

State of Arkansas  
93rd General Assembly  
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# A Bill

SENATE BILL 29

By: Senator T. Garner

## For An Act To Be Entitled

AN ACT TO MAKE TRAFFICKING FENTANYL A CAPITAL  
OFFENSE; CONCERNING CAPITAL OFFENSES; CONCERNING  
FENTANYL OFFENSES; AND FOR OTHER PURPOSES.

## Subtitle

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

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

SECTION 1. Arkansas Code § 5-3-203 is amended to read as follows:

5-3-203. Classification.

A criminal attempt is a:

- (1) Class Y felony if the offense attempted is capital murder, § 5-10-101;
- (2) Class A felony if the offense attempted is treason, § 5-51-201, trafficking of fentanyl, § 5-64-440, or a Class Y felony other than capital murder, § 5-10-101;
- (3) Class B felony if the offense attempted is a Class A felony;
- (4) Class C felony if the offense attempted is a Class B felony;
- (5) Class D felony if the offense attempted is a Class C felony;
- (6) Class A misdemeanor if the offense attempted is a Class D felony or an unclassified felony;
- (7) Class B misdemeanor if the offense attempted is a Class A misdemeanor;
- (8) Class C misdemeanor if the offense attempted is a Class B



misdemeanor; or

(9) Violation if the offense attempted is a Class C misdemeanor or an unclassified misdemeanor.

SECTION 2. Arkansas Code § 5-3-301(b)(1), concerning the inchoate offense of solicitation, is amended to read as follows:

(1) Class A felony if the offense solicited is ~~capital murder, treason~~ capital murder, § 5-10-101, treason, § 5-51-201, trafficking of fentanyl, § 5-64-440, or a Class Y felony;

SECTION 3. Arkansas Code § 5-3-404 is amended to read as follows:  
5-3-404. Classification.

Criminal conspiracy is a:

(1) Class A felony if an object of the conspiracy is commission of ~~capital murder, treason~~ capital murder, § 5-10-101, treason, § 5-51-201, trafficking of fentanyl, § 5-64-440, or a Class Y felony;

(2) Class B felony if an object of the conspiracy is commission of a Class A felony;

(3) Class C felony if an object of the conspiracy is commission of a Class B felony;

(4) Class D felony if an object of the conspiracy is commission of a Class C felony;

(5) Class A misdemeanor if an object of the conspiracy is commission of a Class D felony or an unclassified felony;

(6) Class B misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor; or

(7) Class C misdemeanor if an object of the conspiracy is commission of a Class B misdemeanor.

SECTION 4. Arkansas Code § 5-4-104(a)-(e), concerning authorized sentences, are amended to read as follows:

(a) No defendant convicted of an offense shall be sentenced otherwise than in accordance with this chapter.

(b) A defendant convicted of capital murder, § 5-10-101, ~~or~~ treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, shall be sentenced to death or life imprisonment without parole in accordance with §§ 5-4-601 – 5-4-605,

5-4-607, and 5-4-608, except if the defendant was younger than eighteen (18) years of age at the time he or she committed the ~~capital murder or treason~~ capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, he or she shall be sentenced to life imprisonment with the possibility of parole after serving a minimum of thirty (30) years' imprisonment.

(c)(1) A defendant convicted of a Class Y felony or murder in the second degree, § 5-10-103, shall be sentenced to a term of imprisonment in accordance with §§ 5-4-401 – 5-4-404.

(2) In addition to imposing a term of imprisonment, the trial court may sentence a defendant convicted of a Class Y felony or murder in the second degree, § 5-10-103, to any one (1) or more of the following:

- (A) Pay a fine as authorized by §§ 5-4-201 and 5-4-202;
- (B) Make restitution as authorized by § 5-4-205; or
- (C) Suspend imposition of an additional term of

imprisonment, as authorized by subdivision (e)(3) of this section.

(d) A defendant convicted of an offense other than a Class Y felony, capital murder, § 5-10-101, treason, § 5-51-201, trafficking of fentanyl, § 5-64-440, or murder in the second degree, § 5-10-103, may be sentenced to any one (1) or more of the following, except as precluded by subsection (e) of this section:

- (1) Imprisonment as authorized by §§ 5-4-401 – 5-4-404;
- (2) Probation as authorized by §§ 5-4-301 – 5-4-307 and 16-93-306 – 16-93-314;
- (3) Payment of a fine as authorized by §§ 5-4-201 and 5-4-202;
- (4) Restitution as authorized by a provision of § 5-4-205; or
- (5) Imprisonment and payment of a fine.

