

**House Judiciary Committee  
March 22, 2021**

**House Bill 2412  
Neutral Testimony of  
Kansas Association of Criminal Defense Lawyers**

Dear Chairman Patton and Members of the Committee:

House Bill 2412 (and Senate Bill 264, which is identical) is a result of the State of Kansas being set to receive \$4.8 million, at a minimum, from an opioid lawsuit settlement.<sup>1</sup> In its news release, the Attorney General’s Office stated: “Opioid addiction has killed hundreds of Kansans and continues to ravage the lives of many more, creating one of the largest man-made public health crises in our country’s history. In addition to the human cost, the economic cost in lost productivity, health care, child welfare and criminal justice has been high.”

**What HB 2412 would do**

House Bill 2412 would create the Kansas Fights Addiction Act, which establishes a fund for opioid litigation settlement money “for the abatement or remediation of substance abuse or addiction,” with the money going to “qualified applicants for projects and activities that prevent, reduce, treat or mitigate the effects of substance abuse and addiction.”

The bill also creates a review board of 11 members who would decide which grant applications will be funded. The board would be under the jurisdiction of the attorney general, and each member shall “have expertise in the prevention, reduction, treatment or mitigation of the effects of substance abuse and addiction.” The attorney general “shall provide administrative support for the board and shall administer, monitor and assure compliance with conditions on grants awarded.”

The bill also requires that each year the board shall submit a report to the governor, speaker of the House, president of the Senate, and the attorney general, giving an accounting of where the money was awarded and for what purpose.

**What health experts recommend**

Anticipating the funds from opioid litigation would soon be received by states and localities, a coalition of over 30 leading health organizations “released a set of principles aimed at guiding state and local spending of forthcoming opioid litigation

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<sup>1</sup> <https://ag.ks.gov/in-your-corner-kansas/resources/consumer-news/2021/02/04/ag-derek-schmidt-settles-opioid-lawsuit-brings-4.8-million-to-state-for-addiction-treatment-and-abatement>. “Opioids” refers to drugs such as oxycodone, hydrocodone, heroin, and fentanyl.

settlement funds.”<sup>2</sup> The coalition, coordinated by the Johns Hopkins School of Public Health, provides five principles to help guide policy making and spending of opioid settlement funds:

- Spend money to save lives
- Use evidence to guide spending
- Invest in youth prevention
- Focus on racial equity
- A fair and transparent process for deciding where to spend the funding

### **Our concerns with HB 2412**

We are pleased to see that HB 2412 meets the five principles in many ways. We are a neutral conferee on HB 2412 because amendments need to be made to match the best practices recommended by health experts and what we know to be true about the importance of including the voices of and input from people who experience(d) this public health crisis first-hand.

#### *The proposed makeup of the review board*

The coalition’s principles specifically mention youth, racial equity, involvement of people with lived experience, and clinicians. With regard to its principle of “focus on racial equity,” the coalition points out that:

In particular, minorities are more likely to face criminal justice involvement for their drug use. Black individuals represent just 5% of people who use drugs, but 29% of those arrested for drug offenses and 33% of those in state prison for drug offenses. Minority groups are also more likely to face barriers in accessing high-quality treatment and recovery support services.

These disparities have contributed to ongoing discrimination as well as racial gaps in socioeconomic status, educational attainment, and employment. Without a focus on racial equity when allocating settlement funds, localities run the risk of continuing a cycle of inequity.<sup>3</sup>

While HB 2412 provides that board members “have expertise in the prevention, reduction, treatment or mitigation of the effects of substance abuse and addiction,” there is no mention of representation by youth, people with lived experience, or people knowledgeable about racial impacts of the opioid crisis.

