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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 15, 2023
Subject: Bill Brief for SB 238

Senate Bill 238 increases criminal penalties on drug-related crimes when the drug is fentanyl and creates special sentencing rules for mandatory imprisonment and additional terms of imprisonment for drug-related crimes when the drug is fentanyl or is attractive to minors because of its appearance or packaging.

Section 1 amends K.S.A. 21-5701, the definition section for the drug crime article in the criminal code. A definition of “fentanyl-related controlled substance” is added to mean any substance designated in K.S.A. 65-4105(b)(1), (b)(2), (b)(4), (b)(10), (b)(11), (b)(14), (b)(15), (b)(16), (b)(20), (b)(22), (b)(23), (b)(24), (b)(37), (b)(41), (b)(45), (b)(46), (b)(47), (b)(49), (b)(57), (b)(58), (b)(59), (b)(60), (b)(61), (b)(62), (b)(73), (b)(74), (b)(78), (g)(1) or (g)(2) or K.S.A. 65-4107(c)(1), (c)(6), (c)(9), (c)(26), (c)(28), (c)(30), (f)(3)(A) or (f)(3)(B), or any analog thereof. The definition of “manufacture” is amended to include placing a controlled substance into pill or capsule form.

Section 2 amends K.S.A. 21-5703, the crime of unlawful manufacturing of controlled substances. The section is amended to exclude fentanyl-related controlled substances from the general rule that manufacturing a controlled substance is a drug severity level 2 felony and make manufacturing a fentanyl-related controlled substance a drug severity level 1 felony.

Section 3 amends K.S.A. 21-5705, the crime of unlawful cultivation or distribution of controlled substances. The section is amended 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 containing the controlled substance.

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Section 4 amends K.S.A. 21-6805, the sentencing grid for drug crimes, to create two new special sentencing rules. The rule in subsection (h) provides that the sentence for manufacturing or distributing a controlled substance with respect to material containing any quantity of a fentanyl-related controlled substance shall be presumed imprisonment and shall be two times the maximum duration of the presumptive term of imprisonment. The rule in subsection (i) provides that the sentence for manufacturing or distributing a controlled substance shall be presumed imprisonment and shall be two times the maximum duration of the presumptive term of imprisonment 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. The sentence under either special rule would not be considered a departure and would not be subject to appeal.