

# Idaho Considers More Mandatory Minimums for Fentanyl



by Idaho State Senator Phil Hart

February 20, 2024

In our 2024 legislative session at the Statehouse in Boise, the bill that I have worked on the hardest is not a bill that I am promoting, it's a bill that I am trying to amend. Without at least three amendments, this bill is a train wreck. I am talking about House Bill 406 (HB406), legislation that will create mandatory minimum prison sentences for trafficking in fentanyl. One of the main concerns is that language of the bill is written so broadly that this bill will likely increase Idaho's prison population so much that we will need to build a new prison. The financial impact of HB406 is in the multiple of hundreds of millions of dollars.

My first objection to the bill is that it defines trafficking in such a way that moderate users of fentanyl are going to be classified as traffickers just because they had a three day to a five day supply of their drugs on hand. These people will be sent to prison for three to ten years just for using the drug while having done nothing to traffic any drugs; although the charge will be "trafficking". Without HB406's mandatory minimum sentences, a first offender would most likely go to drug court for a cost to the tax payers of \$13,000 a year. Instead, with the passage of HB406, Idaho tax payers will be paying \$90,000 to \$300,000 to warehouse these people.

The flood of fentanyl coming across our southern border is being done on an industrial scale, and it is going to take a military operation to end it. This bill is being promoted as a way to go after the Mexico drug cartels, but HB406 won't even create a speed bump for the real drug kingpins.



(Pictured here is Cochise County Arizona Sheriff Mark Dannels, center, with Senator Phil Hart, right, and Johnathan Alexander on the left of Live Border News, November 27, 2023, Sierra Vista Arizona. Cochise County and Santa Cruz County to its west see 25% of the fentanyl coming across it's border with Mexico.)

A mandatory minimum statute ties the judge's hands and forces him to sentence a defendant to a term in prison that the legislature determined the length of. Never mind that the judge is close to the case and can make a determination as to what is best for the defendant and best for public's safety. Mandatory minimums were first used in New York beginning in 1973. Michigan implemented them in 1976 and Florida in 1979. These three states, having seen their prison populations explode upward and their costs go through the roof, have abandoned their earlier policies of mandatory minimums for a mix of rehabilitation programs for some, and prison sentences for others. They also learned that the "traffickers" they imprisoned were generally the low-level mules who transported drugs to get a cut of them for free to support their drug habit. The kingpin traffickers would not get caught. These three states came to the conclusion that warehousing non-violent offenders for years was a poor use of tax payer's money. Reforms followed.

“In New York, the “buyer’s remorse” was almost immediate. One of Governor Rockefeller’s closest aids, Joe Persico, helped push the bill through the legislature. Looking back, Persico said, “I concluded very early that this was a failure. It’s filling up the prisons with first time offenders. This was obviously unjust – and not just unjust, it was unwise; it was ineffective.”[1]

Another aspect of HB406 that qualifies it as a train wreck is the language that provides that any mixture of any materials will be deemed to be pure fentanyl if it contains just a trace of the illegal drug. For example, today getting caught with one fentanyl pill will send you to drug court for 6 months, but drop that pill into a quart of water and now you have a combined substance of one gram of fentanyl plus 899 grams of water. However, the statute will say it is 900 grams of fentanyl and you are going to prison for 10 years as a trafficker.

Sen. Hart in Douglas  
Arizona (Cochise County)  
at the Mexico border  
November 26, 2023



Two weekends ago, I met with 22 recovering drug and alcohol users. One of them told of how he was prosecuted by the federal government for fentanyl possession. The Fed’s sent his fentanyl pills to a lab where they determined that 10% of his pills were fentanyl, and the other 90% was filler. He got prosecuted for possessing a quantity of fentanyl that represented 10% of the weight of his pills. If the federal

government can determine an exact amount of the drug, why can't the state of Idaho? It is not because dummies live in Idaho. Idaho leads the nation in the number of patents issued per capita.[2] In Idaho, we can do better.

Lastly, section 3 of the bill creates a new crime called "Drug Induced Homicide". The crime occurs when someone dies of an overdose and another person was sharing that drug with them. The surviving party will be charged with this low-level form of murder. There doesn't even need to be any intent to kill. If you were there, and you both partook of the same drug, you can be found guilty of this statutorily defined murder. I am told that the lack of "intent to kill" is a constitutional defect in the bill. The experts that I am listening to believe this will be challenged in court. Most likely the challenger will be someone who is charged with this "drug induced homicide" and will use a public defender as their lawyer. On the other side of the case will be the state of Idaho defending its statutes. For this case, tax payers will be paying for both sides of the case. Oh, what a poor use of tax payers' money! It would be better to amend the bill and use language that is not guaranteed to end up in court.

I believe this new law, with its expanded definition of what constitutes trafficking, will add hundreds of additional inmates to Idaho's prisons. Because our prisons are already full and we are storing prisoners in other states, it will also add to the cost of transporting our inmates around the country. House Bill 406 will add \$100,000,000's to Idaho's budget, and we will have to build at least one new prison paid for with higher taxes.

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#### **Footnotes:**

[1] Greg Newburn and Sal Nuzzo, [Mandatory Minimums, Crime and](#)

[Drug Abuse](#), James Madison Institute, page 2.

[2] United States Patent and Trademark Office, Patents Per 100k Residents by State, 2005-2010, June 8, 2011.