

CONFERENCE COMMITTEE REPORT

HB 90

2023 Regular Session

Stefanski

June 7, 2023

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 90 by Representative Stefanski, recommend the following concerning the Engrossed bill:

1. That Senate Committee Amendments Nos. 1, 2, 3, and 4 proposed by the Committee on Judiciary C (#1782) be adopted.
2. That Senate Committee Amendment No. 5 proposed by the Committee on Judiciary C (#1782) be rejected.
3. That the following amendments to the Reengrossed bill be adopted:

AMENDMENT NO. 1

On page 1, delete lines 16 through 19 and delete page 2 in its entirety and insert the following:

~~"(4)(a)~~ Fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance containing a detectable amount of carfentanil or its analogues, ~~upon conviction for any amount,~~ shall be punished as follows:

(a) On conviction of an aggregate weight of less than twenty-eight grams, shall be imprisoned imprisonment at hard labor for not less than five years nor more than forty years, at least five years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

(b) On a first conviction of an aggregate weight of twenty-eight grams or more but less than two hundred fifty grams, imprisonment at hard labor for not less than seven years nor more than forty years, at least seven years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

(c) On a second conviction of an aggregate weight of twenty eight grams or more but less than two hundred fifty grams, imprisonment at hard labor for not less than thirty years nor more than forty years, at least ten years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than five hundred thousand dollars.

(d) On a third conviction of an aggregate weight of twenty eight grams or more but less than two hundred fifty grams, imprisonment at hard labor for not less than ninety-nine years without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than five hundred thousand dollars.

(e) On conviction of an aggregate weight of two hundred fifty grams or more, life imprisonment at hard labor, at least twenty-five years of which shall be served without benefit of parole, probation, or suspension of sentence.

~~(b)~~ (f)(i) If the offender unlawfully distributes or dispenses fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance containing a detectable amount of carfentanil or its analogues, which is the direct cause of serious bodily injury to the person who ingested or consumed the substance, the offense shall be classified as a crime of

violence, and the offender shall be imprisoned at hard labor for ~~not less than an additional period of five years nor more than forty years.~~ At least five years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. In addition, the offender may be required to pay a fine of not more than fifty thousand dollars. The additional penalty imposed pursuant to this Subparagraph shall be served consecutively to the sentence imposed under Paragraph (4) of this Subsection.

(ii) For purposes of this Subparagraph, "serious bodily injury" shall have the same meaning as provided by R.S. 14:2(C).

(iii) This Subsection shall be known and may be cited as "Millie's Law".

* * *

E. Treatment for fentanyl or carfentanil addiction as a condition for probation.

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

* * *

Section 2. R.S. 14:2(B)(58) is hereby amended and reenacted to read as follows:

§2. Definitions

* * *

B. In this Code, "crime of violence" means an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. The following enumerated offenses and attempts to commit any of them are included as "crimes of violence":

* * *

(58) Distribution of fentanyl or carfentanil punishable under R.S. 40:967(B)(4)~~(b)~~(f).

* * *

Respectfully submitted,

Representative John M. Stefanski

Senator Franklin J. Foil

Representative Joseph A. Marino, III

Senator Caleb Kleinpeter

Representative Debbie Villio

Senator Patrick McMath

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)]

CONFERENCE COMMITTEE REPORT DIGEST

HB 90

2023 Regular Session

Stefanski

Keyword and oneliner of the instrument as it left the House

DRUGS/CONTROLLED: Provides relative to penalties for distribution or possession with intent to distribute fentanyl or carfentanil

Report adopts Senate amendments to:

1. Make technical changes.

Report rejects Senate amendments which would have:

1. Increased penalties for distribution or possession with intent to distribute fentanyl or carfentanil and provided for aggregate weights of the substance relative to 28 grams, 28 grams or more, and 250 grams or more.

Report amends the bill to:

1. Increase penalties for distribution or possession with intent to distribute fentanyl or carfentanil.
2. Provide for aggregate weights and mandatory minimum sentences for distribution or possession with intent to distribute fentanyl or carfentanil.
3. Provide for life imprisonment on conviction of an aggregate weight of 250 grams or more, at least 25 years of which shall be served without benefit of parole, probation, or suspension of sentence.
4. Relative to distribution of fentanyl or carfentanil which causes serious bodily injury, provide for an additional imprisonment period of five years, which shall be served consecutively to the sentence imposed for distribution or possession with intent to distribute fentanyl or carfentanil.
5. Change the citation reference of distribution of fentanyl or carfentanil which causes serious bodily injury in the present law list of crimes of violence.

Digest of the bill as proposed by the Conference Committee

Present law (R.S. 40:967(B)(4)) provides that any person who produces, manufactures, distributes, or dispenses or possesses with the intent to produce, manufacture, distribute, or dispense fentanyl or carfentanil, upon conviction for any amount, shall be imprisoned at hard labor for not less than five years nor more than 40 years and may, in addition, be required to pay a fine of not more than \$50,000.

Proposed law provides that upon conviction of an aggregate weight of less than 28 grams, the offender shall be imprisoned at hard labor for not less than five years nor more than 40 years, at least five years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$50,000.

Proposed law provides that upon a first conviction of an aggregate weight of 28 grams or more but less than 250 grams, the offender shall be imprisoned at hard labor for not less than seven years nor more than 40 years, at least seven years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$50,000.

Proposed law provides that upon a second conviction of an aggregate weight of 28 grams or more but less than 250 grams, the offender shall be imprisoned at hard labor for not less than 30 years nor more than 40 years, at least 10 years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$500,000.

Proposed law further provides that upon a third conviction of an aggregate weight of 28 grams or more but less than 250 grams, the offender shall be imprisoned at hard labor for not less than 99 years without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$500,000.

Proposed law provides that upon conviction of an aggregate weight of 250 grams or more, the offender shall be imprisoned for life at hard labor, at least 25 years of which shall be served without benefit of parole, probation, or suspension of sentence.

Present law provides that if an offender unlawfully distributes fentanyl or carfentanil which is the direct cause of serious bodily injury to the person who ingested or consumed the substance, the offender shall be imprisoned at hard labor for not less than five years nor more than 40 years. At least five years of the sentence shall be served without benefit of probation, parole, or suspension of sentence. In addition, the offender may be required to pay a fine of not more than \$50,000.

Proposed law amends present law to provide that an offender who unlawfully distributes fentanyl or carfentanil which is the direct cause of serious bodily injury to the person who ingested or consumed the substance shall be imprisoned at hard labor for an additional period of five years without benefit of probation, parole, or suspension of sentence. Such additional imprisonment penalty shall be served consecutively to the sentence imposed for distribution or possession with intent to distribute fentanyl or carfentanil.

Present law authorizes the court to suspend any sentence imposed upon a defendant and place the defendant on probation upon conviction of possession with intent to distribute fentanyl or carfentanil or possession of fentanyl or carfentanil.

Proposed law removes the authority of the court to suspend any sentence imposed upon a defendant and place the defendant on probation upon conviction of possession with intent to distribute fentanyl or carfentanil.

Present law (R.S. 14:2(B)) provides for a list of certain enumerated present law offenses that are designated as crimes of violence. Further provides that distribution of fentanyl or carfentanil that causes serious bodily injury is a crime of violence.

Proposed law retains present law and changes the citation reference of distribution of fentanyl or carfentanil that causes serious bodily injury.

(Amends R.S. 14:2(B)(58) and R.S. 40:967(B)(4) and (E)(1))