



Kansas County & District Attorneys Association

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TO: Senate Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney

RE: SB 39

DATE: January 30, 2013

Hon. Chairman King and Members of the committee:

Thank you for the opportunity to submit testimony regarding SB 39, which amends K.S.A. 21-5708 regarding prescription drugs. My name is Tom Stanton, and I am the Deputy Reno County District Attorney. I am a past president of the KCDAA, and I am currently the Section Leader for the KCDAA Drug Section. This testimony is on behalf of the KCDAA in support of this legislation. I will be present for the hearing, and will be available for any questions the Committee may have on this testimony.

I have reviewed the testimony of Todd Thompson, the Leavenworth County Attorney. I agree with that testimony.

One of the fastest growing drug related problems we have today is the diversion of prescription medication. This term refers to the use of certain prescription drugs by those for whom the drugs were not intended. When the drugs are controlled substances, such as hydrocodone or oxycodone, the problem can be addressed because these substances are also controlled substances. Possession of pharmaceutical controlled substances without a valid prescription falls under the uniform controlled substances act. The problem addressed here is the possession of prescription drugs by unauthorized persons when the drugs require a prescription, are dangerous, but are not controlled.

The "pharm parties" referred to by Mr. Thompson most often consist of young people stealing prescriptions from family members, getting together, and then taking prescription drugs without regard to the dangers of the individual drugs, and with absolutely no knowledge of the effects that will result from combining these medications. It is a very dangerous trend.

One of the concerns I have heard regarding this legislation is the possible affect it may have on

those who legitimately possess prescriptions belonging to another. My wife, my son and myself all use the same pharmacy. There are times I will go to the pharmacy and pick up prescriptions for my wife or my son. The question some have is whether that puts me at risk for arrest. The answer is, "No."

The amendment to the statute defines "holder of a valid prescription order" as "(A) A person to whom a valid prescription order is issued for the purpose of obtaining a prescription-only drug; and (B) such holder's implicitly or explicitly authorized agent for the purpose of facilitating delivery of such prescription-only drug to such holder."

Law enforcement officers are required to have probable cause that a crime has been committed before an arrest can be made. A law enforcement officer could not make an arrest under this statute without having probable cause a crime is being committed. That would require an investigation. The investigation could take a moment, as when the prescription I just picked up for my wife has her name on it, and is still in the original bag stapled close by the pharmacist. Or it could take a couple of minutes for the officer to verify I had permission to pick it up. (Pharmacists are not allowed to give me a prescription for my wife with knowledge that I have her consent.) However, if the situation was that my son had a prescription with my name on it, and the officer could see that there are not the full number of pills within the bottle as listed on the bottle, I would want the officer to take time to insure he properly had the prescription drug.

I make these observations to show that the time to conduct an investigation under this statute will vary depending on the circumstances, especially when there is evidence that a suspect may be under the influence of the prescription drug he or she possesses. However, the safety of our you and all citizens requires this degree of diligence. We do not fault law enforcement officers for conducting field sobriety tests to determine if a motorist is too intoxicated to drive, even when the motorist ultimately passes the tests. The tests are done to protect everyone on the roadway. Any time spent on investigations of the circumstances surrounding the possession of prescription-only drugs is likewise to be commended.

Finally, I assure this Committee that the prosecutors who deal with these types of cases are interested only in prosecuting those involved in the criminal possession of prescription-only drugs when the facts of the individual case support the prosecution. That is why we endorse the broad language of the definition of "holder of a valid prescription order."

I respectfully request that this Committee consider SB 39, and recommend this legislation for passage.

Respectfully submitted,

Thomas R. Stanton
Deputy Reno County District Attorney