

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-second Session
April 10, 2023**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 2:11 p.m. on Monday, April 10, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Senator Nicole J. Cannizzaro, Senatorial District No. 6

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Blain Jensen, Committee Secretary

OTHERS PRESENT:

Aaron Ford, Attorney General
Mike Cathcart, City of Henderson
Susan Proffitt, Vice President, Nevada Republican Club
Erica Roth, Washoe County Public Defender's Office
John J. Piro, Clark County Public Defender's Office

Senate Committee on Judiciary
April 10, 2023
Page 2

Athar Haseebullah, American Civil Liberties Union of Nevada
Nick Shepack, Deputy Director, Fines and Fees Justice Center
Annette Magnus, Battle Born Progress
John Jones, Jr., Nevada District Attorneys Association
Jason Walker, Washoe County Sheriff's Office
Jodi Hocking, Return Strong
Chris Ries, Las Vegas Metropolitan Police Department
Pamela Del Porto, Executive Director, Nevada Sheriffs' and Chiefs' Association
Sean O'Donnell, Executive Director, Foundation for Recovery
Laura Martin, Executive Director, Progressive Leadership Alliance of Nevada
Ryan Hampton, Executive Director, Recovery Advocacy Project
Yesenia Moya
Lisa Lee
Debi Nadler
Karla Wagner, Professor, School of Public Health; University of Nevada, Reno
Barry Cole, M.D., M.P.A

CHAIR SCHEIBLE:

I will open the hearing on Senate Bill (S.B.) 35 and Senate Bill 343 which will be presented together.

SENATE BILL 35: Establishes the crimes of low-level trafficking in fentanyl, mid-level trafficking in fentanyl and high-level trafficking in fentanyl. (BDR 40-423)

SENATE BILL 343: Revises provisions relating to fentanyl and derivatives of fentanyl. (BDR 40-501)

AARON FORD (Attorney General):

I come before the Committee today as the State's top law enforcement officer to discuss Senate Bill 35 that would give our State a new tool to fight against the fentanyl epidemic by adjusting the laws related to illicit fentanyl penalties associated with unlawful possession, manufacturing, distribution and trafficking. Specifically, this bill makes an amount of fentanyl between 14 and 28 grams enough for a mid-level trafficking charge and the amount of 28 grams or more enough for a high-level trafficking charge. Senate Bill 35 is amended to define fentanyl as an illicitly manufactured fentanyl drug opposed to schedule II fentanyl drug which has legitimate medical use.

I had nightmares over ensuring this bill does not recreate the war on drugs from the crack cocaine days. To talk about what S.B. 35 does, I would like to invoke a popular television show to hypothetically demonstrate. The show called "Snowfall" on FX and according to the description is a story about "how crack began. The show chronicles how an off-the-books CIA operation contributed to the destruction rock cocaine leveled upon South Central L.A."

Senate Bill 35 goes after certain characters I am going to reference, like Teddy McDonald who is a Central Intelligence Agency (CIA) agent who buys cocaine from Central and South America, then manufactures it to sell in South Central Los Angeles. It goes after El Oso, who helps Teddy secure and distribute that cocaine. It goes after Franklin Saint, who buys the cocaine from Teddy and runs an enterprise manufacturing crack, which involved the cooking and rocking up the cocaine to be distributed. It goes after Franklin's Aunt Louie and Uncle Jerome who helped distribute this crack cocaine into the communities, and Leon, who was one of Franklin's childhood friends, who also distributes crack and oversees others selling it.

Senate Bill 35 is not intended to go after Wanda, who uses and is addicted to crack. To be sure when she was cooking up the crack to be sold, this bill will go after her too, but in her status as an addict, she is secondary under S.B. 35. We are not trying to recreate the war on drugs during the crack cocaine era. Contrary to anything any person in opposition will say, mistakes were made then, and we learned from those mistakes. We do not want to repeat those mistakes.

Senate Bill 35 is not intended to go after those who are struggling with addiction. We learned that incarceration does not help those in need of help unless help is offered during incarceration. I am requesting to amend S.B. 35 to include medication-assisted treatment (MAT) so jails and prisons can offer help to those finding themselves incarcerated through conversations with addiction and recovery stakeholders. I support this treatment program.

A person who may be using drugs while struggling with addiction would not be in possession of a large amount of fentanyl for personal use. We are working closely with stakeholders and concerned parties to ensure this bill has a minimum amount of impact as possible on those who are addicted to fentanyl or fentanyl-laced drugs.

What S.B. 35 is intended to do is give law enforcement tools to go after those who are unlawfully distributing fentanyl along with addressing the inherent danger it brings and deaths it causes. This drug is dangerous. This is not a moral crusade against drug use, it is a crusade to save the lives of our fellow Nevadans. We cannot stand idly by and do nothing. I note this bill does not roll back any elements of A.B. No. 236 of the 80th Session. To the contrary, it advances the policy that the law embraced of adjusting weights and penalties based on specific drugs. Indeed, former Nevada Supreme Court Justice James Hardesty testified to this need as this video clip ([Exhibit C](#)) demonstrates:

Assembly Bill 236 is just a starting point that I proposed during the subgroup and I still maintain that in addition to the changes in the bill, the Sentencing Commission should spend the next Interim studying the impacts of different drugs and their quantities on public health and criminal justice system. As we know, not all drugs are the same and the quantities of many drugs are extremely impactful even in low quantities. These weight thresholds will be further discussed and evaluated with specific attention to the individual drugs that are affecting our State in the Interim by the Sentencing Commission. If you pass those recommendations presented to you, this area is discussed in sections 118 through 123.

As former Justice Hardesty indicated, we needed to look at specific drugs to see the impact on our communities. That is what we are doing here, by seeking to tighten restrictions on and enhance penalties related to illicit fentanyl because narcotics do not split into even doses in the same quantities. The gram amounts we are suggesting were determined by looking at possible doses.

To make a hypothetical comparison, 100 grams of fentanyl does not contain the same number of doses as 100 grams of cocaine. We are talking about a much higher number of doses of an incredibly dangerous drug when matched weight-to-weight with the same amount of other drugs. We remain open to discussions regarding the final weights in S.B. 35. We believe it is too dangerous to not reckon with how many more doses are contained in one gram of fentanyl.

When discussing trafficking, it is important to keep in mind the actual amount of a drug that can be distributed or sold because two milligrams of fentanyl is considered a potentially lethal dose. Think about how many dangerous doses could be within every four grams. It is lethal, which is why I support Senate Majority Leader Nicole J. Cannizzaro with S.B. 343. Four grams of fentanyl can be divided into a significantly larger number of doses than four grams of cocaine. It should be clear why we cannot treat fentanyl like other drugs because the weights involved are inherently different and the drug can kill someone with such a miniscule amount. It is simply far too easy to overdose and can be added into other drugs without the user's knowledge which creates a dangerous likelihood of overdose.

According to data received from the Nevada Overdose Data to Action Program, there were 497 overdose deaths in Nevada during 2022 containing synthetic opioids like fentanyl. This includes fentanyl analogs such as carfentanil. According to Nevada Department of Health and Human Services (DHHS), there were 566 opioid-related deaths in Nevada during 2021, with 59 percent of these deaths from synthetic opioids like fentanyl and 20 percent involving heroin. Fentanyl is involved in essentially three times as many deaths as heroin in Nevada. Opioids were also found in over 90 percent of all multidrug deaths in 2021 according to DHHS. An extremely concerning problem of dealers intentionally mixing fentanyl with other drugs is leading to consumers taking narcotics without being fully aware of what they are taking. If a person was to take a large dose of cocaine without knowing it had a large amount of fentanyl mixed with it, the result can be, and generally is, deadly.

According to the Centers for Disease Control and Prevention, in 2022 we had a range between 6.2 and 10.3 people per 100,000 population per month visiting the emergency room with a suspected overdose. As you have undoubtedly heard, we have a big problem with illicit fentanyl, and S.B. 35 intends to address it.

Our amendment ([Exhibit D](#)) to S.B. 35 proposes in section 1, lines 3 through 8, of *Nevada Revised Statutes* (NRS) 453 on controlled substances to modify the definition of who is targeted. That is a person who “knowingly or intentionally sells, manufactures, delivers or brings into this State or who is knowingly or intentionally in actual or constructive possession of illicitly manufactured fentanyl, any derivative of fentanyl or any mixture which contains fentanyl.”

Section 1, subsection 1 has been removed in the amendment. That was a section dealing with 4 to 14 grams of fentanyl. These amounts are addressed in S.B. 343.

Section 1, subsection 2 creates the crime of mid-level trafficking fentanyl for those who traffic 14 to 28 grams of illicit fentanyl. This crime will be punishable as a Category B felony by imprisonment for a minimum of 2 years or a maximum of 15 years and a fine of not more than \$100,000. Subsection 3 creates the crime of high-level trafficking in fentanyl for those who traffic 28 grams or more. This crime is punishable as a Category A felony, punishable by life with the possibility of parole, or a definite term of 25 years with eligibility for parole after a minimum of 10 years and a fine of not more than \$500,000.

