House Corrections and Juvenile Justice Committee
February 15, 2022

House Bill 2657
Testimony of the Kansas Association of Criminal Defense Lawyers (KACDL)
Presented by Clayton Perkins
Opponent

Dear Chairman Owens and Members of the Committee:

Reducing armed violence is an important goal of our criminal justice system. That is why this Legislature has already equipped prosecutors and district courts with many tools to combat armed violence. Because HB 2657 would replace judicial discretion in using those tools with mandatory minimum sentences, and lumps drug crimes into the definition of a "violent felony" triggering those mandatory minimum sentences, we oppose this bill.

The first problem with HB 2657 is that it replaces existing judicial discretion in sentencing with mandatory minimum sentences. Right now, when a defendant is sentenced for two or more felony convictions, the sentencing judge already has discretion to decide whether to run those sentences concurrently or consecutively[1]. That means prosecutors are already able to request a defendant receive a consecutive sentence, and district courts can impose those sentences consecutively when appropriate. HB 2657 would, instead, require consecutive sentences and remove that discretion when a defendant is convicted of being a felon in possession of a firearm and a qualifying "violent felony."

Having judicial discretion in sentencing these offenses is critically important, however, because there is a massive range in the culpability of defendants who are convicted of being a felon in possession of a firearm. There are some people convicted of being a felon in possession of a firearm who have significant criminal history, and were clearly on notice that they could not possess a firearm in Kansas. However, there are also people convicted of this crime who were not even aware that they were prohibited from having a firearm at the time.

For example, Kansas law has historically treated a Missouri suspended imposition of sentencing as a conviction making it a crime to have a firearm pursuant to K.S.A. 21-6304, but Missouri doesn't consider that a conviction, so you can have a firearm there. Thus, people who are lawfully possessing their firearms in Missouri can unknowingly commit this crime just by crossing over State Line Road. Likewise, other technical distinction over whether prior convictions are classified as person or nonperson offenses, what counts as an expunged conviction, or when the statutory period prohibiting firearms possession technically begins or ends, all create grounds for people to be convicted via K.S.A. 21-6304 without realizing they were prohibited from having a gun in Kansas. It is, therefore, critically important in such cases that judges have discretion to assess the defendant's culpability and impose the appropriate sentence, rather than be confined to mandatory consecutive sentencing.

[1] See K.S.A. 21-6819

For similar reasons, HB 2657 making all qualifying sentences presumptive imprisonment is problematic. It is important to note in this context that because most of the "violent felonies" listed in HB 2657 already require presumptive imprisonment, any additional sentence for being a felon in possession of a firearm would also be imprisonment. Likewise, anyone with significant criminal history placing them in the A or B categories on our sentencing grid will already be in the presumptive imprisonment range, and K.S.A. 21-6804(h) already makes any person felony committed with a firearm presumptive imprisonment. That means that the switch from presumptive probation to presumptive imprisonment in HB 2657 only really matters in the cases involving the lowest severity of qualifying offenses, committed by defendants who do not have significant criminal history scores. Those are the situations where Kansas law does deem an opportunity at probation is appropriate, and we don't need to change that. Moreover, when a sentence of probation would be inappropriate, the State is already equipped to request a departure sentence to a term of imprisonment.[1] The changes HB 2657 makes to this process are unnecessary and will have the most impact on the least severe cases.

Finally, HB 2657 is problematic because subsection (z)(3)(U) includes drug crimes, including simple possession, in the list of qualifying "violent felonies". Kansas law already and correctly treats drug crimes as non-person offenses, and provides numerous special sentencing rules for addressing drug crimes, including existing sentence enhancements for carrying a firearm while distributing drugs.[2] Another mandatory minimum sentence scheme is unnecessary. Particularly, in the most significant cases impacted by HB 2657, we will see defendants who are convicted of felony possession of marijuana and being a felon in possession of a firearm, when they were unaware that they were even prohibited from having a firearm, who will be required to serve a mandatory prison term of at least 17 months imprisonment. That is at situation where discretion in sentencing, rather than mandatory sentencing rules, is highly important. As such, even if this bill does go forward, this committee should consider removing drug crimes, especially drug possession pursuant to K.S.A. 21-5706, from the list of "violent felonies" contained in HB 2657.

Thank you for your time.

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[1] See K.S.A. 21-6815
[2] See K.S.A. 21-6805(g)