



## ARKANSAS SENTENCING COMMISSION

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### **Impact Assessment for HB1663 Sponsored by Representative Gazaway**

**Subtitle** TO CREATE THE OFFENSE OF KNOWINGLY EXPOSING ANOTHER PERSON TO FENTANYL.

**Impact Summary**<sup>1</sup> Cannot be determined. The proposed bill creates a new offense for which the number of likely convictions cannot be determined.

**Change from Current Law**<sup>2</sup> Amends Title 5, Chapter 13 of the Arkansas Criminal Code to create the new criminal offense of Knowingly exposing another person to fentanyl, § 5-13-214.

Under the proposed bill, a person commits the offense of Knowingly exposing another person to fentanyl in the first degree if the person knowingly exposes another person to fentanyl and the other person suffers serious physical injury as a result of the exposure to fentanyl. Knowingly exposing another person to fentanyl in the first degree is a Class Y felony if the other person is a first responder or employee of a correctional facility, or a Class A felony if otherwise committed.

Under the proposed bill, a person commits the offense of Knowingly exposing another person to fentanyl in the second degree if the person knowingly exposes another person to fentanyl and the other person suffers physical injury as a result of the exposure to fentanyl. Knowingly exposing another person to fentanyl in the first degree is a Class A felony if the other person is a first responder or employee of a correctional facility, or a Class B felony if otherwise committed.

The proposed bill also contains relevant exceptions and definition language.

**Impact Information** Because the proposed bill creates new courses of conduct for which the likely number of convictions is unavailable, the projected impact cannot be determined. The following data on the similar criminal offense of A.C.A. § 5-13-210, Introduction of controlled substance into body of another person, is provided for informational purposes only.

The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning on 1/1/2020

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<sup>1</sup> This impact assessment was prepared 3/28/2023 9:05 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

and ending on 12/31/2022, there were 29 felony convictions of A.C.A. § 5-13-210, Introduction of controlled substance into body of another person. The Division of Correction (ADC) reports that as of December 2, 2022, there are currently 18 offenders serving a term of incarceration for a violation of A.C.A. § 5-13-210, Introduction of controlled substance into body of another person. Of these, 9 are serving a term of incarceration for which A.C.A. § 5-13-210 is the primary offense.

**A.C.A § 5-13-210. Introduction of controlled substance into body of another person.**

(a) It is unlawful for any person to inject any controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq., into the human body of another person, unless the controlled substance has been ordered for the person receiving the controlled substance by a licensed practitioner, licensed by the state to prescribe controlled substances in the schedule involved and this being for a legitimate medical purpose.

(b) It is unlawful for any person to administer or cause to be ingested, inhaled, or otherwise introduced into the human body of another person a controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq., unless the controlled substance has been ordered for the person receiving the controlled substance by a licensed practitioner, licensed by the state to prescribe controlled substances in the schedule involved and this being for a legitimate medical purpose.

(c) Any person who violates this section with respect to:

(1) A controlled substance in Schedule I or Schedule II, which is a narcotic drug, is guilty of a Class Y felony;

(2) Any other controlled substance in Schedule I, Schedule II, or Schedule III is guilty of a Class B felony; or

(3) Any other controlled substance in Schedule IV, Schedule V, or Schedule VI is guilty of a Class C felony.

(d) The provisions of this section and any criminal penalty provided for in this section are in addition to any other criminal penalty a person may be subjected to under a provision of the Arkansas Criminal Code or the Uniform Controlled Substances Act, § 5-64-101 et seq.

(e) It is not a defense under a provision of this section that a person:

(1) Consented to being injected with the controlled substance; or

(2) Ingested, inhaled, or otherwise introduced the controlled substance into his or her human body knowingly and voluntarily.

(f) Notwithstanding a provision of subsection (c) of this section, any person is guilty of a Class Y felony who violates this section by introducing a controlled substance into the body of another person without that other person's knowledge or consent with the purpose of:

(1) Committing any felony sexual offense, as defined in Arkansas law;

(2) Engaging in any unlawful sexual act, as defined in § 5-14-101 et seq.;

(3) Engaging in any unlawful sexual contact, as defined in § 5-14-101; or

(4) Engaging in any act involving a child engaging in sexually explicit conduct, as defined in § 5-27-302.

**History**

Acts 1987, No. 848, §§ 1-3; 1999, No. 516, § 1.