

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

# A Bill

SENATE BILL 29

5  
6 By: Senator T. Garner

7 Filed with: Senate Committee on Judiciary  
8 pursuant to A.C.A. §10-3-217.

## 9 For An Act To Be Entitled

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

## 13 14 15 Subtitle

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

19  
20  
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22  
23 SECTION 1. Arkansas Code § 5-3-203 is amended to read as follows:  
24 5-3-203. Classification.

25 A criminal attempt is a:

26 (1) Class Y felony if the offense attempted is capital murder, §  
27 5-10-101;

28 (2) Class A felony if the offense attempted is treason, § 5-51-  
29 201, trafficking of fentanyl, § 5-64-440, or a Class Y felony other than  
30 capital murder, § 5-10-101;

31 (3) Class B felony if the offense attempted is a Class A felony;

32 (4) Class C felony if the offense attempted is a Class B felony;

33 (5) Class D felony if the offense attempted is a Class C felony;

34 (6) Class A misdemeanor if the offense attempted is a Class D  
35 felony or an unclassified felony;

1           (7) Class B misdemeanor if the offense attempted is a Class A  
2 misdemeanor;

3           (8) Class C misdemeanor if the offense attempted is a Class B  
4 misdemeanor; or

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

7  
8           SECTION 2. Arkansas Code § 5-3-301(b)(1), concerning the inchoate  
9 offense of solicitation, is amended to read as follows:

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

13  
14           SECTION 3. Arkansas Code § 5-3-404 is amended to read as follows:  
15 5-3-404. Classification.

16 Criminal conspiracy is a:

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

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

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

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

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

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

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

32  
33           SECTION 4. Arkansas Code § 5-4-104(a)-(e), concerning authorized  
34 sentences, are amended to read as follows:

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

1 (b) A defendant convicted of capital murder, § 5-10-101, ~~or treason, §~~  
2 5-51-201, or trafficking of fentanyl, § 5-64-440, shall be sentenced to death  
3 or life imprisonment without parole in accordance with §§ 5-4-601 – 5-4-605,  
4 5-4-607, and 5-4-608, except if the defendant was younger than eighteen (18)  
5 years of age at the time he or she committed the ~~capital murder or treason~~  
6 capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl,  
7 § 5-64-440, he or she shall be sentenced to life imprisonment with the  
8 possibility of parole after serving a minimum of thirty (30) years’  
9 imprisonment.

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

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

- 16 (A) Pay a fine as authorized by §§ 5-4-201 and 5-4-202;  
17 (B) Make restitution as authorized by § 5-4-205; or  
18 (C) Suspend imposition of an additional term of  
19 imprisonment, as authorized by subdivision (e)(3) of this section.

20 (d) A defendant convicted of an offense other than a Class Y felony,  
21 capital murder, § 5-10-101, treason, § 5-51-201, trafficking of fentanyl, §  
22 5-64-440, or murder in the second degree, § 5-10-103, may be sentenced to any  
23 one (1) or more of the following, except as precluded by subsection (e) of  
24 this section:

- 25 (1) Imprisonment as authorized by §§ 5-4-401 – 5-4-404;  
26 (2) Probation as authorized by §§ 5-4-301 – 5-4-307 and 16-93-  
27 306 – 16-93-314;  
28 (3) Payment of a fine as authorized by §§ 5-4-201 and 5-4-202;  
29 (4) Restitution as authorized by a provision of § 5-4-205; or  
30 (5) Imprisonment and payment of a fine.

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

- 34 (i) Capital murder, § 5-10-101;  
35 (ii) Treason, § 5-51-201;  
36 (iii) Trafficking of fentanyl, § 5-64-440;

1                   ~~(iii)~~(iv) A Class Y felony, except to the extent  
2 suspension of an additional term of imprisonment is permitted in subsection  
3 (c) of this section;

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

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

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

11                   (B)(i) In any other case, the court may suspend imposition  
12 of sentence or place the defendant on probation, in accordance with §§ 5-4-  
13 301 – 5-4-307 and 16-93-306 – 16-93-314, except as otherwise specifically  
14 prohibited by statute.