Section 2 adds the provisions of section 1 to existing statutes regarding unlawful acts related to imitation controlled substances. Section 3 adds the provisions of section 1 to the statutes regarding penalties for making controlled substances available which caused a death.

Section 4 adds provisions of section 1 to existing statutes for additional penalty for failure to render or seek medical assistance for a person injured or killed by use of controlled substances under certain circumstances.

Section 5 adds provisions of section 1 to NRS regarding unlawful possession of a controlled substance without a valid prescription.

Section 6 adds provisions of section 1 to statutes regarding possession for sale of club drugs like MDMA, also known as molly.

Section 7 adds provisions of section 1 to existing language regarding the determination of weights of controlled substances.

Section 8 adds provisions of section 1 to existing language regarding schedule I or schedule II controlled substances. I am amending section 8 with the intent to ensure only schedule I fentanyl is targeted in S.B. 35. Schedule I controlled substances are defined as having a high potential for abuse and no accepted medical use and treatment. This is to keep consistent with changes in section 1 and my goal to target illicitly manufactured fentanyl. It is not my intent to target legally prescribed fentanyl. My amendment also removes the reference to marijuana as NRS 453.339 specifically addresses trafficking of marijuana.

Section 9 ensures the enforcement measures in section 1 are applied to the statute regarding trafficking of controlled substances. Section 10 adds provisions of section 1 to the Good Samaritan Drug Overdose Act.

Section 11 adds mid-level and high-level trafficking of fentanyl to NRS regarding criminal history records. Section 12 adds the provisions of section 1 to statutes on crimes related to racketeering. Section 13 adds mid-level and high-level trafficking of fentanyl to the statute on immoral crime by education personnel.

My administration has been at the forefront on the fight against the opioid epidemic in Nevada. We worked diligently to help form the One Nevada Agreement on Allocation of Opioid Recoveries. The agreement is an interstate allocation agreement providing a mechanism to allocate recoveries, opioid settlements and bankruptcies between the State, counties and litigating cities with one purpose—to remediate the risks and impacts of opioids. We have secured hundreds of millions of dollars in opioid settlements for the State since I took office. Almost two years ago today, we announced the State would see over \$70 million before costs were deducted. We have not stopped working to hold manufacturers, distributors, pharmacies and others accountable for roles in the opioid crisis.

In 2021, the Legislature created the Statewide Substance Use Response Working Group (SURG) in my office. It was tasked with making recommendations to DHHS for the usage of State and local funds to mitigate substance abuse. In late January, our committee released recommendations that included supporting a backbone agency to help improve local data collection systems, creating a Statewide data-sharing system; providing a platform of services and schools to connect families to prosocial education, early intervention counseling services and more; expanding Medicaid; building opportunities for preventive services; and ensuring communities of color have access to overdose prevention recognition and reversal training.

Those recommendations also included revising the penalties for trafficking in fentanyl which I am presenting in S.B. 35. This recommendation was with input of subject matter experts and through a process of 17 public meetings meant to ensure they were thoroughly vetted and discussed. This bill will give law enforcement the ability to take poison off the street, keep the vulnerable from accessing it and God forbid, dying, by ensuring we are taking all steps possible to mitigate this crisis.

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

I will go through the provisions of S.B. 343. As Attorney General Ford mentioned, these two bills are meant to work in tandem as we have been aware of the fentanyl issue created in our communities and seek an opportunity to rectify with proper balance. That is the intent of both S.B. 35 and S.B. 343.

This discussion is difficult. I echo the comments of my colleague that our intent is not to create a system whereby we are punishing individuals or sending them to prison because they have an addiction issue. That is not what we are trying to do and is something we have considered. To the Attorney General's point, there have been many conversations around both bills. We do not have perfect statistics in Nevada on how prevalent fentanyl is in our communities because it is mixed with other substances, making fentanyl difficult to track specifically. No doubt, we are seeing an unprecedented increase in opioid overdoses and deaths attributed to fentanyl. It is not hard to find unfortunate stories from so many families.

From July to August 2022 in Nevada, we had a 66 percent increase in opioid-related emergency room visits. From January to July 2022, Clark County had an estimated 1,412 opioid-related overdoses. Since 2019, Statewide opioid overdoses deaths due to fentanyl have increased by 227 percent. These astounding statistics speak to why we are here to find the right path on addressing this issue. These numbers are truly staggering and often include first-time occasional recreational drug users and an alarming number of high school-aged kids along with other young people. They think they are taking something far less dangerous than fentanyl and end up taking fentanyl. If somebody who has unknowingly taken fentanyl is lucky, they will end up in an emergency room capable of treating them, but because the drug is so strong, the effects come on quickly. Many who unwittingly take a counterfeit pill or common club drug laced with fentanyl often do not make it to the emergency room. That speaks to the videoclip, [Exhibit C](#), from former Justice Hardesty on some discussions had in a different context. Fentanyl and its effects are certainly included.

We have all heard these horrific stories. I wager that every person in this room knows somebody personally who has dealt with the destruction that fentanyl is doing to our families, friends, children and State. The flood of fentanyl seems to be getting worse quickly, which is why we must use the tools at our disposal to address this threat.

One of those tools is to go after those who intentionally traffic this incredibly dangerous drug without concern for human life. At the same time, we must work on helping Nevadans who are struggling with addiction. Addiction itself is not a crime. We should be clear about that and continue to be compassionate toward those who found themselves dependent on opioids. This bill and its amendments intentionally craft legislation that targets those who are trafficking these drugs while including provisions to encourage and provide treatment for those dealing with addiction, along with recourse for those acting in good faith to help individuals who are experiencing an overdose.

I think it is easy when in the political arena and dealing with a complex public policy, especially an issue like fentanyl, to fall into a trap of wanting to look tough. I want to approach this issue as someone who was a former prosecutor wanting laws to be tough, fair and effective at saving lives but at the same time craft smart policy. I am less interested in grabbing headlines than I am on trying to solve the fentanyl issue by making sure law enforcement has better tools to go after the root of this problem. Drug traffickers and individuals who are bringing fentanyl intentionally into our communities, targeting young vulnerable kids that end up dying or at best in an emergency room, are the root of this problem.

In these two bills, we are trying to allow those tools needed to go after traffickers who are destroying families. We also look to treat people who have addiction issues and ensure we are not unfairly targeting folks who in many cases have innocently been ensnared by the opioid and fentanyl crisis. There is a delicate balance, and there will be some opposition to S.B. 343. But the intentional pieces are designed to give tools to law enforcement and also recognize this issue is more complex than slapping a hard sentence for violating a statute. That is not what we are trying to do; we are trying to make smart policy.

I will walk the Committee through S.B. 343 and a conceptual amendment.

Section 1 establishes a three-tiered system of offenses and related penalties for knowingly trafficking fentanyl, other derivatives or mixtures containing fentanyl. For the purposes of S.B. 343, trafficking does include knowingly or intentionally selling, manufacturing, delivering or bringing into Nevada, any fentanyl-containing substances. The conceptual amendment for S.B. 343 will remove mid-level and high-level offenses along with related penalties, then

retain the low-level trafficking offenses and related penalties. The mid-level and high-level offenses are addressed in S.B. 35, and we want to mirror the definition in section 1 to ensure we are addressing illicit fentanyl.

Section 8 sets fentanyl apart from other controlled substances. In S.B. 343, section 8 will retain the same language ensuring a person who is found guilty of any of these offenses that the penalties go along with whichever level of crime, making sure they apply regardless of whatever the other penalties.

Section 8 will also include additional definitions to ensure we are addressing illicit fentanyl and derivatives. An important part about the fentanyl piece is we know it is in a medical grade but not the same grade as what someone may encounter on the street. Some of the concerns we heard is that often fentanyl is appearing in multiple derivative forms. We are intentionally crafting definitions that will allow continued targeting of drug traffickers dealing illicit fentanyl, even if it is a different derivative form. As amended, section 8 will apply only to the low-level trafficking offense and will be set forth in section 1 being amended.

In section 10, we want to ensure we keep intact and will be removing language for the Good Samaritan piece. Good Samaritan laws are intended to allow for individuals who are with someone experiencing an overdose or who may be experiencing an overdose themselves to be able to call for assistance without worrying whether they will face criminal charges. Often with fentanyl, we see people who may be with a friend who is experiencing an overdose and we want them to be able to call for help because of the fast-acting nature of fentanyl. That call for assistance can be the difference between whether someone ends up in an emergency room or ends up dying. It is important we are being compassionate.

That Good Samaritan piece present in section 10 would have included an exception. We are removing that language so anyone who in good faith seeks medical assistance for a person experiencing an overdose or seeks assistance for oneself will not be subject to criminal prosecution because he or she is calling for help. We want that provision to stay intact.

The changes for S.B. 343 conform with the definition of illicit fentanyl in section 1 of S.B. 35 addressing the 4 to 14 grams of low-level trafficking offenses. This bill also contains similar language to S.B. 35 in section 8, which

addresses the derivative formats of fentanyl and then also will remain intact those Good Samaritan provisions.

