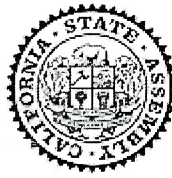


**Vice-Chair**  
Alanis, Juan

**Members**  
Bonta, Mia  
Bryan, Isaac G.  
Lackey, Tom  
Ortega, Liz  
Santiago, Miguel  
Zbur, Rick Chavez

# California State Assembly

## PUBLIC SAFETY



**REGINALD BYRON JONES-SAWYER SR.**  
CHAIR

**Chief Counsel**  
Sandy Uribe

**Deputy Chief Counsel**  
Cheryl Anderson

**Staff Counsel**  
Liah Burnley  
Andrew Ironside  
Mureed Rasool

**Lead Committee Secretary**  
Elizabeth Potter

**Committee Secretary**  
Samarpreet Kaur

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## AGENDA

Thursday, April 27, 2023  
Upon adjournment of Session -- State Capitol, Room 126

### HEARD IN SIGN-IN ORDER

- |    |         |               |   |
|----|---------|---------------|---|
| 1. | AB 33   | Bains         | Fentanyl Addiction and Overdose Prevention Task Force.                |
| 2. | AB 367  | Maienschein   | Controlled substances: enhancements.                                  |
| 3. | AB 474  | Rodriguez     | State Threat Assessment Center: transnational criminal organizations. |
| 4. | AB 675  | Soria         | Controlled substances.  |
| 5. | AB 955  | Petrie-Norris | Controlled substances.  |
| 6. | AB 1058 | Jim Patterson | Controlled substances: fentanyl.                                      |

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### COVID FOOTER

SUBJECT:

All witness testimony will be in person; there will be no phone testimony option for this hearing. You can find more information at <https://www.assembly.ca.gov/committees>.

Date of Hearing: April 27, 2023  
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 33 (Bains) – As Amended March 9, 2023

**As Proposed to be Amended in Committee**

**SUMMARY:** Establishes the Fentanyl Addiction and Overdose Prevention Task Force. Specifically, **this bill:**

- 1) Provides that the task force shall do the following, to the extent feasible:
  - a) Collect and organize data on the nature and extent of fentanyl abuse in California;
  - b) Identify and assess sources and drivers of legal and illicit fentanyl activity in California;
  - c) Measure and evaluate the progress and effectiveness of the state's education, prevention, treatment, and enforcement efforts in preventing fentanyl abuse and death from the intentional use of fentanyl or the unintentional use of illicit substances containing fentanyl, including the prosecution of persons engaged in the illegal manufacture, sale, and trafficking of fentanyl;
  - d) Evaluate approaches to increase public awareness of fentanyl abuse;
  - e) Analyze existing statutes for their adequacy in addressing fentanyl abuse and, if the analysis determines that those statutes are inadequate, recommend revisions to those statutes or the enactment of new statutes that specifically define and address fentanyl abuse;
  - f) Consult with governmental and nongovernmental organizations in developing recommendations to strengthen state and local efforts to prevent fentanyl abuse and death from the intentional use of fentanyl or the unintentional use of illicit substances containing fentanyl, protect and assist persons who misuse fentanyl or other illicit substances that may contain fentanyl, develop policy recommendations on the implementation of evidence-based practices to reduce fentanyl overdoses, and prosecute individuals engaged in the illegal manufacture, sale, and trafficking of fentanyl;
  - g) Develop model treatment protocols for medication-assisted treatment (MAT) of fentanyl addiction and abuse, including, but not limited to, the prescription of buprenorphine and other medications;
  - h) Recommend strategies to increase the ability and willingness of the medical community to treat fentanyl addiction and abuse, including identifying barriers to accessing medical care, biases within the medical community against people who misuse fentanyl or other illicit substances that may contain fentanyl addicted to fentanyl and other illicit

substances that may contain fentanyl, and legal, regulatory, and practical hurdles in the delivery of MAT, behavioral therapy, and other medical strategies critical in the treatment of fentanyl addiction and abuse, which may include, without limitation, overdose prevention centers, fentanyl testing strip distribution, and access to overdose reversal treatment; and,

- i) Assess gaps in federal, state, and local resources to address fentanyl addiction and abuse.
- 2) Requires the task force to be co-chaired by the Attorney General (AG) and the Surgeon General (SG) or their designees.
  - 3) States that the Department of Justice (DOJ) and the Office of the Surgeon General shall provide staff and support for the task force, to the extent that resources are available.
  - 4) Provides that the task force shall be comprised of the following representatives or their designees:
    - a) The AG;
    - b) The SG;
    - c) The Director of the State Department of Public Health;
    - d) The Director of the State Department of Health Care Services;
    - e) The Director of the California Department of Social Services;
    - f) The Director of the California Health and Human Services Department;
    - g) One Member of the Senate, appointed by the Senate Rules Committee;
    - h) One Member of the Assembly, appointed by the Speaker of the Assembly;
    - i) The Chairperson of the Judicial Council of California;
    - j) One representative from the California District Attorneys Association;
    - k) One representative from the California Public Defenders Association;
    - l) One representative from the State Department of Education;
    - m) One representative from the California Hospital Association;
    - n) One representative from the California Medical Association;
    - o) One representative from the County Health Executives Association of California;
    - p) One representative from the County Behavioral Health Directors Association;

- q) One representative from a local health department, appointed by the Governor;
  - r) Three representatives of law enforcement, one selected by the California State Sheriffs' Association, one selected by the California Police Chiefs Association, and one selected by the Department of the California Highway Patrol;
  - s) One representative from the California Society of Addiction Medicine that is a mental health professional;
  - t) One representatives in recovery from fentanyl abuse, appointed by the Governor;
  - u) One representative from a federally qualified health center, appointed by the Governor;
  - v) One representative from an organization that provides services to homeless individuals experiencing fentanyl addiction or abuse, one representative from an organization that provides services to individuals with substance use disorders, and one representative from an organization that serves persons who misuse fentanyl or other illicit substances that may contain fentanyl, appointed by the Governor; and,
  - w) One representative from an organization that provides services to youths relating to substance abuse.
- 5) States that, whenever possible, members of the task force shall have experience providing services to persons who misuse fentanyl or other illicit substances that may contain fentanyl or have knowledge of fentanyl abuse issues.
  - 6) Requires the task force to meet at least once every two months and for the meetings to be open to the public.
  - 7) Requires, on or before July 1, 2025, the task force to report its findings and recommendations to the Governor and the Legislature.
  - 8) Requires, on or before or before January 1, 2025, the task force to submit an interim report to the Governor and the Legislature.
  - 9) Defines "fentanyl abuse" as the use of fentanyl or products containing fentanyl in a manner or with a frequency that negatively impacts one or more areas of physical, mental, or emotional health.
  - 10) Provides that these provisions remain effect only until January 1, 2026, and as of that date are repealed.

**EXISTING LAW:**

- 1) Lists controlled substances in five "schedules" - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. Schedule I includes the most serious and heavily controlled substances, with Schedule V being the least serious and most lightly controlled



substances. (Health & Saf. Code, §§ 11054-11058.)

- 2) Lists fentanyl on Schedule II. (Health & Saf. Code, § 11055.)
- 3) Provides that a person who possesses any controlled substance, as specified, unless upon a valid prescription, shall be punished by imprisonment in a county jail for not more than one year, unless that person has had one or more prior convictions, as specified. (Health & Saf. Code, § 11350.)
- 4) Provides for two, three, or four years imprisonment for the possession for sale or purchasing for purposes of sale any controlled substance, as specified, or any controlled substances classified in Schedule III, IV, or V which is a narcotic drug. (Health & Saf. Code, § 11351.)
- 5) Provides for three, four, or five years imprisonment for drug trafficking of any controlled substance, as specified, or any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon a written prescription by a licensed medical provider. (Health & Saf. Code, § 11352.)
- 6) States that in addition to the term of imprisonment provided by law for persons convicted of violating specified drug offenses, including possession, the trial court may impose a fine not exceeding \$20,000 for each offense. (Health & Saf. Code, § 11372, subd. (a).)
- 7) Commits the state to reinvesting criminal justice resources to support community corrections programs and evidence-based practices that will achieve improved public safety returns on the state's substantial investment in its criminal justice system. (Pen. Code, § 3450, subd. (b)(4).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Fentanyl addiction is a serious public safety and public health issue that requires an organized response. Establishing a task force that is dedicated to combating fentanyl addiction and death is essential. This task force should bring together law enforcement, public health officials, and healthcare providers to coordinate an effective response to the problem. The task force will focus on a number of different strategies, including increasing access to overdose-reversing drugs, improving substance use disorder treatment and recovery support, and crafting strategies to reduce the availability of illicit fentanyl. Working with law enforcement and public health officials, the task force can monitor drug distribution and develop strategies to prevent the use, manufacture, and distribution of illicit fentanyl. The task force can also work to raise public awareness about the dangers of fentanyl, as well as connect people with substance use disorder treatment and recovery support. Public education campaigns should be continued and expanded to help inform the public about the dangers of fentanyl, as well as provide resources for those who are struggling with addiction. In order to combat the fentanyl epidemic, it is essential to establish a task force that is dedicated to this cause. By focusing on strategies to reduce the availability of fentanyl and increase public awareness, the task force can help to reduce the devastating impact that fentanyl is having on our communities."

- 2) **Fentanyl in California:** In California, the number deaths involving fentanyl has increased dramatically in recent years. Between 2012 and 2018, fentanyl overdose deaths increased by more than 800%— from 82 to 786. (CDPH, *Overdose Prevention Initiative* (Dec. 6, 2022) <<https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx?msclkid=99f1af92b9e411ec97e3e1fe58cde884>> [April 20, 2023].) In 2021, there were 5,961 deaths related to fentanyl overdoses. (CDPH, *California Overdose Surveillance Dashboard* <<https://skylab.cdph.ca.gov/ODdash/>> [April 20, 2023].) The impetus of this bill is to reduce overdose deaths by establishing a task force to examine the adequacy of the state’s efforts in preventing fentanyl misuse.
- 3) **Duplication of Efforts – The State Opioid Task Force:** The state’s 2022-23 budget included \$7.9 million in 2022-23 and \$6.7 million ongoing to fund the Fentanyl Task Force within DOJ to help tackle the fentanyl crisis. (*Governor’s Budget Summary – 2023-24* at p. 117 <<https://ebudget.ca.gov/2022-23/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>> [April 20, 2023].) The task force includes 25 new positions within DOJ to support those efforts. (*Ibid.*) This bill would require the DOJ to provide staff and support for a separate task force, which could result in some duplication of effort.

Building on the 2022-23 Budget, the State’s 2023-24 allocates additional funding to combat fentanyl abuse. The budget allocates \$93 million over the next four years, including \$79 million for Naloxone distribution projects; \$10 million for grants for education, testing, recovery, and support services; \$4 million to make test strips more available; and, \$3.5 million for overdose medication for all middle and high schools. (*Governor’s Budget Summary – 2023-24* at p. 69 <<https://ebudget.ca.gov/FullBudgetSummary.pdf>> [April 20, 2023].)

The Governor’s Master Plan for Tackling the Fentanyl and Opioid Crisis also includes \$30 million to expand California National Guard’s work to prevent drug-trafficking transnational criminal organizations and \$15 million over two years to establish and operate the Fentanyl Enforcement Program within the Department of Justice to combat manufacturing, distribution, and trafficking. To the extent this bill requires the task force to conduct a public awareness campaign, the Governor has allocated \$40.8 million education and awareness campaign to establish partnerships and create messaging and education tools for parents and educators and \$23 million substance use disorder workforce grants to develop substance use disorder training for non-behavioral health professionals working with children and youth. (*Governor Newsom’s Master Plan for Tackling the Fentanyl and Opioid Crisis* <[https://www.gov.ca.gov/wp-content/uploads/2023/03/Fentanyl-Opioids-Glossy-Plan\\_3.20.23.pdf?emrc=86c07e](https://www.gov.ca.gov/wp-content/uploads/2023/03/Fentanyl-Opioids-Glossy-Plan_3.20.23.pdf?emrc=86c07e)> [April 20, 2023].)

- 4) **Argument in Support:** According to the *California State Sheriffs’ Association* (CSSA), “Fentanyl is a potent opioid that is approximately 50 times stronger than heroin and 100 times stronger than morphine. Most recently, cases of fentanyl-related overdoses are linked to illicitly manufactured fentanyl that is distributed through illegal drug markets for its heroin-like effect.

“It is often added to other drugs because of its extreme potency, which makes drugs cheaper, more powerful, more addictive, and more dangerous. Fentanyl is a major contributor to fatal and nonfatal overdoses in California. In 2021, fentanyl was involved in over 83% of the 7,175 opioid-related deaths. The number of deaths each year involving fentanyl increased

dramatically between 2012 and 2021. During this time period fentanyl related overdose deaths increased by more than 7,250% from 82 to 5,961 in 2021.

“For these reasons, CSSA is pleased to support Assembly Bill 33, which would create the Fentanyl Addiction and Overdose Prevention Task Force to evaluate the nature of fentanyl abuse in California and to develop policy recommendations for addressing it.”

- 5) **Argument in Opposition:** According to the *San Francisco Public Defender’s Office*, “the task force requires members of the task force to include one representative from the California District Attorneys Association and three representatives from law enforcement, among others.

“The Task Force is unnecessary because we already have decades of research advocating for evidence-based, public health solutions. Instead of the creation of another task force with heavy law enforcement leadership and involvement, we must implement, fund, and increase access to evidence-based solutions and resources. Such solutions and resources include housing, job training, healthcare, education, syringe services programs, naloxone training and distribution, drug checking services, and supervised injection sites—enabling service providers to meet people who use drugs where they are, address the immediate harms they face, and build trust that can support their overall and long-term health.”

6) **Related Legislation:**

- a) AB 462 (Ramos), would establish the Overdose Response Team Fund within the State Treasury, to be administered by the Board of State and Community Corrections, for grants to fund efforts by county sheriffs’ departments to establish overdose response teams to investigate fatal overdoses. AB 462 is pending hearing in the Assembly Appropriations Committee.
- b) AB 474 (Rodriguez), would requires the State Threat Assessment Center and the California Office of Emergency Services to prioritize, to the greatest extent possible, cooperation with state and local efforts to disrupt and dismantle criminal networks trafficking opioid drugs that pose a threat to California. AB 474 will be heard by this Committee today.
- c) SB 19 (Seyarto), would create the Anti-Fentanyl Abuse Task Force to evaluate the nature and extent fentanyl abuse in California and to develop policy recommendations for addressing it. SB 19 is pending in the Senate Appropriations Committee.

7) **Prior Legislation:**

- a) AB 1673 (Seyarto), of the 2021-2022 Legislative Session, would have created the Anti-Fentanyl Abuse Task Force to evaluate the nature extent of fentanyl abuse in California and to develop policy recommendations for addressing it. AB 1673 failed passage in the Assembly Appropriations Committee.
- b) AB 2365 (Patterson), Chapter 783, Statutes of 2022, requires the California Health and Human Services Agency to, upon appropriation, establish a grant program to reduce

fentanyl overdoses and use throughout the state by giving out six one-time grants to increase local efforts in education, testing, recovery, and support services, as specified.

- c) SB 1395 (Bates), of the 2019-2020 Legislative Session, would have required the AG to establish and chair the Southern California Fentanyl Task Force to develop information, make recommendations, and report findings to the DOJ and to the Legislature regarding matters relating to the fentanyl crisis in southern California communities. SB 1395 was held in the Senate Public Safety Committee.
- d) AB 186 (Eggman), of the 2017-2018 Legislative Session, would have authorized the City and County of San Francisco to approve entities to operate an overdose prevention program for adults supervised by healthcare professionals or other trained staff where people can safely use drugs and get access to referrals to addiction treatment. AB 186 was vetoed.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Arcadia Police Officers' Association  
Burbank Police Officers' Association  
California Hospital Association  
California Police Chiefs Association  
California State Sheriffs' Association  
City of Downey  
Claremont Police Officers Association  
Corona Police Officers Association  
Culver City Police Officers' Association  
Deputy Sheriffs' Association of Monterey County  
Emergency Nurses Association, California State Council  
Fullerton Police Officers' Association  
League of California Cities  
Murrieta Police Officers' Association  
Newport Beach Police Association  
Palos Verdes Police Officers Association  
Placer County Deputy Sheriffs' Association  
Pomona Police Officers' Association  
Riverside Police Officers Association  
Riverside Sheriffs' Association  
Santa Ana Police Officers Association  
Upland Police Officers Association

1 Private Individual

### **Oppose**

San Francisco Public Defender

**Analysis Prepared by:** Liah Burnley / PUB. S. / (916) 319-3744



**Amended Mock-up for 2023-2024 AB-33 (Bains (A))**

**Mock-up based on Version Number 97 - Amended Assembly 3/9/23**

**Submitted by: Staff Name, Office Name**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 11455 is added to the Health and Safety Code, to read:

**11455.** (a) There is hereby established the Fentanyl Addiction and Overdose Prevention Task Force to do the following, to the extent feasible:

- (1) Collect and organize data on the nature and extent of fentanyl abuse in California.
- (2) Identify and assess sources and drivers of legal and illicit fentanyl activity in California.
- (3) Measure and evaluate the progress and effectiveness of the state's education, prevention, treatment, and enforcement efforts in preventing fentanyl abuse and death from the intentional use of fentanyl or the unintentional use of illicit substances containing fentanyl, including the prosecution of persons engaged in the illegal manufacture, sale, and trafficking of fentanyl.
- (4) Evaluate approaches to increase public awareness of fentanyl abuse.
- (5) Analyze existing statutes for their adequacy in addressing fentanyl abuse and, if the analysis determines that those statutes are inadequate, recommend revisions to those statutes or the enactment of new statutes that specifically define and address fentanyl abuse.
- (6) Consult with governmental and nongovernmental organizations in developing recommendations to strengthen state and local efforts to prevent fentanyl abuse and death from the intentional use of fentanyl or the unintentional use of illicit substances containing fentanyl, protect and assist persons who misuse fentanyl or other illicit substances that may contain fentanyl, **develop policy recommendations on the implementation of evidence-based practices to reduce fentanyl overdoses,** and prosecute individuals engaged in the illegal manufacture, sale, and trafficking of fentanyl.
- (7) Develop model treatment protocols for medication-assisted treatment (MAT) of fentanyl addiction and abuse, including, but not limited to, the prescription of buprenorphine and other medications.

