

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

# A Bill

HOUSE BILL 1878

5 By: Representative Gazaway  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING THE CONTROLLED SUBSTANCES OF  
9 FENTANYL AND HEROIN; AND FOR OTHER PURPOSES.  
10

### Subtitle

11 CONCERNING THE CONTROLLED SUBSTANCES OF  
12 FENTANYL AND HEROIN.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code § 5-64-101, concerning definitions used in  
20 the Uniform Controlled Substances Act, is amended to add an additional  
21 subdivision to read as follows:

22 (23) "Fentanyl" means the opioid known as fentanyl, an analog of  
23 fentanyl that is a fentanyl-related controlled substance, and any chemical  
24 structure modification to fentanyl or a fentanyl analog, including without  
25 limitation the isomers, esters, ethers, and salts of fentanyl.  
26

27 SECTION 2. Arkansas Code § 5-64-419(b)(1) and (2), concerning  
28 possession of a Schedule I controlled substance, are amended to read as  
29 follows:

30 (1) A Schedule I or Schedule II controlled substance that is  
31 methamphetamine, heroin, or cocaine with an aggregate weight, including an  
32 adulterant or diluent, of:

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

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



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

3 (2) A Schedule I or Schedule II controlled substance that is not  
 4 methamphetamine, fentanyl, heroin, or cocaine with an aggregate weight,  
 5 including an adulterant or diluent, of:

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

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

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

12  
 13 SECTION 3. Arkansas Code § 5-64-420 is amended to read as follows:

14 5-64-420. Possession of methamphetamine, heroin, or cocaine with the  
 15 purpose to deliver.

16 (a) Except as provided by this chapter, it is unlawful if a person  
 17 possesses methamphetamine, heroin, or cocaine with the purpose to deliver the  
 18 methamphetamine, heroin, or cocaine. Purpose to deliver may be shown by any  
 19 of the following factors:

20 (1) The person possesses the means to weigh, separate, or  
 21 package methamphetamine, heroin, or cocaine;

22 (2) The person possesses a record indicating a drug-related  
 23 transaction;

24 (3) The methamphetamine, heroin, or cocaine is separated and  
 25 packaged in a manner to facilitate delivery;

26 (4) The person possesses a firearm that is in the immediate  
 27 physical control of the person at the time of the possession of  
 28 methamphetamine, heroin, or cocaine;

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

31 (6) Other relevant and admissible evidence that contributes to  
 32 the proof that a person's purpose was to deliver methamphetamine, heroin, or  
 33 cocaine.

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

35 (1) Class C felony if the person possessed less than two grams  
 36 (2g) of methamphetamine, heroin, or cocaine by aggregate weight, including an

1 adulterant or diluent;

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

5 (3) Class A felony if the person possessed ten grams (10g) or  
 6 more but less than two hundred grams (200g) of methamphetamine, heroin, or  
 7 cocaine by aggregate weight, including an adulterant or diluent.

8  
 9 SECTION 4. Arkansas Code Title 5, Chapter 64, Subchapter 4, is amended  
 10 to add an additional section to read as follows:

11 5-64-421. Possession of fentanyl – Possession of fentanyl with the  
 12 purpose to deliver – Delivery of fentanyl – Manufacture of fentanyl.

13 (a)(1) Except as provided by this chapter, it is unlawful for a person  
 14 to possess fentanyl.

15 (2) A person who violates subdivision (a)(1) of this section  
 16 upon conviction is guilty of a Class C felony.

17 (b)(1) Except as provided by this chapter, it is unlawful for a person  
 18 to possess fentanyl with the purpose to deliver fentanyl.

19 (2) Purpose to deliver may be shown by any of the following  
 20 factors:

21 (A) The person possesses the means to weigh, separate, or  
 22 package fentanyl;

23 (B) The person possesses a record indicating a drug-  
 24 related transaction;

25 (C) The fentanyl is separated or packaged in a manner to  
 26 facilitate delivery;

27 (D) The person possesses a firearm that is in the  
 28 immediate physical control of the person at the time of the possession of  
 29 fentanyl;

30 (E) The person possesses at least two (2) other controlled  
 31 substances in any amount; or

32 (F) Other relevant and admissible evidence that  
 33 contributes to the proof that a person’s purpose was to deliver fentanyl.

34 (3) A person who violates subdivision (b)(1) of this section  
 35 upon conviction is guilty of a Class A felony.

36 (c)(1) Except as provided by this chapter, it is unlawful for a person

1 to deliver fentanyl.

2 (2) A person who violates subdivision (c)(1) of this section  
3 upon conviction is guilty of a Class Y felony.

