

SENATE BILL REPORT

SSB 5071

As Passed Senate, February 5, 2025

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 Braun, Dhingra, Christian, Dozier, Fortunato, Gildon, King, Krishnadasan, McCune, Wagoner, Warnick and Wilson, J.).

Brief History:

Committee Activity: Law & Justice: 1/20/25, 1/23/25 [DPS].

Floor Activity: Passed Senate: 2/5/25, 42-7.

Brief Summary of First Substitute Bill

- Expands the scope of the crime of endangerment with a controlled substance to include fentanyl and synthetic opioids, not just substances related to methamphetamine.
- Lowers the mental state required for conviction from knowingly and intentionally to knowingly and recklessly.
- Enacts certain exemptions from criminal liability.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5071 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Holy, Ranking Member; Fortunato, Lovick, Salomon, Torres, Valdez and Wagoner.

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.

Staff: Patrick Moore (786-7535)

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.

Between fiscal years 2019 to 2023, an average of about three individuals per year were convicted of endangerment with a controlled substance, ranging from a high of seven to a low of zero convictions per year.

Under state law, a controlled substance is a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, but does not include hemp or industrial hemp.

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 First Substitute Bill: The scope of the crime of endangerment with a controlled substance is expanded by:

- increasing the scope of applicability from methamphetamine, ephedrine, pseudoephedrine, or anhydrous ammonia, to include fentanyl or synthetic opioids, or the smoke of a substance which the person knows or reasonably should know contains fentanyl or synthetic opioids ;
- lowering the state of mind required for conviction from knowingly or intentionally to knowingly or recklessly;
- expanding the protected victims from dependent children and dependent adults to all children and dependent adults; and
- prohibiting permitting absorption of a controlled substance.

Exclusions from criminal liability are provided if the controlled substance was administered during the delivery of health care services or pursuant to a valid prescription, the controlled substance is administered to a child or dependent adult in the course of delivering health care services, or the person is an employee, intern, volunteer, or contractor of the Department of Children, Youth, and Families acting in the scope of their role.

Appropriation: None.

Fiscal Note: Requested on January 10, 2025.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We've seen a significant increase in the deaths of children as a result of exposure to fentanyl. This bill is about making sure we look after children; it does not mean neglecting treatment. The number of children referred to the Children's Advocacy Center for exposure to dangerous drugs has increased eight-fold. There are horror stories about what officers have been exposed to. Children should have the right to be free from exposure to deadly substances. Accidental drug ingestion has caused fatalities and near fatalities. People using drugs are failing to protect individuals in their care. This bill is an investment in the future of our state.

CON: Creating new felonies with substantial prison time, and lowering the burden of proof for what is, at its core, a substance use disorder, is a waste of time. We have tried this path before and it has failed. There are better, less traumatizing ways to protect children than hauling their parents off to prison. The Sentencing Guidelines Commission investigated this and the experts it consulted recommended moving to a medical model and away from a punitive criminal justice approach.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor; Anne Anderson, Washington State Narcotics Investigators Association; Dakota Manley, Washington State Young Republicans; Bryce Nelson, Pierce County Prosecutor's Office; James McMahan, Washington Association of Sheriffs & Police Chiefs.

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

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