

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 174

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

SB 174, as amended, would amend the crime of interfering with law enforcement to add conduct constituting the crime; would create the crimes of interference with the conduct of a health care facility and aggravated interference with the conduct of a health care facility; would amend the crime of battery to define battery against a health care provider; would amend the definitions of manufacture and drug paraphernalia; would add the definition of fentanyl-related controlled substances; would increase the penalty for the unlawful manufacturing of fentanyl; would create a special sentencing rule for the distribution of fentanyl; would amend the elements of the crimes of burglary and aggravated burglary to add domestic battery and violation of a protection order; and would amend law concerning the prosecutorial authority of the Attorney General.

***Crimes of Interference and Aggravated Interference with
the Conduct of a Healthcare Facility (Section 1)***

The bill would would create the crime of interference with the conduct of a health care facility, which would be defined as:

- Conduct at or in a health care facility so as to knowingly deny an employee of the health care facility to enter, to use the facilities of, or to leave any such health care facility;

*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>

- Knowingly impeding an employee of a health care facility from the performance of such employee's duties or activities through the use of restraint, abduction, coercion, or intimidation, or by force and violence or threat thereof; or
- Knowingly refusing to leave a health care facility upon being requested to leave by the employee charged with maintaining order in such health care facility, if such person is committing, threatens to commit, or incites others to commit any act that did, or would if completed, disrupt, impair, interfere with, or obstruct the mission, processes, procedures, or functions of the health care facility.

The bill would also create the crime of aggravated interference with the conduct of a health care facility, which would be defined as any of the above conduct when in possession of any weapon included in the crimes of criminal use of weapons or criminal carrying of a weapon.

For purposes of the new crimes, the bill would define "employee" to mean a person employed by, providing health care services at, volunteering at, or participating in an educational course of instruction at a health care facility and would define "healthcare facility" to mean any facility or portion thereof operated in whole or in part for the purpose of providing inpatient or outpatient health care services by a health care provider, as defined in continuing law governing health care provider insurance.

Interference with the conduct of a health care facility would be a class A nonperson misdemeanor, and aggravated interference with the conduct of a health care facility would be a severity level 6 person felony.

Battery of a Healthcare Provider (Section 2)

The bill would amend 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" would be defined in the same manner as in continuing law governing health care provider insurance.

Battery against a health care provider would be a class A person misdemeanor.

Definitions of Manufacture, Drug Paraphernalia, Fentanyl-related Controlled Substances (Section 3)

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 include 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);
- 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-piperidinyl]-N-phenylpropanamide);
- Beta-hydroxyfentanyl
(N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- Beta-hydroxy-3-methylfentanyl
(other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-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-piperidinyl]-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-piperidinyl]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 include 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).

Increase Penalty for the Unlawful Manufacture of Fentanyl (Section 4)

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.]

Crimes of Burglary and Aggravated Burglary (Section 5)

The bill would amend 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 have the intent to commit a felony, theft, or sexually motivated crime within a protected location.]

Crime of Interfering with Law Enforcement (Section 6)

The bill would amend the crime of interfering with law enforcement to add conduct constituting the crime. The crime would include knowingly fleeing from a law enforcement officer who has reason to stop the person under continuing law in the Kansas Code of Criminal Procedure, by a means other than operation of a motor vehicle.

The offense would be 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.

***Distribution of Fentanyl Special Sentencing Rule
(Section 7)***

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 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.

Prosecutorial Authority of the Attorney General (Section 8)

The bill would amend law concerning the prosecutorial authority of the Attorney General. The bill would authorize the Attorney General, concurrently with a county or district attorney, to prosecute any crime, the attempt to commit any crime, or the attempt, conspiracy, or criminal solicitation of any crime when the alleged course of conduct occurs in two or more counties.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of a representative on behalf of the Kansas Peace Officers Association, Kansas Sheriffs Association, and Kansas Association of Chiefs of Police.

The House Committee on Corrections and Juvenile Justice amended SB 174 as passed by the Senate Committee of the Whole to add the provisions of HB 2023, HB 2398, all as passed by the House Committee of the Whole, SB 73 as passed by the Senate Committee of the Whole, and SB 244 as passed by the Senate Committee on Judiciary.

SB 174 (Crime of Interfering with Law Enforcement)

Senate Committee on Judiciary

In the Senate Committee hearing on February 14, 2023, **proponent** testimony was provided by a representative of the Kansas Peace Officers Association, Kansas Sheriffs Association, and Kansas Association of Chiefs of Police, who stated the objective of the bill is to update the Kansas Criminal Code to reflect the increasing number of foot pursuits that are occurring on a regular basis in which injury is occurring to the law enforcement officers.

No other testimony was provided.

The Senate Committee amended the bill to clarify the severity level 5 nonperson felony would apply when a firearm is discharged or used, rather than possessed, while fleeing.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on March 8, 2023, **proponent** testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association, who stated the objective of the bill is to update the Kansas Criminal Code to reflect the increasing number of foot pursuits that are occurring on a regular basis in which injury is occurring to the law enforcement officers.

