

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 419**

As Agreed to April 26, 2024

Brief*

House Substitute for SB 419 would provide immunity from prosecution for possession of a controlled substance or certain drug paraphernalia if the person seeks medical assistance while under the influence of a controlled substance or provides medical assistance to a person who is under the influence of a controlled substance and is in need of medical assistance.

Persons Eligible for Immunity

The bill would prohibit a law enforcement officer from taking a person who may be eligible for immunity into custody solely based on an alleged offense of:

- Possession of controlled substance; or
- Possession with the intent to use drug paraphernalia in order to introduce a controlled substance into their body.

[*Note:* The bill would not provide immunity for persons who possess and intend to use drug paraphernalia to manufacture, cultivate, plant, propagate, harvest, test, analyze, or distribute a controlled substance, as specified in continuing law.]

Seeking Medical Assistance by an Individual

Under the bill, immunity would be available to persons who initiated contact with law enforcement or emergency medical services (EMS) and requested medical assistance on their own behalf due to use of a controlled substance and a reasonable belief that such assistance was needed. Such person would also be required to cooperate with law enforcement and EMS personnel while medical assistance was provided.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Rendering Aid or Seeking Assistance for Another

The bill would make immunity available to a person who, on behalf of a person who appeared to need medical assistance due to the use of a controlled substance:

- Rendered aid; or
- Initiated contact with law enforcement or EMS and requested medical assistance for such person.

Such person would also be required to:

- Provide their full name and any other relevant information necessary to provide medical assistance requested by law enforcement or EMS personnel;
- Remain at the scene with the person needing medical assistance until EMS personnel and law enforcement officers arrived; and
- Cooperate with EMS personnel and law enforcement in providing medical assistance.

Persons in Need of Medical Assistance

Under the bill, immunity would be available to the person who reasonably appeared to need medical assistance due to the use of a controlled substance and who cooperated with EMS personnel and law enforcement while medical assistance was provided.

Immunity Conditions and Exceptions

Persons who otherwise qualify under the bill would be immune from criminal prosecution for the crimes of possession of a controlled substance, or possession with intent to use drug paraphernalia to introduce a controlled substance into the human body pursuant to the Kansas Criminal Code or any city ordinance or county resolution for the same acts.

Intent to Distribute

If a quantity of controlled substances was found at the scene of the encounter with law enforcement that would be sufficient to create a rebuttable presumption of intent to distribute, immunity from criminal prosecution or having an arrest warrant issued would not be available to persons who may otherwise qualify.

Warrants and Searches

The bill would not extend immunity to persons who seek medical assistance during the course of the execution of an arrest or search warrant or during a lawful search.

Other Evidence

The bill contains a provision indicating persons immune to prosecution under the bill could be prosecuted based on evidence obtained from an independent source.

Civil Liability

Under the bill, law enforcement agencies and officers would not be liable based on an officer's compliance or failure to comply with the bill.

Furthermore, the bill would extend civil liability immunity to officers who arrest persons later determined to be immune from prosecution, unless such officer's conduct was reckless or constituted intentional misconduct.

Conference Committee Action

The Conference Committee agreed to remove the provisions of House Sub. for SB 419 and insert the provisions of HB 2487, as passed by the House.

Background

The Conference Committee agreed to remove the contents of House Sub. for SB 419, as passed by the House, and insert the provisions of HB 2487, as passed by the House.

As it entered conference, House Sub. for SB 419 contained the contents of HB 2522, as passed by the House, concerning the Secretary of Corrections' duty to assist inmates in procuring identification before release from custody. [*Note: These provisions were not retained by the Conference Committee.*]

HB 2487

HB 2487 was introduced by Representatives Hoheisel, Alcalá, Probst, and Proctor.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on January 25, 2024, **proponent** testimony was provided by Representatives Hoheisel, Probst, and Proctor; representatives of DCCCA, the Behavioral Health Association of Kansas, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, Kansas Sheriffs Association, and Safe Streets Wichita Coalition; and eight private citizens. The proponents indicated fentanyl is killing many Kansans, and passage of the bill could save lives by encouraging the seeking of medical assistance for persons experiencing an overdose.

