

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 238

As Amended by Senate Committee on Judiciary

Brief*

SB 238, as amended, would amend the Kansas Criminal Code to amend the definition of “manufacture” and add the definition of “fentanyl-related controlled substances”; increase the penalty for the unlawful manufacturing of fentanyl; apply penalties in continuing law regarding unlawful distribution of controlled substances to fentanyl; create special sentencing rules for the manufacture and distribution of fentanyl and add conduct involving fentanyl to the crime of aggravated endangerment of a child.

Definitions

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

The bill would add the definition of “fentanyl-related controlled substances” 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);

*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-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-piperidiny]-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” 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).

Criminal Penalties

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.]

The bill also would amend the crime of unlawful cultivation or distribution of a controlled substance to make manufacturing a fentanyl-related controlled substance a drug severity level 4, 3, 2, or 1 felony depending on the quantity of the material that contains the controlled substance.

Special Sentencing Rules

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 bill would also create 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 would apply 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.

Sentences under either special rule would not be considered a departure and would not be subject to appeal.

Aggravated Endangerment of Child

The bill would amend the crime of aggravated endangerment of a child to include that certain conduct involving fentanyl-related controlled substances would constitute the crime.

Technical Amendment

The bill would also make a technical amendment to reconcile amendments made by the 2022 Legislature.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Warren.

Senate Committee on Judiciary

In the Senate Committee hearing on February 15, 2023, the Johnson County District Attorney; a representative of the Kansas Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association; and a representative of the Johnson County Sheriff's Office testified as **proponents** of the bill. The proponents stated the rise in fentanyl-related crime is concerning to law enforcement and prosecutors across the state, and the bill is necessary to combat the growing problem. No other testimony was provided.

The Senate Committee amended the bill to insert the contents of SB 240, concerning conduct involving fentanyl in the crime of aggravated endangerment of a child.

SB 240

The bill was introduced by the Senate Committee on Judiciary at the request of a representative of the Johnson County Sheriff's Office.

Senate Committee on Judiciary. In the Senate Committee hearing on February 20, 2023, representatives of the Johnson County Sheriff's Office, Johnson County Sheriff's Office—Northeast Kansas Drug Task Force, and the Kansas County and District Attorneys Association testified as **proponents** of the bill. Written-only proponent testimony was provided by a representative of the Kansas Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association. No other testimony was provided.

Fiscal Information

SB 238

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 six adult prison beds needed by the end of FY 2024. By the end of FY 2033, 79 additional beds would 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 on current operations that could be absorbed within existing resources.

The Office of Judicial Administration indicates enactment of the bill would have no fiscal effect on the operations of the

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

SB 240

According to the fiscal note prepared by the Division of the Budget on the bill, the Kansas Sentencing Commission estimates that enactment of the bill could have an effect on prison admissions and bed space, but this effect cannot be determined at this time. 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 that enactment of the bill would have no fiscal effect.

The Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district courts because it expands the crime of aggravated endangering of a child. This could increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Since the crime carries a severity level 9, person felony, 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 the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Crimes; punishment; sentencing; controlled substances; fentanyl; fentanyl-related controlled substance; aggravated endangerment of a child; packaging