

Stricken language would be deleted from and underlined language would be added to present law.
Act 739 of the Regular Session

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H4/3/23
A Bill

HOUSE BILL 1663

By: Representatives Gazaway, *M. Berry*
By: *Senator Gilmore*

For An Act To Be Entitled

AN ACT TO CREATE THE OFFENSE OF KNOWINGLY EXPOSING
ANOTHER PERSON TO FENTANYL; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE OFFENSE OF KNOWINGLY
EXPOSING ANOTHER PERSON TO FENTANYL.

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

SECTION 1. Arkansas Code § 5-4-501, concerning the sentencing of habitual offenders, is amended to add an additional subsection to read as follows:

(j) For the purpose of determining under this section the number of felonies for which a defendant has been convicted, if the defendant was previously convicted of felony for possession of fentanyl, § 5-64-421, and the defendant also was convicted of a felony for knowingly exposing another person to fentanyl in the first degree, § 5-13-214(b), or knowingly exposing another person to fentanyl in the second degree, §5-13-214(c), stemming from the same set of facts, the two (2) felonies shall be considered as one (1) felony.

SECTION 2. Arkansas Code Title 5, Chapter 13, Subchapter 2, is amended to add an additional section to read as follows:

5-13-214. Knowingly exposing another person to fentanyl in the first and second degree.

(a) As used in this section:



(1)(A) "Correctional facility" means a place used for the confinement of persons charged with or convicted of an offense or otherwise confined under a court order.

(B) "Correctional facility" includes the Arkansas State Hospital only in regard to persons who are detained at the hospital and charged with or convicted of an offense.

(C) "Correctional facility" does not include youth services programs;

(2) "Employee of a correctional facility" means a person who is employed by or working under a professional services contract for a correctional facility;

(3) "Expose" includes without limitation skin contact, inhalation, ingestion, or contact with a needlestick or a mucus membrane, including without limitation the mouth, eyes, or nose; and

(4) "Fentanyl" means the same as defined in § 5-64-101.

(b)(1) A person commits the offense of knowingly exposing another person to fentanyl in the first degree if:

(A) The person knowingly exposes another person to fentanyl; and

(B) The other person suffers serious physical injury as a result of the exposure to fentanyl.

(2) Knowingly exposing another person to fentanyl in the first degree is:

(A) A Class Y felony if the other person is a first responder or an employee of a correctional facility; or

(B) A Class A felony if otherwise committed.

(c)(1) A person commits the offense of knowingly exposing another person to fentanyl in the second degree if:

(A) The person knowingly exposes another person to fentanyl; and

(B) The other person suffers physical injury as a result of the exposure to fentanyl.

(2) Knowingly exposing another person to fentanyl in the second degree is:

(A) A Class A felony if the other person is a first responder or an employee of a correctional facility; or

(B) A Class B felony if otherwise committed.

(d) The following are not offenses under this subchapter:

(1) An individual practitioner acting in the usual course of professional practice issuing a valid prescription for fentanyl for a legitimate medical purpose;

(2) A pharmacy, pharmacist, or an individual practitioner dispensing, delivering, or administering fentanyl pursuant to a prescription;

(3) A permitted manufacturer, wholesaler, pharmacy, hospital, long-term care facility, or other medical provider delivering, prescribing, administering, or transferring fentanyl available by prescription for lawful purposes and in compliance with state and federal law; or

(4) A pharmaceutical company manufacturing fentanyl available by prescription in compliance with state and federal law.

/s/Gazaway

APPROVED: 4/12/23