4 (d)(1) Except as provided by this chapter, it is unlawful for a person  
5 to manufacture fentanyl.

6 (2) A person who manufactures fentanyl upon conviction is guilty  
7 of a Class Y felony.

8 (e) It is an affirmative defense to prosecution under subsection (a)  
9 of this section if a person has a valid prescription for fentanyl and is  
10 using the fentanyl lawfully.

11 (f) It is not a violation under subsections (b) and (c) of this  
12 section if a permitted manufacturer, wholesaler, pharmacy, hospital, long-  
13 term care facility, or other medical provider delivers, prescribes,  
14 administers, or transfers fentanyl for lawful purposes and in compliance with  
15 state and federal law.

16 (g) It is not a violation of subsection (d) of this section for a  
17 pharmaceutical company to manufacture fentanyl in compliance with state and  
18 federal law.

19 (h) The unlawful possession of drug paraphernalia containing fentanyl  
20 residue shall not be charged under this section and may be charged under § 5-  
21 64-443.

22  
23 SECTION 5. Arkansas Code §§ 5-64-422 – 5-64-424 are amended to read as  
24 follows:

25 5-64-422. Delivery of methamphetamine, heroin, or cocaine.

26 (a) Except as provided by this chapter, it is unlawful for a person to  
27 deliver methamphetamine, heroin, or cocaine.

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

31 (2) A person who delivers two grams (2g) or more but less than  
32 ten grams (10g) by aggregate weight, including an adulterant or diluent, of  
33 methamphetamine, heroin, or cocaine upon conviction is guilty of a Class B  
34 felony.

35 (3) A person who delivers ten grams (10g) or more but less than  
36 two hundred grams (200g) by aggregate weight, including an adulterant or

1 diluent, of methamphetamine, heroin, or cocaine upon conviction is guilty of  
 2 a Class Y felony.

3  
 4 5-64-423. Manufacture of methamphetamine—~~Manufacture of cocaine,~~  
 5 heroin, or cocaine.

6 (a)(1) Except as provided by this chapter, it is unlawful for a person  
 7 to manufacture methamphetamine.

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

11 (B)(i) A person who manufactures methamphetamine in an  
 12 amount of two grams (2g) or more by aggregate weight, including an adulterant  
 13 or diluent, upon conviction is guilty of a Class Y felony.

14 (ii)(a) However, a person who manufactures  
 15 methamphetamine in an amount of two grams (2g) or more by aggregate weight,  
 16 including an adulterant or diluents, upon conviction is guilty of a Class A  
 17 felony if the person shows by a preponderance of the evidence that he or she  
 18 manufactured the methamphetamine for personal use only.

19 (b) Factors indicative of personal use may  
 20 include without limitation the:

21 (1) Person did not make a delivery of  
 22 methamphetamine;

23 (2) Quantity of methamphetamine  
 24 manufactured by the person; or

25 (3) Method of manufacturing  
 26 methamphetamine used by the person.

27 (3) A person who has one (1) or more prior convictions of  
 28 manufacturing methamphetamine in any amount under this section or the former  
 29 § 5-64-401 upon conviction is guilty of a Class Y felony.

30 (b)(1) Except as provided by this chapter, it is unlawful for a person  
 31 to manufacture cocaine.

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

35 (B) A person who manufactures cocaine in an amount of two  
 36 grams (2g) or more but less than ten grams (10g), by aggregate weight,

1 including an adulterant or diluent, upon conviction is guilty of a Class B  
2 felony.

3 (C) A person who manufactures cocaine in an amount of ten  
4 grams (10g) or more but less than two hundred grams (200g), by aggregate  
5 weight, including an adulterant or diluent, upon conviction is guilty of a  
6 Class Y felony.

7 (c)(1) Except as provided by this chapter, it is unlawful for a person  
8 to manufacture heroin.

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

12 (B) A person who manufactures heroin in an amount of two  
13 grams (2g) or more but less than ten grams (10g), by aggregate weight,  
14 including an adulterant or diluent, upon conviction is guilty of a Class B  
15 felony.

16 (C) A person who manufactures heroin in an amount of ten  
17 grams (10g) or more but less than two hundred grams (200g), by aggregate  
18 weight, including an adulterant or diluent, upon conviction is guilty of a  
19 Class Y felony.

20  
21 5-64-424. Possession of a Schedule I or Schedule II controlled  
22 substance that is not methamphetamine, fentanyl, heroin, or cocaine with the  
23 purpose to deliver.

