

2018 Regular Session

HOUSE BILL NO. 165

BY REPRESENTATIVES MACK, BACALA, BAGNERIS, DWIGHT, HAZEL,
HOWARD, MARINO, AND PYLANT

DRUGS/CONTROLLED: Provides relative to the Uniform Controlled Dangerous
Substances Law

1 AN ACT

2 To amend and reenact R.S. 40:966(B)(3), (C)(4)(introductory paragraph), and (G)(1) and to
3 enact R.S. 40:961(3.1) and 967(B)(1)(introductory paragraph) and (4), (C)(4), and
4 (E), relative to controlled dangerous substances; to define the term "aggregate" for
5 purposes of the Uniform Controlled Dangerous Substances Law; to provide relative
6 to the substances fentanyl and carfentanil; to provide relative to criminal penalties;
7 to provide relative to treatment; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:966(B)(3), (C)(4)(introductory paragraph), and (G)(1) are hereby
10 amended and reenacted and R.S. 40:961(3.1) and 967(B)(1)(introductory paragraph) and (4),
11 (C)(4), and (E) are hereby enacted to read as follows:

12 §961. Definitions

13 As used in this Part, the following terms shall have the meaning ascribed to
14 them in this Section unless the context clearly indicates otherwise:

15 * * *

16 (3.1) "Aggregate" means the gross weight of an exhibit of evidence.

17 * * *

1 §966. Penalty for distribution or possession with intent to distribute narcotic drugs
2 listed in Schedule I; possession of marijuana, ~~possession of~~ synthetic
3 cannabinoids, ~~possession of~~ and heroin

4 * * *

5 B. Violations of Subsection A. Any person who violates Subsection A of
6 this Section with respect to:

7 * * *

8 (3) A substance classified in Schedule I that is the narcotic drug heroin ~~or a~~
9 ~~mixture or substance containing a detectable amount of heroin or of its analogues or~~
10 a mixture or substance containing a detectable amount of heroin or its analogues, ~~or~~
11 ~~fentanyl or a mixture of substances containing a detectable amount of fentanyl or its~~
12 ~~analogues~~; upon conviction for any amount, shall be imprisoned at hard labor for not
13 less than five years nor more than forty years and may, in addition, be required to
14 pay a fine of not more than fifty thousand dollars.

15 C. Possession. It is unlawful for any person knowingly or intentionally to
16 possess a controlled dangerous substance classified in Schedule I unless such
17 substance was obtained directly, or pursuant to a valid prescription or order, from a
18 practitioner or as provided in R.S. 40:978, while acting in the course of his
19 professional practice, or except as otherwise authorized by this Part. Any person
20 who violates this Subsection with respect to:

21 * * *

22 (4) A substance classified in Schedule I that is the narcotic drug heroin or a
23 mixture or substance containing a detectable amount of heroin or of its analogues,
24 ~~or fentanyl or a mixture or substance containing a detectable amount of fentanyl or~~
25 ~~its analogues~~; upon conviction for an amount:

26 * * *

27 G. Treatment for heroin ~~and fentanyl~~ addiction as a condition for probation.

28 (1) Upon conviction of Paragraph (B)(3) or (C)(4) of this Section, possession with
29 intent to distribute heroin ~~or fentanyl~~ or possession of heroin ~~or fentanyl~~, the court

1 may suspend any sentence which it imposes and place the defendant on probation
2 pursuant to Code of Criminal Procedure Article 893. The court may order the
3 division of probation and parole of the Department of Public Safety and Corrections
4 to conduct a presentence investigation, or may order the defendant to obtain a
5 substance abuse evaluation, for the purpose of determining whether the defendant
6 has a substance abuse disorder.

7 * * *

8 §967. Prohibited acts--Schedule II, penalties

9 * * *

10 B. Violations of Subsection A. Any person who violates Subsection A of
11 this Section with respect to:

12 (1) Except as otherwise provided in Paragraphs (2), ~~(3)~~, and ~~(3)~~ (4) of this
13 Subsection, a substance classified in Schedule II for an amount of:

14 * * *

15 (4) Fentanyl or a mixture or substance containing a detectable amount of
16 fentanyl or its analogues, or carfentanil or a mixture or substance containing a
17 detectable amount of carfentanil or its analogues, upon conviction for any amount,
18 shall be imprisoned at hard labor for not less than five years nor more than forty
19 years and may, in addition, be required to pay a fine of not more than fifty thousand
20 dollars.

21 C. Possession. It is unlawful for any person knowingly or intentionally to
22 possess a controlled dangerous substance as classified in Schedule II unless such
23 substance was obtained directly or pursuant to a valid prescription or order from a
24 practitioner, as provided in R.S. 40:978 while acting in the course of his professional
25 practice, or except as otherwise authorized by this Part. Any person who violates
26 this Subsection with respect to:

27 * * *

1 (4) Fentanyl or a mixture or substance containing a detectable amount of
 2 fentanyl or its analogues, or carfentanil or a mixture or substance containing a
 3 detectable amount of carfentanil or its analogues, upon conviction for an amount:

4 (a) An aggregate weight of less than two grams, shall be sentenced to a term
 5 of imprisonment, with or without hard labor, for not less than two years nor more
 6 than four years.

