

BILL ANALYSIS

S.B. 768
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been noted that fentanyl, a drug that is exponentially more potent than morphine, is responsible for a drastic increase in recent overdose deaths, given that the drug is often combined with cocaine and heroin without the knowledge of the user. According to the U.S. Office of the Attorney General, fentanyl overdoses have accounted for more recent American drug deaths than any other drug. As a result, the U.S. Department of Justice stepped up its prosecutions of fentanyl-related crimes over 300 percent in 2017. There have been calls in Texas to ensure that the manufacture or delivery of fentanyl is adequately addressed in the Texas Controlled Substances Act. S.B. 768 seeks to deter the manufacture and distribution of fentanyl in Texas by creating a more stringent punishment system that is appropriately weighted for the drug's lethality.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 768 amends the Health and Safety Code to create Penalty Group 1-B under the Texas Controlled Substances Act and to transfer from Penalty Group 1 to Penalty Group 1-B fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl. The bill creates an offense for a person who knowingly manufactures, delivers, or possesses with intent to deliver fentanyl, alpha-methylfentanyl, or any other derivative of fentanyl that carries penalties ranging from a state jail felony to a term of imprisonment in the Texas Department of Criminal Justice (TDCJ) for life or for a term of not more than 99 years or less than 20 years, and a maximum \$500,000 fine, depending on the aggregate weight of the controlled substance.

S.B. 768 extends to Penalty Group 1-B substances the applicability of certain provisions under the act governing the following:

- the classification of certain controlled substance analogues;
- offenses for the possession of a substance in Penalty Group 1, for the delivery of a controlled substance or marijuana to a child, and for the possession or transport of certain chemicals with intent to manufacture a controlled substance; and
- penalty enhancements for certain offenses that are committed in certain drug-free zones, that involve the use of a child in the commission of the offense, or that involve the manufacture or delivery of a controlled substance causing death or serious bodily injury.

The bill specifies that certain manufacturing or delivery offenses under the act otherwise punishable as a third degree felony are punishable as a second degree felony if it is shown at the punishment phase of the trial of the offense that the offense was committed in a certain drug-free zone. The bill includes an overdose of a controlled substance listed in Penalty Group 1-B in the scope of provisions governing the mandatory reporting of a controlled substance overdose to the Department of State Health Services.

S.B. 768 amends the Code of Criminal Procedure to make a defendant adjudged guilty of the offense of manufacture or delivery of a substance in Penalty Group 1-B in an amount that is four grams or greater ineligible for judge-ordered community supervision, jury-recommended community supervision, or deferred adjudication community supervision.

S.B. 768 amends the Government Code to make ineligible for release to mandatory supervision an inmate who is serving a sentence for or has been previously convicted of manufacture or delivery of a substance in Penalty Group 1-B in an amount that is four grams or greater.

S.B. 768 amends the Penal Code to expand the conduct that constitutes the offense of directing the activities of a criminal street gang to include knowingly financing, directing, or supervising the commission of, or a conspiracy to commit, as part of the identifiable leadership of a criminal street gang, the manufacture or delivery of a substance in Penalty Group 1-B in an amount that is four grams or greater. The bill establishes that, for the purposes of the offense of endangering a child younger than 15 years, it is presumed that a person engaged in conduct that places the child in imminent danger of death, bodily injury, or physical or mental impairment if the person injected, ingested, inhaled, or otherwise introduced a controlled substance listed in Penalty Group 1-B into the human body when the person was not in lawful possession of the substance.

S.B. 768 amends the Occupations Code to make conforming changes.

S.B. 768 establishes that implementation of a provision of the bill by TDCJ is mandatory only if a specific appropriation is made for that purpose.

EFFECTIVE DATE

September 1, 2021.