

HB5943



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5943

by Rep. Monica Bristow

SYNOPSIS AS INTRODUCED:

720 ILCS 570/401

from Ch. 56 1/2, par. 1401

Amends the Illinois Controlled Substances Act. Increases a sentencing enhancement to 6 years imprisonment (currently, 3 years) when the controlled substance also contains any amount of a fentanyl for the following violations: manufacture or delivery, or possession with intent to manufacture or deliver, a controlled substance, a counterfeit substance, or controlled substance analog; controlled substance trafficking; calculated criminal drug conspiracy; criminal drug conspiracy; streetgang criminal drug conspiracy; or delivery of a controlled, counterfeit, or look-alike substance to a person under 18 years of age. Modifies the amount of fentanyl required to trigger sentencing intervals. Effective immediately.

LRB100 22716 SLF 41697 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Controlled Substances Act is
5 amended by changing Section 401 as follows:

6 (720 ILCS 570/401) (from Ch. 56 1/2, par. 1401)

7 Sec. 401. Manufacture or delivery, or possession with
8 intent to manufacture or deliver, a controlled substance, a
9 counterfeit substance, or controlled substance analog. Except
10 as authorized by this Act, it is unlawful for any person
11 knowingly to manufacture or deliver, or possess with intent to
12 manufacture or deliver, a controlled substance other than
13 methamphetamine and other than bath salts as defined in the
14 Bath Salts Prohibition Act sold or offered for sale in a retail
15 mercantile establishment as defined in Section 16-0.1 of the
16 Criminal Code of 2012, a counterfeit substance, or a controlled
17 substance analog. A violation of this Act with respect to each
18 of the controlled substances listed herein constitutes a single
19 and separate violation of this Act. For purposes of this
20 Section, "controlled substance analog" or "analog" means a
21 substance, other than a controlled substance, which is not
22 approved by the United States Food and Drug Administration or,
23 if approved, is not dispensed or possessed in accordance with

1 State or federal law, and that has a chemical structure
2 substantially similar to that of a controlled substance in
3 Schedule I or II, or that was specifically designed to produce
4 an effect substantially similar to that of a controlled
5 substance in Schedule I or II. Examples of chemical classes in
6 which controlled substance analogs are found include, but are
7 not limited to, the following: phenethylamines, N-substituted
8 piperidines, morphinans, ecgonines, quinazolinones,
9 substituted indoles, and arylcycloalkylamines. For purposes of
10 this Act, a controlled substance analog shall be treated in the
11 same manner as the controlled substance to which it is
12 substantially similar.

13 (a) Any person who violates this Section with respect to
14 the following amounts of controlled or counterfeit substances
15 or controlled substance analogs, notwithstanding any of the
16 provisions of subsections (c), (d), (e), (f), (g) or (h) to the
17 contrary, is guilty of a Class X felony and shall be sentenced
18 to a term of imprisonment as provided in this subsection (a)
19 and fined as provided in subsection (b):

20 (1) (A) not less than 6 years and not more than 30 years
21 with respect to 15 grams or more but less than 100 grams of
22 a substance containing heroin, or an analog thereof;

23 (B) not less than 9 years and not more than 40 years
24 with respect to 100 grams or more but less than 400 grams
25 of a substance containing heroin, or an analog thereof;

26 (C) not less than 12 years and not more than 50 years

1 with respect to 400 grams or more but less than 900 grams
2 of a substance containing heroin, or an analog thereof;

3 (D) not less than 15 years and not more than 60 years
4 with respect to 900 grams or more of any substance
5 containing heroin, or an analog thereof;

6 (1.5) (A) not less than 6 years and not more than 30
7 years with respect to less than 1 gram ~~15 grams or more but~~
8 ~~less than 100 grams~~ of a substance containing fentanyl, or
9 an analog thereof;

