

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 414

As Further Amended by House Committee on
Corrections and Juvenile Justice

Brief*

SB 414, as amended, would create the crime of encouraging suicide and establish penalties for the crime under the Kansas Criminal Code; amend the crime and penalties of aggravated endangering a child; amend the crime and apply a special sentencing rule to the crime of unlawful distribution of fentanyl-related controlled substances (fentanyl); remove the element of concealment and secrecy from the crime breach of privacy; and amend provisions in sentencing law regarding computation of time served.

[*Note:* Although the bill itself would be effective upon publication in the *Kansas Register*, numerous individual provisions, as noted throughout, would be effective on July 1, 2024.]

Encouraging Suicide

The bill would create the crime of encouraging suicide and would establish penalties for the crime under the Kansas Criminal Code.

The term “encouraging suicide” would be defined as knowingly encouraging a person to commit or attempt to commit suicide when:

- Such person knows the other person has communicated a desire to commit suicide;

*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>

- Such encouragement is made proximate in time to the other person committing or attempting to commit suicide; and
- Such encouragement substantially influences the other person's decision or methods used to commit or attempt to commit suicide.

Definitions

The bill would define two other terms as follows:

- "Attempt to commit suicide" would mean any physical action done by a person with the intent to commit suicide.
- "Encouraging a person to commit or attempt to commit suicide" would mean oral, written, or visual communication that is persuasive or intended to be persuasive and that gives advice to commit suicide, attempt to commit suicide, or develop a plan to commit suicide.

Penalties

Encouraging suicide would be a severity level 5 person felony if the other person attempts to commit suicide, and a severity level 4 person felony if the other person commits suicide.

[*Note:* These provisions would be effective on July 1, 2024.]

Aggravated Endangering a Child

The bill would amend the elements of the crime of aggravated endangering a child. The bill would add fentanyl to the list of drugs in regards to causing or permitting a child

to be in specified environments. Additionally, the bill would add “or used” regarding specified environments where current law applies to storage of drug paraphernalia or volatile, toxic, or flammable chemicals for manufacturing or attempting to manufacture methamphetamine or fentanyl.

Severity Level

The bill would create a new severity level 6 person felony penalty for the crime when bodily harm is inflicted upon the child.

Definitions

The bill would define “fentanyl-related controlled substance” to mean the same as the article of the Criminal Code involving controlled substances, and “methamphetamine” to mean the same as in Schedule II of the Uniform Controlled Substances Act.

[*Note:* These provisions would be effective on July 1, 2024.]

Unlawful Distribution Penalties—Fentanyl

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 the same as material containing any quantity of heroin or methamphetamine.

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

- Drug severity level 4 felony for fewer than 10 doses;

- Drug severity level 3 felony for at least 10 doses but fewer than 50 doses;
- Drug severity level 2 felony for at least 50 doses but fewer than 250 doses; and
- Drug severity level 1 felony for 250 doses or more.

[*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 of an intent to distribute to replace the presumption with a permissive inference. Additionally, the bill would add 3.5 grams or more and 50 dosage units or more of fentanyl to the list of quantities of controlled substances that would lead to such an inference.

[*Note:* These provisions would be effective on July 1, 2024.]

Breach of Privacy

The bill would amend the crime of breach of privacy to remove the elements of concealment and secrecy when the crime involves installing or using a device to photograph or record another person under or through their clothing, or a person who is nude or in a state of undress.

[*Note:* These provisions would be effective on July 1, 2024.]

Computation of Sentences

Under continuing law, at sentencing, a judge is required to designate a date to be used when computing a defendant's sentence, parole eligibility, and conditional release dates. The date must be designated in a journal entry after considering the time the defendant has been incarcerated while awaiting disposition of their criminal case.

The bill would specify that the defendant is entitled to have credit applied for each day spent incarcerated while awaiting disposition of their criminal case.

A court would not be able to consider the following in designating a date:

- Time awarded as credit in another case when consecutive sentences are imposed on a defendant; or
- Time spent incarcerated in another jurisdiction if no hold has been issued in such jurisdiction for the case being sentenced.

[*Note:* These provisions of the bill would be effective upon publication in *The Kansas Register*.]

Special Sentencing Rule—Fentanyl

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.]

[*Note:* These provisions would be effective on July 1, 2024.]

Technical Amendments

The bill would also make technical amendments.

Background

On March 21, 2024, the bill was withdrawn from the House Calendar and re-referred to the House Committee on Corrections and Juvenile Justice.

The House Committee on Corrections and Juvenile Justice further amended SB 414 to add provisions of Sub. for HB 2676, as passed by the House; HB 2654, as passed by the House; SB 419, as passed by the Senate; and SB 420, as passed by the Senate.

