

IN THE SENATE

SENATE BILL NO. 1161

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2732B, IDAHO CODE, TO REVISE PENALTIES FOR TRAFFICKING IN HEROIN, TO PROVIDE PENALTIES FOR TRAFFICKING IN FENTANYL, AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2732B, Idaho Code, be, and the same is hereby amended to read as follows:

37-2732B. TRAFFICKING -- MANDATORY SENTENCES. (a) Except as authorized in this chapter, and notwithstanding the provisions of section 37-2732, Idaho Code:

(1) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, one (1) pound of marijuana or more, or twenty-five (25) marijuana plants or more, as defined in section 37-2701, Idaho Code, is guilty of a felony, which felony shall be known as "trafficking in marijuana." If the quantity of marijuana involved:

(A) Is one (1) pound or more, but less than five (5) pounds, or consists of twenty-five (25) marijuana plants or more but fewer than fifty (50) marijuana plants, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of one (1) year and fined not less than five thousand dollars (\$5,000);

(B) Is five (5) pounds or more, but less than twenty-five (25) pounds, or consists of fifty (50) marijuana plants or more but fewer than one hundred (100) marijuana plants, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);

(C) Is twenty-five (25) pounds or more, or consists of one hundred (100) marijuana plants or more, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars (\$15,000).

(D) The maximum number of years of imprisonment for trafficking in marijuana shall be fifteen (15) years, and the maximum fine shall be fifty thousand dollars (\$50,000).

(E) For the purposes of this section, the weight of the marijuana is its weight when seized or as determined as soon as practicable after seizure, unless the provisions of subsection (c) of this section apply.

(2) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession

1 of, twenty-eight (28) grams or more of cocaine or of any mixture or sub-
2 stance containing a detectable amount of cocaine is guilty of a felony,
3 which felony shall be known as "trafficking in cocaine." If the quantity
4 involved:

5 (A) Is twenty-eight (28) grams or more, but less than two hundred
6 (200) grams, such person shall be sentenced to a mandatory minimum
7 fixed term of imprisonment of three (3) years and fined not less
8 than ten thousand dollars (\$10,000);

9 (B) Is two hundred (200) grams or more, but less than four hundred
10 (400) grams, such person shall be sentenced to a mandatory mini-
11 mum fixed term of imprisonment of five (5) years and fined not less
12 than fifteen thousand dollars (\$15,000);

13 (C) Is four hundred (400) grams or more, such person shall be sen-
14 tenced to a mandatory minimum fixed term of imprisonment of ten
15 (10) years and fined not less than twenty-five thousand dollars
16 (\$25,000).

17 (D) The maximum number of years of imprisonment for trafficking
18 in cocaine shall be life, and the maximum fine shall be one hundred
19 thousand dollars (\$100,000).

20 (3) Any person who knowingly manufactures or attempts to manufacture
21 methamphetamine and/or amphetamine is guilty of a felony which shall
22 be known as "trafficking in methamphetamine and/or amphetamine by man-
23 ufacturing." Any person convicted of trafficking in methamphetamine
24 and/or amphetamine by attempted manufacturing shall be sentenced to
25 a mandatory minimum fixed term of imprisonment of two (2) years and
26 not to exceed fifteen (15) years imprisonment and fined not less than
27 ten thousand dollars (\$10,000). Any person convicted of traffick-
28 ing in methamphetamine and/or amphetamine by manufacturing shall be
29 sentenced to a mandatory minimum fixed term of imprisonment of five
30 (5) years and not to exceed life imprisonment and fined not less than
31 twenty-five thousand dollars (\$25,000). The maximum number of years of
32 imprisonment for trafficking in methamphetamine and/or amphetamine by
33 manufacturing shall be life, and the maximum fine shall be one hundred
34 thousand dollars (\$100,000).

35 (4) Any person who knowingly delivers, or brings into this state, or
36 who is knowingly in actual or constructive possession of, twenty-eight
37 (28) grams or more of methamphetamine or amphetamine or of any mixture
38 or substance containing a detectable amount of methamphetamine or am-
39 phetamine is guilty of a felony, which felony shall be known as "traf-
40 ficking in methamphetamine or amphetamine." If the quantity involved:

41 (A) Is twenty-eight (28) grams or more, but less than two hundred
42 (200) grams, such person shall be sentenced to a mandatory minimum
43 fixed term of imprisonment of three (3) years and fined not less
44 than ten thousand dollars (\$10,000);

45 (B) Is two hundred (200) grams or more, but less than four hundred
46 (400) grams, such person shall be sentenced to a mandatory mini-
47 mum fixed term of imprisonment of five (5) years and fined not less
48 than fifteen thousand dollars (\$15,000);

49 (C) Is four hundred (400) grams or more, such person shall be sen-
50 tenced to a mandatory minimum fixed term of imprisonment of ten

1 (10) years and fined not less than twenty-five thousand dollars
2 (\$25,000).

3 (D) The maximum number of years of imprisonment for trafficking in
4 methamphetamine or amphetamine shall be life, and the maximum fine
5 shall be one hundred thousand dollars (\$100,000).