(e)(1)(A) The court shall not suspend imposition of sentence as to a term of imprisonment nor place the defendant on probation for the following offenses:

- (i) Capital murder, § 5-10-101;
- (ii) Treason, § 5-51-201;
- (iii) Trafficking of fentanyl, § 5-64-440;
- ~~(iii)~~(iv) A Class Y felony, except to the extent

suspension of an additional term of imprisonment is permitted in subsection (c) of this section;

~~(iv)~~(v) Driving or boating while intoxicated, § 5-65-103;

~~(v)~~(vi) Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section; or

~~(vi)~~(vii) Engaging in a continuing criminal enterprise, § 5-64-405.

(B)(i) In any other case, the court may suspend imposition of sentence or place the defendant on probation, in accordance with §§ 5-4-301 – 5-4-307 and 16-93-306 – 16-93-314, except as otherwise specifically prohibited by statute.

(ii) The court may not suspend execution of sentence.

(2) If the offense is punishable by fine and imprisonment, the court may sentence the defendant to pay a fine and suspend imposition of the sentence as to imprisonment or place the defendant on probation.

(3)(A) The court may sentence the defendant to a term of imprisonment and suspend imposition of sentence as to an additional term of imprisonment.

(B) However, the court shall not sentence a defendant to imprisonment and place him or her on probation, except as authorized by § 5-4-304.

SECTION 5. Arkansas Code § 5-4-301(a)(1), concerning offenses for which suspension or probation is prohibited, is amended to read as follows:

(a)(1) A court shall not suspend imposition of sentence as to a term of imprisonment or place a defendant on probation for the following offenses:

(A) Capital murder, § 5-10-101;

(B) Treason, § 5-51-201;

(C) Trafficking of fentanyl, § 5-64-440;

~~(C)~~(D) A Class Y felony, except to the extent suspension of an additional term of imprisonment is permitted in § 5-4-104(c);

~~(D)~~(E) Driving or boating while intoxicated, § 5-65-103;

~~(E)~~(F) Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in § 5-4-104(c); or

~~(F)~~(G) Engaging in a continuing criminal enterprise, § 5-64-405.

SECTION 6. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended to read as follows:

Subchapter 6

– Trial and Sentence – Capital ~~Murder~~ Offenses

5-4-601. Legislative intent.

(a) In enacting this subchapter, it is the intent of the General Assembly to specify the procedures and standards pursuant to which a sentencing body shall conform in making a determination as to whether a sentence of death is to be imposed upon a conviction ~~of capital murder~~ for capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440.

(b) If the provisions of this subchapter respecting sentencing procedures are held invalid with regard to the imposition of a sentence of death or a sentence of death is declared to be invalid per se, it is the intent of the General Assembly that+

~~(1) Capital murder is~~ capital murder, § 5-10-101, treason, § 5-51-201, and trafficking of fentanyl, § 5-64-440, are punishable by life imprisonment without parole; ~~and~~

~~(2) The procedures and findings required by §§ 5-4-602—5-4-605, 5-4-607, and 5-4-608 are deemed repealed and of no effect.~~

5-4-602. Capital ~~murder~~ offense charge – Trial procedure.

The following procedures govern a trial of a person charged with capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440:

(1) The jury shall first hear all evidence relevant to the charge and shall then retire to reach a verdict of guilt or innocence;

(2) If the defendant is found not guilty of the capital offense charged but guilty of a lesser included offense, the sentence shall be determined and imposed as provided by law;

(3)(A) If the defendant is found guilty of ~~capital murder~~ the capital offense, the same jury shall sit again in order to:

(i) Hear additional evidence as provided by subdivisions (4) and (5) of this section; and

(ii) Determine the sentence in the manner provided by § 5-4-603.

(B) However, if the state waives the death penalty, stipulates that no aggravating circumstance exists, or stipulates that mitigating circumstances outweigh aggravating circumstances, then:

(i) A hearing under subdivision (3)(A) of this section is not required; and

(ii) The trial court shall sentence the defendant to life imprisonment without parole.

(C) If the defendant was less than eighteen (18) years of age at the time of the offense, then a hearing under subdivision (3)(A) of this section is not required;

(4)(A) If the defendant and the state are accorded an opportunity to rebut the evidence, in determining the sentence evidence may be presented to the jury as to any:

(i) Matter relating to an aggravating circumstance enumerated in § 5-4-604;

(ii) Mitigating circumstance; or

(iii) Other matter relevant to punishment, including, but not limited to, victim impact evidence.

(B)(i) Evidence as to any mitigating circumstance may be presented by either the state or the defendant regardless of the evidence's admissibility under the rules governing admission of evidence in a trial of a criminal matter.

