

BILL ANALYSIS

Senate Research Center
88R29403 CJD-D

C.S.H.B. 6
By: Goldman et al. (Huffman)
Criminal Justice
5/11/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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. H.B. 6 seeks to address this issue by increasing criminal penalties for the manufacturing or delivery of fentanyl, expanding the conduct constituting murder, and creating two criminal offenses involving the manufacture or delivery of certain opioids.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 6 amends current law relating to the designation of fentanyl toxicity for the purposes of the death certificate and to the criminal penalties for certain controlled substance offenses and increases a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 193.005, Health and Safety Code, by adding Subsections (e-1), as follows:

(e-1) Requires the medical certification on a death certificate to include the term "Fentanyl Toxicity" if:

- (1) a toxicology examination reveals a controlled substance listed in Penalty Group 1-B present in the body of the decedent in an amount or concentration that is considered to be lethal by generally accepted scientific standards; and
- (2) the results of an autopsy performed on the decedent are consistent with an opioid overdose as the cause of death.

SECTION 2. Amends Section 481.102, Health and Safety Code, as follows:

Sec. 481.102. PENALTY GROUP 1. Provides that Penalty Group 1 consists of:

- (1) deletes existing text providing that Penalty Group 1 includes certain opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, including:

Alfentanil; and

Sufentanil;

(2)-(3) makes no changes to these subdivisions;

(4) deletes existing text providing that Penalty Group 1 includes certain opiates, including their isomers, esters, ethers, salts, and salts of isomers, if existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation; and

(5)-(16) makes no changes to these subdivisions.

SECTION 3. Amends Section 481.1022, Health and Safety Code, to provide that Penalty Group 1-B includes certain 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.

SECTION 4. Amends Sections 481.112(e) and (f), Health and Safety Code, as follows:

(e) Provides that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1, except as authorized by Chapter 481 (Texas Controlled Substances Act)) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice (TDCJ) for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) Makes a conforming change to this subsection.

SECTION 5. Amends Section 481.1121(b), Health and Safety Code, as follows:

(b) Provides that an offense under Section 481.1121 (Offense: Manufacture or Delivery of Substance in Penalty Group 1-A) is:

(1)-(3) makes no changes to these subdivisions; and

(4) a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 4,000 or more.

SECTION 6. Amends Sections 481.1123(b), (d), (e), and (f), Health and Safety Code, as follows:

(b) Provides that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B, except as authorized by this chapter) is a felony of the third degree, rather than a state jail felony, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(d) Provides that an offense under Subsection (a) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$20,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e)-(f) Makes conforming changes to these subdivisions.

SECTION 7. Amends Section 481.113(e), Health and Safety Code, to provide that an offense under Subsection (a) (relating to providing that a person commits an offense if the person

knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 2 or 2-A, except as authorized by this chapter) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 8. Amends Section 481.114(e), Health and Safety Code, to provide that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 3 or 4, except as authorized by this chapter) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

SECTION 9. Amends Section 481.115(f), Health and Safety Code, to provide that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1 or 1-B, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice, except as authorized by this chapter) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 10. Amends Section 481.1151(b), Health and Safety Code, as follows:

(b) Provides that an offense under Section 481.1151 (Offense: Possession of Substance in Penalty Group 1-A) is:

(1)-(4) makes no changes to these subdivisions; and

(5) a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 8,000 or more.

SECTION 11. Amends Section 481.116(e), Health and Safety Code, to provide that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 2, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice, except as authorized by this chapter) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 12. Amends Section 481.1161(b), Health and Safety Code, as follows:

(b) Provides that an offense under Section 481.1161 (Offense: Possession of Substances in Penalty Group 2-A) is:

(1)-(5) makes no changes to these subdivisions; and

(6) a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, more than 2,000 pounds.

SECTION 13. Amends Section 481.117(e), Health and Safety Code, to provide that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice, except as authorized by this chapter) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 14. Amends Section 481.118(e), Health and Safety Code, to provide that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 4, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of practice, except as authorized by this chapter) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 15. Amends Section 481.120(b), Health and Safety Code, to provide that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly or intentionally delivers marihuana, except as authorized by this chapter) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana delivered is more than 2,000 pounds.

SECTION 16. Amends Section 481.121(b), Health and Safety Code, to provide that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana, except as authorized by this chapter) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana possessed is more than 2,000 pounds.

SECTION 17. Amends Section 481.126(a), Health and Safety Code, as follows:

(a) Provides that a person commits an offense if the person:

(1) barter property or expend funds the person knows are derived from the commission of a first degree felony offense under this chapter punishable by imprisonment in TDCJ for life; or

(2)-(4) makes no changes to these subdivisions.

SECTION 18. Reenacts Section 481.134(c), Health and Safety Code, as amended by Chapters 584 (S.B. 768) and 807 (H.B. 1540), Acts of the 87th Legislature, Regular Session, 2021, and amends it, as follows:

(c) Provides that the minimum term of confinement or imprisonment for an offense otherwise punishable under certain sections, including Section 481.1123(b) and (c) (relating to providing that an offense under Subsection (a) (relating to providing that a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B, except as authorized by this chapter) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams), is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed under certain circumstances. Makes a nonsubstantive change.

SECTION 19. Amends Section 481.141, Health and Safety Code, by adding Subsection (d), as follows:

(d) Prohibits punishment from being increased under Section 481.141 (Manufacture or Delivery of Controlled Substance Causing Death or Serious Bodily Injury) if the defendant is also prosecuted under Section 19.02(b)(4), Penal Code, for conduct occurring during the same criminal episode.

SECTION 20. Amends Section 19.02, Penal Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Provides that a person commits an offense if the person:

(1) makes no changes to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions;

(4) knowingly manufactures or delivers a controlled substance included in Penalty Group 1-B under Section 481.1022 (Penalty Group 1-B), Health and Safety Code, in violation of Section 481.1123 (Offense: Manufacture or Delivery of Substance in Penalty Group 1-B), Health and Safety Code, 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.

SECTION 21. Amends Section 71.02(a), Penal Code, as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1)-(5-a) makes no changes to these subdivisions;

(5-b) unlawful possession with intent to deliver a controlled substance listed in Penalty Group 1-B under Section 481.1022, Health and Safety Code; or

(6)-(19) makes no changes to these subdivisions.

SECTION 22. Provides that the change in law made by this Act to Section 193.005, Health and Safety Code, applies only to a death that occurs on or after the effective date of this Act, or a death that occurs before that date but is discovered on or after the effective date of this Act.

SECTION 23. Makes application of the changes in law made by this Act to Chapter 481, Health and Safety Code, and Sections 19.02 and 71.02, Penal Code, prospective.

SECTION 24. Provides that to the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 25. Effective date: September 1, 2023.