

## **BILL ANALYSIS**

C.S.H.B. 6  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In recent years, overdoses in the United States have seen an alarming increase due to the increased production and smuggling of fentanyl, an incredibly potent synthetic opioid. According to the CDC, in the 12-month period ending in November 2022, more than 75,000 Americans died from an overdose of synthetic opioids, mainly from fentanyl. In Texas, the Department of Public Safety has seized over 353 million lethal doses of fentanyl since the beginning of Operation Lone Star in March 2021, according to the governor's office. C.S.H.B. 6 seeks to address this issue by increasing criminal penalties for certain controlled substance offenses, expanding the conduct constituting murder, and creating two criminal offenses involving the manufacture or delivery of certain opioids.

### **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**

C.S.H.B. 6 amends the Health and Safety Code to transfer the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, from Penalty Group 1 of the Texas Controlled Substances Act to Penalty Group 1-B of that act:

- Acetyl-alpha-methylfentanyl;
- Alfentanil;
- Alpha-methylthiofentanyl;
- Beta-hydroxyfentanyl;
- Beta-hydroxy-3-methylfentanyl;
- Carfentanil;
- 3-methylfentanyl;
- 3-methylthiofentanyl;
- Para-fluorofentanyl;
- Remifentanil;
- Sufentanil; and
- Thiofentanyl.

C.S.H.B. 6 requires the medical certification on a death certificate in the event of a poisoning involving a controlled substance in Penalty Group 1-B to list the name of the Penalty Group 1-B controlled substance or substances as the cause of death and, except as otherwise specifically established by the medical examiner, to list "homicide" as the manner of death. The bill establishes that an event of poisoning occurs when:

- a toxicology examination reveals one or more Penalty Group 1-B controlled substances present in the body of the decedent in an amount or concentration that is considered to be lethal by generally accepted scientific standards; or
- if an autopsy is performed, the results of the autopsy performed on the decedent are consistent with one or more such controlled substances as the cause of death.

These provisions apply only to a death that occurs on or after the bill's effective date, or a death that occurs before that date but is discovered on or after that date.

C.S.H.B. 6 increases from a state jail felony to a third degree felony the penalty for manufacturing or delivering a controlled substance in Penalty Group 1-B that is, by aggregate weight, including adulterants or dilutants, less than one gram. The bill increases the minimum term of confinement or imprisonment for that conduct by five years and doubles the maximum fine if it is shown on the trial of the offense that the offense was committed in a drug-free zone.

C.S.H.B. 6 amends the Penal Code to expand the conduct that constitutes the offense of engaging in organized criminal activity to include the unlawful possession of a controlled substance listed in Penalty Group 1-B with the intent to do the following:

- deliver the controlled substance; and
- establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang.

C.S.H.B. 6 expands the conduct that constitutes murder to include knowingly manufacturing or delivering a controlled substance in Penalty Group 1-B and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance manufactured or delivered by the actor, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant. The bill establishes as a defense to prosecution for this conduct that the actor's conduct in manufacturing or delivering the controlled substance was authorized under the Texas Controlled Substances Act, other state law, or federal law.

C.S.H.B. 6 creates a second degree felony offense for a person who recklessly manufactures or delivers a controlled substance in Penalty Group 1-B and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance manufactured or delivered by the actor, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant. The bill establishes as a defense to prosecution for the offense that the actor's conduct in manufacturing or delivering the controlled substance was authorized under the Texas Controlled Substances Act, other state law, or federal law.

C.S.H.B. 6 creates a state jail felony offense for a person who, with criminal negligence, manufactures or delivers a controlled substance in Penalty Group 1-B and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance manufactured or delivered by the actor, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant. The bill establishes as a defense to prosecution for the offense that the actor's conduct in manufacturing or delivering the controlled substance was authorized under the Texas Controlled Substances Act, other state law, or federal law.

C.S.H.B. 6 amends the Health and Safety Code to prohibit the increase of punishment for the offense of manufacturing or delivering a controlled substance causing death or serious bodily

injury if the defendant is also prosecuted for any of the following offenses and the death of an individual occurred during the same criminal episode:

- murder in which the actor knowingly manufactures or delivers a controlled substance in Penalty Group 1-B the introduction of which into an individual's body results in their death;
- the second degree felony offense created by the bill; or
- the state jail felony offense created by the bill.

C.S.H.B. 6 applies only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 6 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions that transfer specified opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of these isomers, esters, ethers, and salts is possible within an applicable chemical designation, from Penalty Group 1 to Penalty Group 1-B. The introduced did not include these provisions.

The substitute includes a requirement absent from the introduced for the medical certification on a death certificate in the event of a poisoning involving a Penalty Group 1-B controlled substance to list the name of the Penalty Group 1-B controlled substance or substances as the cause of death and, except as otherwise specifically established by the medical examiner, list "homicide" as the manner of death.

The substitute includes provisions absent from the introduced that do the following with respect to the offense of murder:

- expand the conduct that constitutes the offense to include knowingly manufacturing or delivering a controlled substance in Penalty Group 1-B and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of that substance, regardless of whether the substance was used by itself or with another substance, including a drug, adulterant, or dilutant; and
- establish a defense to prosecution that the actor's conduct in manufacturing or delivering the controlled substance was authorized under the Texas Controlled Substances Act, other state law, or federal law.

The substitute includes provisions absent from the introduced that do the following:

- create a second degree felony offense involving the reckless manufacture or delivery of a controlled substance in Penalty Group 1-B that results in the victim's death; and
- create a state jail felony offense involving the manufacture or delivery, with criminal negligence, of a controlled substance in Penalty Group 1-B that results in the victim's death.

Accordingly, the substitute includes defenses to prosecution for both offenses that were not present in the introduced.

The substitute includes a prohibition absent from the introduced against increasing the punishment for the offense of manufacturing or delivering a controlled substance causing death

or serious bodily injury if the defendant is also prosecuted for any of the following offenses and the death of an individual occurred during the same criminal episode:

- murder in which the actor knowingly manufactures or delivers a controlled substance in Penalty Group 1-B the introduction of which into an individual's body results in their death;
- the second degree felony offense created by the bill; or
- the state jail felony offense created by the bill.