

February 6, 2024

The Honorable Kellie Warren, Chairperson
Senate Committee on Judiciary
300 SW 10th Avenue, Room 346-S
Topeka, Kansas 66612

Dear Senator Warren:

SUBJECT: Fiscal Note for SB 413 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 413 is respectfully submitted to your committee.

SB 413 would establish penalties for unlawful distribution or possession with the intent to distribute by weight or dosage unit any material containing any quantity of a fentanyl-related controlled substance. The bill would specify the following penalties for the unlawful distribution or possession with the intent to distribute by weight any material containing any quantity of a fentanyl-related controlled substance:

<u>Material Quantity</u>	<u>Penalty</u>
Less than 1 gram	Drug severity level 4 felony
At least 1 gram but less than 3.5 grams	Drug severity level 3 felony
At least 3.5 grams but less than 100 grams	Drug severity level 2 felony
100 grams or more	Drug severity level 1 felony

The bill would specify the following penalties for the unlawful distribution or possession with the intent to distribute by dosage unit any material containing any fentanyl-related controlled substance:

<u>Material Quantity</u>	<u>Penalty</u>
Fewer than 10 doses	Drug severity level 4 felony
At least 10 doses but fewer than 50 doses	Drug severity level 3 felony
At least 50 doses but fewer than 250 doses	Drug severity level 2 felony
250 doses or more	Drug severity level 1 felony

Current law defines a dosage unit as a pill, capsule, or microdot that is not distributed by weight. Under the provisions of the bill, the possession of at least three and a half grams or 50 doses of material containing any fentanyl-related controlled substance would be construed as possession with the intent to distribute. The bill would also expand the definition of possession with the intent to distribute to include material containing any quantity of marijuana, methamphetamine, heroin, fentanyl, or any other controlled substance.

The Board of Indigents Defense services indicates that the bill would increase agency expenditures on legal counsel and support staff by an unknown amount. The Board estimates that drug severity level 2, 3, or 4 felony cases require 57 hours of direct work by an attorney to provide constitutionally adequate representation. Based upon the rates of \$83.36 per hour for public defenders and \$120 per hour for assigned counsel, each new drug severity level 2, 3, or 4 felony case brought to the agency would result in State General Fund expenditures of \$4,752 to \$6,840. The Board indicates that a drug severity level 1 felony case requires 99 hours of defense attorney work. Therefore, each new drug severity level 1 felony case brought to the agency would result in State General Fund expenditures of \$8,253 to \$11,880. The Board indicates that it may require 1.00 new FTE attorney position and possibly additional support staff depending on the amount of work required by the bill.

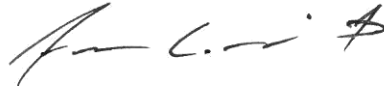
The Sentencing Commission estimates that the bill would result in an increase of four adult prison beds needed by the end of FY 2025. By the end of FY 2034, 14 additional beds would be needed. The current estimated available bed capacity is 9,668 for males and 932 for females. Based upon the Commission's most recent ten-year projection contained in its *FY 2024 Adult Inmate Prison Population Projections* report, it is estimated that the year-end population will total 8,556 male and 828 female inmates in FY 2024 and 8,847 male and 870 female inmates in FY 2025. The Department of Corrections indicates that the bill would result in State General Fund expenditures of \$15,306 in FY 2025 and \$31,224 in FY 2026 due to additional prison admissions.

The Judiciary indicates that the bill has the potential to increase the number of cases filed in district courts. This may increase agency operating expenditures due to the additional time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. However, the Judiciary is unable to calculate an exact estimate of this effect. The bill has the potential to increase the collections of docket fees that are deposited in the State General Fund; however, the amount of additional docket fee collections is unknown.

The Board of Pharmacy and the Kansas Bureau of Investigation indicate that the bill would have no fiscal effect on agency operations. Any fiscal effect associated with SB 413 is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties indicates that the bill may increase operating expenditures for county law enforcement and courts. The League of Kansas Municipalities indicates that the bill would have no fiscal effect on cities.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam C. Proffitt" with a stylized flourish at the end.

Adam C. Proffitt
Director of the Budget

cc: Trisha Morrow, Judiciary
Jennifer King, Department of Corrections
Alexandra Blasi, Board of Pharmacy
Wendi Stark, League of Kansas Municipalities
Jay Hall, Kansas Association of Counties
Paul Weisgerber, Kansas Bureau of Investigation
Scott Schultz, Kansas Sentencing Commission
Heather Cessna, Board of Indigents Defense Services