



SF 508 – Controlled Substances, Penalty Enhancements and Fentanyl Penalties (LSB1229SV)
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 Fiscal Note Version – New

Description

[Senate File 508](#) relates to controlled substances, including fentanyl, and the administration of opioid antagonists and provides penalties. The Bill is organized by divisions.

Division I — Manufacture, Delivery, or Possession of a Controlled Substance

Description

Division I of the Bill addresses the manufacture, delivery, or possession of controlled substances; the manufacture or conspiracy to manufacture a controlled substance in the presence of a minor; and the delivery or conspiracy to deliver a controlled substance to a minor and provides penalties.

Table 1 shows expanded penalties under the Bill, **Table 2** shows the enhanced sentences under the Bill, and **Table 3** shows the controlled substances added to Iowa Code sections [124.401C](#) and [124.401D](#).

Table 1 — Expanded Penalties

Description	Felony	Penalty
The manufacture, delivery, or possession of a fentanyl-related substance containing more than 50 grams.	Class B	Confinement for no more than 50 years and a fine of not more than \$1.0 million.
The manufacture, delivery, or possession of a fentanyl-related substance containing more than 5 grams but not more than 50 grams.	Class B	Confinement for no more than 25 years and a fine of not less than \$5,000 nor more than \$100,000.
The manufacture, delivery, or possession of a fentanyl-related substance containing 5 grams or fewer.	Class C	Confinement for no more than 10 years and a fine of not less than \$1,000 nor more than \$50,000.

Table 2 — Enhanced Sentencing

Description	Penalty
An individual who causes the death of another person while participating in the manufacture, delivery, or possession of a controlled substance and who is not seeking medical assistance for a drug-related overdose.	Three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof may be deferred or suspended.
An individual who causes serious bodily injury to another person while participating in the manufacture, delivery, or possession of a controlled substance and who is not seeking medical assistance for a drug-related overdose.	Two times the term otherwise imposed by law, and no such judgement, sentence, or part thereof may be deferred or suspended.
The delivery to a minor or possession with the intent to deliver to a minor a controlled substance, counterfeit substance, simulated controlled substance, or imitation controlled substance will include combining a controlled substance with a food or beverage product, marketing or packaging a controlled substance to appear similar to a food or beverage product, or modifying the flavor or color of a controlled substance to appear similar to a food or beverage product.	Two times the term otherwise imposed by law, and no such judgement, sentence, or part thereof may be deferred or suspended.

Table 3 — Manufacture, Delivery, or Possession of a Controlled Substance

Description	Penalty
Current law provides that a person who is 18 years of age or older who either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufactures methamphetamine or its salts, isomers, or salts of its isomers in the presence of a minor will be sentenced up to an additional term of confinement of five years. The Bill adds any controlled substance listed in Iowa Code section 124.401(1)(a, b, and c) to this crime.	The previous penalty of the felony was confinement for no more than 50 years and a fine of not more than \$1.0 million. The Bill allows two times the term otherwise imposed by law, and no such judgement, sentence, or part thereof may be deferred or suspended. A second or subsequent violation is a Class A felony.
Current law states that it is unlawful for a person 18 years of age or older to act with, or enter into a common scheme or design with, or conspire with one or more persons to manufacture for delivery to a person under 18 years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers. The Bill adds any controlled substances listed in Iowa Code section 124.401(1)(a, b, and c) to this crime.	The previous penalty of confinement for no more than 99 years is stricken and provides that a person in violation will be sentenced to two times the term otherwise imposed by law, and no such judgement, sentence, or part thereof may be deferred or suspended. A second or subsequent violation is a Class A felony.

Background

Fentanyl and a fentanyl-related substance are categorized under Iowa Code section [124.204\(9\)](#) as a Schedule I substance.

Under Iowa Code section [124.401\(1\)\(a\)\(8\)](#), the manufacture, delivery, or possession of more than 10 kilograms of fentanyl or a fentanyl-related substance is a Class B felony and punishable by confinement for no more than 50 years and a fine of not more than \$1.0 million.

