



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for HB1604 Sponsored by Representative Gazaway

Subtitle CONCERNING THE APPLICATION OF THE OFFENSE OF POSSESSION OF DRUG PARAPHERNALIA IN REGARDS TO THE HABITUAL OFFENDER SENTENCE ENHANCEMENT; AND CONCERNING THE OFFENSE OF DRUG PARAPHERNALIA.

Impact Summary¹ Cannot be determined. Data is unavailable as to the number of offenders who would see an increased penalty under the proposed bill. For this reason, the impact cannot be determined.

Change from Current Law² Amends various provisions of the Arkansas Code related to possession of drug paraphernalia. The proposed bill amends A.C.A. § 5-4-501, Habitual offenders, to add a new subsection which provides that if a defendant was previously convicted of a felony for possession of a controlled substance under § 5-64-401 et. seq., and the defendant was also convicted of a felony for possession of drug paraphernalia under § 5-64-443 stemming from the same set of facts, the two (2) felonies shall be considered as one felony for purposes of determining the number of felonies for which a defendant has been convicted under the habitual offender enhancement.

The proposed bill also amends A.C.A. § 5-64-443, Drug paraphernalia, to place limits on convictions arising from the same course of conduct and increase the penalty for subsequent convictions. Under the proposed bill, Possession of drug paraphernalia with the purpose to use the paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, or to store, contain, conceal, or weigh a controlled substance, is a Class D felony if the person has previously been convicted of possession of drug paraphernalia. Under current law, this conduct is a Class D felony if the controlled substance is methamphetamine, heroin, fentanyl, or cocaine, or a Class A misdemeanor if otherwise committed. The proposed bill also provides that when the same conduct of a defendant may establish the commission of more than one (1) offense under this section, the defendant may only be convicted of one (1) offense.

The proposed bill also makes organizational changes to A.C.A. § 5-64-443.

Impact Information The proposed bill increases the penalty for some occurrences of Possession of drug paraphernalia from a Class A misdemeanor to a Class D felony, while also limiting the number of convictions for Possession of drug paraphernalia that can arise from a single course of conduct and limiting application of the habitual offender enhancement. Available data does not differentiate offenders convicted of A.C.A. § 5-64-443 (a)(1) who have a prior conviction for drug paraphernalia. For this reason, the impact of the proposed bill cannot be determined.

¹ This impact assessment was prepared 3/8/2021 11:24 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

² 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