



Seattle
City Attorney's Office



January 12, 2024

Via Email

To: Washington State House Community Safety, Justice, and Reentry Committee

From: Seattle City Attorney Ann Davison
King County Prosecuting Attorney Leesa Manion

Re: Appropriate Accountability for Exposing Children to Fentanyl

We are writing with urgency to call for the closure of a statutory gap that does not allow felony prosecution when a child is endangered or seriously injured after a parent or guardian knowingly or intentionally exposes a child to fentanyl. This gaping hole in our child endangerment laws must be closed during this legislative session.

RCW 9A.42.100 – “Endangerment with a Controlled Substance” – prohibits “knowingly or intentionally permit[ting] a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with **methamphetamine**.” That law does not include fentanyl because when the law first passed in 2002 fentanyl was not the common street drug that it is now. And because fentanyl is not included under 9A.42.100, a parent, guardian, or other responsible adult who exposes a child to fentanyl can only face a misdemeanor, at most.

The 2022 Overdose Death Report by King County Public Health shows that while non-fentanyl fatal overdoses have remained constant, fentanyl-related overdose deaths have increased by a factor of 8 over the last 5 years. In 2021 fentanyl surpassed methamphetamine as the top drug involved in fatal overdoses. In 2023 there were 1,065 fentanyl-involved deaths in King County.

Today, if the worst of all possibilities occurs and a child dies from intentional fentanyl exposure, the responsible adult can be tried by the King County Prosecuting Attorney's Office (KCPAO) for felony manslaughter. However, if the child does not die but is seriously harmed or endangered, KCPAO cannot prosecute fentanyl endangerment with a controlled substance because fentanyl is not included under that law. Currently, for fentanyl exposure cases, the most applicable crime under state law is gross misdemeanor reckless endangerment under RCW 9A.36.050.

During the last legislative session, the Senate unanimously passed SB 5010 to fix this statutory gap and include fentanyl within RCW 9A.42.100. This bill passed out of the Senate and was referred to the House Committee on Community Safety, Justice, and Reentry, but was ultimately returned to the Senate Rules Committee at the end of the session after it failed to pass out of the House Committee. Because this statutory gap has not been fixed, our offices have not been able to appropriately pursue cases in which children were endangered by fentanyl exposure.

In this short legislative session, we ask you to act with urgency to safeguard the lives of children and close this gap in our state criminal law. Please provide prosecutors with the appropriate tools to protect children from exposure to fentanyl.

Sincerely,

Ann Davison
Seattle City Attorney

Leesa Manion
King County Prosecutor