7 (b) An aggregate weight of two grams or more but less than twenty-eight
 8 grams, shall be sentenced to a term of imprisonment, with or without hard labor, for
 9 not less than two years nor more than ten years and may, in addition be required to
 10 pay a fine of not more than five thousand dollars.

11 * * *

12 E. Treatment for fentanyl or carfentanil addiction as a condition for
 13 probation. (1) Upon conviction of Paragraph (B)(4) or (C)(4) of this Section,
 14 possession with intent to distribute fentanyl or carfentanil or possession of fentanyl
 15 or carfentanil, the court may suspend any sentence which it imposes and place the
 16 defendant on probation pursuant to Article 893 of the Code of Criminal Procedure.
 17 The court may order the division of probation and parole of the Department of Public
 18 Safety and Corrections to conduct a presentence investigation, or may order the
 19 defendant to obtain a substance abuse evaluation, for the purpose of determining
 20 whether the defendant has a substance abuse disorder.

21 (2) Upon receiving the report or evaluation, the court shall, if it finds
 22 probable cause from such report to believe the defendant has a substance abuse
 23 disorder, order a contradictory hearing for the purpose of making a judicial
 24 determination on whether the defendant has a substance abuse disorder.

25 (3) If, at such contradictory hearing, the court determines that the defendant
 26 has a substance abuse disorder, it shall require as a condition of probation that the
 27 defendant complete a drug treatment program if the following conditions are met:

1 (a) There is an available program in the local jurisdiction that has sufficient
2 experience in working with criminal justice participants with substance abuse
3 disorders and is certified and approved by the state of Louisiana.

4 (b) The cost of the approved treatment does not create a substantial financial
5 hardship to the defendant or his dependents. For purposes of this determination,
6 "substantial financial hardship" shall have the same meaning as provided in R.S.
7 15:175.

8 (4) If the offender does not successfully complete the drug treatment
9 program, or otherwise violates the conditions of his probation, the court may revoke
10 the probation or impose other sanctions pursuant to Article 900 of the Code of
11 Criminal Procedure.

12 Section 2.(A) The Louisiana State Law Institute is hereby authorized and directed
13 to renumber the terms defined in R.S. 40:961 to ensure that such terms are in alphabetical
14 order and to remove the use of decimalization in numbering such terms.

15 (B) The Louisiana State Law Institute is hereby authorized and directed to correct
16 the citations in the following provisions to reflect the renumbering of the defined terms in
17 R.S. 40:961 as provided by Subsection A of this Section: R.S. 17:416.3(D)(1) and 491.2(A),
18 R.S. 37:1360.52(2) and 2371(3), and R.S. 40:991(B), 971.2(B)(introductory paragraph), and
19 1060.13(A).

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 165 Engrossed

2018 Regular Session

Mack

Abstract: Provides a definition of "aggregate" for purposes of determining the weight of certain controlled dangerous substances, relocates the existing criminal penalties for fentanyl to correspond to its classification as a Schedule II controlled dangerous substance, and applies those same criminal penalties to the substance carfentanil.

Present law provides for the Uniform Controlled Dangerous Substances Law which imposes criminal penalties upon any person who manufactures, produces, distributes, possesses with the intent to distribute, or possesses a controlled dangerous substance or who engages in other unlawful acts set forth in present law relative to controlled dangerous substances.

Imposition of certain penalties in present law depend upon the aggregate weight of the substance involved.

Proposed law retains present law but adds a definition of the term "aggregate" to mean the gross weight of an exhibit of evidence.

Present law classifies fentanyl as a Schedule II substance in the Uniform Controlled Dangerous Substances Law but provides for criminal penalties as follows in the penalty provisions involving Schedule I substances:

- (1) Manufacture or distribution of fentanyl, or a mixture or substance including fentanyl - penalties include imprisonment at hard labor for five to forty years, and may include a fine not to exceed \$50,000.
- (2) Possession of fentanyl or a mixture or substance containing fentanyl - penalties are as follows:
 - (a) An aggregate weight of less than two grams - imprisonment, with or without hard labor, for not less than two years nor more than four years.
 - (b) An aggregate weight of two grams or more but less than twenty-eight grams - imprisonment, with or without hard labor, for not less than two years nor more than ten years and may include a fine of not more than \$5,000.

Proposed law retains the present law classification of fentanyl as a Schedule II substance and retains the present law criminal penalties, but relocates those penalties to the penalty provisions in Schedule II. Proposed law further applies these present law penalties to violations involving the substance carfentanil.

Present law authorizes substance abuse treatment and probation in certain cases of possession or possession with intent to distribute heroin or fentanyl. Requires a contradictory hearing to determine the presence of a substance abuse disorder, and provides for the revocation of probation or other sanctions for the failure to complete treatment or other conditions of probation.

Proposed law retains present law but relocates these provisions applicable to fentanyl to the penalty provisions in Schedule II, and makes the present law treatment provisions applicable to carfentanil as well.

(Amends R.S. 40:966(B)(3), (C)(4)(intro. para.), and (G)(1); Adds R.S. 40:961(3.1) and 967(B)(1)(intro. para.) and (4), (C)(4), and (E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Provide that the present law penalties and treatment provisions for fentanyl also apply to carfentanil.