

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1604

5 By: Representative Gazaway
6

For An Act To Be Entitled

8 AN ACT CONCERNING THE APPLICATION OF THE OFFENSE OF
9 POSSESSION OF DRUG PARAPHERNALIA IN REGARDS TO THE
10 HABITUAL OFFENDER SENTENCE ENHANCEMENT; CONCERNING
11 THE OFFENSE OF DRUG PARAPHERNALIA; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

15 CONCERNING THE APPLICATION OF THE OFFENSE
16 OF POSSESSION OF DRUG PARAPHERNALIA IN
17 REGARDS TO THE HABITUAL OFFENDER SENTENCE
18 ENHANCEMENT; AND CONCERNING THE OFFENSE
19 OF DRUG PARAPHERNALIA.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 5-4-501, concerning the application of the
26 habitual offender sentence enhancement, is amended to add an additional
27 subsection to read as follows:

28 (i) For the purpose of determining under this section the number of
29 felonies for which a defendant has been convicted, if the defendant was
30 previously convicted of a felony for possession of a controlled substance
31 under § 5-64-101 et seq., and the defendant also was convicted of a felony
32 for possession of drug paraphernalia under § 5-64-443 stemming from the same
33 set of facts, the two (2) felonies shall be considered as one (1) felony.
34

35 SECTION 2. Arkansas Code § 5-64-443 is amended to read as follows:
36 5-64-443. ~~Drug~~ Possession of drug paraphernalia.



1 (a) A person who possesses drug paraphernalia with the purpose to use
 2 the drug paraphernalia to inject, ingest, inhale, or otherwise introduce into
 3 the human body a controlled substance or to store, contain, conceal, or weigh
 4 a controlled substance in violation of this chapter upon conviction is guilty
 5 of:

6 (1) A Class A misdemeanor; or

7 (2) A Class D felony if the ~~controlled~~:

8 (A) Controlled substance is methamphetamine, heroin,
 9 fentanyl, or cocaine; and

10 (B) Person has been previously convicted of a violation of
 11 this chapter.

12 (b) A person who uses or possesses with the purpose to use drug
 13 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,
 14 compound, convert, produce, process, prepare, test, analyze, pack, or repack
 15 a controlled substance ~~that is methamphetamine, heroin, fentanyl, or cocaine~~
 16 in violation of this chapter upon conviction is guilty of a:

17 (1) Class D felony; or

18 (2) Class B felony if the controlled substance is
 19 methamphetamine, heroin, fentanyl, or cocaine.

20 (c) ~~A person who uses or possesses with the purpose to use drug~~
 21 ~~paraphernalia to store, contain, or conceal a controlled substance that is~~
 22 ~~methamphetamine, heroin, fentanyl, or cocaine upon conviction is guilty of a~~
 23 ~~Class D felony~~ When the same conduct of a defendant may establish the
 24 commission of more than one (1) offense under this section, the defendant may
 25 only be convicted of one (1) offense under this section.

26 (d) ~~A person who uses or possesses with the purpose to use drug~~
 27 ~~paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,~~
 28 ~~compound, convert, produce, process, prepare, test, analyze, pack, or repack~~
 29 ~~a controlled substance that is not methamphetamine, heroin, fentanyl, or~~
 30 ~~cocaine upon conviction is guilty of a Class D felony.~~

31 (e) ~~A person who uses or possesses with the purpose to use drug~~
 32 ~~paraphernalia to store, contain, or conceal a controlled substance that is~~
 33 ~~not methamphetamine, heroin, fentanyl, or cocaine upon conviction is guilty~~
 34 ~~of a Class A misdemeanor.~~

35 APPROVED: 3/24/21