



SB 350 – Alexandra’s Law

Senator Melissa Melendez

Background

Two days before Christmas, Matt Capelouto lost his daughter, Alexandra, to a drug poisoning. She had unknowingly consumed five times the fatal amount of fentanyl. The suspected drug dealer, who illegally sold Alex what she thought to be oxycodone, is unlikely to face significant consequences for taking her life.

Unfortunately, this is not a unique case. Drugs or pills sold on the street are typically counterfeit, made to look like common prescription medications such as Xanax, Percocet and Oxycodone. They are actually composed of insignificant filler and deadly chemicals made with zero quality control, including fentanyl. The person consuming may be unaware and would have unlikely consented to consuming. This bill was created by a community of parents who have lost an integral part of their family: a child. It was thoughtfully crafted to provide a second chance, while still establishing accountability.

Problem Being Addressed

In order to convict a suspect of second degree murder, the prosecution must show evidence that the suspect has exhibited implied malice. With regards to Alexandra’s fatality, the prosecution would have had to prove the suspect knew the act of illegally manufacturing, transporting or distributing a controlled substance was dangerous to human life. SB 350 plans to address implied malice for drug fatalities similar to what is in place for a fatality caused by a drunk driver.

In 1981, the California Supreme Court spoke approvingly of implied malice murder within the context of driving under the influence (DUI), an act “dangerous to human life” in *People v. Watson*. Following this case, the State Legislature enacted Vehicle Code 23593 to require the court to advise a person convicted of DUI 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.”

By advising a defendant of the dangerousness of their conduct upon conviction, an offender is both deterred from such future conduct, and conceivably exposed to greater accountability in the future, should they opt to reoffend. Courts have repeatedly found that court-ordered DUI educational programs serve like purposes, as seen in cases like *People v. Murray* in 1990.

Which code section is affected?

The measure will impact individuals convicted of drug sales or drug distribution of a controlled substance, possession of a controlled substance, or manufacturing a controlled substance, under Health & Safety Code 11351, 11352, or 11379.6. It will require the court to advise the person that partaking in any of those illegal actions could cause a fatality if he or she continues to do so. This advisory will provide an understanding for those convicted of these crimes that their actions could result in the death of another human and lead to a homicide charge. It will additionally be crucial in prosecuting future cases when another life is ripped apart by the illegal manufacturing, transportation and distribution of drugs.

Summary

In California, opioid deaths increased 27% from 2018 to 2019. Studies suggest the pandemic has led to a devastating rise in opioid deaths across the country, even outpacing COVID-19 fatalities in San Francisco. In recent months, 50% of all drug poisoning deaths in LA County have been attributed to fentanyl, which can be incredibly deadly in small doses. Medicinal fentanyl dosages are measured by millionths of a gram, which means fentanyl fatalities occur at a mere couple thousandths of a gram. Unfortunately, these controlled substances are easily accessible to our youth, and we need to take action now to help prevent future, avoidable deaths.

SB 350 doesn’t solve the opioid crisis. But it does provide a small step forward in addressing drug-related deaths in our communities by providing awareness to those illegally selling controlled substances and supporting prosecutors with repeat offenders.