SB 414 (Unlawful Distribution Penalties; Special Sentencing Rule—Fentanyl)

SB 414 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, 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 a representative 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).

No other testimony was provided.

The Senate Committee amended the bill to add the contents of SB 413 regarding penalties for unlawful distribution of fentanyl.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing, **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.

No other testimony was provided.

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 a presumption of intent to distribute.

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

SB 413 (Penalties for Unlawful Distribution of Fentanyl by Dosage Unit)

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

In the Senate Committee hearing on 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 KCDAA.

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

No other testimony was provided.

Sub. for HB 2676 (Creating the Crime of and Establishing Penalties for Encouraging Suicide)

HB 2676 was introduced by the House Committee on Judiciary at the request of Representative Landwehr.

House Committee on Judiciary

In the House Committee hearing, **proponent** testimony was provided by seven private citizens. The proponents generally stated the bill would help reduce suicide deaths by limiting the dissemination of harmful information and deter the encouragement of suicide.

Written-only proponent testimony was submitted by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs

Association and representatives of the KBI, Kansas Catholic Conference, and Kansas Mental Health Coalition.

Neutral testimony was provided by a private citizen. The testimony addressed a website that provides information to help facilitate suicide.

Opponent testimony was provided by a representative of BIDS. The opponent generally stated the bill would raise constitutional concerns and limit free speech.

The House Committee replaced the original provisions of HB 2676, which would have amended the crime of assisted suicide, with language that would create a new crime and would specifically:

- Make knowingly encouraging suicide a crime under the Kansas Criminal Code;
- Define “attempt to commit suicide” and “encouraging a person to commit or attempt to commit suicide”;
- Establish the criteria for knowingly encouraging suicide; and
- Establish penalties for encouraging suicide.

The House Committee recommended a substitute bill incorporating the above provisions.

SB 419 (Aggravated Endangerment of a Child)

SB 419 was introduced by the Senate Committee on Judiciary at the request of a representative of the Office of the Attorney General (OAG).

Senate Committee on Judiciary

In the Senate Committee hearing on February 6, 2024, the Attorney General provided **proponent** testimony, stating that the changes in the bill are needed because of the toxicity of fentanyl and the harm to children that may result from conduct involving fentanyl-related substances. Representatives of the Johnson County Sheriff's Office Northeast Kansas Drug Task Force, Kansas Association of Chiefs of Police, KCDAA, and the OAG also provided proponent testimony, expressing similar concerns related to the lethality of fentanyl, especially as it relates to children.

Written-only proponent testimony was provided by a representative of the KBI.

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

No other testimony was provided.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on March 6, 2024, representatives of the Johnson County Sheriff's Office; the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriffs Association; and the OAG provided proponent testimony. The proponents generally stated fentanyl is a lethal substance in small quantities, especially for children, and the bill would provide prosecutors the ability to charge individuals for knowingly putting children in environments where the distribution or manufacturing of fentanyl takes place.

Written-only proponent testimony was provided by the Attorney General, a representative of KBI, and the Johnson County District Attorney.

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

No other testimony was provided.

[*Note:* SB 419 was further amended by the House Committee on Corrections and Juvenile Justice to be a substitute bill containing the provisions of HB 2522].

SB 420 (Crime of Breach of Privacy)

SB 420 was introduced by the Senate Committee on Judiciary at the request of a representative of the KCDAA.

Senate Committee on Judiciary

In the Senate Committee hearing, the Wabaunsee County Attorney and representatives of the City of Wichita and the Wichita Police Department provided **proponent** testimony, stating the changes proposed by the bill would ensure the crime may continue to be prosecuted in the event a recording device is not concealed, which is becoming increasingly common due to advances in technology.

Written-only proponent testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association and a representative of the Kansas Coalition Against Sexual and Domestic Violence.

No other testimony was provided.

[*Note:* SB 420 was amended by the House Committee on Corrections and Juvenile Justice to become a substitute bill containing the provisions of HB 2490 and HB 2698.]

HB 2654 (Concerning Computation of Sentences)

HB 2654 was introduced by the House Committee on Corrections and Juvenile Justice at the request of a representative of the KCDAA.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing, **proponent** testimony was provided by a representative of the KCDAA, who stated the bill was introduced to address a recent Kansas Supreme Court decision, *State v. Hopkins*, which has caused a significant disruption to sentencing decisions, and the bill would prevent duplicative credit in consecutive sentences.

Neutral testimony was provided by a private citizen who stated concerns that the bill would not make a notable difference in recidivism and would make the sentencing process more complicated.

Opponent testimony was provided by a representative of the Board of Indigents' Defense Services' Legislative Committee, who stated its concern the bill would be contrary to other provisions of sentencing law and would not address "dead time" in a meaningful way. The opponent also stated the provisions of the bill regarding duplicative credit are already in the Kansas Administrative Regulations of the DOC.