Written-only proponent testimony was provided by representatives of the Board of Indigents' Defense Services, Cross-Lines Community Outreach, Johnson County Mental Health Center, Kansas Bureau of Investigation (KBI), Kansas Department for Aging and Disability

Services, Kansas Department of Health and Environment, Kansas Public Health Association, Lawrence-Douglas County Public Health, United Community Services of Johnson County, and Wyandotte County Public Health Department, and three private citizens.

Neutral testimony was provided by a representative of First Call Alcohol/Drug Prevention & Recovery, who stated that in jurisdictions with a “Good Samaritan” law, rates of calling to seek medical assistance are low, but the organizations hopes this bill results in persons seeking medical assistance without fear of reprisal.

Opponent testimony was provided by a private citizen, who stated their concerns regarding law enforcement discretion under the bill, provisions concerning the number of people who may receive immunity, and the quantity of controlled substances present.

The House Committee amended the bill to:

- Remove language that limited the number of people who would be eligible for immunity [Note: The Conference Committee retained this amendment.];
- Specify that a person would be required to provide information that is necessary for medical assistance in addition to their full name [Note: The Conference Committee retained this amendment.]; and
- Specify that a person acting in accordance with the bill would neither be taken into custody nor have a warrant for arrest issued against them for a violation of certain release conditions. [Note: The Conference Committee did not retain this amendment.]

On February 6, 2024, the bill was withdrawn from the House Calendar and rereferred to the House Committee on Corrections and Juvenile Justice.

On February 8, 2024, the House Committee further amended the bill to:

- Specify that only the offense of possession with intent to use drug paraphernalia to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the body is eligible for immunity from prosecution [Note: The Conference Committee retained this amendment.]; and
- Remove the previous amendment specifying that a person acting in accordance with the bill would neither be taken into custody nor have a warrant for arrest issued against them for a violation of certain release conditions. [Note: The Conference Committee retained this amendment.]

Senate Committee on Judiciary

In the Senate Committee hearing on March 14, 2024, **proponent** testimony was provided by Representative Proctor; representatives of the Behavioral Health Association of Kansas, DCCCA, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association; and six private citizens. The testimony was substantially similar to what was provided in the House Committee hearing.

Written-only proponent testimony was submitted by Representatives Hoheisel and Probst; representatives of the Board of Indigents’ Defense Services, Johnson County Mental Health

Center, Kansas Department for Aging and Disability Services, Kansas Department of Health and Environment, Kansas Public Health Association, Kansas School Nurse Organization, Lawrence-Douglas County Public Health, and Wyandotte County Public Health Department; and six private citizens.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2487, as introduced, the Kansas Commission on Peace Officers' Standards and Training (KSCPOST) states its sole funding source is municipal court costs fees, and that with the possibility that certain drug possession crimes could avoid prosecution under the bill, it would reduce KSCPOST revenues. The agency estimates that 5.0 percent of people charged with misdemeanor drug crimes would utilize the provisions of the bill, which would cause a reduction of approximately \$20,000, beginning in FY 2025.

The Office of the Attorney General, KBI, the Emergency Medical Services Board, the Office of Judicial Administration, and the Kansas Highway Patrol indicate enactment of the bill would have no fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties states it cannot estimate a fiscal effect because it cannot estimate how often the provisions of the bill would be used to avoid prosecution and what local resources would be used in responding to requests for medical assistance.

The League of Kansas Municipalities states municipalities would be required to develop and implement new procedures related to drug crimes, which would result in additional time and training expenditures; however, a precise estimate could not be determined.

Fentanyl; immunity from criminal prosecution; law enforcement; emergency medical services

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