

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO SENATE, No. 3325

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 12, 2023

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3325, with committee amendments.

As amended, this bill would: (1) create new amount thresholds to establish new first-degree crimes for manufacturing, distributing, dispensing, or possessing with the intent to manufacture, distribute or disperse fentanyl or its analog; and (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.

DISTRIBUTION OR POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL.

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, 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). At present, 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. It is a crime of the third degree if the quantity of fentanyl or its analog involved is *less than one ounce* including any adulterants or dilutants. See N.J.S.2C:35-5, subsection b., paragraph (5). This is the lowest grading of the crime, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

This bill would reduce the amount threshold for a crime of the second degree 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 addition to establishing a “ceiling” on the quantity of fentanyl for a second-degree crime under N.J.S.2C:35-5, the bill establishes that an act committed with an amount of fentanyl above *10 grams (0.35 ounce)* would be a new first-degree crime. A crime of the first degree is ordinarily punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both. In addition, under this bill, an enhanced fine of up to \$500,000 may be imposed.

The bill would reduce the amount threshold for a third degree violation to *less than five grams (0.176 ounce)*. Under this bill, an enhanced fine of up to \$75,000 may be imposed.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- (1) remove references to “fentanyl mixtures” from section 2;
- (2) remove section 3, which would have enhanced current penalties for possession or use of fentanyl;
- (3) change the synopsis to read: Enhances penalties for distribution and manufacture of certain amounts of fentanyl; and
- (4) make minor technical changes.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that this bill will result in annual State expenditure and revenue increases. The following State agencies would incur caseload and expenditure increases: i) the Department of Corrections would have to house more inmates for longer terms of imprisonment and the State Parole Board would have to supervise their return to society; ii) the Department of Law and Public Safety would have to prosecute additional cases; iii) the Judiciary would have to adjudicate additional cases; and iv) the Office of the Public Defender would have to represent additional low-income criminal defendants.

To the extent the bill results in additional incarcerations or longer incarcerations, the Department of Corrections would incur higher costs. The OLS does not have sufficient information on the potential increases in number of convictions and terms of imprisonment resulting from the bill’s provisions and therefore is unable to estimate the exact costs to the State.

The OLS notes that the State may receive indeterminate revenue from fines imposed on individuals convicted of the crimes under this bill. However, the State’s ability to collect criminal fines and penalties has historically been limited.