In Hawaii, for example, the increased expense associated with higher incarceration rates is a growing concern.¹⁴³ Although the rationale for enhancing mandatory sentences is to increase the deterrent effect, local officials in Hawaii have questioned its effectiveness in reaching that goal.¹⁴⁴ In fact, methamphetamine use in Hawaii has actually increased since the passage

138. See MD. CODE ANN., CRIM. LAW, § 5-605 (LexisNexis 2002) (defining a common nuisance as “a dwelling, building, vehicle, vessel, aircraft, or other place: (1) resorted to by individuals for the purpose of administering illegally controlled dangerous substances; or (2) where controlled dangerous substances or controlled paraphernalia are manufactured, distributed, dispensed, stored, or concealed illegally”).

139. See FRANCO, *supra* note 3, at 2.

140. Karen P. Tandy, Adm’r, Drug Enforcement Admin., Speech at the National Methamphetamine Chemicals Initiative Conference (May 18, 2006), available at <http://www.dea.gov/speeches/s051806p.html>.

141. *Id.*

142. *Id.*

143. See Brannon, *supra* note 69.

144. *Id.* According to Hawaii Public Defender, John Tonaki: “The thought behind this whole thing was that if people know they’re going to get mandatory jail time for using, it will deter them and therefore solve the drug problem. Clearly, that strategy has failed to work, but the law is still in place. . . .” *Id.* (internal quotation marks omitted).

of the law, which could further support the argument that these mandatory sentences have not produced the desired results.¹⁴⁵

B. Tools Available to States in the Fight Against Methamphetamine

While federal officials address the drug problem at the national and international level, local communities have additional tools to enhance their efforts to decrease methamphetamine use and production. Because the production of methamphetamine harms individuals beyond the actual drug user, it is a dimension of drug policy that can be effectively enforced by state and local entities.¹⁴⁶ As one commentator noted, “[w]hile it may be important to punish methamphetamine producers, it is equally important to protect human health and the environment from the negative effects associated with illicit drug production.”¹⁴⁷ As this Comment will argue, although child abuse laws are effective tools to combat methamphetamine, states should more aggressively employ nuisance laws in the war against methamphetamine production.

C. Effectiveness of Child Abuse Statutes

As noted above, states have focused much of their efforts on addressing the particular dangers of methamphetamine production on children. Efforts to stop child abuse and methamphetamine production share similar goals. As the California court of appeals noted in *People v. Toney*, the purpose of child abuse statutes is to protect children from harms they cannot control.¹⁴⁸ Methamphetamine production is just this type of harm.¹⁴⁹ Even when children are not present during actual

145. See *id.*; see also Saleem, *supra* note 32, at 727 (“The conventional approach of incarcerating those associated with illegal drugs ignores the reality of the overcrowded and poorly-staffed criminal justice system. . . . Especially in light of the overwhelming burden on the criminal justice system, the importance of using nuisance laws in the war on drugs should not be overlooked.”).

146. See *Comprehensively Combating Methamphetamines: Impacts on Health and the Environment: J. Hearing Before the Subcomm. on Health and the Subcomm. on Environment and Hazardous Materials of the H. Comm. on Energy and Commerce*, 109th Cong. 33 (2005) (prepared statement of Peter Murtha, Director, Office of Criminal Enforcement, Forensics and Training, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency) (discussing the EPA’s general policy of leaving methamphetamine laboratory cleanup to state and local governments).

147. See Scanga, *supra* note 20, at 172.

148. See *People v. Toney*, 90 Cal. Rptr. 2d 578, 581 (Ct. App. 1999).

149. See *id.* (“Any reasonable person would understand the risks posed to a child in such a setting.”).

methamphetamine production, the presence of residue from the drug's production presents an equally harmful threat to a child.¹⁵⁰

Both state approaches, amending child abuse statutes to include specific provisions concerning methamphetamine or applying traditional child abuse laws when methamphetamine is present, expand options for local prosecutors. By using child abuse statutes to address child exposure to methamphetamine, courts may then impose the sanctions associated with child abuse, namely, termination of parental rights, in addition to incarceration for drug violations.¹⁵¹

