

DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2010 LEGISLATURE

NARCOTICS ENFORCEMENT DIVISION
FY 2009 ANNUAL REPORT

December 2009

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ANNUAL REPORT TO THE LEGISLATURE
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CHAPTER 329-11 REPORTING REQUIRMENTS

In accordance with Chapter 329-11, Hawaii Revised Statutes (HRS), the Department of Public Safety (PSD) has the authority to schedule controlled substances. Annually, upon the convening of each regular session of the state legislature, PSD shall report to the legislature additions, deletions, or revisions in the schedules of substances enumerated in sections 329-14, 329-16, 329-18, 329-20, and 329-22, and any other recommendations that it deems necessary. Three months prior to the convening of each regular session, PSD shall post public notice, at the state capitol and in the office of the lieutenant governor for public inspection, of the department's recommendations to the legislature concerning any additions, deletions, or revisions in these schedules; provided that the posting shall not be required if official notice has been received that the substance has been added, deleted, or rescheduled as a controlled substance under federal law.

Under Chapter 329-11(d), HRS, states that if a substance is added, deleted, or rescheduled as a controlled substance under federal law and notice of the designation is given to PSD, PSD shall recommend that a corresponding change in Hawaii law be made. PSD shall similarly designate the substance as added, deleted, or rescheduled under this chapter after the expiration of thirty days from publication in the Federal Register of a final order and this change shall have the effect of law. If a substance is added, deleted, or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the State Legislature has not made the corresponding changes in this Chapter, the temporary designation of the added, deleted, or rescheduled substance shall be nullified.

PSD was notified by means of the Code of Federal Regulations that on June 22, 2009, the substance "Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]" that was placed in Schedule V by the Federal government under 74 FR 23789. In accordance with provisions of Chapter 329-11(d), HRS, if a substance is added, deleted, or rescheduled as a controlled substance under federal law and notice of the designation is given to PSD, PSD shall recommend that a corresponding change in Hawaii law be made. PSD is, therefore, recommending that the controlled substance "Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]" be listed under Chapter 329-22 (d) as a Schedule V controlled substance classified as a depressant.

PSD was notified by means of the Code of Federal Regulations that on June 22, 2009, the substance "Tapentadol" that was placed in Schedule II by the Federal government under 74 FR 23790. In accordance with provisions of Chapter 329-11(d), HRS, if a substance is added, deleted, or rescheduled as a controlled substance under federal law and notice of the designation is given to PSD, PSD shall recommend that a corresponding change in Hawaii law be made. PSD is, therefore, recommending that the controlled substance "Tapentadol"

be listed under Chapter 329-16 (c) as a Schedule II controlled substance classified as an opiate.

PSD was notified by means of the Code of Federal Regulations that on November 5, 2009, the substance “Fospropofol (Lusedra)” would be placed in Schedule IV by the Federal government under 74 FR 51234. In accordance with provisions of Chapter 329-11(d), HRS, if a substance is added, deleted, or rescheduled as a controlled substance under federal law and notice of the designation is given to PSD, PSD shall recommend that a corresponding change in Hawaii law be made. PSD is, therefore, recommending that the controlled substance “Fospropofol (Lusedra)” be listed under Chapter 329-20 (b) as a Schedule IV controlled substance classified as a depressants.

Salvia Divinorum and/or Salvinorin A



In accordance with provisions set forth in Chapter 329-11(e), HRS, Emergency Scheduling Authority, the Administrator of the Narcotics Enforcement Division emergency scheduled the substance Salvia Divinorum and/or Salvinorin A on **August 15, 2009 (12:01 AM.)** to avoid an imminent hazard or the possibility of an imminent hazard to the citizens of Hawaii from this dangerous hallucinogenic substance.

In accordance with Chapter 329-11(e), the Administrator of PSD’s Narcotics Enforcement Division may make an emergency scheduling by placing a substance into schedules I, II, III, IV or V on a temporary basis, if the administrator determines that such action is necessary to avoid an imminent hazard or the possibility of an imminent hazard to the health and safety of the public. If a substance is added or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the state legislature has not enacted the corresponding changes in this chapter, the temporary designation of the added or rescheduled substance shall be nullified.

The Drug Enforcement Administration even though it has not made “Salvia divinorum or its constituent Salvinorin A” as a controlled substance it has determined that this drug does not have an approved medical use in the United States and is presently listed as a "drug of concern" by the Federal Drug Enforcement Administration due its ability to evoke hallucinogenic effects, which in general, are similar to those of other scheduled hallucinogenic controlled substances.

Presently Hawaii does not have a controlled substance analogue law like that of the Federal Government to deal with individuals abusing this drug. Under Federal law in 21

USC Sec. 802 the term "Controlled Substance Analogue is defined in 21 USC Sec. 802 (32) to mean:

- (32) (A) Except as provided in subparagraph (C), the term "controlled substance analogue" means a substance -
- (i) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;
 - (ii) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or
 - (iii) **With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.**

This definition allows the Federal government to only treat Salvia Divinorum and/or Salvinorin A as a controlled substance analogue if it is used for human consumption as a psychoactive drug. This leaves a loophole in the law for individuals selling this drug labeled as not for human consumption.

As of August 2009, twelve states have enacted legislation placing regulatory controls on Salvia Divinorum and/or Salvinorin A due to its hallucinogenic properties. Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota and Virginia have placed Salvia Divinorum and/or Salvinorin A into schedule I. Louisiana and Tennessee enacted other forms of legislation restricting the distribution of the plant and making human consumption of Salvia illegal. California and Maine passed legislation making it illegal to sell Salvia to minors.

