



## ARKANSAS SENTENCING COMMISSION

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

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

### **Impact Assessment for HB1043** **Sponsored by Representative M. Berry**

**Subtitle** TO AMEND PENALTIES FOR OFFENSES INVOLVING FENTANYL; AND TO ENHANCE SENTENCES FOR CERTAIN OFFENSES INVOLVING FENTANYL.

**Impact Summary**<sup>1</sup> Cannot be determined. The proposed bill increases the minimum sentence for certain drug offenses. Because available data does not uniformly distinguish between the conduct underlying convictions, the impact of the proposed bill cannot be determined.

**Change from Current Law**<sup>2</sup> Amends the criminal penalty for delivery or manufacture of fentanyl and for trafficking fentanyl by creating a mandatory minimum sentence of thirty (30) years or life with eligibility for parole after serving thirty (30) years without credit for meritorious good time if the offense causes the death of a person.

Under current law, § 5-64-421 (c), delivery of fentanyl, § 5-64-421 (d), manufacture of fentanyl, and § 5-64-440, trafficking a controlled substance are Class Y felonies. The default statutory range for a Class Y felony is ten (10) to forty (40) years, or life. Enhancements such as the habitual offender enhancement found at § 5-4-501 can increase the statutory range of punishment. The proposed bill would increase the minimum to thirty (30) years for all occurrences of these offenses, or life with eligibility for parole after serving thirty (30) years without credit for meritorious good time if the offense causes the death of a person.

The proposed bill also requires that a juvenile sentenced for one of the impacted offenses serve thirty (30) years prior to being considered for release on parole. Currently, a juvenile who commits one of these offenses is eligible to be considered for release on parole after serving twenty (20) years, including all consecutive sentences and enhancements.

**Impact Information** The proposed bill increases the minimum sentence for certain fentanyl offenses. For offenses occurring prior to 2021, fentanyl convictions were not reported separately from other offenses. In addition, deaths resulting from drug offenses are not a discernable course of conduct. For these reasons, the impact of the proposed bill cannot be determined. The following data is for informational purposes only.

The Administrative Office of the Courts reports the following for the three (3) year period beginning January 1,

---

<sup>1</sup> This impact assessment was prepared 1/24/2023 7:25 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

2020, and ending December 31, 2022:

Offense / A.C.A.	Felony Class	Number of Convictions
Delivery of Fentanyl § 5-64-421(c)	Y	7
Manufacture of Fentanyl § 5-64-421(d)	Y	0
Trafficking a Controlled Substance § 5-64-440(c)	Y	125

The Division of Correction reports the following as of December 2, 2022:

Offense / A.C.A.	Felony Class	Total Number of Inmates with Sentence	Inmates for whom sentence is Primary Offense
Delivery of Fentanyl § 5-64-421(c)	Y	1	1
Manufacture of Fentanyl § 5-64-421(d)	Y	0	0
Trafficking a controlled substance § 5-64-440(b)(c)	Y	112	110

**A.C.A. § 5-64-421. Possession of fentanyl — Possession of fentanyl with the purpose to deliver — Delivery of fentanyl — Manufacture of fentanyl.**

(a)

- (1) Except as provided by this chapter, it is unlawful for a person to possess fentanyl.
- (2) A person who violates subdivision (a)(1) of this section upon conviction is guilty of a Class C felony.

(b)

- (1) Except as provided by this chapter, it is unlawful for a person to possess fentanyl with the purpose to deliver fentanyl.
- (2) Purpose to deliver may be shown by any of the following factors:
  - (A) The person possesses the means to weigh, separate, or package fentanyl;
  - (B) The person possesses a record indicating a drug-related transaction;
  - (C) The fentanyl is separated or packaged in a manner to facilitate delivery;
  - (D) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of fentanyl;
  - (E) The person possesses at least two (2) other controlled substances in any amount; or
  - (F) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver fentanyl.
- (3) A person who violates subdivision (b)(1) of this section upon conviction is guilty of a Class A felony.

(c)

- (1) Except as provided by this chapter, it is unlawful for a person to deliver fentanyl.
- (2) A person who violates subdivision (c)(1) of this section upon conviction is guilty of a Class Y felony.

(d)

- (1) Except as provided by this chapter, it is unlawful for a person to manufacture fentanyl.
- (2) A person who manufactures fentanyl upon conviction is guilty of a Class Y felony.

(e) It is an affirmative defense to prosecution under subsection (a) of this section if a person has a valid prescription for fentanyl and is using the fentanyl lawfully.

(f) It is not a violation under subsections (b) and (c) of this section if a permitted manufacturer, wholesaler, pharmacy, hospital, long-term care facility, or other medical provider delivers, prescribes, administers, or transfers fentanyl for lawful purposes and in compliance with state and federal law.

(g) It is not a violation of subsection (d) of this section for a pharmaceutical company to manufacture fentanyl in compliance with state and federal law.

(h) The unlawful possession of drug paraphernalia containing fentanyl residue shall not be charged under this section and may be charged under § 5-64-443.

**History**

Acts 2021, No. 887, § 4.

**A.C.A § 5-64-440. Trafficking a controlled substance.**

(a) Except as provided by this chapter, it is unlawful for a person to engage in trafficking a controlled substance.

(b) A person engages in trafficking a controlled substance if he or she possesses, possesses with the purpose to deliver, delivers, or manufactures a controlled substance by aggregate weight, including an adulterant or diluent, in the following amounts:

- (1) Methamphetamine, heroin, or cocaine, two hundred grams (200g) or more;
- (2) Fentanyl, one gram (1g) or more;
- (3) Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine, two hundred grams (200g) or more;
- (4) Schedule III controlled substance, four hundred grams (400g) or more;
- (5) Schedule IV or Schedule V controlled substance, eight hundred grams (800g) or more; or
- (6) A Schedule VI controlled substance, five hundred pounds (500 lbs.) or more.

(c) Trafficking a controlled substance is a Class Y felony.

**History**

Acts 2011, No. 570, § 60; 2013, No. 529, § 4; 2021, No. 887, § 7.