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

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

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

23                   (B) However, the court shall not sentence a defendant to  
24 imprisonment and place him or her on probation, except as authorized by § 5-  
25 4-304.

26  
27                   SECTION 5. Arkansas Code § 5-4-301(a)(1), concerning offenses for  
28 which suspension or probation is prohibited, is amended to read as follows:

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

31                   (A) Capital murder, § 5-10-101;

32                   (B) Treason, § 5-51-201;

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

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

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

1                 ~~(E)~~(F) Murder in the second degree, § 5-10-103, except to  
2 the extent suspension of an additional term of imprisonment is permitted in §  
3 5-4-104(c); or

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

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

9   Subchapter 6

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

11  
12                 5-4-601. Legislative intent.

13                 (a) In enacting this subchapter, it is the intent of the General  
14 Assembly to specify the procedures and standards pursuant to which a  
15 sentencing body shall conform in making a determination as to whether a  
16 sentence of death is to be imposed upon a conviction ~~of capital murder for~~  
17 capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl,  
18 § 5-64-440.

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

23                                 ~~(1) Capital murder is~~ capital murder, § 5-10-101, treason, § 5-  
24 51-201, and trafficking of fentanyl, § 5-64-440, are punishable by life  
25 imprisonment without parole; and

26                                 ~~(2) The procedures and findings required by §§ 5-4-602 — 5-4-~~  
27 ~~605, 5-4-607, and 5-4-608 are deemed repealed and of no effect.~~

28  
29                 5-4-602. Capital ~~murder~~ offense charge – Trial procedure.

30                 The following procedures govern a trial of a person charged with  
31 capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl,  
32 § 5-64-440:

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

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

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

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

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

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

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

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

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

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

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

25                   (ii) Mitigating circumstance; or

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

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

32                   (ii) However, mitigating circumstance evidence shall  
33 be relevant to the issue of punishment, including, but not limited to, the  
34 nature and circumstances of the crime, and the defendant's character,  
35 background, history, and mental and physical condition as set forth in § 5-4-  
36 605.

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

4 (D) Any evidence admitted at the trial relevant to  
5 punishment may be considered by the jury without the necessity of  
6 reintroducing the evidence at the sentencing proceeding; and

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

9 (A) The state shall open the argument;

10 (B) The defendant is permitted to reply; and

11 (C) The state is then permitted to reply in rebuttal.

12  
13 5-4-603. Findings required for death sentence – Harmless error review.

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

16 (1) An aggravating circumstance exists beyond a reasonable  
17 doubt;

18 (2) Aggravating circumstances outweigh beyond a reasonable  
19 doubt all mitigating circumstances found to exist; and

20 (3) Aggravating circumstances justify a sentence of death beyond  
21 a reasonable doubt.

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

24 (1) Aggravating circumstances do not exist beyond a reasonable  
25 doubt;

26 (2) Aggravating circumstances do not outweigh beyond a  
27 reasonable doubt all mitigating circumstances found to exist; or

28 (3) Aggravating circumstances do not justify a sentence of death  
29 beyond a reasonable doubt.

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

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

35 (A) The Supreme Court finds that the jury erred in finding  
36 the existence of any aggravating circumstance for any reason; and