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(8) Recommend strategies to increase the ability and willingness of the medical community to treat fentanyl addiction and abuse, including identifying barriers to accessing medical care, biases within the medical community against people **who misuse fentanyl or other illicit substances that may contain fentanyl** ~~addicted to fentanyl and other illicit substances that may contain fentanyl~~, and legal, regulatory, and practical hurdles in the delivery of MAT, behavioral therapy, and other medical strategies critical in the treatment of fentanyl addiction and abuse, **which may include, without limitation, overdose prevention centers, fentanyl testing strip distribution, and access to overdose reversal treatment.**

(9) Assess gaps in federal, state, and local resources to address fentanyl addiction and abuse.

(b) The task force shall be cochaired by the Attorney General and the Surgeon General or their designees. The Department of Justice and the Office of the Surgeon General shall provide staff and support for the task force, to the extent that resources are available.

(c) The members of the task force shall serve at the pleasure of the respective appointing authority. Reimbursement of necessary expenses may be provided at the discretion of the respective appointing authority or agency participating in the task force. The task force shall be comprised of the following representatives or their designees:

(1) The Attorney General.

(2) The Surgeon General.

(3) The Director of the State Department of Public Health.

(4) The Director of the State Department of Health Care Services.

**(5) The Director of the California Department of Social Services.**

**(6) The Director of the California Health and Human Services Department.**

~~(5)~~ (7) One Member of the Senate, appointed by the Senate Rules Committee.

~~(6)~~ (8) One Member of the Assembly, appointed by the Speaker of the Assembly.

**(9) The Chairperson of the Judicial Council of California.**

~~(7)~~ (10) One representative from the California District Attorneys Association.

**(11) One representative from the California Public Defenders Association.**

~~(8)~~ (12) One representative from the State Department of Education.

~~(9)~~ (13) One representative from the California Hospital Association.

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~~(10)~~ **(14)** One representative from the California Medical Association.

**(15)** One representative from the County Health Executives Association of California.

**(16)** One representative from the County Behavioral Health Directors Association.

**(17)** One representative from a local health department, appointed by the Governor.

~~(11)~~ **(18)** Three representatives of law enforcement, one selected by the California State Sheriffs' Association, one selected by the California Police Chiefs Association, and one selected by the Department of the California Highway Patrol.

~~(12)~~ **(19)** One representative from the California Society of Addiction Medicine **that is a mental health professional.**

~~(13)~~ Two representatives from community organizations that serve persons who misuse fentanyl and other illicit substances that may contain fentanyl, appointed by the Governor.

**(20)** One representative in recovery from fentanyl abuse, appointed by the Governor.

~~(14)~~ **(21)** One representative from a federally qualified health center, appointed by the Governor.

**(22)** One representative from an organization that provides services to homeless individuals experiencing fentanyl addiction or abuse, one representative from an organization that provides services to individuals with substance use disorders, and one representative from an organization that serves persons who misuse fentanyl or other illicit substances that may contain fentanyl, appointed by the Governor.

**(23)** One representative from an organization that provides services to youths relating to substance abuse.

(d) Whenever possible, members of the task force shall have experience providing services to persons who misuse fentanyl or other illicit substances that may contain fentanyl or have knowledge of fentanyl abuse issues.

(e) The task force shall meet at least once every two months. Subcommittees may be formed and meet as necessary. All meetings shall be open to the public. The first meeting of the task force shall be held no later than March 1, 2024.

(f) (1) On or before July 1, 2025, the task force shall report its findings and recommendations to the Governor, ~~the Attorney General,~~ and the Legislature. At the request of any member, the report may include minority findings and recommendations.

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(2) On or before January 1, 2025, the task force shall submit an interim report to the Governor, ~~the Attorney General~~, and the Legislature.

(3) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(g) For the purposes of this section, “fentanyl abuse” means the use of fentanyl or products containing fentanyl in a manner or with a frequency that negatively impacts one or more areas of physical, mental, or emotional health.

(h) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Date of Hearing: April 27, 2023  
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 367 (Maienschein) – As Amended March 22, 2023

**SUMMARY:** Applies the “great bodily injury” enhancement to any person who sells, furnishes, administers, or gives away fentanyl or an analog of fentanyl when the person to whom the fentanyl was sold, furnished, administered or given suffers a significant or substantial physical injury from using the substance.

- 1) Provides that a person who sells, furnishes, administers, or gives away fentanyl or analog of fentanyl personally inflicts great bodily injury when the person to whom the substance was sold, furnished, administered, or given suffers a significant or substantial physical injury from using the substance.
- 2) Provides that the enhancement does not apply to juvenile offenders.
- 3) Provides a sunset date of January 1, 2029.

**EXISTING LAW:**

- 1) Provides that a person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony, or attempted commission of a felony, shall be punished by an additional and consecutive term of imprisonment in state prison for three years. (Pen. Code, § 12022.7, subd. (a).)
- 2) Requires that a person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony, or attempted commission of a felony, which causes the victim to become comatose due to brain injury or to suffer paralysis of a permanent nature to be punished by an additional and consecutive term of imprisonment in the state prison for five years. (Pen. Code, § 12022.7, subd. (b).)
- 3) Requires that a person who personally inflicts great bodily injury on a person who is 70 years of age or older, other than an accomplice, in the commission of a felony or attempted felony to be punished by an additional and consecutive term of imprisonment in state prison for five years. (Pen. Code, § 12022.7, subd. (c).)
- 4) Requires that a person who personally inflicts great bodily injury on a child under the age of five years in the commission of a felony or attempted felony to be punished by an additional and consecutive term of imprisonment in the state prison for four, five, or six years. (Pen. Code, § 12022.7, subd. (d).)
- 5) Requires a person personally inflicts great bodily injury under the circumstances involving domestic violence in the commission of a felony or attempted felony to be punished by an

additional and consecutive term of imprisonment in the state prison for three, four, or five years. (Pen. Code, § 12022.7, subd. (e).)

- 6) States “great bodily injury” means a significant or substantial injury. (Pen. Code, § 12022.7, subd. (f).)
- 7) Provides that the great bodily injury enhancement does not apply to murder, manslaughter, arson, or any offense where great bodily injury is an element of the offense. (Pen. Code, § 12022.7, subd. (g).)
- 8) Provides that a person who possesses fentanyl for sale, or purchases fentanyl for purposes of sale, shall be punished by imprisonment in county jail for two, three, or four years. (Health & Saf. Code, § 11351.)
- 9) Provides that a person who sells or transports specified controlled substances, including fentanyl, or offers to do so, unless upon a written prescription, as specified, shall be punished by imprisonment in county jail for three, four, or five years. (Health & Saf. Code, § 11352, subd. (a).)
- 10) Provides that a person who transports specified controlled substances, including fentanyl, within this state from one county to another noncontiguous county shall be punished by imprisonment in county jail for three, six, or nine years. (Health & Saf. Code, § 11352, subd. (b).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “The effects of fentanyl are devastating. The data shows us that action to address this epidemic is critically overdue. We must take action at all levels of government to protect our communities from this deadly substance. This bill would help California hold drug dealers accountable for the destruction and trauma they cause by knowingly distributing fentanyl. While our efforts could never repair the loss of life, AB 367 recognizes that injury to human life or death deserves – at the minimum – a 3-year sentence enhancement.”
- 2) ***People v. Ollo* (2021) 11 Cal. 5th 682:** This bill seeks to overturn part of the California Supreme Court’s decision in *People v. Ollo* (2021) 11 Cal.5th 682. In that case, the 18-year-old defendant supplied his 16-year-old girlfriend with a white powder he thought was cocaine. (*Id.* at p. 685.) It was not cocaine; it was fentanyl. (*Ibid.*) Using an I.D card, his girlfriend voluntarily prepared and consumed the powder and fell asleep. (*Ibid.*) Awaking the next morning, he found his girlfriend unresponsive. (*Ibid.*) She had died of an overdose. (*Ibid.*)

During trial, the prosecutor argued that the defendant personally inflicted great bodily injury (GBI) on his girlfriend. (*Ollo, supra*, 11 Cal.5th at p. 685.) The defendant moved to dismiss the allegation, which the trial court denied. (*Ibid.*) The defendant argued that the trial court should permit him to argue that the facts did not support the GBI enhancement allegation. The trial court rejected his argument. (*Ibid.*) The defendant was sentenced to nine years in

prison plus the three-year GBI enhancement. (*Id.* at p. 686.) On appeal, he argued that the trial court erred by prohibiting him from arguing that he did not personally inflict GBI. The appellate court affirmed. (*Ibid.*)

The California Supreme Court was asked to decide “whether a defendant who furnishes a controlled substance ‘personally inflicts’ great bodily injury as a matter of law whenever a person to whom he or she provides drugs dies or suffers other great bodily injury from using drugs” under subdivision (a) of Penal Code section 12022.7. (*Ollo, supra*, 11 Cal.5th at p. 687.) The court observed that precedent demonstrates that the purpose of the great bodily injury enhancement “focus[es] on *aspects* of the criminal act that are not always present,” that the intent of the enhancement is to punish “gratuitous harm not inherent in the crime itself.” (*Id.* at p. 691 [internal citations omitted] [emphasis in original].) According to the court,

In determining whether the personal infliction requirement is satisfied, the key inquiry is whether the furnishing was akin to administering. When a defendant administers the drugs without the victim’s consent, the defendant has participated in the injury-causing act and thus may be held liable for personal infliction of the overdose. Where a defendant simply provides the drugs to a user who subsequently overdoses, the defendant facilitates but does not personally inflict the overdose. This distinction recognizes the importance of the voluntariness of a victim’s ingestion in the determination of whether a defendant personally inflicts great bodily injury in the drug furnishing context. To be eligible for the great bodily injury enhancement, a defendant’s participation in the act of ingestion must occur in circumstances in which the victim is not an independent “intermediary” capable of breaking the “personal[]” nexus between the defendant and the overdose injury. Whereas a victim with full capacity who voluntarily chooses to ingest a controlled substance is an independent intermediary, a victim who ingests drugs as a result of coercion or with diminished capacity is not.

(*Id.* at pp. 690-691 [internal citations omitted].) The court emphasized that the question hinges on “the facts of the particular case rather than the charged offense.” A defendant could furnish drugs in “a particularly way” that would “undermine[] the victim’s voluntary choice as to whether to consume the drug” causing “the victim to use the drug in a more dangerous manner than the mere act of selling drugs on the street.” (*Id.* at pp. 688, 691-692.) The court observed, for example, that a defendant who supplies an individual with pills over the course of a night, while observing that individual become increasingly intoxicated, may be subject to the GBI enhancement whereas a defendant who supplied heroin but “played no part in the individual’s ingestion of the drugs” likely is not. (*Id.* at pp. 689-90.) The court concluded, “The trial court’s statement of law contravenes our reasoning that the voluntariness of a victim’s ingestion is a key consideration in the determination of whether a defendant personally inflicts great bodily injury in the drug furnishing context.” (*Id.* at p. 693.)

This bill seeks to overrule the California Supreme Court’s unanimous decision in *People v. Ollo* as applied to fentanyl. It would make the GBI enhancement automatic as a matter of law anytime a person is convicted of selling, furnishing, administering, or giving away fentanyl or analog of fentanyl if a person dies of an overdose after consuming it. This bill rejects the Supreme Court’s reasoning that application of the GBI enhancement requires an analysis of the facts of the case.

3) **Harsher Sentences for Drug Trafficking Unlikely to Reduce Drug Use or Deter Criminal Conduct:**

This bill attempts to deter people who sell, furnish, administer, or give away fentanyl by automatically applying a three-year enhancement whenever a person dies or suffers a serious bodily injury after using it. But any claim that such measures will meaningfully reduce drug use or crime associated with the drug trade is, at best, dubious.

Ample research on the impact of increasing penalties for drug offenses on criminal behavior has called into question the effectiveness of such measures. In a report examining the relationship between prison terms and drug misuse, Pew Charitable Trusts found “[n]o relationship between drug imprisonment rates and states’ drug problems,” finding that “high rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths.” (PEW, *More Imprisonment Does Not Reduce State Drug Problems* (Mar. 2018) p. 5 <[https://www.pewtrusts.org/-/media/assets/2018/03/pspp\\_more\\_imprisonment\\_does\\_not\\_reduce\\_state\\_drug\\_problems.pdf](https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf)> [last viewed Feb. 6, 2023]; see generally, Przybylski, *Correctional and Sentencing Reform for Drug Offenders* (Sept. 2009) <[http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional\\_and\\_Sentencing\\_Reform\\_for\\_Drug\\_Offenders.pdf](http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf)> [last visited Mar. 20, 2023].) Put differently, imprisoning more people for longer periods of time for drug trafficking offenses is unlikely to reduce the risk of illicit drugs in our communities.

Unduly long sentences are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L.Rev. 1 (Nov. 5, 2018).) According the U.S. Department of Justice, “Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not ‘chasten’ individuals convicted of crimes, and prisons may exacerbate recidivism.” (National Institute of Justice, U.S. Department of Justice, *Five Things About Deterrence* (June 5, 2016) <<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>> [last visited Feb. 2, 2023].) Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Long-Term Sentence, supra.*)

Harsher sentences for drug trafficking offenses specifically may be particularly ineffective, in part because of the nature of illicit drug markets. As the National Research Council explains:

For several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case. Drug dealing is part of a complex illegal market with low barriers to entry. Net earnings are low, and probabilities of eventual arrest and imprisonment are high... Drug policy research has nonetheless shown consistently that arrested dealers are quickly replaced by new recruits....

Despite the risks of drug dealing and the low average profits, many young disadvantaged people with little social capital and limited life chances sell drugs on street corners because it appears to present opportunities not otherwise available. However, [they] ... overestimate the benefits of that activity and



underestimate the risks. This perception is compounded by peer influences, social pressures, and deviant role models provided by successful dealers who live affluent lives and...avoid arrest... Arrests and imprisonments of easily replaceable offenders create illicit “opportunities” for others.

(Cmte. On Causes and Consequence of High Rates of Incarceration, National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014) p. 146.

<<https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>> [last visited Apr. 25, 2023].)

More recently, the Council on Criminal Justice reviewed the evidence on the effect of harsher punishments on criminal behavior and came to the same conclusion. It reported:

The empirical evidence on selective incapacitation suggests that long sentences may produce short- and long-term public safety benefits for individuals engaged in violent offending, but may produce *the opposite effect* for those engaged in drug-related offending...where an incarcerated individual is quickly replaced by a new recruit. This “replacement effect” occurs—and undermines the overall crime-reducing effects of incapacitation—when there is “demand” for a particular criminal activity. The illicit drug business offers the most obvious example: when someone who plays a role in a drug trafficking organization is incarcerated, someone else must take his or her place.

One study found that incarcerating street-level drug dealers fueled their replacement by younger and more violent individuals. Additional research replicated these findings through an examination of the public safety impact of California’s three strikes law from 1994, when the law was implemented, to 1998. This work found short- and long-term decreases in most types of crime, but also found that imprisoning chronic drug offenders had no impact on the drug crime rate. The authors hypothesized that incarcerating chronic drug offenders did not result in an incapacitation effect because “when one drug offender is jailed, there is another (and perhaps more than just one other) ready to take his or her place.” Additional analyses further indicate that incarcerating people for drug trafficking may result in increased crimes rates in general and increased rates of violent crime, specifically, because of organizational destabilization and the need for new recruits to prove themselves.

