



**House Judiciary Committee
February 6, 2023**

**House Bill 2215
Testimony of the BIDS Legislative Committee
Prepared by Sean Randall**

Opponent

Dear Chairman Patton and Members of the Committee:

This bill creates a crime that would effectively undo the graduated sanctions scheme established by this legislature just a few short years ago currently embodied in K.S.A. 22-3716. Additionally, it likely impacts a whole class of citizens and situations not intended to be brought under the proposed legislation. Thirdly, it will likely result in an increase in our state prison populations, and the attendant costs thereto. As such, the BIDS legislative committee opposes this bill.

Effect on Kansans Currently Under Probation Supervision

As a condition of probation, probationers must submit to a test of their breath, saliva, urine, or hair at any time requested by their probation officer. Most often, these tests are conducted on a probationer's urine and the purpose of the test is to determine whether they are using controlled substances while under supervision. If the test is positive for the presence of controlled substances, a probation violation report will oftentimes be filed with the Court, and the probationer may be called in to answer for that violation. Testing positive for the presence of controlled substances while under supervision is a "technical" violation. Additionally, if a probationer is found to be employing the use of a drug-masking product, they will also receive a technical violation. This is different from other types of more serious conduct – such as receiving a new laws violation or absconding from supervision.

Over the past few years, this legislature has recognized that citizens with addiction and drug dependence issues should be treated differently than other criminal defendants enveloped in the criminal justice system. Astutely, this legislature has recognized that the focus of our limited resources should be on treating the underlying cause of their criminality (drug addiction and dependence) rather than incarceration. As a result, a host of legislation has been passed that attempts to avoid lengthy prison sentences and instead focuses on shorter sanctions and drug treatment options. For example, K.S.A. 21-6824 (commonly known as SB 123), created a program whereby many people convicted of drug possession are afforded the opportunity to receive substance abuse treatment as part of their probation supervision.

Additionally, and most pertinent to this proposed legislation, is K.S.A. 22-3716. This statute sets out graduated sanctions for courts to impose for violations of probation, including assignment to



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a community corrections program or varying lengths of “shock time” in the county jail (or the Department of Corrections, for violations before July 1, 2019). However, these sanctions do not result in the offender’s probation being revoked or the serving of their underlying sentence. That cannot happen until this series of sanctions has been imposed and the probationer continues to violate the terms of his or her supervision. It bears emphasizing that this legislature mandated that this series of sanctions be imposed - they are not discretionary. A Court must impose one or more of them before revoking probation and ordering an offender to serve their underlying sentence.

However, K.S.A. 22-3716 also lays out ways for a court to bypass the imposition of these sanctions and impose a person’s underlying prison sentence instead. A notable exception to this mandate is when a person on probation commits a new felony or misdemeanor. In that circumstance, the Court is not required to impose any sanctions and instead is authorized to revoke their probation forthwith.

By creating a new criminal misdemeanor offense of utilizing a drug-masking product, this bill would undo several of the parts of positive and commendable legislation passed in the recent past that recognizes that those with drug addiction and drug dependence should not be sent to prison without first employing a series of sanctions and treatment. This bill would turn a technical violation into a laws violation – and the potential ramifications would be life-altering.

It would also treat two probationers engaged in the same violative conduct – the use of controlled substances – to wildly different consequences based not on the violation, but the decision to try and obfuscate such conduct from their supervising officer. If two probationers use a controlled substance, but only one of them decides to employ the use of a drug-masking product, the former would likely receive a sanction, while the other could potentially be sent to serve a prison sentence. This is simply unfair.

Drug dependence and addiction is a reality in our society. We should continue to afford Kansans dealing with this affliction alternative treatment and supervision options. We should not create a new misdemeanor offense that will eviscerate the progress enacted by this legislature and result in incarceration in the Department of Corrections.

Impacts on Kansans Seeking Employment

In today’s world, many employers require prospective job applicants to pass a drug test as a precondition of employment. Oftentimes, a positive drug test is an automatic disqualifier from obtaining such employment. As a result, those battling drug addiction or drug dependence can face significant barriers to gainful employment.

Being unable to obtain employment as a result of drug dependence issues is already a burden for the individual and for our State. To add an extra burden of a criminal prosecution – which involves a significant expenditure of time, money, and resources for both the individual and our State – is unnecessary and punitive.



Being unemployable is hard enough. This legislation makes it harder, because now they won't have a job and they are facing a criminal prosecution. And, furthermore, this committee is well aware of the limited resources of our law enforcement and judicial agencies. Due to the broad language of this bill, these limited resources will be expected to engage in what is, and should remain, conduct between a potential employer and a potential employee. The remedy for this conduct should be failure to get a job – already detrimental in itself. Adding a layer of potential criminal ramifications is excessive and unnecessary. Additionally, this law will create a burden on prospective employers who, aware of the criminal conduct, are not transformed in to law violation reporting entities. This should not be the desire of this committee.

Effect on Prison Population and Overcrowding

As stated previously, criminalizing what is currently a technical probation violation, and turning it into a misdemeanor offense, will short-circuit the graduated sanctions scheme and allow the Courts to simply revoke probation and execute underlying prison sentences.

It is not inexpensive to house people in the Kansas Department of Corrections. Each additional prisoner is an additional cost to the taxpayer (\$37,000 last year). Simply put, those citizens dealing with substance abuse disorders like addiction and/or dependence, are not inherently dangerous and should not be subject to the harshest of criminal penalty – incarceration in our state prisons.

Have no doubt: creating new crimes creates more people with criminal records or more extensive records, which results in more people incarcerated in Kansas jails and prisons.

For all the reasons explained above, we respectfully request that this Committee reject HB 2215.

Respectfully submitted,

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