6 (5) Any person who knowingly manufactures, delivers, brings into
7 this state, or who is knowingly in actual or constructive possession
8 of the below-specified quantities of any of the following immediate
9 precursors to methamphetamine or amphetamine (namely ephedrine, methy-
10 lamine, methyl formamide, phenylacetic acid, phenylacetone, or pseu-
11 doephedrine) as defined in section 37-2707(g) (1), Idaho Code, or any
12 compound, mixture or preparation which contains a detectable quantity
13 of these substances, is guilty of a felony which shall be known as "traf-
14 ficking in immediate precursors of methamphetamine or amphetamine." If
15 the quantity:

16 (A) Of ephedrine is five hundred (500) grams or more;

17 (B) Of methylamine is one-half (1/2) pint or more;

18 (C) Of methyl formamide is one-quarter (1/4) pint or more;

19 (D) Of phenylacetic acid is five hundred (500) grams or more;

20 (E) Of phenylacetone is four hundred (400) grams or more;

21 (F) Of pseudoephedrine is five hundred (500) grams or more;

22 such person shall be sentenced to a mandatory minimum fixed term of
23 imprisonment of ten (10) years and fined not less than twenty-five thou-
24 sand dollars (\$25,000). The maximum number of years of imprisonment
25 for trafficking in immediate precursors of methamphetamine or am-
26 phetamine in the quantities specified in paragraphs (A) through (F) of
27 this subsection (5) shall be life, and the maximum fine shall be one hun-
28 dred thousand dollars (\$100,000). If the quantity of pseudoephedrine
29 is twenty-five (25) grams or more, but less than five hundred (500)
30 grams, such person shall be sentenced to a term of imprisonment of up
31 to ten (10) years and fined not more than twenty-five thousand dollars
32 (\$25,000).

33 (6) Any person who knowingly manufactures, delivers or brings into this
34 state, or who is knowingly in actual or constructive possession of, ~~two~~
35 five (25) grams or more of heroin or any salt, isomer, or salt of an iso-
36 mer thereof, or ~~two~~ five (25) grams or more of any mixture or substance
37 containing a detectable amount of any such substance is guilty of a
38 felony, which felony shall be known as "trafficking in heroin." If the
39 quantity involved:

40 (A) Is ~~two~~ five (25) grams or more, but less than ~~seven~~ ten (710)
41 grams, such person shall be sentenced to a mandatory minimum fixed
42 term of imprisonment of three (3) years and fined not less than ten
43 thousand dollars (\$10,000);

44 (B) Is ~~seven~~ ten (710) grams or more, but less than twenty-eight
45 (28) grams, such person shall be sentenced to a mandatory minimum
46 fixed term of imprisonment of ~~ten~~ five (105) years and fined not
47 less than fifteen thousand dollars (\$15,000);

48 (C) Is twenty-eight (28) grams or more, such person shall be
49 sentenced to a mandatory minimum fixed term of imprisonment of

1 ~~fifteen~~ ten (150) years and fined not less than twenty-five thou-
2 sand dollars (\$25,000).

3 (D) The maximum number of years of imprisonment for trafficking
4 in heroin shall be life, and the maximum fine shall be one hundred
5 thousand dollars (\$100,000).

6 (7) Any person who knowingly manufactures, delivers, or brings into
7 this state, or who is knowingly in actual or constructive posses-
8 sion of, two (2) grams or more of alfentanil, as described in section
9 37-2707(7)(c)(1), Idaho Code; carfentanil, as described in section
10 37-2707(7)(c)(6), Idaho Code; fentanyl, as described in section
11 37-2707(7)(c)(9), Idaho Code; sufentanil, as described in section
12 37-2707(7)(c)(27), Idaho Code; fentanyl-related substances, as de-
13 scribed in section 37-2705(b)(32), Idaho Code; or any mixture or sub-
14 stance containing a detectable amount of any such substance is guilty of
15 a felony, which felony shall be known as "trafficking in fentanyl." If
16 the quantity involved:

17 (A) Is two (2) grams or more, but less than ten (10) grams, such
18 person shall be sentenced to a mandatory minimum fixed term of
19 imprisonment of three (3) years and fined ten thousand dollars
20 (\$10,000);

21 (B) Is ten (10) grams or more, but less than twenty-eight (28)
22 grams, such person shall be sentenced to a mandatory minimum fixed
23 term of imprisonment of five (5) years and fined fifteen thousand
24 dollars (\$15,000);

25 (C) Is twenty-eight (28) grams or more, such person shall be sen-
26 tenced to a mandatory minimum fixed term of imprisonment of ten
27 (10) years and fined twenty-five thousand dollars (\$25,000).

28 (8) A second conviction for any trafficking offense as defined in sub-
29 section (a) of this section shall result in a mandatory minimum fixed
30 term that is twice that otherwise required under this section.

31 (89) Notwithstanding any other provision of law, with respect to any
32 person who is found to have violated the provisions of this section, ad-
33 judication of guilt or the imposition or execution of sentence shall not
34 be suspended, deferred, or withheld, nor shall such person be eligible
35 for parole prior to serving the mandatory minimum fixed term of impris-
36 onment prescribed in this section. Further, the court shall not retain
37 jurisdiction.

38 (b) Any person who agrees, conspires, combines or confederates with an-
39 other person or solicits another person to commit any act prohibited in sub-
40 section (a) of this section is guilty of a felony and is punishable as if he
41 had actually committed such prohibited act.

42 (c) For the purposes of subsections (a) and (b) of this section, the
43 weight of the controlled substance as represented by the person selling or
44 delivering it is determinative if the weight as represented is greater than
45 the actual weight of the controlled substance.