(Long Sentences Task Force, Council on Criminal Justice, *The Impact of Long Sentences on Public Safety: A Complex Relationship* (Nov. 2022) p. 8 <https://counciloncj.org/wp-content/uploads/2022/11/Impact-of-Long-Sentences-on-Public-Safety.pdf> [last visited Apr. 2023] [internal citations omitted] [emphasis added].)

With fentanyl, the deterrent effect of increasing penalties may be questioned further because the seller often is unaware that the product is laced with fentanyl. Citing U.S. Sentencing Commission data, one analysis observed, “Low-level dealers rarely know the contents of the product in their supply chain or can predict its risk.” (Beletsky, *America’s Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis* (2019) 4 Utah L.Rev. 833, 877.) “These contents also frequently fluctuate—often as a result of interdiction activities and other law enforcement efforts to disrupt the market, further complicating any rational decision-making.” (*Ibid.*)



Additionally, as the Council on Criminal Justice’s report notes, harsher punishments for drug offenses may actually do harm. They may push persons selling and using drugs to engage in riskier behaviors. (See Friedman et al., *Relationships of deterrence and law enforcement to drug-related harms among drug injectors in US metropolitan areas* (2006) AIDS Vol 20 No 1.) Users may be less likely to call 911 when another is overdosing out of fear of criminal punishment. “The role of risk perception is critical in this area. Research demonstrates that people who use drugs...lack an accurate understanding of Good Samaritan policies... Ultimately, it is the perception of bystanders about legal risk to self or the victim that drives help-seeking behavior.” (Beletsky, *supra*, at p. 864; see also Dunkle, *Senate Bill 44 by Sen. Tom Umberg will put more people at risk of overdosing from fentanyl*, Orange Co. Register (Mar. 23, 2023) <<https://www.ocregister.com/2023/03/23/senate-bill-44-by-sen-tom-umberg-will-put-more-people-at-risk-of-overdosing-from-fentanyl/>> [last visited Apr. 23, 2023]; Hoban, *After overdose deaths, families ask lawmakers to reduce penalties for calling 911*, N.C. Health News (May 12, 2021) <<https://www.northcarolinahealthnews.org/2021/05/12/after-overdose-deaths-families-want-stronger-good-samaritan-law/>> [last visited Apr. 23, 2023].)

These harms may be compounded further by increasing intentional fentanyl use. “One of the deadliest street drugs, illicit fentanyl, has transitioned from a hidden killer that people often hope to avoid to one that many drug users now seek out on its own.” (Edwards, *Once feared, illicit fentanyl is now a drug of choice for many opioid users*, NBC News (Aug. 7, 2022) <<https://www.nbcnews.com/health/health-news/feared-illicit-fentanyl-now-drug-choice-many-opioids-users-rcna40418>> [last visited Apr. 24, 2023].) A recent University of Washington survey of people who had used syringe service programs found that two-thirds had used fentanyl “on purpose” in the last three months. (Kingston et al., University of Washington, *Results from the 2021 WA State Syringe Service Program Health Survey* (Mar. 2022) at pp. 1, 6 <<https://adai.uw.edu/wordpress/wp-content/uploads/ssp-health-survey-2021.pdf>> [last visited Apr. 24, 2023].) “More than half of drug users [in the Tenderloin district in San Francisco] purposely seek fentanyl, despite its dangers, according to harm reduction workers who talk to hundreds of drug users every day.” (Vestal, *Some Drug Users in Western U.S. Seek Out Deadly Fentanyl. Here’s Why.*, PEW Charitable Trusts (Jan. 7, 2019) <<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/01/07/some-drug-users-in-western-us-seek-out-deadly-fentanyl-heres-why>> [last view Apr. 24, 2023].) Given that this bill specifically targets fentanyl, the potential negative consequences resulting from increased sentences will likely fall on fentanyl users.

According to PEW, “[A] large body of prior research...cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations.” (PEW, *supra*.) PEW concludes:

Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (*Ibid.*)

Will applying the GBI enhancement to a person who sold, furnished, administered, or gave away fentanyl to person who subsequently suffers a serious injury or death from consuming the substance reduce the amount drugs on California streets? The evidence to date suggests that it will not.

- 4) **The Scope of the Enhancement:** The bill's sponsor justifies the enhancement by distinguishing between "habitual dealers" and the persons who use drugs.

First, there is no requirement under this bill that the person supplying the fentanyl be a "habitual dealer." In fact, a person who has never made a single cent from selling any drug could be subject to the enhancement. (See *People v. Ollo* (2021) 11 Cal.5th 682.) The enhancement would apply to a person who uses drugs who administers or gives away fentanyl even when the deceased voluntarily used the drug knowing it was fentanyl. (See *People v. Label* (1974) 43 Cal.App.3d 766.) One analysis found that roughly half of the defendants in drug-induced homicide cases were the friend, family member, or a romantic partner of the person who overdosed. (Beletsky, *supra*, at pp. 839, 873-874.) There is little reason to believe that the application of the GBI enhancement would be any different.

Second, persons who participate in the drug trade often are themselves people who use drugs. According to the National Research Council, "Facing limited opportunities in legal labor markets and already in contact with drug-selling networks, users provide a ready low-wage labor pool for illegal markets." (<https://nap.nationalacademies.org/read/12976/chapter/4-24>). According to a Bureau of Justice Statistics report, 70% of persons serving time in state prison for drug trafficking offenses used drugs in the month before the offense, and 42.3% of those persons had been using drugs at the time of their offense. (Bureau of Justice Statistics, *Special Report: Drug Use and Dependence, State and Federal Prisoners*, 2004 (Oct. 2006) a p. 5 <<https://bjs.ojp.gov/content/pub/pdf/dudsfp04.pdf>> [last visited Mar. 20, 2023].) According to one study, "[Street-involved youth implicated in the drug trade] appear to be motivated by drug dependence," finding: "Among participants who reported drug dealing, 263 (85.6%) individuals stated that the main reason that they sold drugs was to pay for their personal drug use." (Werb et al., *Risks surrounding drug trade involvement among street-involved youth*, Am. J. Drug Alcohol Abuse (2008) <<https://pubmed.ncbi.nlm.nih.gov/19016187/>> [last visited Feb. 2, 2023]; Floyd et al., *Adolescent Drug Dealing and Race/Ethnicity: A Population-Based study of the Differential Impact on Substance Use on Involvement in Drug Trade*, Amer. J. of Drug & Alcohol Abuse, Vol. 36, No. 2 (Mar. 2010) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871399/-R7>> [last visited Mar. 17, 2022].)

Will the threat of a three-year enhancement effectively deter somebody already at a relatively high risk of death from illicit drug use?

- 5) **Argument in Support:**

- a) According to *San Diego Mayor Todd Gloria*, the bill's sponsor: "A recent study by the Center for Disease Control (CDC) names fentanyl the deadliest drug in the United States. Fentanyl is often disguised as other synthetic opioids or drugs, then sold on the street to users who are unaware that fentanyl is a key ingredient. Users who unknowingly ingest these substances believing they are taking a less powerful drug are much more susceptible to overdose or even death. When abused, fentanyl affects the brain and

nervous system and is 50 times stronger than heroin and 100 times stronger than morphine.

“In the City of San Diego, ‘accidental overdose’ was the leading cause of death according to preliminary 2021 data. Of those 549 overdose deaths in San Diego, 385 individual deaths, or 70%, involved fentanyl. The problem is particularly acute in the homeless population. Accidental overdoses as a cause of death for people experiencing homelessness in the City have increased from 2017 to 2021 by 406% (32 to 162) and accidental overdoses involving fentanyl among the same population over that time period have increased an alarming 5,550% (2 to 113).

“AB 367 does not add a new sentence enhancement to state law, but instead clarifies when courts may apply the provision. While existing law speaks to “great bodily injury” which could include instances when fentanyl is involved, the Supreme Court in 2021 found that the law’s requirement that the injury must be *personally inflicted* prohibited the sentence enhancement from applying in most cases. The Court explained that the phrase “personally inflicts” means that someone directly and physically causes something damaging or painful to be endured.

“Such legal interpretation of the law absurdly absolves habitual dealers of fentanyl-laced drugs unless they physically place the drug in the users’ bodies. AB 367 is intended to clarify that existing penalties are properly enforced in circumstances involving serious bodily injury. The measure will provide justice to thousands of California families and will deter those who deal deadly drugs from continuing to do so. We know this law will provide an important tool to cities, like my own, suffering with the devastating [sic] impacts of the opioid epidemic.”

- b) According to the *California Police Chiefs Association*, “Fentanyl is now the deadliest drug circulating on the illegal drug market. According to the California Department of Public Health, statewide fentanyl deaths increased from 239 deaths in 2016 to 3,946 in 2020, or 1,551%. In California, 71% of all opioid-related deaths in 2020 were a result of fentanyl poisoning. Synthetic opioids like fentanyl account for two-thirds of the 105,000 nationwide drug-related deaths that occurred between October 2020 and October 2021.

“AB 367 takes a critical step towards impacting this crisis by targeting those selling this deadly substance.”

## 6) **Argument in Opposition:**

- a) According to *Initiate Justice*, “Our organization understands the impact that drug use can have on the lives of users, their families, and those who’ve lost a loved one to overdose. California voters have repeatedly signaled their preference for moving away from the failed carceral policies of the past and instead treating substance use as the health crisis that it is. Reverting back to the criminal penalties of the past not only flies in the face of multiple statewide elections, but it is also proven to be bad public policy. AB 367 would result in further criminalization of mostly low-income, marginalized populations and push them further from the strategies that work.

“AB 367 relies on an outdated War on Drugs mentality, one that has already had a

devastating impact on communities across California. The consequences of using jails and prisons to deal with a public health issue has taken decades to even begin unraveling. This measure would set California back from more public health centered approaches. Harsher sentencing does not reduce the distribution of fentanyl, nor would it prevent overdoses; it does not reduce the supply of drugs nor the demand for them; and worse, it could discourage effective methods of dealing with the opioid crisis.

“Rather than diminishing the harms of drug misuse, criminalizing people who sell and use drugs amplifies the risk of fatal overdoses and diseases, increases stigma and marginalization, and drives people away from needed treatment, health, and harm reduction services. Many of the people who will be incarcerated by this bill will be addicts themselves. A Bureau of Justice report found that 70% of people incarcerated for drug trafficking in state prisons used drugs prior to the offense. These individuals often distribute drugs, not for profit, but to support their own substance use disorder. Often, these “sellers” are not high-level members of any organized drug distribution scheme but are rather furnishing narcotics to friends and family members.

“In November 2021, the Center for Disease Control and Prevention (CDC) released provisional data demonstrating that nationally drug overdose deaths rose to 100,000 in the 12th month period ending in April 2021.<sup>1</sup> This further proof that enforcement-first approaches to drugs are not working, in fact criminalization are fueling the overdose crisis by pushing people into risky situations, isolation and making the drug supply unregulated and unsafe.

“With countless lives at stake, it’s time to divest from failed intervention of the past and to look at effective approaches to reduce drug-related harms by making evidence-based treatment available on demand and to implement harm reduction policies, such as facilitating drug checking to help identify adulterated substances and getting the opioid overdose antidote naloxone in the hands of those most likely to be present when a person is suffering a drug overdose – people who use drugs and their family members and friends.

“AB 367 and its imposition of harsh penalties for distribution will undermine California’s Good Samaritan law, lifesaving legislation that was passed in order to encourage people to contact emergency services in case of an overdose. The most common reason people cite for not calling 911 in the event of an overdose is fear of police involvement. Recognizing this barrier, California, along with 39 other states and the District of Columbia, passed “911 Good Samaritan” laws, which provide limited immunity from prosecution for drug-related offenses for those who seek medical assistance for an overdose victim. This public health approach to drug use, however, is greatly undermined by enforcement of drug-induced homicide statutes.”

- b) According to *Ella Baker Center for Human Rights*, “Adding a great bodily injury enhancement for the furnishing, sharing or selling of controlled substances will do nothing to address the deadly crisis facing California. For over 50 years, California and the United States has spent more money warring drugs through policing, interdiction, deportation, jails and prisons, than spent on cost-effective prevention, medical and public health responses to the use of drugs and substance use disorder. It is well past time that California lawmakers stop wasting lives and money on failed carceral policies and invest



in drug treatment, harm reduction and prevention.

“This bill would add an additional three or five years to a sentence for sharing, furnishing, administering, or selling a controlled substance, if the person who chose to ingest drugs suffered great bodily injury (GBI), presumably related to accidental overdose. There are other potential negative medical outcomes of self-administration of controlled substances, including soft tissue infections or endocarditis, that might be considered GBI. It is difficult to know how wide a net District Attorneys might throw given the option of enhancements. It would likely take years for courts to determine appropriate application, and there would doubtless be uneven application of the enhancements. Given the history of the drug war, it is predictable that the defendants most likely to suffer over-sentencing would be people of color, Black, Latinx and Indigenous.

“The imposition of harsher penalties would be yet another impediment to calling 911 or seeking emergency medical care when a person witnesses an overdose. If any person shared drugs, furnished drugs or sold drugs, and was present during an overdose, this bill--like those that would treat overdose as a homicide--make it far less likely that a person would seek care with the urgency required to save a life. Even hesitation can result in brain injury or death.

“Long sentences and enhancements are already proven to be both ineffective and expensive. An additional 3-years in prison costs the taxpayers of California an additional \$338,000. The approximate per capita cost of a year in 2021 was over \$112,600.1. The approximate cost of a year of methadone treatment for an opioid dependent person is \$6,552. The approximate cost of buprenorphine treatment is less than \$6,000.2 It would be healthier, safer and better for public safety to send an additional 17 people to methadone treatment, or 19 people to buprenorphine treatment, than to incarcerate one person for an additional year. Sending a person to prison for an additional three or five years makes no difference in drug availability. Funding a robust, voluntary drug treatment system is a far more intelligent investment.

“Rather than diminishing the harms of drug misuse, criminalizing people who sell and use drugs amplifies the risk of fatal overdoses and diseases, increases stigma and marginalization, drives people away from needed treatment, health, and harm reduction services, and exacerbates racial disparities in incarceration.”

**7) Related Legislation:**

- a) AB 955 (Petrie-Norris), would provide that a person who sells fentanyl on a social media platform in California shall be punished by imprisonment for a period of three, six, or nine years in county jail. AB 955 will be heard today in this committee.
- b) AB 675 (Soria), would add a substance containing a heroin analog, a substance containing fentanyl, and a substance containing a fentanyl analog to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony punishable in state prison by two, three, or four years. AB 675 will be heard today in this committee.

- c) AB 701 (Villapudua), would impose an additional enhancement when a person is convicted of specified drug offenses involving fentanyl, including sale, possession for sale, and transportation, when the substance containing fentanyl exceeds a specified weight. AB 701 is up for reconsideration in this committee today.
- d) SB 237 (Grove), increases the punishment for drug trafficking fentanyl. SB 237 is up for reconsideration in the Senate Public Safety Committee.
- e) SB 62 (J. Nguyen), would apply existing weight enhancements increasing the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. SB 62 is up for reconsideration in the Senate Public Safety Committee.
- f) AB 18 (Joe Patterson), would require the court to advise a person convicted of specified drug offenses that they could be charged with voluntary manslaughter or murder if they manufacture or distribute controlled substances in the future and somebody dies as a result. AB 18 is up for reconsideration in this committee.
- g) SB 44 (Umberg), is substantially similar to AB 18 (Joe Patterson). SB 44 is up for reconsideration in the Senate Public Safety Committee.

**8) Prior Legislation:**

- a) AB 2366 (Jim Patterson), of the 2021-2022 Legislative Session, was substantially similar to AB 18 (Joe Patterson), of the current session. The author pulled AB 2366 before the bill's scheduled hearing in this committee.
- b) SB 350 (Melendez), of the 2021-2022 Legislative Session, was substantially similar to AB 18 (Joe Patterson), of the current session. SB 350 failed passage in the Senate Public Safety Committee.
- c) AB 1955 (Nguyen), of the 2021-2022 Legislative Session, would have applied the existing weight enhancements which increase the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. AB 1955 failed passage in this committee.
- d) AB 1351 (Petrie-Norris), of the 2021-2022 Legislative Session, was nearly identical AB 1955 (Nguyen). The author pulled AB 1351 before it received hearing in the Assembly Public Safety Committee.
- e) AB 2975 (Petrie-Norris), of the 2019-2020 Legislative Session, was nearly identical to AB 1955 (Nguyen). AB 2973 was not heard in this committee.
- f) AB 2405 (Patterson), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II of the drug schedule and would have increased penalties for trafficking in carfentanil. AB 2405 failed passage in this committee.
- g) AB 2467 (Patterson), of the 2017-2018 Legislative Session, would have increased the punishment for specified drug crimes involving fentanyl. SB 2467 failed passage in this

committee.

