

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), (G)(1), and  
3 967(B)(1)(introductory paragraph) and to enact R.S. 40:961(3.1) and 967(B)(4),  
4 (C)(4), and (E), relative to controlled dangerous substances; to define the term  
5 "aggregate" for purposes of the Uniform Controlled Dangerous Substances Law; to  
6 provide relative to the substances fentanyl and carfentanil; to provide relative to  
7 criminal penalties; 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), (G)(1), and 967(B)(1)  
10 (introductory paragraph) are hereby amended and reenacted and R.S. 40:961(3.1) and  
11 967(B)(4), (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           (b) The cost of the approved treatment does not create a substantial financial  
 2           hardship to the defendant or his dependents. For purposes of this determination,  
 3           "substantial financial hardship" shall have the same meaning as provided in R.S.  
 4           15:175.

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

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

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

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#### 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)]

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HB 165 Reengrossed

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) and 967(B)(1)(intro. para.); Adds R.S. 40:961(3.1) and 967(B)(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.

The House Floor Amendments to the engrossed bill:

1. Make technical corrections.