

California to enact sentencing enhancement as fentanyl debate reaches boiling point

By Eric He

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Much like the rest of the country, [California has seen](#) its number of fentanyl-related deaths spike in recent years. Nearly 6,000 Californians died from fentanyl in 2021 — a drastic increase from just under 800 in 2018. It's a trend that has gotten the attention of many lawmakers in Sacramento, though "tough-on-crime" policy attempts to address fentanyl — such as sentencing enhancements — have not fared well in this Legislature.

Around a third of the fentanyl-related measures that lawmakers introduced last session analyzed by POLITICO sought an enhancement in penalties for possessing or selling fentanyl. However, only one was signed into law by Gov. [Gavin Newsom](#): a bill that adds an additional three to 25 years of prison time for a person convicted of knowingly selling, purchasing or transporting at least one kilogram of fentanyl.

[AB 701](#) by Assemblymember [Carlos Villapudua](#) (D-Stockton) is a rare new sentencing enhancement enacted by the California Legislature. Democratic lawmakers have been wary of harkening back to the "war on drugs" — a string of policies passed in the 1980s and 1990s that led to mass incarceration disproportionately targeting people of color — and have instead sought in recent years to [lessen or ease](#) enhancement.

This bill was backed by the California District Attorneys Association and opposed by the California Public Defenders Association, which called sentencing enhancements an outdated approach.

Villapudua, in an interview with POLITICO, said that he supports preventative and treatment solutions proposed by the bill's opponents, but noted that most people who take fentanyl are "not going to make it to rehab."

"It's not so much the war on drugs," Villapudua said. "It's more of letting people know that this is not a drug. This is a poison."

WHAT'S IN THE BILL?

This Pro Bill Analysis is based on the [text of the bill](#) as signed into law on Oct. 8.

The bill adds fentanyl to the list of controlled substances — in addition to cocaine and heroin — for which additional penalties would apply if a person is convicted of selling, purchasing or transporting at least one kilogram of the drug. However, the text states that the person would also have to be aware that the drug is considered a controlled substance (Sec. 1).

The penalties for fentanyl would be the same as those listed for the other drugs under [Section 11370.4 of the Health and Safety Code](#). If convicted, the individual would receive the following sentencing:

- An additional three years if the substance exceeds one kilogram
- An additional five years if the substance exceeds four kilograms
- An additional 10 years if the substance exceeds 10 kilograms
- An additional 15 years if the substance exceeds 20 kilograms
- An additional 20 years if the substance exceeds 40 kilograms

— An additional 25 years if the substance exceeds 80 kilograms.

That said, the measure will allow a court to waive the enhancement if it determines “circumstances in mitigation of the additional punishment.”

AB 701 will also amend [Section 11372 of the Health and Safety Code](#) to include fentanyl, and will allow a \$1 million fine for those who traffic one kilogram of fentanyl, \$4 million for four kilograms and \$8 million for 10 kilograms (Sec. 2).

WHO ARE THE POWER PLAYERS?

A bipartisan group of more than 40 lawmakers signed onto the bill as co-authors, helping Assemblymember [Carlos Villapudua](#) (D-Stockton) propel it to the governor’s desk this year after several unsuccessful attempts since 2016. Assemblymember [Cottie Petrie-Norris](#) (D-Laguna Beach), who tried to pass a similar measure in 2020 and 2021, introduced the bill with Villapudua.

The principal coauthor was Sen. [Janet Nguyen](#) (R-Huntington Beach), who brought forward a nearly identical measure, [SB 62](#), before Villapudua introduced his bill — but she ultimately threw her support behind AB 701.

In addition to Nguyen, five other Senate Republicans joined Democrats in co-authoring the bill: Minority Leader [Brian Jones](#) (R-Santee), Sen. [Roger Niello](#) (R-Fair Oaks), Sen. [Rosilicie Ochoa Bogh](#) (R-Yucaipa), Sen. [Kelly Seyarto](#) (R-Murrieta) and Sen. [Scott Wilk](#) (D-Santa Clarita).

The bill did not originally have the support of Assemblymember [Reggie Jones-Sawyer](#) (D-Los Angeles), the then-chair of the Assembly Public Safety Committee. After initially voting down AB 701 and holding all fentanyl-related measures, Jones-Sawyer [later relented](#) in the face of immense pressure and brought the bill back up again as part of a special hearing where the measure passed.

“We rallied together as one, and I’m very thankful for my colleagues for being able to push the needle across — because that’s what changed,” Villapudua said.

Villapudua said then-Speaker [Anthony Rendon](#) (D-Lakewood) helped gather support for the bill, and that other lawmakers were seeing the same fentanyl-related issues in their own districts. He credited **Ron Freitas**, the San Joaquin County District Attorney, for presenting him with the idea for the bill.

Nguyen told POLITICO that the Democrats caved to public pressure in dealing with an issue that isn’t new, but they wanted to take credit. It is not unusual for Democrats, who control a super-majority of the state Legislature, to thwart an idea presented by a Republican lawmaker in favor of the same policy introduced by one of their own.

“I’m unhappy about the political gamesmanship,” Nguyen said. “However, I don’t care who takes the credit. I just want it done because it’s the right thing to do.”

Kim Stone, a lobbyist for the **California District Attorneys Association**, suggested that AB 701 was the only fentanyl-related measure with penalty enhancements to pass because the amount of fentanyl needed to trigger the increased sentencing would only apply to large-scale drug dealers.