10 (B) not less than 9 years and not more than 40 years
11 with respect to 1 gram ~~100 grams~~ or more but less than 15
12 ~~400~~ grams of a substance containing fentanyl, or an analog
13 thereof;

14 (C) not less than 12 years and not more than 50 years
15 with respect to 15 ~~400~~ grams or more but less than 100 ~~900~~
16 grams of a substance containing fentanyl, or an analog
17 thereof;

18 (D) not less than 15 years and not more than 60 years
19 with respect to 100 ~~900~~ grams or more of a substance
20 containing fentanyl, or an analog thereof;

21 (2) (A) not less than 6 years and not more than 30 years
22 with respect to 15 grams or more but less than 100 grams of
23 a substance containing cocaine, or an analog thereof;

24 (B) not less than 9 years and not more than 40 years
25 with respect to 100 grams or more but less than 400 grams
26 of a substance containing cocaine, or an analog thereof;

1 (C) not less than 12 years and not more than 50 years
2 with respect to 400 grams or more but less than 900 grams
3 of a substance containing cocaine, or an analog thereof;

4 (D) not less than 15 years and not more than 60 years
5 with respect to 900 grams or more of any substance
6 containing cocaine, or an analog thereof;

7 (3) (A) not less than 6 years and not more than 30 years
8 with respect to 15 grams or more but less than 100 grams of
9 a substance containing morphine, or an analog thereof;

10 (B) not less than 9 years and not more than 40 years
11 with respect to 100 grams or more but less than 400 grams
12 of a substance containing morphine, or an analog thereof;

13 (C) not less than 12 years and not more than 50 years
14 with respect to 400 grams or more but less than 900 grams
15 of a substance containing morphine, or an analog thereof;

16 (D) not less than 15 years and not more than 60 years
17 with respect to 900 grams or more of a substance containing
18 morphine, or an analog thereof;

19 (4) 200 grams or more of any substance containing
20 peyote, or an analog thereof;

21 (5) 200 grams or more of any substance containing a
22 derivative of barbituric acid or any of the salts of a
23 derivative of barbituric acid, or an analog thereof;

24 (6) 200 grams or more of any substance containing
25 amphetamine or any salt of an optical isomer of
26 amphetamine, or an analog thereof;

1 (6.5) (blank);

2 (6.6) (blank);

3 (7) (A) not less than 6 years and not more than 30 years
4 with respect to: (i) 15 grams or more but less than 100
5 grams of a substance containing lysergic acid diethylamide
6 (LSD), or an analog thereof, or (ii) 15 or more objects or
7 15 or more segregated parts of an object or objects but
8 less than 200 objects or 200 segregated parts of an object
9 or objects containing in them or having upon them any
10 amounts of any substance containing lysergic acid
11 diethylamide (LSD), or an analog thereof;

12 (B) not less than 9 years and not more than 40 years
13 with respect to: (i) 100 grams or more but less than 400
14 grams of a substance containing lysergic acid diethylamide
15 (LSD), or an analog thereof, or (ii) 200 or more objects or
16 200 or more segregated parts of an object or objects but
17 less than 600 objects or less than 600 segregated parts of
18 an object or objects containing in them or having upon them
19 any amount of any substance containing lysergic acid
20 diethylamide (LSD), or an analog thereof;

21 (C) not less than 12 years and not more than 50 years
22 with respect to: (i) 400 grams or more but less than 900
23 grams of a substance containing lysergic acid diethylamide
24 (LSD), or an analog thereof, or (ii) 600 or more objects or
25 600 or more segregated parts of an object or objects but
26 less than 1500 objects or 1500 segregated parts of an

1 object or objects containing in them or having upon them
2 any amount of any substance containing lysergic acid
3 diethylamide (LSD), or an analog thereof;

4 (D) not less than 15 years and not more than 60 years
5 with respect to: (i) 900 grams or more of any substance
6 containing lysergic acid diethylamide (LSD), or an analog
7 thereof, or (ii) 1500 or more objects or 1500 or more
8 segregated parts of an object or objects containing in them
9 or having upon them any amount of a substance containing
10 lysergic acid diethylamide (LSD), or an analog thereof;