During last legislative session Oregon, Alaska, New Jersey, Pennsylvania, Iowa, Georgia, Texas, Massachusetts, Wisconsin, Alabama, Indiana, Maryland, Michigan, Hawaii, Kentucky, North Carolina proposed legislative bills to place regulatory controls on Salvia Divinorum and/or Salvinorin A. During the last legislative session there were two bills that contained language to place Salvia Divinorum and/or Salvinorin A as a Schedule I controlled substance, however HB 2179 was not scheduled for hearing and SB1487 was amended deleting this drug due to a posting requirement mandated by Chapter 329-11(a), HRS.

Salvia Divinorum and/or Salvinorin A have also been placed under regulatory controls in Australia, Belgium, Denmark, Estonia, Finland, Italy, Japan, Spain, and Sweden due to its potential for abuse.

On August 15, 2009, the PSD emergency scheduled the controlled substance Salvia divinorum and its derivatives into Schedule I by amending Section 329-14(d) HRS to read as follows:

“(d) Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alpha-ethyltryptamine (AET);
- (2) 2,5-dimethoxy-4-ethylamphetamine (DOET);
- (3) 2,5-dimethoxyamphetamine (2,5-DMA);
- (4) 3,4-methylenedioxy amphetamine;
- (5) 3,4-methylenedioxymethamphetamine (MDMA);
- (6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
- (7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
- (8) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (9) 4-bromo-2,5-dimethoxy-amphetamine(4-bromo-2,5-DMA);
- (10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
- (11) 3,4,5-trimethoxy amphetamine;
- (12) Bufotenine;
- (13) 4-methoxyamphetamine (PMA);
- (14) Diethyltryptamine;
- (15) Dimethyltryptamine;
- (16) 4-methyl-2,5-dimethoxy-amphetamine;
- (17) Gamma hydroxybutyrate (GHB) (some other names include gamma hydroxybutyric acid; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
- (18) Ibogaine;
- (19) Lysergic acid diethylamide;
- (20) Marijuana;
- (21) Parahexyl;
- (22) Mescaline;
- (23) Peyote;
- (24) N-ethyl-3-piperidyl benzilate;
- (25) N-methyl-3-piperidyl benzilate;
- (26) Psilocybin;
- (27) Psilocyn;
- (28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);
- (29) Tetrahydrocannabinols;
- (30) Ethylamine analog of phencyclidine (PCE);
- (31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- (32) Thiophene analog of phencyclidine (TPCP; TCP);
- (33) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number 96-48-0 when any such substance is intended for human ingestion;

- (34) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4- butylenes glycol; butylene glycol; 1,4-dihydroxybutane; 1,4- tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4- diol with Chemical Abstract Service number 110-63-4 when any such substance is intended for human ingestion;
- (35) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;
- (36) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;
- (37) 1-(3-trifluoromethylphenyl) piperazine (TFMPP), its optical isomers, salts, and salts of isomers;
- (38) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers; [~~and~~]
- (39) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;
- (40) Salvia divinorum;
- (41) Salvinorin A; and
- (42) Divinorin A

Since August 15, 2009, PSD has not had any complaints regarding this scheduling action and have received comments from the public Law enforcement and the Military thanking PSD for taking this preventive action that will decrease the availability and abuse of this controlled substance by the citizens and visitors to Hawaii.

ACT 44 SLH 2004 REQUIREMENTS

Chapter 26-14.6 Department of Public Safety (PSD). (m) states that PSD shall coordinate drug abatement efforts of the communities with the State, counties, and community agencies, by:

- (1) Facilitating sharing of resources and information;
- (2) Providing technical support for community mobilization groups;
- (3) Establishing community action plans for drug education, awareness, and prevention;
- (4) Facilitating problem solving in the delivery of law enforcement services by state and local agencies to the community.

PSD shall submit an annual report to the legislature twenty days before the convening of each regular session, on the activities of PSD relating to this mandate.

NED'S ENFORCEMENT PROGRAMS

Chapter 26-14.6(m) requires PSD to coordinate drug abatement efforts of the communities with the State, counties, and community agencies. By (1) facilitating the sharing of resources and information and (4) facilitating problem solving in the delivery of law enforcement services by state and local agencies to the community.

During FY 2009, NED received and responded to 2 drug complaints calls from the public and initiated 390 cases where another agency requested assistance or referred a case to NED. To further accomplish these goals NED has facilitated the sharing of resources and information by working joint criminal investigations through its participation in initiatives with the Hawaii High Intensity Drug Trafficking Area (HIDTA), FBI and FDA. During FY2009, NED Investigators responded to 1303 cases, 598 criminal and 705 administrative or regulatory.

STATE AIRPORTS, DRUG INTERDICTION AND OTHER AREAS:

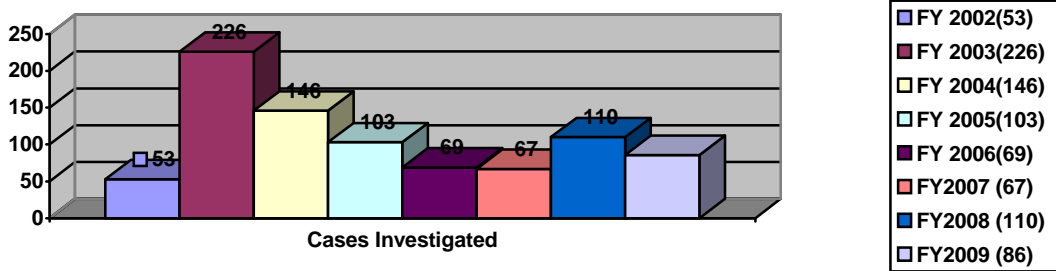


Increased security at the airport since the September 11, 2001, terrorist incident have resulted in an increase in the number of controlled substance being detected at airport checkpoints and through the mail.