A kilogram of fentanyl pills could have the same amount of potency as up to 92,000 personal-use dosages, and a kilogram of fentanyl powder could manufacture approximately one million pills, Stone wrote [in a letter](#) on behalf of the CDAA. The law is not intended to target low-level street dealers or people who share the drug occasionally with others, the letter adds.

“I think this bill got the support it did because there’s no way on earth a user supporting their habit would have a kilo of fentanyl,” Stone told POLITICO. “This is only going after the biggies.”

The bill’s opponents included the **California Public Defenders Association** and the **Ella Baker Center for Human Rights**. Glenn Backes, a lobbyist and consultant for the Ella Baker Center, said that while a kilogram is a large amount of fentanyl, a three-year prison term enhancement means spending money on a policy that doesn’t necessarily reduce fatal overdoses.

“Our main line was: ‘Don’t spend public dollars on things that don’t work, emphasize enrolling people in drug treatment and deemphasize putting people in prisons and jails,’” Backes said in an interview with POLITICO.

With the state staring down a [\\$68 billion budget deficit](#) next year, Backes added that “we cannot continue to increase spending on prisons and not expect it to have a negative impact on spending on health, education and other priorities” that he sees as more tangible solutions to the fentanyl crisis.

WHAT’S HAPPENED SO FAR?

Legislation similar to AB 701 has been introduced six different times since 2016 — most recently by Nguyen last year ([AB 1955](#)) and Petrie-Norris in both 2020 ([AB 2975](#)) and 2021 ([AB 1351](#)). Former Sen. Patricia Bates also tried three times unsuccessfully: [SB 1323](#) in 2016 and [SB 1103](#) and [SB 176](#), both in 2017.

All but one failed in the Public Safety Committees; neither of [Petrie-Norris’ efforts](#) even received a hearing in the Assembly Public Safety Committee. Of the more than a dozen fentanyl-related bills that failed to pass this year, all but one were also stymied by the Public Safety Committees.

“Everybody knows that sentencing enhancements are unlikely to get out of the Public Safety Committee,” said Stone, the lobbyist with the district attorneys association. “You have to go about it another way.”

Stone, who also lobbied for several other fentanyl bills this year, said that there have been numerous measures that would have cleared the Assembly floor if not for the Public Safety Committee holding them up.

Villapudua said that AB 701 was “dead on arrival” in the committee even before its first hearing, without the support of Jones-Sawyer. He convinced two Democrats — Assemblymembers [Liz Ortega](#) (D-San Leandro) and [Rick Chavez Zbur](#) (D-Los Angeles) — to join with the Republicans in defying the chair’s recommendation, but entered the March 21 hearing knowing he was one vote short.

Still, Villapudua, who was “a little bit more angry on this one,” showed up and presented the bill.

“I walked out of there basically kind of upset and said, ‘Hey, you know what? I’m not going to quit here,’” Villapudua said.

A month later, the bill cleared the committee as part of a special hearing on various fentanyl-related measures, where Jones-Sawyer flipped his vote. It also passed the Senate Public Safety Committee unanimously on June 27, despite some trepidation from Sen. [Scott Wiener](#) (D-San Francisco), who pushed for an amendment to require that the dealer have knowledge that they are in possession of fentanyl — language that was eventually added to the enacted bill.

The measure passed both houses with no opposition and was signed into law by Newsom on Oct. 8.

Backes, of the Ella Baker Center for Human Rights said that the “Public Safety Committee is not ever going to solve the problem of drugs,” arguing that the criticism toward how Jones-Sawyer handled the fentanyl measures was an unfair political strategy by the Republican minority to “bash, bash, bash.” He instead pointed to solutions that were discussed in health committees and health-oriented items in the budget such as [increasing distribution of Naloxone](#), the [California Harm Reduction Initiative](#) and [other response efforts](#).

“The overwhelming evidence of decades of research is that increased penalties do not reduce the availability of drugs,” Backes said. “And so adding fentanyl to the list of substances for which you could get additional years — having already witnessed that it didn’t work for cocaine, heroin, methamphetamine or other drugs — is not sound policy.”

WHAT’S NEXT?

The law takes effect on Jan. 1, and legislation addressing fentanyl is widely expected to again be a hot topic in Sacramento next year, with both Villapudua and Nguyen weighing introducing other measures.

Some bills that failed this year could also be brought back and critiqued by fresh eyes, now that Assemblymember [Kevin McCarty](#) (D-Sacramento) is taking over for Jones-Sawyer as chair of the Assembly Public Safety Committee. McCarty, who is also running for mayor of Sacramento, [told the Sacramento Bee](#) that he’s planning to address the fentanyl crisis but did not offer specific proposals.

The Assembly Health Committee will have new leadership, as well, with Assemblymember [Mia Bonta](#) (D-Alameda) taking over as chair for Assemblymember [Jim Wood](#) (D-Healdsburg). Bonta, who served on the Public Safety Committee last year, was one of two Assemblymembers — along with [Ash Kalra](#) (D-San Jose) — who abstained from voting on the bill when it passed the full body by a 78-0 margin.

Villapudua, who himself will be [running in a contested state Senate race](#), said he's looking to bring forward more legislation that "takes us to the next level" beyond enhancements. He'll also keep an eye on how other states are addressing the fentanyl crisis.

"Billboards are not going to stop this," Villapudua said. "Education in schools is not going to stop this. It's got to be something more."

WHAT ARE SOME STORIES ON THE BILL?

[Read POLITICO news on AB 701.](#)