(ii) However, mitigating circumstance evidence shall be relevant to the issue of punishment, including, but not limited to, the nature and circumstances of the crime, and the defendant's character, background, history, and mental and physical condition as set forth in § 5-4-605.

(C) The admissibility of evidence relevant to an aggravating circumstance set forth in § 5-4-604 is governed by the rules governing the admission of evidence in a trial of a criminal matter.

(D) Any evidence admitted at the trial relevant to punishment may be considered by the jury without the necessity of

reintroducing the evidence at the sentencing proceeding; and

(5) The state and the defendant or his or her counsel are permitted to present argument respecting sentencing:

- (A) The state shall open the argument;
- (B) The defendant is permitted to reply; and
- (C) The state is then permitted to reply in rebuttal.

5-4-603. Findings required for death sentence – Harmless error review.

(a) The jury shall impose a sentence of death if the jury unanimously returns written findings that:

- (1) An aggravating circumstance exists beyond a reasonable doubt;
- (2) Aggravating circumstances outweigh beyond a reasonable doubt all mitigating circumstances found to exist; and
- (3) Aggravating circumstances justify a sentence of death beyond a reasonable doubt.

(b) The jury shall impose a sentence of life imprisonment without parole if the jury finds that:

- (1) Aggravating circumstances do not exist beyond a reasonable doubt;
- (2) Aggravating circumstances do not outweigh beyond a reasonable doubt all mitigating circumstances found to exist; or
- (3) Aggravating circumstances do not justify a sentence of death beyond a reasonable doubt.

(c) If the jury does not make any finding required by subsection (a) of this section, the court shall impose a sentence of life imprisonment without parole.

(d)(1) On an appellate review of a death sentence, the Supreme Court shall conduct a harmless error review of the defendant's death sentence if:

- (A) The Supreme Court finds that the jury erred in finding the existence of any aggravating circumstance for any reason; and
- (B) The jury found no mitigating circumstance.

(2) The Supreme Court shall conduct a harmless error review under subdivision (d)(1) of this section by determining that a remaining aggravating circumstance:

- (A) Exists beyond a reasonable doubt; and

(B) Justifies a sentence of death beyond a reasonable doubt.

(e) If the Supreme Court concludes that the erroneous finding of any aggravating circumstance by the jury would not have changed the jury's decision to impose the death penalty on the defendant, then a simple majority of the court may vote to affirm the defendant's death sentence.

5-4-604. Aggravating circumstances.

An aggravating circumstance is limited to the following:

(1) The capital ~~murder~~ offense was committed by a person imprisoned as a result of a felony conviction;

(2) The capital ~~murder~~ offense was committed by a person unlawfully at liberty after being sentenced to imprisonment as a result of a felony conviction;

(3) The person previously committed another felony, an element of which was the use or threat of violence to another person or the creation of a substantial risk of death or serious physical injury to another person;

(4) The person in the commission of the capital ~~murder~~ offense knowingly created a great risk of death to a person other than the victim or caused the death of more than one (1) person in the same criminal episode;

(5) The capital ~~murder~~ offense was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody;

(6) The capital ~~murder~~ offense was committed for pecuniary gain;

(7) The capital ~~murder~~ offense was committed for the purpose of disrupting or hindering the lawful exercise of any government or political function;

(8)(A) The capital ~~murder~~ offense was committed in an especially cruel or depraved manner.

(B)(i) For purposes of subdivision (8)(A) of this section, a capital ~~murder~~ offense is committed in an especially cruel manner when, as part of a course of conduct intended to inflict mental anguish, serious physical abuse, or torture upon the victim prior to the victim's death, mental anguish, serious physical abuse, or torture is inflicted.

(ii)(a) "Mental anguish" means the victim's uncertainty as to his or her ultimate fate.

(b) "Serious physical abuse" means physical

abuse that creates a substantial risk of death or that causes protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

(c) "Torture" means the infliction of extreme physical pain for a prolonged period of time prior to the victim's death.

(C) For purposes of subdivision (8)(A) of this section, a capital ~~murder~~ offense is committed in an especially depraved manner when the person relishes the ~~murder~~ capital offense, evidencing debasement or perversion, or shows an indifference to the suffering of the victim and evidences a sense of pleasure in committing the ~~murder~~ capital offense;

(9) The capital ~~murder~~ offense was committed by means of a destructive device, bomb, explosive, or similar device that the person planted, hid, or concealed in any place, area, dwelling, building, or structure, or mailed or delivered, or caused to be planted, hidden, concealed, mailed, or delivered, and the person knew that his or her act would create a great risk of death to human life; or

(10) The capital ~~murder~~ offense was committed against a person whom the defendant knew or reasonably should have known was especially vulnerable to the attack because:

(A) Of either a temporary or permanent severe physical or mental disability which would interfere with the victim's ability to flee or to defend himself or herself; or

(B) The person was twelve (12) years of age or younger.

