

SESSION OF 2023

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2398**

As Amended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2398, as amended, would amend the definitions of manufacture and drug paraphernalia; add the definition of fentanyl-related controlled substances; increase the penalty for the unlawful manufacturing of fentanyl; and create a special sentencing rule for the distribution of fentanyl.

***Definitions***

The bill would amend the definition of “manufacture” to include placing a controlled substance into a pill or capsule form.

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

The bill would add the definition of “fentanyl-related controlled substances” in the Kansas Criminal Code to the following Schedule I controlled substances:

- Acetyl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);
- Acetyl-alpha-methylfentanyl  
(N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Acryl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide;  
acryloylfentanyl);
- Alpha-methylfentanyl  
(N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]  
propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-  
propanilido) piperidine);
- Alpha-methylthiofentanyl  
(N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]-N-  
phenylpropanamide);
- Beta-hydroxyfentanyl  
(N-[1-(2-hydroxy-2-phenethyl)-4-piperidiny]-N-  
phenylpropanamide);
- Beta-hydroxy-3-methylfentanyl  
(other name: N-[1-(2-hydroxy-2-phenethyl)-3-  
methyl-4-piperidiny]-N-phenylpropanamide);
- Beta-hydroxythiofentanyl  
(N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-  
yl]-N-phenylpropionamide);
- Butyryl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-  
phenylbutyramide);
- Crotonyl fentanyl  
((E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-  
enamide);
- Cyclopentyl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-  
phenylcyclopentanecarboxamide);
- Cyclopropyl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-  
phenylcyclopropanecarboxamide);

- Furanyl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide);
- Isobutyryl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide);
- Methoxyacetyl fentanyl  
(2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);
- 3-Methylfentanyl  
(N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- 3-Methylthiofentanyl  
(N-[(3-methyl-1-(2-thienyl)ethyl)-4-piperidyl]-N-phenylpropanamide);
- Ocfentanil  
(N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide);
- Ortho-fluorofentanyl  
(N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide; 2-fluorofentanyl);
- Para-chloroisobutyryl fentanyl  
(N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide);
- Para-fluorobutyryl fentanyl  
(N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide);
- Para-fluorofentanyl  
(N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidyl]propenamide);

- Para-fluoroisobutyryl fentanyl  
(N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, 4-fluoroisobutyryl fentanyl);
- Para-methoxybutyryl fentanyl  
(N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide);
- Tetrahydrofuranyl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide);
- Thiofentanyl  
(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- Valeryl fentanyl  
(N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide);
- N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers; or
- N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

The bill would add the definition of “fentanyl-related controlled substances” in the criminal code to the following Schedule II controlled substances:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- Remifentanil;

- Thiafentanil;
- Immediate precursor to fentanyl 4-anilino-N-phenethylpiperidine (ANPP); or
- Immediate precursor to fentanyl N-phenyl-N-(piperidin-4-yl)propionamide (norfentanyl).

### ***Increased Criminal Penalty***

The bill would amend the crime of manufacturing a controlled substance to make the manufacturing of a fentanyl-related controlled substance a drug severity level 1 felony. [Note: Current law states that manufacturing of a controlled substance is a drug severity level 2 felony.]

### ***Special Sentencing Rule***

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

The bill would also make 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.

### **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice by Representative Schlingensiepen at the request of Representative Probst.

### ***House Committee on Corrections and Juvenile Justice***

In the House Committee hearing on February 14, 2023, representatives of Kansas Association of Chiefs of Police, Kansas Peace Officers Association, Kansas Sheriffs Association, and Wichita Police Department testified as **proponents** of the bill, noting the current illicit fentanyl crisis created a need for this legislation.

No other testimony was provided.

The House Committee amended the bill by inserting the contents of 2023 HB 2328 to exclude tests that can detect fentanyl and other controlled substances from the definition of drug paraphernalia.

### ***HB 2328***

HB 2328 was introduced by the House Committee on Corrections and Juvenile Justice by Representative Schlingensiepen at the request of Representative Probst.

**Proponent** testimony was provided by representatives of the Association of Community Mental Health Centers of Kansas, BrightHouse, Cooper Davis Memorial Foundation, the Unified Government of Wyandotte County Public Health Department, and a private citizen. Written proponent testimony was provided by Representative Probst and representatives of DCCCA, Johnson County Mental Health, City of Wichita, and private citizens. No other testimony was provided.

### **Fiscal Information**

According to the fiscal note prepared by the Division of Budget on the bill, as introduced, the Kansas Sentencing Commission indicates enactment of the bill would cause no change in number of adult prison beds by the end of FY 2024. The Department of Corrections indicates that

enactment of the bill would have no fiscal effect. The Office of Judicial Administration indicates there would be no fiscal effect on the Judicial Branch with enactment of the bill.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Fentanyl; drug manufacture; drug paraphernalia; fentanyl test; fentanyl-related controlled substances; special sentencing rule; distribution of fentanyl