

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 19 (Seyarto) – As Amended March 7, 2023

SENATE VOTE: 40-0

SUBJECT: Anti-Fentanyl Abuse Task Force.

SUMMARY: Establishes upon appropriation by the Legislature, the Anti-Fentanyl Abuse Task Force (task force) to evaluate the nature and extent of fentanyl abuse in the state and to develop policy recommendations for addressing it. Specifies task force membership and reporting requirements.

- 1) Establishes, upon an appropriation by the Legislature, the task force to do the following:
 - a) Collect and organize data on the nature and extent of fentanyl abuse in California;
 - b) Examine collaborative models between government and nongovernmental organizations for protecting persons who misuse fentanyl or other illicit substances that may contain fentanyl, and develop policy recommendations on the implementation of evidence-based practices to reduce fentanyl overdoses, including, without limitation, overdose prevention centers, fentanyl testing strip distribution, and access to overdose reversal treatments;
 - c) Measure and evaluate the progress of the state in preventing fentanyl abuse and death from the intentional use of fentanyl or the unintentional use of illicit substances containing fentanyl, protecting and providing assistance to persons who misuse fentanyl or other illicit substances that may contain fentanyl, and prosecuting 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; and,
 - 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, and prosecute individuals engaged in the illegal manufacture, sale, and trafficking of fentanyl.
- 2) Provides that the task force is chaired by the Attorney General (AG) or their designee. Requires the Department of Justice (DOJ) to provide staff and support for the task force, to the extent resources are available.
- 3) Requires members of the task force serve at the pleasure of their appointing authority. Allows reimbursement of necessary expenses at the discretion of their respective appointing authority or agency participating in the task force.
- 4) Requires the task force to be comprised of the following representatives or their designees:

- a) The AG;
 - b) The Chairperson of the Judicial Council of California;
 - c) The Director of the State Department of Public Health (DPH);
 - d) The Director of the State Department of Health Care Services;
 - e) One Member of the Senate, appointed by the Senate Rules Committee;
 - f) One Member of the Assembly, appointed by the Speaker of the Assembly;
 - g) One representative from the California District Attorneys Association (CDA);
 - h) One representative from the California Public Defenders Association;
 - i) One representative from the California Hospital Association;
 - j) One representative from the County Health Executives Association of California;
 - k) 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;
 - l) One representative from a community organization representing persons suffering from opioid use disorder, appointed by the Governor;
 - m) One university researcher and one mental health professional, appointed by the Governor;
 - n) One representative from an organization that provides services to homeless individuals and one representative from an organization that serves persons who misuse fentanyl or other illicit substances that may contain fentanyl in southern California, appointed by the Speaker of the Assembly;
 - o) One representative from an organization that provides services to homeless individuals and one representative from an organization that serves persons who misuse fentanyl or other illicit substances that may contain fentanyl in northern California, appointed by the Senate Rules Committee; and,
 - p) One person in recovery from fentanyl or opioid abuse, and one person who has lost a family member to a fatal fentanyl overdose, appointed by the Governor.
- 5) Provides that members of the task force 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. Permits subcommittees to be formed and meet as necessary, and requires all meetings to be open to the public. Requires the first meeting of the task force be held no later than March 1, 2024.
 - 7) Requires the task force to report its findings and recommendations to the Governor, the AG, and the Legislature on or before July 1, 2025. Permits, at the request of any member, the report to include minority findings and recommendations.
 - 8) 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.
 - 9) Sunsets this bill on January 1, 2026.

EXISTING LAW:

- 1) Classifies controlled substances under the California Uniform Controlled Substances Act (CUCSA), into five schedules and places the greatest restrictions and penalties on the use of

those substances placed in Schedule I. Classifies the drug fentanyl in Schedule II. [Health & Safety Code (HSC), §11054-11058]

- 2) Requires that a person who possesses any controlled substance, as specified, unless upon a valid prescription, 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. [HSC §11350]
- 3) Requires 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. [HSC §11351]
- 4) Requires 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. [HSC §11352]
- 5) Permits a trial court, in addition to the term of imprisonment provided by law for persons convicted of violating specified drug offenses, including possession, to impose a fine not exceeding \$20,000 for each offense. [HSC §11372 (a)]
- 6) Requires a local health officer to assume that the fentanyl manufacturing process has led to some degree of chemical contamination and to take action, as prescribed, if a fentanyl laboratory activity has taken place at a property. [HSC § 25400.17]

FISCAL EFFECT: According to the Senate Appropriations Committee, annual and ongoing cost pressures over the next three years in the millions of dollars in order for the DOJ to implement. The DOJ reports costs of \$2.6 million in 2023-2024, \$4.6 million in 2024-2025, and \$2.4 million in 2025-2026 (General Fund).