11 (7.5) (A) not less than 6 years and not more than 30 years
12 with respect to: (i) 15 grams or more but less than 100
13 grams of a substance listed in paragraph (1), (2), (2.1),
14 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or (26)
15 of subsection (d) of Section 204, or an analog or
16 derivative thereof, or (ii) 15 or more pills, tablets,
17 caplets, capsules, or objects but less than 200 pills,
18 tablets, caplets, capsules, or objects containing in them
19 or having upon them any amounts of any substance listed in
20 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
21 (20.1), (21), (25), or (26) of subsection (d) of Section
22 204, or an analog or derivative thereof;

23 (B) not less than 9 years and not more than 40 years
24 with respect to: (i) 100 grams or more but less than 400
25 grams of a substance listed in paragraph (1), (2), (2.1),
26 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or (26)

1 of subsection (d) of Section 204, or an analog or
2 derivative thereof, or (ii) 200 or more pills, tablets,
3 caplets, capsules, or objects but less than 600 pills,
4 tablets, caplets, capsules, or objects containing in them
5 or having upon them any amount of any substance listed in
6 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
7 (20.1), (21), (25), or (26) of subsection (d) of Section
8 204, or an analog or derivative thereof;

9 (C) not less than 12 years and not more than 50 years
10 with respect to: (i) 400 grams or more but less than 900
11 grams of a substance listed in paragraph (1), (2), (2.1),
12 (2.2), (3), (14.1), (19), (20), (20.1), (21), (25), or (26)
13 of subsection (d) of Section 204, or an analog or
14 derivative thereof, or (ii) 600 or more pills, tablets,
15 caplets, capsules, or objects but less than 1,500 pills,
16 tablets, caplets, capsules, or objects containing in them
17 or having upon them any amount of any substance listed in
18 paragraph (1), (2), (2.1), (2.2), (3), (14.1), (19), (20),
19 (20.1), (21), (25), or (26) of subsection (d) of Section
20 204, or an analog or derivative thereof;

21 (D) not less than 15 years and not more than 60 years
22 with respect to: (i) 900 grams or more of any substance
23 listed in paragraph (1), (2), (2.1), (2.2), (3), (14.1),
24 (19), (20), (20.1), (21), (25), or (26) of subsection (d)
25 of Section 204, or an analog or derivative thereof, or (ii)
26 1,500 or more pills, tablets, caplets, capsules, or objects

1 containing in them or having upon them any amount of a
2 substance listed in paragraph (1), (2), (2.1), (2.2), (3),
3 (14.1), (19), (20), (20.1), (21), (25), or (26) of
4 subsection (d) of Section 204, or an analog or derivative
5 thereof;

6 (8) 30 grams or more of any substance containing
7 pentazocine or any of the salts, isomers and salts of
8 isomers of pentazocine, or an analog thereof;

9 (9) 30 grams or more of any substance containing
10 methaqualone or any of the salts, isomers and salts of
11 isomers of methaqualone, or an analog thereof;

12 (10) 30 grams or more of any substance containing
13 phencyclidine or any of the salts, isomers and salts of
14 isomers of phencyclidine (PCP), or an analog thereof;

15 (10.5) 30 grams or more of any substance containing
16 ketamine or any of the salts, isomers and salts of isomers
17 of ketamine, or an analog thereof;

18 (10.6) 100 grams or more of any substance containing
19 hydrocodone, or any of the salts, isomers and salts of
20 isomers of hydrocodone, or an analog thereof;

21 (10.7) (blank);

22 (10.8) 100 grams or more of any substance containing
23 dihydrocodeine, or any of the salts, isomers and salts of
24 isomers of dihydrocodeine, or an analog thereof;

25 (10.9) 100 grams or more of any substance containing
26 oxycodone, or any of the salts, isomers and salts of

1 isomers of oxycodone, or an analog thereof;

2 (11) 200 grams or more of any substance containing any
3 other controlled substance classified in Schedules I or II,
4 or an analog thereof, which is not otherwise included in
5 this subsection.