NED RESPONSE TO AIRPORT SHERIFF DETAIL

During Fiscal Year 2009 NED Investigators investigated 86 controlled substances and drug paraphernalia cases referred by the Airport Sheriff Detail at security checkpoints. NED presently responds to all drug cases initiated by the Airport Sheriff Detail, however NED unlike the Attorney General's investigators and the Airport Sheriff Deputies receive no funding from DOT for overtime or investigative expenses. In FY 2009 due to the State's fiscal situation, NED has had to prioritize all its after hour responses to the Airport Sheriff Detail taking into consideration the Division's budgeted overtime and manpower availability. During FY2010 NED is requesting that the Department review the DOT contract with the Sheriff Division to provide services for the airport to include funding for NED for drug investigative services.

AIRPORT SHERIFF DETAIL CASES FY 2002- FY 2008



HIGH INTENSITY DRUG TRAFFICING AREA (CLANDESTINE LABORATORY INITIATIVE)

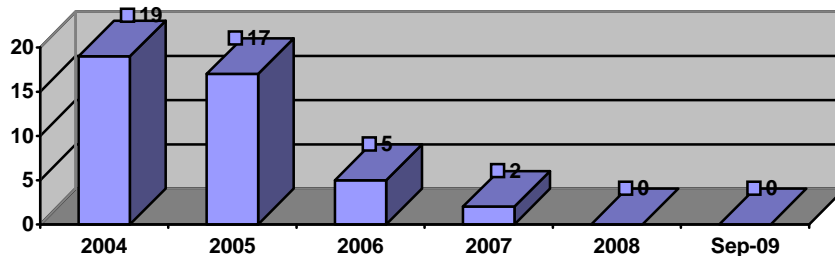


Keith Kamita, Narcotics Enforcement Division chief, Department of Public Safety (DPS), holds sudafed and addresses the importance of HB 2410. From left: Anthony Williams, U.S. Drug Enforcement Administration assistant special agent in charge; Dutchie Hanohano, U.S. Marshall; Jim Propotnik, acting DPS director; and Lt. Governor James R. "Duke" Aiona, Jr.



During calendar year 2009 law enforcement statewide did not report any clandestine laboratories. NED feels that this decrease can be attributed to increased enforcement activities, regulations on the key precursor chemical pseudoephedrine as well as increased education of retailers and the public on over the counter chemicals utilized to manufacture methamphetamine. During FY 2009 NED conducted five OSHA required clandestine laboratory recertification classes for Federal, State and County law enforcement. NED conducted 2 classes on Oahu, 1 on Maui, 1 on Kauai and one on the island of Hawaii. During FY 2009 NED received only 1 case involving the unlawful procurement of precursor chemicals (Pseudoephedrine) to manufacture methamphetamine.

CLANDESTINE LABORATORIES SEIZURES



NEW PSEUDOEPHEDRINE TRACKING PROGRAM

In accordance with Act 184 signed into law by Governor Linda Lingle on 6-17-08, NED is mandated to develop and implement by January 1, 2010, an electronic tracking program for all pharmacies and retailers selling products, mixtures, or preparations containing pseudoephedrine. Act 184 mandates that this electronic log be transmitted to the Narcotics Enforcement Division on monthly bases where the information will be retained for a period of two years. The electronic log shall be capable of being checked for compliance against all State and Federal laws, including interfacing with other states to ensure comprehensive compliance. This new program will require additional personnel and funding, however NED has secured three grants from the U.S. Department of Justice, Office of Justice, Office of Community Orientated Policing (COPS) Grant through the sub-grantee the Hawaii Community Foundation that include funding for the purchase of the computer equipment and software for this program till November 21, 2009.

During FY 2009 NED received only 1 criminal case involving the unlawful procurement of precursor chemicals (Pseudoephedrine) to manufacture methamphetamine. During FY 2009 NED identified 0 cases of non-compliance with the Federal Combat Methamphetamine Epidemic Act of 2005, which went into affect on March 8, 2006 and Hawaii's Regulated Chemical for the Manufacture of Controlled Substances Section 329, Part IV HRS. The Hawaii legislature also passed Act 171, which was signed, into law on 6-5-06, this new amended to Chapter 329-64 (a)(4) relating to exemptions. Act 171 deletes the exemption for over the counter sale of Ephedrine and Phenylpropanelamine containing products and placed additional reporting requirements for pseudoephedrine products.

It should be noted that many of the non-pharmacy retail distributors no longer carry ephedrine and pseudoephedrine containing products and are now selling over the counter pseudoephedrine PE products that cannot be utilized to manufacture methamphetamine.

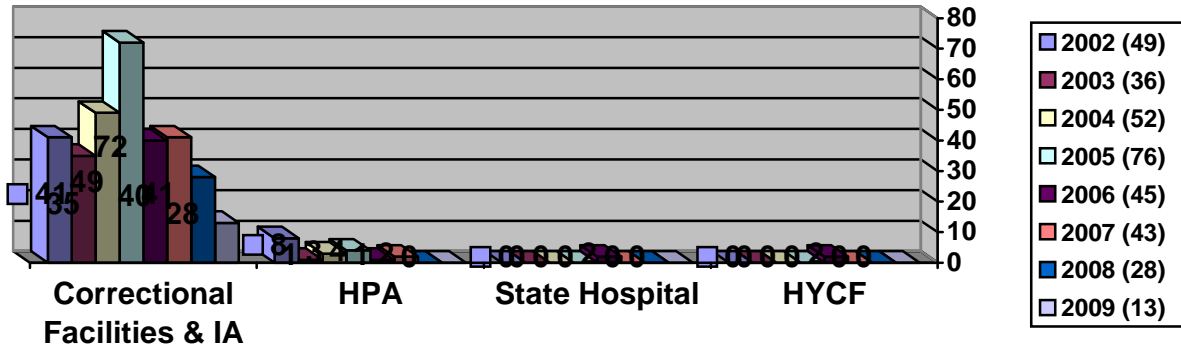
During FY 2009 NED developed an excel format uniform reporting form that will be distributed to all retail distributors of pseudoephedrine and pseudoephedrine containing products. NED met with the Hawaii Food Industry and various pharmacy and Hospital organizations (Walgreens, Longs Drugs, Kaiser etc.) to discuss the proposed electronic pseudoephedrine reporting form. The form being proposed is in compliance with Act 184 signed into law by Governor Linda Lingle on 6-17-08, the Narcotics Enforcement Division is mandated to develop and implement by January 1, 2010, an electronic tracking program for all pharmacies and retailers selling products, mixtures, or preparations containing pseudoephedrine. Act 184 mandates that this electronic log be transmitted to NED on monthly bases where the information will be retained for a period of two years. During FY 2009 NED working with Walgreens conducted a test of the electronic reporting system.

