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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** SB 1350                      **Hearing Date:** April 26, 2022  
**Author:** Melendez  
**Version:** March 15, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Controlled substances: homicide resulting from the illegal furnishing of a controlled substance*

## HISTORY

**Source:** Author

**Prior Legislation:** SB 350 (Melendez), failed passage in Senate Public Safety 2021  
AB 2173 (Parra), Ch. 502, Stats. 2004

**Support:** California District Attorneys Association; California State Sheriffs' Association;  
Peace Officers Research Association of California

**Opposition:** ACLU California Action; Alcohol Justice; California Attorneys for Criminal  
Justice; California Public Defenders Association; Drug Policy Alliance; Ella  
Baker Center for Human Rights

## PURPOSE

*The purpose of this bill is to provide a written advisory to a person convicted of specified drug offenses notifying the person of the danger of manufacturing and distributing controlled substances and of the potential future criminal liability if another person dies as a result of that person's actions.*

*Existing law* makes it unlawful for a person to possess for sale or purchase for purpose of sale cocaine, cocaine base, heroin and specified opiates and opioid derivatives. (Health & Saf. Code, § 11351.)

*Existing law* makes it unlawful for a person to transport, import, sell, furnish, administer, or give away, or offer or attempt to transport, import, sell, furnish, administer, or give away cocaine, cocaine base, heroin and specified opiates and opioid derivatives. (Health & Saf. Code, § 11352.)

*Existing law* makes it unlawful for a person to manufacture, compound, convert, produce, derive, process, or prepare, either directly or indirectly by chemical extraction or by means of chemical synthesis any controlled substance, including opiates, opium derivatives, hallucinogenic substances, cocaine, and cocaine base, among others. (Health & Saf. Code, § 11379.6.)

*Existing law* defines manslaughter as the unlawful killing of a human being without malice, and provides that there are three kinds: voluntary—upon a sudden quarrel or heat of passion; involuntary—in the commission of an unlawful act, not amounting to a felony, or in the

commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; and vehicular. (Pen. Code, § 192.)

*Existing law* defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187.)

*Existing law* provides that malice may be express or implied. Provides that malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (Pen. Code, § 188, subd. (a).)

*Existing law* provides that if it is shown that the killing resulted from an intentional act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. (Pen. Code, § 188, subd. (b).)

*This bill* requires the court to advise a person who is convicted of, or who pleads guilty or no contest to, a violation of possession for sale, transporting, importing, selling, furnishing, administering, giving away, or manufacturing specified controlled substances of the following:

“You are hereby advised that the illicit manufacture and distribution of controlled substances, either real or counterfeit, inflicts a grave health risk to those who ingest or are exposed to them. It is extremely dangerous to human life to manufacture or distribute real or counterfeit controlled substances. If you do so, and a person dies as a result of that action, you can be charged with voluntary manslaughter or murder.”

*This bill* requires the advisory statement to be provided to the defendant in writing, either on the plea form or after sentencing. Requires the fact that the advisory was given be on the record and recorded in the abstract of the conviction

## COMMENTS

### 1. Need For This Bill

According to the author:

SB 1350 seeks to hold drug dealers accountable with a charge of involuntary manslaughter if a controlled substance they sold to a person leads to that person's death.

Fentanyl is a synthetic opioid 100 times more potent than morphine. Statistics show the opioid crisis has significantly worsened since fentanyl entered the illicit drug market. Sadly, synthetic opioids were responsible for the majority of drug related deaths in 2021. Specifically, fentanyl was the number one cause of death last year for people ages 18-45, outpacing suicides and COVID-19. It causes a fatality every 8.57 minutes, approximately, and is linked to 64% of total drug fatalities.

Fentanyl can be found in methamphetamine, cocaine, heroin, vaping products, as well as fake pills of Xanax, hydrocodone or Oxycodone. Unfortunately, some individuals who fatally experience fentanyl may have done so without their knowledge or consent.

## 2. Advisory Statement in This Bill Mirrors Existing Language In DUI Context

This bill would require the court to advise a person who is convicted of, or who pleads guilty or no contest to, a violation of possession for sale, transporting, importing, selling, furnishing, administering, giving away, or manufacturing specified controlled substances of the following:

“You are hereby advised that the illicit manufacture and distribution of controlled substances, either real or counterfeit, inflicts a grave health risk to those who ingest or are exposed to them. It is extremely dangerous to human life to manufacture or distribute real or counterfeit controlled substances. If you do so, and a person dies as a result of that action, you can be charged with voluntary manslaughter or murder.”

The language in this bill is modeled after the language codified by AB 2173 (Parra), Chapter 502, Statutes 2004, which requires the court to provide a person convicted of a reckless driving offense or DUI with an advisory statement. The advisory in Vehicle Code section 23593 reads:

“You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.”

