

**SUBJECT:** Designating certain deaths as poisonings and enhancing penalties

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Moody, Cook, Bhojani, Darby, Harrison, Schatzline  
2 nays — Bowers, C. Morales  
1 absent — Leach

**WITNESSES:** For — Andrew Anagnostis, Dallas County Criminal District attorney John Creuzot; Noel Johnson, Williamson County Sheriffs Office; Caren Burbach; Ed Burbach; Jena Ehlinger (*Registered, but did not testify*: Jennifer Szimanski, Combined Law Enforcement Associations of Texas; James Parnell, Dallas Police Association; Julio Gonzalez, Dallas Police Department; Joe Morris, Game Warden Peace Officer Association; Heidi Ruiz, Houston Police Department; Ray Hunt, HPOU; Tami Brown Rodriguez, Jaco Booyens Ministries; James Smith, San Antonio Police Department; Carlos Ortiz, San Antonio Police Officers Association; John Wilkerson, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; AJ Louderback, Texas Sheriffs Regional Alliance; Richard Millette; Jesse Williams)

Against — Sarah Reyes, Texas Center for Justice and Equity; Cate Graziani, JJ Ramirez, Texas Harm Reduction Alliance; Katy Dyer (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Maggie Luna, Statewide Leadership Council; Paulette Soltani, Texas Harm Reduction Alliance; and 18 individuals)

On — Stephen Pustilnik, Fort Bend County Medical Examiner; Keith Pinckard (*Registered, but did not testify*: Christopher Grisolia, Texas Cannabis Collective)

**DIGEST:** CSHB 6 would remove certain drugs related to fentanyl from Penalty Group 1 to and add them to Penalty Group 1-B.

CSHB 6 would specify that a poisoning occurred when:

- a toxicology examination revealed one or more controlled substances included in Penalty Group 1-B in the body of the decedent in an amount or concentration considered to be lethal by generally accepted scientific standards; or
- if an autopsy was performed, the results of the autopsy were consistent with one or more controlled substances included in Penalty Group 1-B as the cause of death.

If a poisoning occurred, the medical certification on the death certificate would have to list “(the name of the Penalty 1-B substance) poisoning” as the cause of death and, except as otherwise specifically established by the medical examiner, list “homicide” as the manner of death.

CSHB 6 would increase the penalty for knowingly manufacturing, delivering, or possessing with the intent to deliver a controlled substance listed in Penalty Group 1-B from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for amounts less than one gram.

CSHB 6 would add to conduct that constitutes murder an offense for knowingly manufacturing or delivering a controlled substance included in Penalty Group 1-B, and an individual died as a result of injecting, ingesting, inhaling, or introducing any amount of the controlled substance into the individual’s body, regardless of whether the controlled substance was used by itself or with another substance. It would be a defense to prosecution that manufacturing or delivering the controlled substance was authorized by state or federal law.

CSHB 6 would establish an offense of manslaughter for recklessly manufacturing a controlled substance in Penalty Group 1-B, and an individual died as a result of injecting, ingesting, inhaling, or introducing any amount of the controlled substance into the individual’s body, regardless of whether the controlled substance was used by itself or with

another substance. It would be a defense to prosecution that manufacturing or delivering the controlled substance was authorized by state or federal law. The offense would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

The bill also would establish an offense of criminally negligent homicide for a person who manufactured or delivered a controlled substance included in Penalty Group 1-B with criminal negligence, and an individual died as a result of injecting, ingesting, inhaling, or introducing any amount of the controlled substance into the individual's body, regardless of whether the controlled substance was used by itself or with another substance. It would be a defense to prosecution that manufacturing or delivering the controlled substance was authorized by state or federal law.

Punishment for a person's death or serious bodily injury as a result of injecting, ingesting, inhaling, or introducing a controlled substance into a person's body could not be increased if the defendant was also punished under the criminal provisions of the bill for conduct occurring during the same criminal episode.

CSHB 6 would add unlawful possession with intent to deliver a controlled substance included in Penalty Group 1-B to the list of actions that constitute an offense related to criminal street gangs.

The bill would specify that the following offenses constitute a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000), with various fines and sentences:

- knowingly manufacturing, delivering, or possessing with the intent to deliver a controlled substance included in Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or 4;
- knowingly or intentionally possessing a controlled substance included in Penalty Group 1 1-A, 1-B, 2, 2-A, 3, or 4, unless the person obtained the substance under a valid prescription or order of a practitioner;

- knowingly or intentionally delivering or possessing more than 2,000 pounds of marijuana; and
- bartering property or expending funds the person knew was derived from the commission.

If it was shown on the trial of the offense that the offense was committed at or near a school, on a school bus, or at or near certain other areas, the minimum term of confinement or imprisonment for certain offenses related to controlled substances would be increased by five years, and the maximum fine for the offense would be doubled.

To the extent of any conflict, CSHB 6 would prevail over another bill of the 88th Legislature, relating to nonsubstantive additions to and corrections in enacted codes.

The bill would take effect September 1, 2023.

**SUPPORTERS  
SAY:**

CSHB 6 would help to address the fentanyl crisis by enhancing certain penalties related to controlled substance offenses. Classifying deaths related to fentanyl as murders could discourage the distribution of fentanyl, which could reduce overdose deaths. The bill also would help to enable the investigation and prosecution of fentanyl-related deaths by listing fentanyl poisoning as the cause of death on a death certificate instead of accidents. The bill would address offenses related to organized criminal activity and clarify the penalties for certain drug offenses to ensure more efficient prosecution. Exceptions in the bill would allow medical examiners to still categorize deaths as something other than a homicide as necessary.

**CRITICS  
SAY:**

CSHB 6 may not achieve the goal of reducing fentanyl distribution or overdoses. Enhancing penalties may not effectively discourage distribution and could discourage people from calling emergency services when they witness an overdose. Public health approaches would be more effective in addressing fentanyl overdoses.

Additionally, medical examiners should have full discretion to determine

causes and manners of death through their medical knowledge and expertise. The manner of death is not necessarily the deciding factor for whether prosecutors pursue a case, so listing deaths as an accident would not hinder prosecutions.