

Senate Judiciary Committee

Pete Mulvey 271-4063

SB 14-FN, relative to the penalty for certain fentanyl-related offenses.

Hearing Date: January 14, 2025

Time Opened: 1:15 p.m.

Time Closed: 2:24 p.m.

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

Members of the Committee Absent : Senator Carson

Bill Analysis: This bill adds mandatory minimum sentences for certain fentanyl-related offenses.

Sponsors:

Sen. Gannon

Sen. Lang

Sen. Innis

Sen. Birdsell

Sen. Abbas

Sen. Avar

Sen. Rochefort

Sen. Murphy

Rep. Weyler

Rep. M. Pearson

Rep. Bernardy

Who supports the bill: four individuals signed in support of SB 14-FN. Contact Pete Mulvey (pete.mulvey@gc.nh.gov) for further details.

Who opposes the bill: 63 individuals signed in opposition to SB 14-FN. Contact Pete Mulvey (pete.mulvey@gc.nh.gov) for further details.

Who is neutral on the bill: N/A.

Summary of testimony presented:

Senator Bill Gannon

Senate District 23

- SB 14 prescribes mandatory minimum sentences for possession of fentanyl.
- Minimums vary for amounts exceeding 5g and 28g of the substance respectively.
- Senator Gannon referred to testimony before the Senate Judiciary Committee in the preceding session; mandatory minimums would deter offenders.
- Senator Gannon found deterrence to be an essential component of opioid mitigation in addition to rehabilitation, functioning like legs of a stool.
- Senator Altschiller asked Senator Gannon if he had county figures supporting the notion that dealers re offended frequently.

- Senator Gannon indicated that he would seek and provide the requested metrics.
- Senator Altschiller contemplated if correctional authorities had the capacity to accommodate a potentially significant increase in such incarcerations.
 - Senator Gannon indicated that he would follow up on the matter with the appropriate parties.
 - Senator Gannon clarified that the New Hampshire Police Chiefs Association had an amendment creating an exception for informants.
- Senator Reardon asked if the unintentional sale of fentanyl would be subject to the mandatory minimums proposed in SB 14.
 - Senator Gannon said they would not; sales had to be made knowingly.

Mayor Jay Ruais

City of Manchester, N.H.

- Mayor Ruais spoke in support of SB 14.
- Safety is the top responsibility and priority of the mayor's office.
- SB 14 would enable the City of Manchester to make further progress with measures relative to opioid mitigation and enforcement.
- Opioid related fatalities had dropped 21% in Manchester.
- The lowest one-month opioid response total had just been recorded in Manchester.
- Nearly half of Manchester's drug arrests were for fentanyl or heroin.
- In 2024, over 7300 grams of fentanyl had been found in Manchester.
- Mayor Ruais supported the 7-year minimum sentence for those caught in possession of 5g or more of fentanyl.
- Mayor Ruais took the opportunity to share his support for SB 15 in lieu of additional in person testimony.

Melissa Davis, esq.

New Hampshire Association of Criminal Defense Lawyers

- Ms. Davis opposed SB 14 on behalf of the N.H Association of Criminal Defense Lawyers.
- New Hampshire had 427 overdoses in 2022. In 2024, that figure fell to 199.
- Evidently, harm reduction and demand mitigation via treatment was working without mandatory minimums.
- Addiction symptoms and withdrawal eclipse an individual's considerations toward mandatory minimums.
- For some with substance use disorder, 5g of fentanyl could be a personal daily quantity.
- The absence of mandatory minimums did not preclude the pursuit of weighty punishments to compel cooperation.
- Ms. Davis expressed concern that SB 14 could result in bias and asserted that judges ought to determine sentencing.
- It currently costs \$190k to incarcerate an individual for a 3.5-year sentence. SB 14 would drive costs up to almost a quarter of a million dollars per person.

