

Controlled Substance “Good Samaritan” Protections; House Sub. for SB 419

House Sub. for SB 419 provides 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 prohibits a law enforcement officer from taking a person who may be eligible for immunity into custody based solely on an alleged offense of:

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

[*Note:* The bill does 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

The bill provides immunity to persons who initiate contact with law enforcement or emergency medical services (EMS) and request medical assistance on their own behalf due to use of a controlled substance and a reasonable belief that such assistance was needed. Such person is also required to cooperate with law enforcement and EMS personnel while medical assistance is provided.

Rendering Aid or Seeking Assistance for Another

The bill makes 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:

- Renders aid; or
- Initiates contact with law enforcement or EMS and requests medical assistance for such person.

The person is also 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 arrive; and
- Cooperate with EMS personnel and law enforcement in providing medical assistance.

Persons in Need of Medical Assistance

The bill makes immunity available to the person who reasonably appears to need medical assistance due to the use of a controlled substance and who cooperates with EMS personnel and law enforcement while medical assistance is provided.

Immunity Conditions and Exceptions

Persons who otherwise qualify under the bill are 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 is found at the scene of the encounter with law enforcement that is sufficient to create a rebuttable presumption of intent to distribute, immunity from criminal prosecution or having an arrest warrant issued will not be available to persons who may otherwise qualify.

Warrants and Searches

The bill does 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 can be prosecuted based on evidence obtained from an independent source.

Civil Liability

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