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<sup>2</sup> <https://www.jhsph.edu/news/news-releases/2021/coalition-releases-principles-to-guide-state-and-local-spending-of-forthcoming-opioid-litigation-settlement-funds.html>; full report here:

<https://opioidprinciples.jhsph.edu/>

<sup>3</sup> <https://opioidprinciples.jhsph.edu/principle-4-focus-on-racial-equity/>

For example, the board membership in Massachusetts includes that at least a couple of members be “qualified by experience with opioid use disorder, either first-hand or as a family member of an individual with opioid use disorder.”<sup>4</sup> In Kentucky, the board includes members representing the drug treatment community, drug prevention community, and “Kentuckians who have lost family members to overdoses.”<sup>5</sup>

On another note, while HB 2412 allows prosecutors to pick 3 of the 11 board members, there is no mention of a criminal defense attorney, i.e. a member of a group of professionals who have stood next to thousands of people affected by opioid addiction-related offenses while they were prosecuted and imprisoned by this state.

### *Criteria for grants*

The recommendations set out under the fourth principle, *i.e.* focus on racial equity, include “support diversion from arrest and incarceration.” Ideas include elevate and expand diversion programs and link participants to housing and employment, fund community-based harm reduction programs, and increase equitable access to treatments.

HB 2412 does refer to giving preference to treatment authorized under K.S.A. 21-6824 (commonly referred to as SB 123 treatment), which would potentially include people on diversion (see HB 2026, passed by the House on 1/28/21, 123-0). But HB 2412 should go further by making it clear that programs that decrease reliance on prosecution are also preferred.

Additionally, review of bills in other states shows them prioritizing “vulnerable populations” such as people in prison and people with co-occurring mental illness.<sup>6</sup>

HB 2412 would also be improved by adding language like that found in New York A. 2466: “Funding decisions should include an emphasis on supporting programs that are culturally and gender competent, trauma-informed, evidence-based and, where appropriate, employ individuals with lived experience as part of the services provided.”<sup>7</sup>

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<sup>4</sup> <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter309>

<sup>5</sup> [https://apps.legislature.ky.gov/recorddocuments/bill/19RS/hb44/orig\\_bill.pdf](https://apps.legislature.ky.gov/recorddocuments/bill/19RS/hb44/orig_bill.pdf)

<sup>6</sup> [http://webserver1.lsb.state.ok.us/cf\\_pdf/2021-22%20INT/SB/SB610%20INT.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20INT/SB/SB610%20INT.PDF) (Oklahoma’s bill on settlement fund); [https://www.njleg.state.nj.us/2020/Bills/A4000/3941\\_I1.HTM](https://www.njleg.state.nj.us/2020/Bills/A4000/3941_I1.HTM) (New Jersey’s bill)

<sup>7</sup> <https://s3.amazonaws.com/fn-document-service/file-by-sha384/19f9b8a0df9514468e01ef3c57696e6941e99d2e4a96e6d818706296904d57f4de374b21b9375952870b735d22e80b63>

### *Transparency of funding awards*

One of the coalition's suggestions is "[j]urisdictions should publicly report on how funds from opioid litigation are being spent. The expenditures should be categorized such that it is easy to understand the goals of a particular program and the measures that they are using to determine success..."<sup>8</sup>

HB 2412 requires a report be sent only to legislative leaders and two executive branch leaders. There are no provisions for release to the public.

HB 2412 should be amended to make clear how this information will be accessible to the public. For example, the list of recipients of Byrne Grant funding and the amounts are available on the governor's website, but I had to write someone to find out what the projects/purposes for the grant awards were. The public should not have to figure out how to dig deeper to see where settlement money is going.

### **Conclusion**

Due to statutes or regulations I am not aware of, there may be other amendments necessary to make HB 2412 comply with the coalition's principles.

We appreciate the thought that has gone into HB 2412, and would encourage this Committee to work on the language in this bill.

Everyone seems to agree this is a public health crisis—HB 2412 offers an opportunity to frame our state's response accordingly, and we encourage this Committee to make its decisions with a public health approach in mind.

Sincerely,

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<sup>8</sup> <https://opioidprinciples.jhsph.edu/principle-1-spend-money-to-save-lives/>;  
<https://www.astho.org/StatePublicHealth/How-States-are-Preparing-for-Opioid-Settlement-Funds/01-27-21/>