



## ARKANSAS SENTENCING COMMISSION

1302 Pike Avenue, Suite E • North Little Rock, AR 72114

Phone: (501) 682-5001 • Fax: (501) 682-5018

### Impact Assessment for SB29 Sponsored by Senator Garner

**Subtitle** TO MAKE TRAFFICKING FENTANYL A CAPITAL OFFENSE; CONCERNING CAPITAL OFFENSES; AND CONCERNING FENTANYL OFFENSES.

**Impact Summary**<sup>1</sup> Cannot be determined. The proposed bill increases the penalty for offenses involving Fentanyl, a controlled substance. Convictions for offenses involving Fentanyl are not currently reported separately from convictions involving other controlled substances in the same schedule. For these reasons, the impact of this proposed bill cannot be determined.

**Change from Current Law**<sup>2</sup> Amends various provisions of Title 5 of the Arkansas Criminal Code regarding Fentanyl. To begin, the proposed bill adds Fentanyl to the list of Schedule I controlled substances and the list of what are considered super-drugs found in the Uniform Controlled Substances Act. Currently, Methamphetamine and Cocaine are often punished more harshly than other Schedule I and II controlled substances.

Under the proposed bill, Fentanyl is added to following code sections, as indicated by *italics*:

A.C.A. Code	Offense Name	Weight	Felony Class
5-64-419 (b)(1)(A)-(C)	Possession of a Controlled Substance, Sch. I/II Meth, Cocaine, <i>or Fentanyl</i>	< 2 g	D
		≥ 2 g < 10 g	C
		≥ 10 g < 200 g	B
5-64-420	Possession of Meth, Cocaine, <i>or Fentanyl</i> , with purpose to deliver	< 2 g	C
		≥ 2 g < 10 g	B
		≥ 10 g < 200 g	A
5-64-422	Delivery of Meth, Cocaine, <i>or Fentanyl</i>	< 2 g	C
		≥ 2 g < 10 g	B
		≥ 10 g < 200 g	Y
5-64-423 (new subsection)	<i>Manufacture of Fentanyl</i>	< 2 g	C
		≥ 2 g < 10 g	B
		≥ 10 g < 200 g	Y

<sup>1</sup> This impact assessment was prepared 1/25/2021 9:20 AM by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Corrections and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

<sup>2</sup> Standard punishment ranges:

Class Y 10-40 years or life  
Class A 6-30 years; up to \$15,000  
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000  
Class D 0-6 years; up to \$10,000  
Unclassified As specified in statute

Misdemeanors

Class A Up to 1 year; up to \$2,500  
Class B Up to 90 days; up to \$1,000  
Class C Up to 30 days; up to \$500

Under the proposed bill, Fentanyl is excluded from the following code sections, as indicated by *italics*:

A.C.A. Code	Offense Name	Weight	Felony Class
5-64-419 (b)(2)(A)-(C)	Possession of a Controlled Substance, Sch. I/II <u>not</u> Meth, Cocaine, <i>or Fentanyl</i>	< 2 g	D
		$\geq 2$ g < 28 g	C
		$\geq 28$ g < 200 g	B
5-64-424	Possession of Sch. I/II <u>not</u> Meth, Cocaine, <i>or Fentanyl</i> , with purpose to deliver	< 2 g	C
		$\geq 2$ g < 28 g	B
		$\geq 28$ g	A
5-64-426	Delivery of Sch. I/II <u>not</u> Meth, Cocaine, <i>or Fentanyl</i>	< 2 g	C
		$\geq 2$ g < 28 g	B
		$\geq 28$ g < 200 g	A
5-64-427	Manufacture of Sch. I/II <u>not</u> Meth, Cocaine, <i>or Fentanyl</i>	< 2 g	C
		$\geq 2$ g < 28 g	B
		$\geq 28$ g	A

The proposed bill also amends A.C.A. § 5-64-440 and other various provisions of Title 5 to designate trafficking Fentanyl as a capital offense. Under current law, Trafficking Fentanyl is a Class Y felony, with an authorized range of punishment of ten (10) to forty (40) years, or life. Under the proposed bill Trafficking Fentanyl is a capital offense, with authorized sentences of death, life imprisonment without the possibility of parole, or, for an offender who was less than eighteen (18) years of age at the time of offense, life imprisonment with the possibility of parole after serving a minimum of thirty (30) years imprisonment. Under the proposed bill, an attempt, solicitation, or conspiracy to commit the offense of Trafficking Fentanyl is a Class A felony.

The proposed bill also amends provisions of Title 16 of the Arkansas Code to make trafficking Fentanyl ineligible for parole.

**Impact Information** Because convictions for drug offenses are not currently reported in a manner that allows for isolation of offenses involving fentanyl, the impact of this proposed bill cannot be determined.