Under Iowa Code section [124.401\(1\)\(b\)\(9\)](#), the manufacture, delivery, or possession of more than 5 kilograms of but not more than 10 kilograms of fentanyl or a fentanyl-related substance is a Class B felony and punishable by confinement for no more than 25 years and a fine of not less than \$5,000 nor more than \$100,000.

Under Iowa Code section [124.401\(1\)\(c\)\(8\)](#), the manufacture, delivery, or possession of 5 kilograms or less of fentanyl or a fentanyl-related substance is a Class C felony and punishable by confinement for no more than 10 years and a fine of not less than \$1,000 nor more than \$50,000.

Fentanyl and all controlled substances listed in Iowa Code section [124.401\(1\)\(a, b, and c\)](#) are being introduced into the following Iowa Code sections, which currently only apply to methamphetamines or amphetamines:

- Iowa Code section [124.401C](#), relating to manufacturing, currently only applies to methamphetamine, and the enhanced penalty is an additional term of confinement of five years.
- Iowa Code section [124.401D\(1\)\(a\)](#), relating to the conspiracy to manufacture for delivery to a minor, currently only applies to amphetamine or methamphetamine, and a first conviction for a violation under this section is punishable by confinement up to 99 years under Iowa Code section [902.9\(1\)\(a\)](#).
- Iowa Code section [124.401D\(2\)\(a\)](#), relating to the delivery to or possession with the intent to deliver to a minor, currently only applies to amphetamine or methamphetamine. A first conviction for a violation under this section is punishable by confinement up to 99 years under Iowa Code section [902.9\(1\)\(a\)](#).

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends, prisoner length of stay (LOS), revocation rates, plea bargaining, and other criminal justice system policies and procedures.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.

Correctional Impact

Because the Bill expands current law and creates new penalties, the correctional impact of the Bill cannot be estimated.

In FY 2022, there were 527 individuals admitted to prison and 1,550 admitted to Community-Based Corrections (CBC) for the manufacture/delivery of any controlled substances under Iowa Code section [124.401\(1\)](#). In FY 2022, there were no individuals admitted to prison or to CBC for the manufacture/delivery involving a minor under Iowa Code section [124.401D](#).

Table 4 shows estimates for sentencing to State prison, parole, probation, or CBC residential facilities; LOS in months under those supervisions; and supervision marginal costs per day for

all convictions of Class C felonies, Class D felonies, aggravated misdemeanors, and serious misdemeanors. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 20, 2023, for information related to the correctional system.

Table 4 — Sentencing Estimates and LOS

Conviction Offense Class	Percent Ordered to State Prison	FY 22 Avg LOS In Prison In Months (All Releases)	FY 22 Marginal Cost Per Day Prison	Percent Ordered to Probation	FY 22 Avg LOS on Probation In Months	FY 22 Avg Cost Per Day Probation	Percent Sentenced to CBC Residential Facility	FY 22 Marginal Cost Per Day CBC	Percent Ordered to County Jail	Marginal Cost Per Day Jail	FY 22 Avg LOS on Parole In Months	FY 22 Marginal Cost Per Day Parole
B Felony Persons	95.2%	115.8	\$23.42	4.8%	38.3	\$7.27	0.0%	\$20.67	45.2%	\$50.00	33.1	\$7.27
C Felony Persons	89.8%	50.1	\$23.42	27.6%	39.0	\$7.27	3.6%	\$20.67	43.2%	\$50.00	19.5	\$7.27

Minority Impact

[Senate File 508](#) expands current law and creates new penalties. As a result, the Division of Criminal and Juvenile Justice Planning (CJJP) of the Department of Human Rights cannot use prior existing data to estimate the minority impact of SF 508. However, of the 527 prison admissions for manufacture/delivery of controlled substances under Iowa Code section 124.401(1), 75.0% were Caucasian, 14.8% were African American, and 10.2% were other races. Of the 1,550 admitted to CBC under Iowa Code section 124.401(1), 71.0% were Caucasian, 19.1% were African American, and 9.9% were other races. Iowa’s population is 84.5% Caucasian, 3.6% African American, and 11.9% other races.

Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 20, 2023, for information related to minorities in the criminal justice system.

Fiscal Impact

[Senate File 508](#) expands current law and creates new penalties. As a result, the fiscal impact cannot be determined due to a lack of existing data. **Table 5** shows the average State cost per offense for a Class B felony and Class C felony. The estimated impact to the State General Fund includes operating costs incurred by the Judicial Branch, the Indigent Defense Fund, and the Department of Corrections (DOC). The cost would be incurred across multiple fiscal years for prison and parole supervision.

Table 5 — Average State Cost Per Offense

Offense Class	Average Cost
Class B Felony	\$14,200 to \$46,300
Class C Felony	\$12,100 to \$25,100

Division II — Receipt, Provision, and Administration of Opioid Antagonists

Description

Division II of the Bill expands the authorization for the receipt, provision, and administration of opioid antagonists to secondary distributors and provides immunity for affected individuals.

The Bill makes the following changes:

- A licensed health care provider may prescribe an opioid antagonist to a secondary distributor.

- Secondary distributors include the following list of qualified individuals: a law enforcement agency, an emergency medical services program, a fire department, a school district, a health care provider, a licensed behavioral health provider, a county health department, or the Department of Health and Human Services (HHS).
- A licensed pharmacist may dispense, furnish, or provide an opioid antagonist in the name of secondary distributors and provide liability protection for both parties.
- Both secondary distributors and the pharmacist who dispenses the opioid antagonist are added to the list of persons who are granted immunity arising from any injury resulting from using an opioid antagonist under Iowa Code section [147A.18](#).
- A secondary distributor may obtain a prescription for and maintain a supply of antagonists, with the responsibility of replacing the antagonist upon its use or expiration.
- A pharmacist or a secondary distributor who provides an opioid antagonist pursuant to a valid prescription, standing order, or collaborative agreement must provide written instruction, including emergency, crisis, and substance use referral contact information, to the recipient.
- A secondary distributor may possess and provide an opioid antagonist to a person in a position to assist.
- Pharmacists may order and administer other opioid antagonists for overdose reversals to patients ages 18 years and older instead of naloxone.

Background

Current law allows licensed health care professionals to prescribe an opioid antagonist to a person in a position to render aid to a person at risk of experiencing an opioid-related overdose. This may be a family member, friend, caregiver, employee of a substance abuse treatment facility, or another individual whom a health care professional deems appropriate.

A person in a position to assist and administer an opioid antagonist, when prescribed by a health care professional, who has acted reasonably and in good faith is not held liable for any injury arising from administering the opioid antagonist when under the belief that the individual is experiencing an opioid-related overdose.

Current law provides that a licensed pharmacist may, by standing order or through collaborative agreement, dispense, furnish, or otherwise provide an opioid antagonist in the name of a service program, law enforcement agency, or fire department.

Iowa Code section [155A.46](#) previously listed naloxone as the only approved opioid antagonist, but the Bill broadens this language to include any opioid antagonists that are used for overdose reversals.

Through federal grants, the HHS purchased approximately 4,300 naloxone kits (rate of \$47.50 per kit) for a total of \$204,000 in FY 2022. The Department has budgeted \$668,000 in FY 2024 and FY 2025 from federal grants to fund additional kits. These kits are provided to law enforcement agencies, fire departments, businesses, organizations, and schools to have on hand for administration purposes in the event of a suspected opioid overdose.

Assumptions

- HHS will not be required to be a secondary distributor.
- The current budgeted amount of naloxone kits will not be exceeded and HHS will not be required to purchase additional kits.

Fiscal Impact

Division II of the Bill is estimated to have little to no fiscal impact.

Sources

Criminal and Juvenile Justice Planning Division, Department of Human Rights
Department of Corrections
Department of Public Safety
Department of Health and Human Services

/s/ Jennifer Acton

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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