No other testimony was provided.

The House Committee amended the bill to:

- State the defendant shall be entitled to have credit applied for each day spent incarcerated; and
- Clarify that no credit is to be awarded when consecutive sentences are imposed (and credit has already been awarded), and for time spent incarcerated in another jurisdiction.

Fiscal Information

SB 414 (Penalties for Unlawful Distribution of Fentanyl by Weight)

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 on 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 require additional support staff, depending on the amount of work required by the bill.

The Kansas Sentencing Commission (KSC) 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 2034, 50 additional beds would be needed.

The DOC 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. The bill has the potential to increase the collections of

docket fees that are deposited in the SGF. However, the overall fiscal effect of the bill and the amount of additional docket fee collections are 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 (KAC) indicates enactment of SB 414, as introduced, may increase operating expenditures for county law enforcement and courts. The League of Kansas Municipalities (LKM) indicates enactment of the bill would have no fiscal effect on cities.

SB 413 (Penalties for Unlawful Distribution of Fentanyl by Dosage Unit)

According to the fiscal note prepared by the Division of the Budget on SB 413, 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 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 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 KSC estimates 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 DOC 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. The bill has the potential to increase the collections of docket fees that are deposited in the SGF. However, the overall fiscal effect of the bill and the amount of additional docket fee collections is unknown.

The Board of Pharmacy and KBI indicate 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 KAC indicates enactment of the bill may increase operating expenditures for county law enforcement and courts. The LKM indicates enactment of the bill would have no fiscal effect on cities.

Sub. for HB 2676 (Creating the Crime of and Establishing Penalties for Encouraging Suicide)

A fiscal note for the substitute bill was not available.

SB 419 (Aggravated Endangerment of a Child)

According to the fiscal note prepared by the Division of the Budget on SB 419, 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 each new severity level 9 person felony case brought to the agency would result in SGF expenditures of

\$2,918 to \$4,200. BIDS indicates that each severity level 6 person felony that would have previously been charged as a severity level 9 person felony would require the agency to perform 22 hours of additional case work at a cost of \$1,834 to \$2,640. BIDS indicates it may require 1.0 new FTE attorney position and possibly require additional support staff depending on the amount of work required by the bill.

The KSC estimates enactment of the bill would result in an increase of five adult prison beds needed by the end of FY 2025. By the end of FY 2034, nine additional beds would be needed.

The DOC indicates enactment of the bill would result in SGF expenditures of \$19,132 in FY 2025 and \$39,030 in FY 2026 due to additional prison admissions.

The Judicial Branch indicates enactment of the bill would have the potential to increase the number of cases filed in district courts, and subsequently increase agency operating expenditures due to the additional time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Enactment of the bill could also require more supervision of offenders by court services officers. However, the Judicial Branch is unable to calculate an exact estimate of this effect. Enactment of 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 Department for Children and Families and the KBI indicate enactment of the bill would have no fiscal effect on either agency's operations. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The KAC indicates enactment of the bill may increase operating expenditures for county law enforcement and courts. The LKM indicates enactment of the bill would have no fiscal effect on cities.

SB 420 (Crime of Breach of Privacy)

According to the fiscal note prepared by the Division of the Budget on the bill, the KSC estimates that enactment of the bill could have an effect on prison admissions and bed space, but the effect would be minimal.

The DOC indicates that enactment of the bill would have a minimal effect on the agency, which 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 the bill makes it easier to prove the crime of breach of privacy. This could increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Because this crime carries a severity level 8 person felony penalty, enactment of the bill could require more supervision of offenders by court services officers. The bill could also result in the collection of supervision fees, docket fees, and fines in cases filed under the provisions of the bill, which would mostly be deposited in the SGF. However, a precise fiscal effect cannot be determined because the number of additional cases cannot be estimated.

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

HB 2654 (Concerning Computation of Sentences)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the DOC indicates enactment of the bill could result in increased costs if additional prison beds were needed. However, an estimate could not be determined. The Judicial Branch indicates the bill would not have an effect on expenditures. Any fiscal effect associated with enactment of the bill is not included in *The FY 2025 Governor's Budget Report*.

According to the prison bed impact statement prepared by the KSC on the bill, as introduced, the KSC indicates enactment of the bill would have no impact on prison admissions or its workload. The bill may impact prison beds needed, but the total cannot be determined.

Crimes; breach of privacy; sentencing; credit; time served; incarceration; suicide; assisting suicide; encouraging suicide; attempting suicide; controlled substances; fentanyl; fentanyl-related controlled substances; aggravated endangerment of a child; rebuttable presumption