

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3325

STATE OF NEW JERSEY

DATED: FEBRUARY 13, 2023

The Senate Judiciary Committee reports favorably Senate Bill No. 3325.

This bill would: (1) create new amount thresholds to establish new first-degree crimes for manufacturing, distributing, or dispensing fentanyl or its analog, or possessing such with intent to do so, as well as for simple possession of fentanyl; (2) reduce the current amount thresholds for second- and third-degree manufacturing, distributing, or dispensing fentanyl or its analog, or possessing such with intent to do so, thus upgrading the penalties for acts committed involving smaller amounts of such; and (3) add to the crime of manufacturing, distributing, or dispensing fentanyl or its analog, or possessing such with intent to do so, “fentanyl mixtures,” with distinct amount thresholds establishing the grading of criminal acts involving such mixtures.

DISTRIBUTION OR POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL AND FENTANYL MIXTURES.

Currently, under N.J.S.2C:35-5, it is a crime of the second degree to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, fentanyl (a Schedule II narcotic drug/opiate per section 6 of P.L.1970, c.226 (C.24:21-6)), or its analog, in a quantity of *one ounce or more* including any adulterants or dilutants. See N.J.S.2C:35-5, subsection b., paragraph (4). This is the highest degree of crime for fentanyl set forth in N.J.S.2C:35-5, and is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both. The bill would reduce the amount threshold to *five grams (0.176 ounce) or more* as well as establish a new maximum amount of *less than 10 grams (0.35 ounce)* for which the aforementioned penalties may be imposed.

In concert with the new “ceiling” on measuring the amount for the second-degree crime, the bill further establishes that an act committed with an amount of fentanyl above that “ceiling,” being *10 grams (0.35 ounce) or more*, would be a new first-degree crime. This would be punishable by a term of imprisonment of 10 to 20 years, an enhanced fine of up to \$500,000 (ordinarily a fine of up to \$200,000), or both.

It is currently a crime of the third degree if the quantity of fentanyl or its analog involved in the act is *less than one ounce* including any adulterants or dilutants. See N.J.S.2C:35-5, subsection b., paragraph (5). This, the lowest grading of the crime, is punishable by a term of

imprisonment of three to five years, an enhanced fine of up to \$75,000 (ordinarily a fine of up to \$15,000), or both. The bill would reduce the amount threshold for this lowest grade to *less than five grams (0.176 ounce)*, causing an act involving any greater amount of fentanyl to be graded at a higher degree and punishable as such, as described above.

As to fentanyl mixtures, the manufacturing, distributing, or dispensing of a mixture or its analog, or possessing such with intent to do so, would be graded as a crime of the first, second, or third degree based upon the following amount thresholds, which would include any adulterants or dilutants:

- first-degree, *100 grams (3.5 ounces) or more*;
- second-degree, *50 grams (1.76 ounces) or more but less than 100 grams (3.5 ounces)*; and
- third-degree, *less than 50 grams (1.76 ounces)*.

The same penalties available for the first, second, and third degree crimes involving fentanyl as described above would apply to the same degree of crime involving a fentanyl mixture.

POSSESSION OF FENTANYL.

In accordance with N.J.S.2C:35-10, possession of fentanyl, of any amount, is a crime of the third degree, punishable by a term of imprisonment of three to five years, an enhanced fine of up to \$35,000 (ordinarily a fine of \$15,000), or both. The bill would maintain the same degree of crime for possession of less than 10 grams (*0.35 ounce*) with the same term of imprisonment, but eliminate the enhanced fine so that the ordinary fine of \$15,000, generally applicable to all third-degree crimes, would apply. Additionally, the bill would create a new first-degree crime for possession of 10 grams (*0.35 ounce*) or more, which would be punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both.