Nevertheless, the use of child abuse statutes to address issues of child endangerment surrounding methamphetamine has not gone without criticism. One of the primary critiques of the marriage between methamphetamine and child abuse statutes is the concern that this solution may actually harm children.¹⁵² According to Richard Wexler, executive director of the National Coalition for Child Protection Reform, "[t]his will be enormously harmful for children. . . . It will make it much more likely that children will be needlessly taken away [from their parents] and face the torment of needless placement in foster care."¹⁵³ Instead, Mr. Wexler believes that the appropriate response is greater availability of drug treatment programs for parents.¹⁵⁴ He further argues that removing children from dangerous homes where methamphetamine is produced is still a possible remedy; however, it should be applied on a case-by-case basis, and should not be automatic under a statutory scheme.¹⁵⁵ These competing arguments raise questions as to whether the

150. See Bettendorf, *supra* note 7, at 532 ("Even if the families are not present during the manufacturing process, the toxic residue from the gaseous vapors lingers in the air and the structure.").

151. See, e.g., *In re E.H.*, No. W2004-00514-COA-R3-PT, 2005 WL 181665, at *4 (Tenn. Ct. App. Jan. 26, 2005) (holding defendant guilty of severe child abuse where a four-year-old child was found present during a meth lab raid and terminating parental rights pursuant to Tennessee Code).

152. See *Under New South Dakota Anti-Meth Law, Drug Use Equals Child Abuse*, STOPTHEDRUGWAR.ORG, Mar. 4, 2005, <http://stopthedrugwar.org/chronicle-old/377/sdlaw.shtml>.

153. *Id.* (internal quotation marks omitted).

154. *Id.* Wexler went on to note: "We know from the research that those children's development will be compromised if the state resorts to foster care instead of drug treatment for the parents. And the more you overload a foster care system, the less safe the homes become and the greater the risk to the children." *Id.* (internal quotation marks omitted).

155. *Id.* ("It is perfectly reasonable to decide on a case by case basis that a parent is unfit, but to automatically declare drug use child abuse is setting the stage for additional enormous harm to the state's children." (internal quotation marks omitted)). Although child abuse statutes would specify penalties for parents, district attorneys arguably would retain discretion in determining whether or not to bring charges against a parent. *Id.* The statutes merely allow more avenues under which prosecutors may act. See *id.*

goal of the state is more focused on punishing drug users than on protecting children.¹⁵⁶

D. The Availability of Nuisance Law

Nuisance law presents another avenue that may further the goal of eradicating methamphetamine production sites, especially in light of concerns raised by using child abuse statutes. Nuisance laws are intended to protect the rights of individuals as related to the use and enjoyment of their property.¹⁵⁷ Methamphetamine presents particular challenges to communities because of the environmental effects of the drug's production.¹⁵⁸ Two primary threats of production may particularly cause harm to local neighbors. First, methamphetamine production poses significant risks of explosions or fires during the actual production of the drug.¹⁵⁹ The use of toxic, highly volatile chemicals can cause explosions that can burn homes and spread onto other adjacent properties. Second, particularly in agricultural communities, methamphetamine production can contaminate the ground water and soil that neighbors rely upon for their agricultural supply.¹⁶⁰

If nuisance laws were used effectively to address the community problems associated with crack houses, it seems even more compelling to use nuisance law in cases involving methamphetamine. Methamphetamine production presents a significant risk of harm to others in close proximity. And, by using nuisance law as another effective tool to address methamphetamine production, community

156. *See id.* It is interesting to note that the number of children removed from homes where methamphetamine was present is small. In Michigan, for example, only 116 children taken from abusive homes were affected by methamphetamine. *Methamphetamine as Child Abuse Laws Gain Ground*, *supra* note 77. The national average is also small. Only 0.9% of all children who entered foster care had been removed due to methamphetamine. *See id.* These numbers suggest that the focus of these statutes is not on the most effective avenue to help children exposed to methamphetamine production, but, rather, to punish parents who are users of the drug. *See id.*

157. *See supra* notes 109-13 and accompanying text.

