
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1598 **Hearing Date:** June 14, 2022
Author: Davies
Version: May 23, 2022
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Controlled substances: paraphernalia: controlled substance testing*

HISTORY

Source: Author

Prior Legislation: None

Support: Alcohol Justice; Arcadia Police Officers' Association; Burbank Police Officers' Association; California Association of Alcohol and Drug Executives, INC; California Attorneys for Criminal Justice; California Chapter of the American College of Emergency Physicians; California Coalition of School Safety Professionals; California Consortium of Addiction Programs and Professionals; California Council of Community Behavioral Health Agencies; California State Sheriffs' Association; Claremont Police Officers' Association; Corona Police Officers' Association; County of Orange; County of San Diego; Culver City Police Officers' Association; Fullerton Police Officers' Association; Inglewood Police Association; Los Angeles County District Attorney's Office; Los Angeles Schools Police Association; Newport Beach Police Association; Palos Verdes Police Officers' Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Prosecutors Alliance of California; Riverside Police Officers' Association; Riverside Sheriffs' Association; Santa Ana Police Officers' Association; Upland Police Officers' Association

Opposition: None known

Assembly Floor Vote: 70 - 0

PURPOSE

The purpose of this bill is to exclude from the definition of "drug paraphernalia" any testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of fentanyl or any fentanyl analog, ketamine, or gamma hydroxybutyric acid (GHB).

Existing law defines "drug paraphernalia" as all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human a body a controlled substance. (Health & Saf. Code, §§ 11014.5, subd. (a), 11364.5, subd. (a).)

Existing law provides that drug paraphernalia includes testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances. (Health & Saf. Code, §§ 11014.5, subd. (a)(4), 11364.5, subd. (d)(4).)

Existing law prohibits a person from maintaining or operating any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded. (Health & Saf. Code, §11364.5. subd. (a).)

This bill excludes from the definition of “drug paraphernalia” any testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of fentanyl or any fentanyl analog, ketamine, or GHB.

This bill includes uncodified intent language.

COMMENTS

1. Need For This Bill

According to the author:

Prior to the Covid-19 global pandemic, California was already facing an epidemic of our own. The battle with opioids has been sweeping into our neighborhoods and communities for far too long. The worst of these opioids is Fentanyl. Due to the pandemic, our state has seen a surge of users and deaths as a result of the increased trafficking of this drug. In order to combat this increase, we must increase the tools in our tool-belt to prevent accidental overdoses and deaths. One way to do this is to reform our ‘drug paraphernalia’ laws to not criminalize life-saving products and technologies. AB 1598 seeks to do just that and ensure members of the general public like teachers, parents and other health officials have access to these products anytime and any place.

2. Fentanyl and Fentanyl-Related Substances

Fentanyl was synthesized in 1959 and has been used medically since the 1960s. The Centers for Disease Control and Prevention (CDC) website provides this description of fentanyl:

Fentanyl, a synthetic and short-acting opioid analgesic, is 50-100 times more potent than morphine and approved for managing acute or chronic pain associated with advanced cancer.... [M]ost cases of fentanyl-related morbidity and mortality have been linked to illicitly manufactured fentanyl and fentanyl analogs, collectively referred to as non-pharmaceutical fentanyl (NPF). NPF is sold via illicit drug markets for its heroin-like effect and often mixed with heroin and/or cocaine as a combination product—with or without the user’s knowledge—to increase its euphoric effects. While NPF-related overdoses can be reversed with naloxone, a higher dose or multiple number of doses per overdose event may be required ...due to the high potency of NPF. (Internal footnotes omitted.) (<<http://emergency.cdc.gov/han/han00384.asp>> [as of Jun. 7, 2022].)

Legitimate fentanyl, also known as pharmaceutical fentanyl, is prescribed by a physician in a variety of forms, including lozenges, nasal sprays, and transdermal patches. While some pharmaceutical fentanyl is diverted, this is typically done on a small scale and often for personal use. Illicitly-produced fentanyl is primarily manufactured in laboratories in China and Mexico, and then shipped to the U.S. or smuggled across the U.S.-Mexico border. It is distributed in the form of powder or as counterfeit prescription pills. The Drug Enforcement Administration (DEA) reports that the fentanyl coming into the U.S. directly from China has purities commonly testing above 90 percent, while the fentanyl trafficked into the country from Mexico is generally low in purity. (<<https://www.dea.gov/sites/default/files/2018-11/DIR-032-18%202018%20NDTA%20final%20low%20resolution.pdf>> [as of Jun. 7, 2022].)