Attorney General Ford and I have seen firsthand how devastating fentanyl has been to our community. The two of us sitting here demonstrate how serious our State is about addressing this crisis and doing so in a smart fashion. This is by no means an end to the conversation around fentanyl, and you have our commitment that we will continue to work with all good faith actors to ensure that these bills are tailored to address the root cause of the epidemic and not unnecessarily put those who are facing addiction issues in a difficult spot.

ATTORNEY GENERAL FORD:

I keep Narcan in my truck because this is such a recurring activity. Narcan helps to save those who have overdosed on an opioid. I have had nightmares about these bills, trying to ensure we do not recreate the war on crack cocaine, but at the same time acknowledge this is a real drug.

I want to address some of the opposition the Committee is going to hear. I am going to speak to both bills because the opposition letter ([Exhibit E](#)) says, "In 2023, S.B. 35 and S.B. 343 are declaring the same state of emergency the War on Drugs did in 1973" over trace amounts of fentanyl. First off, it is untrue that we are waging a war on drugs. We have been clear on what we are trying to do. Trace amounts of fentanyl are killing people which is why we are here. This letter says we are not addressing "the trafficking, sale or manufacturing of fentanyl that is cut and laced into the drug supply." Then further says, "these bills seek to impose draconian penalties on the individual users who buy fentanyl-laced substances for personal use or otherwise intend to possess a different substance," which is nonsense. The Committee heard testimony from us, and the bills speaks for itself. These bills are endeavoring to provide medication-assisted treatment to those who are incarcerated or in jails to help them. This focus is not on those individuals as described in a letter.

There is something I agree with in this letter, [Exhibit E](#), I am referencing from Ms. Erica Roth, a deputy public defender for Washoe County. I do agree with this notion of our drug testing tactics are qualitative versus quantitative. If someone gets a sugar packet that is four grams, that whole sugar packet is going to count as four grams. Tests cannot distinguish whether there was only one gram of fentanyl versus all four grams being fentanyl. That is the quality of the testing that our drug laws operate under. I would love to see some study

associated with transitioning our State from qualitative to quantitative. The State could in fact make those types of determinations and address this going forward.

The letter, [Exhibit E](#), continues, "S.B. 35 and S.B. 343 fail to address the public health crisis that stems from the opioid epidemic." I learned in legislation class when I was in law school that not every social illness has to be dealt with in one bill. To be clear, we are endeavoring to apply some public health approaches which is the reason why the medication-assisted treatment is included in S.B. 35. We received suggestions directly from the recovery community because this crisis requires supportive services for our community members who are grappling with substance use disorder.

There are other opportunities to do that as well. This is a public health crisis, but it is also a public safety issue. Two things can be true at the same time and that is what is happening here. We are endeavoring to do as much as we can to address these issues holistically. As the solution component of the letter states, others have interests and ideas to present in their own bills and potentially back and supplement what we are doing as well. Make no mistake from someone who keeps Narcan in his truck, we cannot sit by and do nothing. We must address what is killing the clients of some public defenders and killing law enforcement officers as they engage those who have these forms of narcotics.

As the top law enforcement officer in the State, I will not sit idly by and hope someone else will do something. I hope we can continue working with these interest groups. I would be happy to receive an amendment addressing some of these issues from folks who make suggestions. We are determined to make something happen here. I look forward to working with whomever wants to help us make that happen.

SENATOR HARRIS:

Given that we do not have the ability currently to separate out how much of what substance is in whatever we are testing, how do we ensure that we do not actually just change the trafficking levels for everything? My understanding is that lots of drugs are cut with fentanyl, and this is now going to be the floor for cocaine because a good portion of cocaine is cut with fentanyl. This will now be the trafficking level for essentially any drug that may contain fentanyl. How do we avoid that issue?

SENATOR CANNIZZARO:

Your concern is a well-placed one, and I agree with the Attorney General suggestion for a study to look at what it would take to ensure that type of analysis. But the reverse of that it is true—if someone cuts fentanyl with something, they can completely avoid any ability for the State to address it. At the same time, they are still inflicting the same issue, which is a small amount of fentanyl can and does kill people. I do not see this as a way for us to change everything into a trafficking level crime, especially because we are trying to get at that fentanyl piece. Merely cutting it with something else should not necessarily mean a person can no longer be held accountable or the State is without a means to address it because that creates a loophole allowing folks to continue dealing fentanyl in the way that we are seeing it and the way that we are interacting with it without providing a proper tool for law enforcement.

Realistically, we have to have some tool to address fentanyl. I invite anybody who can to come up with a different example because people are not going to see a full tablet or whole packet of pure fentanyl. That is not how fentanyl is presented. That is one of the differentiation pieces. We have to address it this way for at least two reasons: one, that we currently are incapable of doing that analysis and two, because otherwise I think it does create a loophole whereby because you cut it with something else now, can we no longer address it whatsoever?

SENATOR HARRIS:

My concern is the opposite. Most drugs are cut with fentanyl, not as if dealers are trying to sell fentanyl and cutting it with another drug to make it sellable. But that ubiquitousness is part of the problem that you are trying to address. It seems like it would touch everything when we look at not trying to harm the buyer who has 14 grams of cocaine because that is what the buyer purchased. But if it has some trace amounts of fentanyl in it, they are now a trafficker. I am trying to figure out how to ensure that we do not make the mistake that I know you do not want to make by inadvertently going after people who are purchasing this on the street or the user who has a problem. Instead, go after the person who is pushing these very dangerous drugs.

ATTORNEY GENERAL FORD:

The working group is large enough to receive input on how to address that issue. But the point I made earlier remains the same; I do not believe we can do nothing. This is a drug that is killing people with trace amounts. I have indicated

by the characters of “Snowfall” on whom I am trying to go after—and Wanda the addict is not one. How do we ensure that is the case going forward absent some different language? I do not know, Senator. It is a real question I acknowledge, and I am open to hearing ways in which we can address it.

SENATOR HARRIS:

We know pure fentanyl does not happen often. Are you all aware of what the drug market looks like today? Is there anyone who is bringing cocaine into Nevada that is not cut with fentanyl? Do we know if there still is such a thing as pure cocaine or is it all cocaine supply? Meaning all cocaine is now going to be potentially covered under this bill or whatever X, Y or Z drug? Is there anything that is pure anymore that would not have fentanyl in it, and we now have this new trafficking limit?

SENATOR CANNIZZARO:

Most commonly we are seeing fentanyl not laced in a bag of cocaine but often in pill form. I think the Committee will hear from law enforcement and medical professionals who have been dealing with fentanyl’s aftermath of overdoses and folks showing up in the emergency room. The most common way to encounter fentanyl is in a pill, and a person must have an exceptionally large number of pills to achieve the levels present in these two bills. That is an important point that does not necessarily mean there also could be a bag of 14 grams of cocaine that is laced with fentanyl to get to that gram level. Even four grams constitute a lot of pills. Other individuals can speak with a few more specifics, or we can get that data for you.

One piece about all our drug laws is a person could have 14 grams of cocaine and other substances, including a common everyday kitchen ingredient, and it is nonetheless treated as cocaine for the purposes of reaching those trafficking levels. That is true even within prior legislation we have addressed and passed. We are not looking for a person who is in possession when it comes to fentanyl. There might be different circumstances where you may have a baggy that has that amount. How much of that is laced with fentanyl? I do not have that data at this point. We certainly can get it.

When we are talking about fentanyl, it is in pill form, a lot of pills, to reach a level that would be touched by these bills. It is not somebody who has one pill who happens to be taking it at a club. That is the practical reality of what we are dealing with. You are seeing this even though there are low levels in

trafficking that is an attempt to go after folks. We are going to have more of them who are looking to sell and distribute fentanyl into the community.

SENATOR HARRIS:

Do you know what it is people think they are buying when they purchase these pills because I am assuming they are not purchasing fentanyl, right? Is it the synthetic drug MDMA? What do they generally think they are purchasing in these pills?

ATTORNEY GENERAL FORD:

I think it varies, but they are often trying to buy an opioid. I do not know what opioid, but an opioid that is not fentanyl. That opioid pill is adulterated with fentanyl in it, enough where it is killing individuals. It could be in other forms that I have not heard of yet. To the Senate Majority Leader's point, we are not talking about the one pill purchase, we are talking about bags full.

SENATOR NGUYEN:

I just want to clarify a couple of things because during the Attorney General's presentation, he indicated there were some amendments and that we are trying to meld these bills together. In the Office of the Attorney General amendment, [Exhibit D](#), it is removing section 1, subsection 1 from S.B. 35 because it was included in the Majority Leader's bill, or was it the intention to take it out of both bills, or is that the melding of the bills?

ATTORNEY GENERAL FORD:

The intent was removed from S.B. 35 so it could be addressed in S.B. 343.

SENATOR NGUYEN:

I was not sure if you were removing it for some other reason, but it was because it was already included in the S.B. 343. I have the same concerns about the not pure fentanyl and realized we do not have the capabilities at our labs to distinguish it or does that capability just not exist?

ATTORNEY GENERAL FORD:

My understanding is that in the State we do not have the capacity, not that it can never be done or cannot be done elsewhere. That is the reason why I support this notion of studying how we go from qualitative to quantitative. For example, this Body created a State lab in the Eighty-first Legislative Session.