- h) AB 3105 (Waldron), of the 2017-2018 Legislative Session, would have made sale of fentanyl punishable by a term of 10 years to life in a case involving 20 grams or more of a mixture or substance containing a detectable amount of fentanyl, as defined, or 5 grams or more of a mixture or substance containing an analogue. AB 3105 failed passage in this committee.
- i) SB 176 (Bates), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II and would have applied the weight enhancement to a substance containing carfentanil or fentanyl. SB 176 failed passage in the Senate Public Safety Committee.
- j) SB 1103 (Bates), of the 2017-2018 Legislative Session, was substantially similar to AB 1955 (Nguyen). SB 1103 failed passage in the Senate Public Safety Committee.
- k) SB 1323 (Bates), of the 2015-2016 Legislative Session, would have applied the weight enhancement for possession for sale, or sale, of specified drugs, to fentanyl. SB 1323 was held on the Assembly Appropriations Committee Suspense File.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Mayor Todd Gloria, City of San Diego (Sponsor)  
California District Attorneys Association (Co-Sponsor)  
Big City Mayors  
California Association of Highway Patrolmen  
California Police Chiefs Association  
California State Sheriffs' Association  
Chino; City of  
League of California Cities  
Orange County District Attorney  
San Diegans Against Crime  
San Diego County District Attorney's Office  
San Diego County Sheriff's Department  
San Diego Deputy District Attorneys Association

4 Private Individuals

### **Oppose**

Anti Recidivism Coalition  
Backes; Glenn  
Broken No More  
California Attorneys for Criminal Justice  
California for Safety and Justice  
California Public Defenders Association (CPDA)



Californians for Safety and Justice  
Californians United for A Responsible Budget  
Care First California  
Children's Defense Fund - CA  
Communities United for Restorative Youth Justice (CURYJ)  
Community Legal Services in East Palo Alto  
Drug Policy Alliance  
Ella Baker Center for Human Rights  
Friends Committee on Legislation of California  
Glide  
Harm Reduction Institute  
Initiate Justice  
Initiate Justice Action  
LA Defensa  
Law Enforcement Action Partnership  
Legal Services for Prisoners With Children  
Milpa (motivating Individual Leadership for Public Advancement)  
National Harm Reduction Coalition  
Pacific Juvenile Defender Center  
Rubicon Programs  
San Francisco Public Defender  
Santa Cruz Barrios Unidos INC.  
Silicon Valley De-bug  
Sister Warriors Freedom Coalition  
The Gubbio Project  
The Sidewalk Project  
Treatment on Demand Coalition  
Youth Forward

2 Private Individuals

**Analysis Prepared by:** Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: April 27, 2023  
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 474 (Rodriguez) – As Introduced February 7, 2023

**SUMMARY:** Requires the State Threat Assessment Center (STAC) and the California Office of Emergency Services (Cal OES) to prioritize, to the greatest extent possible, cooperation with state and local efforts to disrupt and dismantle criminal networks trafficking opioid drugs that pose a threat to California. Specifically, **this bill**:

- 1) Requires STAC to support state and local interagency task forces established to combat illegal opioid trafficking in California.
- 2) Requires support provided by STAC to include, but is not limited to, all off the following:
  - a) Preparing and disseminating intelligence products for public safety entities;
  - b) Analyzing tactics and trends or transnational criminal organizations operating in California; and,
  - c) Sharing information with government decision makers and state and local public safety officials regarding the extent to which transnational criminal organizations are trafficking opioids and pose other public safety threats in California.
- 3) Contains Legislative findings and declarations.

**EXISTING FEDERAL LAW:**

- 1) Provides that the Department of Homeland Security (DHS), under the federal Homeland Security Act of 2002, has responsibility for integrating law enforcement and intelligence information relating to terrorist threats to the homeland. (P.L. 107-296)
- 2) Establishes the National Counterterrorism Center as the coordinator at the federal level for terrorism information and assessment. (P.L. 108-458)

**EXISTING STATE LAW:**

- 1) Establishes the California Office of Emergency Services (Cal OES) within the office of the Governor for the purpose of mitigating the effects of natural, manmade, or war-caused emergencies. (Gov. Code, § 8550)
- 2) Requires Cal OES to coordinate the emergency activities of all state agencies in connection with an emergency, and requires every state agency and officer to cooperate with Cal OES in

rendering all possible assistance in carrying out its duties, as specified. (Gov. Code, § 8587, subd. (a).)

- 3) Includes representatives from the STAC on the California Cybersecurity Integration Center. (Gov. Code, § 8586.5, subd. (a).)
- 4) Requires the California Cybersecurity Integration Center to operate in close coordination with the California State Threat Assessment System and the United States Department of Homeland Security –National Cybersecurity and Communications Integration Center. (Gov. Code, § 8586.5, subd. (b).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “As we are facing an opioid crisis, it is critical that we do everything we can to protect our State from threats to our public health. Transnational Criminal Organizations pose such a threat and have generated \$100 billion from drug-related crimes alone. We must, to the best of our ability, disrupt these networks of criminals and get opioid drugs off of our streets.”

“Transnational Criminal Organizations refers to a range of criminal activity perpetrated by groups whose origins often lie outside of the United States but whose operations cross international borders. The operations of transnational criminal organizations threaten the safety, health and economic wellbeing of all Californians. AB 474 would require the STAC to prepare and share intelligence products for public safety entities and analyze tactics and trends of Transnational Criminal Organizations operating in California. STAC would then be required to share this information with government decision-makers and state and local public safety officials to highlight the extent to which TCOs are trafficking opioids and pose other public safety threats in California.”

“Fentanyl and other opioids are killing Californians, and related deaths continue to increase. Our children have been severely affected by this crisis and are dying from drugs they likely know little to nothing about. Allowing our State to gain insights and information on TCOs and other threats to California is the first step in fighting back and stopping the opioid epidemic. Additionally, the Governor recently released a ‘Master Plan for Tackling the Fentanyl and Opioid Crisis.’ The Governor’s plan, among other things, establishes a state opioid task force to improve statewide collaboration and planning. The STAC should support this and other task forces aimed at disrupting criminals trafficking fentanyl.”

- 2) **The State Threat Assessment Center:** The State Threat Assessment Center (STAC) serves as California’s information sharing clearinghouse of strategic threat analysis and situational awareness reporting to statewide leadership and the public safety community in support of efforts to prevent, prepare for, mitigate and respond to all crimes and all hazards impacting California citizens and critical infrastructure, while preserving civil liberties, individual privacy, and constitutional rights.

Transnational Criminal Organizations (TCOs) continue to pose a threat to California, public

health, and our economic security. Estimated profits from illicit drug sales exceed \$100 billion per year in the United States. (Office of the President of the United States, *What America's Users Spend on Illegal Drugs: 2000-2010* (Feb. 2014)

<[https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/wausid\\_results\\_report.pdf](https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/wausid_results_report.pdf)> [last visited Mar. 31, 2023].) These profits come with a high toll on human life; the opioids these TCOs traffic are responsible for the majority of the over 100,000 U.S. overdose deaths between April 2020 and April 2021. (Press Release, Drug Overdose Deaths in the U.S. Top 100,000 Annually, CDC (Nov. 17, 2021).) Roughly 70% of those deaths are synthetic opioid-related overdoses. (Fentanyl & Overdose Prevention, CDPH <<https://www.cdph.ca.gov/Programs/OPA/Pages/Communications-Toolkits/Fentanyl-Overdose-Prevention.aspx>> [last visited Mar. 31, 2023].)

- 3) **Fentanyl in California:** Drug overdoses have increased dramatically in recent years. In California, the number of deaths involving opioids, and fentanyl in particular, has increased significantly over the course of the last decade. Between 2012 and 2018, while opioid-related overdose deaths increased by 42%, overdose deaths related to fentanyl specifically increased by more than 800%—from 82 to 786. (CDPH, Overdose Prevention Initiative <<https://www.cdph.ca.gov/Programs/CCDC/DCDC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx?msclkid=99f1af92b9e411ec97e3e1fe58cde884>> [last viewed Mar. 7, 2023].) In 2021, there were 21,016 emergency room visits resulting from an opioid overdose, 7,176 opioid-related overdose deaths, and 5,961 overdose deaths from fentanyl. (CDPH, Overdose Surveillance Dashboard <<https://skylab.cdph.ca.gov/ODdash/?tab=Home>> [last visited Mar. 7, 2023].).

Most of the illicit fentanyl consumed in the United States originates in China, “a major pipeline of the building blocks of fentanyl, known as fentanyl precursors, according to U.S. officials.” (John et al., *The US sanctioned Chinese companies to fight illicit fentanyl. But the drug's ingredients keep coming*, CNN.com (Mar. 30, 2023) <<https://www.cnn.com/2023/03/30/americas/fentanyl-us-china-mexico-precursor-intl/index.html>> [last visited Mar. 31, 2023].). Chemical manufactures in China ship fentanyl precursors to Mexico where drug cartels make fentanyl and arrange for it to be transported across the U.S./Mexico border. (Ainsley, *U.S. and Mexico weighing deal from Mexico to crack down on fentanyl going north while U.S. cracks down on guns going south*, NBCNews.com (Mar. 27, 2023) <<https://www.nbcnews.com/politics/national-security/fentanyl-gun-smuggling-us-mexico-border-deal-rcna75782>> [last visited Mar. 31, 2023].) The vast majority of the fentanyl seizures in the U.S. occur at legal ports of entry or interior vehicle checkpoints, and U.S. citizens are primarily the ones trafficking fentanyl. (Bier, *Fentanyl Is Smuggled for U.S. Citizens By U.S. Citizens, Not Asylum Seekers*, Cato.org (Sept. 14, 2022) <<https://www.cato.org/blog/fentanyl-smuggled-us-citizens-us-citizens-not-asylum-seekers>> [last visited Mar. 31, 2023].).

This bill would require STAC to cooperate with state and local task forces to disrupt drug trafficking of illicit opioids in California, focusing in particular on the role of transnational criminal organizations operating in the state.

- 4) **Attorney General Recommended Using STAC to Combat Transnational Organized Crime:** In 2014, then Attorney General Kamala D. Harris, released a report entitled, *Gangs Beyond Borders: California and the Fight Against Transnational Organized Crime*. ([https://oag.ca.gov/sites/all/files/agweb/pdfs/toc/report\\_2014.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/toc/report_2014.pdf) [last visited Mar. 31,

2023].) The report noted, “more narcotics, weapons and humans are trafficked in and out of California than any other state.” The report, written with assistance from the STAC, described the strategies that are working and made recommendations to combat transnational organized crime. Among the recommendations in this report, were federal, state, and local law enforcement should use California’s State Threat Assessment System as a central hub for sharing information about transnational crime and state and local law enforcement agencies should increase operational coordination in combatting TCOs. (*Id.* at 74.)

- 5) **Existing Efforts to Combat Fentanyl in California:** The state’s 2022-23 budget included \$7.9 million in 2022-23 and \$6.7 million ongoing to fund the Fentanyl Task Force within DOJ to help tackle the fentanyl crisis. (*Governor’s Budget Summary – 2023-24* at p. 117 <<https://ebudget.ca.gov/2022-23/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>> [April 20, 2023].) The task force includes 25 new positions within Department of Justice (DOJ) to support those efforts. (*Ibid.*)

Building on the 2022-23 Budget, the state’s 2023-24 Budget includes additional funding to combat fentanyl abuse. The budget allocates \$93 million over the next four years, including \$79 million for Naloxone distribution projects; \$10 million for grants for education, testing, recovery, and support services; \$4 million to make test strips more available; and, \$3.5 million for overdose medication for all middle and high schools. (*Governor’s Budget Summary – 2023-24* at p. 69 <<https://ebudget.ca.gov/FullBudgetSummary.pdf>> [April 20, 2023].)

The Governor’s Master Plan for Tackling the Fentanyl and Opioid Crisis also includes \$30 million to expand California National Guard’s work to prevent drug-trafficking transnational criminal organizations and \$15 million over two years to establish and operate the Fentanyl Enforcement Program within the DOJ to combat manufacturing, distribution, and trafficking. The Governor also has allocated \$40.8 million for an education and awareness campaign to establish partnerships and create messaging and education tools for parents and educators, and \$23 million in substance use disorder workforce grants to develop substance use disorder training for non-behavioral health professionals working with children and youth. (*Governor Newsom’s Master Plan for Tackling the Fentanyl and Opioid Crisis* <[https://www.gov.ca.gov/wp-content/uploads/2023/03/Fentanyl-Opioids-Glossy-Plan\\_3.20.23.pdf?emrc=86c07e](https://www.gov.ca.gov/wp-content/uploads/2023/03/Fentanyl-Opioids-Glossy-Plan_3.20.23.pdf?emrc=86c07e)> [April 20, 2023].)

Adding to these efforts, the Governor recently announced a public safety partnership charged with combatting fentanyl trafficking in San Francisco. The partnership would include the California Highway Patrol, the California National Guard, San Francisco Police Department, and the San Francisco District Attorney’s Office. According to the press release, “This agreement will lead to the formation of a new collaborative operation between all four agencies focused on dismantling fentanyl trafficking and disrupting the supply of the deadly drug in the city by holding the operators of large-scale drug trafficking operations accountable.” (*Governor Newsom Announces Public Safety Partnership to Disrupt Fentanyl Trafficking San Francisco* <<https://www.gov.ca.gov/2023/04/21/public-safety-partnership-sf/>> [last visited Apr. 24, 2023].)

- 6) **Argument in Support:** According to the *Peace Officers’ Research Association of California*, “AB 474 would find and declare that the State Threat Assessment Center (STAC) serves as California’s information-sharing clearinghouse of strategic threat analysis and



situational awareness reporting for statewide leadership and the public safety community, as specified, and that the STAC is California's state primary fusion center, as designated by the Governor, and is operated by the Department of the California Highway Patrol, the Office of Emergency Services, and the Department of Justice. The bill would make other findings and declarations related to drug trafficking and transnational criminal organizations."

- 7) **Argument in Opposition:** According to the *ACLU California Action*, "The opioid crisis is a matter of public health that the criminal legal system is ill-equipped to solve. As previous 'war on drugs' efforts have more than demonstrated, notably the war on crack cocaine, we cannot police ourselves out of drug overdoses and the collateral damage of such efforts lasts for a long period of time and takes a great deal of work to undo. A better solution would center a health-based uniform effort to address the opioid overdose problem.

"Instead, AB 474 centers problematic fusion centers to address this public health problem. STAC is, as the bill notes, a fusion center in California. Contrary to the finding and declaration, fusion centers like STAC are not operating in ways 'preserving civil liberties, individual privacy and constitutional rights.' Fusion centers act as opaque data brokers for law enforcement and spy on Americans with virtually complete secrecy." There have also been substantive questions by Congress about the quality of intelligence provided by the fusion centers. In addition to secretly collecting up vast stores of people's personal information and their history of producing flawed analyses, fusion centers also have targeted minority communities and protesters and perpetuated improper religious, racial, ethnic and political bias – collecting and compiling information like 'Suspicious ME [Middle Eastern] Males Buy Several Large Pallets of Water.'

"Fusion centers continue to be susceptible to abuse and undermine the rights and safety of community members. According to the Brennan Center, 'fusion centers have amplified FBI and DHS threat warnings that falsely lump pro-choice activists together with abortion foes as potential 'abortion-related violent extremists,' even though only anti-abortion militants have a history of engaging in deadly violence. As states criminalize abortion, investigations of those seeking, providing, or even just supporting access to reproductive services will fit within fusion centers' 'all crimes' remit,' with the potential that fusion centers will contribute to law enforcement actions inconsistent with California protections for reproductive freedom.

"Unfortunately, AB 474 builds on this problematic remit of fusion centers, including the targeting of particular communities. The bill's legislative finding muddles opioid distribution with immigration and thefts of intellectual property, singles out people [sic] from a particular country, and using overheated rhetoric, threatens to further exacerbate improper targeting based on nationality or family ancestry.

"Additionally, AB 474 would redirect STAC to focus on work that is already being done by other agencies. Disrupting and dismantling trans-national crime rings distributing drugs is the mission of the Drug Enforcement Agency (DEA) and its 33 affiliates in the High-Intensity Drug Trafficking Areas and 19 Organized Crime Drug Enforcement Task Force Strike Forces. It is unclear why STAC would be redirected to duplicate this work.

"In sum, we have grave policy concerns about unleashing California's problematic fusion centers on all things Mexico and Mexicans using a vague mandate and little oversight under the guise of solving the opioid overdose problem." (citations omitted)

**8) Related Legislation:**

- a) AB 33 (Bains), would establish the Fentanyl Addiction and Overdose Prevention Task Force to evaluate the nature and extent fentanyl abuse in California and to develop policy recommendations for addressing it. AB 33 will be heard in this committee today.
- b) SB 19 (Seyarto), would create the Anti-Fentanyl Abuse Task Force to evaluate the nature and extent of fentanyl abuse in California and to develop policy recommendations for addressing it. SB 19 is pending hearing in the Senate Appropriations Committee.
- c) AB 462 (Ramos), would establish the Overdose Response Team Fund within the State Treasury, to be administered by the Board of State and Community Corrections, for grants to fund efforts by county sheriffs' departments to establish overdose response teams to investigate fatal overdoses. AB 462 is pending hearing in the Assembly Appropriations Committee.

