

# SENATE BILL REPORT

## ESSB 5010

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As Passed Senate, March 1, 2023

**Title:** An act relating to updating the endangerment with a controlled substance statute to include fentanyl or synthetic opioids.

**Brief Description:** Updating the endangerment with a controlled substance statute to include fentanyl or synthetic opioids.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Wilson, L., Holy, Wilson, J., Braun, Schoesler, King, Short, Fortunato, Padden, Torres, Dozier, Gildon, Rolfes, Wagoner and Warnick).

**Brief History:**

**Committee Activity:** Law & Justice: 1/12/23, 1/19/23 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 3/1/23, 47-0.

### Brief Summary of Engrossed First Substitute Bill

- Expands the felony offense of endangerment with a controlled substance by prohibiting knowing or intentional exposure of a dependent adult or dependent child to fentanyl, synthetic opioids, or the smoke created from a substance containing fentanyl or synthetic opioids.
- Exempts fentanyl or synthetic opioids that are provided during delivery of health care services or pursuant to a valid prescription.
- Exempts the Department of Children, Youth, and Families and its employees, volunteers, or contractors from criminal liability while acting in the scope of their roles.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5010 be substituted therefor, and the substitute bill do pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Dhingra, Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

**Minority Report:** That it be referred without recommendation.

Signed by Senator Trudeau, Vice Chair.

**Staff:** Kevin Black (786-7747)

**Background:** A person commits the crime of endangerment with a controlled substance if they knowingly or intentionally permit a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, including the components used to manufacture methamphetamine. Endangerment with a controlled substance is a class B felony, seriousness level IV for the purpose of the sentencing grid, with a standard sentencing range of from 3 to 9 months to 63 to 84 months, depending on the defendant's offender score.

Opioids are a class of drugs that include the illegal drug heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription, such as oxycodone, hydrocodone, codeine, morphine, and many others. Fentanyl is a powerful synthetic opioid similar to morphine, but is 50 to 100 times more potent. Currently the misuse of opioids is causing a serious public health and community crisis, with about two people dying of an opioid-related overdose in Washington State every day, and thousands more struggling with addiction. According to the Centers for Disease Control and Prevention, fentanyl is now associated with two-thirds of all opioid-related overdose deaths in the United States.

During the last five fiscal years, an average of about three individuals per year have been convicted of endangerment with a controlled substance, ranging from a high of seven to a low of zero convictions per year.

The Department of Children, Youth, and Families is the lead agency for certain state-funded services that support children and families. It has oversight of programs such as child protective services, family assessment response, licensed foster care, adoption support, early childhood education and assistance, Working Connections child care, home visiting, and juvenile rehabilitation.

**Summary of Engrossed First Substitute Bill:** The crime of endangerment with a controlled substance is expanded to prohibit a person from knowingly or intentionally permitting a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with fentanyl or synthetic opioids, or the smoke of a substance that the person knows, or reasonably should know, contains or is contaminated with fentanyl or synthetic opioids. The offense does not apply to medications administered or provided during the delivery of health care services or pursuant to a valid prescription.

The Department of Children, Youth, and Families and any employees, interns, volunteers,

or contractors of the department who are acting in the scope of their role are exempt from criminal liability for endangerment with a controlled substance.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on First Substitute:** PRO: Overdosing is an alarming trend in Washington, especially with fentanyl, which has had an outsize impact on deaths, especially concerning young adults. The laws have become outdated. State laws which allow charges to be filed when children are exposed to dangerous drugs should include fentanyl. The last update was in 2005. This will be a useful tool to hold people accountable for harming children. These situations are life-threatening, but there is no appropriate law to hold the person accountable when the child makes a recovery. We've seen increase in cases of children exposed to fentanyl and other opioids. In 2021 there were only 25 such cases in Vancouver, Washington, and by 2022 this number jumped to 46. The only recourse is a citation for misdemeanor reckless endangerment. To be able to effect a felony arrest allows time to complete an investigation and execute a search warrant that can protect other children.

CON: Creating a new felony for something which is at its core a substance use disorder is not the way to go. We've tried this approach for 50 years and it's been an utter failure. We should not continue to legislate by anecdote. Experts on substance use disorders have testified that criminalizing drug use is not helpful for the user, their family, or society. We should move away from a punitive approach to a medical model. Other criminal statutes apply to sanction the examples given today.

**Persons Testifying:** PRO: Senator Lynda Wilson, Prime Sponsor; Erik Podhora, Clark County Prosecuting Attorney's Office; Gunnar Skollingsberg, Vancouver Police Department; Wayne Phillips, Clark County Sheriff's Office.

CON: David Trieweiler, Washington Association of Criminal Defense Lawyers, Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** No one.