6 (b) Any person sentenced with respect to violations of
7 paragraph (1), (2), (3), (7), or (7.5) of subsection (a)
8 involving 100 grams or more of the controlled substance named
9 therein, may in addition to the penalties provided therein, be
10 fined an amount not more than \$500,000 or the full street value
11 of the controlled or counterfeit substance or controlled
12 substance analog, whichever is greater. The term "street value"
13 shall have the meaning ascribed in Section 110-5 of the Code of
14 Criminal Procedure of 1963. Any person sentenced with respect
15 to any other provision of subsection (a), may in addition to
16 the penalties provided therein, be fined an amount not to
17 exceed \$500,000.

18 (b-1) Excluding violations of this Act when the controlled
19 substance is fentanyl, any person sentenced to a term of
20 imprisonment with respect to violations of Section 401, 401.1,
21 405, 405.1, 405.2, or 407, when the substance containing the
22 controlled substance contains any amount of fentanyl, 6 ~~3~~ years
23 shall be added to the term of imprisonment imposed by the
24 court, and the maximum sentence for the offense shall be
25 increased by 6 ~~3~~ years.

26 (c) Any person who violates this Section with regard to the

1 following amounts of controlled or counterfeit substances or
2 controlled substance analogs, notwithstanding any of the
3 provisions of subsections (a), (b), (d), (e), (f), (g) or (h)
4 to the contrary, is guilty of a Class 1 felony. The fine for
5 violation of this subsection (c) shall not be more than
6 \$250,000:

7 (1) 1 gram or more but less than 15 grams of any
8 substance containing heroin, or an analog thereof;

9 (1.5) (blank) ~~1 gram or more but less than 15 grams of~~
10 ~~any substance containing fentanyl, or an analog thereof;~~

11 (2) 1 gram or more but less than 15 grams of any
12 substance containing cocaine, or an analog thereof;

13 (3) 10 grams or more but less than 15 grams of any
14 substance containing morphine, or an analog thereof;

15 (4) 50 grams or more but less than 200 grams of any
16 substance containing peyote, or an analog thereof;

17 (5) 50 grams or more but less than 200 grams of any
18 substance containing a derivative of barbituric acid or any
19 of the salts of a derivative of barbituric acid, or an
20 analog thereof;

21 (6) 50 grams or more but less than 200 grams of any
22 substance containing amphetamine or any salt of an optical
23 isomer of amphetamine, or an analog thereof;

24 (6.5) (blank);

25 (7) (i) 5 grams or more but less than 15 grams of any
26 substance containing lysergic acid diethylamide (LSD), or

1 an analog thereof, or (ii) more than 10 objects or more
2 than 10 segregated parts of an object or objects but less
3 than 15 objects or less than 15 segregated parts of an
4 object containing in them or having upon them any amount of
5 any substance containing lysergic acid diethylamide (LSD),
6 or an analog thereof;

7 (7.5) (i) 5 grams or more but less than 15 grams of any
8 substance listed in paragraph (1), (2), (2.1), (2.2), (3),
9 (14.1), (19), (20), (20.1), (21), (25), or (26) of
10 subsection (d) of Section 204, or an analog or derivative
11 thereof, or (ii) more than 10 pills, tablets, caplets,
12 capsules, or objects but less than 15 pills, tablets,
13 caplets, capsules, or objects containing in them or having
14 upon them any amount of any substance listed in paragraph
15 (1), (2), (2.1), (2.2), (3), (14.1), (19), (20), (20.1),
16 (21), (25), or (26) of subsection (d) of Section 204, or an
17 analog or derivative thereof;

