



# ARKANSAS SENTENCING COMMISSION

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## Impact Assessment for HB1456 and SB283 Sponsored by Representative Gazaway and Senator Gilmore

**Subtitle** CREATING THE FENTANYL ENFORCEMENT AND ACCOUNTABILITY ACT OF 2023; CONCERNING FENTANYL AND OTHER CONTROLLED SUBSTANCES; TO ESTABLISH INCREASED PENALTIES; AND TO DECLARE AN EMERGENCY

**Impact Summary**<sup>1</sup> Cannot be determined.

**Change from Current Law**<sup>2</sup> Amends various provisions of Title 5 of the Arkansas Code Annotated related to controlled substances.

The proposed bill creates a new subchapter in Title 5, Chapter 10, which creates criminal penalties for certain instances involving the death of a person due to the use of a controlled substance, provides definitions, and sets out exceptions to liabilities. Three sections set out offenses of Death by delivery, all of which have elements requiring that a person knowingly delivers or conveys a controlled or counterfeit substance to another person and that the injection, ingestion, inhalation, or other introduction of the controlled substance causes the death of another person. The type of controlled substance and surrounding circumstances impact the potential penalties. Please see the table below for a brief synopsis:

| Offense Title  | Type of Controlled Substance                   | Penalty  |
|--|--|--|
| § 5-10-202<br>Aggravated Death by Delivery           | Fentanyl                                       | Unclassified felony<br>20 to 60 or Life  |
|  |  | Victim is a minor<br>Unclassified felony<br>Life   |
|  |  | Victim is a minor, but defendant is less than three years older than the victim<br>Unclassified felony<br>20 to 60 or Life |
| § 5-10-203<br>Death by Delivery in the first degree  | Methamphetamine, Heroin, or Cocaine            | Class Y felony   |
|  |  | Class A felony if factors in (b)(2) are met  |
| § 5-10-204<br>Death by Delivery in the second degree | All other controlled or counterfeit substances | Class A felony   |
|  |  | Class B felony if factors in (b)(2) are met  |
|  |  | Class Y felony if factors in (b)(3) are met  |

<sup>1</sup> This impact assessment was prepared 3/29/2023 7:50 AM 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 Corrections 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.

<sup>2</sup> Standard punishment ranges:

Class Y 10-40 years or life  
 Class A 6-30 years; up to \$15,000  
 Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000  
 Class D 0-6 years; up to \$10,000  
 Unclassified As specified in statute

Misdemeanors  
 Class A Up to 1 year; up to \$2,500  
 Class B Up to 90 days; up to \$1,000  
 Class C Up to 30 days; up to \$500

The proposed bill also excludes disposable, single-use test strips that can detect the presence of fentanyl or fentanyl analogs from the description of “drug paraphernalia” for purposes of the Uniform Controlled Substances Act.

The proposed bill amends A.C.A. § 5-64-421 to add a new subsection (i), which creates the new offense of predatory marketing of fentanyl to minors. Under the proposed bill a person commits the offense of predatory marketing of fentanyl to minors if he or she possesses fentanyl with the purpose to deliver, delivers fentanyl, or manufactures fentanyl and the fentanyl is likely appeal to minors due to the shape, color, taste, or design of the fentanyl or the fentanyl’s packaging.

The proposed bill also amends A.C.A. § 5-64-440 (c) to increase the penalty for trafficking of fentanyl to an unclassified felony with a penalty of a sentence of imprisonment of not less than twenty -five years nor more than sixty years, or life. Under current law, trafficking of fentanyl is a Class Y felony.

**Impact Information** The proposed bill amends various provisions regarding controlled substances for which available data does not adequately provide information on which to determine the projected impact.

While the state crime lab does provide data on drug overdoses, this data does not distinguish those instances in which the source of the controlled substance can be determined. Prior to 2021, fentanyl offenses were not reported separately from other controlled substances. In addition, current law does not differentiate between the type of controlled substances trafficked under A.C.A. § 5-64-440, or the nature of the shape, color, taste, or design of fentanyl under A.C.A. § 5-64-421. For these reasons, the projected impact of the proposed bill cannot be determined.