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, the potency and availability of illicit fentanyl is a threat to all Californians. Local agencies need the tools to keep our communities safe and to hold those responsible for poisoning our communities accountable for this catastrophe. This task force will identify the resources necessary to respond to and bring the scourge of fentanyl under control. The author concludes that fentanyl is a new threat and unlike anything the state has seen before. Our communities deserve a coordinated policy response with proven strategies which this taskforce will recommend.
- 2) **BACKGROUND.**
 - a) **Controlled Substances.** Certain drugs are classified under the federal Controlled Substances Act of 1970 (CSA) into one of five schedules. Placement in a given schedule depends on whether a drug has a currently accepted medical use, its relative abuse potential, and its likelihood of causing either addiction or physical dependency when abused. Most opioid analgesics are Schedule II drugs, in that they have a recognized medical use, but also have a high potential for abuse that may lead to severe psychological and/or physical dependence. The CSA places a number of restrictions on prescribers and pharmacies that dispense controlled substances like opioids. For example,

refills are not permitted and a new written prescription must be presented each time the drug is dispensed. Fentanyl is currently classified as Schedule II. CUCSA very closely mirrors the Federal CSA related to drug/opioid classification.

- b) Fentanyl.** Fentanyl is a potent synthetic opioid drug approved by the United States Food and Drug Administration (FDA) for use as an analgesic and anesthetic. It is approximately 50 times stronger than heroin and 100 times stronger than morphine. First developed in 1959, it was introduced in the 1960's as an intravenous anesthetic. Fentanyl is legally manufactured and distributed in the United States; however, there are two types of fentanyl: pharmaceutical fentanyl and illicitly manufactured fentanyl. Both are considered synthetic opioids. Pharmaceutical fentanyl is prescribed by doctors to treat severe pain, especially after surgery and for advanced-stage cancer. 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.

The Centers for Disease Control and Prevention (CDC) reports that over 150 people die every day from overdoses related to synthetic opioids like fentanyl. According to the CDC, only three states, California, Illinois, and Virginia experienced a statistically significant change in overdose death rates involving synthetic opioids from 2016 to 2017. Eighteen states reflected no statistically significant change in overdose deaths and 25 states plus the District of Columbia had remained stable. In stark contrast, the 2019-2020 figures reflect that 40 states and the District of Columbia experienced a statistically significant increase in opioid related deaths while only four states did not have a significant increase and only seven states remained stable.

- c) Fentanyl in California.** Fentanyl is a major contributor to fatal and nonfatal overdoses in California. According to the DPH Opioid Overdose Dashboard, fentanyl was involved in over 83% of the 7,175 opioid related deaths in 2021. 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.
- d) Governor's Master Plan for Tackling Fentanyl and Opioid Crisis (master plan).** In March 2023, the Governor unveiled California's master plan for tackling the fentanyl and opioid crisis. The master plan includes allocations and activities in the following areas:
- i)** \$79 million for enhancement of the Naloxone distribution program (NDP) (Since the NDP inception, over 2.2 million naloxone doses have been distributed and more than 130,000 opioid overdoses reversals have been reported);
 - ii)** \$10 million in grants for education, testing, recovery, and support services;
 - iii)** \$4 million to make test strips more available;
 - iv)** \$3.5 million to provide overdose medications provided to all middle and high schools;
 - v)** \$30 million to expand California National Guard's work to prevent drug-trafficking through the hiring, training and embedding of 144 new members (in 2022, 28,765 pounds of fentanyl were seized in operations supported by Cal Guard, an increase of 594% in seizures since 2021);

- vi) \$15 million over two years to establish and operate the Fentanyl Enforcement Program with the DOJ to combat manufacturing, distribution, and trafficking;
- vii) \$40.8 million for an education and awareness campaign to establish partnerships and create messaging and education tools for parents and educators;
- viii) \$23 million to develop substance use disorder (SUD) training for non-behavioral health professionals working with children and youth; and,
- ix) Through CalRx, California will seek to manufacture its own Naloxone.

