

SUBJECT:	Requiring crime laboratories to test certain evidence for fentanyl
COMMITTEE:	Criminal Jurisprudence — favorable, without amendment
VOTE:	9 ayes — Moody, Cook, Bhojani, Bowers, Darby, Harrison, Leach, C. Morales, Schatzline 0 nays
WITNESSES:	For — Paula Blackmon, City of Dallas; (<i>Registered, but did not testify</i> : Jennifer Szimanski, Combined Law Enforcement Associations of Texas (CLEAT); M Paige Williams, Dallas County Criminal District Attorney John Creuzot; Julio Gonzalez, Dallas Police Department; Natalie Ibe; Matt Long; Thomas Parkinson; Jason Vaughn) Against — (<i>Registered, but did not testify</i> : Kevin Hale, Libertarian Party of Texas; Mary Palmer) On — Brady Mills, Texas DPS Crime Laboratory; (<i>Registered, but did not testify</i> : Joyce H.)
DIGEST:	HB 178 would require crime laboratories to test submitted evidence that may be a controlled substance for the presence of fentanyl when it was reasonably possible that the substance was or contained fentanyl. Crime laboratories would be required to follow validated laboratory procedures and sampling protocols when testing for the presence of fentanyl. The bill would take effect September 1, 2023.
SUPPORTERS SAY:	HB 178 would help protect the public by providing law enforcement agencies with the necessary tools to better understand the scope of the fentanyl crisis. More testing of controlled substance evidence for fentanyl would help law enforcement detect trends in how fentanyl was moving through communities. HB 178 also could provide an enhancement tool for prosecutors and other individuals who handled drug-related crimes.

Law enforcement officers and first responders can potentially expose themselves to fentanyl when conducting field tests for controlled substances. By requiring labs to establish a robust testing system, HB 178 could eliminate the need for first responders and law enforcement officers to conduct field tests, improving the safety of law enforcement and first responders.

Although HB 178 would be a cost to the state, the bill would be a worthy investment into solutions that could help Texas respond to the fentanyl crisis.

While HB 178 would require county and municipal crime labs to conduct additional testing, the Department of Public Safety (DPS) has drafted guidelines clarifying what substances could be understood as “reasonably possible” to be or contain fentanyl. These guidelines could prevent labs from conducting excessive testing.

CRITICS
SAY:

HB 178 could create a challenge for county and municipal crime laboratories that do not receive state funding. These labs handle about half of the testing in the state for controlled substance evidence and are not sufficiently resourced to handle the increase in testing HB 178 would mandate, as most evidence received by labs would require testing under the guidelines of the bill. HB 178 also would require local labs to test misdemeanor quantities and suspected drug material for cases that would not go to court, which could create an unnecessary burden for labs and result in significant backlogs.

Although HB 178 intends to protect law enforcement and first responders, the bill could have the opposite effect. The backlog in crime labs that could result from implementing HB 178 could drive first responders and law enforcement to conduct more field tests to keep up with the need for testing, posing an additional risk.

HB 178 would create additional costs for under-resourced county and municipal crime labs and would be a significant cost to the state.

OTHER
CRITICS
SAY:

HB 178 should clarify testing requirements for labs. The current language of the bill does not specify the testing requirement for large quantities of controlled substances, such as pills. HB 178 should clarify whether labs would be required to test each pill or other material in a large quantity of evidence, which is a time-consuming and resource-intensive process. Crime labs follow reliable sampling protocols when testing large quantities, and the bill should clarify if these sampling processes would be permitted.

NOTES:

According to estimates by the Legislative Budget Board, HB 178 would have a negative impact of \$17,777,699 in general revenue related funds during fiscal 2024-25 and result in an addition of 56 employees to the Department of Public Safety.