158. *See supra* notes 71-72 and accompanying text; *see also* Saleem, *supra* note 32, at 709 ("Public nuisance laws are vital because illegal drugs destroy communities.").

159. *See Bettendorf*, *supra* note 7, at 530-31.

160. *See id.* at 530. This is particularly concerning because of the rapid spread of the drug into rural, agricultural communities. *See, e.g.*, Gardner, *supra* note 20, at 194 (discussing the residential drug explosion); *see also supra* note 32 and accompanying text. Additionally, fertilizer—one of the several precursor chemicals used in the production of the drug—is often found on farms and in agricultural communities. *See Bettendorf*, *supra* note 7, at 530.

members have an opportunity to personally address the issue by raising complaints, as was done in *Lew v. Superior Court*.¹⁶¹

Employing a common law nuisance action also presents the opportunity for grassroots involvement in the war against methamphetamine.¹⁶² Community prosecution of nuisance is also likely more effective than simply waiting for government entities to bring claims against individuals causing nuisance.¹⁶³ As one commentator suggests, “[p]ublic nuisance laws are vital because illegal drugs destroy communities.”¹⁶⁴ Often, community members will more readily recognize criminal activity than local law enforcement officials.¹⁶⁵ Recognizing this reality, some states have initiated programs that allow citizens to share information with government officials regarding a nuisance in their neighborhood.¹⁶⁶

Although community involvement in addressing local nuisances would arguably develop stronger communities and provide the greatest

161. See *supra* notes 120-25 and accompanying text; see also Lieberman, *supra* note 108, at 262 (“Neighbors are more likely to spot and obtain evidence concerning crime in a given community than are the local city officials. For this reason, some states have set up administrative systems in which citizens can alert government officials about a nuisance property in their neighborhood.” (footnotes omitted)).

162. See Saleem, *supra* note 32, at 709 (“[N]uisance provides fertile ground for effective litigation strategies which can be employed at the grassroots level.”).

163. This type of community involvement in prosecuting methamphetamine may also complement the multidisciplinary task force model being used to address methamphetamine. See discussion *supra* note 79.

164. Saleem, *supra* note 32, at 709 (emphasis added).

165. Lieberman, *supra* note 108, at 262.

166. *Id.* at 262-63. In Texas, for example, a district attorney may call a public meeting to hear complaints about local property nuisances. *Id.*; see also TEX. CIV. PRAC. & REM. CODE ANN. § 125.042(a) (Vernon 2005). To hold such a meeting, the district attorney must receive a signed petition from a specified number of registered voters in the area. Lieberman, *supra* note 108, at 263. Furthermore, the owner of the property at issue is notified of the meeting prior to its occurrence, and may attend the meeting to directly hear the complaints of the other citizens. *Id.* If, based on this meeting, sufficient evidence exists to illustrate that a public nuisance exists, the district attorney is authorized to begin proceedings to abate the nuisance. *Id.*

Similarly, a Florida statute authorizes the creation of an administrative board to hear and receive complaints from community members. *Id.*; see also FLA. STAT. ANN. § 893.138(1) (West 2000). The board is authorized to conduct hearings and may also declare a property a public nuisance. Lieberman, *supra* note 108, at 263. They may also enjoin use of the property for one year and may seek temporary or permanent injunctions. *Id.* at 263-64.

The Young Lawyers Section of the Bar Association of the District of Columbia created a similar community-wide initiative to use nuisance law to combat drug use. Saleem, *supra* note 32, at 694. The program, entitled “Operation Crackdown,” allows community members to collect information regarding area nuisances, particularly crack houses, and work with attorneys on a pro bono basis, to bring claims against the offending property owners. *Id.*

opportunity to unearth problems early, lack of time and resources may hinder such efforts. First, these programs remain scarce.¹⁶⁷ They rely on community members with the time and willingness to organize around the desire to eliminate methamphetamine production in their communities.¹⁶⁸ Second, some programs rely on the availability and resources of local attorneys and government officials to act upon the evidence gathered by local neighbors.¹⁶⁹ Unless these programs are adequately funded and supported by strong communication channels, their success remains questionable.