#### 5-4-605. Mitigating circumstances.

A mitigating circumstance includes, ~~but is not limited to,~~ without limitation the following:

(1) The capital ~~murder~~ offense was committed while the defendant was under extreme mental or emotional disturbance;

(2) The capital ~~murder~~ offense was committed while the defendant was acting under an unusual pressure or influence or under the domination of another person;

(3) The capital ~~murder~~ offense was committed while the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental disease or defect, intoxication, or drug abuse;

(4) The youth of the defendant at the time of the commission of the capital ~~murder~~ offense;

(5) The capital ~~murder~~ offense was committed by another person and the defendant was an accomplice and his or her participation was relatively minor; or

(6) The defendant has no significant history of prior criminal activity.

5-4-606. Life imprisonment without parole.

A person sentenced to life imprisonment without parole shall:

(1) Be remanded to the custody of the Division of Correction for imprisonment for the remainder of his or her life; and

(2) Not be released except ~~pursuant to~~ under commutation, pardon, or reprieve of the Governor.

5-4-607. Application for executive clemency – Regulations.

(a) The pardon of a person convicted of capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, or of a Class Y felony, Class A felony, or Class B felony, or the commutation of a sentence of a person convicted of capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, or of a Class Y felony, Class A felony, or Class B felony, may be granted only in the manner provided in this section.

(b)(1) A copy of the application for pardon or commutation shall be filed with:

(A) The Secretary of State;

(B) The Attorney General;

(C) The sheriff of the county where the offense was committed;

(D) The prosecuting attorney of the judicial district where the applicant was found guilty and sentenced, if still in office, and, if not, the successor of that prosecuting attorney;

(E) The circuit judge presiding over the proceedings at which the applicant was found guilty and sentenced, if still in office, and, if not, the successor of that circuit judge; and

(F) The victim of the crime or the victim's next of kin,

if he or she files a request for notice with the prosecuting attorney.

(2)(A) The application shall set forth a ground upon which the pardon or commutation is sought.

(B) If the application involves a conviction for capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, a notice of the application shall be published by two (2) insertions, separated by a minimum of seven (7) days, in a newspaper of general circulation in the county or counties where the offense or offenses of the applicant were committed.

(c) On granting an application for pardon or commutation, the Governor shall:

(1) Include in his or her written order the reason for the granting of the application; and

(2) File with the House of Representatives and the Senate a copy of his or her written order which shall state the:

(A) Applicant's name;

(B) Offense of which the applicant was convicted and the sentence imposed;

(C) Date of the judgment imposing the sentence; and

(D) Effective date of the pardon or commutation.

(d) A person sentenced to death or to life imprisonment without parole is not eligible for parole and shall not be paroled.

(e) If the sentence of a person sentenced to death or life imprisonment without parole is commuted by the Governor to a term of years, the person shall not be paroled, nor shall the length of his or her incarceration be reduced in any way to less than the full term of years specified in the order of commutation or in any subsequent order of commutation.

(f) A reprieve may be granted as presently provided by law.

5-4-608. Waiver of death penalty.

(a) If a defendant is charged with a capital ~~murder~~ offense, with the permission of the court the prosecuting attorney may waive the death penalty.

(b) In a case described in subsection (a) of this section, if the defendant pleads guilty to the capital ~~murder~~ offense or is found guilty of a capital ~~murder~~ offense after trial to the court or to a jury, the trial court

shall sentence the defendant to life imprisonment without parole.

5-4-609 – 5-4-614. [Reserved.]

5-4-615. Conviction – Punishments.

A person convicted of a capital offense shall be punished by death by lethal injection or by life imprisonment without parole ~~pursuant to~~ under this subchapter.

5-4-616. Procedures following remand of capital ~~case~~ offense after vacation of death sentence – Retroactive application.

(a) Notwithstanding § 5-4-602(3) that requires that the same jury sit in the sentencing phase of a capital ~~murder~~ offense trial, the following shall apply:

(1)(A) Upon any appeal by the defendant when the sentence is of death, if the appellate court finds prejudicial error in the sentencing proceeding only, the appellate court may set aside the sentence of death and remand the case to the trial court in the jurisdiction in which the defendant was originally sentenced.

(B) No error in the sentencing proceeding shall result in the reversal of the conviction for a capital ~~felony~~ offense.