- Federal guidelines differed from SB 14; federally, 40g of fentanyl in possession warrants a 5-year sentence, or 10 years if possessing 400g or more.
- Federal investigations typically target high-volume dealers.
- Mandatory minimums do not encourage pleas, but rather trial. Litigation costs will expand because of SB 14.
- Those deemed incompetent cannot proceed to trial, which SB 14 does not accommodate for.
- Ms. Davis stated that New Hampshire law finds those charged as accomplices as equally guilty to other participatory parties.
- Every county in the state has a drug court. Mandatory minimums would upend said courts and specialized programs.
- Senator Gannon asked Ms. Davis if the implication was that 5g of fentanyl was insignificant. Senator Gannon reiterated that 5g can kill someone.
 - Ms. Davis clarified that the population in question are largely subject to tolerances; they can and will consume that quantity in a day.
- Senator Gannon asked if marijuana laced with 5g of fentanyl could kill children.
 - Ms. Davis said yes, in theory, marijuana laced with the specified quantity could be lethal for some.
- Senator Abbas stated that a lethal dose of fentanyl is 2mg. Meaning 5g is 1000 lethal doses. Senator Abbas asked Ms. Davis if people took 1000 fatal doses and survived.
 - Ms. Davis clarified that the figure represented daily total consumption, not a one-time dose.

Dan Wargo

Director - TLC Recovery

- Mr. Wargo is a licensed drug and alcohol counselor for the Department of Corrections in Sullivan County.
- Mr. Wargo expressed concern over SB 14 and 15.
- Punitive approaches should not take priority over treatment.
- In a treatment group devoid of dealers, all had admitted to possessing 5g of fentanyl or more at a given time according to Mr. Wargo.
- N.H had done a great job with opioid mitigation compared to other states.
- Senator Abbas asked about line 21, finding 28g to be an appropriate quantity for a mandatory minimum.
 - Mr. Wargo believed the quantity specified was more in line with distribution and was clearly distinct from a 5g personal amount.
- Senator Abbas asked Mr. Wargo if he would oppose a seven-year mandatory minimum for 28g in possession.
 - Mr. Wargo stated that he would have to think on the question.
- Senator Reardon asked Mr. Wargo what program he participated in.
 - Mr. Wargo was a part of TRAILS.

- Senator Reardon spoke of the Merrimack County treatment program, asking Mr. Wargo if he felt that SWORD and the 90 days spent there were akin to punishment or treatment.
 - Mr. Wargo considered the program treatment.
- Senator Reardon asked Mr. Wargo if full sentences would be served in the event an individual failed a program.
 - Mr. Wargo said yes, and added that you could agree to treatment for a reduced sentence or refuse and serve full time.
- Senator Altschiller asked if someone with substance use disorder was impaired voluntarily or at the whim of their disorder if using fentanyl.
 - Mr. Wargo said impairment or use was voluntary until it became and developed into a substance use disorder.

Michelle Lennon

Campton

- Ms. Lennon opposed SB 14 for personal and professional reasons.
- Following an accident, Ms. Lennon's husband was over prescribed opioids and developed substance use disorder.
- There were little to no treatment resources at the time – Ms. Lennon did not find any of her husband's arrests or incarcerations productive.
- Ms. Lennon believed that for a time her husband did not behave voluntarily and was subject to his condition.
- Forced sobriety is not the same as recovery
- Comprehensive recovery programs establishing continuity between incarceration and release are entering the Department of Corrections.
- The state may not be able to offer what people need for recovery. Ms. Lennon's husband received a hip replacement which solidified his progress.
- Incarceration never helped and only put more burdens on Ms. Lennon and her family.

Jake Berry

Vice President of Policy - New Futures NH

- Mr. Berry and New Futures were strongly opposed to SB 14 and SB 15.
- Substance use disorder is a chronic relapsing condition of the brain requiring treatment not punishment.
- Mandatory minimums do not provide any notable reduction for overdoses or drug related crimes in states which have enacted such laws.
- Mr. Berry suggested that such punitive measures impeded treatment and mitigation.
 - Additionally, prosecution and incarceration cost more for taxpayers than treatment and prevention.

