

House Committee on Corrections and Juvenile Justice
February 14, 2023

House Bill 2329
Testimony of the BIDS Legislative Committee
Prepared by Emily Brandt
Opponent

Chairman Owens and Members of the Committee:

The BIDS Legislative Committee is opposed to HB 2329 which would increase the sentence enhancement from 6 months to 36 months of imprisonment if a person possesses a firearm to commit a drug felony.

HB 2329 will penalize people legally possessing firearms

As written, HB 2329 has no limiting factor for **who** can be penalized for possessing a firearm in furtherance of a drug felony. HB 2329 is so broadly written that people legally possessing firearms will face an additional 3 to 5 years in prison. Although those same people may be committing a drug felony while possessing the firearm, drug felonies are nonperson offenses and typically non-violent felonies.

This is unlike HB 2031 which this committee previously heard testimony on. HB 2329 **targets people who lawfully possess firearms**—not people who are legally prohibited from possessing a firearm. Kansas is an open carry state and allows certain people to conceal carry without a permit. It has some of the most robust protections of the right to bear arms. Without some limiting factor, HB 2329 will infringe on the rights of people to legally possess firearms.

Substituting “Possessed” for “Carried” will increase the number of people impacted by HB 2329

The Kansas Criminal Code, K.S.A. 21-5111(v) defines possession as:

[K]nowingly 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.

A person can be in possession of a firearm without carrying a firearm. Carrying a firearm, concealed or open, requires a person to have the firearm physically on their person.

Distributing a controlled substance is a drug felony. K.S.A. 21-5705(a),(d)(1). Imagine a scenario where a college aged woman is prescribed Adderall (a controlled substance). During finals she sells some of her Adderall to friends. Like our gun owner above, she is also a responsible gun owner. She follows all of her campus rules and procedures for securely storing her conceal carry firearm in her dorm room. To try and avoid detection from her RA, she sells her Adderall while her friends are already in her dorm room, hanging out, studying, etc. Her roommate tells the RA what is going on and law enforcement officers arrest the responsible gun owner for distribution. During the search of her dorm room, the law enforcement officers find the firearm.

Was she in possession of her firearm while committing a drug felony? Yes. She knew she had exclusive control over her weapon. She kept the gun in her dorm room. She had access to the gun safe and only she knew the combination to it.

But was she carrying her firearm during the drug felony? No. The firearm was securely in a gun safe, locked away and not on her person.

Substituting “possessed” for “carried” in subsection (g)(1) will result in more people being swept up by this sentencing enhancement rule. People who are responsible gun owners, who are legally allowed to possess their guns will face significant additional prison time—more time than for the underlying drug felony in many cases—if HB 2329 passes out of committee without amendment.

Thank you for your time.

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