Looking for ways to afford the ability to make those types of determinations could be helpful, but I understand the State labs do not have the capability.

SENATOR NGUYEN:

Is there a possibility that some of the \$280 million in the opioid settlement funds could be diverted to increase those capabilities, if we are trying to move toward a more qualitative than quantitative evidence-based analysis?

ATTORNEY GENERAL FORD:

That would certainly be my desire and my hope. The State itself had to develop a needs assessment to determine how to spend those funds, and DHHS is going to be making those determinations. Municipalities and counties either had or have to come up with their own assessment as well. It may be determined to appropriate money that my office is bringing into the MAT programs for the prisons or jails. Or it may be determined that they want to work toward developing labs in their jurisdictions that can do quantitative measurements. I would absolutely encourage anyone in this State receiving these millions of dollars to utilize it for these purposes because that is exactly the purpose of this money.

SENATOR NGUYEN:

I think studying evidence-based analysis is something incredibly important. We can avoid people being lumped in, such as a younger person that is at electric dance concert using molly, then suddenly is going to prison for 20 years because it is cut with fentanyl. Or we have a situation where a bad decision turns into something incredibly serious. I understand that you are balancing the dangerousness of fentanyl as a start. The video clip of former Justice Hardesty talking about the Sentencing Commission during the Interim does not suggest the Commission has taken this issue on. I do not know if anyone else has taken on some of these things. Even looking at the legislative history of these initial weights of 4 to 14 grams, then 14 to 28 grams, it was not based on anything. The amounts were made-up numbers, and I am wondering if we are continuing this made-up weight or if any studies exist about drug levels and weights distinguishing between fentanyl, methamphetamine and heroin because as you said before, they are arguably not the same.

SENATOR CANNIZZARO:

I think the evidence-based study would be a smart way to go. My understanding is there are one or two labs mostly at the federal level that can do a full analysis

to discern exactly what and how much is in whatever substance. This is something that is done in a rare circumstance and might be worth looking at what it might take for our State to adopt something like that.

That was the one thing I wanted to highlight: how we are differentiating between grams. Senator Nguyen, you are correct that we picked some weights from where it was historically. For purposes within these bills, you will find a lot of folks who have dealt with some of the tragedies of the fentanyl crisis would argue the weights should be much lower just because the lethal doses are very low. That certainly that is something to keep in mind and why we are talking about fentanyl with respect to the Sentencing Commission. I do not know that we have had a lot of these discussions.

The point raised with respect to former Justice Hardesty is that A.B. No. 236 of the 80th Session changed a lot of the trafficking levels to better conform to what you are confronting from the criminal justice side. When you are dealing with individuals who are manufacturing and distributing it, who get paid from folks buying the stuff, four grams for something that is a different substance is a small amount, right? We are seeing the capture of folks who are addicted. I think that was smart policy to raise those limits.

The point made by Justice Hardesty that is important for this Committee to keep in mind is addressing A.B. 236 of the 80th Session should uniformly be the case regardless of substances across the board. There are, in fact, differentiations even within Nevada law, even after the passage of A.B. 236 of the 80th Session.

For example, what we commonly call the date rape drug is not at that same trafficking level because it is not utilized in the same fashion and is at a much smaller level when it comes to trafficking. The point that was delineated with the Justice's remarks is that we can and should take a look at different substances and how they are treated. Those substances may need a different threshold than some of the changes we made in A.B. 236 of the 80th Session. I would be happy to talk about what those thresholds are.

The other point I would make is that four grams of fentanyl, as you would readily find it, is a lot even in pill form. I would argue that if a person has 4 or 14 or 28 grams worth of fentanyl in pill form, it is not something they have for personal use or because they are going to take it at electric dance concert with

some friends. That is a substantial amount and speaks to someone who is manufacturing, delivering and selling that substance.

SENATOR DONDERO LOOP:

If I have an 18-year-old student in high school or just graduated who takes one of these pills and has two or more because he or she is going to share with someone, then something goes wrong causing a visit to the hospital and that person survives, what happens with that person?

SENATOR CANNIZZARO:

First, hopefully such people make it to the hospital so they can be treated. Something like having two or three additional pills probably does not rise to the level of trafficking because it must get to four grams and that takes quite a few. That individual may face a possession of a controlled substance charge. One of the pieces we want to keep in S.B. 343 is the conceptual amendment to ensure the Good Samaritan provisions stay in place so someone experiencing an overdose or someone who is with somebody experiencing an overdose can still seek assistance without fear of being prosecuted. That amendment would speak to possession and falls within the parameters of our current Good Samaritan statute. To the extent that individual you mentioned might have committed another crime, they would be covered under the Good Samaritan laws where we are more concerned about making sure people get emergency treatment and live than prosecuting them.

SENATOR DONDERO LOOP:

The reason I ask is because kids do get talked into doing dumb things, whatever they may be. If somebody is doing something wrong, that person might even talk other kids into doing the dumb thing. The kid thinks, well, it is once that I will carry these pills for my friend, and he can carry half of them, whatever the case may be. I worry about putting kids in prison who really are not bad kids but did dumb things. I do not mean to nullify anything said or take away from the importance because it scares me, not only as a community member but as a mother and grandmother, that these kids can get these pills and die.

SENATOR STONE:

I want to be a resource because I consider myself a subject matter expert on this drug by having a doctorate degree in pharmacy and having taught pharmacology at University of Southern California's School of Pharmacy and at California State University. I would like to make a few points. First,

U.S. Customs and Border Protection confiscated, last year alone, 12,900 pounds of fentanyl or about 6.5 tons. We have talked about two milligrams being a fatal dose; I made it three milligrams for data purposes. If you use three milligrams, that means that that 6.5 tons would kill 1.95 billion people.

I agree that we are not seeing fentanyl in pure form, but we are seeing it cut in such a way that it still has as much fentanyl as necessary to kill somebody. How fentanyl kills somebody is it basically shuts off your sensors that tell you to breathe; carbon dioxide levels in your blood put you asleep and you end up suffocating to death. More than 150 people die every single day from some form of opiate overdose. I would opine that many of the overdoses are probably fentanyl in some way. There were over 70,000 documented fentanyl overdoses in the past year.

To give clarity about the range, four grams of fentanyl is basically four-fifths of a teaspoon. If you figure 3 milligrams is fatal, that will kill 1,333 people. Senator Cannizzaro addressed analogs of carfentanil, which we are seeing some traces of and is 10,000 times more potent than morphine and 100 times more potent than fentanyl. If you use 4 grams of carfentanil, it will kill 133,000 people. If you go to your upper range of 14 grams, that kills 4,666 people. Carfentanil kills 466,000 people. Then 27 grams, which is less than 28 grams, that is 909,000 people killed. The high level of 100 grams is 3.5 ounces, not that much. But if it is cut where it is 3 milligrams in a tablet or 3 milligrams in a powder, it kills 333,000 people.

You are right, Attorney General Ford, we are talking about a very dangerous drug that in very small amounts kills people. I say it is a drug that does not have any second chances. In 2016, the Drug Enforcement Administration National Drug Threat Assessment said that clandestine fentanyl is distributed in the United States in the same manner that heroin is. It is sold in powder form in glassine bags or envelopes after being stamped with a brand name and often sold as heroin with not many users aware of the presence of fentanyl in the substance. The bottom line is its killing people.

I introduced S.B. 197. My bill was different than your bills because I want to go after the guy who is selling it as fentanyl like you do. Senate Bill 197 took it a step further in that if you sold what you had as something other than fentanyl and that person knew fentanyl was in it, if somebody got hurt, it deserved a

large enhancement. Then, if a dealer sells a product as something other than fentanyl and killed somebody, it should have a high penalty. These are things I think you should consider. More work needs to be done on the quantities listed low-level and mid-level, which can kill literally thousands of people. We are not comparing apples to oranges when looking at other schedule I or schedule II drugs.

SENATE BILL 197: Establishes and revises the penalties for certain offenses involving fentanyl and carfentanil. (BDR 40-579)

Somebody asked, "What are these being sold as?" It is being sold as OxyContin, Percodan and Percocet but unbeknown to the user who is taking those pills. The user might take two, getting six milligrams of fentanyl. If the user does not have Narcan or is not lucky enough to be around someone with Narcan, the user is going to be dead. I think you have made a good attempt at trying to solve this problem, but if you do not go after the people who are selling the fentanyl or selling it as something else to lace other drugs, I think we are still going to see a significant amount of morbidity. Unfortunately, it will be with young people who do not understand how dangerous a drug this really is.

Would you consider looking at crimes going after the top? It is not the middleman, because the dealer at the top is selling it to all these distributors as pure fentanyl, laced fentanyl or as something else. That dealer is the one you should be focusing efforts on and is the one who should get inordinately high penalties to stop this activity from happening in Nevada. I would like to hear how you feel about incorporating some language like that into your bills.