Illicitly-produced fentanyl is frequently mixed with heroin, often without the knowledge of the purchaser. The DEA reports that it is increasingly common for fentanyl to be mixed with adulterants and diluents and sold as heroin, although no heroin is present in the product. (*Id.*; see also <https://www.washingtonpost.com/world/national-security/at-the-new-york-division-of-fentanyl-inc-a-banner-year/2017/11/13/c3cce108-be83-11e7-af84-d3e2ee4b2af1_story.html?noredirect=on&utm_term=.8fd868ed8b2b> [as of Jun. 7, 2022].) Reports by law enforcement agencies and health care providers in recent years indicate that fentanyl is appearing in cocaine more frequently than had previously been seen. (<<https://www.npr.org/sections/health-shots/2018/03/29/597717402/fentanyl-laced-cocaine-becoming-a-deadly-problem-among-drug-users>>; <<https://www.theatlantic.com/health/archive/2018/05/americas-opioid-crisis-is-now-a-fentanyl-crisis/559445/>>; <<https://www.motherjones.com/politics/2018/04/americas-fentanyl-problem-is-reaching-a-whole-new-group-of-users/>> [as of Jun. 7, 2022].) A recent analysis by the DEA’s Special Testing and Research Laboratory’s Fentanyl Signature Profiling Program conducted on wholesale seizures—defined generally as seizures greater than one kilogram—indicated that “heroin is rarely mixed with fentanyl at the wholesale level...[which] points to the likelihood that U.S.-based drug trafficking organizations and dealers are responsible for mixing fentanyl with heroin at the regional and local levels for retail consumption...allow[ing] dealers to maximize profitability by extending heroin supplies.” (<https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf> [as of Jun. 7, 2022].)

Many cases that are reported as involving fentanyl actually involve one of several fentanyl-related substances. Fentanyl-related substances are in the same chemical family as fentanyl and have similar pharmacological effects, but have slight variations in their chemical structure.

3. Harm Reduction Approach to Drug Use

Initially developed for adults with substance use disorders for whom abstinence was not feasible, harm reduction is a public health strategy in which the primary objective is to minimize the adverse consequences of the problematic behavior. Examples of harm reduction strategies employed by the state to address the ongoing opioid epidemic include the expansion of access to medication-assisted treatment services and the naloxone distribution program. The legalization of pharmacists to furnish hypodermic needles and syringes without a prescription or a permit to a person who is 18 or older as well as the legalization of a person who is 18 or older to obtain hypodermic needles and syringes from a physician or pharmacist without a prescription or license are additional examples of harm reduction strategies designed to minimize the spread of HIV, hepatitis B, and hepatitis C among people who inject drugs.

Fentanyl test strips (FTS), used to detect fentanyl in illicit or unregulated drugs, are another harm reduction strategy that can reduce the risk of overdose. FTS can be used to test injectable drugs, powders, and pills. (<https://harmreduction.org/issues/fentanyl/>) Their use has become more common in recent years as drug overdose deaths, often attributable to fentanyl, have increased significantly. In 2021, the CDC and Substance Abuse and Mental Health Services Administration announced that federal funding could be used by grantees, including state, county, and city health departments, to purchase FTS. (<https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html>)

FTS have historically been prohibited under drug paraphernalia laws although many states have recently legalized them. This bill would exclude from the definition of “drug paraphernalia” any testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of fentanyl or any fentanyl analog. This bill would also apply to testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of ketamine and GHB which are often surreptitiously placed into a person’s drink with the intent to sexually assault the person who consumes the beverage.

4. Argument in Support

According to the Los Angeles County District Attorney’s Office:

AB 1598 seeks to take preventative steps to protect individuals from unknowingly ingesting fentanyl or an analog of fentanyl. Most of the overdose and deaths caused by opioids have been linked to fentanyl which is often pressed into counterfeit pills and sold to unknowing buyers. One way to reduce the number of fentanyl overdoses and deaths is through the use of fentanyl test strips. ...

Under California law, fentanyl test strips are considered drug paraphernalia and therefore are illegal to possess. Colorado, Virginia, and Maryland amended their state paraphernalia laws to specifically exclude fentanyl test strips as a means of reducing fentanyl overdoses and deaths. AB 1598 aims to do the same.

AB 1598 would also help protect individuals from unknowingly ingesting ketamine or GHB ... [which] are commonly used to commit sexual assaults by surreptitiously mixing these drugs into an alcoholic cocktail. Testing equipment has been developed that can detect the presence of these drugs in a drink. In order to combat sexual assault and to protect the public, AB 1598 would also exclude testing tools that can detect the presence of ketamine and GHB from the definition of drug paraphernalia. Excluding testing equipment that detects the presence of illicit narcotics like fentanyl, ketamine and GHB makes sense and will help protect the public at large.

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