

## **BILL ANALYSIS**

C.S.H.B. 4642  
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Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In September 2022, Governor Abbott sent a letter to the heads of various state agencies directing those agencies to ramp up anti-fentanyl efforts. In that letter, Governor Abbott noted that fentanyl is a synthetic opioid that is up to 100 times more potent than morphine and further noted that there was an 89 percent increase in fentanyl-related deaths in Texas between 2020 and 2021. That same month, Governor Abbott issued an executive order designating Mexican drug cartels as terrorist organizations and directed the Department of Public Safety (DPS) to take action to keep Texans safe from the ongoing fentanyl crisis. The director of DPS, Steve McCraw, has also publicly stated that the state is facing increasing dangers from the growing fentanyl crisis and that Mexican drug cartels are targeting children.

Due to the dangerous nature of fentanyl and the difficulty that local law enforcement has had with prosecuting transnational criminal activity, the legislature must act to ensure that offenses involving the deadly use of fentanyl are punished appropriately and that law enforcement is educated on the best practices for the investigation and prosecution of the criminal activity involving fentanyl. C.S.H.B. 4642 would address the fentanyl crisis by creating a stand-alone felony offense of lethal opioid poisoning and by establishing a fentanyl offenses enforcement training program.

### **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. 4642 amends the Penal Code to create the first degree felony offense of lethal opioid poisoning for a person who knowingly manufactures or delivers a controlled substance listed in Penalty Group 1-B under the Texas Controlled Substances Act, which consists of fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl, in violation of the provisions of that act establishing an offense involving the manufacture or delivery of such a substance and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance that was manufactured or delivered by the actor, regardless of whether the controlled substance was used by itself or with any other substance, including a drug, adulterant, or dilutant. The bill establishes as a defense to prosecution for lethal opioid poisoning that the actor's conduct in manufacturing or delivering the controlled substance was authorized under any state or federal law. If conduct that constitutes the offense also

constitutes another offense under the Penal Code, the actor may be prosecuted for either offense, but not both.

C.S.H.B. 4642 amends the Code of Criminal Procedure, Education Code, Estates Code, Family Code, Government Code, Health and Safety Code, Occupations Code, and Penal Code to do the following with respect to lethal opioid poisoning:

- require a law enforcement agency to make a complete and contemporaneous electronic recording of any custodial interrogation that occurs in a place of detention of a person suspected of committing or charged with the commission of the offense of lethal opioid poisoning, unless good cause exists that makes electronic recording infeasible;
- include the offense of lethal opioid poisoning among the offenses for which there is no statute of limitations within which a felony indictment may be brought;
- make a defendant charged with the offense of lethal opioid poisoning generally ineligible for release on personal bond;
- make a defendant who, while released on bail or community supervision for the offense of lethal opioid poisoning, is charged with committing a felony offense or any of the following misdemeanor offenses ineligible for release on personal bond:
  - assault involving intentionally, knowingly, or recklessly causing bodily injury to another;
  - deadly conduct;
  - terroristic threat; or
  - disorderly conduct involving a firearm;
- make a defendant previously convicted of the offense of lethal opioid poisoning ineligible for release on personal bond;
- require a magistrate who issues an order imposing a condition of bond on a defendant for the offense of lethal opioid poisoning to notify the sheriff of the condition of bond and provide the sheriff with certain information about the order as soon as practicable but not later than the next day after issuance;
- include the offense of lethal opioid poisoning among the offenses for which an interception order may be issued;
- include the offense of lethal opioid poisoning among the offenses for which certain testimony made by a child younger than 13 years of age determined by a court to be unavailable to testify in the presence of the defendant may be admissible into evidence during trial under certain circumstances;
- make a defendant adjudged guilty of the offense of lethal opioid poisoning ineligible for judge-ordered community supervision, jury-recommended community supervision, or deferred adjudication community supervision;
- require a student to be expelled from a public school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property, engages in conduct that contains the elements of the offense of lethal opioid poisoning;
- expand the circumstances under which a probate court may enter an order declaring that the parent of a child under 18 years of age may not inherit from or through the child under the laws of descent and distribution to include the court finding by clear and convincing evidence that the parent has been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the provisions governing the offense of lethal opioid poisoning;
- include the offense of lethal opioid poisoning among those eligible for a determinate sentence;
- expand the grounds for the involuntary termination of the parent-child relationship to include a finding of clear and convincing evidence that the parent has been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the provisions governing the offense of lethal opioid poisoning, or under a law of