ATTORNEY GENERAL FORD:

I will reiterate what I said at the beginning of my testimony and referencing "Snowfall." I am trying to get Franklin Saint who is doing exactly what you are talking about. I am trying to get Teddy McDonald who was a CIA agent buying the coke that was ultimately being converted into crack. I am not trying to get Wanda the addict as I mentioned. We are endeavoring to reach those you detailed.

The second thing is in my legislation class, they taught me that I do not have to deal with every illness in one bill. I would respectfully request that this bill address this issue and others can address the issue that you have brought up because there is more intricacy and detail associated with that conversation

than is aware to me at this point. I would respectfully decline that request at this juncture and suggest other bills take up that particular social illness. But I understand what you are saying and mentioned drugs that are laced with fentanyl being sold or portrayed as other types of opioids. I did not want to mention those you have, and I will leave it to the record for that purpose.

Senator Dondero Loop, I have a high school teenage son right now and he has lost friends because of this issue, and it scares me half to death. People try to buy Percocet and end up buying something laced with fentanyl, then end up dying. This is predominantly the reason why I have Narcan in my truck because I take my son to and from school and I have no idea where I might encounter this situation. This issue is serious, and we want to address it. Hopefully, my reputation speaks for itself when it comes to trying to balance criminal justice and reform. I am trying to walk a line here to ensure we can accomplish some important policies. I asked for support and assistance on trying to walk this line as tightly as possible. Anyone who has suggestions on ways to address this, please come forward because obviously we are working on this right now as opposed to something else.

SENATOR STONE:

One comment that Ross Perot once said: "There is nothing wrong with stealing a good idea from somebody else." I am not looking for any credit, I just want to be a contributor to solve a problem because I do not want your son or my granddaughter being the next victim. If you do not proactively go after the ones at the top who are manufacturing, tainting and distributing, I think we are still going to see the morbidity and mortality. I hope that both of you might look at S.B. 197. I want to be a contributor to reduce the morbidity and mortality of innocent people who are trying these drugs for the first time and not getting a second chance. They are dying, and the parents have to bury their kids.

SENATOR OHRENSCHALL:

With your fact pattern, if these bills passed into law and unintentionally Wanda is caught and prosecuted, and she is not the salesperson, manufacturer or distributor, do you think there is any flexibility either in these bills or an existing statute for Wanda to get a chance to treatment rather than prison and maybe have deferred judgment? That is my worry because I appreciate the intent but I just wonder what your thoughts are or if there might be any wiggle room on that.

ATTORNEY GENERAL FORD:

Senate Bill 35 does not supplant diversion courts and other alternative assistance that people can receive. I have thought about what happens if Wanda gets caught here. Wanda, who was cooking cocaine and making crack, is supposed to get caught. The Wanda who later in the series was the crack addict who got arrested, I hope she receives medication-assisted treatment. That is one reason why we are contemplating including it in this bill so those who are caught into the system may be able to receive some level of assistance. They may have to serve some jail or prison time because there will be some overlap. Although there will be some addicts and dealers, I would anticipate alternatives to incarceration, whether it be diversion courts and drug treatment programs, would still be available because I am not endeavoring to undo those programs.

SENATOR CANNIZZARO:

First, based on some of the levels here and how we are seeing it, it would be a rare circumstance where someone like Wanda would be captured in the provisions of these two bills. Number two is the addition of the MAT treatment. The Attorney General spoke on allowing some of that treatment to occur as well. If somebody were incarcerated, an important piece of the proposal addresses it from an addiction standpoint.

Third, there is nothing about these bills that would necessarily negate any plea negotiations that may occur. Often, even prior to A.B. No. 236 of the 80th Session, individuals who were arrested for trafficking for lower amounts, which might indicate someone had an addiction issue or other circumstance, would receive a different plea or treatment. Certainly, these bills would not negate the ability for individuals to seek treatment. I do not think that is encompassed in the bills. The most important piece is really the first step, which is to establish the four grams level, especially in pill form, which takes quite a lot of pills to reach. As for somebody who is in the circumstance Senator Ohrenschall has described, I do not think you can address every issue. That is why we have negotiations to address specific circumstances, even where the activity may meet the elements of a particular crime. But when crafting legislation, you have to craft the law in a way that gets at the issue and still allows for leniency where appropriate.

CHAIR SCHEIBLE:

The intent here is not to get at the user or addict, but to get somebody who is trafficking in fentanyl or substances that includes significant amounts of fentanyl. Why even include the person in constructive possession of fentanyl in this bill?

SENATOR CANNIZZARO:

Constructive possession can be “not on your person.” When you talk about constructive possession, that is not going to make a delineation between somebody who may have an addiction issue and be in possession of, or someone who is trafficking and be in possession of. In a number of statutes, if someone is in possession of a stolen vehicle, if you are possession of an unauthorized firearm, and if you are in possession of stolen property, then possession is typically always actual or constructive by encompassing both formats.

If somebody merely has fentanyl within their vehicle, that could be constructive possession. We want to include that because it does not necessarily go one way or the other. If not having it in your pocket would keep someone from having any crimes, that would make sure we cannot get those drug traffickers. Someone with an apartment where pills are manufactured laced with fentanyl is searched and charges are brought, that is the constructive possession piece under this bill. It exists because of how the laws are currently and commonly structured when relating to possession.

CHAIR SCHEIBLE:

In that example, if someone is manufacturing substances in an apartment, then he or she would fall under the manufacturing portion on page 2, line 5 of S.B. 35. Why include possession at all? Why not just limit it to people who are manufacturing, delivering, selling or bringing into the State?

SENATOR CANNIZZARO:

One of the hard parts and why we are talking in a trafficking context is to charge somebody with possession with intent to sell. Possession with intent to sell in NRS 453.337 is a Category D felony with a one-to-four year sentence that includes any variety of illicit substances that someone may be selling. There has to be evidence of someone who is actively with the substance who has given it in exchange for something of value, generally money. Usually, those

charges come because someone has with them a scale, O-sheet or other paraphernalia that indicates they are packaging something for sale.

If a person is manufacturing, the individual has to find a lab or other facility that shows how to put drugs together into a pill form. Most often, people doing those things have a bunch of pills with them, maybe they do not have an O-sheet, but they are still selling those pills. That is why when talking about it from a drug trafficking standpoint, certainly those other statutes may still apply if somebody is possession with intent to sell or engaging in the manufacturing. When somebody has a large quantity in possession that is not for personal use, this is like any other trafficking statute that includes possession. Because we are talking about larger quantities, it is not somebody who may be charged with possession of a controlled substance. The intent of the statute is to encompass the sale, manufacture and people who are walking around trying to sell outside of that context.

MIKE CATHCART (City of Henderson):

Fentanyl is an issue that is impacting all parts of Clark County including Henderson. The tools to go after the producers and traffickers of fentanyl included in these bills will be beneficial to law enforcement. We believe these bills attempt to strike the right balance to go after those responsible for illicit fentanyl being accessible in our community along with helping those suffering from addiction. We support S.B. 35 and S.B. 343.

SUSAN PROFFITT (Vice President, Nevada Republican Club):

I think it would do wonders for our community if we saw some bipartisanship working together, whether you get credit or not. Would you all please consider what an expert has in Senator Stone's S.B. 197. I appreciate you for doing this, but it does not go far enough. Letting a murderer out after ten years is a slap in the face for me because I lost my daughter to fentanyl. Another thing, I would really appreciate it if you would stop calling it an overdose. This is not an overdose, it is murder, brought in from China deliberately to murder us from within. It is destroying our communities and families because of the open border. If we do not stop the flow and the people who are producing it, like China and the cartel who is trafficking it, then this bill is for nothing. We have got to stop the flow or we are never going to stop this madness. The Committee should pass these bills, but they need to be amended and a few more things added. Another thing that we need to fix for this to work is to get enough police officers on the streets who can respond. I have found the guy

who sold the drug to my daughter. When I called the investigators, they did not have time to go after him because they said there were too many bodies in the morgue and not enough police officers to process them. This was in Jacksonville, Florida, two years ago on Father's Day. This is starting the ball rolling, but please do more. I support S.B. 35 and S.B. 343.

ERICA ROTH (Washoe County Public Defender's Office):

I did submit a letter, [Exhibit E](#), that was drafted last night. I hope that all of you have had a chance to review it and I am not going to rehash all of those arguments that I made. I do stand by the sentiment of that letter. Fentanyl is deadly, but the evidence is undisputed that so are these bills. Experts across the political spectrum have made clear that increasing criminal penalties for drug possession not only destroys communities through mass incarceration, but it also increases overdose deaths. These bills will kill. Even the report issued by this State planning how to address opioid abuse and overdose did not recommend increasing criminal penalties.

We understand the desire to go after drug traffickers. However, these bills do not amend the current drug trafficking statute that was mentioned today, NRS 453.337 in regard to sales. These bills will criminalize someone in near possession of any amount of fentanyl and this is problematic for many reasons. Looking at four grams, if three grams are cocaine and one gram is fentanyl, the person in possession of this will now be a drug trafficker. Whether or not that is the intent of the bill, it is the reality being born from this bill.

