

Battery Against a Health Care Provider; Fentanyl-related Definitions and Penalties; Other Crimes; Attorney General Prosecutorial Authority; SB 174

SB 174 amends the crime of battery to define battery against a health care provider; amends the definitions of manufacture and drug paraphernalia; adds a definition of fentanyl-related controlled substances; increases the penalty for the unlawful manufacturing of fentanyl; amends the elements of the crimes of burglary and aggravated burglary to add domestic battery and violation of a protection order; amends the crime of interference with law enforcement to add conduct constituting the crime; creates special sentencing rules related to the manufacture and distribution of fentanyl; and amends law concerning the prosecutorial authority of the Attorney General.

Battery of a Health Care Provider

The bill amends the crime of battery to define battery against a health care provider as a battery committed against a health care provider while such provider is engaged in the performance of such provider's duty. "Healthcare provider" is defined as an individual who is licensed, registered, certified, or otherwise authorized by the state of Kansas to provide health care services in this state.

Battery against a health care provider is a class A person misdemeanor.

Definitions of Manufacture, Drug Paraphernalia, Fentanyl-related Controlled Substances

The bill amends the definition of "manufacture" to include placing a controlled substance into a pill or capsule form.

The bill amends the definition of "drug paraphernalia" to exclude tests used to detect the presence of fentanyl, ketamine, or gamma-hydroxybutyric acid (GHB).

The bill adds the definition of "fentanyl-related controlled substances" in the Kansas Criminal Code to include certain Schedule I and Schedule II controlled substances, as specified by the bill. The bill also makes a technical amendment to reconcile amendments made by the 2022 Legislature by removing the definition of the term "possession" from KSA 21-5701 and by repealing KSA 21-5701b.

Increased Penalty for the Unlawful Manufacture of Fentanyl

The bill amends the crime of manufacturing a controlled substance to make the manufacturing of a fentanyl-related controlled substance a drug severity level 1 felony, increased from a drug severity level 2 felony.

Crimes of Burglary and Aggravated Burglary

The bill amends the elements of the crimes of burglary and aggravated burglary to add domestic battery and violation of a protection order to the list of crimes that a person can have

the intent to commit when they enter or remain in one of the locations specified in the crimes of burglary and aggravated burglary.

[*Note:* Under continuing law, the crimes of burglary and aggravated burglary require a person to have the intent to commit a felony, theft, or sexually motivated crime within a protected location.]

Crime of Interference with Law Enforcement

The bill amends the crime of interference with law enforcement to add conduct constituting the crime. The crime includes knowingly fleeing from a law enforcement officer by means other than operation of a motor vehicle, when:

- The officer has reason to stop the person under continuing law in the Kansas Code of Criminal Procedure; and
- The officer has given the person visual or audible signal to stop.

The offense is classified as one of the following:

- A class A nonperson misdemeanor in the case of a misdemeanor, or resulting from any authorized disposition for a misdemeanor, or a civil case;
- A severity level 7 nonperson felony in the case of a felony, or resulting from parole or any authorized disposition for a felony; or
- A severity level 5 nonperson felony if the offender discharged or used a firearm while fleeing.

Special Sentencing Rules Related to Manufacture or Distribution of Fentanyl

The bill creates a special sentencing rule for the penalty for the crime of manufacturing material that contains any quantity of fentanyl-related controlled substances; it includes presumptive imprisonment and two times the maximum duration of the presumptive sentence term. The sentence is not to be considered a departure and will not be subject to appeal.

The bill also creates a special sentencing rule for the penalty for the crime of manufacturing or distributing a controlled substance with the same penalty as described in the above rule. This rule applies if the trier of fact makes a finding beyond a reasonable doubt that the controlled substance involved, because of its appearance or packaging, was likely to be attractive to minors.

Prosecutorial Authority of the Attorney General

The bill amends law concerning the prosecutorial authority of the Attorney General. The bill authorizes the Attorney General, concurrently with a county or district attorney, to prosecute:

- Theft, under continuing law in the Revised Kansas Criminal Code;
- A violation of the Kansas Racketeer Influenced and Corrupt Organizations Act;
and
- An attempt, conspiracy, or criminal solicitation of such crimes when the alleged course of conduct occurs in two or more counties.