another jurisdiction that contains elements that are substantially similar to the elements of the offense of lethal opioid poisoning, or adjudicated under the juvenile justice code for conduct that caused the death or serious injury of a child and that would constitute the offense of lethal opioid poisoning;

- expand the circumstances under which the court, in an adversary hearing, may find that a parent has subjected the child to aggravated circumstances to include the parent having engaged in conduct against the child or another child of the parent that would constitute the offense of lethal opioid poisoning;
- make a person who requests an order of nondisclosure of criminal history record information for, or who has been previously convicted of or placed on deferred adjudication community supervision for, the offense of lethal opioid poisoning ineligible to be granted an order of nondisclosure and to establish that the person is not entitled to petition the court for such an order;
- include a defendant arrested for the offense of lethal opioid poisoning among the defendants who must be required to provide one or more specimens for the purpose of creating a DNA record;
- make an inmate who is awaiting transfer to the institutional division of the Texas Department of Criminal Justice, or serving a sentence, for the offense of lethal opioid poisoning ineligible to be considered for release to intensive supervision parole;
- make an inmate who is serving a sentence for or who has been previously convicted of the offense of lethal opioid poisoning ineligible for release to mandatory supervision;
- prohibit the punishment for a defendant from being increased under provisions of the Texas Controlled Substances Act providing for the increase in punishment for an offense involving the manufacture or delivery of a controlled substance that causes death or serious bodily injury if the defendant is also prosecuted for the offense of lethal opioid poisoning for conduct occurring during the same criminal episode;
- require the Texas Board of Nursing to suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of the offense of lethal opioid poisoning;
- classify lethal opioid poisoning as a type of criminal homicide; and
- expand the conduct constituting the offense of engaging in organized criminal activity to include a person, with the requisite intent, committing or conspiring to commit lethal opioid poisoning.

C.S.H.B. 4642 requires the Department of Public Safety (DPS), in coordination with local law enforcement agencies, to establish and administer a fentanyl offenses enforcement training program for peace officers employed by local law enforcement agencies that will prepare the officers to do the following:

- collaborate and cooperate with and assist any law enforcement agency in the interdiction, investigation, and prosecution of offenses under the Texas Controlled Substances Act involving the manufacture or delivery of a controlled substance in Penalty Group 1-B; and
- collaborate and cooperate with and assist district attorneys, county attorneys, the border prosecution unit, and other prosecutors in the investigation and prosecution of allegations of those offenses.

The bill requires the training program to include the following:

- information on criminal activity related to controlled substances in Penalty Group 1-B occurring along the Texas-Mexico border, including manufacture and delivery of those controlled substances carried out by cartels, transnational gangs, and other groups engaged in organized criminal activity;
- information on methods for identifying intrastate criminal activity associated with the manufacture or delivery of a controlled substance listed in Penalty Group 1-B and other organized criminal activity related to those controlled substances; and

- best practices for investigating and prosecuting this criminal activity and the safest methods for handling a controlled substance listed in Penalty Group 1-B as determined by the Health and Human Services Commission (HHSC).

C.S.H.B. 4642 authorizes the Texas Commission on Law Enforcement (TCOLE) to recognize or, with the consent of DPS, administer or assist in administering the training program as a continuing education program for peace officers and reserve law enforcement officers. The bill authorizes TCOLE to credit an officer who successfully completes the program with the appropriate number of continuing education hours.