I understand the desire to do something, but we must not return to the draconian penalties of the 1980s and 1990s with this. Increasing penalties for possession of fentanyl is yet another iteration of the drug wars' ineffective and punitive strategies. To prevent overdoses and protect our communities, this Body must invest in public health solutions to mitigate the harms of illicit fentanyl. We know how to combat this issue, and it is not by increasing penalties for crime. The science and research make clear we can invest in our communities, treatment and fund Narcan for all. I keep Narcan in my car. I do not want the risk of overdose to increase as it will under these bills. As we stand today, we oppose S.B. 35 and S.B. 343.

JOHN J. PIRO (Clark County Public Defender's Office):

I have submitted an amendment ([Exhibit F](#)). No healthy treatment plan can be born from a bad diagnosis. These bills are an aggressive and inferior solution to

a complex problem. They are recycling an almost 40-year-old failed solution to an ever-evolving problem and asking this Body to repeat the same failed policies. We may talk about fictional television characters, but there are real-life people who will testify who are affected by these bills. Language matters. It is not the intent to go after the addicts, but when you reduce it to four grams, you take away everything that we did in A.B. No. 236 of the 80th Session which is what this bill does because everything is cut with fentanyl. When the courts are looking at this, they are not going to look at the intent and instead will go after the users, which is what these bills do. To say that we do not have the tools and these bills are closing a loophole in the tools is not accurate either. Douglas County District Attorney Mark Jackson just prosecuted a woman for fentanyl trafficking, and she got a sentence of 12 to 32 years. We have the necessary tools to do what we need to do and there are no loopholes that need to be closed because our standard drug laws would apply. The RAND Corporation did a 600-page study, and the State did an opioid study, 180 pages. None of these solutions were proposed in those studies. Nothing from the Sentencing Commission came with these regressive-type policies.

This was the only nonunanimous resolution to come out of the SURG committee which Attorney General Ford talked about, meaning nobody agreed that this was the right way to attack the fentanyl problem. If we want to capture the right people and not all people, then this bill does not need to move forward. New solutions need to come to the table because this is an old solution, and we lost that war. What we will do is throw away a whole generation of Nevadans. That is what the language in these bills will do. It may not be the intent, but that is what the language says. We are on the ground every day and we do not like what fentanyl is doing to our community either, but this is not the solution. We oppose S.B. 35 and S.B. 343.

ATHAR HASEEBULLAH (American Civil Liberties Union of Nevada):

The American Civil Liberties Union of Nevada is opposed to both S.B. 35 and S.B. 343. These bills and the hearing are reminiscent of the late 1980s. Neither of the bills call for the federal Food and Drug Administration removal or approval of fentanyl. The bill does not go after suppliers, kingpins or cartels. The bills do not even target the sale of fentanyl-only possession. Whether intended or not, these bills go after a user who unknowingly received drugs laced with fentanyl and more likely these bills will target people with addiction. They will be used to pad arrest and conviction statistics Statewide to pretend we are addressing an issue that we are not addressing. Nevadans will end up paying tens and

hundreds of millions of dollars into a criminal legal system to prosecute and incarcerate those experiencing addiction.

Make no mistake. The spread of fentanyl will not stop or decrease because of these bills. Nevada will be no safer as a result of them. Let us put it into perspective, Percocet is often cut with fentanyl. A 5-gram pill weighs approximately 550 milligrams, so 4 grams here would be about 7 pills and 14 grams would be about 25 pills. Ask yourself the following questions: how many cartels cutting drugs like Percocet with fentanyl do you think care about this bill? Does anyone on this Committee or in this room think that a cartel or a drug ring is going to stop production of drugs laced with fentanyl because of these bills? Moreover, which cartel or distributor stakes a claim on such a small quantity of pills? These bills will not save lives, but are almost certain to destroy communities today. We do not need you acting like you are tough on crime. We need to be smart and addressing solutions that relate to public health.

NICK SHEPACK (Deputy Director, Fines and Fees Justice Center):

I helped organize a Statewide coalition referred to as the Justice Reform and Accountability Alliance. On behalf of the coalition, we have one request for any data that suggests this type of law will reduce overdoses from any other state and situation. We have yet to receive data that suggests this. What we have found through organizations such as the Drug Policy Alliance are detailed recommendations on how to deal with these issues. They specifically say to not do this and have detailed evidence-based solutions. We need to continue our march toward evidence-based reforms in this Committee and in this Body. A friend of mine had received Percocet, or what they thought was Percocet, years ago before we knew about fentanyl, and it was laced with fentanyl. Luckily, my friend survived the scary situation, but less than ten of those pills would have put him in the trafficking level. That is not a large amount of drugs to buy.

I have administered Narcan to a stranger at a gas station by the house where I live. I heard somebody yelling we need Narcan and I carry it. But they would not call the police because they were scared of the drug-induced homicide laws and possession laws on the books. I called the police and administered the Narcan, then that person left the scene. If we increase these penalties in this direction, we are going to discourage calling for help when it is needed and more lives will be lost. I caution you against moving forward with the bills.

ANNETTE MAGNUS (Battle Born Progress):

We oppose S.B. 35 and S.B. 343 as written. While we commend the efforts to quell the outbreak of fentanyl deaths, we believe this bill will have unintended consequences. To quote former President Ronald Reagan,

the casual user cannot morally escape responsibility for the action of drug, drug traffickers and dealings. I am saying that if you are a casual drug user, you are an accomplice to murder. The casual user also cannot morally escape their association with those who use drugs and endanger public safety. The message from casual use is that drugs are acceptable, they can be handled and somehow it is simply a matter of dosage. Casual use sets the tone for tolerance and that tolerance has killed.

Another excerpt from the war on drugs is 50 years old, published in *The Nation* in July 2021:

In June 1986, just a day after signing a multimillion-dollar contract with the NBA's Boston Celtics, college basketball sensation Len Bias collapsed in his dorm at the University of Maryland from a fatal cocaine overdose.

Five months later, President Ronald Reagan would sign an antidrug abuse act, the Len Bias Law, and it would lead to a quantum expansion of the domestic drug war including a mandatory minimum sentence of five years just for the possession of five grams of cocaine. These policies did not work in 1986 and they will not work now. Mandatory minimum sentences for simple drug possession or trafficking as seen in this bill are reminiscent of the failed war on drugs. They are not proven to deter crime while also increasing the likelihood of recidivism.

I know the sponsors do not think this is the same as the war on drugs. However, the words heard today in these bills are eerily similar. This is going backward from the good work we have done in past sessions. Even the fear and stigma created by these enhanced penalties can lead to communities having a fear and distrust of law enforcement that further erodes public safety and trust. As a niece of an uncle who sits in prison after fighting in Vietnam because he had a drug addiction, this is personal for me. Preventing overdose deaths in treating addiction are matters of public health, not prisons. Lawmakers should

follow the guidance of public health experts on this issue rather than pushing for further incarceration for people who probably do not even know they possess these drugs. This bill will in fact kill.

JOHN JONES, JR. (Nevada District Attorneys Association):

We appreciate Attorney General Ford and Majority Leader Cannizzaro for recognizing the proliferation that fentanyl derivatives have on the greatest public health and safety issues facing our State. Our opposition is based on the mandated medication-assisted treatment program proposed in S.B. 35 as well as the proposed Good Samaritan provisions, but we have not yet seen that amendment.

I want to address what we are seeing on the ground in terms of pill size because we have had a lot of numbers thrown out. What we see most of the time with respect to fentanyl is what we are calling the blue M30 pill. Each pill weighs about 100 milligrams, meaning there are 10 pills in each packet and 40 pills would constitute trafficking under the proposal before you today. I will note that we do not see a lot of simple users possessing that many pills. To illustrate one of the current problems, 14 grams is considered possession of controlled substance under Nevada law, which is our lowest level of drug offense in the State. That would mean, using the fake M30 pill, the most common, as a basis, a person could have 140 pills and still be considered in possession of controlled substance, which includes mandatory dismissal and diversion. But users do not possess that many pills, so that is one of the reasons why this legislation is essential.

JASON WALKER (Washoe County Sheriff's Office):

We oppose S.B. 35 and S.B. 343 mainly for the requirement of the MAT program. Fortunately for the Washoe County Sheriff's Office, we have a successful MAT program. But I believe it would be difficult for smaller agencies to put a MAT program together. If they are able to do that, it would take several years.

We are talking about statistics: the Washoe County Medical Examiner's Office had 79 fentanyl deaths in 2021 and 138 fentanyl deaths in 2022. That is a 75 percent increase. Deaths by age range 18 to 24 years of age at 42 percent and 25 to 34 years of age at 53 percent. District Attorney Jones is correct that we do find fake M30 pills out there. One thing that I gathered from this hearing is we can all agree that we have a major public safety and health problem.

SENATOR NGUYEN:

The Washoe County Sheriff's Office already has a MAT program. I read the December 2022 study from the Department of Health and Human Services in response to the opioid epidemic. I did not have the opportunity to read the 600 page RAND Corporation report but did a cursory search of it. These medication-aided treatment programs are one of the only things that is recommended. You are doing it in your jail. Is there any reason why we would not be able to replicate some version of this in other places if our true intent is to help get people real treatment and save lives?

