

SENATE BILL NO. 2248

Introduced by

Senators Hogue, Larson, Luick

Representatives Klemin, Louser

1 A BILL for an Act to create and enact ~~sections 19-03.1-23.5~~ a new section to chapter 19-03.1
2 and section 19-03.1-23.6 of the North Dakota Century Code, relating to ~~a mandatory term of~~
3 ~~imprisonment for manufacturing or delivering fentanyl~~ a special penalty for death or injury
4 through distribution of illegal drugs and fentanyl reporting; ~~to amend and reenact subsection 2-~~
5 ~~of section 29-29.5-08 of the North Dakota Century Code, relating to the disposition of cases~~
6 ~~involving confidential informants~~; to provide a penalty; and to provide ~~for application~~ an
7 appropriation.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 ~~**SECTION 1.** Section 19-03.1-23.5 of the North Dakota Century Code is created and~~
10 ~~enacted as follows:~~

11 ~~**19-03.1-23.5. Mandatory term of imprisonment for manufacturing or delivering**~~
12 ~~**fentanyl.**~~

13 ~~1. An individual arrested for manufacturing, delivery, or possession with intent to~~
14 ~~manufacture or deliver fentanyl or fentanyl derivatives may not enter a plea agreement~~
15 ~~dissolving the individual's arrest related to manufacturing, delivery, or possession with~~
16 ~~intent to manufacture or deliver fentanyl or fentanyl derivatives.~~

17 ~~2. Notwithstanding section 19-03.1-23, an individual who has been arrested for, or pled~~
18 ~~guilty or nolo contendere to, or has been found guilty of manufacturing, delivery, or~~
19 ~~possession with intent to manufacture or deliver fentanyl or fentanyl derivatives must~~
20 ~~be sentenced to a minimum sentence of one year imprisonment.~~

21 ~~3. The court may not defer imposition of sentence or suspend any part of the specified~~
22 ~~minimum mandatory term under subsection 2 either at the time of or after the~~
23 ~~imposition of the sentence.~~

1 **SECTION 1.** A new section to chapter 19-03.1 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Distribution of illegal drugs - Special penalty for death or injury.**

4 1. As used in this section:

5 a. "Consume" means to inject, ingest, or inhale a controlled substance.

6 b. "Controlled substance" includes derivatives or analogs to a scheduled controlled
7 substance.

8 c. "Injury" means an overdose that puts an individual's life at immediate risk.

9 d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to
10 supply or deliver a controlled substance.

11 2. An individual is guilty of causing death or injury by distributing a controlled substance if
12 the individual willfully supplies another to deliver a controlled substance to an
13 individual who consumes the controlled substance and that individual dies or is injured
14 from overdosing after consuming a portion of the controlled substance.

15 a. A violation of this section is a class A felony.

16 b. This section does not limit a conviction under chapter 12.1-16, but an individual
17 may not be found guilty of this section and an offense under chapter 12.1-16 if
18 the conduct arises out of the same course of conduct.

19 3. Venue for an offense under this section is in the county where the death or injury
20 occurred or any county where the controlled substance was directly or
21 indirectly obtained by the deceased or injured individual.

22 a. An individual may not be convicted in more than one county for the death or
23 injury of the same individual who overdosed on a controlled substance.

24 b. Notwithstanding chapter 29-03, an individual outside the state may be
25 prosecuted within the state under this section.

26 c. The charging document for a violation of this section must list an overt act in
27 which the individual engaged to violate this section.

28 d. Injury or death by an overdose may be proven by direct or circumstantial
29 evidence.

- 1 4. An individual may not be charged under this section if the individual supplied or
2 administered a controlled substance as part of a medical procedure or the individual
3 was in a lawful position to dispense a medication prescription.
4 a. An individual may not be charged under this section if the individual complied
5 with section 19-3.1-23.4.
6 b. It is not a defense to this section that the deceased or injured individual had other
7 controlled substances or alcohol in the individual's system which the defendant
8 did not supply at the time of an overdose.

9 **SECTION 2.** Section 19-03.1-23.6 of the North Dakota Century Code is created and
10 enacted as follows:

11 **19-03.1-23.6. Fentanyl reporting - Report to legislative management.**

- 12 1. As used in this section, "law:
13 a. "Health care provider" means a person licensed or certified by the state to
14 provide health care services. The term includes emergency service personnel, a
15 medical hospital, and a medical clinic.
16 b. "Law enforcement agency" means a nonfederal public agency authorized by law
17 or by a government agency or branch to enforce the law and to conduct or
18 engage in investigations or prosecutions for violations of law. The term includes a
19 multijurisdictional task force.
20 2. Annually, a law enforcement agency and a health care provider shall provide to the
21 attorney general a completed case report form for every death the agency or the
22 provider encounters which is caused by, suspected to have been caused by, or is
23 related to fentanyl consumption.
24 a. The data and report compiled under this section are open records.
25 b. The attorney general may require the reporting of additional information not
26 specified in this section. The attorney general shall develop standard forms,
27 processes, and deadlines for annual submission of fentanyl data by law
28 enforcement agencies and health care providers.
29 c. If a law enforcement agency or health care provider fails to file a report within
30 thirty days after the report is due, the attorney general may compel compliance
31 by any means until the report is filed.

1 d. By November first of each year, the attorney general shall submit to the
2 legislative management and the governor a written report summarizing the
3 number of deaths that occurred in the state caused by or related to fentanyl
4 consumption during the preceding calendar year. The attorney general shall
5 make the report available on the attorney general's website.

6 ~~— **SECTION 3. AMENDMENT.** Subsection 2 of section 29-29.5-08 of the North Dakota~~
7 ~~Century Code is amended and reenacted as follows:~~

8 ~~— 2. — After~~~~Except for a sentence imposed under section 19-03.1-23.5, after consideration of~~
9 ~~an informant agreement, a court may defer imposition of sentence or suspend a~~
10 ~~portion of a minimum mandatory sentence when a confidential informant has~~
11 ~~substantially complied with an informant agreement.~~

12 ~~— **SECTION 4. APPLICATION.** Section 3 of this Act applies to an informant agreement~~
13 ~~entered after the effective date of this Act.~~

14 **SECTION 3. APPROPRIATION - ATTORNEY GENERAL - FENTANYL AWARENESS**

15 **EXPANSION.** There is appropriated out of any moneys from opioid-related lawsuit settlement
16 proceeds, not otherwise appropriated, the sum of \$1,500,000, or so much of the sum as may be
17 necessary, to the attorney general for the purpose of providing and expanding statewide
18 awareness of the fentanyl drug and overdose epidemic, for the biennium beginning July 1,
19 2023, and ending June 30, 2025.