

**ACT No. 677**

2018 Regular Session

HOUSE BILL NO. 165

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

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 \* \* \*

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

21 \* \* \*

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

3   \*       \*       \*

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

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

17   \*       \*       \*

18                   (4) A substance classified in Schedule I that is the narcotic drug heroin or a  
19 mixture or substance containing a detectable amount of heroin or of its analogues,  
20 ~~or fentanyl or a mixture or substance containing a detectable amount of fentanyl or~~  
21 ~~its analogues~~, upon conviction for an amount:

22   \*       \*       \*

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

24                   (1) Upon conviction of Paragraph (B)(3) or (C)(4) of this Section, possession with  
25 intent to distribute heroin ~~or fentanyl~~ or possession of heroin ~~or fentanyl~~, the court  
26 may suspend any sentence which it imposes and place the defendant on probation  
27 pursuant to Code of Criminal Procedure Article 893. The court may order the  
28 division of probation and parole of the Department of Public Safety and Corrections  
29 to conduct a presentence investigation, or may order the defendant to obtain a

1 substance abuse evaluation, for the purpose of determining whether the defendant  
2 has a substance abuse disorder.

3 \* \* \*

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

5 \* \* \*

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

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

10 \* \* \*

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

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

23 \* \* \*

24 (4) Fentanyl or a mixture or substance containing a detectable amount of  
25 fentanyl or its analogues, or carfentanil or a mixture or substance containing a  
26 detectable amount of carfentanil or its analogues, upon conviction for an amount of:

27 (a) An aggregate weight of less than two grams, shall be imprisoned, with  
28 or without hard labor, for not less than two years nor more than four years.

29 (b) An aggregate weight of two grams or more but less than twenty-eight  
30 grams, shall be imprisoned, with or without hard labor, for not less than two years

1 nor more than ten years and may, in addition, be required to pay a fine of not more  
2 than five thousand dollars.

3 \* \* \*

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

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

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

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

23 (b) The cost of the approved treatment does not create a substantial financial  
24 hardship to the defendant or his dependents. For purposes of this determination,  
25 "substantial financial hardship" shall have the same meaning as provided in R.S.  
26 15:175.

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

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

4           (B) The Louisiana State Law Institute is hereby authorized and directed to correct  
5 the citations in the following provisions to reflect the renumbering of the defined terms in  
6 R.S. 40:961 as provided by Subsection A of this Section: R.S. 17:416.3(D)(1) and 491.2(A),  
7 R.S. 37:1360.52(2) and 2371(3), and R.S. 40:971.2(B)(introductory paragraph), 991(B), and  
8 1060.13(A).

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_