
Assembly Committee on Judiciary

This measure may be considered for action during today's work session.

SENATE BILL 35

Establishes the crimes of low-level trafficking in fentanyl, mid-level trafficking in fentanyl and high-level trafficking in fentanyl. (BDR 40-423)

Sponsored By: Senate Committee on Health and Human Services (On Behalf of the Attorney General)

Date Heard: May 17, 2023

Fiscal Notes: Effect on Local Government: No.
Effect on the State: Yes.

Senate Bill 35 establishes the crimes of mid-level and high-level trafficking in illicitly manufactured fentanyl and derivatives thereof. Anyone who knowingly or intentionally sells, manufactures, delivers, or brings this into the State, or is knowingly or intentionally in actual or constructive possession of illicit fentanyl, derivatives of fentanyl, or mixtures containing fentanyl or derivatives, is guilty of a category B felony for mid-level trafficking in fentanyl if the quantity is 14 grams or more but less than 28 grams. Such a person is guilty of a category A felony for high-level trafficking in fentanyl if the quantity is 28 grams or more. The bill also provides, to the extent funds are available, for the implementation of medication-assisted treatment programs in prisons and jails for offenders with a substance use disorder.

Amendments: There is one proposed amendment for this measure. The Assembly Committee on Judiciary proposed an amendment, which makes several changes, including:

- Creates a penalty for a person who sells a substance with actual knowledge that the substance contains fentanyl and intentionally fails to inform a purchaser that such a substance contains fentanyl;
- Creates a penalty for a person who knowingly or intentionally sells, manufactures, delivers or brings into this State or who is knowingly or intentionally in actual possession of a counterfeit fentanyl compound;
- Directs the Joint Interim Standing Committee on the Judiciary to study the cost and benefits of upgrading the crime labs to have the ability to do quantitative testing and its associated impact on the State of Nevada;
- Directs all state and local law enforcement to report to the Joint Interim Standing Committee on the Judiciary certain information; and
- Requires the implementation of medication-assisted treatment programs in city, county, and State correctional facilities for the treatment of persons with substance use disorders, if funds and staff are available.

PROPOSED AMENDMENTS TO SENATE BILL 343 & 35

EXPLANATION: Matters in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; and (5) **orange underlining** is deleted language in the original bill proposed to be retained in this amendment.

Amendment #1 Purpose: Creates the highest level of sanction available for an individual who knowingly sells items laced with fentanyl to an unknowing buyer by adding the following section to NRS 453.

Language:

An individual who sells a substance with actual knowledge that the substance contains fentanyl and intentionally fails to inform a purchaser that said substance contains fentanyl is guilty of intentional misrepresentation of a fentanyl product and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years and by a fine of not more than \$50,000.

Amendment #2 Purpose: To remove provisions targeting those experiencing addiction and instead address those who are engaged in the creation and distribution of a counterfeit Fentanyl compound until such time as Nevada's labs are upgraded.

Language:

Except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive, a person who knowingly or intentionally sells, manufactures, delivers or brings into this State or who is knowingly or intentionally in actual possession of a counterfeit fentanyl compound, unless a greater penalty is provided pursuant to NRS 453.3385 or NRS 453.322, if the quantity involved:

- 1. Is 28 grams or more, but less than 42 grams is guilty of low-level trafficking in fentanyl and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than ten years.**
- 2. Is 42 grams or more, but less than 100 grams, is guilty of mid-level trafficking in fentanyl and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 year and a maximum term of not more than fifteen years.**
- 3. ~~Is 100 grams or more, is guilty of high-level trafficking in fentanyl and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.~~**

4. For purposes of this section, a counterfeit fentanyl compound refers to a substance that contains one or more substances in conjunction with fentanyl that has been illicitly manufactured.

Add:

NRS 453.3405 Trafficking in controlled substances: Suspended sentence limited; eligibility for parole; reduction or suspension of sentence of person assisting in investigation or prosecution of any offense; consideration of factors by court.

1. Except as otherwise provided in subsection 2, the adjudication of guilt and imposition of sentence of a person found guilty of trafficking in a controlled substance in violation of NRS 453.3385 ~~or~~ 453.339 **or amendment 2** must not be suspended and the person is not eligible for parole until the person has actually served the mandatory minimum term of imprisonment prescribed by the section under which the person was convicted.

2. The court, upon an appropriate motion, may reduce or suspend the sentence of any person convicted of violating any of the provisions of [NRS 453.3385](#) or [453.339](#) if the court finds that the convicted person rendered substantial assistance in the investigation or prosecution of any offense. The arresting agency must be given an opportunity to be heard before the motion is granted. Upon good cause shown, the motion may be heard in camera.

3. Any appropriate reduction or suspension of a sentence pursuant to subsection 2 must be determined by the court, for reasons stated by the court that may include, without limitation, consideration of the following:

(a) The court's evaluation of the significance and usefulness of the convicted person's assistance, taking into consideration the prosecuting attorney's evaluation of the assistance rendered;

(b) The truthfulness, completeness and reliability of any information or testimony provided by the convicted person;

(c) The nature and extent of the convicted person's assistance;

(d) Any injury suffered or any danger or risk of injury to the convicted person or his or her family resulting from his or her assistance; and

(e) The timeliness of the convicted person's assistance.

Amendment #3 Purpose: Re-establishes Nevada's Good Samaritan provision for those subject to any offense pursuant to NRS 453.

Conceptual Amendment: Reprints of SB 35 and SB 343 seem to retain the protections of Nevada's Good Samaritan Drug Overdose Act in NRS 453C.150, but we need it to be clear that Nevada's Good Samaritan Laws apply to these new provisions.

Amendment #4: Purpose: Establishes the Defense from the Colorado Fentanyl Legislation (House Bill 22-1326) for people who unknowingly possess drugs containing Fentanyl.

Language:

Where a Defendant establishes by a preponderance of evidence that he or she did not know that the controlled substance at issue contained fentanyl, the court may grant probation. The Court shall state on the record its factual findings regarding its determination of the defendant's probation eligibility

Need to also make clear that Amendment 4 would only apply to the new fentanyl trafficking crime contained in amendment 2. It would not apply if someone is charged under the current trafficking statute.

Amendment #5 Purpose: Direct the Interim Judiciary Committee to study the cost and benefits of upgrading the crime labs to have the ability to do quantitative testing and its associated impact on the State of Nevada.

**Amendment #6 Purpose: Directs all state and local law enforcement to report to the Interim Judiciary Committee the following information:
(insert data to be requested)**

Amendment #7 Purpose: Adds mandatory medication assisted treatment programs in jails and prisons within NRS 453.

Language:

Within the limits of available funds and personnel, including, but not limited to, legislative appropriation, require implementation of medication-assisted treatment programs in city, county and state correctional facilities for the treatment of persons with substance use disorders. Such programs shall include all forms of medication-assisted treatment approved by the federal food and drug administration for the treatment of substance use disorders for the duration of incarceration. Any individual determined to have a substance use disorder for which approved medications exists shall be eligible to participate and offered placement in the program. Placement shall not be mandatory. Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health professional in conjunction with the participant. Participation in the program shall not be unreasonably withheld from a qualified incarcerated individual. An incarcerated individual using medication-assisted treatment prior to such individual's incarceration shall be eligible to continue such treatment in the medication-assisted treatment program for any period of time during the duration of such individual's incarceration. No person shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program, nor shall any person shall receive a disciplinary infraction for a positive drug screening. No person shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction before entry into the program or during participation in the program.