(C) When a capital ~~case~~ offense is remanded after vacation of a death sentence, the prosecutor may move the trial court to:

(i) Impose a sentence of life without parole, and the trial court may impose the sentence of life without parole without a hearing; or

(ii) Impanel a new sentencing jury;

(2) If the prosecutor elects subdivision (a)(1)(C)(ii) of this section the trial court shall impanel a new jury for the purpose of conducting a new sentencing proceeding;

(3) A new sentencing proceeding is governed by ~~the provisions of~~ § 5-4-602(4) and (5) and §§ 5-4-603 – 5-4-605;

(4)(A) Any exhibit and a transcript of any testimony or other evidence properly admitted in the prior trial and sentencing is admissible in the new sentencing proceeding.

(B) Additional relevant evidence may be admitted including

testimony of a witness who testified at the previous trial; and

(5) The provisions of this section:

(A) Are procedural; and

(B) Apply retroactively to any defendant sentenced to death after January 1, 1974.

(b) This section ~~shall not be construed to~~ does not amend a provision of § 5-4-602 requiring the same jury to sit in both the guilt and sentencing phases of the original trial.

5-4-617. Method of execution.

(a) The Division of Correction shall carry out the sentence of death by intravenous lethal injection of the drug or drugs described in subsection (c) of this section in an amount sufficient to cause death.

(b) The Director of the Division of Correction or his or her designee may order the dispensation and administration of the drug or drugs described in subsection (c) of this section for the purpose of carrying out the lethal-injection procedure, and a prescription is not required.

(c) The division shall select one (1) of the following options for a lethal-injection protocol, depending on the availability of the drugs:

(1) A barbiturate; or

(2) Midazolam, followed by vecuronium bromide, followed by potassium chloride.

(d) The drug or drugs described in subsection (c) of this section used to carry out the lethal injection shall be:

(1) Approved by the United States Food and Drug Administration and made by a manufacturer approved by the United States Food and Drug Administration;

(2) Obtained from a facility registered with the United States Food and Drug Administration; or

(3) Obtained from a compounding pharmacy that has been accredited by a national organization that accredits compounding pharmacies.

(e) The drugs set forth in subsection (c) of this section shall be administered along with any additional substances, such as saline solution, called for in the instructions.

(f) Catheters, sterile intravenous solution, and other equipment used for the intravenous injection of the drug or drugs set forth in subsection

(c) of this section shall be sterilized and prepared in a manner that is safe and commonly performed in connection with the intravenous administration of drugs of that type.

(g) The director shall develop logistical procedures necessary to carry out the sentence of death, including:

(1) The following matters:

(A) Ensuring that the drugs and substances set forth in this section and other necessary supplies for the lethal injection are available for use on the scheduled date of the execution;

(B) Conducting employee orientation of the lethal injection procedure before the day of the execution;

(C) Determining the logistics of the viewing;

(D) Coordinating with other governmental agencies involved with security and law enforcement;

(E) Transferring the condemned prisoner to the facility where the sentence of death will be carried out;

(F) Escorting the condemned prisoner from the holding cell to the execution chamber;

(G) Determining the identity, arrival, and departure of the persons involved with carrying out the sentence of death at the facility where the sentence of death will be carried out; and

(H) Making arrangements for the disposition of the condemned prisoner's body and personal property; and

(2) The following matters pertaining to other logistical issues:

(A) Chaplaincy services;

(B) Visitation privileges;

(C) Determining the condemned prisoner's death, which shall be pronounced according to accepted medical standards; and

(D) Establishing a protocol for any necessary mixing or reconstitution of the drugs and substances set forth in this section in accordance with the instructions.

(h) The procedures for carrying out the sentence of death and related matters are not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(i)(1) Except as provided for under subdivision (i)(2) of this section, a person shall not disclose in response to a request under the

Freedom of Information Act of 1967, § 25-19-101 et seq., or in response to discovery under the Arkansas Rules of Civil Procedure, or otherwise, any of the following:

(A) Documents, records, or information that may identify or reasonably lead to the identification of entities or persons who participate in the execution process or administer lethal injections;

(B) Documents, records, or information that may identify or reasonably lead directly or indirectly to the identification of an entity or person who compounds, synthesizes, tests, sells, supplies, manufactures, transports, procures, dispenses, or prescribes the drug or drugs described in subsection (c) of this section, or that provides the medical supplies or medical equipment for the execution process; or

(C) Documents, records, or information that concern the procedures under subdivision (g)(1) of this section and the implementation of the procedures under subdivision (g)(1) of this section.