Nuisance law also provides additional sanctions, such as injunctions and financial penalties, in addition to the criminal sanctions under local narcotic laws.¹⁷⁰ Abatement proceedings ensure that the property is no longer used as a toxic methamphetamine laboratory so the property can be fully decontaminated.¹⁷¹ Nuisance laws also offer civil penalties that can result in fines for individuals responsible for exposing the local environment to the toxic chemicals.¹⁷² These financial penalties can provide restitution to the individuals whose property interests were invaded by the production of methamphetamine.¹⁷³ Further, civil fines can provide monetary punishment for the drug user in addition to any incarceration he or she may receive as a result of criminal charges.¹⁷⁴ These civil tort remedies provide added deterrent benefits that otherwise would not be available under criminal drug and child abuse statutes.¹⁷⁵

Nuisance statutes can also support charges against methamphetamine producers when prosecutors have insufficient evidence to support a charge under the drug laws.¹⁷⁶ Moreover, when community members bring nuisance claims, their own testimony regarding the heavy traffic and noise resulting from a drug house may be sufficient.¹⁷⁷ Therefore,

167. Saleem, *supra* note 32, at 694.

168. *See id.* at 693-94 (“Nuisance and environmental laws are enforceable by communities without the assistance of counsel.”).

169. *Id.* at 694.

170. *See supra* notes 134-37 and accompanying text.

171. *See supra* note 134 and accompanying text.

172. *See Scanga, supra* note 20, at 162.

173. *See id.*

174. *Id.*

175. *See id.* (“[R]estitution serves not only to punish the offender economically, but also attempts to make the individual, or general public, whole again by compensating them for their loss. Whether the loss be in the form of individual physical harm, property damage, or harm to the environment, restitution directly addresses those concerns.”).

176. *See, e.g.,* *People v. Schriber*, 310 N.Y.S.2d 551, 552-53 (App. Div. 1970) (upholding criminal nuisance conviction of appellant, but dismissing the criminal conviction for possession of marijuana).

177. *See Lew v. Superior Court*, 25 Cal. Rptr. 2d 42, 46-47 (Ct. App. 1994) (providing summary of statements made by neighbors of the property in question).

use of these statutes can assist prosecutors when the evidence is insufficient to support a drug claim on other grounds, as the court held in *Schriber*.¹⁷⁸ Nuisance statutes thus offer alternate grounds for punishment when an individual does not meet the evidentiary standards for prosecution under traditional laws.

V. STATES SHOULD CONTINUE TO PURSUE UNIQUE AVENUES TO ADDRESS METHAMPHETAMINE PRODUCTION

States hold a unique role in the national and international fight against methamphetamine use and production. Through traditional police powers, a core function of state authority is “to protect the health, safety and welfare of their citizens.”¹⁷⁹ Because individuals near methamphetamine production sites are particularly harmed by the environmental impact of methamphetamine production,¹⁸⁰ states must remain involved in the fight to combat the drug. For instance, the ongoing effort to limit access to the precursor chemicals is one area of particular success, and recent studies demonstrate the effectiveness of strong state laws in this area.¹⁸¹ Several states, however, have yet to pass such laws.¹⁸² It is important that states continue to implement these prohibitions to address one dimension of the methamphetamine problem facing communities.

Child abuse and nuisance laws provide additional tools for local law enforcement entities to address the particular challenges of local methamphetamine labs.¹⁸³ Methamphetamine production threatens various classes of individuals, particularly children and neighbors living near methamphetamine production sites.¹⁸⁴ The goals of child abuse and nuisance laws are consistent with the goals of eradicating methamphetamine production,¹⁸⁵ and as such, present additional remedies that can enhance the effectiveness of drug enforcement measures.¹⁸⁶

178. *Schriber*, 310 N.Y.S.2d at 552-53. It has been suggested that nuisance law can close loopholes left by criminal laws in these types of cases. See Saleem, *supra* note 32, at 727-28 (1996) (“*Schriber* demonstrates how nuisance law can supplement and close the loopholes in traditional criminal law drug possession cases.”).