MR. WALKER:

I believe we can replicate it in other smaller jurisdictions and agencies, but time, effort and money can be a problem. Attorney General Ford referenced \$280 million or something like that. It also took our department three years to put our MAT program together. There are doctors, clinicians and other staff involved. To answer your question though, it can be done.

JODI HOCKING (Return Strong):

My husband was born in prison addicted to heroin and crack because his mother was an addict in prison. Never in the existence of that family has anyone ever worked at or had the opportunity to address the root of drug addiction. There will always be somebody selling a drug somewhere. The only way to stop that is to deal with the drug addiction and underlying issues. I always ask regarding our work of the Return Strong organization, are we fighting the tip of the iceberg or the root of the problem? Sometimes you have to do both.

I want to respond to Attorney General Ford about Wanda because right now my husband's family, Jermaine, Latrine, William and Nicole, are sitting in Washoe County Jail and could easily be caught under these bills. They are not traffickers but have addiction issues. They are not the only ones because we deal with thousands of families like that inside Nevada prisons. My fear is this is not going to solve the problem. For the past 20 years, we have been dismantling 50 years of failed policy from the war on drugs and its effect on Black, Brown and poor people in America.

We get letters from people who have spent decades in prison because of the failed attempt to stop drug epidemics. It does not matter what the drug is; increasing the trafficking weight thresholds has not worked to stop deaths in the past and it will not work now. We cannot as a society keep going back to

the same solutions that did not work before, anticipating they will work. If we rip this out at the root and address people's need for substances and need for drugs to relieve their pain and trauma, we eliminate the opportunity for bad players to profit.

CHRIS RIES (Las Vegas Metropolitan Police Department):

We oppose S.B. 35 and S.B. 343. We do believe lowering the threshold for trafficking of fentanyl and its derivatives will have an important and meaningful effect on decreasing the increasing number of deaths that we are seeing. I echo the concerns from the Nevada District Attorneys Association and am still concerned with the language of S.B. 35.

PAMELA DEL PORTO (Executive Director, Nevada Sheriffs' and Chiefs' Association):

We oppose S.B. 35 and S.B. 343 due to concerns on behalf of the rural city and county detention centers. We appreciate the efforts to control the horrific incidents involving fentanyl by both bills and their sponsors.

SEAN O'DONNELL (Executive Director, Foundation for Recovery):

In January this year, I celebrated six years of recovery. Every year our organization witnesses and celebrates similar milestones for hundreds of constituents. There is no doubt that we all want to prevent fentanyl use in our communities and go after the bad guys who are trafficking copious amounts of addicting and lethal substances in our State. Whether it is the intent or not, both these bills will seriously harm Nevadans battling their addiction and rip apart families by imposing stricter criminal penalties without any hard data or science to support this method of mitigation.

The bill does not address the bad guys. It wrongly targets people struggling with behavior and health conditions, not the true drug traffickers we all want off our streets. The mandatory sentences and penalties are one thing, but what I want lawmakers to understand is that following incarceration of these patients and people with behavioral health disorders, they end up at the doorstep of our organization and other nonprofits. The long-term effects of these felony charges make it exponentially harder for our recovery team to find housing and employment for people. What happens when someone cannot find a place to live or work following incarceration is often a cycle of drug use and finding other means to financially support oneself. What we know is that mandatory minimums targeting specific substances like crack cocaine in the past and

creating barriers for people to call 911 in the event of an overdose not only does not work, it kills. Families and people recovering from substance use disorders and public health experts agree that this is regressive policy and will not address our ability to curb opioid deaths or deter fentanyl supply in Nevada.

LAURA MARTIN (Executive Director, Progressive Leadership Alliance for Nevada): We oppose S.B. 35 and S.B. 343. Since 2011, 45 states have proposed legislation to increase penalties for fentanyl, only 39 states have passed or enacted the same type of legislation. Have you seen a reduction in fentanyl use with these changes in policy?

We know the war on drugs disproportionately harms low income and minority communities. According to the Drug Policy Alliance, nearly 80 percent of people in federal prison and almost 60 percent of people in state prison for drug offenses are Black or Latino. Harsh penalties for fentanyl only continue to perpetuate the discriminatory war on drugs instead of offering proven public health policy solutions that save lives. Our politicians want to lock up our loved ones and let drug corporations flood our communities with addictive painkillers for profit while working with corporate lobbyists to deny treatments we need.

We need a public health response to drug and overdose issues. I know we are talking about television characters during this hearing, but one name I will leave you with is Ian, who is my brother, and July 17, 2001, he overdosed. He needed public health and services. He did not need to be criminalized for his addiction.

RYAN HAMPTON (Executive Director, Recovery Advocacy Project):

I have testified on this issue in Congress for years and have worked with Republicans, Democrats and the White House on ensuring we employ public safety measures that offer support to people who need help, not jail. I am the survivor of many near fatal overdoses. My story as a person in recovery is not because the system works, is not because the public health measures we have in place to catch those most vulnerable to an overdose and is not because our drug policy prioritizes public health over the failed tactics still finding their way into Committee rooms such as S.B. 343.

To reference the "Snowfall" comparison, S.B. 343 will 100 percent go after Wanda the crack addict if section 1, subsection 1 is included. Let me make myself clear, Senate Bill 343 is a harmful bill. While I am in solid agreement with

every member of the Legislature that something must be done about fentanyl, this bill is a misguided attempt that ignores basic principles learned from decades of data and ignores the lessons from the crack epidemic of the 1980s and 1990s.

Section 1, subsection 1 provides a threshold so low for one-year minimum mandatory and a felony at four grams that it will undoubtedly imprison people who use drugs and people who need help. Let me further explain, one gram of fentanyl can be purchased in San Francisco for as little as \$10; essentially \$40 of fentanyl, which is a personal use amount, will get someone a one-year minimum mandatory sentence and a felony conviction that will prevent the individual from getting a job or finding housing. This is why people with addictions who get incarcerated are over 120 times more likely to overdose and die. I urge you to please vote no on S.B. 343. We remain neutral on S.B. 35 with the current amendments proposed by the Attorney General and hope to work with his office on more amendments.

YESENIA MOYA:

Two friends of mine have passed away because of the drug addiction despite getting “help from the State.” One had gone to a treatment center and a week later died. I have used my Narcan more times than I can count. My friends and community will be caught up in these bills. They are not the ones that are bringing this into the State. I will lose more in my community because of your lack of care and need to push bipartisan fixes. The road to hell is paved with good intentions. The intent of these bills will not negate the absolute harmful impact that they will have on my community.

Fentanyl overdoses are not on purpose because everything is laced with cocaine, crack, meth, weed, pills, ecstasy and others. You want the deaths to be curbed and stop? Create access to drug treatment programs and wraparound programs for our folks that are free and worthwhile. Invest in harm reduction and healthcare providers who believe in community care. Train our doctors and healthcare professionals to help our communities. I understand that this bill is performative and pure political posturing—why would the Attorney General use a fictional show as an example? I can give you names and dates of the people in my life affected by addiction. A person who is at the place to take a fake opioid is because he or she has no options left other than heroin. This bill is clearly written by folks who have never understood addiction or been affected by it.

Attorney General Ford said the State does not have the capability to do the testing. He wants to go after Franklin Saint, the Black kid who was trying to get out of the hood, but not Teddy, the CIA agent who was the one selling the drugs with permission from the U.S. government. We currently have a woman who led the police association in San Jose who has been smuggling drugs for years. The Attorney General use the word holistically. How is criminalizing people holistic? How is putting people in a prison cell helpful? Do not pass these bills so that jailers and prosecutors can fill quotas. I ask, who is impacted in this working group? Why is the Attorney General talking about a fictional show when this happened to our uncles?

LISA LEE:

I am a person in long-term recovery from opioid use disorder, a concerned mother and a doctoral candidate in public health. I also am a multiple overdose survivor who is here before you today because my friends were not afraid to intervene and reverse my overdoses as I am not afraid to intervene and reverse overdoses.

Let me be clear that I too am concerned about fentanyl and have lost friends who have died from overdoses. I am here to oppose S.B. 35 and S.B. 343 as these bills will kill. Decades of public health research has shown that prohibitive policies drive increasingly risky adulterants in the illicit drug supply, mass incarceration and disproportionately impact people of color and the lowest level people on the supply chain, people with addiction. Nevada has quantitative drug checking capabilities that cannot extrapolate how much fentanyl is in four grams of heroin or sugar for that matter. On the illicit market, all drugs have at least trace amounts of fentanyl from packaging and distribution. Four grams of opioids is the weight of four paperclips, an amount a person might consume in a day, and is not trafficking. Unlike Colorado HR 22-1326, these bills contain no pathways for prevention, harm reduction, treatment or recovery support, and therefore undermine the work of those of us in the trenches working to keep people alive. It fails to address other adulterants concerns, which will only cause further damage in this game of whack-a-mole. I urge you to support prevention, harm reduction, treatment and recovery services that have decades of scientific evidence to support their efficacy. I urge you to be led by evidence, not fear.