**9) Prior Legislation:**

- a) AB 1566 (Committee on Emergency Management), of the 2021-2022 Legislative Session, would have required Cal OES to deliver an annual threat assessment and report on homeland security grant fund expenditures, as specified. AB 1566 failed passage in the Assembly.
- b) AB 1673 (Seyarto), of the 2021-2022 Legislatures Session, was substantially similar to SB 19 above. AB 1673 was held on suspense in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:****Support**

California State Sheriffs' Association  
League of California Cities  
Peace Officers Research Association of California (PORAC)

**Oppose**

ACLU California Action  
Oakland Privacy  
San Francisco Public Defender

**Analysis Prepared by:** Andrew Ironside / PUB. S. / (916) 319-3744



Date of Hearing: April 27, 2023  
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 675 (Soria) – As Amended March 23, 2023

**SUMMARY:** Adds a substance containing a heroin analog, a substance containing fentanyl, and a substance containing a fentanyl analog to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony punishable in state prison by two, three, or four years.

**EXISTING LAW:**

- 1) Makes it unlawful to possess several specified controlled substances, including heroin, cocaine, cocaine base, opium, hydrocodone, and fentanyl. Provides that the punishment is imprisonment in the county jail for not more than one year unless the person has one or more prior convictions for a serious or violent felony, as specified, or for an offense requiring sex offender registration, in which case it is punishable as a felony. (Health & Saf. Code, § 11350, subd. (a).)
- 2) Makes it unlawful to possess several specified controlled substances, including methamphetamine, amphetamine, phencyclidine (PCP), and gamma hydroxybutyric acid (GHB). Provides that the punishment is imprisonment in the county jail for not more than one year unless the person has one or more prior convictions for a serious or violent felony, as specified, or for an offense requiring sex offender registration, in which case it is punishable as a felony. (Health & Saf. Code, § 11377, subd. (a).)
- 3) Makes it unlawful for a person to possess for sale, or purchase for purpose of sale, several specified controlled substances, including heroin, cocaine, cocaine base, opium, and fentanyl. Provides that the punishment is imprisonment in the county jail for two, three, or four years. (Health & Saf. Code, §§ 11351, 11351.5.)
- 4) Makes it unlawful for a person to transport, import, sell, furnish, administer, or give away, or offer or attempt to transport, import, sell, furnish, administer, or give away several specified controlled substances, including cocaine, cocaine base, heroin, and fentanyl. Provides that the punishment is imprisonment in the county jail for three, four, or five years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years. (Health & Saf. Code, § 11352.)
- 5) Makes it unlawful to possess for sale several specified controlled substances, including methamphetamine, amphetamine, and GHB. Provides that the punishment is imprisonment in the county jail for 16 months, two years, or three years. (Health & Saf. Code, § 11378.)

- 6) Makes it unlawful to possess for sale PCP. Provides that the punishment is imprisonment in the county jail for three, four, or five years. (Health & Saf. Code, § 11378.5.)
- 7) Makes it unlawful for a person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport specified controlled substances, including methamphetamine, amphetamine, and GHB. Provides that the punishment is imprisonment in the county jail for two, three, or four years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years. (Health & Saf. Code, § 11379.)
- 8) Makes it unlawful for a person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport PCP. Provides that the punishment is imprisonment in the county jail for three, four, or five years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years. (Health & Saf. Code, § 11379.5.)
- 9) Provides, notwithstanding any other provision of law, that every person who unlawfully possesses any amount of a substance containing cocaine base, a substance containing cocaine, a substance containing heroin, a substance containing methamphetamine, a crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years. (Health & Saf. Code, § 11370.1, subd. (a).)
- 10) Defines “armed with” to mean having available for immediate offensive or defensive use. (Health & Saf. Code, § 11370.1, subd. (a).)
- 11) Provides that any person who is convicted of the above offense is ineligible for diversion or deferred entry of judgment, as described. (Health & Saf. Code, § 11370.1, subd. (b).)
- 12) Provides that, except as specified, the term “controlled substance analog” means either of the following:
  - (a) A substance the chemical structure of which is substantially similar to the chemical structure of specified controlled substances; or
  - (b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of specified controlled substances. (Health & Saf. Code, § 11401, subd. (b)(1) & (2).)
- 13) Specifies that the term “controlled substance analog” does not mean “any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the

federal Food, Drug, and Cosmetic Act.” (Health & Saf. Code, § 11401, subd. (c)(1).)

- 14) Regulates firearms, the possession of firearms, and the carrying of firearms. (Pen. Code §§ 23500 et seq.)
- 15) Provides for an additional year of punishment for a person who is armed with a firearm in the commission or attempted commission of a felony, unless being armed is an element of the offense. (Pen. Code, § 12022, subd. (a)(1).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “Fentanyl poisoning is the #1 killer for individuals ages 18-45.

“Nationwide, over 150 people die every day from fentanyl overdoses and poisonings.

“In the three counties I represent, Fresno, Madera and Merced, there have been over 130 deaths linked to fentanyl in 2021 alone.

“Current law clearly states that the possession of HEROIN and a loaded firearm is punishable by a felony.

“However, while FENTANYL is 50 times more powerful than HEROIN and 2 milligrams can kill an individual, it is NOT punishable by a felony when coupled with a loaded firearm.

“This unequal treatment of possession of a loaded firearm and fentanyl deserves immediate correction to address the fentanyl crisis sweeping across our State and Nation.”

- 2) **Possession of a Controlled Substance While Armed:** Under current law, possession of specified controlled substances, including heroin and fentanyl, is generally a misdemeanor. (See Health & Saf. Code, §§ 11377 & 11350.) However, possession of any amount of a substance containing cocaine base, cocaine, heroin, methamphetamine, or PCP while armed with a loaded, operable firearm is a felony punishable by imprisonment in the state prison for two, three, or four years. (Health & Saf. Code, § 11370.1, subd. (a).)

Notably, this law does not require that the firearm be unlawfully possessed or that the person otherwise be engaged in unlawful activity related to the firearm. In other words, a person in lawful possession of a loaded, operable firearm who is also in possession of one of the specified controlled substances can be charged with a felony. Moreover, the person is considered armed with the firearm even if it is not on their person. They do not even need to know that it is loaded and operable, just that it is in a readily accessible place. (See CALCRIM No. 2303; *People v. White* (2016) 243 Cal.App.4th 1354, 1362.)

The controlled substance need only be a “usable amount.” A “usable amount” is defined as “a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.” (See CALCRIM No. 2303.)

Though these specific controlled substances are singled out in statute for enhanced punishment if the person has an accessible firearm that may be lawfully possessed, there is no requirement that the person know which specific controlled substance they actually possess. They need only know the substance's nature or character as a controlled substance. (*People v. Palaschak* (1995) 9 Cal.4th 1236, 1242; *People v. Horn* (1960) 187 Cal.App.2d 68, 74-75; CALCRIM No. 2303.)

This bill would add a substance containing a heroin analog, a substance containing fentanyl, and a substance containing a fentanyl analog to the list of controlled substances in this statute. What this bill does is punish the personal possession of these substances if there is a firearm accessible. Possession for sales, sales, and distribution of these controlled substances are already felonies under current law. A person who possesses these substances for purposes of sales is guilty of a felony punishable in the county jail by two, three, or four years. (Health & Saf. Code, § 11351.) If the person is armed with a firearm, an additional year may be added. (Pen. Code, § 12022, subd. (a)(1).) If a person transports, sells, furnishes, administers, or gives away, any of these substances, the punishment is three, six, or nine years in state prison. (Health & Saf. Code, § 11352.) Again, if they are armed, an additional year may be added. (Pen. Code, § 12022, subd. (a)(1).)

- 3) **Harsher Sentences Unlikely to Reduce Drug Use or Deter Criminal Conduct:** Ample research on the impact of increasing penalties for drug offenses on criminal behavior has called into question the effectiveness of such measures. In a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found “[n]o relationship between drug imprisonment rates and states’ drug problems,” finding that “higher rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths.” (<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>; see [https://www.ccjrc.org/wp-content/uploads/2016/02/Correctional\\_and\\_Sentencing\\_Reform\\_for\\_Drug\\_Offenders.pdf](https://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf))

This may be because of the limited deterrent effect of harsher sentences generally. According the U.S. Department of Justice, “Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not ‘chasten’ individuals convicted of crimes, and prisons may exacerbate recidivism.” (<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>)

According to PEW, “[A] large body of prior research...cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations.” (PEW, *supra*.) PEW concludes:

Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (*Ibid.*)

Will applying enhanced punishment to a person who possess one of these controlled substances for personal use, while having access to what may be a lawfully possessed

firearm, reduce the amount drugs on California streets or reduce the threat of injury from a firearm? The evidence to date suggests that it will not. How will this enhanced punishment for having a firearm and fentanyl prevent the accidental overdoses referenced in the author's statement?

- 4) **Argument in Support:** According to the *San Diego District Attorneys Association*, "Current law recognizes that a person armed with a loaded, operable firearm possessing methamphetamine, heroin or cocaine may be willing to resort to use of that weapon to avoid arrest or will use the firearm to maintain their illicit stash putting the public and police at risk. Furthermore, the legislature has recognized that people who have controlled substances, like methamphetamine, make their immediate access to a loaded, operable firearm more of a threat to public safety than a possessor of controlled substances who does not have a loaded firearm.

"Yet, Health and Safety Code section 11370.1 currently excludes fentanyl, a deadly controlled substance that has killed over 70,000 citizens per year from the list of drugs where individuals are prohibited from simultaneously possessing a firearm. Because of the value of the fentanyl, it is common to find guns, both traceable and ghost guns, in the possession of those in possession of fentanyl for the reasons stated above. Those who are armed with a firearm and in possession of fentanyl pose a deadly threat to the public and to law enforcement officers."

- 5) **Argument in Opposition:** According to *Initiate Justice*, "We are all concerned with the impact that fentanyl is having on the drug supply and we understand the intent behind the bill about the need to take measures to reduce the harms associated with fentanyl use. However, further criminalizing the possession of fentanyl while carrying a firearm will not prevent fentanyl from entering the U.S. or disrupt the fentanyl trade, as drugs are brought through legal ports of entry or mail service.

"This bill is rooted on outdated War on Drugs mentality and would end up creating more harm than it would prevent. Relying on ever increasing penalties for drug offenses has been extensively researched, and we can therefore make some educated predictions about the outcome of bills like AB 675: it would not reduce the distribution of fentanyl, nor would it prevent overdoses; it would reduce neither the supply of drugs or the demand for them ; and worse, it could actually discourage effective methods of dealing with the opioid crisis.

"In practice, the proposed policy could subject a person struggling with drug use to serve a longer sentence because they had a gun even if the gun was never used. Specifically, the mere presence of the firearm would be enough for a conviction, even if the firearm was legally owned and properly and safely stored. This will not only represent a miscarriage of justice but also will push people farther away from needed services. In midst of an overdose crisis, the state must create the environment to facilitate access to health-based services and harm reduction tools, such as making Narcan and drug checking widely available.

"It's important for California to continue to lead on gun control laws, unfortunately we believe that AB 675 will not have the desired effect. Data shows that suicides have long accounted for the majority of U.S. gun deaths. In 2020, 54% of all gun-related deaths in the U.S. were suicides.



“Adopting a public model to curb the overdose rates and resources to treat mental illness has proven to be a more effective approach. California voters have signaled, again and again, their preference for using a health approach to drug offenses, and their desire to unwind the failed War on Drugs. Reversing course and increasing criminal penalties not only flies in the face of multiple statewide elections, but it is also simply bad policy. Societal harms associated with drugs are not alleviated by ever longer prison sentences. Rather, these increased penalties impose their own harm, devastating vulnerable communities, particularly communities of color.”

- 6) **Related Legislation:** SB 226 (Alvarado-Gil) would add fentanyl to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony. SB 226 is pending in the Senate Public Safety Committee.
- 7) **Prior Legislation:** SB 1070 (Melendez), of the 2021-2022 Legislative Session, would have added oxycodone and fentanyl to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony. Hearing on SB 1070 in the Senate Public Safety Committee was canceled at the request of the author.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Arcadia Police Officers' Association  
 Burbank Police Officers' Association  
 California District Attorneys Association  
 California Police Chiefs Association  
 California State Sheriffs' Association  
 Claremont Police Officers Association  
 Corona Police Officers Association  
 Culver City Police Officers' Association  
 Deputy Sheriffs' Association of Monterey County  
 Fullerton Police Officers' Association  
 Murrieta Police Officers' Association  
 Newport Beach Police Association  
 Palos Verdes Police Officers Association  
 Placer County Deputy Sheriffs' Association  
 Pomona Police Officers' Association  
 Riverside Police Officers Association  
 Riverside Sheriffs' Association  
 San Diegans Against Crime  
 San Diego Deputy District Attorneys Association  
 Santa Ana Police Officers Association  
 Upland Police Officers Association

3 Private Individuals

### **Oppose**

Being Alive - Los Angeles  
Broken No More  
California Alliance for Youth and Community Justice  
California Attorneys for Criminal Justice  
California Public Defenders Association (CPDA)  
Communities United for Restorative Youth Justice (CURYJ)  
Drug Policy Alliance  
Ella Baker Center for Human Rights  
Initiate Justice  
Initiate Justice Action  
Legal Services for Prisoners With Children  
National Harm Reduction Coalition  
San Francisco Public Defender  
Sister Warriors Freedom Coalition  
The Gubbio Project  
The Sidewalk Project  
Transitions Clinic Network  
Young Women's Freedom Center

**Analysis Prepared by:** Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: April 27, 2023  
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 955 (Petrie-Norris) – As Amended March 15, 2023

**SUMMARY:** Creates a new crime for selling fentanyl on a social media platform. Specifically, **this bill:**

- 1) Provides that a person who sells fentanyl on a social media platform in California shall be punished by imprisonment for a period of three, six, or nine years in county jail.
- 2) Defines “social media platform” as a public-facing internet website, internet application, or mobile internet application, such as a social network, search engine, or email service, with at least 30,000,000 active monthly users in the United States.

**EXISTING LAW:**

- 1) Provides that a person who possesses fentanyl for sale, or purchases fentanyl for purposes of sale, shall be punished by imprisonment in county jail for two, three, or four years. (Health & Saf. Code, § 11351.)
- 2) Provides that a person who sells or transports fentanyl, or offers to do so, unless upon a written prescription, as specified, shall be punished by imprisonment in county jail for three, four, or five years. (Health & Saf. Code, § 11352, subd. (a).)
- 3) Provides that a person who transports fentanyl within this state from one county to another noncontiguous county shall be punished by imprisonment in county jail for three, six, or nine years. (Health & Saf. Code, § 11352, subd. (b).)
- 4) Provides that a person 18 years of age or over who voluntarily solicits, induces, encourages, or intimidates any minor to violate specified drug offenses shall be punished by imprisonment in the state prison for a period of three, six, or nine years. (Health & Saf. Code, § 11353.)
- 5) Provides that a person 18 years of age or over who hires, employs, or uses a minor to unlawfully traffic a controlled substance, as specified, shall be punished by imprisonment in the state prison for a period of three, six, or nine years. (Health & Saf. Code, § 11353.)
- 6) Provides that a person 18 years of age or over who unlawfully sells, offers to sell, or furnishes a controlled substance to a minor shall be punished by imprisonment in the state prison for a period of three, six, or nine years. (Health & Saf. Code, § 11353.)
- 7) Provides that a person 18 years of age or over who is convicted of specified drug offenses involving a minor, in addition to the punishment imposed for that conviction, shall receive a

one-year enhancement if the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred at a facility where minors congregate. (Health & Saf. Code, § 11353.1, subd. (a)(1).)