NED will need to request at the minimum one full-time, general funded Program Specialist V position and two office assistant III positions to implement this new program. These positions are necessary to track and regulate every retail distributor that could possibly sell a product that contains pseudoephedrine.

CORRECTIONAL FACILITIES

During FY 2009 NED Investigators responded to 13 criminal and 0 regulatory cases originating from PSD Correctional facilities, 0 from the Hawaii Paroling Authority, 0 from the Hawaii Youth Correctional Facility, 0 from Internal Affairs Office and 0 cases from State operated Hospitals.

CORRECTIONAL FACILITIES CASE 2002-2008



PHARMACEUTICAL CONTROLLED SUBSTANCE DIVERSION CASES

Pharmaceutical Controlled Substance Diversion Cases

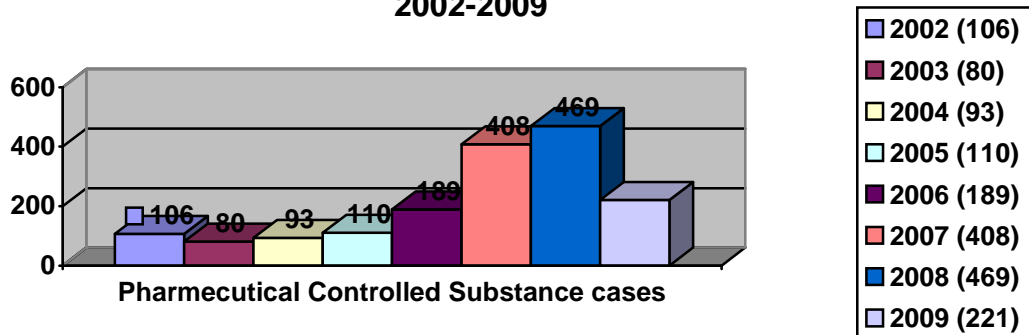


During FY 2009 NED saw a substantial increase in pharmaceutical controlled substance diversion cases. In FY 2009, NED investigators conducted 221 criminal pharmaceutical controlled substance investigations: 110-forged controlled substance prescription cases, 2 multi-doctor cases, 0 Internet cases, 9 promoting cases involving pharmaceutical controlled substances, 39 cases where an authorized agency and 546 cases where a physician is checking on a patient due to suspicion of diversion of pharmaceutical controlled substances using NED's e-Pass program, 3 Physician cases, 7 Nurse cases, 14 theft/loss from medical facility cases and 7 classified as other. During FY 2009 NED prioritized its emphasis on criminal cases involving pharmaceutical controlled substances and proposed legislation to better address problem issues with Hawaii's controlled substance laws.

NED has a few advantages over many of the other states across the nation:

- 1) Hawaii is a dual registration state requiring that all practitioners must obtain a State Controlled Substance registration as well as a Federal DEA registration.
- 2) Hawaii does not allow out-of state controlled substance prescriptions to be filled in the State.
- 3) All controlled substance prescriptions must originate from within the State. (Practitioner must physically be in the State when issuing the prescription)
- 4) Hawaii has an Electronic Prescription Monitoring Program for all Schedule II through V controlled substances.
- 5) NED has a Pharmacy Alert System connected to all of Hawaii's pharmacies.
- 6) NED's Administrator has emergency scheduling powers for controlled substances and regulated chemicals.
- 7) Hawaii has an investigative Division (NED) that specializes in pharmaceutical and chemical diversion cases.
- 8) As of 7-1-08, Act 186 gave NED the ability to assess monetary fines for violations of Hawaii's Uniform Controlled Substance Act, Chapter 329 HRS.

