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HB2487

Opponent

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House Corrections and Juvenile Justice

Chair: Rep. Stephen Owens

This bill tries to put a mask on our society's current mandate on criminalizing certain drug users. If drug possession is a crime then we should treat it as a crime, if we want to give immunity to those committing a crime then we should make what is a crime not a crime. I respect the sponsors of this bill and mourn with those who have lost loved ones, but I cannot understand what this will do except create more confusion and probably even more use of disparate discretion.

The language in subsection (a) would allow the use of other lower-level misdemeanors to be used for arrest such as disorderly conduct, trespassing, loitering, etc. so an individual may not be arrested or charged with a violation of KSA 21-5706, but would still be subject to arrest and prosecution on other non-immune crimes. This will be looked at as a 'gotcha' even if it is not intended to be. Then in (a)(2)(A) does the, "not more than four persons", language mean that if persons 5, 6, and 7 were there, and had illegal substances on them, could they be arrested? In (a)(2)(B) what is considered relevant information in regards to the 5th Amendment, "snitching" etc.?

In subsection (b)(2), it appears there will be a need for reporters to know the quantity of illegal drugs in the house, car or on each person before they call. This seems slightly ridiculous to pass this bill with the expectation that the public will make sure they yell out how much stash they have so they can feel safe calling 911 for the dying man, woman, or child. In reality, all those involved should throw themselves at the mercy of the court after trying to save the one in distress.

Subsection (d) is vague and confusing as to what determines an independent source. Does this nullify the immunity in cases of sharing relevant information or cooperation as mentioned above?

Finally in subsection (e), what would be an example of reckless or intentional misconduct? If something is against federal law like states who have legalized cannabis, would intentional misconduct be arresting for a federal offence? Regardless, if arrested, there are still the consequences of that arrest including detainment, bail, discretionary decisions about interrogation, searches, confiscation of drugs or paraphernalia and other forms of trauma and harm relating to one's personal life, housing, employment etc. of which does not even consider expungement issues.

There are other issues that complicate matters involving "frequent flyers", parolees and probationers, and drug-induced homicide laws. Kansas will, if this bill passes, have both a drug-induced homicide law and a Good Samaritan law where you as policymakers will essentially be telling people that if they call for help at the scene of an overdose, they may be protected from the legal consequences of drug possession, but if that overdose turns fatal, they could face homicide.

I am a proponent of a Controlled Substances Act when it comes to synthetic substances and believe a hard on crime approach is more conducive to our Constitutional Republic, however, the most straightforward way to ensure that fear of criminalization does not deter help-seeking is true decriminalization. These are my thoughts and I thank you for allowing me to share them.