- 8) Provides that a person 18 years of age or over who is convicted of specified drug offenses involving a minor, in addition to the punishment imposed for that conviction, shall receive a two-year sentence enhancement if the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred near a school. (Health & Saf. Code, § 11353.1, subd. (a)(2).)
- 9) Specifies that it is a felony to manufacture specified controlled substances, including fentanyl, and makes that conduct punishable by imprisonment for three, five, or seven years in the county jail. (Health & Saf. Code, § 11379.6.)
- 10) Defines “social media platform” as a public or semipublic internet-based service or application that has users in California and that meets the following criteria:
  - a) A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application.
  - b) A service or application that provides email or direct messaging services shall not be considered to meet this criterion on the basis of that function alone.
  - c) The service or application allows users to do all of the following:
    - i) Construct a public or semipublic profile for purposes of signing into and using the service.
    - ii) Populate a list of other users with whom an individual shares a social connection within the system.
    - iii) Create or post content viewable by other users, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users. (Bus. & Prof. Code, § 22945, subd. (a)(3); Civ. Code, § 1798.99.20, subd. (b))
- 11) Requires a social media platform that operates in the state to create, and publicly post on its internet website, a policy statement that includes all of the following:
  - a) The social media platform’s policy on the use of the social media platform to illegally distribute a controlled substance;
  - b) A general description of the social media platform’s moderation practices that are employed to prevent users from posting or sharing electronic content pertaining to the illegal distribution of a controlled substance;

- c) A link to mental health and drug education resources provided by governmental public health authorities;
- d) A link to the social media platform's reporting mechanism for illegal or harmful content or behavior on the social media platform, if one exists; and,
- e) A general description of the social media platform's policies and procedures for responding to law enforcement inquiries, including warrants, subpoenas, and other court orders compelling the production of or access to electronic communication information. (Bus. & Prof. Code, § 22945, subd. (b)(1)-(5).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Far too many families have felt the crushing heartbreak of losing a loved one to a fentanyl overdose. The problem is exacerbated by how easily the drug is trafficked on social media platforms. Every life taken due to an online fentanyl sale is a preventable tragedy and we must continue to do everything possible to ensure law enforcement agencies have the tools necessary fight this growing epidemic. AB 955 would increase penalties applied to those convicted of fentanyl sales by imprisonment in a county jail for a period of 3, 6, or 9 years, offering law enforcement important assistance in the fight against this deadly epidemic."
- 2) **Fentanyl Use and Distribution:** Drug overdoses have increased dramatically in recent years. In California, the number of deaths involving opioids, and fentanyl in particular, has increased significantly over the course of the last decade. Between 2012 and 2018, while opioid-related overdose deaths increased by 42%, overdose deaths related to fentanyl specifically increased by more than 800%—from 82 to 786. (CDPH, Overdose Prevention Initiative <<https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx?msclkid=99f1af92b9e411ec97e3e1fe58cde884>> [last viewed Mar. 7, 2023].) In 2021, there were 21,016 emergency room visits resulting from an opioid overdose, 7,176 opioid-related overdose deaths, and 5,961 overdose deaths from fentanyl. (CDPH, Overdose Surveillance Dashboard <<https://skylab.cdph.ca.gov/ODdash/?tab=Home>> [last visited Mar. 7, 2023].). According to the CDC, "[i]t is a major contributor to fatal and nonfatal overdoses in the U.S." (CDC, Fentanyl Facts <<https://www.cdc.gov/stopoverdose/fentanyl/index.html>> [last visited Apr. 25, 2023].)

Most of the illicit fentanyl consumed in the United States originates in China, "a major pipeline of the building blocks of fentanyl, known as fentanyl precursors, according to U.S. officials." (John et al., *The US sanctioned Chinese companies to fight illicit fentanyl. But the drug's ingredients keep coming*, CNN.com (Mar. 30, 2023) <<https://www.cnn.com/2023/03/30/americas/fentanyl-us-china-mexico-precursor-intl/index.html>> [last visited Mar. 31, 2023].). Chemical manufactures in China ship fentanyl precursors to Mexico where drug cartels make fentanyl and arrange for it to be transported across the U.S./Mexico border. (Ainsley, *U.S. and Mexico weighing deal from Mexico to crack down on fentanyl going north while U.S. cracks down on guns going south*,



NBCNews.com (Mar. 27, 2023) <<https://www.nbcnews.com/politics/national-security/fentanyl-gun-smuggling-us-mexico-border-deal-rcna75782>> [last visited Mar. 31, 2023].) The vast majority of the fentanyl seizures in the U.S. occur at legal ports of entry or interior vehicle checkpoints, and U.S. citizens are primarily the ones trafficking fentanyl. (Bier, *Fentanyl Is Smuggled for U.S. Citizens By U.S. Citizens, Not Asylum Seekers*, Cato.org (Sept. 14, 2022) <<https://www.cato.org/blog/fentanyl-smuggled-us-citizens-us-citizens-not-asylum-seekers>> [last visited Mar. 31, 2023].).

Illicit fentanyl is typically available as either a liquid or powder. It is often mixed with other drugs like heroin, cocaine, or methamphetamine, and is widely used in counterfeit prescription opioids. Because of mixing, many users might not be aware that they are consuming fentanyl. (CDC, Fentanyl Facts <<https://www.cdc.gov/stopoverdose/fentanyl/index.html>> [last visited Apr. 25, 2023].)

Intentional fentanyl use is also on the rise. “One of the deadliest street drugs, illicit fentanyl, has transitioned from a hidden killer that people often hope to avoid to one that many drug users now seek out on its own.” (Edwards, *Once feared, illicit fentanyl is now a drug of choice for many opioid users*, NBC News (Aug. 7, 2022) <<https://www.nbcnews.com/health/health-news/feared-illicit-fentanyl-now-drug-choice-many-opioids-users-rcna40418>> [last visited Apr. 24, 2023].) A recent University of Washington survey of people who had used syringe service programs found that two-thirds had used fentanyl “on purpose” in the last three months. (Kingston et al., University of Washington, *Results from the 2021 WA State Syringe Service Program Health Survey* (Mar. 2022) at pp. 1, 6 <<https://adai.uw.edu/wordpress/wp-content/uploads/ssp-health-survey-2021.pdf>> [last visited Apr. 24, 2023].) “More than half of drug users [in the Tenderloin district in San Francisco] purposely seek fentanyl, despite its dangers, according to harm reduction workers who talk to hundreds of drug users every day.” (Vestal, *Some Drug Users in Western U.S. Seek Out Deadly Fentanyl. Here’s Why*, PEW Charitable Trusts (Jan. 7, 2019) <<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/01/07/some-drug-users-in-western-us-look-out-deadly-fentanyl-heres-why>> [last view Apr. 24, 2023].)

### 3) **Harsher Sentences for Drug Trafficking Unlikely to Reduce Drug Use or Deter Criminal Conduct:**

The author claims, “AB 955 would increase penalties applied to those convicted of fentanyl sales by imprisonment in a county jail for a period of 3, 6, or 9 years, offering law enforcement important assistance in the fight against this deadly epidemic.” Increasing penalties would assist law enforcement by either (1) incapacitating persons who deal drugs, thereby reducing the availability of fentanyl, or (2) deterring people from selling fentanyl. The evidence, however, suggests that measures such as this will do neither.

Ample research on the impact of increasing penalties for drug offenses on criminal behavior has called into question the effectiveness of such measures. In a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found “[n]o relationship between drug imprisonment rates and states’ drug problems,” finding that “high rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths.” (PEW, *More Imprisonment Does Not Reduce State Drug Problems* (Mar. 2018) p. 5 <[https://www.pewtrusts.org/-/media/assets/2018/03/pspp\\_more\\_imprisonment\\_does\\_not\\_reduce\\_state\\_drug\\_problems.pdf](https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf)> [last viewed Feb. 6, 2023]; see generally, Przybylski, *Correctional and Sentencing Reform*

for Drug Offenders (Sept. 2009) < [http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional\\_and\\_Sentencing\\_Reform\\_for\\_Drug\\_Offenders.pdf](http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf)> [last visited Mar. 20, 2023].) Put differently, imprisoning more people for longer periods of time for drug trafficking offenses is unlikely to reduce the risk of illicit drugs in our communities.

This may be because of the limited deterrent effect of harsher sentences generally. According the U.S. Department of Justice, “Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not ‘chasten’ individuals convicted of crimes, and prisons may exacerbate recidivism.” (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) <<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>> [last visited Feb. 2, 2023].)

Harsher sentences for drug trafficking offenses specifically may be particularly ineffective, in part because of the nature of illicit drug markets. As the National Research Council explains:

For several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case. Drug dealing is part of a complex illegal market with low barriers to entry. Net earnings are low, and probabilities of eventual arrest and imprisonment are high... Drug policy research has nonetheless shown consistently that arrested dealers are quickly replaced by new recruits....

Despite the risks of drug dealing and the low average profits, many young disadvantaged people with little social capital and limited life chances sell drugs on street corners because it appears to present opportunities not otherwise available. However, [they] ... overestimate the benefits of that activity and underestimate the risks. This perception is compounded by peer influences, social pressures, and deviant role models provided by successful dealers who live affluent lives and...avoid arrest... Arrests and imprisonments of easily replaceable offenders create illicit “opportunities” for others.

(Cmte. On Causes and Consequence of High Rates of Incarceration, National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014) p. 146 <<https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>> [last visited Apr. 25, 2023].)

More recently, the Council on Criminal Justice reviewed the evidence on the effect of harsher punishments on criminal behavior and came to the same conclusion. It reported:

The empirical evidence on selective incapacitation suggests that long sentences may produce short- and long-term public safety benefits for individuals engaged in violent offending, but may produce *the opposite effect* for those engaged in drug-related offending...where an incarcerated individual is quickly replaced by a new recruit. This “replacement effect” occurs—and undermines the overall crime-reducing effects of incapacitation—when there is “demand” for a particular criminal activity. The illicit drug

business offers the most obvious example: when someone who plays a role in a drug trafficking organization is incarcerated, someone else must take his or her place.

One study found that incarcerating street-level drug dealers fueled their replacement by younger and more violent individuals. Additional research replicated these findings through an examination of the public safety impact of California's three strikes law from 1994, when the law was implemented, to 1998. This work found short- and long-term decreases in most types of crime, but also found that imprisoning chronic drug offenders had no impact on the drug crime rate. The authors hypothesized that incarcerating chronic drug offenders did not result in an incapacitation effect because "when one drug offender is jailed, there is another (and perhaps more than just one other) ready to take his or her place." Additional analyses further indicate that incarcerating people for drug trafficking may result in increased crimes rates in general and increased rates of violent crime, specifically, because of organizational destabilization and the need for new recruits to prove themselves.

(Long Sentences Task Force, Council on Criminal Justice, *The Impact of Long Sentences on Public Safety: A Complex Relationship* (Nov. 2022) p. 8 <https://counciloncj.org/wp-content/uploads/2022/11/Impact-of-Long-Sentences-on-Public-Safety.pdf> [last visited Apr. 2023] [internal citations omitted] [emphasis added].)

With fentanyl, the deterrent effect of increasing penalties may be questioned further because the seller often is unaware that the product is laced with fentanyl. Citing U.S. Sentencing Commission data, one analysis observed, "Low-level dealers rarely know the contents of the product in their supply chain or can predict its risk." (Beletsky, *America's Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis* (2019) 4 Utah L.Rev. 833, 877.) "These contents also frequently fluctuate—often as a result of interdiction activities and other law enforcement efforts to disrupt the market, further complicating any rational decision-making." (*Ibid.*)

Moreover, persons who participate in the drug trade often are themselves people who use drugs. According to the National Research Council: "Facing limited opportunities in legal labor markets and already in contact with drug-selling networks, users provide a ready low-wage labor pool for illegal markets." (<https://nap.nationalacademies.org/read/12976/chapter/4-24>). According to a Bureau of Justice Statistics report, 70% of persons serving time in state prison for drug trafficking offenses used drugs in the month before the offense, and 42.3% of those persons had been using drugs at the time of their offense. (Bureau of Justice Statistics, *Special Report: Drug Use and Dependence, State and Federal Prisoners*, 2004 (Oct. 2006) a p. 5 <<https://bjs.ojp.gov/content/pub/pdf/dudsfp04.pdf>> [last visited Mar. 20, 2023].) Will the threat of an increased sentence effectively deter somebody already at a relatively high risk of death from illicit drug use?

Proponents observe that "[s]ocial media is a space dominated largely by young people." But this is likely to be just as true for people who use drugs as for those who sell them. According to one study, "[Street-involved youth implicated in the drug trade] appear to be motivated by drug dependence," finding: "Among participants who reported drug dealing, 263 (85.6%) individuals stated that the main reason that they sold drugs was to pay for their personal drug use." (Werb et al., *Risks surrounding drug trade involvement among street-involved youth*, Am. J. Drug Alcohol Abuse (2008) <<https://pubmed.ncbi.nlm.nih.gov/19016187/>> [last

visited Feb. 2, 2023].) Still another found that “White youths who misused prescription drugs were three times more likely to sell drugs, compared to White youths who did not misuse prescription drugs.” (Floyd et al., *Adolescent Drug Dealing and Race/Ethnicity: A Population-Based study of the Differential Impact on Substance Use on Involvement in Drug Trade*, Amer. J. of Drug & Alcohol Abuse, Vol. 36, No. 2 (Mar. 2010) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871399/> - R7> [last visited Mar. 17, 2022].) Many of the people receiving increased penalties under this bill are likely to be friends or romantic partners of the users. (Cf. Beletsky, *America’s Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis* (2019) 4 Utah L.Rev. 833, pp. 839, 873-874.)

Additionally, as the Council on Criminal Justice’s report notes, the harsher punishments for drug offenses may actually do harm. For example, they may push persons selling and using drugs to engage in riskier behaviors. (See Friedman et al., *Relationships of deterrence and law enforcement to drug-related harms among drug injectors in US metropolitan areas* (2006) AIDS Vol 20 No 1.)

According to PEW, “[A] large body of prior research...cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations.” (PEW, *supra*.) PEW concludes:

Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (*Ibid.*)

Will increasing penalties for selling fentanyl on social media deter people from selling, or using, drugs? The evidence to date suggests that it will not.

- 4) **Existing Penalties for Sale of Fentanyl:** Existing law provides for significant penalties for selling fentanyl. A person who sells fentanyl, or even offers to do so, is subject to up to 5 years in county jail. (Health & Saf. Code, § 11352.) If a person 18-years-old or older sells fentanyl to minor, or who uses a minor to sell fentanyl, that person is subject to imprisonment in state prison for up to 9 years. (Health & Saf. Code, § 11353.) Transporting fentanyl within the state from one county to another is punishable by imprisonment in county jail for up to nine years. (Health & Saf. Code, § 11352, subd. (b).) If the fentanyl was mixed with cocaine or heroin, as is commonly done, and was sold at a place where minors congregate or near a school, the person is subject to a one- or two-year enhancement on top of the base term. (Health & Saf. Code, § 11353.1, subd. (a)(1) & (2).) Selling fentanyl while in possession of a firearm carries a one-year enhancement as well. (Pen. Code, § 12022, subd. (a)(1).)
- 5) **Existing Efforts to Combat Fentanyl in California:** The state’s 2022-23 budget included \$7.9 million in 2022-23 and \$6.7 million ongoing to fund the Fentanyl Task Force within the Department of Justice (DOJ) to help tackle the fentanyl crisis. (*Governor’s Budget Summary – 2023-24* at p. 117 <<https://ebudget.ca.gov/2022-23/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>> [April 20, 2023].) The task force includes 25 new positions within the DOJ to support those efforts. (*Ibid.*)



Building on the 2022-23 Budget, the state's 2023-24 Budget includes additional funding to combat fentanyl abuse. The budget allocates \$93 million over the next four years, including \$79 million for Naloxone distribution projects; \$10 million for grants for education, testing, recovery, and support services; \$4 million to make test strips more available; and, \$3.5 million for overdose medication for all middle and high schools. (*Governor's Budget Summary – 2023-24* at p. 69 <<https://ebudget.ca.gov/FullBudgetSummary.pdf>> [April 20, 2023].)

The Governor's Master Plan for Tackling the Fentanyl and Opioid Crisis also includes \$30 million to expand California National Guard's work to prevent drug-trafficking transnational criminal organizations and \$15 million over two years to establish and operate the Fentanyl Enforcement Program within the DOJ to combat manufacturing, distribution, and trafficking. The Governor also has allocated \$40.8 million for an education and awareness campaign to establish partnerships and create messaging and education tools for parents and educators, and \$23 million in substance use disorder workforce grants to develop substance use disorder training for non-behavioral health professionals working with children and youth. (*Governor Newsom's Master Plan for Tackling the Fentanyl and Opioid Crisis* <[https://www.gov.ca.gov/wp-content/uploads/2023/03/Fentanyl-Opioids-Glossy-Plan\\_3.20.23.pdf?emrc=86c07e](https://www.gov.ca.gov/wp-content/uploads/2023/03/Fentanyl-Opioids-Glossy-Plan_3.20.23.pdf?emrc=86c07e)> [April 20, 2023].)

Adding to these efforts, the Governor recently announced a public safety partnership charged with combatting fentanyl trafficking in San Francisco. The partnership would include the California Highway Patrol, the California National Guard, San Francisco Police Department, and the San Francisco District Attorney's Office. According to the press release, "This agreement will lead to the formation of a new collaborative operation between all four agencies focused on dismantling fentanyl trafficking and disrupting the supply of the deadly drug in the city by holding the operators of large-scale drug trafficking operations accountable." (*Governor Newsom Announces Public Safety Partnership to Disrupt Fentanyl Trafficking San Francisco* <<https://www.gov.ca.gov/2023/04/21/public-safety-partnership-sf/>> [last visited Apr. 24, 2023].)