24 (a) Except as provided in this chapter, it is unlawful if a person  
25 possesses a Schedule I or Schedule II controlled substance that is not  
26 methamphetamine, fentanyl, heroin, or cocaine with the purpose to deliver the  
27 Schedule I or Schedule II controlled substance that is not methamphetamine,  
28 fentanyl, heroin, or cocaine. Purpose to deliver may be shown by any of the  
29 following factors:

30 (1) The person possesses the means to weigh, separate, or  
31 package a Schedule I or Schedule II controlled substance that is not  
32 methamphetamine, fentanyl, heroin, or cocaine;

33 (2) The person possesses a record indicating a drug-related  
34 transaction;

35 (3) The Schedule I or Schedule II controlled substance that is  
36 not methamphetamine, fentanyl, heroin, or cocaine is separated and packaged

1 in a manner to facilitate delivery;

2 (4) The person possesses a firearm that is in the immediate  
3 physical control of the person at the time of the possession of the Schedule  
4 I or Schedule II controlled substance that is not methamphetamine, fentanyl,  
5 heroin, or cocaine;

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

8 (6) Other relevant and admissible evidence that contributes to  
9 the proof that a person's purpose was to deliver a Schedule I or Schedule II  
10 controlled substance that is not methamphetamine, fentanyl, heroin, or  
11 cocaine.

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

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

17 (2) Class B felony if the person possessed by aggregate weight,  
18 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, fentanyl, heroin, cocaine, or a controlled substance listed  
22 in this subdivision (b)(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 but not more than two hundred grams (200g) for any other  
29 Schedule I or Schedule II depressant or hallucinogenic drug; or

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

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

35 (A) Twenty-eight grams (28g) or more but less than two  
36 hundred grams (200g) of a Schedule I or Schedule II controlled substance that

1 is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance  
 2 listed in this subdivision (b)(3);

3 (B) One hundred twenty-eight milligrams (128mg) or more or  
 4 one hundred sixty (160) dosage units or more but less than two hundred grams  
 5 (200g) of hydromorphone hydrochloride;

6 (C) One thousand six hundred micrograms (1,600µ) or more  
 7 or one hundred sixty (160) dosage units or more but less than two hundred  
 8 grams (200g) of lysergic acid diethylamide (LSD);

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

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

15 (c) It is a defense to a prosecution under this section that the  
 16 person possessed less than the minimum listed amount of a Schedule I or  
 17 Schedule II controlled substance that is not methamphetamine, fentanyl,  
 18 heroin, or cocaine and that is listed in this section.

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 20 SECTION 6. Arkansas Code §§ 5-64-426 and 5-64-427 are amended to read  
 21 as follows:

22 5-64-426. Delivery of a Schedule I or Schedule II controlled substance  
 23 that is not methamphetamine, fentanyl, heroin, or cocaine.

24 (a) This section does not apply to the delivery of methamphetamine,  
 25 fentanyl, heroin, or cocaine, which is governed by § 5-64-421 and § 5-64-422.

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

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

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

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

35 (A) Two grams (2g) or more but less than twenty-eight  
 36 grams (28g) of a Schedule I or Schedule II controlled substance that is not



1 methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed  
2 in this subdivision (c)(2);

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

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

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

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

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

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

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

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

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

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

29  
30 5-64-427. Manufacture of a Schedule I or Schedule II controlled  
31 substance that is not methamphetamine, fentanyl, heroin, or cocaine.

32 (a) This section does not apply to the manufacture of methamphetamine,  
33 fentanyl, heroin, or cocaine, which is governed by § 5-64-421 and § 5-64-423.

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

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

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

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

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

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

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

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

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

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

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

26           (B) One hundred sixty (160) dosage units or more of  
27 hydromorphone hydrochloride;

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

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

33           (E) One hundred sixty (160) dosage units or more  
34 regardless of weight for any other Schedule I or Schedule II stimulant drug.  
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36           SECTION 7. Arkansas Code § 5-64-440 is amended to read as follows:

1 5-64-440. Trafficking a controlled substance.

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

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

8 (1) Methamphetamine, heroin, or cocaine, two hundred grams  
9 (200g) or more;

10 (2) Fentanyl, one gram (1g) or more;

11 ~~(2)(3)~~ Schedule I or Schedule II controlled substance that is  
12 not methamphetamine, fentanyl, heroin, or cocaine, two hundred grams (200g)  
13 or more;

14 ~~(3)(4)~~ Schedule III controlled substance, four hundred grams  
15 (400g) or more;

16 ~~(4)(5)~~ Schedule IV or Schedule V controlled substance, eight  
17 hundred grams (800g) or more; or

18 ~~(5)(6)~~ A Schedule VI controlled substance, five hundred pounds  
19 (500 lbs.) or more.

20 (c) Trafficking a controlled substance is a Class Y felony.

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