

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1878

By: Representative Gazaway

## For An Act To Be Entitled

AN ACT CONCERNING THE CONTROLLED SUBSTANCES OF  
FENTANYL AND HEROIN; AND FOR OTHER PURPOSES.

### Subtitle

CONCERNING THE CONTROLLED SUBSTANCES OF  
FENTANYL AND HEROIN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-64-101, concerning definitions used in the Uniform Controlled Substances Act, is amended to add an additional subdivision to read as follows:

(23) "Fentanyl" means the opioid known as fentanyl, an analog of fentanyl that is a fentanyl-related controlled substance, and any chemical structure modification to fentanyl or a fentanyl analog, including without limitation the isomers, esters, ethers, and salts of fentanyl.

SECTION 2. Arkansas Code § 5-64-419(b)(1) and (2), concerning possession of a Schedule I controlled substance, are amended to read as follows:

(1) A Schedule I or Schedule II controlled substance that is methamphetamine, heroin, or cocaine with an aggregate weight, including an adulterant or diluent, of:

(A) Less than two grams (2g) upon conviction is guilty of a Class D felony;

(B) Two grams (2g) or more but less than ten grams (10g) upon conviction is guilty of a Class C felony; or



(C) Ten grams (10g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class B felony;

(2) A Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with an aggregate weight, including an adulterant or diluent, of:

(A) Less than two grams (2g) upon conviction is guilty of a Class D felony;

(B) Two grams (2g) or more but less than twenty-eight grams (28g) upon conviction is guilty of a Class C felony; or

(C) Twenty-eight grams (28g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class B felony;

SECTION 3. Arkansas Code § 5-64-420 is amended to read as follows:

5-64-420. Possession of methamphetamine, heroin, or cocaine with the purpose to deliver.

(a) Except as provided by this chapter, it is unlawful if a person possesses methamphetamine, heroin, or cocaine with the purpose to deliver the methamphetamine, heroin, or cocaine. Purpose to deliver may be shown by any of the following factors:

(1) The person possesses the means to weigh, separate, or package methamphetamine, heroin, or cocaine;

(2) The person possesses a record indicating a drug-related transaction;

(3) The methamphetamine, heroin, or cocaine is separated and packaged in a manner to facilitate delivery;

(4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of methamphetamine, heroin, or cocaine;

(5) The person possesses at least two (2) other controlled substances in any amount; or

(6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver methamphetamine, heroin, or cocaine.

(b) A person who violates this section upon conviction is guilty of a:

(1) Class C felony if the person possessed less than two grams (2g) of methamphetamine, heroin, or cocaine by aggregate weight, including an

adulterant or diluent;

(2) Class B felony if the person possessed two grams (2g) or more but less than ten grams (10g) of methamphetamine, heroin, or cocaine by aggregate weight, including an adulterant or diluent; or

(3) Class A felony if the person possessed ten grams (10g) or more but less than two hundred grams (200g) of methamphetamine, heroin, or cocaine by aggregate weight, including an adulterant or diluent.

SECTION 4. Arkansas Code Title 5, Chapter 64, Subchapter 4, is amended to add an additional section to read as follows:

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.

SECTION 5. Arkansas Code §§ 5-64-422 – 5-64-424 are amended to read as follows:

5-64-422. Delivery of methamphetamine, heroin, or cocaine.

(a) Except as provided by this chapter, it is unlawful for a person to deliver methamphetamine, heroin, or cocaine.

(b)(1) A person who delivers less than two grams (2g) by aggregate weight, including an adulterant or diluent, of methamphetamine, heroin, or cocaine upon conviction is guilty of a Class C felony.

(2) A person who delivers two grams (2g) or more but less than ten grams (10g) by aggregate weight, including an adulterant or diluent, of methamphetamine, heroin, or cocaine upon conviction is guilty of a Class B felony.

(3) A person who delivers ten grams (10g) or more but less than two hundred grams (200g) by aggregate weight, including an adulterant or

diluent, of methamphetamine, heroin, or cocaine upon conviction is guilty of a Class Y felony.

5-64-423. Manufacture of methamphetamine—~~Manufacture of cocaine,~~  
heroin, or cocaine.

(a)(1) Except as provided by this chapter, it is unlawful for a person to manufacture methamphetamine.

(2)(A) A person who manufactures methamphetamine in an amount less than two grams (2g) by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class C felony.

(B)(i) A person who manufactures methamphetamine in an amount of two grams (2g) or more by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class Y felony.

(ii)(a) However, a person who manufactures methamphetamine in an amount of two grams (2g) or more by aggregate weight, including an adulterant or diluents, upon conviction is guilty of a Class A felony if the person shows by a preponderance of the evidence that he or she manufactured the methamphetamine for personal use only.

(b) Factors indicative of personal use may include without limitation the:

(1) Person did not make a delivery of methamphetamine;

(2) Quantity of methamphetamine manufactured by the person; or

(3) Method of manufacturing methamphetamine used by the person.

(3) A person who has one (1) or more prior convictions of manufacturing methamphetamine in any amount under this section or the former § 5-64-401 upon conviction is guilty of a Class Y felony.

(b)(1) Except as provided by this chapter, it is unlawful for a person to manufacture cocaine.

(2)(A) A person who manufactures cocaine in an amount less than two grams (2g) by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class C felony.

(B) A person who manufactures cocaine in an amount of two grams (2g) or more but less than ten grams (10g), by aggregate weight,

including an adulterant or diluent, upon conviction is guilty of a Class B felony.

(C) A person who manufactures cocaine in an amount of ten grams (10g) or more but less than two hundred grams (200g), by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class Y felony.

(c)(1) Except as provided by this chapter, it is unlawful for a person to manufacture heroin.

