

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: H4/3/23

A Bill

HOUSE BILL 1663

5 By: Representatives Gazaway, M. Berry
6 By: Senator Gilmore
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE OFFENSE OF KNOWINGLY EXPOSING
10 ANOTHER PERSON TO FENTANYL; AND FOR OTHER PURPOSES.

Subtitle

14 TO CREATE THE OFFENSE OF KNOWINGLY
15 EXPOSING ANOTHER PERSON TO FENTANYL.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 5-4-501, concerning the sentencing of
21 habitual offenders, is amended to add an additional subsection to read as
22 follows:

23 (j) For the purpose of determining under this section the number of
24 felonies for which a defendant has been convicted, if the defendant was
25 previously convicted of felony for possession of fentanyl, § 5-64-421, and
26 the defendant also was convicted of a felony for knowingly exposing another
27 person to fentanyl in the first degree, § 5-13-214(b), or knowingly exposing
28 another person to fentanyl in the second degree, §5-13-214(c), stemming from
29 the same set of facts, the two (2) felonies shall be considered as one (1)
30 felony.

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32 SECTION 2. Arkansas Code Title 5, Chapter 13, Subchapter 2, is amended
33 to add an additional section to read as follows:

34 5-13-214. Knowingly exposing another person to fentanyl in the first
35 and second degree.

36 (a) As used in this section:



1 (1)(A) "Correctional facility" means a place used for the
2 confinement of persons charged with or convicted of an offense or otherwise
3 confined under a court order.

4 (B) "Correctional facility" includes the Arkansas State
5 Hospital only in regard to persons who are detained at the hospital and
6 charged with or convicted of an offense.

7 (C) "Correctional facility" does not include youth
8 services programs;

9 (2) "Employee of a correctional facility" means a person who is
10 employed by or working under a professional services contract for a
11 correctional facility;

12 (3) "Expose" includes without limitation skin contact,
13 inhalation, ingestion, or contact with a needlestick or a mucus membrane,
14 including without limitation the mouth, eyes, or nose; and

15 (4) "Fentanyl" means the same as defined in § 5-64-101.

16 (b)(1) A person commits the offense of knowingly exposing another
17 person to fentanyl in the first degree if:

18 (A) The person knowingly exposes another person to
19 fentanyl; and

20 (B) The other person suffers serious physical injury as a
21 result of the exposure to fentanyl.

22 (2) Knowingly exposing another person to fentanyl in the first
23 degree is:

24 (A) A Class Y felony if the other person is a first
25 responder or an employee of a correctional facility; or

26 (B) A Class A felony if otherwise committed.

27 (c)(1) A person commits the offense of knowingly exposing another
28 person to fentanyl in the second degree if:

29 (A) The person knowingly exposes another person to
30 fentanyl; and

31 (B) The other person suffers physical injury as a result
32 of the exposure to fentanyl.

33 (2) Knowingly exposing another person to fentanyl in the second
34 degree is:

35 (A) A Class A felony if the other person is a first
36 responder or an employee of a correctional facility; or

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(B) A Class B felony if otherwise committed.

(d) The following are not offenses under this subchapter:

(1) An individual practitioner acting in the usual course of professional practice issuing a valid prescription for fentanyl for a legitimate medical purpose;

(2) A pharmacy, pharmacist, or an individual practitioner dispensing, delivering, or administering fentanyl pursuant to a prescription;

(3) A permitted manufacturer, wholesaler, pharmacy, hospital, long-term care facility, or other medical provider delivering, prescribing, administering, or transferring fentanyl available by prescription for lawful purposes and in compliance with state and federal law; or

(4) A pharmaceutical company manufacturing fentanyl available by prescription in compliance with state and federal law.

/s/Gazaway