18 (8) 10 grams or more but less than 30 grams of any
19 substance containing pentazocine or any of the salts,
20 isomers and salts of isomers of pentazocine, or an analog
21 thereof;

22 (9) 10 grams or more but less than 30 grams of any
23 substance containing methaqualone or any of the salts,
24 isomers and salts of isomers of methaqualone, or an analog
25 thereof;

26 (10) 10 grams or more but less than 30 grams of any

1 substance containing phencyclidine or any of the salts,
2 isomers and salts of isomers of phencyclidine (PCP), or an
3 analog thereof;

4 (10.5) 10 grams or more but less than 30 grams of any
5 substance containing ketamine or any of the salts, isomers
6 and salts of isomers of ketamine, or an analog thereof;

7 (10.6) 50 grams or more but less than 100 grams of any
8 substance containing hydrocodone, or any of the salts,
9 isomers and salts of isomers of hydrocodone, or an analog
10 thereof;

11 (10.7) (blank);

12 (10.8) 50 grams or more but less than 100 grams of any
13 substance containing dihydrocodeine, or any of the salts,
14 isomers and salts of isomers of dihydrocodeine, or an
15 analog thereof;

16 (10.9) 50 grams or more but less than 100 grams of any
17 substance containing oxycodone, or any of the salts,
18 isomers and salts of isomers of oxycodone, or an analog
19 thereof;

20 (11) 50 grams or more but less than 200 grams of any
21 substance containing a substance classified in Schedules I
22 or II, or an analog thereof, which is not otherwise
23 included in this subsection.

24 (c-5) (Blank).

25 (d) Any person who violates this Section with regard to any
26 other amount of a controlled or counterfeit substance

1 containing dihydrocodeine or classified in Schedules I or II,
2 or an analog thereof, which is (i) a narcotic drug, (ii)
3 lysergic acid diethylamide (LSD) or an analog thereof, (iii)
4 any substance containing amphetamine or fentanyl or any salt or
5 optical isomer of amphetamine or fentanyl, or an analog
6 thereof, or (iv) any substance containing N-Benzylpiperazine
7 (BZP) or any salt or optical isomer of N-Benzylpiperazine
8 (BZP), or an analog thereof, is guilty of a Class 2 felony. The
9 fine for violation of this subsection (d) shall not be more
10 than \$200,000.

11 (d-5) (Blank).

12 (e) Any person who violates this Section with regard to any
13 other amount of a controlled substance other than
14 methamphetamine or counterfeit substance classified in
15 Schedule I or II, or an analog thereof, which substance is not
16 included under subsection (d) of this Section, is guilty of a
17 Class 3 felony. The fine for violation of this subsection (e)
18 shall not be more than \$150,000.

19 (f) Any person who violates this Section with regard to any
20 other amount of a controlled or counterfeit substance
21 classified in Schedule III is guilty of a Class 3 felony. The
22 fine for violation of this subsection (f) shall not be more
23 than \$125,000.

24 (g) Any person who violates this Section with regard to any
25 other amount of a controlled or counterfeit substance
26 classified in Schedule IV is guilty of a Class 3 felony. The

1 fine for violation of this subsection (g) shall not be more
2 than \$100,000.

3 (h) Any person who violates this Section with regard to any
4 other amount of a controlled or counterfeit substance
5 classified in Schedule V is guilty of a Class 3 felony. The
6 fine for violation of this subsection (h) shall not be more
7 than \$75,000.

8 (i) This Section does not apply to the manufacture,
9 possession or distribution of a substance in conformance with
10 the provisions of an approved new drug application or an
11 exemption for investigational use within the meaning of Section
12 505 of the Federal Food, Drug and Cosmetic Act.

13 (j) (Blank).

14 (Source: P.A. 99-371, eff. 1-1-16; 99-585, eff. 1-1-17;
15 100-368, eff. 1-1-18.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.