



Arkansas
Sentencing
Commission

Impact Assessment for HB1754
Sponsored by Representative Gazaway

Subtitle CONCERNING THE OFFENSE OF FURNISHING, POSSESSING, OR USING PROHIBITED ARTICLES.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Annotated § 5-54-119, Furnishing, possessing, or using prohibited articles, to amend the title of the code provision, to amend the current conduct provision for possessing a prohibited article, and to create the offense of delivering a prohibited article.

Under the proposed bill, a person commits the offense of possessing a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly possesses (A) a cellular telephone or other communication device; (B) a component of a cellular telephone or other communication device; or (C) a *controlled substance*. Under the current law as well as the proposed bill, possessing a prohibited article is a Class B felony. [Italics indicate change proposed by this bill.]

Under the proposed bill, a person commits the offense of delivering a prohibited article if, being an inmate in a correctional facility or in the custody of a correctional facility, the person knowingly delivers a controlled substance to another person. Under the proposed bill, delivering a prohibited article is a Class A felony if the controlled substance through its use causes the death of, or serious bodily injury to, another person. Otherwise, delivering a prohibited article is a Class B felony.

The proposed bill also creates a bar to conviction for furnishing, possessing, or delivering a prohibited article if the prohibited article is a controlled substance and the person has been charged with, tried for, or convicted of a possession or delivery offense under the Uniform Controlled Substances Act, § 5-64-401 et seq., that arises out of the same set of facts.

Impact Information

The Arkansas Department of Correction reports that for the two (2) year period beginning on January 1, 2017, and ending on December 31, 2018, there were thirty-nine (39) inmate deaths resulting from the use of illicit drugs. However, available data does not specify when the controlled substance was delivered by another inmate.

¹ This impact assessment was prepared (3/13/2019, 9:34 a.m.) 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 Correction 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 C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

While some data is available as to the likely number of occurrences of conduct covered by the proposed bill, data is insufficient to project an impact. For this reason, the impact of this proposed bill cannot be determined. The following data is provided for informational purposes only.

ADC reports 417 inmates currently serving a term of incarceration for A.C.A. § 5-54-119, Furnishing or possessing prohibited articles, as currently written. Eighty-three (83) inmates are currently serving a term of incarceration for which A.C.A. § 5-54-119, Furnishing or possessing prohibited articles, is the primary offense.

Possession of a controlled substance is currently prohibited by A.C.A. § 5-64-419, Possession of a controlled substance. Penalties for a violation of A.C.A. § 5-64-419 range from a Class A misdemeanor to a Class A felony, depending on the type and amount of the controlled substance possessed. Further, A.C.A. § 5-64-419 (c) currently contains an enhancement provision for possession of a controlled substance by any person who is an inmate in a state criminal detention facility, county criminal detention facility, city criminal detention facility, or juvenile detention facility. The penalty for a violation under this subsection is increased to the next higher classification as prescribed by law for the offense. Data is unavailable as to the number of sentences enhanced by this provision.

Delivery of a controlled substance is currently prohibited by the following sections of the Arkansas Code: § 5-64-422, § 5-64-426, § 5-64-430, § 5-64-434, and § 5-64-438. Penalties for delivery of a controlled substance range from a Class A misdemeanor to a Class Y felony, depending on the type and amount of the controlled substance delivered. Please note that there is no provision specifically enhancing the penalty for delivery of a controlled substance by an inmate in a correctional facility.

A.C.A. § 5-64-419. Possession of a controlled substance.

- (a) Except as provided by this chapter, it is unlawful for a person to possess a controlled substance.
- (b) A person who violates this section with respect to:
 - (1) A Schedule I or Schedule II controlled substance that is methamphetamine 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 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;
 - (3) A Schedule III controlled substance with an aggregate weight, including an adulterant or diluent, of:
 - (A)
 - (i) Less than two grams (2g) upon conviction is guilty of a Class A misdemeanor.
 - (ii) However, if the person has four (4) or more prior convictions under this section or the former § 5-64-401(c), upon conviction the person is guilty of a Class D felony for a violation of subdivision (b)(3)(A)(i) of this section;
 - (B) Two grams (2g) or more but less than twenty-eight grams (28g) upon conviction is guilty of a Class D felony;
 - (C) Twenty-eight grams (28g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class C felony; or
 - (D) Two hundred grams (200g) or more but less than four hundred grams (400g) upon conviction is guilty of a Class B felony;
 - (4) A Schedule IV or Schedule V controlled substance with an aggregate weight, including an adulterant or diluent, of:
 - (A)
 - (i) Less than twenty-eight grams (28g) upon conviction is guilty of a Class A misdemeanor.
 - (ii) However, if the person has four (4) or more prior convictions under this section or the former § 5-64-401(c), upon conviction the person is guilty of a Class D felony for a violation of subdivision (b)(4)(A)(i) of this section;
 - (B) Twenty-eight grams (28g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class D felony;
 - (C) Two hundred grams (200g) or more but less than four hundred grams (400g) upon conviction is guilty of a Class C felony; or
 - (D) Four hundred grams (400g) or more but less than eight hundred grams (800g) upon conviction is guilty of a Class B felony; or
 - (5) A Schedule VI controlled substance with an aggregate weight, including an adulterant or diluent, of:
 - (A) Less than four ounces (4 oz.) upon conviction is guilty of a Class A misdemeanor;
 - (B) One ounce (1 oz.) or more but less than four ounces (4 oz.) and the person has four (4) previous convictions under this section or the former § 5-64-401(c) upon conviction is guilty of a Class D felony;
 - (C) Four ounces (4 oz.) or more but less than ten pounds (10 lbs.) upon conviction is guilty of a Class D felony;
 - (D) Ten pounds (10 lbs.) or more but less than twenty-five pounds (25 lbs.) upon conviction is guilty of a Class C felony;
 - (E) Twenty-five pounds (25 lbs.) or more but less than one hundred pounds (100 lbs.) upon conviction is guilty of a Class B felony; or
 - (F) One hundred pounds (100 lbs.) or more but less than five hundred pounds (500 lbs.) upon conviction is guilty of a Class A felony.
- (c) If a person possesses a controlled substance in violation of this section while the person is an inmate in a state criminal detention facility, county criminal detention facility, city criminal detention facility, or juvenile detention facility, the penalty for the offense is increased to the next higher classification as prescribed by law for the offense.

HISTORY: Acts 2011, No. 570, § 44; 2013, No. 529, § 1.