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MEMORANDUM

To: House Committee on Corrections and Juvenile Justice
From: Office of Revisor of Statutes
Date: March 5, 2024
Subject: Bill Brief on SB 414

SB 414 increases the criminal penalties for unlawful distribution of fentanyl-related controlled substances.

Section 1 amends K.S.A. 21-5705, the criminal code statute that makes it unlawful for any person to distribute, possess with the intent to distribute, or cultivate certain controlled substances. Current law in subsection (d)(3) provides that a violation of subsection (a) – distribution or possession with intent to distribute – with respect to material containing any quantity of heroin or methamphetamine is punished at a higher severity level than violations involving other controlled substances: (1) A drug severity level 4 felony if the quantity of the material was less than 1 gram; (2) a drug severity level 3 felony if the quantity of the material was at least 1 gram but less than 3.5 grams; (3) a drug severity level 2 felony if the quantity of the material was at least 3.5 grams but less than 100 grams; and (4) a drug severity level 1 felony if the quantity of the material was 100 grams or more. This bill adds a violation of subsection (a) with respect to material containing a fentanyl-related controlled substance to these higher penalties. The Senate Committee on Judiciary amended the bill by adding the contents of SB 413, which specifies criminal penalties for unlawful distribution of fentanyl-related controlled substances when distributed by weight or dosage unit. The penalties would be: (1) A drug severity level 4 felony if the number of dosage units was fewer than 10; (2) a drug severity level 3 felony if the number of dosage units was at least 10 but fewer than 50; (3) a drug severity level 2 felony if the number of dosage unites was at least 50 but fewer than 250; and (4) a drug severity level 1 felony if the number of dosage unites was 250 or more.

Current law in subsection (e) provides that in any prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses certain quantities of

controlled substances or analogs thereof. The bill adds that possession of 3.5 grams or more of material containing any quantity of a fentanyl-related controlled substance creates the rebuttable presumption, the same rule that applies to heroin or methamphetamine under current law. The Senate Committee on Judiciary added a provision from SB 413 applying this presumption if a person possesses 50 dosage units or more of a fentanyl-related controlled substance.

Section 2 amends K.S.A. 21-6805, the criminal code statute that provides the sentencing guidelines grid for drug crimes and special sentencing rules for such crimes. Current law in subsection (h) provides that the sentence for a violation of K.S.A. 21-5703, unlawful manufacturing of controlled substances, 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 bill adds that this special sentencing rule also applies to violation of K.S.A. 21-5705, referenced above, if the violation is classified as a drug severity level 1, 2 or 3 felony.