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MEMORANDUM

To: House Committee on Corrections and Juvenile Justice

From: Office of Revisor of Statutes

Date: February 14, 2023

Subject: Bill Brief on HB 2398

HB 2398 adds the placing of controlled substances into pills into the definition of manufacture, increases the criminal penalties for manufacturing fentanyl and creates a special sentencing rule to make sentences for distributing fentanyl presumptive imprisonment.

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 manufacturing a controlled substance. 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. 21-6805, the sentencing grid for drug crimes, to create a new special sentencing rule for fentanyl-related manufacture. The rule would provide that a sentence for manufacturing 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. The sentence would not be considered a departure and would not be subject to appeal.