

Senate Judiciary Committee

Pete Mulvey 271-4063

SB 15-FN, relative to establishing a mandatory minimum sentence for the crime of distribution of a controlled drug with death resulting.

Hearing Date: January 14, 2025

Time Opened: 2:24 p.m.

Time Closed: 3:18 p.m.

Members of the Committee Present: Senators Gannon, Abbas, Altschiller and Reardon

Members of the Committee Absent : Senator Carson

Bill Analysis: This bill sets a mandatory minimum sentence for the crime of distribution of a controlled drug with death resulting.

Sponsors:

Sen. Gannon

Sen. Gray

Sen. Lang

Sen. Birdsell

Sen. Avarad

Sen. Abbas

Rep. Litchfield

Rep. Khan

Rep. Vose

Rep. L. Walsh

Rep. Bernardy

Who supports the bill: Seven individuals signed in support of SB 15-FN. Contact Pete Mulvey for further details (peter.mulvey@gc.nh.gov).

Who opposes the bill: 54 individuals signed in opposition to SB 15-FN. Contact Pete Mulvey for further details (peter.mulvey@gc.nh.gov).

Who is neutral on the bill: N/A

Summary of testimony presented:

Senator Bill Gannon

Senate District 23

- Senator Gannon pointed to the death resulting component of SB 15 to distinguish it from SB 14.
- Senator Gannon did not find it just that sellers continued to live freely whilst families lost children resulting from their dealing.

- A death resulting from the sale of a substance is significant enough to justify the sentencing proposed; Justice is given to families, less product is sold, and rehabilitation can proceed for the incarcerated.

Melissa Davis, esq.

New Hampshire Association of Criminal Defense Lawyers

- Ms. Davis testified in opposition and expressed concern that SB 15 was broad to the extent that regular users would be encompassed.
- The intent to target distributors was understood by Ms. Davis. Federal Authorities usually pursued cases of significant quantity for transit or distribution.
- SB 15 would impede judicial discretion.
- Circumstances of distribution are typically accounted for in death resulting cases.
- Ms. Davis reported that most people involved in death resulting cases were being held to account.
- Senator Abbas asked Ms. Davis what an appropriate punishment would be for an individual knowingly selling a product with the awareness that it is deadly and very well may result in such – regardless of intention.
 - Ms. Davis said maximum penalties were already in place. In such an instance, a judge could use their discretion to potentially sentence a convicted party to life.
- Senator Abbas emphasized focus on distributors and suggested that mandatory minimums for deaths resulting in such circumstances is analogous to vehicular homicide while intoxicated. The outcome is foreseeable and occurs despite any intention to harm.
 - Ms. Davis attested that she did not believe vehicular homicide and distribution with death resulting were equivocal. If a group experiencing collective withdrawal appointed an individual to procure fentanyl, that individual could be captured by SB 15.
- Senator Reardon asked Ms. Davis if she felt current laws sufficiently addressed the circumstances in question.
 - Ms. Davis believed so.

Sean Karkos, esq.

Assistant County Attorney – Hillsborough County Attorney’s Office

- Death resulting cases are rare, subject to proper hurdles and difficult to prove. There are hundreds of overdose deaths annually yet very few prosecutions for death resulting.
- Every charge carries the goal of rehabilitation and deterrence.
- Deterrence encapsulates the individual and society as a collective.
- Mr. Karkos believed that SB 15 adequately covered deterrence.
- Measures to address demand are successful and necessary – as are measures addressing the supply.

