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Testimony to the House Committee on Judiciary in Opposition to HB2365

February 18, 2021

Chairman Patton and Members of the Committee:

The Johnson County Sheriff's Office opposes passage of **HB2365 - Providing immunity from criminal prosecution for possession of controlled substances or drug paraphernalia if seeking assistance related to substance use.**

The language in the bill is like language that was used in 2016 when SB133 was worked, passed by the Legislature, and signed into law by the governor. This became **K.S.A. 41-727 - Purchase or consumption of alcoholic beverage by minor; penalty; exceptions; immunity from criminal prosecution; tests; detainment.**

I was a senator then and I voted for that bill. It dealt with **minors** in possession or who had consumed alcoholic liquor or cereal malt beverages and needed medical assistance due to the use of those substances. I supported that bill because it dealt with minors. The research into brain science shows that **critical parts of the brain involved in decision-making are not fully developed until a person is at least 25 years old.** To put it another way, a minor isn't making the best decisions due to biology. That is not the case with an adult.

This bill does not make that distinction. **This bill would exempt any person, of any age, and up to four other people, of any age, from criminal prosecution for engaging in behavior they know or should know is criminal and has the possibility of serious physical harm or death.** This bill removes the *mens rea* from the crimes of possession of controlled substances and possession of certain drug precursors and drug paraphernalia.

This is an unbelievable range of drug crimes that criminal liability would suddenly disappear from because a person or group of persons asked for medical assistance. It is nearly every drug on every drug schedule for the state of Kansas.

The bill also removes intent for possession of certain drug precursors (ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,

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pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers) as well as drug paraphernalia.

Under this bill, if an officer were dispatched to a medical call and arrived to find a person in a room with large amounts of drugs, no enforcement action could be taken – other than the seizure of the drugs as contraband. This could be an adult illicit drug producer and distributor.

Page 2, lines 3 - 4 are troubling. We are not sure how this provision would work – “immune from liability for arresting a person who is later determined to be immune from prosecution pursuant to this section.” Who determines if a person is immune from liability? When is that determination made? Is it subject to a moving set of standards?

There is no liability protection for an officer’s agency should a person be arrested who is later determined to be immune from prosecution under this statute. **K.S.A. 41-727** provides that “A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or such officer’s employer, based on the officer’s compliance or failure to comply with this subsection.” We feel this language is more appropriate than the “later determined to be immune” language.

We would be willing to work towards a juvenile focused bill, but we cannot support this bill as written. We ask that the committee not recommend **HB2365** for passage.

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