A representative of the State Board of Indigents' Defense Services Legislative Committee provided written-only opponent testimony.

No other testimony was provided.

On March 23, 2023, the House Committee amended the bill to add the provisions of HB 2023, as passed by the House; the provisions of HB 2398, as passed by the House; the provisions of SB 73, as passed by the Senate; and the provisions of SB 244, as passed by the Senate Committee on Judiciary.

[*Note:* The House Committee on Judiciary placed the contents of HB 2455 into SB 244.]

HB 2023 (Crimes of Interference and Aggravated Interference with the Conduct of a Healthcare Facility)

The bill was introduced by Representatives Concannon and Hawkins.

[*Note:* A substantially similar bill to the bill as introduced, 2022 HB 2620, was passed by the House Committee on Judiciary during the 2022 Legislative Session. Provisions modified from HB 2620 were included in the Second Conference Committee Report for House Sub. for Sub. for SB 286, which was subsequently vetoed by Governor Kelly.]

House Committee on Judiciary

In the House Committee hearing on January 23, 2023, representatives of AdventHealth Shawnee Mission, Ascension Via Christi Hospitals Wichita, Kansas Hospital Association, NMC Health, Saint Luke's Health System, Stormont Vail Health; a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association; a representative of the Kansas Public Transit Association (KPTA); and a physician testified as **proponents** of the bill. Generally, the proponents stated violence in health care facilities and against health care workers has risen over the past decade, which is harming employees, disrupting care, and affecting staffing levels. The representative of the KPTA requested an amendment to add provisions covering public transportation employees in the crimes of assault and battery.

Written-only proponent testimony was provided by representatives of Ascension Via Christi Hospitals St. Joseph, Children's Mercy Hospital, Kansas Medical Society, and Stormont Vail Health.

Neutral testimony was provided by a representative of the Center for Practical Bioethics, stating the bill is unlikely to address the problem of violence against health care workers.

On February 8, 2023, the bill was withdrawn from the House Calendar and rereferred to the House Committee.

On February 14, 2023, the House Committee amended the bill to replace references to "hospital" with "healthcare

facility” throughout the bill, to define “healthcare facility,” and to modify the definition of “healthcare provider.”

[*Note:* As of the House Corrections and Juvenile Justice meeting on March 23, 2024, at which contents of HB 2023 were added to SB 174, the Senate Committee on Judiciary was scheduled to hold a hearing on HB 2023 on March 24, 2023.]

HB 2398 (Definitions of Manufacture, Drug Paraphernalia, Fentanyl-related Controlled Substances; Increase Penalty for the Unlawful Manufacture of Fentanyl; Distribution of Fentanyl Special Sentencing Rule)

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of a representative of the Wichita Police Department.

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 to insert the contents of 2023 HB 2328 to exclude tests that can detect fentanyl and other controlled substances from the definition of drug paraphernalia.

[*Note:* Provisions concerning excluding fentanyl, ketamine, or gamma hydroxybutyric acid test strips from the definition of drug paraphernalia (HB 2328) were amended into HB 2398 when the House Committee on Corrections took final action on that bill.]

HB 2328 (Definition of Drug Paraphernalia)

HB 2328 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

Proponent testimony was provided by representatives of the Association of Community Mental Health Centers of Kansas, BrightHouse, Cooper Davis Memorial Foundation, and the Unified Government of Wyandotte County Public Health Department, and by a private citizen. Written-only proponent testimony was provided by Representative Probst and representatives of DCCCA, Johnson County Mental Health, and the City of Wichita, and by private citizens.

No other testimony was provided.

SB 73 (Crimes of Burglary and Aggravated Burglary)

The bill was introduced by the Senate Committee on Judiciary at the request of a representative of the Kansas County and District Attorneys Association.

Senate Committee on Judiciary

In the Senate Committee hearing on January 31, 2023, a representative of the Office of the Johnson County District Attorney, the Deputy District Attorney of Sedgwick County, and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association testified as **proponents** of the bill. The proponents stated the bill intends to address a gap in the law that makes it difficult for prosecutors to charge an offender with the crime of burglary or aggravated burglary in certain circumstances.

No other testimony was provided.

SB 244 (Prosecutorial Authority of the Attorney General)

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Claeys. On February 23, 2023, the bill was referred to the Senate Committee on Ways and Means. On March 1, 2023, the bill was referred to the Senate Committee on Judiciary.

Senate Committee on Judiciary

In the Senate Committee hearing on March 6, 2023, the Attorney General testified as a **proponent** of the bill, stating the bill would provide additional prosecutorial resources when crimes are committed in more than one county in Kansas. The Attorney General also provided the example of organized retail crime as a potential use for the authority that would be granted under the bill. **Proponent** testimony was also provided by a representative of the Kansas Chamber and Kansas Retail Council.

Written-only proponent testimony was received from a representative of Home Depot.

No other testimony was provided.