(2) The following documents, records, and information may be disclosed:

(A) The director may disclose or authorize disclosure of documents, records, and information to his or her subordinates, contractors, or vendors to the extent necessary to carry out his or her duties under this section;

(B) The director may disclose or authorize disclosure of documents, records, and information to the Governor or the Attorney General, or both; and

(C) The Governor or the Attorney General, or both, may disclose or authorize the disclosure of documents, records, and information to their subordinates to the extent necessary to carry out their duties under law.

(3)(A) If any part of this subsection is invalidated by a final and unappealable court order, any unauthorized disclosure of information under this section shall be permitted only after the entry and service of an order prohibiting public disclosure or use of the documents, records, or information and requiring that a public filing of the documents, records, or information be done under seal.

(B) A person who recklessly discloses documents, records, or information in violation of an order under this subdivision (i)(3) upon

conviction is guilty of a Class D felony.

(j)(1) The director shall certify under oath that the drug or drugs described in subsection (c) of this section meet the requirements of subsection (d) of this section.

(2) After the certification required under this subsection, a challenge to the conformity of the drug or drugs described under subsection (c) of this section with the requirements of subsection (d) of this section shall be brought only as an original action in the Supreme Court.

(k) The division shall make available to the public any of the following information upon request, so long as the information that may be used to identify an entity or person listed in subsection (i) of this section is redacted and maintained as confidential:

(1) The certification provided for under subsection (j) of this section; and

(2) The division's procedure for administering the drug or drugs described in subsection (c) of this section.

(l) The division shall carry out the sentence of death by electrocution if execution by lethal injection under this section is invalidated by a final and unappealable court order.

(m) Every person that procures, prepares, administers, monitors, or supervises the injection of a drug or drugs under this section has immunity under § 19-10-305.

(n) A person who recklessly discloses documents, records, or information in violation of subdivision (i)(1) of this section upon conviction is guilty of a Class D felony.

#### 5-4-618. Defendants with intellectual disabilities.

(a)(1) As used in this section, "intellectual disabilities" means:

(A) Significantly below-average general intellectual functioning accompanied by a significant deficit or impairment in adaptive functioning manifest in the developmental period, but no later than age eighteen (18) years of age; and

(B) A deficit in adaptive behavior.

(2) There is a rebuttable presumption of intellectual disabilities when a defendant has an intelligence quotient of sixty-five (65) or below.

(b) No defendant with intellectual disabilities at the time of committing capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, shall be sentenced to death.

(c) The defendant has the burden of proving intellectual disabilities at the time of committing the offense by a preponderance of the evidence.

(d)(1) A defendant on trial for capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, shall raise the special sentencing provision of intellectual disabilities by motion prior to trial.

(2)(A) Prior to trial, the court shall determine if the defendant has an intellectual disability.

(B)(i) If the court determines that the defendant does not have an intellectual disability, the defendant may raise the question of an intellectual disability to the jury for determination de novo during the sentencing phase of the trial.

(ii) At the time the jury retires to decide mitigating and aggravating circumstances, the jury shall be given a special verdict form on an intellectual disability.

(iii) If the jury unanimously determines that the defendant had an intellectual disability at the time of the commission of capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, then the defendant will automatically be sentenced to life imprisonment without possibility of parole.

(C) If the court determines that the defendant has an intellectual disability, then:

(i) The jury is not “death qualified”; and

(ii) The jury shall sentence the defendant to life imprisonment without possibility of parole upon conviction.

(e) However, this section is not deemed to:

(1) Require unanimity for consideration of any mitigating circumstance; or

(2) Supersede any suggested mitigating circumstance regarding mental defect or disease currently found in § 5-4-605.

SECTION 7. Arkansas Code § 5-64-101, concerning definitions under the Uniform Controlled Substances Act, is amended to add an additional subdivision to read as follows:

(23)(A) "Fentanyl" means a type of synthetic opioid used to treat patients with severe or chronic pain or patients who are physically tolerant to other opioids.

(B) "Fentanyl" may be known by the brand name Actiq, Duragesic, or Sublimaze, or commonly known as Apache, China Girl, China White, Dance Fever, Friend, Goodfella, Jackpot, Murder 8, or Tango and Cash.

SECTION 8. Arkansas Code § 5-64-204 is amended to read as follows:  
5-64-204. Substances in Schedule I.