C.S.H.B. 4642 establishes the fentanyl offenses enforcement task force to compile data on criminal activity in the Texas-Mexico border region related to the manufacture or delivery of a controlled substance listed in Penalty Group 1-B and develop best practices for:

- investigating, interdicting, and prosecuting criminal activity that constitutes an offense under the Texas Controlled Substances Act involving the manufacture or delivery of a controlled substance in Penalty Group 1-B; and
- safely handling a controlled substance listed in Penalty Group 1-B.

The bill requires the governor to appoint to the task force two members representing DPS, two members representing HHSC, and two members representing TCOLE. The bill requires the task force, not later than six months after the date the governor appoints members to the task force, to submit to the governor and the public safety director of DPS a report containing the data and best practices compiled and developed by the task force. The task force is abolished and these provisions expire December 1, 2024.

### **EFFECTIVE DATE**

September 1, 2023.

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

While C.S.H.B. 4642 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 introduced and the substitute each relate to opioids and the controlled substances listed in Penalty Group 1-B under the Texas Controlled Substances Act. However, whereas the introduced dealt entirely with the concept of "lethal poisons," which the introduced established as consisting wholly or partly of a controlled substance listed in Penalty Group 1-B, the substitute does not use this term. The substitute instead references specifically the controlled substances listed in Penalty Group 1-B without the descriptor of "lethal poisons" and without the distinction of wholly or partly containing a Penalty Group 1-B substance.

With respect to the provisions in the introduced creating the offense of lethal poisoning, the substitute does the following:

- changes the name of the offense to lethal opioid poisoning;
- prescribes a penalty for the offense, which is a first degree felony, whereas no specific penalty is prescribed in the introduced;
- revises the conduct constituting the offense by:
  - removing the reference to trafficking of substances included in the introduced;
  - including inhaling the substance into one's body among the qualifying manners of contacting the substance that, if death results, triggers the applicability of the offense; and
  - specifying that, for purposes of the provision stating that the offense applies regardless of whether the substance was used by itself or with another substance, the other substances referenced include a drug, adulterant, or dilutant;

- establishes a requisite state of mind for the offense of knowing the person engaged in the prohibited conduct, whereas no requisite state of mind was established in the introduced;
- changes the exception to the offense, which was provided for in the introduced, to a defense to prosecution and expands the scope of the provision from referencing only conduct that is authorized under the Texas Controlled Substances Act to conduct authorized under any state or federal law; and
- includes a provision absent from the introduced establishing that if conduct that constitutes the offense established by the bill also constitutes an offense under another Penal Code provision, the actor may be prosecuted for either offense, but not both.

All other provisions included in the substitute with respect to the treatment of the offense created under the bill or of the consequences of being charged with or convicted of the offense are unique to the substitute and were not included in the introduced.

The substitute revises the provisions in the introduced requiring DPS to establish and administer a lethal poisoning prevention training program to require instead that DPS establish and administer a fentanyl offenses enforcement training program. With respect to the required components of the training program, the substitute omits references to trafficking which appeared in the introduced. Additionally, the substitute omits provisions from the introduced requiring DPS to identify opportunities for peace officers to assist DPS in its duties relating to the interdiction of lethal poisons and establishing that an officer providing such assistance is not entitled to compensation from DPS for the assistance provided.

While both the introduced and the substitute provide for the establishment of a task force to address Penalty Group 1-B substances, the introduced required the governor to establish a lethal poisoning prevention task force, whereas the substitute itself establishes a fentanyl offenses enforcement task force. Moreover, while the introduced put its task force into statute on a permanent basis, the substitute instead creates its task force through a temporary procedural provision that is set to expire December 1, 2024, on which date the task force is abolished. The substitute omits the reference to trafficking included in the introduced with respect to the data compilation requirement for the task force.