1 (B) The jury found no mitigating circumstance.  
2 (2) The Supreme Court shall conduct a harmless error review  
3 under subdivision (d)(1) of this section by determining that a remaining  
4 aggravating circumstance:  
5 (A) Exists beyond a reasonable doubt; and  
6 (B) Justifies a sentence of death beyond a reasonable  
7 doubt.  
8 (e) If the Supreme Court concludes that the erroneous finding of any  
9 aggravating circumstance by the jury would not have changed the jury's  
10 decision to impose the death penalty on the defendant, then a simple majority  
11 of the court may vote to affirm the defendant's death sentence.  
12  
13 5-4-604. Aggravating circumstances.  
14 An aggravating circumstance is limited to the following:  
15 (1) The capital ~~murder~~ offense was committed by a person  
16 imprisoned as a result of a felony conviction;  
17 (2) The capital ~~murder~~ offense was committed by a person  
18 unlawfully at liberty after being sentenced to imprisonment as a result of a  
19 felony conviction;  
20 (3) The person previously committed another felony, an element  
21 of which was the use or threat of violence to another person or the creation  
22 of a substantial risk of death or serious physical injury to another person;  
23 (4) The person in the commission of the capital ~~murder~~ offense  
24 knowingly created a great risk of death to a person other than the victim or  
25 caused the death of more than one (1) person in the same criminal episode;  
26 (5) The capital ~~murder~~ offense was committed for the purpose of  
27 avoiding or preventing an arrest or effecting an escape from custody;  
28 (6) The capital ~~murder~~ offense was committed for pecuniary gain;  
29 (7) The capital ~~murder~~ offense was committed for the purpose of  
30 disrupting or hindering the lawful exercise of any government or political  
31 function;  
32 (8)(A) The capital ~~murder~~ offense was committed in an especially  
33 cruel or depraved manner.  
34 (B)(i) For purposes of subdivision (8)(A) of this section,  
35 a capital ~~murder~~ offense is committed in an especially cruel manner when, as  
36 part of a course of conduct intended to inflict mental anguish, serious



1 physical abuse, or torture upon the victim prior to the victim's death,  
2 mental anguish, serious physical abuse, or torture is inflicted.

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

5 (b) "Serious physical abuse" means physical  
6 abuse that creates a substantial risk of death or that causes protracted  
7 impairment of health, or loss or protracted impairment of the function of any  
8 bodily member or organ.

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

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

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

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

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

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

29  
30 5-4-605. Mitigating circumstances.

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

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

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

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

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

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

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

15  
16          5-4-606. Life imprisonment without parole.

17          A person sentenced to life imprisonment without parole shall:

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

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

22  
23          5-4-607. Application for executive clemency – Regulations.

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

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

- 33                   (A) The Secretary of State;  
34                   (B) The Attorney General;  
35                   (C) The sheriff of the county where the offense was  
36 committed;

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

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

7 (F) The victim of the crime or the victim's next of kin,  
8 if he or she files a request for notice with the prosecuting attorney.

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

11 (B) If the application involves a conviction for capital  
12 murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-  
13 440, a notice of the application shall be published by two (2) insertions,  
14 separated by a minimum of seven (7) days, in a newspaper of general  
15 circulation in the county or counties where the offense or offenses of the  
16 applicant were committed.

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

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

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

23 (A) Applicant's name;

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

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

27 (D) Effective date of the pardon or commutation.

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

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

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

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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;

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

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

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

9 (B) Additional relevant evidence may be admitted including  
10 testimony of a witness who testified at the previous trial; and

11 (5) The provisions of this section:

12 (A) Are procedural; and

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

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

18  
19 5-4-617. Method of execution.

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

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

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

29 (1) A barbiturate; or

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

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

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

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

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

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

8           (f) Catheters, sterile intravenous solution, and other equipment used  
9 for the intravenous injection of the drug or drugs set forth in subsection  
10 (c) of this section shall be sterilized and prepared in a manner that is safe  
11 and commonly performed in connection with the intravenous administration of  
12 drugs of that type.

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

15                 (1) The following matters:

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

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

21                         (C) Determining the logistics of the viewing;

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

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

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

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

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

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

34                         (A) Chaplaincy services;

35                         (B) Visitation privileges;

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

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

6 (h) The procedures for carrying out the sentence of death and related  
7 matters are not subject to the Arkansas Administrative Procedure Act, § 25-  
8 15-201 et seq.

9 (i)(1) Except as provided for under subdivision (i)(2) of this  
10 section, a person shall not disclose in response to a request under the  
11 Freedom of Information Act of 1967, § 25-19-101 et seq., or in response to  
12 discovery under the Arkansas Rules of Civil Procedure, or otherwise, any of  
13 the following:

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

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

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

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

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

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

35 (C) The Governor or the Attorney General, or both, may  
36 disclose or authorize the disclosure of documents, records, and information

1 to their subordinates to the extent necessary to carry out their duties under  
2 law.

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

9 (B) A person who recklessly discloses documents, records,  
10 or information in violation of an order under this subdivision (i)(3) upon  
11 conviction is guilty of a Class D felony.