## 3. Use of Advisement to Establish Implied Malice in a Subsequent Prosecution

The author intends for the advisory required in this bill to help establish implied malice in a subsequent second-degree murder prosecution in which a person convicted of the drug offenses specified in this bill engages in future drug-related criminal conduct that results in the death of another person. As stated above, the advisory in this bill is modeled after the DUI advisory codified in the Vehicle Code. With respect to deaths resulting from DUIs, the California Supreme Court held in *People v. Watson* (1981), 30 Cal.3d 290, 298, in affirming a second-degree murder conviction, that “when the conduct in question can be characterized as a wanton disregard for life, and the facts demonstrate a subjective awareness of the risk created, malice may be implied.” The stated intent of AB 2173 (Parra), Chapter 502, Statutes 2004, was to help prosecutors prove implied malice in second-degree murder cases arising out of DUI cases resulting in death by “making it clear that those individuals were aware of the danger they posed to others by drinking and driving as a result of the statement required by this bill which they signed after the original DUI conviction.” (Assem. Com. on Pub. Safety, Analysis of Assem. Bill 2173 (2003-2004 Reg. Sess.) as introduced February 18, 2004, p. 4.)

As is the case with a DUI in which an intoxicated driver kills another person, a person engaged in drug-related criminal conduct (e.g., furnishing a controlled substance) that results in the death of another person may be charged under current law with second-degree murder or manslaughter. Murder is defined as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187.) First-degree murder is a murder committed by specified lethal means, or by any other kind of willful, deliberate, and premeditated killing, or that is committed in the perpetration of, or attempt to perpetrate various specified felonies, or that is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death. (Pen. Code, § 189, subd. (a).) All other murder is murder of the second degree. (Pen. Code, § 189, subd. (b).) Malice may be express or implied.

(Pen. Code, § 188, subd. (a).) Malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (*Id.*) If it is shown that the killing resulted from an intentional act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. (Pen. Code, § 188, subd. (b).)

The advisory in this bill also notifies a person convicted of specified drug offenses whose future drug-related conduct results in the death of another person that the person may be charged with voluntary manslaughter. Manslaughter is defined as the unlawful killing of a human being without malice. (Pen. Code, § 192.) There are three kinds of manslaughter: voluntary—upon a sudden quarrel or heat of passion; involuntary—in the commission of an unlawful act, not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; and vehicular. (*Id.*)

It is unclear to what extent prosecutors have been successful in proving implied malice and in securing second-degree murder convictions in DUI cases resulting in death as a result of the passage of AB 2173 or what the effect of this bill may be with respect to drug-related deaths.

#### 4. Argument in Support

According to the California District Attorneys Association:

The opioid epidemic has not spared California. Indeed, California's main highways, ports, and borders serve as an entry point for illegal substances. The purveyors of these substances know they deal in poison. They distribute these substances without regard for the impact on the users. Oftentimes, controlled substances are laced with other substances, such as fentanyl, resulting in overdose and death. Recent events had unsuspecting West Point cadets die from consuming cocaine laced with fentanyl. This is just one recent example of the poisoning of drug users. The distributors of these substances can no longer avoid knowing the consequences of their actions and should not be able to separate themselves from liability.

... This bill provides an effective step in holding drug dealers responsible for their actions.

#### 5. Argument in Opposition

The California Public Defenders Association writes:

SB 1350 would require a court to advise in writing any person convicted of the selling, transporting, furnishing, administering, giving away, or manufacturing of various controlled substances, including, among others, cocaine, fentanyl, peyote, and various other opiates and narcotics. The written advisory would warn against the danger of transactions with these controlled substances and state that if a person dies from using the controlled substance, the seller, manufacturer, or distributor, can be charged with voluntary manslaughter or murder. The bill would further require that the advisory be given on the record in court and recorded on the abstract of conviction. The advisory would be used as a predicate

to establish the mental state of malice, required for a voluntary manslaughter or murder charge, when the person involved in the drug transaction had no intention of ever killing or injuring the person who knowingly obtained the controlled substance.

CPDA sympathizes with and understands the unintended consequences and impact that the use of unregulated illegal drugs can have on the lives of users, as so many of our clients have had problems with drugs. However, SB 1350 by creating another basis for a manslaughter or murder charge is an attempt to resurrect the failed public policy of the past and return to mass incarceration as a solution for societal problems. California recently moved away from imposing draconian punishments on those who never intended to kill another human being by their actions and moved toward a more humane society where we do not punish those who are not personally responsible for killing another human being in the same fashion as those who do intend to kill by enacting SB 1437 (2018). The Legislature reaffirmed this effort toward creating a fairer criminal justice system by holding only those who intend to kill liable for the penalties associated with a charge of murder in enacting SB 775 (2021.)

From our experience as public defenders we know that many of those who engage in the illegal drug trade are often low-level users of drugs themselves. To punish them for the unintended consequences of engaging in illegal narcotic sales and for outcomes that they never intended is contrary to sound public policy and humane treatment in our criminal justice system.

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