

SENATE THIRD READING
SB 19 (Seyarto)
As Amended September 1, 2023
Majority vote

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.

COMMENTS

- 1) *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. The California Uniform Controlled Substances Act very closely mirrors the Federal CSA related to drug/opioid classification.
- 2) *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.

- 3) *Fentanyl in California*. Fentanyl is a major contributor to fatal and nonfatal overdoses in California. According to the Department of Public Health (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.

- 4) *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:
 - a) \$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);
 - b) \$10 million in grants for education, testing, recovery, and support services;
 - c) \$4 million to make test strips more available;
 - d) \$3.5 million to provide overdose medications provided to all middle and high schools;
 - e) \$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);
 - f) \$15 million over two years to establish and operate the Fentanyl Enforcement Program with the Department of Justice (DOJ) to combat manufacturing, distribution, and trafficking;
 - g) \$40.8 million for an education and awareness campaign to establish partnerships and create messaging and education tools for parents and educators;
 - h) \$23 million to develop substance use disorder (SUD) training for non-behavioral health professionals working with children and youth; and,
 - i) 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:

- a) Increase support for SUD facilities and improve infrastructure for treatment;
- b) Address the needs of communities of color and vulnerable populations, including those who are unhoused;
- c) Strengthen viability of Naloxone or other FDA-approved overdose reversal drugs;
- d) Double down on interventions for drug addiction in vulnerable youth and supporting those in the juvenile justice system with treatment options;

- e) 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;
 - f) Implement best practices for outreach, diversion and deflection;
 - g) Support job creating programs to help connect those recovering from SUD with gainful employment and pathways to financial stability; and,
 - h) Improve data-sharing and management systems to detect suspicious activity, including the prescription of controlled substances.
- 2) *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.

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.

Arguments in Support

The California District Attorneys Association (CDA), 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.

Arguments in Opposition

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 billions 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.

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

FISCAL COMMENTS

According to the Assembly Committee on Appropriations, the DOJ estimates General Fund costs of \$2.57 million in fiscal year (FY) 2023-24, \$4.54 million in FY 2024-25, and \$2.44 million in

FY 2025-26 to fund 18 new limited-term positions to conduct research; provide legal advice and assistance on Open Meeting-related matters; analyze existing statutes and recommendations to strengthen state and local efforts to prosecute individuals engaged in the illegal manufacture, sale, and trafficking of fentanyl; examine collaborative models for protecting victims of fentanyl abuse; measure and evaluate the progress of the state in preventing fentanyl abuse; protect and assist victims of fentanyl abuse; and evaluate approaches to increase public awareness of fentanyl abuse. The estimate also includes costs for consultants, legal experts and witnesses, travel, and printing.

VOTES

SENATE FLOOR: 40-0-0

YES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

ASM HEALTH: 14-0-1

YES: Wood, Waldron, Aguiar-Curry, Arambula, Boerner, Wendy Carrillo, Vince Fong, Maienschein, McCarty, Joe Patterson, Rodriguez, Santiago, Villapudua, Weber
ABS, ABST OR NV: Flora

ASM PUBLIC SAFETY: 8-0-0

YES: Jones-Sawyer, Alanis, Bonta, Bryan, Lackey, Ortega, Santiago, Zbur

ASM APPROPRIATIONS: 15-0-1

YES: Holden, Megan Dahle, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Sanchez, Weber, Wilson
ABS, ABST OR NV: Soria

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