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

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

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

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

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

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

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

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

36



1 5-4-618. Defendants with intellectual disabilities.

2 (a)(1) As used in this section, “intellectual disabilities” means:

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

7 (B) A deficit in adaptive behavior.

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

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

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

16 (d)(1) A defendant on trial for capital murder, § 5-10-101, treason, §  
17 5-51-201, or trafficking of fentanyl, § 5-64-440, shall raise the special  
18 sentencing provision of intellectual disabilities by motion prior to trial.

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

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

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

28 (iii) If the jury unanimously determines that the  
29 defendant had an intellectual disability at the time of the commission of  
30 capital murder, § 5-10-101, treason, § 5-51-201, or trafficking of fentanyl,  
31 § 5-64-440, then the defendant will automatically be sentenced to life  
32 imprisonment without possibility of parole.

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

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

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

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

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

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

8  
9 SECTION 7. Arkansas Code § 5-64-101, concerning definitions under the  
10 Uniform Controlled Substances Act, is amended to add an additional  
11 subdivision to read as follows:

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

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

18  
19 SECTION 8. Arkansas Code § 5-64-204 is amended to read as follows:  
20 5-64-204. Substances in Schedule I.

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

- 31 (1) 4-Methylmethcathinone (Mephedrone);  
32 (2) Methylenedioxypropylvalerone (MDPV);  
33 (3) 3,4-Methylenedioxy-N-methylcathinone (Methylone);  
34 (4) 4-Methoxymethcathinone;  
35 (5) 3-Fluoromethcathinone;  
36 (6) 4-Fluoromethcathinone; ~~or~~

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

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

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

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

11 (8) Fentanyl.

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

14  
15 SECTION 9. Arkansas Code § 5-64-419(b)(1) and (2), concerning  
16 possession of a controlled substance, are amended to read as follows:

17 (1) A Schedule I or Schedule II controlled substance that is  
18 methamphetamine, ~~or~~ cocaine, or fentanyl with an aggregate weight, including  
19 an adulterant or diluent, of:

20 (A) Less than two grams (2g) upon conviction is guilty of  
21 a Class D felony;

22 (B) Two grams (2g) or more but less than ten grams (10g)  
23 upon conviction is guilty of a Class C felony; or

24 (C) Ten grams (10g) or more but less than two hundred  
25 grams (200g) upon conviction is guilty of a Class B felony;

26 (2) A Schedule I or Schedule II controlled substance that is not  
27 methamphetamine, ~~or~~ cocaine, or fentanyl with an aggregate weight, including  
28 an adulterant or diluent, of:

29 (A) Less than two grams (2g) upon conviction is guilty of  
30 a Class D felony;

31 (B) Two grams (2g) or more but less than twenty-eight  
32 grams (28g) upon conviction is guilty of a Class C felony; or

33 (C) Twenty-eight grams (28g) or more but less than two  
34 hundred grams (200g) upon conviction is guilty of a Class B felony;

35  
36 SECTION 10. Arkansas Code § 5-64-420 is amended to read as follows:

1           5-64-420. Possession of methamphetamine, ~~or~~ cocaine, or fentanyl with  
2 the purpose to deliver.

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

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

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

11                   (3) The methamphetamine, ~~or~~ cocaine, or fentanyl is separated  
12 and packaged in a manner to facilitate delivery;

13                   (4) The person possesses a firearm that is in the immediate  
14 physical control of the person at the time of the possession of  
15 methamphetamine, ~~or~~ cocaine, or fentanyl;

16                   (5) The person possesses at least two (2) other controlled  
17 substances in any amount; or

18                   (6) Other relevant and admissible evidence that contributes to  
19 the proof that a person's purpose was to deliver methamphetamine, ~~or~~ cocaine,  
20 or fentanyl.

21           (b) A person who violates this section upon conviction is guilty of a:

22                   (1) Class C felony if the person possessed less than two grams  
23 (2g) of methamphetamine, ~~or~~ cocaine, or fentanyl by aggregate weight,  
24 including an adulterant or diluent;

25                   (2) Class B felony if the person possessed two grams (2g) or  
26 more but less than ten grams (10g) of methamphetamine, ~~or~~ cocaine, or  
27 fentanyl by aggregate weight, including an adulterant or diluent; or

28                   (3) Class A felony if the person possessed ten grams (10g) or  
29 more but less than two hundred grams (200g) of methamphetamine, ~~or~~ cocaine,  
30 or fentanyl by aggregate weight, including an adulterant or diluent.