(a) In addition to any substance placed in Schedule I by the Secretary of the Department of Health under § 5-64-203, any material, compound, mixture, or preparation, whether produced directly or indirectly from a substance of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, that contains any quantity of the following substances, or that contains any of the following substances' analogs, salts, isomers, and salts of isomers when the existence of the analogs, salts, isomers, and salts of isomers is possible within the specific chemical designation, with the following chemical structure is included in Schedule I:

- (1) 4-Methylmethcathinone (Mephedrone);
- (2) Methylenedioxypropylvalerone (MDPV);
- (3) 3,4-Methylenedioxy-N-methylcathinone (Methylone);
- (4) 4-Methoxymethcathinone;
- (5) 3-Fluoromethcathinone;
- (6) 4-Fluoromethcathinone; ~~or~~

(7) A compound, unless listed in another schedule or a legend drug, that is structurally derived from 2-Amino-1-phenyl-1-propanone by modification or by substitution:

(A) In the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one (1) or more other univalent substituents;

(B) At the 3-position with an alkyl substituent; or

(C) At the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; or

(8) Fentanyl.

(b) The Secretary of the Department of Health shall not delete a controlled substance listed in this section from Schedule I.

SECTION 9. Arkansas Code § 5-64-419(b)(1) and (2), concerning possession of a controlled substance, are amended to read as follows:

(1) A Schedule I or Schedule II controlled substance that is methamphetamine, ~~or~~ cocaine, or fentanyl 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, ~~or~~ cocaine, or fentanyl 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 10. Arkansas Code § 5-64-420 is amended to read as follows:

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

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

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

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

(3) The methamphetamine, ~~or~~ cocaine, or fentanyl 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, ~~or~~ cocaine, or fentanyl;

(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, ~~or~~ cocaine, or fentanyl.

(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, ~~or~~ cocaine, or fentanyl 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, ~~or~~ cocaine, or fentanyl 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, ~~or~~ cocaine, or fentanyl by aggregate weight, including an adulterant or diluent.

SECTION 11. Arkansas Code § 5-64-422 is amended to read as follows:

5-64-422. Delivery of methamphetamine, ~~or~~ cocaine, or fentanyl.

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

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

SECTION 12. Arkansas Code § 5-64-423, concerning the manufacture of methamphetamine and cocaine, is amended to add an additional subsection to read as follows:

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

(2)(A) A person who manufactures fentanyl 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 fentanyl 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 fentanyl 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.

SECTION 13. Arkansas Code § 5-64-424 is amended to read as follows:

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

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

(3) The Schedule I or Schedule II controlled substance that is not methamphetamine, ~~or~~ cocaine, or fentanyl 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, ~~or~~ cocaine, or fentanyl;

(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, ~~or~~ cocaine, or fentanyl.

(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, ~~or~~ cocaine, or fentanyl;

(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, ~~or~~ cocaine, or fentanyl, 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, ~~or~~ cocaine, fentanyl, 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, ~~or~~ cocaine, or fentanyl and that is listed in this section.

SECTION 14. Arkansas Code § 5-64-426 is amended to read as follows:

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

(a) This section does not apply to the delivery of methamphetamine, ~~or~~ cocaine, or fentanyl, which is governed by § 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, ~~or~~ cocaine, or fentanyl;

(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, cocaine, fentanyl, 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, cocaine, fentanyl, 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.

SECTION 15. Arkansas Code § 5-64-427 is amended to read as follows:

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

(a) This section does not apply to the manufacture of methamphetamine, ~~or~~ cocaine, or fentanyl, which is governed by § 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,

~~or~~ cocaine, or fentanyl;

(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, cocaine, fentanyl, 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, cocaine, fentanyl, 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 16. 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, ~~or~~ cocaine, or fentanyl, two hundred grams (200g) or more;
- (2) Schedule I or Schedule II controlled substance that is not methamphetamine, ~~or~~ cocaine, or fentanyl, two hundred grams (200g) or more;
- (3) Schedule III controlled substance, four hundred grams (400g) or more;
- (4) Schedule IV or Schedule V controlled substance, eight hundred grams (800g) or more; or
- (5) A Schedule VI controlled substance, five hundred pounds (500 lbs.) or more.

(c) Trafficking a controlled substance is a Class Y felony unless the controlled substance is fentanyl, in which case it is a capital offense, with the available sentences being death or life imprisonment without the possibility of parole.

SECTION 17. Arkansas Code § 16-33-305 is amended to read as follows:

16-33-305. Challenge to trial jurors – Individual juror – Peremptory.

(a) The state shall be entitled to ten (10) peremptory challenges in prosecutions for capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, to six (6) peremptory challenges in prosecutions for all other felonies, and to three (3) peremptory challenges in prosecutions for misdemeanors.

(b) The defendant shall be entitled to twelve (12) peremptory challenges in prosecutions for capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, to eight (8) peremptory challenges in prosecutions for all other felonies, and to three (3) peremptory challenges in prosecutions for misdemeanors.

