

**House Corrections and Juvenile Justice Committee
February 3, 2020**

**House Bill 2456
Testimony of the Kansas Association of Criminal Defense Lawyers (KACDL)
Presented by Clayton J. Perkins
Neutral**

Dear Chairman Jennings and Members of the Committee:

My name is Clayton Perkins. I am an attorney in Kansas practicing in the field of criminal defense appeals. I appear on behalf of the Kansas Association of Criminal Defense Lawyers (KACDL). The KACDL a non-profit organization of criminal defense lawyers and related professionals. The KACDL's mission includes ensuring justice and due process for persons accused of crime or other misconduct, and promoting public awareness of citizen's rights, the criminal justice process, and the role of the criminal defense practice.

HB 2456 provides clarity in the definition of possession contained in K.S.A. 21-5111(v). As it is currently written, the use of two distinct mental culpability levels, knowingly or intentionally, can create confusion. Using two mental culpability levels separated by an “or” also has the potential to create alternative means issues, so this change would fix that. Finally, because knowing conduct would already satisfies the definition of possession, this change does not appear to substantively lower the standard the State already has to prove.

However, as I discussed this bill with colleagues, several of them expressed that the law would be better served if possession crimes were treated as intentional crimes, such as “*intentionally* having joint or exclusive control over an item.” This is because there are some scenarios where a person may have to knowingly posses a piece of contraband for a good reason, though they had not intent to possess it. Let me provide an example:

K.S.A. 21-6301(5) criminalizes possessing “a shotgun with a barrel less than 18 inches in length.” Because that crime only requires the “knowingly” mental culpability level it is satisfied whenever someone is aware that they are possessing such a shotgun.¹ For example, imagine that a person inherited the contents of their grandfather’s gun safe, and discovers that it contains a shotgun with a barrel that is 16 inches in length. That person is now guilty of knowingly possessing that shotgun under Kansas law. Even if the

¹ See K.S.A. 21-5202(i)(defining knowingly).

person wanted to just take it to the police station so they can take care of it, they would still be guilty of knowingly possessing the shotgun just for transporting it. However, if the law required “intentionally” possessing the shotgun the person would have a defense because it was not their “conscious objective or desire”² to have the shotgun, they just had to get rid of it.

Thank you for your time and consideration.

Sincerely,

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² See K.S.A. 21-5202(h)(defining intentionally).