- 6) **This Bill's Potential Impact on California's Jail Population:** Realignment began in October 2011. Since that time county jails have had oversight over most non-serious, non-violent, non-sexual felons and parolees who violate their parole. Before realignment, the maximum sentence in county jail was one year. Now that lower-level felons serve sentences in county jail, a portion of the jail population is serving sentences that are much longer than one year. Those factors related to realignment have served to increase population pressure on county jails.

In February 2021, the Public Policy Institute of California (PPIC) published a report discussing population impacts on California jails related to Realignment, Proposition 47 (Prop 47), and the effects of the COVID-19 pandemic. After realignment, the jail population began to rise; as of October 2014, the month before the passage of Proposition 47, it stood at roughly 82,000 inmates, a gain of 14% from 2011. (Lofstrom & Martin, *California's County Jails* (Feb. 2021) <<http://www.ppic.org/publication/californias-county-jails/>>)[last viewed Mar. 21, 2022].)

Voters approved Prop 47 in November 2014, reclassifying several property and drug



crimes from felonies to misdemeanors. Prop 47 had an immediate and lasting impact on jail populations: the average daily population dropped by almost 10,000 between October 2014 and January 2015. The jail population remained relatively flat between January 2015 and the onset of the COVID-19 pandemic. By February 2020, the average daily jail population had dropped to about 69,000, although that population grew by roughly 7,200 persons between May and September 2020. California currently has the capacity to house 79,000 persons in long-term county jail facilities. (Lofstrom & Martin, *California's County Jails* (Feb. 2021) <<http://www.ppic.org/publication/californias-county-jails/>>)[last viewed Mar. 21, 2022].)

Moreover, even before realignment, many county jails were struggling with overcrowding. Indeed, “[p]rior to the passage of realignment, many counties were already operating under court-imposed population caps, and others had very little extra capacity in their jail systems.” (Lofstrom et al., *Impact of Realignment on County Jail Populations*, Public Policy Institute of California (June 2013) p. 7 <[https://www.ppic.org/wp-content/uploads/content/pubs/report/R\\_613MLR.pdf](https://www.ppic.org/wp-content/uploads/content/pubs/report/R_613MLR.pdf)> [last visited Mar. 17, 2023].)

This bill would dramatically increase sentences for individuals convicted of specified criminal offenses involving fentanyl. Many of the individuals sentenced pursuant to the provisions of this bill would serve their sentences in county jail, potentially straining already overcrowded facilities. Some will nonetheless serve prison sentences based on prior convictions.

## 7) Arguments in Support:

- a) According to the *California Statewide Law Enforcement Association*, “Fentanyl is an incredibly dangerous drug that presents a significant risk to public health. Those who distribute fentanyl do so with a conscious indifference to human life, ignoring the drug’s extremely dangerous potential. This danger is evidenced by the exponential increase in fentanyl-related deaths in our state. In California, there were 239 fentanyl-related deaths in 2016. By 2021, that number increased by 2,294%, reaching a total of 5,722 deaths.

“Law enforcement agencies make great efforts to seize fentanyl and control the influx of the drug into our state. Despite these efforts, a substantial amount of fentanyl continues to make its way into our communities. To combat this phenomenon requires holding traffickers and sellers accountable to the fullest extent of the law. This bill furthers that goal by increasing penalties for those using social media as a platform for their operations. Social media is a space dominated largely by young people. In order to best protect all Californians, especially the youngest among us on social media, accountability must be expanded to include sales made on such platforms.”

- b) According to the *Orange County Sheriff's Department*, “The use of social media has become one of the more common methods for selling drugs, particularly to our youth. We have seen this firsthand in the course of our law enforcement investigations. Over the past few year the Orange County Sheriff's Department has employed a new strategy for investigating drug-related deaths. Past practice for drug-related deaths primarily involved a coroner review of the death, with little to no attempt to identify the source of the lethal drug. Now drug-related deaths in Sheriff's jurisdiction are investigated with the intent of

identifying the drug's supplier for prosecution. In a substantial amount of the cases we have investigated, social media was the means for making the drug sale. Legislation like AB 955 will help us better hold traffickers accountable and make clear that use of social media to target Californians will not be tolerated."

- 8) **Argument in Opposition:** According to the *California Public Defenders Association*, "Although the intention to stem the tide of fentanyl overdose deaths is laudable, AB 955 is misguided, targets the wrong people, and returns to failed policies of mass incarceration and War on Drugs.

"Clearly, if Californians want to stop the sale of fentanyl on social media, it can be stopped or at least severely curtailed by requiring the social media companies to police their websites. Social media companies do this every day with child pornography and other illicit activities. For example, *Comparitech* reports the following:

... in just nine months of 2022, Facebook had almost equaled 2021's content removals for child exploitation. It was a similar story on Instagram (6.08 million pieces of content flagged from Q1-Q3 of 2022 compared to 8.38 million in 2021) and TikTok (140 million pieces of content flagged from Q1-Q3 of 2022 compared to 141.7 million in 2021).

Snapchat looked set to surpass 2021's total with 201,527 accounts flagged for child sexual exploitation and abuse in the first half of 2022, compared to 317,243 flagged across all of 2021. Whereas, Discord's Q1-Q3 figures for 2022 had already exceeded 2021's totals (1.52 million accounts, servers, and pieces of content were flagged from Q1-Q3 of 2022, compared to 1.42 million in 2021). (Available online <https://www.comparitech.com/blog/vpn-privacy/child-abuse-online-statistics/>)

"Instead, AB 955 relies on outdated War on Drugs mentality and would end up creating more harm than it would prevent. Relying on ever increasing penalties for drug offenses has been extensively researched, and we can therefore make some educated predictions about the outcome of bills like AB 955: it would not reduce the distribution of fentanyl, nor would it prevent overdoses; it would reduce neither the supply of drugs or the demand for them; and worse, it could actually discourage effective methods of dealing with the opioid crisis. One study found that states that increase their incarceration rates do not experience a decrease in drug use. When a drug seller is incarcerated, the supply of drugs is not reduced nor is the drug market impacted. Because the drug market is driven by demand rather than supply, research indicates that an incarcerated seller will simply be replaced by another individual to fill the market demand.

"Many of the people who will be incarcerated by this bill will be addicts themselves. A Bureau of Justice report found that 70% of people incarcerated for drug trafficking in state prisons used drugs prior to the offense. These individuals often distribute drugs, not for profit, but as a way to support their own substance use disorder. Often, these "traffickers" are not high-level members of any organized drug distribution scheme but are rather furnishing narcotics to friends and family members.

"The imposition of harsh penalties for distribution could undermine California's Good Samaritan law, which encourages people to contact emergency services in case of an overdose. The threat of police involvement and harsh prison sentences may make an

individual hesitant to call emergency services or run from the scene rather than help the victim.

“The primary risk of overdose for fentanyl results from its unknowing ingestion. The process of adding fentanyl to heroin is usually done early in the production process. According to the Drug Enforcement Administration, fentanyl is generally added to heroin before it enters the U.S. Therefore, low level sellers may not know they are distributing fentanyl. This bill would not reduce the inclusion of fentanyl in the drug supply, as it takes place high in the distribution chain.

“The War on Drugs has had a devastating impact on communities across California. The unintended consequences of using jails and prisons to deal with a public health issue will take decades to unravel. Rather than diminishing the harms of drug misuse, criminalizing people who sell and use drugs amplifies the risk of fatal overdoses and diseases, increases stigma and marginalization, and drives people away from needed treatment, health, and harm reduction services.

“Moreover, California voters have signaled, again and again, their preference for using a health approach to drug offenses, and their desire to unwind the failed War on Drugs. Reversing course and increasing criminal penalties not only flies in the face of multiple statewide elections, but it is also simply bad policy. If ever-increasing criminal penalties were the answer to the misuse of drugs, California would have solved this problem long ago. Societal harms associated with drugs are not alleviated by lengthy prison sentences. Rather, these increased penalties impose their own harm, devastating vulnerable communities, particularly communities of color. For all of these reasons, AB 955 would take California in the wrong direction.

“It is not time to returned to policies that have already proven to be ineffective.”

**9) Related Legislation:**

- a) AB 675 (Soria), would add a substance containing a heroin analog, a substance containing fentanyl, and a substance containing a fentanyl analog to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony punishable in state prison by two, three, or four years. AB 675 will be heard today in this committee.
- b) AB 701 (Villapudua), would impose an additional enhancement when a person is convicted of specified drug offenses involving fentanyl, including sale, possession for sale, and transportation, when the substance containing fentanyl exceeds a specified weight. AB 701 was granted reconsideration in this committee.
- c) AB 18 (Joe Patterson), would require the court to advise a person convicted of specified drug offenses that they could be charged with voluntary manslaughter or murder if they manufacture or distribute controlled substances in the future and somebody dies as a result. AB 18 was granted reconsideration in this committee.

- d) SB 237 (Grove), increases the punishment for drug trafficking fentanyl. SB 237 is up for reconsideration in the Senate Public Safety Committee.
- e) SB 62 (J. Nguyen), would apply existing weight enhancements increasing the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. SB 62 is up for reconsideration in the Senate Public Safety Committee.
- f) SB 44 (Umberg), is substantially similar to AB 18 (Joe Patterson). SB 44 is up for reconsideration in the Senate Public Safety Committee.
- g) SB 226 (Alvarado-Gil), is substantially similar to AB 675 above. SB 226 is pending hearing in the Senate Appropriations Committee.

**10) Prior Legislation:**

- a) AB 2246 (Petrie-Norris), of the 2021-2022 Legislative Session, would have increased penalties for specified drug offenses involving fentanyl and applies a sentencing enhancement for specified drug trafficking offenses involving heroin, cocaine, or cocaine base to those involving fentanyl. AB 2246 failed passage in this committee.
- b) AB 2366 (Jim Patterson), of the 2021-2022 Legislative Session, was substantially similar to AB 18 (Joe Patterson), of the current session. The author pulled AB 2366 before the bill's scheduled hearing in this committee.
- c) SB 350 (Melendez), of the 2021-2022 Legislative Session, was substantially similar to AB 18 (Joe Patterson), of the current session. SB 350 failed passage in the Senate Public Safety Committee.
- d) AB 1955 (Nguyen), of the 2021-2022 Legislative Session, would have applied the existing weight enhancements which increase the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. AB 1955 failed passage in this committee.
- e) AB 1351 (Petrie-Norris), of the 2021-2022 Legislative Session, was nearly identical AB 1955 (Nguyen). The author pulled AB 1351 before it received hearing in the Assembly Public Safety Committee.
- f) AB 2975 (Petrie-Norris), of the 2019-2020 Legislative Session, was nearly identical to AB 1955 (Nguyen). AB 2973 was not heard in this committee.
- g) AB 2405 (Patterson), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II of the drug schedule and would have increased penalties for trafficking in carfentanil. AB 2405 failed passage in this committee.
- h) AB 2467 (Patterson), of the 2017-2018 Legislative Session, would have increased the punishment for specified drug crimes involving fentanyl. SB 2467 failed passage in this committee.

- i) AB 3105 (Waldron), of the 2017-2018 Legislative Session, would have made sale of fentanyl punishable by a term of 10 years to life in a case involving 20 grams or more of a mixture or substance containing a detectable amount of fentanyl, as defined, or 5 grams or more of a mixture or substance containing an analogue. AB 3105 failed passage in this committee.
- j) SB 176 (Bates), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II and would have applied the weight enhancement to a substance containing carfentanil or fentanyl. SB 176 failed passage in the Senate Public Safety Committee.
- k) SB 1103 (Bates), of the 2017-2018 Legislative Session, was substantially similar to AB 1955 (Nguyen). SB 1103 failed passage in the Senate Public Safety Committee.
- l) SB 1323 (Bates), of the 2015-2016 Legislative Session, would have applied the weight enhancement for possession for sale, or sale, of specified drugs, to fentanyl. SB 1323 was held on the Assembly Appropriations Committee Suspense File.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Arcadia Police Officers' Association  
Association of Orange County Deputy Sheriffs  
Burbank Police Officers' Association  
California Association of Highway Patrolmen  
California District Attorneys Association  
California Fraternal Order of Police  
California Police Chiefs Association  
California State Sheriffs' Association  
California Statewide Law Enforcement Association  
Claremont Police Officers Association  
Corona Police Officers Association  
Culver City Police Officers' Association  
Deputy Sheriffs' Association of Monterey County  
Fullerton Police Officers' Association  
League of California Cities  
Long Beach Police Officers Association  
Murrieta Police Officers' Association  
Newport Beach Police Association  
Orange County Sheriff's Department  
Palos Verdes Police Officers Association  
Peace Officers Research Association of California (PORAC)  
Placer County Deputy Sheriffs' Association  
Pomona Police Officers' Association  
Riverside Police Officers Association  
Riverside Sheriffs' Association  
Sacramento County Deputy Sheriffs' Association  
San Bernardino County Sheriff's Employees' Benefit Association



San Diegans Against Crime  
San Diego Deputy District Attorneys Association  
Santa Ana Police Officers Association  
Upland Police Officers Association

2 Private Individuals

**Oppose**

Drug Policy Alliance  
Ella Baker Center for Human Rights  
Sister Warriors Freedom Coalition

**Analysis Prepared by:** Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: April 27, 2023  
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1058 (Jim Patterson) – As Introduced February 15, 2023

**SUMMARY:** Increases the penalties for drug trafficking of fentanyl, an analog of fentanyl, or a substance containing fentanyl or an analog of fentanyl, if the amount of fentanyl weighs more than 28.35 grams. Specifically, **this bill:**

- 1) Increases the punishment for a person who possess or purchases for purposes of sale more than 28.35 grams of fentanyl or analog of fentanyl, or a substance containing more than 28.35 grams of fentanyl or an analog of fentanyl, from two, three, or four years imprisonment in county jail to four, five, or six years.
- 2) Increases the punishment for a person who transports, imports into this state, sells, furnishes, administers, or gives away, or who offers or attempts to transport, import into this state, sell, furnish, administer or give away, more than 28.35 grams of fentanyl or analog of fentanyl, or substance containing more than 28.35 grams of fentanyl or an analog of fentanyl from three, six, or nine years imprisonment in county jail to seven, eight, or nine years.
- 3) Increases the punishment for a person who transports more than 28.35 grams of fentanyl or an analog of fentanyl, or a substance containing more than 28.35 grams of fentanyl or an analog of fentanyl, within this state from one county to another noncontiguous county from 3, 6, or 9 years imprisonment in county jail to 7, 10, or 13 years.

**EXISTING LAW:**

- 1) Provides the following penalties for trafficking of cocaine, cocaine base, heroin and specified opiates, including fentanyl:
  - a) Possession for sale is punishable by imprisonment for two, three, or four years in the county jail (Health & Saf. Code, § 11351);
  - b) Sale is punishable by imprisonment for three, four, or five years in county jail. Sale includes any transfer or distribution (Health & Saf. Code, § 11352.); and,
  - c) Transportation of fentanyl, to a noncontiguous county, for purposes of sale is punishable by imprisonment for three, six, or nine years in the county jail (Health & Saf. Code, § 11352.).
- 2) Provides that, except as specified, the term "controlled substance analog" means either of the following:

- a) A substance the chemical structure of which is substantially similar to the chemical structure of specified controlled substances; or,
  - b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of specified controlled substances. (Health & Saf. Code, § 11401, subd. (b)(1) & (2).)
- 3) Specifies that the term "controlled substance analog" does not mean "any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the federal Food, Drug, and Cosmetic Act." (Health & Saf. Code, § 11401, subd. (c)(1).)
- 4) Provides the following additional sentencing enhancements based on the weight of a substance containing heroin, cocaine base, or cocaine possessed for sale or sold.
- a) 1 kilogram = 3 years
  - b) 4 kilograms = 5 years
  - c) 10 kilograms = 10 years
  - d) 20 kilograms = 15 years
  - e) 40 kilograms = 20 years
  - f) 80 kilograms = 25 years. (Health and Saf. Code, § 11370.4, subd. (a).)
- 5) States that in addition to the term of imprisonment provided by law for persons convicted of violating specified drug trafficking crimes, the trial court may impose a fine not exceeding \$20,000 for each offense. (Health & Saf. Code, § 11372, subd. (a).)
- 6) Specifies that a person receiving an additional prison term for trafficking more than a kilogram of a substance containing heroin, cocaine base, or cocaine may, in addition, be fined by an amount not exceeding \$1,000,000 for each offense. (Health & Saf. Code, § 11372, subd. (b).)
- 7) Provides that a person receiving an additional prison term for trafficking more than four kilograms of a substance containing heroin, cocaine base, or cocaine may, in addition, be fined by an amount not to exceed \$4,000,000 for each offense. (Health & Saf. Code, § 11372, subd. (c).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "AB 1058 modernizes the penalty structure for the fentanyl drug market by restructuring the penalty for those in possession of 28.35

grams or more. This bill would specifically target dealers while simultaneously avoiding addicted victims. The weight limit was selected after working with a local Drug Enforcement Agency agent who specializes in targeting dealers.”