31

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

33           5-64-422. Delivery of methamphetamine, ~~or~~ cocaine, or fentanyl.

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

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

4 (2) A person who delivers two grams (2g) or more but less than  
5 ten grams (10g) by aggregate weight, including an adulterant or diluent, of  
6 methamphetamine, ~~or~~ cocaine, or fentanyl upon conviction is guilty of a Class  
7 B felony.

8 (3) A person who delivers ten grams (10g) or more but less than  
9 two hundred grams (200g) by aggregate weight, including an adulterant or  
10 diluent, of methamphetamine, ~~or~~ cocaine, or fentanyl upon conviction is  
11 guilty of a Class Y felony.

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

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

18 (2)(A) A person who manufactures fentanyl in an amount less than  
19 two grams (2g) by aggregate weight, including an adulterant or diluent, upon  
20 conviction is guilty of a Class C felony.

21 (B) A person who manufactures fentanyl in an amount of two  
22 grams (2g) or more but less than ten grams (10g), by aggregate weight,  
23 including an adulterant or diluent, upon conviction is guilty of a Class B  
24 felony.

25 (C) A person who manufactures fentanyl in an amount of ten  
26 grams (10g) or more but less than two hundred grams (200g), by aggregate  
27 weight, including an adulterant or diluent, upon conviction is guilty of a  
28 Class Y felony.

29  
30 SECTION 13. Arkansas Code § 5-64-424 is amended to read as follows:

31 5-64-424. Possession of a Schedule I or Schedule II controlled  
32 substance that is not methamphetamine, ~~or~~ cocaine, or fentanyl with the  
33 purpose to deliver.

34 (a) Except as provided in this chapter, it is unlawful if a person  
35 possesses a Schedule I or Schedule II controlled substance that is not  
36 methamphetamine, ~~or~~ cocaine, or fentanyl with the purpose to deliver the

1 Schedule I or Schedule II controlled substance that is not methamphetamine,  
2 ~~or cocaine, or fentanyl~~. Purpose to deliver may be shown by any of the  
3 following factors:

4 (1) The person possesses the means to weigh, separate, or  
5 package a Schedule I or Schedule II controlled substance that is not  
6 methamphetamine, ~~or cocaine, or fentanyl~~;

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

9 (3) The Schedule I or Schedule II controlled substance that is  
10 not methamphetamine, ~~or cocaine, or fentanyl~~ is separated and packaged in a  
11 manner to facilitate delivery;

12 (4) The person possesses a firearm that is in the immediate  
13 physical control of the person at the time of the possession of the Schedule  
14 I or Schedule II controlled substance that is not methamphetamine, ~~or~~  
15 ~~cocaine, or fentanyl~~;

16 (5) The person possesses at least two (2) other controlled  
17 substances in any amount; or

18 (6) Other relevant and admissible evidence that contributes to  
19 the proof that a person's purpose was to deliver a Schedule I or Schedule II  
20 controlled substance that is not methamphetamine, ~~or cocaine, or fentanyl~~.

21 (b) A person who violates this section upon conviction is guilty of a:

22 (1) Class C felony if the person possessed by aggregate weight,  
23 including an adulterant or diluent, less than two grams (2g) of a Schedule I  
24 or Schedule II controlled substance that is not methamphetamine, ~~or cocaine,~~  
25 ~~or fentanyl~~;

26 (2) Class B felony if the person possessed by aggregate weight,  
27 including an adulterant or diluent:

28 (A) Two grams (2g) or more but less than twenty-eight  
29 grams (28g) of a Schedule I or Schedule II controlled substance that is not  
30 methamphetamine, ~~or cocaine, or fentanyl~~, or a controlled substance listed in  
31 this subdivision (b)(2);

32 (B) Eighty (80) or more but less than one hundred sixty  
33 (160) dosage units of hydromorphone hydrochloride;