(2)(A) A person who manufactures heroin in an amount less than two grams (2g) by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class C felony.

(B) A person who manufactures heroin in an amount of two grams (2g) or more but less than ten grams (10g), by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class B felony.

(C) A person who manufactures heroin in an amount of ten grams (10g) or more but less than two hundred grams (200g), by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class Y felony.

5-64-424. Possession of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with the purpose to deliver.

(a) Except as provided in this chapter, it is unlawful if a person possesses a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with the purpose to deliver the Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine. Purpose to deliver may be shown by any of the following factors:

(1) The person possesses the means to weigh, separate, or package a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(2) The person possesses a record indicating a drug-related transaction;

(3) The Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine is separated and packaged

in a manner to facilitate delivery;

(4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of the Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(5) The person possesses at least two (2) other controlled substances in any amount; or

(6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.

(b) A person who violates this section upon conviction is guilty of a:

(1) Class C felony if the person possessed by aggregate weight, including an adulterant or diluent, less than two grams (2g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(2) Class B felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Two grams (2g) or more but less than twenty-eight grams (28g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (b)(2);

(B) Eighty (80) or more but less than one hundred sixty (160) dosage units of hydromorphone hydrochloride;

(C) Eighty (80) or more but less than one hundred sixty (160) dosage units of lysergic acid diethylamide (LSD);

(D) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug; or

(3) Class A felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Twenty-eight grams (28g) or more but less than two hundred grams (200g) of a Schedule I or Schedule II controlled substance that

is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (b)(3);

(B) One hundred twenty-eight milligrams (128mg) or more or one hundred sixty (160) dosage units or more but less than two hundred grams (200g) of hydromorphone hydrochloride;

(C) One thousand six hundred micrograms (1,600 $\mu$ ) or more or one hundred sixty (160) dosage units or more but less than two hundred grams (200g) of lysergic acid diethylamide (LSD);

(D) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug.

(c) It is a defense to a prosecution under this section that the person possessed less than the minimum listed amount of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine and that is listed in this section.

SECTION 6. Arkansas Code §§ 5-64-426 and 5-64-427 are amended to read as follows:

5-64-426. Delivery of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.

(a) This section does not apply to the delivery of methamphetamine, fentanyl, heroin, or cocaine, which is governed by § 5-64-421 and § 5-64-422.

(b) Except as provided in this chapter, it is unlawful for a person to deliver a Schedule I or Schedule II controlled substance.

(c) A person who violates this section upon conviction is guilty of a:

(1) Class C felony if the person delivered by aggregate weight, including an adulterant or diluent, less than two grams (2g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(2) Class B felony if the person delivered by aggregate weight, including an adulterant or diluent:

(A) Two grams (2g) or more but less than twenty-eight grams (28g) of a Schedule I or Schedule II controlled substance that is not

methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (c)(2);

(B) Eighty (80) or more but less than one hundred sixty (160) dosage units of hydromorphone hydrochloride;

(C) Eighty (80) or more but less than one hundred sixty (160) dosage units of lysergic acid diethylamide (LSD);

(D) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug; or

(3) Class A felony if the person delivered by aggregate weight, including an adulterant or diluent:

(A) Twenty-eight grams (28g) or more but less than two hundred grams (200g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (c)(3);

(B) One hundred sixty (160) dosage units or more but less than two hundred grams (200g) of hydromorphone hydrochloride;

(C) One hundred sixty (160) dosage units or more but less than two hundred grams (200g) of lysergic acid diethylamide (LSD);

(D) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug.

5-64-427. Manufacture of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.

(a) This section does not apply to the manufacture of methamphetamine, fentanyl, heroin, or cocaine, which is governed by § 5-64-421 and § 5-64-423.

(b) Except as provided by this chapter, it is unlawful for a person to manufacture a Schedule I or Schedule II controlled substance.

(c) A person who violates this section upon conviction is guilty of a:

(1) Class C felony if the person manufactured by aggregate weight, including an adulterant or diluent, less than two grams (2g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(2) Class B felony if the person manufactured by aggregate weight, including an adulterant or diluent:

(A) Two grams (2g) or more but less than twenty-eight grams (28g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (c)(2);

(B) Eighty (80) or more but less than one hundred sixty (160) dosage units of hydromorphone hydrochloride;

(C) Eighty (80) or more but less than one hundred sixty (160) dosage units of lysergic acid diethylamide (LSD);

(D) Eighty (80) or more but less than one hundred sixty (160) dosage units for any other Schedule I or Schedule II depressant or hallucinogenic drug regardless of weight; or

(E) Eighty (80) or more but less than one hundred sixty (160) dosage units for any other Schedule I or Schedule II stimulant drug regardless of weight; or

(3) Class A felony if the person manufactured by aggregate weight, including an adulterant or diluent:

(A) Twenty-eight grams (28g) or more of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (c)(3);

(B) One hundred sixty (160) dosage units or more of hydromorphone hydrochloride;

(C) One hundred sixty (160) or more dosage units of lysergic acid diethylamide (LSD);

(D) One hundred sixty (160) dosage units or more regardless of weight for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) One hundred sixty (160) dosage units or more regardless of weight for any other Schedule I or Schedule II stimulant drug.

SECTION 7. Arkansas Code § 5-64-440 is amended to read as follows:

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;

~~(2)~~(3) Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine, two hundred grams (200g) or more;

~~(3)~~(4) Schedule III controlled substance, four hundred grams (400g) or more;

~~(4)~~(5) Schedule IV or Schedule V controlled substance, eight hundred grams (800g) or more; or

~~(5)~~(6) A Schedule VI controlled substance, five hundred pounds (500 lbs.) or more.

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

**APPROVED: 4/25/21**