DEBI NADLER:

I am a cofounder of Moms Against Drugs and Drug Epidemic Awareness Walk Across America. I am an active member on the SURG committee led by Attorney General Ford; I know his passion and appreciate everything he does. I am a mom who has been directly affected by the loss of my son in 2008 to an overdose. It took me three years after losing him to realize and quite honestly understand exactly what everybody else who has lived this went through. All I wanted to do was put every single person in jail for the first couple of years. Sitting back, I watched and saw this play out, going from the heroin epidemic to fentanyl epidemic and nothing being done to prevent it; watched my son and had to detox myself because there was nothing available in our city. Close your eyes and try to imagine your young child screaming, rolled up in a ball, curled up in pain, in agony, begging, pleading for help. There are no resources here. This was in 2010, and I am still appalled that we do not have the resources.

The reason I am opposing this bill is because there are so many gray areas. Senator Dondero Loop spoke about our children and that touched a chord with me. The bills do not distinguish between minors. In our State, starting at the age of 12, we have children beginning to experiment, not only with marijuana and alcohol, but with prescription drugs and illicit substances. They do not have the full comprehension of life experience to realize the dangers and risks. We have nothing in our classrooms set up to prevent this. We need to have mandated drug counselors and health counselors and drug programs in all the classrooms. Furthermore, the Narcan bill says it shall be in the classroom. It is not mandated and needs to be mandated.

KARLA WAGNER (Professor, School of Public Health; University of Nevada, Reno): I study the health consequences of drug use and overdose. Research points toward three strategies that can reduce overdose deaths, scaling up medications to treat opioid use disorder; implementing evidence-based drug prevention programs; and supporting and expanding access to harm reduction tools such as Narcan to reverse overdoses. Evidence also shows that increased sentencing does not prevent overdose deaths but can increase drug-related harms. For example, in my research in Nevada, fear of law enforcement is a primary deterrent from seeking help during an overdose. People equate calling 911 for help with calling the police. People simply will not call the police in response to an overdose, and people die. Fear of law enforcement also drives people toward solitary drug use, which is another primary risk factor for overdose death.

Incarceration itself is a risk factor for overdose death. People recently released from prison have 10 to 12 times the risk for overdose compared to nonincarcerated people. Disrupting local drug selling networks is also a risk factor for overdose death. In this fentanyl-saturated market, people keep themselves safe by buying drugs from trusted sources. Arresting and incarcerating those sources drives people toward riskier drugs. Research has also shown in the early days of the opioid epidemic that restricting access to prescription opioids was associated with transitions to heroin and methamphetamine use. Now we are seeing fentanyl fill that void. We are focusing on fentanyl which might yield some short-term benefits, but in the long term, the market will respond with other, more dangerous drugs. My team and I have done research on the prevalence of fentanyl in street drugs including stimulants like methamphetamine and cocaine. We found fentanyl in trace amounts in about 21 percent of cocaine and about 4 percent of methamphetamine. We also know that seized pills like those fake M30 that people are talking about are largely comprised of other substances, not fentanyl. One pill analyzed in a lab contained 44 percent of acetaminophen and 0.8 percent fentanyl. In short, sentencing penalties can increase risk for overdose death through a number of different pathways. I am aware of no evidence that increased penalties can reduce overdose deaths or substance use.

BARRY COLE, M.D., M.P.A.:

I am neutral and would like to present a couple of observations. We heard about 6.5 tons of fentanyl being seized at the border. The problem is the DEA thinks that they only get about 5 percent to 10 percent. That means 130,000 to 250,000 pounds got through. If we only got 13,000 starts with, I know you will work incrementally because that is how government progresses. We have S.B. 35, S.B. 197 and S.B. 343 that will have to play through, but the long goal is we are missing the point.

The point is fentanyl comes from Mexico and is not made in America unless it is pharmaceutical. Those precursors that made that drug in Mexico came from the People's Republic of China. We know that. If we are not going to as the State do something to penalize Mexico and China, how do you think you are going to cut this off? It is not going to happen. I assure you as an undergrad at Berkeley in 1974 with a six-foot resin column, you could give me any unknown sample in the biochemist lab and I could tell you what was in it. If you do not want to hire Berkeley or University of Nevada, Reno, undergrads, you can send it to Millennium Labs for \$1,000 to \$1,500. If they cannot tell you exactly what is in

the sample, they have many competitors. We can determine what is in pills and we can do something about it. I am not so sure what the legislation will do.

ATTORNEY GENERAL FORD:

This is an important discussion. It is difficult to address a crisis on a tough issue. Some people want no penalties whatsoever, while some people do not want medicated treatment required in the jails. That is a bridge difficult to overcome.

To the contrary, intent does matter to those who said otherwise. My intent could have been to come in as a tough on crime guy who had no compassion for the end user, who sought only to punish those we engage in this area from the end user to the trafficker. Instead, my intent is to ascertain ways in which to provide assistance to those who use drugs and to focus on those who are distributing and manufacturing these drugs. It does matter and not to the exclusion of effect because effect is important as well, which is why I asked those from every side of the issue to provide me with assistance on ensuring effect aligns with my intent. Some have stonewalled me and have said under no circumstance can they provide assistance; for those who testified in opposition without providing support on ways in which to bridge matters because my approach could have been I could care less what those opposing this bill feel. Instead, I believe in cooperative acquiescence and looking for opportunities again to find the compromise where appropriate.

I would hope that this conversation continues because we have a lot of work yet to do with those who are opposed to these bills. Reasonable minds can disagree. Some argue this is a public health issue and has nothing to a public safety. I think it is both and respectfully disagree with the notion that the only approach to address this issue is public health. I am looking for opportunities to meld public health and public safety and have attempted to pursue these simultaneously. I encourage those who have ideas on both ends to present and to pursue those ideas.

I will remind those who are paying attention to this bill hearing that nothing in these bills removes the ability of diversion courts, drug courts and other opportunities to receive assistance as opposed to being sent to jail or prison. There are additional suggestions on ways the criminal justice system can approach this, and I would suggest they be brought forward because there are some big differences between the 1980s and what we are doing today.

We are two presenters who are concerned about the impact and effect of the language in these bills. Some say that we are only throwing them in jail and being tough on crime, not smart on crime. I do not endeavor to claim to be tough on crime and want to be smart on crime, looking for the opportunity to address this issue in a holistic way. I would encourage those who have presented amendments to continue to work with us and encourage those who have stonewalled us and not presented amendments to approach us with suggestions on ways to proceed.

SENATOR CANNIZZARO:

The one thing that sticks out to me is it does not have to be one or the other. It can both be a public health and public safety crisis that we can address with treatment and a variety of other facets. Maybe some of those are not in this particular bill, but I think we can be dedicated to and also recognize there is a place for tools for law enforcement to go after individuals who are creating this crisis. We cannot lose sight of that. There are so many families who have lost kids and friends to fentanyl. That is why we are having this discussion; not because there was some discussion at a table and figure out what bill we can bring that just says, "Let's go for these higher penalties and that is what we are going to do."

We have tried to address this issue over the last few sessions in this building. This Committee has endeavored to come up with legislation that does not treat everything the same way and does make considerations for things like treatment. There are folks who are on one side or another, being a public health crisis or public safety crisis, and do not want to see the other side. But the two individuals sitting before you are trying to find the right balance to do both of those things simultaneously. This speaks to the approach we, the Committee and other Legislators have tried to do. To walk away from this and not to address it at all is simply not a place we can be for our constituents. I would rather say that we have tackled something we know is an issue.

There are plenty of statistics to delineate that fentanyl is absolutely a crisis in our communities. Whether using the anecdotal or actual data points, there is no denying that fact. These bills will not solve all those problems simultaneously. What it does is provide a tool to law enforcement and recognize that some are born out of addiction. How is it that we can address that? Through medication-assisted treatment programs? How can we provide pieces in the legislation from the Good Samaritan standpoint, so that folks do not have to be

afraid in an overdose situation or where someone has taken fentanyl and is potentially in a life-threatening situation so they can seek assistance? How can we create those spaces to allow for discretion and for things to be treated appropriately and still provide the tool?

I think that these bills are in a good spot to move forward with that premise. I will continue to speak with anyone who wants to help work on this issue and come up with a solution—not we do nothing and walk away, because the solution has to be that we do something. It is going to mean a public safety aspect and is also going to mean a public health aspect.

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Senate Committee on Judiciary
April 10, 2023
Page 40

CHAIR SCHEIBLE:

I have received one neutral letter ([Exhibit G](#)) for S.B. 35. This concludes the hearing on S.B. 35 and S.B. 343, and I am adjourning the Senate Judiciary Committee at 4:30 p.m.

RESPECTFULLY SUBMITTED:

Blain Jensen,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 35	C	4	Attorney General Aaron Ford	Video Clip Link
S.B. 35	D	5	Attorney General Aaron Ford	Proposed Amendment
S.B. 35 / S.B. 343	E	11	Attorney General Aaron Ford	Opposition Letter from Erica Roth, Washoe County Public Defender's Office
S.B. 35 / S.B. 343	F	25	John J. Piro / Clark County Public Defender's Office	Proposed Amendment
S.B. 343	G	40	Senator Melanie Scheible	Neutral Letter