34 (C) Eighty (80) or more but less than one hundred sixty  
35 (160) dosage units of lysergic acid diethylamide (LSD);

1 (D) Eighty (80) or more but less than one hundred sixty  
2 (160) dosage units but not more than two hundred grams (200g) for any other  
3 Schedule I or Schedule II depressant or hallucinogenic drug; or

4 (E) Eighty (80) or more but less than one hundred sixty  
5 (160) dosage units but not more than two hundred grams (200g) for any other  
6 Schedule I or Schedule II stimulant drug; or

7 (3) Class A felony if the person possessed by aggregate weight,  
8 including an adulterant or diluent:

9 (A) Twenty-eight grams (28g) or more but less than two  
10 hundred grams (200g) of a Schedule I or Schedule II controlled substance that  
11 is not methamphetamine, ~~or~~ cocaine, fentanyl, or a controlled substance  
12 listed in this subdivision (b)(3);

13 (B) One hundred twenty-eight milligrams (128mg) or more or  
14 one hundred sixty (160) dosage units or more but less than two hundred grams  
15 (200g) of hydromorphone hydrochloride;

16 (C) One thousand six hundred micrograms (1,600 $\mu$ ) or more  
17 or one hundred sixty (160) dosage units or more but less than two hundred  
18 grams (200g) of lysergic acid diethylamide (LSD);

19 (D) One hundred sixty (160) dosage units or more  
20 regardless of weight but less than two hundred grams (200g) for any other  
21 Schedule I or Schedule II depressant or hallucinogenic drug; or

22 (E) One hundred sixty (160) dosage units or more  
23 regardless of weight but less than two hundred grams (200g) for any other  
24 Schedule I or Schedule II stimulant drug.

25 (c) It is a defense to a prosecution under this section that the  
26 person possessed less than the minimum listed amount of a Schedule I or  
27 Schedule II controlled substance that is not methamphetamine, ~~or~~ cocaine, or  
28 fentanyl and that is listed in this section.

29  
30 SECTION 14. Arkansas Code § 5-64-426 is amended to read as follows:

31 5-64-426. Delivery of a Schedule I or Schedule II controlled substance  
32 that is not methamphetamine, ~~or~~ cocaine, or fentanyl.

33 (a) This section does not apply to the delivery of methamphetamine, ~~or~~  
34 cocaine, or fentanyl, which is governed by § 5-64-422.

35 (b) Except as provided in this chapter, it is unlawful for a person to  
36 deliver a Schedule I or Schedule II controlled substance.

1 (c) A person who violates this section upon conviction is guilty of a:

2 (1) Class C felony if the person delivered by aggregate weight,  
3 including an adulterant or diluent, less than two grams (2g) of a Schedule I  
4 or Schedule II controlled substance that is not methamphetamine, ~~or~~ cocaine,  
5 or fentanyl;

6 (2) Class B felony if the person delivered by aggregate weight,  
7 including an adulterant or diluent:

8 (A) Two grams (2g) or more but less than twenty-eight  
9 grams (28g) of a Schedule I or Schedule II controlled substance that is not  
10 methamphetamine, cocaine, fentanyl, or a controlled substance listed in this  
11 subdivision (c)(2);

12 (B) Eighty (80) or more but less than one hundred sixty  
13 (160) dosage units of hydromorphone hydrochloride;

14 (C) Eighty (80) or more but less than one hundred sixty  
15 (160) dosage units of lysergic acid diethylamide (LSD);

16 (D) Eighty (80) or more but less than one hundred sixty  
17 (160) dosage units but not more than two hundred grams (200g) for any other  
18 Schedule I or Schedule II depressant or hallucinogenic drug; or

19 (E) Eighty (80) or more but less than one hundred sixty  
20 (160) dosage units but not more than two hundred grams (200g) for any other  
21 Schedule I or Schedule II stimulant drug; or

22 (3) Class A felony if the person delivered by aggregate weight,  
23 including an adulterant or diluent:

24 (A) Twenty-eight grams (28g) or more but less than two  
25 hundred grams (200g) of a Schedule I or Schedule II controlled substance that  
26 is not methamphetamine, cocaine, fentanyl, or a controlled substance listed  
27 in this subdivision (c)(3);