**NED PHARMACEUTICAL CONTROLLED SUBSTANCE
CASES
2002-2009**



NED'S PREVENTION PROGRAMS



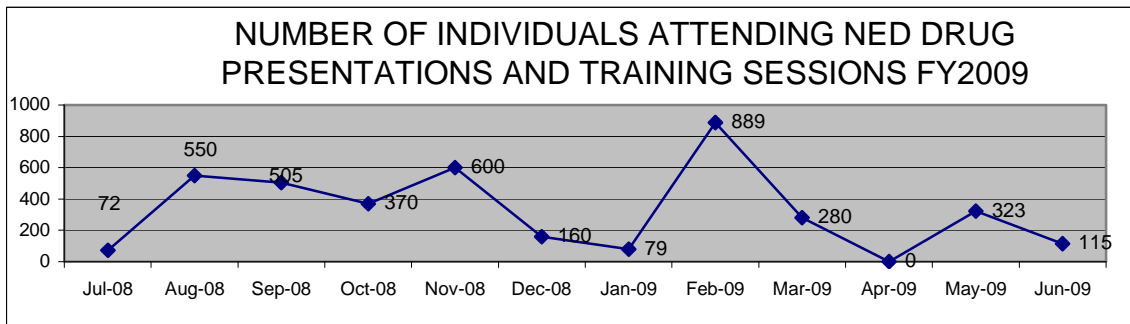
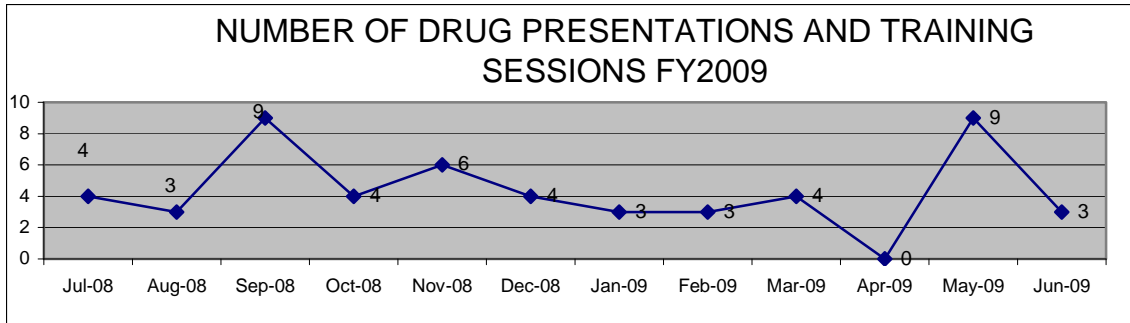
In accordance with Chapter 26-14.6(m)(2) (3) and (4) the Department of Public Safety's Narcotics Enforcement Division during FY 2009, NED took a leadership role in informing the community of Hawaii's methamphetamine problem within the division's budgetary constraints.

DRUG EDUCATION AND TRAINING PROGRAMS

NED continues to inform the community of Hawaii's crystal methamphetamine and pharmaceutical drug problem. The presentations covered Hawaii's drug trends, drug identification, clandestine laboratories, and the chemicals utilized in the illegal manufacture of controlled substances and the physical and psychological effects as well as the damage that drugs can do to the human body. In FY 2009, NED conducted 52 educational drug and clandestine laboratory presentations on the island of Hawaii, Maui, Kauai and Oahu, which were attended by 3953 people from law enforcement, education, businesses, medical community and the public.

In an attempt to assist the Department of Education in implementing its new drug and alcohol testing program, NED partnered with the DOE Office of Human Resources and put on three hour blocks of instruction relating the physical and psychological damage caused by the illegal use of drug.

FISCAL YEAR	TRAINING SESSIONS	# OF INDIVIDUALS TRAINED
2009	52	3953
2008	77	7326
2007	77	7436
2006	59	3867
2005	72	4904
2004	97	9140
2003	45	2485
2002	49	1025



Due to the State's fiscal situation and restrictions on travel in FY 2009 the Narcotics Enforcement Division had to decline numerous requests from the public, businesses and medical organizations for drug and chemical educational presentations and trainings.

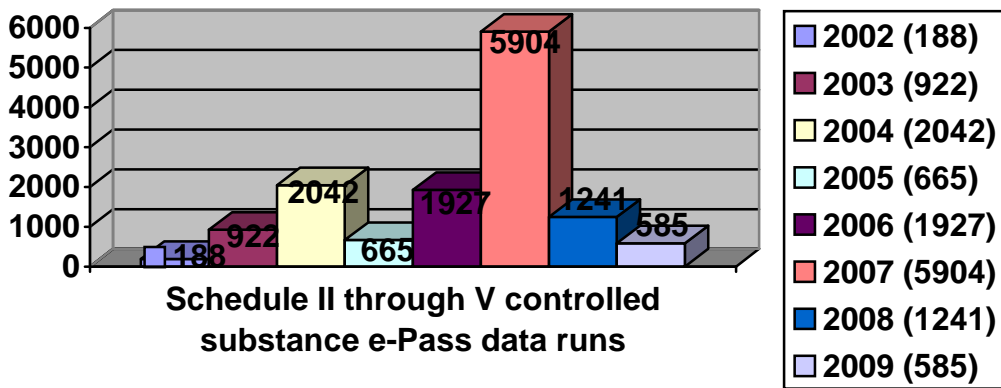
ELECTRONIC PRESCRIPTION MONITORING PROGRAM

NED's Electronic Prescription Monitoring Program (e-PASS) and NED's Pharmacy Alert System continues to identify and chart specific prescribing trends of Hawaii Physicians as well as identifies multi-doctor patients attempting to obtain controlled substance prescriptions. In FY 2009 NED's Investigator assigned to the Electronic Prescription Monitoring Program processed and analyzed the data from 3,603,380 Schedule II through V controlled substance prescriptions into the system that is presently monitoring the data from 10,299,705 schedules II through V controlled substance prescriptions. During FY 2009 NED sent out 39 prescription data reports to other law enforcement agencies conducting criminal drug cases and 546 reports to physicians relating to their patients controlled substance use.