SECTION 18. Arkansas Code § 16-87-205(c)(1), concerning the Capital, Conflicts, and Appellate Office of the Arkansas Public Defender Commission, is amended to read as follows:

(c)(1)(A)(i) The Arkansas Public Defender Commission shall be

appointed by the trial court in ~~the following situation:~~

~~(A)(i)~~ In capital murder, treason, or trafficking of fentanyl cases in which the death penalty is sought if a conflict of interest is determined by the court to exist between the trial public defender's office and the indigent person or if for any other reason the court determines that the trial public defender cannot or should not represent the indigent person.

(ii) The representation may be in conjunction with appointed private attorneys.

~~(iii)(B)~~ In capital murder, treason, or trafficking of fentanyl cases, unless the prosecuting attorney informs the circuit court at the arraignment of the defendant that the death penalty will not be sought, it shall be presumed for purposes of this section that the death penalty will be sought.

~~(iv)(a)(C)(i)~~ The executive director may assign the Capital, Conflicts, and Appellate Office, a trial public defender from another area, a private attorney whose name appears on a list of attorneys maintained by the commission, or a combination of private and public defender attorneys to represent the indigent person.

~~(b)(ii)~~ The executive director shall notify the trial court of the assignment and an order reflecting the assignment shall be entered.

SECTION 19. Arkansas Code § 16-87-212(c), concerning court fees and expenses, is amended to read as follows:

(c) At the discretion of the commission, capital murder, treason, or trafficking of fentanyl cases and all proceedings under the Arkansas Rules of Criminal Procedure, Rule 37.5, shall be paid entirely by the commission.

SECTION 20. Arkansas Code § 16-87-218(c)(1) and (2), concerning the costs for legal services provided by the Arkansas Public Defender Commission, are amended to read as follows:

(1) Capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, in which the death penalty was given, including any appeal and post-conviction remedy, twelve thousand five hundred dollars (\$12,500);

(2) Capital murder, § 5-10-101, treason, § 5-51-201, or

trafficking of fentanyl, § 5-64-440, in which the death penalty was not given, murder in the first degree, § 5-10-102, or Class Y felony:

- (A) For an early disposition, five hundred dollars (\$500);
- (B) For a negotiated plea or disposition before trial, two thousand five hundred dollars (\$2,500); or
- (C) For a trial or an extended matter, seven thousand five hundred dollars (\$7,500);

SECTION 21. Arkansas Code § 16-90-803(b)(5), concerning voluntary presumptive standards in sentencing, is amended to read as follows:

(5) Capital murder ~~is~~, § 5-10-101, treason, § 5-51-201, and trafficking of fentanyl, § 5-64-440, are excluded from the sentencing standards and ~~is~~ are subject to the procedures in § 5-4-601 et seq.

SECTION 22. Arkansas Code § 16-91-110(b)(2), concerning bail bonds, is amended to read as follows:

(2) When a criminal defendant has been found guilty of or pleaded guilty or nolo contendere to a criminal offense of capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

SECTION 23. Arkansas Code § 16-91-202(e)(2)(A), concerning the qualifications of defense counsel in a capital case, is amended to read as follows:

(2)(A) In all such cases, the attorney shall have been admitted to practice law for not less than five (5) years and shall have had no fewer than three (3) years' experience in the actual handling of capital murder or other capital case prosecutions or capital murder or other capital case post-conviction proceedings in Arkansas courts.

SECTION 24. Arkansas Code § 16-93-204(d)(2)(A), concerning executive clemency, is amended to read as follows:

(2)(A) Before considering an application for a pardon or recommending a commutation of sentence of a person who was convicted of capital murder, § 5-10-101, treason, § 5-51-201, trafficking of fentanyl, §

5-64-440, or a Class Y felony, Class A felony, or Class B felony, the board shall notify the victim of the crime or the victim's next of kin, if he or she files a request for notice with the prosecuting attorney.

SECTION 25. Arkansas Code § 16-93-207(d)(1)(B), concerning applications for pardon, commutation of sentence, and remission of fines and forfeitures, is amended to read as follows:

(B) Eight (8) years from the date of the denial if the applicant is serving a sentence of life without parole for capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440.

SECTION 26. Arkansas Code § 16-93-612(e), concerning the date of an offense and which parole eligibility statute will govern, is amended to add an additional subdivision to read as follows:

(5) If the felony is trafficking of fentanyl, § 5-64-440, and the offense occurred on or after the effective date of this act, § 16-93-623 governs that person's parole eligibility.

SECTION 27. Arkansas Code Title 16, Chapter 93, Subchapter 6, is amended to add an additional section to read as follows:

16-93-623. Parole eligibility – Trafficking of fentanyl.

An inmate sentenced to trafficking of fentanyl, § 5-64-440, on or after the effective date of this act is not eligible for parole.