28 (B) One hundred sixty (160) dosage units or more but less  
29 than two hundred grams (200g) of hydromorphone hydrochloride;

30 (C) One hundred sixty (160) dosage units or more but less  
31 than two hundred grams (200g) of lysergic acid diethylamide (LSD);

32 (D) One hundred sixty (160) dosage units or more  
33 regardless of weight but less than two hundred grams (200g) for any other  
34 Schedule I or Schedule II depressant or hallucinogenic drug; or



1 (E) One hundred sixty (160) dosage units or more  
2 regardless of weight but less than two hundred grams (200g) for any other  
3 Schedule I or Schedule II stimulant drug.  
4

5 SECTION 15. Arkansas Code § 5-64-427 is amended to read as follows:  
6 5-64-427. Manufacture of a Schedule I or Schedule II controlled  
7 substance that is not methamphetamine, ~~or~~ cocaine, or fentanyl.

8 (a) This section does not apply to the manufacture of methamphetamine,  
9 ~~or~~ cocaine, or fentanyl, which is governed by § 5-64-423.

10 (b) Except as provided by this chapter, it is unlawful for a person to  
11 manufacture a Schedule I or Schedule II controlled substance.

12 (c) A person who violates this section upon conviction is guilty of a:

13 (1) Class C felony if the person manufactured by aggregate  
14 weight, including an adulterant or diluent, less than two grams (2g) of a  
15 Schedule I or Schedule II controlled substance that is not methamphetamine,  
16 ~~or~~ cocaine, or fentanyl;

17 (2) Class B felony if the person manufactured by aggregate  
18 weight, including an adulterant or diluent:

19 (A) Two grams (2g) or more but less than twenty-eight  
20 grams (28g) of a Schedule I or Schedule II controlled substance that is not  
21 methamphetamine, cocaine, fentanyl, or a controlled substance listed in this  
22 subdivision (c)(2);

23 (B) Eighty (80) or more but less than one hundred sixty  
24 (160) dosage units of hydromorphone hydrochloride;

25 (C) Eighty (80) or more but less than one hundred sixty  
26 (160) dosage units of lysergic acid diethylamide (LSD);

27 (D) Eighty (80) or more but less than one hundred sixty  
28 (160) dosage units for any other Schedule I or Schedule II depressant or  
29 hallucinogenic drug regardless of weight; or

30 (E) Eighty (80) or more but less than one hundred sixty  
31 (160) dosage units for any other Schedule I or Schedule II stimulant drug  
32 regardless of weight; or

33 (3) Class A felony if the person manufactured by aggregate  
34 weight, including an adulterant or diluent:

1 (A) Twenty-eight grams (28g) or more of a Schedule I or  
2 Schedule II controlled substance that is not methamphetamine, cocaine,  
3 fentanyl, or a controlled substance listed in this subdivision (c)(3);

4 (B) One hundred sixty (160) dosage units or more of  
5 hydromorphone hydrochloride;

6 (C) One hundred sixty (160) or more dosage units of  
7 lysergic acid diethylamide (LSD);

8 (D) One hundred sixty (160) dosage units or more  
9 regardless of weight for any other Schedule I or Schedule II depressant or  
10 hallucinogenic drug; or

11 (E) One hundred sixty (160) dosage units or more  
12 regardless of weight for any other Schedule I or Schedule II stimulant drug.  
13

14 SECTION 16. Arkansas Code § 5-64-440 is amended to read as follows:

15 5-64-440. Trafficking a controlled substance.

16 (a) Except as provided by this chapter, it is unlawful for a person to  
17 engage in trafficking a controlled substance.

18 (b) A person engages in trafficking a controlled substance if he or  
19 she possesses, possesses with the purpose to deliver, delivers, or  
20 manufactures a controlled substance by aggregate weight, including an  
21 adulterant or diluent, in the following amounts:

22 (1) Methamphetamine, ~~or~~ cocaine, or fentanyl, two hundred grams  
23 (200g) or more;

24 (2) Schedule I or Schedule II controlled substance that is not  
25 methamphetamine, ~~or~~ cocaine, or fentanyl, two hundred grams (200g) or more;

26 (3) Schedule III controlled substance, four hundred grams (400g)  
27 or more;

28 (4) Schedule IV or Schedule V controlled substance, eight  
29 hundred grams (800g) or more; or

30 (5) A Schedule VI controlled substance, five hundred pounds (500  
31 lbs.) or more.