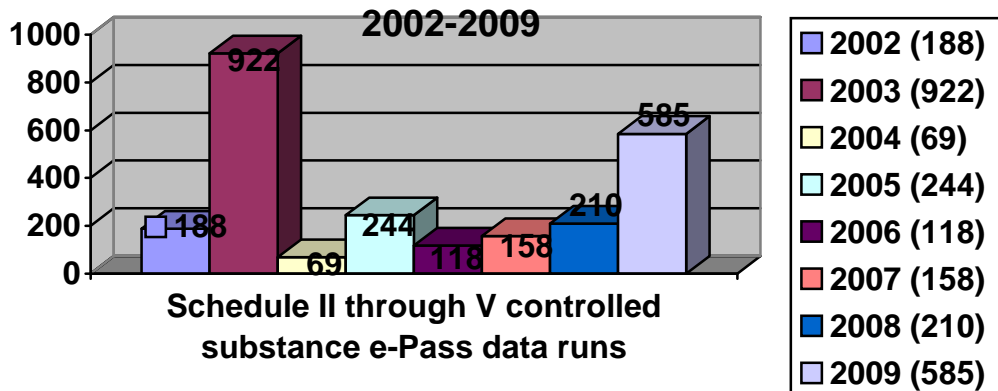
During FY 2007 with the assistance of a Bureau of Justice Grant NED was able to hire two positions for its prescription-monitoring program. These two federally funded positions enabled NED to take over the function of the "Central Repository" of all Schedule II through V controlled substance prescription data statewide. This Grant also enabled NED to establish an Internet base webpage that has the capability of allowing pharmacies to electronically transmit data to NED.

On August 15, 2007, NED was notified that had received a \$400,000.00 grant from the Department of Justice FY 2008 Prescription Drug Monitoring (Harold Rodgers) Program to continue the enhancements to the State's electronic prescription monitoring program, which is maintained within the Department's Narcotics Enforcement Division (NED). This grant will focus on processing all prescription data electronically sent to NED in house. This Grant will afford NED the ability to hire a Clerk III to assist the PMP Investigator with the inputting and analysis of all Schedule II through V controlled substances prescriptions filled by all pharmacies registered in the State of Hawaii. This grant runs from May 1, 2008 through April 30, 2010.

NED's Electronic Prescription Monitoring Program (e-Pass) investigative data inquiries 2002-2009



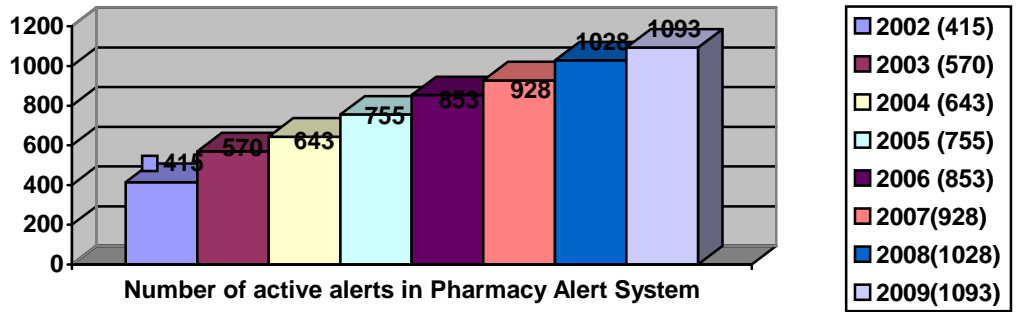
NED's Electronic Prescription Monitoring Program (e-Pass) data reports sent to Law Enforcement and Physicians



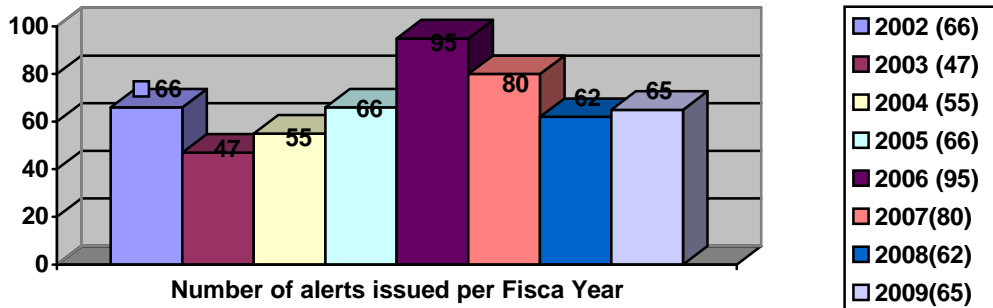
NED'S PHARMACY ALERT SYSTEM

NED's Pharmacy Alert System was designed to link all of Hawaii's pharmacies electronically to the Division. NED is able to issue warning bulletins to all of Hawaii's 316 pharmacies registered to dispense controlled substances. This program allows NED to warn pharmacies of individuals suspected of pharmaceutical diversion and to update these pharmacies with information on new laws and amendments to Hawaii's Uniform Controlled substance Act. NED's Pharmacy Alert System continues to identify and chart specific prescribing trends of Hawaii Physicians as well as identifies multi-doctor patients attempting to obtain controlled substance prescriptions. During FY2009, NED issued 65 pharmacy alerts and is presently monitoring 1093 alert bulletins on this system.

NED's Pharmacy Alert System 2002-2009



NED's Pharmacy Alert System 2002-2009



REGISTRATION

During this time period the Registration Staff issued 4609 controlled substance registrations, 15 regulated chemical permits 3163 patient registry identification certificates for the medical use of marijuana and assigned 323 new oral call numbers to physicians, physician assistants or advance practice registered nurses. The Division set a high goal for itself by implementing the five-day processing deadline.

The Narcotics Enforcement Division's Registration Section has decreased the time required to process a controlled substance, regulated chemical or medical marijuana registry certificate to within five days. State Administrative rules require that the processing of these certificates be done within 60 days, however in April of 2009 NED lost one of its two clerks that handle all of the controlled substance, chemical and medical use of marijuana registrations causing processing times to increase substantially. NED has been able to maintain the 7 day processing time on controlled substance and chemical registrations, however, medical use of marijuana permit processing has increased to 30 to 45 days. This is due to the fact that when the Medical Use of Marijuana Program was placed in the Narcotics Enforcement Division in 2000 there was no additional personnel appropriated for this program by the legislature.