Fiscal Information

SB 174 (Crime of Interfering with Law Enforcement)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Sentencing Commission estimates that enactment of the bill would result in an increase of one adult prison bed needed by the end of FY 2024. By the end of FY 2033, one additional bed would also be needed. The current estimated available bed capacity

is 9,428 for males and 936 for females. Based upon the Commission's most recent ten-year projection contained in its FY 2023 Adult Inmate Prison Population Projections report, it is estimated that the year-end population will total 7,933 male and 764 female inmates in FY 2023 and 8,043 male and 740 female inmates in FY 2024. The Department of Corrections indicates enactment of the bill would have a negligible fiscal effect that could be absorbed within existing resources.

The Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district courts because it creates a new crime. This could increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases.

Since the crime carries misdemeanor and felony penalties, there could also be more supervision of offenders required to be performed by court services officers. The bill could also result in the collection of supervision fees, docket fees, and fines, which would be deposited into the State General Fund. However, the Office states a precise fiscal effect cannot be determined until the Judicial Branch has had an opportunity to operate under the bill's provisions.

Any fiscal effect associated with enactment of SB 174 is not reflected in *The FY 2024 Governor's Budget Report*.

HB 2023 (Crimes of Interference and Aggravated Interference with the Conduct of a Healthcare Facility)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district courts because it creates new crimes. This could increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases, as well as result in more supervision of offenders performed by court services officers for misdemeanor offenses. Enactment of the bill could also

result in the collection of supervision fees in cases filed under the provisions of the bill, most of which would be deposited into the State General Fund. However, a fiscal effect cannot be determined because the number of additional cases cannot be estimated.

The Kansas Sentencing Commission indicates that enactment of the bill may affect the number of prison beds needed, but the total cannot be determined because the bill creates a new factual circumstance. The Commission notes that the number of convictions would likely be low and would result in probation in most cases. However, a fiscal effect cannot be estimated. The current estimated available bed capacity is 9,428 for males and 936 for females. Based upon the Commission's most recent ten-year projection contained in its FY 2023 Adult Inmate Prison Population Projections report, it is estimated that the year-end population will total 7,933 male and 764 female inmates in FY 2023 and 8,043 male and 740 female inmates in FY 2024.

The Department of Corrections indicates enactment of HB 2023 would have no fiscal effect.

Any fiscal effect associated with enactment of HB 2023 is not reflected in *The FY 2024 Governor's Budget Report*.

HB 2398 (Definitions of Manufacture, Drug Paraphernalia, Fentanyl-related Controlled Substances; Increase Penalty for the Unlawful Manufacture of Fentanyl; Distribution of Fentanyl Special Sentencing Rule)

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 enactment of HB 2398 is not reflected in *The FY 2024 Governor's Budget Report*.

HB 2328 (Definition of Drug Paraphernalia)

The Kansas Bureau of Investigation and the Kansas Highway Patrol indicate enactment of HB 2328 would have no fiscal effect on the agencies.

SB 73 (Crimes of Burglary and Aggravated Burglary)

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates that enactment of the bill could have a fiscal effect on the Judicial Branch because the bill would expand the crimes of burglary and aggravated burglary, which could increase the time spent by judges and court staff in processing, researching, and hearing the cases. In addition, more supervision from court services officers may be required. There could be a change in the amount of docket fees, fines, and supervision fees that are collected which would be credited to the State General Fund. The Office states that a fiscal effect cannot be estimated until the Judicial Branch has operated under the bill's provisions.

The Kansas Sentencing Commission estimates enactment of the bill would result in an increase of 27, 57, or 87 beds needed by the end of FY 2023 depending on the scenario. By the end of FY 2033, 42, 77, or 120 additional beds would be needed, depending on the scenario.

The Department of Corrections states enactment of the bill would result in additional expenditures of between \$93,819 for 27 beds and up to \$302,307 for 87 beds from SGF, depending on the scenario in FY 2024.

Any fiscal effect associated with enactment of SB 73 is not reflected in *The FY 2024 Governor's Budget Report*.

SB 244 (Prosecutorial Authority of the Attorney General)

According to the fiscal note prepared by the Division of Budget on the bill, the Office of the Attorney General states the bill would increase the number of prosecution cases handled by the Office. The Office estimates that for FY 2024, it would require 1.0 Attorney FTE position and 1.0 Special Agent FTE position at a total cost of \$227,981 from the State General Fund for salaries and benefits. In addition, the Office would require \$24,844 from the State General Fund for related operating expenses.

Any fiscal effect associated with enactment of SB 244 is not reflected in *The FY 2024 Governor's Budget Report*.

The Kansas Association of Counties states the bill could generate some savings from coordinating with the Attorney General on qualifying prosecutions. However, the Association cannot determine a precise fiscal effect. The League of Kansas Municipalities states that the bill would not have a fiscal effect on cities.

Crimes and punishment; interference with the conduct of a healthcare facility; battery against a healthcare provider; fentanyl; drug manufacture; drug paraphernalia; fentanyl test; fentanyl-related controlled substances; special sentencing rule; distribution of fentanyl; burglary; aggravated burglary; domestic battery; protection order; fleeing from a law enforcement officer; interference with law enforcement; county attorney; district attorney; Attorney General; prosecution; two or more counties