WEST virginia legislature

2024 regular session

Committee Substitute

for

House Bill 5319

By Delegates Kelly, Hott, Ward, Kump, Fehrenbacher, Mallow, Holstein, Pinson, Shamblin, Kirby, and Westfall

[Originating in the Committee on the Judiciary; Reported on February 12, 2024]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-5-17b, all relating to creating the offense of exposing a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel to fentanyl; creating the offense of exposing a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel to fentanyl causing death; creating the offense of exposing a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel to fentanyl causing bodily injury; requiring proof of a violation of this code; establishing criminal penalties; requiring proof of exposure; and providing definitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17b. Exposing a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel to fentanyl; penalties.

(a) Notwithstanding any provision of this code to the contrary, any person who commits any act in violation of any of the provisions of §60A-4-401 *et seq.* of this code or any provision of §61-5-8 of this code and thereby proximately causes the death of a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel lawfully acting in his or her official capacity as a result of exposure of any such persons to fentanyl used or possessed in the commission of the act is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility for a term of 15 years to life.

(b) Notwithstanding any provision of this code to the contrary, any person who commits any act in violation of any of the provisions of §60A-4-401 *et seq.* of this code or any provision of §61-5-8 of this code and thereby proximately causes the bodily injury of a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel lawfully acting in his or her official capacity as a result of exposure of any such persons to fentanyl used or possessed in the commission of the act is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility for a term of not less than three nor more than 15 years.

(c) For purposes of this section:

(1) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition, including, but not limited to, loss of consciousness or other symptoms of a fentanyl overdose which result in the immediate administration of an opioid antagonist medication.

(2) "Death" means the death of any law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel which ensues within one year as a proximate result of a bodily injury received in violation of this section.

(3) "Exposure" includes without limitation skin contact, inhalation, ingestion, or contact with a needlestick or a mucus membrane, including without limitation the mouth, eyes, or nose. Proof of exposure shall be based on a confirmed positive test for fentanyl administered by a medical professional immediately following the death or bodily injury of the law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel.

(4) “Fentanyl” refers to the substance identified in §60A-2-206 of this code, and any analog or derivative thereof.

(5) "Law-enforcement officer" has the same definition as that term is defined in §30-29-1 of this code, except for purposes of this section, "law-enforcement officer" shall additionally include those individuals defined as "chief executive", "law-enforcement official", and "pre-certified law-enforcement officer" in §30-29-1 of this code.

(d) The offenses set forth in this section shall be in addition to any other offenses set forth in this code.

NOTE: The purpose of this bill is to create the offense of exposing a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel to fentanyl.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.