



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1760
Sponsored by Representative Tosh**

Subtitle CONCERNING THE POSSESSION OF A SCHEDULE I, SCHEDULE II, OR SCHEDULE III CONTROLLED SUBSTANCE WHEN THE CONTROLLED SUBSTANCE IS INSIDE A PERSON’S BODY.

Impact Summary¹ Cannot be determined. This bill criminalizes a new course of conduct; therefore, data is not available for the number of occurrences of this course of conduct.

Change from current law² Amends A.C.A § 5-64-419(b)(1) – (b)(3) to add that a person is guilty of possession of a Schedule I, II, or III controlled substance if he or she has any amount of the controlled substance within his or her body or bodily fluid. Currently, the statute does not specify that a controlled substance within a person’s body subjects the person to criminal penalties.

A person is guilty of a Class D felony if they possess any amount of a Schedule I or II controlled substance that is methamphetamine or cocaine within their body or bodily fluid. A person is guilty of a Class D felony if they possess any amount of a Schedule I or II controlled substance that is not methamphetamine or cocaine within their body or bodily fluid. A person is guilty of a Class A misdemeanor if they possess any amount of a Schedule III controlled substance within their body or bodily fluid.

Impact Information

Arkansas Community Correction (ACC) reports that 9,248 offenders tested positive for a Schedule I, II or III controlled substance during calendar year 2014. Some offenders tested positive for multiple drugs. These offenders would serve as the pool of offenders who could possibly be subject to prosecution under this proposed bill.

¹ This impact assessment was prepared (03/17/2015 9:06 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

In surveying other states, the Arkansas Sentencing Commission found that South Dakota had the law (SDCL § 22-42-5.1) most similar to this proposed bill. (See attached for full code provision). While the controlled substance schedules are not uniform from state to state, the most popular drugs fell into the same categories in Arkansas and South Dakota. South Dakota's statute became effective on July 1, 2013. As of February 2015, the South Dakota Department of Corrections (SDDOC) reports 47 inmates serving a sentence for which Unauthorized ingestion of a Schedule I or II controlled substance was the most serious offense.

While the information from ACC and SDDOC provide a picture of the potential impact of this proposed bill, data does not exist as to the exact number of occurrences of this course of conduct.

SDCL §22-42-5.1. Unauthorized ingestion of controlled drug or substance as felony. No person may knowingly ingest a controlled drug or substance or have a controlled drug or substance in an altered state in the body unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A violation of this section for a substance in Schedules I or II is a Class 5 felony. A violation of this section for a substance in Schedules III or IV is a Class 6 felony.

Source: SL 2013, ch 101, § 54.

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.