

Omnibus Crimes Bill; SB 414

SB 414 amends the crime and penalties of aggravated endangering a child; amends the crime and applies a special sentencing rule to the crime of unlawful distribution of fentanyl-related controlled substances (fentanyl); removes the element of concealment and secrecy from the crime of breach of privacy; amends law in the Kansas Code of Procedure for Municipal Courts governing fingerprinting for municipal convictions; amends provisions in sentencing law regarding computation of time served; and updates terms and conditions of supervision for certain offenders.

Aggravated Endangering a Child

The bill amends the elements of the crime of aggravated endangering a child. The bill adds fentanyl to the list of drugs for which causing or permitting a child to be in an environment where the person knows or reasonably should know the drug is present constitutes the crime. The bill adds “or used” regarding specified environments where law applies to storage of drug paraphernalia or volatile, toxic, flammable, or otherwise specified chemicals for manufacturing or attempting to manufacture methamphetamine or fentanyl.

Severity Level

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

Definitions

The bill defines “fentanyl-related controlled substance” to mean the same as in 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.

Unlawful Distribution Penalties—Fentanyl

The bill amends 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 to be the same as for material containing any quantity of heroin or methamphetamine.

When the drug is measured by dosage unit, the bill specifies 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 amends language regarding a rebuttable presumption of an intent to distribute to replace the presumption with a permissive inference. The bill adds 3.5 grams or more and 50 dosage units or more of fentanyl to the list of quantities of controlled substances that leads to such an inference.

Breach of Privacy

The bill amends 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.

Fingerprinting for Municipal Convictions

The bill specifies that fingerprints need not be obtained from individuals convicted of violating municipal ordinances related to vehicle registration, driving without a valid driver’s license, or failing to have motor vehicle liability insurance coverage. [*Note:* Former law required fingerprints to be obtained in all municipal convictions that are comparable to a class A or class B misdemeanor or assault under the Kansas Criminal Code.]

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

The bill prohibits the court from considering 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.

Special Sentencing Rule—Fentanyl

The bill amends the special sentencing rule for the unlawful manufacturing of fentanyl to specify this rule applies 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 are not subject to appeal.]

Conditions of Supervision

The bill revises and amends conditions of supervision for persons on supervised release. For persons on supervision for probation, suspension of sentence, or assignment to community corrections, the bill authorizes the court to impose the conditions listed below. For persons on parole or postrelease supervision after being in the custody of the Kansas Department of Corrections (KDOC), the Prisoner Review Board is required to impose the following conditions:

- Obey all laws and ordinances;
- Inform the supervision officer of any encounters with law enforcement within 24 hours of such encounter;
- Refrain from engaging in or making threats of violence;
- Not purchase or possess any dangerous weapon, including a firearm, if the supervision is for a felony conviction;
- Report to the assigned supervision officer as directed and be truthful in all matters;
- Remain in Kansas or other areas as specified by the supervision officer;
- Inform the supervision officer of any sudden changes in residence or contact information within 24 hours of the change and reside at the approved residence;
- Not possess, use, or distribute any controlled substance unless prescribed by a licensed medical professional;
- Abstain from alcohol or substance use and from entering an establishment where sale or consumption of alcohol is the primary business;
- Comply with alcohol or substance testing as directed by the supervision officer without tampering with the specimen or test;

- Participate in assessments, treatment, programs, and other directives mandated by the court or supervision officer; and
- Refrain from contacting victims unless authorized by the court as part of rehabilitation or therapy.

The bill also directs the Office of Judicial Administration (OJA) and the KDOC to collaborate on developing appropriate documentation for conditions of supervision for probation, suspension of sentence, and community corrections.

Parole or Postrelease Supervision

The bill removes the required conditions of repaying transportation costs related to apprehension of the person for violation of a condition of release, pursuing a secondary education, and performing community service. The bill retains required conditions of supervision for persons on parole or postrelease supervision regarding payment of fees and reimbursement for services.

Searches and Reporting

Provisions regarding searches are included in the conditions for persons on probation, community corrections, parole, or postrelease supervision. The person is required to submit to searches of their person, belongings, vehicle, and property by:

- A court services officer or community correctional services officer for persons on probation or in community corrections;
- A parole or corrections officer for persons on parole or postrelease supervision, with or without a warrant or cause, although not for the sole purpose of harassment; and
- A law enforcement officer based on reasonable suspicion of probation, parole, or postrelease supervision violations or criminal activity.

The bill adds a requirement that a law enforcement officer who conducts a search under supervision terms of parole submit a written report to the person's parole officer no later than the close of business the next day after the search is conducted. The bill requires the written report to include facts leading to the search, the scope of the search, and any findings of the search. [Note: Similar requirements are found in continuing law for searches of persons on probation and in community corrections.]

Probation Conditions for Driving Under the Influence

The bill requires certain persons with a felony driving under the influence (DUI) conviction to participate in a multidisciplinary model of substance use disorder treatment.

Current law classifies DUI as a severity level 6 nonperson felony when:

- The person has a prior conviction within the past 10 years, not including periods of incarceration; or
- It is the person's fourth or subsequent conviction.

Risk and needs assessment. The bill requires, if a person convicted of a felony DUI has been granted probation, a risk assessment tool specified by the Kansas Sentencing Commission to be used to determine the person's risk and needs. The court is, then, required to determine whether community correctional services or court services will supervise the person, based upon the determined risk and needs of the person.

Multidisciplinary model of services. The bill requires a person convicted of a felony DUI under probation supervision to participate in a multidisciplinary model of services for substance abuse disorders facilitated by a care coordination agency designated by the Kansas Department for Aging and Disability Services (KDADS).

The bill requires the model of services to include assessment and, if appropriate, referral to community-based substance use disorder treatment, including recovery management and mental health counseling as needed. The bill requires members of the multidisciplinary team to include:

- The designated care coordination agency;
- The supervision officer;
- The KDADS designated treatment provider; and
- The person.