- Mr. Berry understood the intent to capture dealers, yet found it difficult to delineate between buyers and sellers as many eventually turn to distribution, further enabling their illness.
- Senator Abbas asked Mr. Berry if he believed there should be mandatory minimum sentences for sellers.
 - Mr. Berry said it was very hard to distinguish. Mandatory minimums undermine the treatment system.
 - Mr. Berry added that inserting those struggling with addiction into criminal settings did little to address addiction,
- Senator Abbas said the DEA found 2mg of fentanyl to be lethal for the average adult.
- Senator Abbas maintained that given the fact such an acute amount can kill someone, 28g should be well beyond personal use and fitting for a mandatory minimum sentence.
 - Mr. Berry was concerned that a broad-based mandatory minimum would capture individuals who need treatment as opposed to punishment.

Sean Karkos, esq.

Assistant County Attorney - Hillsborough County Attorney's Office

- Mr. Karkos serves as the lead for drug prosecution in the Hillsborough County Attorney's office.
- Mr. Karkos spoke in support of SB 14 on his own volition, and not as a representative of the Hillsborough County Attorney.
- Mr. Karkos shared his familiarity with RSA 318-B.
- SB 14's mandatory minimums are only applicable for those with a prior conviction and intent to sell.
- Prior statements, large amounts of cash, a ledger, in addition to the specified quantity would be required to pursue the mandatory minimum.
- While addiction and its effects were understandable, Mr. Karkos found the notion of selling to support an underlying addiction as something of its own.
- Decreasing overdose figures are largely attributable to Narcan and awareness. Actual rates of use, or quantities possessed have not changed much.
- Mr. Karkos maintained that fentanyl is so bad that it would be a considerable improvement to revert to selling crack and or heroin.
- Senator Abbas asked Mr. Karkos to elaborate and substantiate that SB 14 only applied for subsequent/repeat offenses.
 - Mr. Karkos referenced line 2 on the first page of SB 14.
- Senator Altschiller asked if Mr. Karkos felt that the judicial system failed to treat fentanyl with the appropriate level of seriousness and severity.
 - Mr. Karkos believed the past several years represented a shift to accept fentanyl as just any other drug.
 - Mr. Karkos found it imperative to significantly distinguish fentanyl from other, more "traditional" substances in law.

- Mr. Karkos noted that some individuals continue to sell even after achieving sobriety, meanwhile plenty with substance use disorder refrain from selling. Mr. Karkos maintained that the act of selling was uniquely criminal.
- Senator Altschiller asked if fentanyl should be treated independent of other substances.
 - Mr. Karkos believed independent treatment was necessary and suggested that line 17 on the first page of SB 14 accomplished that.
 - Given the contemporary drug market, Mr. Karkos suggested that it was an unspoken given that marketed opioids contained fentanyl. It was very rare for individuals to be arrested with heroin or other substances.
- Senator Abbas asked what other factors were considered in determining intent to distribute.
 - Packaging is a common indicator for intent to distribute, in addition to substantial cash on hand, a ledger, etc.
- Senator Abbas was curious if people interchanging/pooling supply had ever been prosecuted as distribution.
 - Mr. Karkos was uncertain and said any effort to do so would be dependent on the unique facts of the case and the scene. Regardless, he believed juries were sensible and would carefully weigh all facts and considerations in a proceeding.

Devon Chaffee

Executive director, ACLU NH

- Ms. Chaffee testified in opposition to SB 14.
- For over 20 years, there had been bipartisan efforts to erase mandatory minimum sentences.
- Mandatory minimums are an expensive, ineffective, one size fits all approach
- Ms. Chaffee reiterated that capacity of the department of corrections was important to consider.
- Similar policies were adopted in the 1980s and 1990s with poor results.
- Alternatively, data suggested that awareness, access to Narcan and available treatment do in fact reduce overdoses and opioid use.
- Ms. Chaffee believed that mandatory minimums transferred discretion away from judges and towards prosecutors, offending justice and upending the separation of powers.
- Senator Abbas asked how to target dealers in the absence of minimum sentencing.
 - Ms. Chaffee believed treatment, recovery, and demand mitigation would address dealers.