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Testimony Regarding HB 2277, Concerning the Definition of Possession in the Criminal Code Submitted by Mande Schauf, Assistant District Attorney On Behalf of Marc Bennett, District Attorney, Eighteenth Judicial District

Honorable Chairman Jennings and Members of the Corrections and Juvenile Justice Committee:

Thank you for the opportunity to address you regarding House Bill 2277. On behalf of Marc Bennett, District Attorney for the Eighteenth Judicial District, we join the Kansas County and District Attorneys Association, as proponents for a clarification to the definition of “possession” as set forth in the Kansas Criminal Code.

Currently, K.S.A. 21-5111(v) defines “possession” as “having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.” At the time this definition was enacted, the Kansas Criminal Code had only two culpable mental states, intentional and reckless. In 2011, the legislature recodified the criminal code and, among other changes, added a third culpable mental state to the code, knowingly or with knowledge of. As a result, a crime in Kansas can be committed either intentionally, knowingly, or recklessly. Each of these terms is then uniquely defined in the code. Crimes that are committed “knowingly” are general intent crimes.

Despite the thorough and painstaking review of all impacts of the recodification, the definition of “possession” was overlooked. As you can see, the current definition contains two culpable mental states, intentional (“intent to have”) and knowing (“with knowledge of...or knowingly keeping”). Having two culpable mental states within a single sentence causes confusion for prosecutors, defense attorneys and judges when it comes to instructing jurors on the law regarding possession. 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 to determine which level of culpability to apply.

HB 2277 proposes to clarify the culpable mental state required to prove possession. As proposed, the definition would read, “‘Possession’ means knowingly having joint or exclusive control over an item or knowingly keeping some item in a place where the person has some measure of access and right of control.” The clarification brings a single level of culpability to the definition making it clearer for all members of the criminal justice system to understand the requisite

mental state for possession. This proposed change simply codifies the fact that possession under the law is a general intent crime.

Thank you for your consideration of this measure and we urge its passage.

Respectfully submitted,

Mandee Schauf
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