- 2) **Harsher Sentences for Drug Trafficking Unlikely to Reduce Drug Use or Deter Criminal Conduct:** In California, the number of deaths involving opioids, and fentanyl in particular, has increased significantly over the course of the last decade. Between 2012 and 2018, opioid-related overdose deaths increased by 42%; fentanyl overdose deaths increased by more than 800%—from 82 to 786. (CDPH, Overdose Prevention Initiative <<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx?msclkid=99f1af92b9e411ec97e3e1fe58cde884>> [last viewed Mar. 7, 2023].) In 2021, there were 21,016 emergency room visits resulting from an opioid overdose, 7,176 opioid-related overdose deaths, and 5,961 overdose deaths from fentanyl. (CDPH, California Overdose Surveillance Dashboard <<https://skylab.cdph.ca.gov/ODdash/?tab=Home>> [last visited Mar. 7, 2023].).

This bill attempts to reduce the number of people dying of overdoses involving fentanyl by deterring people who traffic fentanyl with a sentencing enhancement ranging from three to 13 years based on the amount. However, ample research on the impact of increasing penalties for drug offenses on criminal behavior has called into question the effectiveness of such measures. In a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found “[n]o relationship between drug imprisonment rates and states’ drug problems,” finding that “high rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths.” (PEW, *More Imprisonment Does Not Reduce State Drug Problems* (Mar. 2018) p. 5 <[https://www.pewtrusts.org/-/media/assets/2018/03/pspp\\_more\\_imprisonment\\_does\\_not\\_reduce\\_state\\_drug\\_problems.pdf](https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf)> [last viewed Feb. 6, 2023]; see generally, Przybylski, *Correctional and Sentencing Reform for Drug Offenders* (Sept. 2009) <[http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional\\_and\\_Sentencing\\_Reform\\_for\\_Drug\\_Offenders.pdf](http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf)> [last visited Mar. 20, 2023].) Put differently, imprisoning more people for longer periods of time for drug trafficking offenses is unlikely to reduce the risk of illicit drugs in our communities.

Unduly long sentences are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L.Rev. 1 (Nov. 5, 2018).) According to the U.S. Department of Justice, “Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not ‘chasten’ individuals convicted of crimes, and prisons may exacerbate recidivism.” (National Institute of Justice, U.S. Department of Justice, *Five Things About Deterrence* (June 5, 2016) <<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>> [last visited Feb. 2, 2023].) Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Long-Term Sentence, supra.*)

Harsher sentences for drug trafficking offenses specifically may be particularly ineffective, in part because of the nature of illicit drug markets. As the National Research Council explains:

For several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case. Drug dealing is part of a complex illegal market with low barriers to entry. Net earnings are low, and probabilities of eventual arrest and imprisonment are high... Drug policy research has nonetheless shown consistently that arrested dealers are quickly replaced by new recruits....

Despite the risks of drug dealing and the low average profits, many young disadvantaged people with little social capital and limited life chances sell drugs on street corners because it appears to present opportunities not otherwise available. However, [they] ... overestimate the benefits of that activity and underestimate the risks. This perception is compounded by peer influences, social pressures, and deviant role models provided by successful dealers who live affluent lives and...avoid arrest... Arrests and imprisonments of easily replaceable offenders create illicit “opportunities” for others.

(Cmte. On Causes and Consequence of High Rates of Incarceration, National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014) p. 146

<<https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>> [last viewed Apr. 25, 2023].)

More recently, the Council on Criminal Justice reviewed the evidence on the effect of harsher punishments on criminal behavior and came to the same conclusion. It reported:

The empirical evidence on selective incapacitation suggests that long sentences may produce short- and long-term public safety benefits for individuals engaged in violent offending, but may produce *the opposite effect* for those engaged in drug-related offending...where an incarcerated individual is quickly replaced by a new recruit. This “replacement effect” occurs—and undermines the overall crime-reducing effects of incapacitation—when there is “demand” for a particular criminal activity. The illicit drug business offers the most obvious example: when someone who plays a role in a drug trafficking organization is incarcerated, someone else must take his or her place.

One study found that incarcerating street-level drug dealers fueled their replacement by younger and more violent individuals. Additional research replicated these findings through an examination of the public safety impact of California’s three strikes law from 1994, when the law was implemented, to 1998. This work found short- and long-term decreases in most types of crime, but also found that imprisoning chronic drug offenders had no impact on the drug crime rate. The authors hypothesized that incarcerating chronic drug offenders did not result in an incapacitation effect because “when one drug offender is jailed, there is another (and perhaps more than just one other) ready to take his or her place.” Additional analyses further indicate that incarcerating people for drug trafficking may result in increased crimes rates in general and increased rates of violent crime, specifically, because of organizational destabilization and the need for new recruits to prove themselves.



(Long Sentences Task Force, Council on Criminal Justice, *The Impact of Long Sentences on Public Safety: A Complex Relationship* (Nov. 2022) p. 8 <https://counciloncj.org/wp-content/uploads/2022/11/Impact-of-Long-Sentences-on-Public-Safety.pdf> [last visited Apr. 24, 2023] [internal citations omitted] [emphasis added].)

Additionally, as the Council on Criminal Justice’s report notes, the harsher punishments for drug offenses may actually do harm. For example, they may push persons selling and using drugs to engage in riskier behaviors. (See Friedman et al., *Relationships of deterrence and law enforcement to drug-related harms among drug injectors in US metropolitan areas* (2006) AIDS Vol 20 No 1.)

According to PEW, “[A] large body of prior research...cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations.” (PEW, *supra*.) PEW concludes:

Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (*Ibid.*)

Based on this research, one might reasonably question whether increasing the penalties for drug trafficking fentanyl would meaningfully impact the drug’s availability or the number of deaths resulting from its illicit fentanyl use.

- 3) **The Scope of the Enhancement:** Proponents argue that this bill “would specifically target dealers while simultaneously avoiding addicted victims.” This assumes, of course, that people who sell drugs are not also “addicted victims.” In fact, persons who participate in the drug trade often are themselves people who use drugs.

According to the National Research Council: “Facing limited opportunities in legal labor markets and already in contact with drug-selling networks, users provide a ready low-wage labor pool for illegal markets.” (<https://nap.nationalacademies.org/read/12976/chapter/4-24>). According to a Bureau of Justice Statistics report, 70% of persons serving time in state prison for drug trafficking offenses used drugs in the month before the offense, and 42.3% of those persons had been using drugs at the time of their offense. (Bureau of Justice Statistics, *Special Report: Drug Use and Dependence, State and Federal Prisoners*, 2004 (Oct. 2006) a p. 5 <<https://bjs.ojp.gov/content/pub/pdf/dudsfp04.pdf>> [last visited Mar. 20, 2023].)

According to one study, “[Street-involved youth implicated in the drug trade] appear to be motivated by drug dependence,” finding: “Among participants who reported drug dealing, 263 (85.6%) individuals stated that the main reason that they sold drugs was to pay for their personal drug use.” (Werb et al., *Risks surrounding drug trade involvement among street-involved youth*, Am. J. Drug Alcohol Abuse (2008) <<https://pubmed.ncbi.nlm.nih.gov/19016187/>> [last visited Feb. 2, 2023].)

Still another found that “White youths who misused prescription drugs were three times more likely to sell drugs, compared to White youths who did not misuse prescription drugs.” (Floyd et al., *Adolescent Drug Dealing and Race/Ethnicity: A Population-Based study of the Differential Impact on Substance Use on Involvement in Drug Trade*, Amer. J. of Drug & Alcohol Abuse, Vol. 36, No. 2 (Mar. 2010) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871399/> -

R7> [last visited Mar. 17, 2022].)

Will the threat of a three-year enhancement effectively deter somebody already at a relatively high risk of death from illicit drug use?

- 4) **This Bill's Potential Impact on California's Jail Population:** Realignment began in October 2011. Since that time county jails have had oversight over most non-serious, non-violent, non-sexual felons and parolees who violate their parole. Before realignment, the maximum sentence in county jail was one year. Now that lower-level felons serve sentences in county jail, a portion of the jail population is serving sentences that are much longer than one year. Those factors related to realignment have served to increase population pressure on county jails.

In February 2021, the Public Policy Institute of California (PPIC) published a report discussing population impacts on California jails related to Realignment, Proposition 47 (Prop 47), and the effects of the COVID-19 pandemic. After realignment, the jail population began to rise; as of October 2014, the month before the passage of Proposition 47, it stood at roughly 82,000 inmates, a gain of 14% from 2011. (Lofstrom & Martin, California's County Jails (Feb. 2021) <<http://www.ppic.org/publication/californias-county-jails/>>)[last viewed Mar. 21, 2022].)

Voters approved Prop 47 in November 2014, reclassifying several property and drug crimes from felonies to misdemeanors. Prop 47 had an immediate and lasting impact on jail populations: the average daily population dropped by almost 10,000 between October 2014 and January 2015. The jail population remained relatively flat between January 2015 and the onset of the COVID-19 pandemic. By February 2020, the average daily jail population had dropped to about 69,000, although that population grew by roughly 7,200 persons May and September 2020. California currently has the capacity to house 79,000 persons in long-term county jail facilities. (Lofstrom & Martin, California's County Jails (Feb. 2021) <<http://www.ppic.org/publication/californias-county-jails/>>)[last viewed Mar. 21, 2022].)

Moreover, even before realignment, many county jails were struggling with overcrowding. Indeed, “[p]rior to the passage of realignment, many counties were already operating under court-imposed population caps, and others had very little extra capacity in their jail systems.” (Lofstrom et al., *Impact of Realignment on County Jail Populations*, Public Policy Institute of California (June 2013) p. 7 <[https://www.ppic.org/wp-content/uploads/content/pubs/report/R\\_613MLR.pdf](https://www.ppic.org/wp-content/uploads/content/pubs/report/R_613MLR.pdf)> [last visited Mar. 17, 2023].)

This bill would dramatically increase sentences for individuals convicted of specified criminal offenses involving fentanyl. Many of the individuals sentenced pursuant to the provisions of this bill would serve their sentences in county jail, potentially straining already overcrowded facilities. Some will nonetheless serve prison sentences based on prior convictions.

- 5) **Argument in Support:** According to the *County of Fresno*, “In 2021, fentanyl overdoses became the leading cause of death for adults between the ages of 18 and 45. In California, fentanyl was responsible for 36% of all drug-related deaths. On average, over 150 people die

every day from overdoses related to synthetic opioids like fentanyl and its analogs.

“Under existing law, addicted victims are treated the same as their dealers who were carrying over a thousand pills when they were detained. Given the lethality of the drug, this number of pills brings with it a serious threat to the public.

“AB 1058 seeks to modernize the penalty structure for the fentanyl drug market by restructuring the penalty for those in possession of 28.35 grams or more. This bill would specifically target dealers while simultaneously avoiding addicted victims.”

- 6) **Argument in Opposition:** According to the *Ella Baker Center for Human Rights*, “Specifically, AB 1058 would amend Health & Safety Codes 11351 and 11352 to increase the number of years a person would be incarcerated should they be convicted of possession for sale of fentanyl (HSC 11351), or sale, transportation, furnishing, administering or giving away fentanyl, if the weight was more than 28.35 grams (HSC 11352). The upper penalty for violation of HSC 11351 would be six years, and the upper penalty for HSC 11352 would be 13 years, if fentanyl were transported from one county to another noncontiguous county.

“We are in the midst of a tragic increase in drug overdose deaths. Thousands of lives are lost in California every year – each one leaving an irreparable rift in the hearts and lives of their families and friends. To prevent future death and suffering California should implement evidence-based solutions to prevent avoidable deaths. California needs to invest more in substance use disorder treatment and harm reduction, rather than pursuing expensive and unproductive incarceration policies.

“What health benefit do the people of California get from punishing people with many more years of incarceration? Research has established that persons leaving prisons are far, are more likely to die of a drug overdose than the general population. And there is no research that we are aware of that shows that long sentences reduce the availability of drugs, or reduce drug harms. On the contrary, available research finds that long sentences have negligible public safety benefit, and measurable negative effects on families and communities.

“Furthermore, our state and local budgets are not unlimited – we should not lock them up in failed policies. The approximate per capita cost of a year in a California state prison is now over \$112,600. The approximate cost of a year of methadone treatment for an opioid dependent person is \$6,552. The approximate cost of buprenorphine treatment is less than \$6,000. It would be healthier, safer and better for public safety to send an additional 17 people to methadone treatment, or 19 people to buprenorphine treatment, than to incarcerate one person for an additional year. Funding a robust, voluntary drug treatment system is a far more intelligent investment.

“The war on drugs failed us, failed families, and failed communities. While incarcerating millions of Americans, drugs became more widely available, stronger, and cheaper than ever before. It seems completely irrational to expand on that failed policy.”

7) **Related Legislation:**

- a) AB 955 (Petrie-Norris), would provide that a person who sells fentanyl on a social media platform in California shall be punished by imprisonment for a period of three, six, or

nine years in county jail. AB 955 will be heard today in this committee.

- b) AB 675 (Soria), would add a substance containing a heroin analog, a substance containing fentanyl, and a substance containing a fentanyl analog to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony punishable in state prison by two, three, or four years. AB 675 will be heard today in this committee.
- c) AB 701 (Villapudua), would impose an additional enhancement when a person is convicted of specified drug offenses involving fentanyl, including sale, possession for sale, and transportation, when the substance containing fentanyl exceeds a specified weight. AB 701 failed passage in this committee and was granted reconsideration.
- d) AB 18 (Joe Patterson), would require the court to advise a person convicted of specified drug offenses that they could be charged with voluntary manslaughter or murder if they manufacture or distribute controlled substances in the future and somebody dies as a result. AB 18 failed passage in this committee and was granted reconsideration.
- e) SB 237 (Grove), would increase the punishment for drug trafficking fentanyl. SB 237 failed passage in the Senate Public Safety Committee and was granted reconsideration.
- f) SB 62 (J. Nguyen), would apply existing weight enhancements increasing the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. SB 62 failed passage in the Senate Public Safety Committee and was granted reconsideration.
- g) SB 44 (Umberg), is substantially similar to AB 18 (Joe Patterson). SB 44 is up for reconsideration in the Senate Public Safety Committee.

**8) Prior Legislation:**

- a) AB 1955 (Nguyen), of the 2021-2022 Legislative Session, was identical to AB 701. AB 1955 failed passage in this committee.
- b) AB 1351 (Petrie-Norris), of the 2021-2022 Legislative Session, was identical to AB 701. AB 1351 was not heard in this committee.
- c) AB 2975 (Petrie-Norris), of the 2019-2020 Legislative Session, was identical to AB 701. AB 2975 was not heard in this committee.
- d) AB 2405 (Patterson), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II of the drug schedule and increase penalties for trafficking in carfentanil. AB 2405 failed passage in this committee.
- e) AB 2467 (Patterson), of the 2017-2018 Legislative Session would have increased the punishment for specified drug crimes involving fentanyl. SB 2467 failed passage in this committee.



- f) AB 3105 (Waldron), of the 2017-2018 Legislative Session, would have made sale of fentanyl punishable by a term of 10 years to life in a case involving 20 grams or more of a mixture or substance containing a detectable amount of fentanyl, as defined, or 5 grams or more of a mixture or substance containing an analogue. AB 3105 failed passage in this committee.
- g) SB 176 (Bates), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II and would have applied the weight enhancement to a substance containing carfentanil or fentanyl. SB 176 failed passage in the Senate Public Safety Committee.
- h) SB 1103 (Bates), of the 2017-2018 Legislative Session, was substantially similar to AB 701. SB 1103 failed passage in the Senate Public Safety Committee.
- i) SB 1323 (Bates), of the 2015-2016 Legislative Session, would have applied the weight enhancement for possession for sale, or sale, of specified drugs, to fentanyl. SB 1323 was held on the Assembly Appropriations Committee Suspense File.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California District Attorneys Association  
 California Police Chiefs Association  
 California State Sheriffs' Association  
 Clovis Unified School District  
 County of Fresno  
 Fresno County District Attorney's Office  
 Fresno County Superintendent of Schools  
 Fresno Police Department  
 Orange County District Attorney  
 Orange; County of  
 Pain Parents & Addicts in Need  
 Peace Officers Research Association of California (PORAC)

6 Private Individuals

### **Oppose**

Broken No More  
 California Alliance for Youth and Community Justice  
 California Attorneys for Criminal Justice  
 California Immigrant Policy Center  
 California Public Defenders Association (CPDA)  
 Californians for Safety and Justice  
 Communities United for Restorative Youth Justice (CURYJ)  
 Drug Policy Alliance  
 Ella Baker Center for Human Right



Ella Baker Center for Human Rights  
Initiate Justice  
Initiate Justice Action  
Legal Services for Prisoners With Children  
National Harm Reduction Coalition  
San Francisco Public Defender  
Sister Warriors Freedom Coalition  
The Gubbio Project  
The Sidewalk Project  
Transitions Clinic Network  
Young Women's Freedom Center

**Analysis Prepared by:** Andrew Ironside / PUB. S. / (916) 319-3744