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HOUSE OF REPRESENTATIVES

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**BRETT FAIRCHILD**  
113TH DISTRICT

I've submitted written testimony in opposition to SB 414, "increasing the criminal penalties for unlawful distribution of fentanyl-related controlled substances." I certainly view fentanyl abuse as being a huge problem in our communities, and last year I voted in favor of legislation which increases the penalty for selling fentanyl. However, from my perspective this legislation goes much further than the legislation that we passed last year. The title of the bill seems misleading to me, because the actual text of the bill changes the state statute regarding all drugs, including marijuana. From my perspective, this bill would result in far more people in our state being falsely convicted of having an intent to sell drugs.

Some of the main problems that I have with the bill are on page 3, beginning on line 32. This section states that there shall be a rebuttable presumption of an intent to distribute if any person possesses 450 grams or more of material containing any quantity of marijuana. The phrase "material containing any quantity of" is in italics and is therefore new language in the bill and not part of the current statute. Therefore, this section essentially makes it to where there will be a rebuttable presumption that an individual has an intent to distribute marijuana if that individual bakes a cake that weighs at least 450 grams and simply contains a trace amount of marijuana. This section is essentially making it to where someone is presumed to be selling marijuana even if they only possess a very small amount of it, if the marijuana is contained within some other substance which weighs at least 450 grams. I'm simply using marijuana as an example, but I object to this language as it applies to all other drugs as well, because this section is making it to where an individual would be presumed to be selling drugs even if they only possess a very small amount of drugs, as long as those drugs are contained within some other substance. I think this section would result in a lot more people going to prison for selling drugs who did nothing more than simply possess and use drugs.

In addition, I believe that "intent laws" in general are problematic because they basically assume that a defendant is guilty until proven innocent. This flies in the face of the legal principle embedded in our legal system that all defendants are innocent until proven guilty. The Kansas legislature also seems to recognize that our current "intent laws" are problematic, because we recently passed legislation unanimously in the house that replaces the "rebuttable presumption" language with "permissive inference" instead. It's unclear to me whether this change will entirely solve this problem or not, but it at least seems like a step in the right direction. It should be noted that this bill still contains the "rebuttable presumption" language that we're attempting to change in HB 2385. I believe that it's deeply problematic for our legal system to simply assume that an individual is guilty of having an intent to sell drugs, and then require that individual to prove in court

that he or she didn't have an intent to sell drugs. This is the exact opposite of the way that our legal system is supposed to work.

In conclusion, I'm opposing this legislation because I believe it would result in a significant increase in the number of people in prison in our state who were convicted for having an intent to sell drugs who were simply possessing and using drugs. I believe this bill represents a significant expansion in the size and scope of government in our state, and I'm asking the house corrections committee to either significantly amend the bill or kill the bill all together.

*Brett Fairchild - State Representative - 113th District*

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