Additionally, California is engaged in several settlement agreements with the opioid manufacturers, distributors, and pharmacies who helped fuel the opioid crisis through their unlawful practices and profited from it. Billions of dollars will flow to California from these settlements and will be available to California communities to, among other things, be used to:

- i) Increase support for SUD facilities and improve infrastructure for treatment;
 - ii) Address the needs of communities of color and vulnerable populations, including those who are unhoused;
 - iii) Strengthen viability of Naloxone or other FDA-approved overdose reversal drugs;
 - iv) Double down on interventions for drug addiction in vulnerable youth and supporting those in the juvenile justice system with treatment options;
 - v) Improve training and resources for law enforcement and first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs, including with regard to addressing the needs of criminal justice-involved persons with opioid use disorder and mental health issues;
 - vi) Implement best practices for outreach, diversion and deflection;
 - vii) Support job creating programs to help connect those recovering from SUD with gainful employment and pathways to financial stability; and,
 - viii) Improve data-sharing and management systems to detect suspicious activity, including the prescription of controlled substances.
- e) **Joint Assembly Committee Hearing: Overview on the Fentanyl and Overdose Crisis.** On May 24, 2023, a joint hearing was held by the Assembly Select Committee on Fentanyl, Opioid Addiction and Overdose Prevention, the Assembly Health Committee and the Assembly Public Safety Committee. The first in what is anticipated to be a number of hearings, the primary purpose of this hearing was to obtain an overview of existing and future state and local public health, legal, and educational efforts aimed at addressing the fentanyl/opioid crisis. In addition to physicians with specialty training in addiction and family members of overdose victims, those testifying before the committees included the DPH, the DOJ, the State Superintendent of Public, public defenders, district attorneys, law enforcement representatives and representatives from community based organizations. Hearing testimony revealed that significant focus, resources and efforts are currently being directed at addressing the fentanyl and overdose crisis. Law enforcement efforts are frequently crossing jurisdictional boundaries to ensure coordinated activities. Community and school-based programs are working to ensure that programs provide continuity across services and promote well-documented evidence based programs. The DPH has undertaken the development of a robust statewide media campaign using trusted and preferred channels, prioritizing social and digital media and will engage local communities, provide families and communities with the information they need; and to elevate local personal success stories. This media campaign is slated to

roll out this year in late Summer.

- 3) **SUPPORT.** CDAA, in a support position, states that fentanyl is a synthetic opioid 100 times more potent than morphine. It can be found in methamphetamine, cocaine, heroin, and vaping products, as well as counterfeit pharmaceutical pills such as Xanax, Percocet, hydrocodone, or Oxycodone among others. Statistics show the opioid crisis has significantly worsened since fentanyl entered the illicit drug market. Specifically, fentanyl was the number one cause of death last year for people ages 18- 45, outpacing suicides, automobile accidents, and COVID-19. Fentanyl causes a fatality approximately every seven to eight minutes and is linked to 64% of total drug fatalities in 2021. CDAA concludes by stating that this bill will help address the opioid overdose epidemic by establishing the task force to undertake various duties relating to fentanyl abuse, including collecting and organizing data on the nature of fentanyl abuse in California and evaluating approaches to increase public awareness of fentanyl abuse.

The County Health Executives Association of California (CHEAC) also in a support position states that California's local health departments have been proactive at the local level implementing prevention and education programs on opioids as well as fentanyl. As an example, one jurisdiction has established a program to enhance their overdose morbidity and mortality local surveillance efforts and to use that enhanced surveillance data to guide overdose prevention efforts. Another jurisdiction has implemented a vending machine network that has placed four vending machines throughout their county to provide residents with preventative health and harm reduction items such as sharps containers, naloxone, and fentanyl testing strips among other items. CHEAC concludes by stating that California's local health departments strongly support efforts to reduce and prevent costly SUDs and related problems, and it is for these reasons CHEAC supports the bill.

- 4) **OPPOSE.** The Drug Policy Alliance (DPA) in an oppose position states that they understand the need to evaluate statewide efforts to help inform strategies to reduce the harms associated with fentanyl use, however, any attempt to examine and measure the impact of fentanyl must be led by public health experts, with the specialty in harm reduction and SUD treatment as well as drug policy experts. The approach taken in this bill structures the task force as being more prosecutorial focused rather than recognizing substance use as being a health crisis. In a year when the state is facing billion of dollars in deficit, it's counterproductive to pour more funds into a law enforcement approach to analyze the state's work on mitigating the harms of fentanyl. Creating another enforcement styled body will not help solve the opioid overdose crisis in our state, rather it runs the risk of operating counter to existing health centered task forces and working groups. Additionally, the structure of this bill strays away from the evidence-based healthcare treatment approaches that have been proven to work. DPA concludes by stating that until this task force is restructured, the Legislature should continue to support the work that the DPH is already doing and ensuring that the state makes investments in harm reduction, increasing access to treatment on demand, and building out the substance use assessment system so that referrals and information can be provided directly and in real time to those individuals and communities in need.
- 5) **OTHER.** The Association of California School Administrators (CASA) advocating for the inclusion of an education partners in the proposed task force states that strategies for youth outreach must be tailored differently than outreach to adults since youth are more likely to be experimenting with drugs versus adults who might already be suffering with substance abuse.