- Mr. Karkos said it was uncommon for sellers to discriminate regarding substances. They market a diverse range of drugs, which would be limited in the event fentanyl is treated independently.
- While the exact figure may be debated, Mr. Karkos found a mandatory minimum for death resulting as imperative.
- Senator Altschiller noted that SB 15 was not limited to fentanyl, and additionally, left discretion to the prosecutor. Senator Altschiller asked Mr. Karkos if SB 15 may enable similarly empowered individuals to pursue the mandatory minimum for a death resulting from an Adderall induced heart attack.
 - Mr. Karkos stated that while true, the burden of proof beyond a reasonable doubt that the substance in question caused the death would be maintained. If an individual took Adderall and had a heart attack, the mandatory minimum could not be pursued unless it were specifically an Adderall toxicity event.
- Senator Reardon asked if it was the prosecutor who chose whether to pursue the mandatory minimum, and not the judge.
 - Mr. Karkos confirmed that yes, and if convicted, judicial discretion is limited.
- Senator Gannon asked Mr. Karkos to provide some figures for deaths resulting cases.
 - Mr. Karkos said he has only had five in his tenure. Deaths resulting cases were very difficult to pursue in Manchester due to the availability of substances and the effect that has on proving cause beyond a reasonable doubt.
- Mr. Karkos encouraged the committee to amend SB 15 to provide exceptions for informants.
- Senator Abbas asked how a prosecution would orchestrate for two individuals consuming on a bench, with a death resulting.
 - Mr. Karkos stated that aside from a confession, the specified instance would be difficult to prosecute as record indicating intent to distribute, to procure a buyer, and to coordinate and transact would have to be apparent.

Devon Chaffee

Executive Director, ACLU N.H

- Ms. Chaffee testified in opposition to SB 15.
- Best practices were already in effect and working well.
- Death resulting is a strict liability crime, and lacks evidence suggesting it would reduce overdoses.
- Ms. Chaffee stated that the bulk of death resulting prosecutions are not against dealers; they do not tend to stick around very long.
- Many deaths resulting prosecutions are against friends or family who very well may be suffering from substance use disorder as well.
- Strict liability crimes are typically delineated from others by the element of intention to harm or significant negligence regarding harm.
- There is little proof suggesting that lofty sentences reduced overdoses.

- In New Jersey, Tennessee, North Carolina, Louisiana, New York, and Illinois, overdoses rose significantly following similar efforts to impose mandatory minimums for deaths resulting.
- Ms. Chaffee encouraged commitment to best practices; Fund treatment, prevention services and Narcan.
- Ms. Chaffee asked the committee to consider SB 15 inexpedient to legislate.
- Senator Gannon questioned the veracity of Ms. Chaffee’s data and the notion that mandatory minimums increased overdoses as such ran contrary to his conversations with police chiefs.
 - Ms. Chaffee stated that these are not novel policies, and there is historical data proving their outcomes across many jurisdictions. Greater time spent in prison is correlated with recidivism as well.
- Senator Gannon asked Ms. Chaffee if punishment and deterrence are unnecessary, and if rehabilitation is all that is needed.
 - Ms. Chaffee clarified that it is not her nor the ACLUs position that deterrence is unnecessary. Rather, SB 15 is simply unproductive.

Anena Hansen

Peterborough

- Ms. Hansen testified in opposition to SB 14 and SB 15.
- Ms. Hansen’s late partner, Phil Spagnuolo, was a former state representative, small business owner, and advocate for treatment reform.
- Phil was in recovery from substance use disorder and succumbed to his condition in 2021.
- Phil had prior convictions for both possession and dealing for many years. Ms. Hansen found it unlikely that a mandatory minimum would aid his recovery or public safety.
- Ms. Hansen did not believe prison better served society than recovery.
- The goal of mitigation and prevention is collectively shared. There is clear data showing the un productivity of mandatory minimums.
- Ms. Hansen believed the imposition of such policies against the sick was unethical.
 - Sellers typically require treatment as well.
- Punishments are only ethical when incorporated with evidence based best practices
- Those responsible for manufacturing, transiting, and selling Phil’s final, fatal dose are still around. Ms. Hansen did not wish for their lives to be spent behind bars, but rather to be subject to legal consequences proven to improve contribution to society and proven to decrease the odds of re offending.