

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]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §61-5-17b, all relating to creating the offense of exposing a law-enforcement
3 officer, probation officer, parole officer, courthouse security officer, correctional officer, the
4 State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical
5 service personnel to fentanyl; creating the offense of exposing a law-enforcement officer,
6 probation officer, parole officer, courthouse security officer, correctional officer, the State
7 Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service
8 personnel to fentanyl causing death; creating the offense of exposing a law-enforcement
9 officer, probation officer, parole officer, courthouse security officer, correctional officer, the
10 State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical
11 service personnel to fentanyl causing bodily injury; requiring proof of a violation of this
12 code; establishing criminal penalties; requiring proof of exposure; and providing
13 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.

1 (a) Notwithstanding any provision of this code to the contrary, any person who commits any
2 act in violation of any of the provisions of §60A-4-401 et seq. of this code or any provision of §61-5-
3 8 of this code and thereby proximately causes the death of a law-enforcement officer, probation
4 officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a
5 deputy or assistant fire marshal, firefighter, or emergency medical service personnel lawfully
6 acting in his or her official capacity as a result of exposure of any such persons to fentanyl used or

6 possessed in the commission of the act is guilty of a felony, and upon conviction thereof, shall be
7 imprisoned in a state correctional facility for a term of 15 years to life.

8 (b) Notwithstanding any provision of this code to the contrary, any person who commits any
9 act in violation of any of the provisions of §60A-4-401 et seq. of this code or any provision of §61-5-
10 8 of this code and thereby proximately causes the bodily injury of a law-enforcement officer,
11 probation officer, parole officer, courthouse security officer, correctional officer, the State Fire
12 Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel
13 lawfully acting in his or her official capacity as a result of exposure of any such persons to fentanyl
14 used or possessed in the commission of the act is guilty of a felony, and upon conviction thereof,
15 shall be imprisoned in a state correctional facility for a term of not less than three nor more than 15
16 years.

17 (c) For purposes of this section:

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

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

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

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

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

37 (d) The offenses set forth in this section shall be in addition to any other offenses set forth
38 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.