CASA concluded that schools and partnerships with educators lend a critical viewpoint on how to effectively message to students.

6) RELATED LEGISLATION.

- a) AB 33 (Bains) is substantially similar to this bill and establishes the Fentanyl Addiction and Overdose Prevention Task Force to undertake specified duties relating to fentanyl abuse. AB 33 is pending hearing in the Senate Committee on Public Safety.
- b) AB 1058 (Jim Patterson) increases penalties for possession for the purposes of sale and for transportation and sale of a controlled substance if the controlled substance involved was more than 28.35 grams of fentanyl, more than 28.35 grams of an analog of fentanyl, a substance containing more than 28.35 grams of fentanyl, or a substance containing more than 28.35 grams of an analog of fentanyl. AB 1058 was held in the Assembly Public Safety Committee.
- c) SB 44 (Umberg) requires a person who is convicted of, or who pleads guilty or no contest to possession for sale or purchase for the purpose of sale, transport, sell, furnish, administer, give away, manufacture, compound, convert, produce, derive, process or prepare various controlled substances, including fentanyl, to receive a written advisory of the danger of manufacturing or distribution of controlled substances and that, if a person dies as a result of that action, the manufacturer or distributor can be charged with voluntary manslaughter or murder. SB 44 was held in the Senate Public Safety Committee.

7) PREVIOUS LEGISLATION.

- a) SB 1053 (Bates) of 2022 would have defined great bodily injury to include a person who sells, furnishes, administers, or gives away a controlled substance whenever the person sold, furnished, administered, or given the controlled substance suffers from great bodily injury from using the controlled substance. SB 1053 was held in the Senate Public Safety Committee.
- b) SB 1060 (Bates) of 2022 would have imposed an additional sentence term upon a person who is convicted of a violation of, or of a conspiracy to violate, specified provisions of law with respect to a substance containing either fentanyl or oxycodone, if the substance exceeds a specified weight. Would have prohibited the court from imposing those additional penalties unless there are circumstances in aggravation to support that additional punishment. SB 1060 was held in the Senate Public Safety Committee.
- c) AB 2365 (Jim 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
- d) AB 1673 (Seyarto) of 2021 was similar to this bill and would have created the Anti-Fentanyl Abuse Task Force to evaluate the extent of fentanyl abuse in California and to develop policy recommendations for addressing it. AB 1673 was held in the Assembly Appropriations Committee.

- e) SB 1395 (Bates) of 2020 would have required the AG to establish and chair the Southern California Fentanyl Task Force (SCFTF). Would have required the SCFTF 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.
 - f) AB 2467 (Patterson) of 2017 would have punished the possession, sale, or purchase for sale of fentanyl by imprisonment in a county jail for four, five or six years, the transportation, importation, sale, furnishing, administering, or giving away of fentanyl by imprisonment in a county jail for seven, eight or nine years, and the trafficking of fentanyl by imprisonment in a county jail for seven, 10, or 13 years. AB 2467 failed passage in the Assembly Public Safety Committee.
- 8) **DOUBLE REFERRAL.** This bill has been double referred; upon passage of this committee, it will be referred to the Assembly Committee on Public Safety.
- 9) **COMMITTEE AMENDMENT.** The makeup of the task force as currently constructed does not have representation of either a physician specialist in addiction medicine or an education partner. The Committee may wish to amend this bill by adding a position on the task force for one representative from the California Society of Addiction Medicine and one representative from a Local Educational Agency appointed by the California Superintendent of Public Instruction.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Academy of Family Physicians
California Coalition of School Safety Professionals
California District Attorneys Association
California Hospital Association
California Society of Health System Pharmacists
California State Sheriffs' Association
City of Alameda
City of Laguna Niguel
City of Norwalk
City of Placentia
Claremont Police Officers Association
Corona Police Officers Association
County Health Executives Association of California (CHEAC)
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
League of California Cities
Los Angeles School Police Officers Association
Newport Beach Police Association
Orange County
Orange County District Attorney

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
Upland Police Officers Association

Opposition

Drug Policy Alliance

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