Presently due to the State's fiscal situation NED has not been authorized to fill the Special funded Office Assistant III position that has been vacant since April of 2009 resulting in NED's Registration section to operate with only one Office Assistant position to handle all controlled substance, chemical and medical use of marijuana registrations. NED has had to authorize over time and have its Account Clerk, and Secretary assist in registration on a daily bases just to keep from falling behind the 60 day maximum processing time.

HAWAII'S MEDICAL USE OF MARIJUANA PROGRAM

On June 14, 2000, Governor Cayetano signed Act 228 relating to the Medical Use of Marijuana. Act 228 / Senate Bill 862 SD 2 HD requires that the Department promulgate administrative rules to implement a program to register all qualifying patient and primary caregivers authorized by their physicians to utilize marijuana for medical purposes. Act 228, however did not allot any additional funding to the department to implement this program nor did it legislatively address the problem of transferring the moneys collected from fees to be utilized to supplement the budget of Division maintaining the program.

On October 16, 2000, Governor Cayetano authorized the Department to go forward with the public hearing on the Medical Use of Marijuana Rules. On December 22, 2000, the Department held a public hearing on the proposed Administrative Rules for the Medical Use of marijuana Title 23 Chapter 202. On December 28, 2000, the Governor signed title 23 Chapter 202 Administrative rules into law and on January 9, 2001, NED issued its first certificate.

NED is presently utilizing Special and General Funds to implement this program. On June 18, 2002, Acting Governor Mazie Hirono signed Act 165 into law, which authorized the Department to deposit monies collected from medical use of marijuana registration fees into NED's Special Controlled Substance Revolving fund to offset the cost of the Medical Use of Marijuana Program.

On June 18, 2002, Acting Governor Mazie Hirono signed Act 165 into law. Act 165 (HB 703 HD 1, SD 2) authorized the Department to deposit the fees collected from the Medical Use of Marijuana Program into the Controlled Substance Registration Revolving Fund. Act 165 also appropriated \$10,000.00 for equipment and other current expenses to carry out the provisions of Chapter 329, Part IX Hawaii Revised Statutes, and Hawaii's

Medical Use of Marijuana Program, however did not appropriate any funding for positions. During the 2005 there was a Bill introduced in the Senate SB128 to move the Medical Use of Marijuana Program from the Narcotics Enforcement Division to The Department of Health.

On June 6, 2005, The Narcotics Enforcement Division was notified that the US Supreme Court had issued a 6-3 ruling on Gonzales, Attorney General v. Raich relating to medical use of marijuana. The Supreme Court stated that the Federal Controlled Substance Act designated marijuana as contraband for any purpose; in fact, by characterizing marijuana as a Schedule I Controlled Substance, Congress expressly found that the drug has no acceptable medical uses. It goes on to state: "Moreover the CSA is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, and in what manner. "Also referred to was the Supremacy Clause, which "unambiguously provides that is there is any conflict between federal and state law federal law shall prevail."

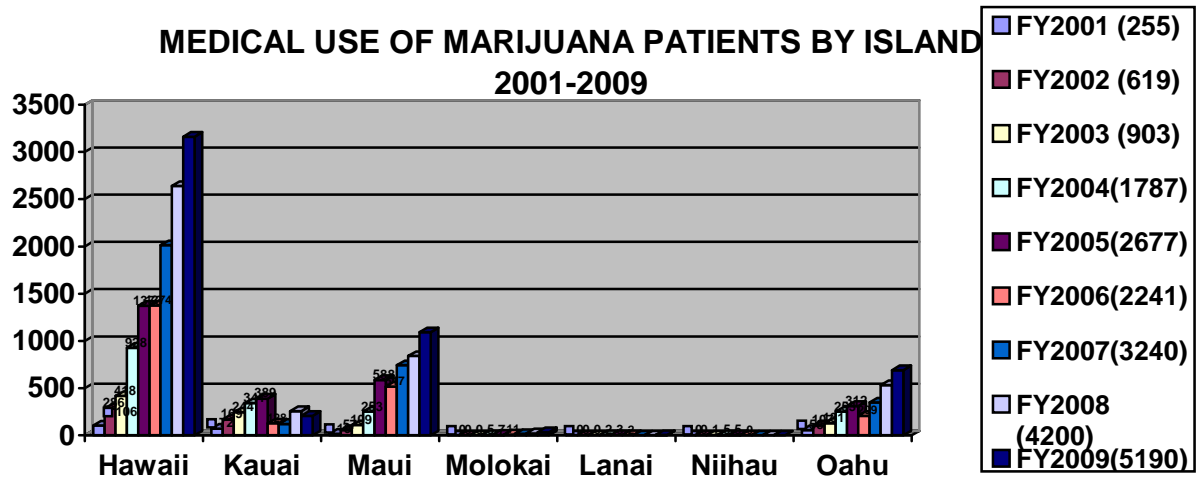
Due to these findings NED requested guidance from the Attorney General's Office as to Hawaii's Medical Use of Marijuana Program. NED will be amending all of its registry application forms, patient and physician information packets to educate the public that the protections afforded authorized patients to utilize medical marijuana by State law does not protect them from Federal prosecution. NED amended its patient and physician information forms and included the information indicated in the June 15, 2005 letter from Attorney General Mark Bennett.

Due to the fact that when Hawaii's Medical Marijuana law was passed it did not appropriate any positions to run this program NED has had to utilize its two clerical positions assigned to process all of Hawaii's controlled substance and regulated chemical applications to assist with the processing of the Medical Use of Marijuana permits.