32 (c) Trafficking a controlled substance is a Class Y felony unless the  
33 controlled substance is fentanyl, in which case it is a capital offense, with  
34 the available sentences being death or life imprisonment without the  
35 possibility of parole.  
36

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

2 16-33-305. Challenge to trial jurors – Individual juror – Peremptory.

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

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

13  
14 SECTION 18. Arkansas Code § 16-87-205(c)(1), concerning the Capital,  
15 Conflicts, and Appellate Office of the Arkansas Public Defender Commission,  
16 is amended to read as follows:

17 (c)(1)(A)(i) The Arkansas Public Defender Commission shall be  
18 appointed by the trial court in ~~the following situation:~~

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

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

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

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

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

4  
 5            SECTION 19. Arkansas Code § 16-87-212(c), concerning court fees and  
 6 expenses, is amended to read as follows:

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

10  
 11            SECTION 20. Arkansas Code § 16-87-218(c)(1) and (2), concerning the  
 12 costs for legal services provided by the Arkansas Public Defender Commission,  
 13 are amended to read as follows:

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

18            (2) Capital murder, § 5-10-101, treason, § 5-51-201, or  
 19 trafficking of fentanyl, § 5-64-440, in which the death penalty was not  
 20 given, murder in the first degree, § 5-10-102, or Class Y felony:

21            (A) For an early disposition, five hundred dollars (\$500);

22            (B) For a negotiated plea or disposition before trial, two  
 23 thousand five hundred dollars (\$2,500); or

24            (C) For a trial or an extended matter, seven thousand five  
 25 hundred dollars (\$7,500);

26  
 27            SECTION 21. Arkansas Code § 16-90-803(b)(5), concerning voluntary  
 28 presumptive standards in sentencing, is amended to read as follows:

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

32  
 33            SECTION 22. Arkansas Code § 16-91-110(b)(2), concerning bail bonds, is  
 34 amended to read as follows:

35            (2) When a criminal defendant has been found guilty of or  
 36 pleaded guilty or nolo contendere to a criminal offense of capital murder, §

1 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440, the  
2 court shall not release the defendant on bail or otherwise pending appeal or  
3 for any reason.

4  
5 SECTION 23. Arkansas Code § 16-91-202(e)(2)(A), concerning the  
6 qualifications of defense counsel in a capital case, is amended to read as  
7 follows:

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

13  
14 SECTION 24. Arkansas Code § 16-93-204(d)(2)(A), concerning executive  
15 clemency, is amended to read as follows:

16 (2)(A) Before considering an application for a pardon or  
17 recommending a commutation of sentence of a person who was convicted of  
18 capital murder, § 5-10-101, treason, § 5-51-201, trafficking of fentanyl, §  
19 5-64-440, or a Class Y felony, Class A felony, or Class B felony, the board  
20 shall notify the victim of the crime or the victim's next of kin, if he or  
21 she files a request for notice with the prosecuting attorney.

22  
23 SECTION 25. Arkansas Code § 16-93-207(d)(1)(B), concerning  
24 applications for pardon, commutation of sentence, and remission of fines and  
25 forfeitures, is amended to read as follows:

26 (B) Eight (8) years from the date of the denial if the  
27 applicant is serving a sentence of life without parole for capital murder, §  
28 5-10-101, treason, § 5-51-201, or trafficking of fentanyl, § 5-64-440.

29  
30 SECTION 26. Arkansas Code § 16-93-612(e), concerning the date of an  
31 offense and which parole eligibility statute will govern, is amended to add  
32 an additional subdivision to read as follows:

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

36

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

3 16-93-623. Parole eligibility – Trafficking of fentanyl.

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

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7  
8 Referred requested by the Arkansas Senate

9 Prepared by: MBM/KFW

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