179. *Gonzales v. Raich*, 545 U.S. 1, 66 (2005) (Thomas, J., dissenting).

180. See *supra* notes 29-34 and accompanying text.

181. Tandy, *supra* note 140.

182. See *supra* note 64.

183. See *supra* Parts II.C, III.B.

184. See *supra* notes 27-32 and accompanying text.

185. See *supra* notes 76-81 and accompanying text.

186. See *supra* notes 104-06, 134-38 and accompanying text.

State efforts to address child exposure to methamphetamine through the use of child abuse statutes are both novel and effective. As noted above, however, states risk placing the focus on the offenders and not on the best interest of the children.¹⁸⁷ As a result, children may be forced to enter the foster care system, which is wrought with its own challenges.¹⁸⁸ Additionally, the number of children actually taken from their parents under these child abuse statutes seems minimal.¹⁸⁹ States certainly should continue along this avenue, but this method appears only to address a small sub-population of all methamphetamine producers.

This Comment advocates for increased efforts by prosecutors to prosecute the nuisance associated with methamphetamine production. Nuisance laws offer effective avenues for addressing methamphetamine use and production in our communities.¹⁹⁰ The multiple effects of methamphetamine present unique challenges that have not previously been seen by other drug-related crimes, particularly to neighbors and individuals sharing soil and water supplies.¹⁹¹ By engaging local community members in the effort to combat methamphetamine production, prosecutors can rely on the first-hand knowledge of neighbors, and communities can feel empowered to make changes to their own environment.

This solution is also strongly supported by the traditional deterrence theory of criminal law.¹⁹² As noted above, Hawaii authorities are skeptical that increased criminal sanctions under drug laws are providing the deterrent effects that they were designed to create.¹⁹³ Nuisance laws present a unique alternative method for increasing the deterrent effects when prosecuting methamphetamine.¹⁹⁴ Specifically, linking the actions of the drug user to the impact such actions have on others may increase the strength of the deterrence argument. Most other drug laws focus on criminal sanctions targeting the drug user's possession and use of an illegal substance. Through nuisance law, the focus of the harm is on

187. See *supra* notes 152-56 and accompanying text.

188. See generally Miriam Aroni Krinsky, *A Case for Reform of the Child Welfare System*, 45 FAM. CT. REV. 541 (2007).

189. See *supra* note 176.

190. See *supra* Part.III.

191. See *supra* notes 29-34.

192. See JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 2.03[B][1] (3d ed. 2001) (discussing the basic principles of a deterrence theory of punishment and noting that a person will “avoid criminal activity if the perceived potential pain (punishment) outweighs the expected potential pleasure (criminal rewards)”).

193. See *supra* note 69.

194. See Scanga, *supra* note 20, at 162 (“In addition to criminal punishment, imposing civil penalties for producing, trafficking possessing, and using methamphetamine or other illegal substances serves as a more powerful deterrent than jail time alone.”).

others and the environment, not the drug user. Additionally, the sanctions serve both to punish the offender and to compensate the individual or community who suffered the harm.¹⁹⁵

VI. CONCLUSION

Combating methamphetamine will require collaboration among various local and national agencies and resources.¹⁹⁶ Local communities have a unique role to play in the national and international war against methamphetamine. Communities can enhance their efforts by increasing their use of traditional nuisance laws to more directly address the effects the drug has on local areas. By combining federal, state, and local efforts, America will be able to comprehensively target methamphetamine and present a workable solution for combating drugs. Through communities working together, the methamphetamine problem can be eradicated.

195. *See id.*

196. *See The Methamphetamine Epidemic in Colorado: Hearing Before the Subcomm. on Criminal Justice, Drug Policy, and Human Resources of the H. Comm. on Government Reform*, 109th Cong. 20 (2006) (statement of Jeffrey D. Sweetin, Special Agent in Charge, Denver Field Division, Drug Enforcement Administration) (“Combating this drug requires a collaborative effort at all levels of law enforcement. An essential component of the DEA’s efforts against methamphetamine involves the partnership we have developed with state and local law enforcement across the country.”).