

SESSION OF 2024

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 414**

As Amended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

SB 414, as amended, would amend the Kansas Criminal Code with respect to fentanyl-related controlled substances (fentanyl). The bill would specify the penalty to be applied in the crime of unlawful distribution of fentanyl when distributed by weight or dosage unit, create a permissible inference of intent to distribute, remove language regarding a rebuttable presumption of intent to distribute, and apply a special sentencing rule to the crime of unlawful distribution of fentanyl. The bill would also make technical amendments to ensure consistency in statutory phrasing.

***Unlawful Distribution Penalties***

The bill would amend the penalties for unlawful distribution of a controlled substance to specify a violation of the crime with respect to material containing any quantity of fentanyl would be a drug severity level 4, 3, 2, or 1 felony depending on the quantity of the material distributed.

The bill would specify the following penalties apply to amounts, based on:

- Less than 1 gram, drug severity level 4 felony;
- At least 1 gram but less than 3.5 grams, drug severity level 3 felony;

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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>

- At least 3.5 grams but less than 100 grams, drug severity level 2 felony; and
- 100 grams or more, drug severity level 1 felony.

[*Note:* Current law provides these higher penalties only for unlawful distribution of material containing any quantity of heroin or methamphetamine.]

When the drug is measured by dosage unit, the bill would specify the following penalties:

- 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; and
- 250 doses or more, drug severity level 1 felony.

[*Note:* Continuing law defines a “dosage unit” as a discrete unit including, but not limited to, a pill, capsule, or microdot that is not distributed by weight. Continuing law also defines a “dosage unit” with respect to controlled substances in liquid form.]

### ***Permissive Inference***

The bill would amend language regarding a rebuttable presumption concerning intent to distribute to replace the rebuttable presumption with permissive inference and amend provisions that would apply when a person possesses certain quantities of a controlled substance and the inference is supported by other facts. The bill would specify the inference would apply when any person possesses:

- 450 grams or more of marijuana;

- 3.5 grams or more of fentanyl, heroin, or methamphetamine;
- 50 dosage units or more containing any quantity of fentanyl;
- 100 dosage units or more containing any other controlled substance; or
- 100 grams or more of any other controlled substance.

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

The bill would amend the special sentencing rule for the unlawful manufacturing of fentanyl to specify this rule would apply to an offender convicted of unlawful distribution when the crime is classified as a drug severity level 1, 2, or 3 felony. [Note: The special sentencing rule provides a sentence of presumptive imprisonment and two times the maximum duration of the presumptive sentence term. Sentences under the special rule are not considered a departure and would not be subject to appeal.]

### **Background**

The bill as amended contains the contents of SB 414 and SB 413, concerning similar provisions related to penalties for unlawful distribution of fentanyl. Background information for both SB 414 and SB 413 is provided below.

### ***SB 414 (Increasing Penalties for Fentanyl Distribution)***

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

### *Senate Committee on Judiciary*

In the Senate Committee hearing, on February 6, 2024, a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association provided **proponent** testimony stating the enhanced penalties provided in the bill are needed to adequately address the fentanyl crisis in the state.

Written-only proponent testimony was provided by representatives of the Kansas Bureau of Investigation (KBI) and the Kansas County and District Attorneys Association (KCDAA).

Written-only **opponent** testimony was provided by a representative of the Board of Indigents' Defense Services (BIDS).

The Senate Committee amended the bill to add the contents of SB 413.

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

In the House Committee hearing on March 5, 2024, **proponent** testimony was provided by the Johnson County District Attorney and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association. The proponents stated the bill is needed to address the fentanyl crisis in the state and that the substance should be treated similarly to methamphetamine and heroin under the Criminal Code.

The House Committee amended the bill to replace a rebuttable presumption in current law with a permissible inference and to remove the bill's provisions expanding quantities of controlled substance to also include amounts of material containing any quantity of the controlled substance that would lead to an presumption of intent to distribute.

[*Note:* Provisions regarding permissible inferences are also found in HB 2385.]

***SB 413 (Penalties for Unlawful Distribution of Fentanyl-Weight or Dosage Unit)***

SB 413 was introduced by the Senate Committee on Judiciary at the request of a representative of KCDA.

In the Senate Committee hearing on February 6, 2024, a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association provided **proponent** testimony regarding the need for the enhanced sentencing for distribution of fentanyl-related substances at lower quantity levels.

Written-only proponent testimony was provided by a representatives of the KBI and the KCDA.

Written-only **opponent** testimony was provided by a representative of BIDS.

**Fiscal Information**

***SB 414 (Increasing Penalties for Fentanyl Distribution)***

According to the fiscal note prepared by the Division of the Budget on SB 414, as introduced, BIDS indicates enactment of the bill would increase agency expenditures on legal counsel and support staff by an unknown amount. BIDS 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 (SGF) expenditures of \$4,752 to \$6,840. BIDS 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 SGF expenditures of \$8,253 to \$11,880. BIDS 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 Kansas Sentencing Commission estimates enactment of the bill would result in an increase of 11 adult prison beds needed by the end of FY 2025. By the end of FY 2024, 50 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 enactment of the bill would result in SGF expenditures of \$42,091 in FY 2025 and \$62,447 in FY 2026 due to additional prison admissions.

The Judicial Branch indicates enactment of 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 Judicial Branch 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 SGF; however, the amount of additional docket fee collections is unknown.

The Board of Pharmacy and KBI indicate that enactment of the bill would have no fiscal effect on agency operations.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties indicates enactment of SB 414 as introduced may increase operating expenditures for county law enforcement and courts. The League of Kansas Municipalities indicates enactment the bill would have no fiscal effect on cities.

***SB 413 (Penalties for Unlawful Distribution of Fentanyl-Weight or Dosage Unit)***

According to the fiscal note prepared by the Division of the Budget on the bill, BIDS indicates enactment of the bill would increase agency expenditures on legal counsel and support staff by an unknown amount. BIDS 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 SGF expenditures of \$4,752 to \$6,840.

BIDS 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 SGF 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 Kansas Sentencing Commission estimates that enactment of 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 enactment of the bill would result in SGF expenditures of \$15,306 in FY 2025 and \$31,224 in FY 2026 due to additional prison admissions.

The Judicial Branch indicates enactment of 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 Judicial Branch is unable to calculate an exact estimate of this effect. Enactment of bill has the potential to increase the collections of docket fees that are deposited in the SGF; however, the amount of additional docket fee collections is unknown.

The Board of Pharmacy and KBI indicate enactment of SB 413 would have no fiscal effect on agency operations.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

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

Crimes; punishment; sentencing; controlled substances; fentanyl; fentanyl-related substances