



Kansas County & District Attorneys Association

1200 SW 10th Avenue  
Topeka, KS 66604  
(785) 232-5822 Fax: (785) 234-2433  
www.kcdaa.org

To: Chairman Jennings and Members of Corrections and Juvenile Justice

From: Kim T Parker Kansas County and District Attorneys Association

Date: February 3rd, 2020

Re: Proponent Testimony House Bill 2456

Good Afternoon Chairman Jennings and Committee Members,

Thank you for the opportunity to provide proponent testimony regarding HB2456. I am addressing you on behalf of the Kansas County and District Attorney's Association. This bill seeks to clarify the definition of possession in the Kansas Criminal Code. Several years ago, this state engaged in a massive project to recodify the Kansas Criminal Code. I was part of that working group for five years. One of the central objectives of the recodification project was to make clear levels of criminal culpability throughout the Kansas Criminal Statutes. In other words, to clarify and distinguish the meanings of *intentional acts*, *knowing acts* and *reckless acts*. Our aim as part of recodification, was to assign a single level of culpability to each distinct criminal act. Before the recodification, several crimes had more than one level of culpability in a single sentence, phrase or element of the crime. Thus, it was confusing for investigators, prosecutors, defenders, judges and jurors. The terms intentional and knowing each have their own definitions and each have different meanings. When these two defined terms are both given to jurors to apply to the same set of facts it becomes very confusing for them and difficult for

jurors to determine which culpability term to apply. The change we propose would help eliminate that confusion for practitioners and citizens.

Despite the careful and thorough work of the recodification working group, the definition of possession was overlooked and currently refers, within a single sentence, to two levels of culpability. This oversight has resulted in the exact confusion the recodification changes were designed to correct. HB2456 is a clarification change to the definition of possession that clearly identifies the a single level of culpability consistent with case law and consistent with K.S.A.

21-5202 i) *A person acts "knowingly," or "with knowledge," with respect to the nature of such person's conduct or to circumstances surrounding such person's conduct when such person is aware of the nature of such person's conduct or that the circumstances exist. A person acts "knowingly," or "with knowledge," with respect to a result of such person's conduct when such person is aware that such person's conduct is reasonably certain to cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as "knowingly," "known," or "with knowledge" are general intent crimes.*

The change we seek in HB2456 is to strike the reference to intent, leaving knowing as the appropriate level of culpability, and the clarified statute would read, "Possession" means knowingly having joint or exclusive control over an item or knowingly keeping some item in any place where the person has some measure of access and right of control. Because this is a clarification amendment to the statute it has no fiscal effect. Thank you for your consideration of this measure and we urge its passage.

Kim T Parker

Prosecutor Coordinator

Kansas County and District Attorney's Association

316-650-7267 kteresep@gmail.com