Over the years the Narcotics Enforcement Division's Registration Section has been able to decrease the time required to process medical marijuana registry certificate to within five to seven days of receipt. State Administrative rules require that the processing of these certificates be done within 60 days, however in April of 2009 NED loss one of its two clerks that handle all of the controlled substance, chemical and medical use of marijuana registrations causing processing times to increase substantially to between 30-45 days. It should be noted that the processing of each medical use of marijuana application takes approximately 20-30 minutes to make the appropriate verifications, computer input, printing and mailing of the permit. This does not include the time required for the NED Administrator to respond to all law enforcement verification requests, subpoena's for records or court testimony.

As of the end of FY 2009, the following is the statistical breakdown by island of the patients registered under this program to utilize marijuana for medical purposes:

Island	# Patients	# Caregiver	Physician on island	Physician off island
Hawaii	3160	353	28	15
Kauai	208	21	9	10
Lanai	4	1	0	2
Maui	1092	98	19	10
Molokai	34	8	0	7
Niihau	0	0	0	0
Oahu	691	81	22	9
TOTAL:	5190	562	78	53

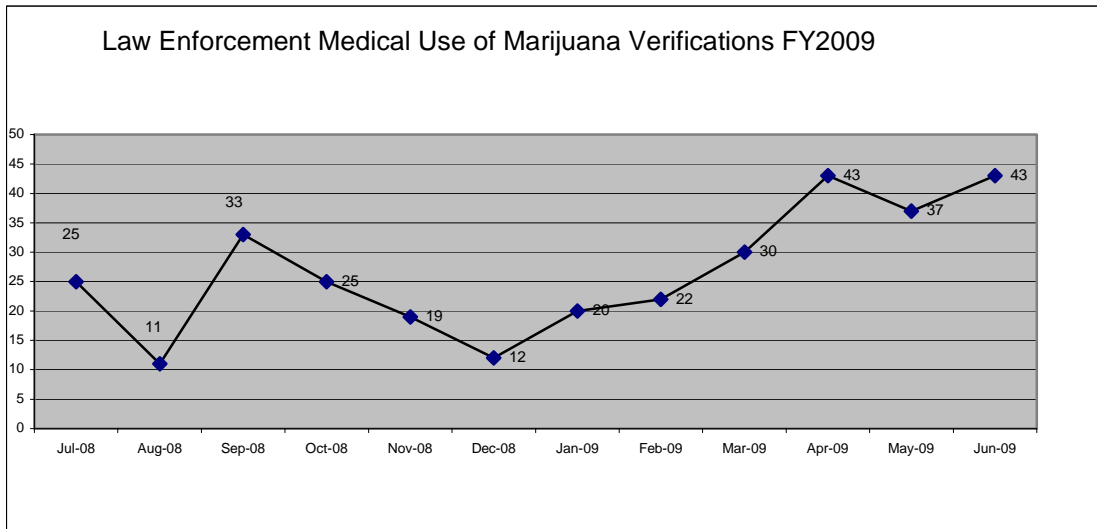


Top Ten Physicians Issuing Medical Use of Marijuana Registry Certificates

1. JB (Maui) 2290 (2199 patients on Hawaii, 12 on Kauai, 11 on Maui, 1 in Molokai and 67 on Oahu)
2. RM (Hawaii) 600 (5 patients on Hawaii, 3 on Kauai, 1 on Lanai, 584 on Maui, 5 on Molokai, and 2 on Oahu)
3. AJ (Oahu) 396 (7 Patient on Hawaii, 12 patients on Kauai, 6 on Maui, 2 on Molokai, and 396 on Oahu)
4. YC (Hawaii) 392 (384 patients on Hawaii, 8 on Oahu)
5. RL (Maui) 349 (5 patients on Hawaii, 1 on Kauai, 3 on Lanai, 322 on Maui, 14 on Molokai and 4 on Oahu)
6. DB (Hawaii) 342 (221 patients on Hawaii, 101 on Kauai, 1 on Maui, 1 on Molokai and 18 on Oahu)
7. GG (Oahu) 166 (4 patient on Hawaii, 4 on Kauai, 3 on Maui, 10 on Molokai and 145 on Oahu)
8. RD (Hawaii) 165 (164 on Hawaii, 1 on Oahu)
9. ML (Maui) 42 (1 Kauai and 41 Maui)
10. RA (Oahu) 38 (5 patients on Hawaii, 16 on Kauai, 1 on Maui and 16 on Oahu)

MEDICAL USE OF MARIJUANA VERIFICATION CHECKS REQUESTED CONDUCTED BY LAW ENFORCEMENT

The Department's Narcotics Enforcement Division since the inception of Hawaii's Medical Use of Marijuana program in 2000 has worked very closely with State and county law enforcement officers in conducting medical use of marijuana permit verification information to the officer on the street. During FY 2009 NED conducted 199 medical use of marijuana verification checks for Federal, State and County law enforcement agencies. Of these 199, law enforcement verification checks NED has only received 11 case referrals relating to patients or caregivers arrested for violating the program by possessing over the authorized number of marijuana plants or processed marijuana. NED has received numerous verification calls resulting in an individual being released without arrest or seizure of their plants due to the ability of law enforcement officer to contact NED 24 hours a day, 7 days a week to verify a patient or caregiver's medical use of marijuana certificate status. During FY 2009 NED implemented a form for Federal, State and County law enforcement to request Medical Use of Marijuana verification request.



During both FY 2008 and FY 2009 the law enforcement and the public have continue to voice concerns relating to specific physicians participating in Hawaii's Medical Use of Marijuana Program not examining or having a bona fide doctor patient relationship with their patients. Another concern being voiced by the public is that some of these patients on the program are just doing it to smoke marijuana and that the doctors know about this.

On June 15, 2008, Governor Linda Lingle signed Act 186 into law that amended Chapter 329 HRS by adding a new definition for the term "Physician-patient relationship" and penalties for non-compliance to this section.