

House Study Bill 104 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED GOVERNOR BILL)

A BILL FOR

1 An Act relating to controlled substances including the
2 manufacture, delivery, or possession of a controlled
3 substance including fentanyl; the manufacture of a
4 controlled substance in the presence of a minor; conspiracy
5 to manufacture for delivery or delivery or intent or
6 conspiracy to deliver a controlled substance to a
7 minor; receipt, provision, and administration of opioid
8 antagonists, including by secondary distributors, providing
9 for immunity; and providing penalties.
10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

MANUFACTURE, DELIVERY, OR POSSESSION OF A CONTROLLED SUBSTANCE

Section 1. Section 124.401, subsection 1, paragraph a, subparagraph (8), Code 2023, is amended to read as follows:

(8) More than ten kilograms of a mixture or substance containing any detectable amount of those substances identified in section 124.204, subsection 9, except for a mixture or substance containing any detectable amount of fentanyl or any fentanyl-related substance identified in section 124.204, subsection 9.

Sec. 2. Section 124.401, subsection 1, paragraph a, Code 2023, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (9) More than fifty grams of a mixture or substance containing a detectable amount of fentanyl or any fentanyl-related substance identified in section 124.204, subsection 9.

Sec. 3. Section 124.401, subsection 1, paragraph b, Code 2023, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (10) More than five grams but not more than fifty grams of a mixture or substance containing a detectable amount of fentanyl or any fentanyl-related substance identified in section 124.204, subsection 9.

Sec. 4. Section 124.401, subsection 1, paragraph c, Code 2023, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (10) Five grams or less of a mixture or substance containing a detectable amount of fentanyl or any fentanyl-related substance identified in section 124.204, subsection 9.

Sec. 5. Section 124.401, subsection 1, Code 2023, is amended by adding the following new paragraphs:

NEW PARAGRAPH. *g.* A person who causes the death of another person while participating in a violation of this subsection and who is not entitled to protection under section 124.418, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be

1 deferred or suspended.

2 NEW PARAGRAPH. *h.* A person who causes serious bodily injury
3 to another person while participating in a violation of this
4 subsection and who is not entitled to protection under section
5 124.418, shall be sentenced to two times the term otherwise
6 imposed by law, and no such judgment, sentence, or part thereof
7 shall be deferred or suspended.

8 Sec. 6. Section 124.401C, subsection 1, Code 2023, is
9 amended to read as follows:

10 1. In addition to any other penalties provided in this
11 chapter, a person who is eighteen years of age or older and
12 who either directly or by extraction from natural substances,
13 or independently by means of chemical processes, or both,
14 unlawfully manufactures ~~methamphetamine, its salts, isomers,~~
15 ~~or salts of its isomers~~ a controlled substance, counterfeit
16 substance, simulated controlled substance, or imitation
17 controlled substance in violation of section 124.401,
18 subsection 1, paragraph "a", "b", or "c", in the presence
19 of a minor shall be sentenced ~~up to an additional term of~~
20 ~~confinement of five years~~ to two times the term otherwise
21 imposed by law, and no such judgment, sentence, or part thereof
22 shall be deferred or suspended. However, the additional term
23 of confinement shall not be imposed on a person who has been
24 convicted and sentenced for a child endangerment offense under
25 section 726.6, subsection 1, paragraph "g", arising from the
26 same facts.

27 Sec. 7. Section 124.401D, Code 2023, is amended to read as
28 follows:

29 **124.401D Conspiracy to manufacture for delivery or delivery**
30 **or intent or conspiracy to deliver ~~amphetamine or methamphetamine~~**
31 **to a minor.**

32 1. *a.* It is unlawful for a person eighteen years of age
33 or older to act with, or enter into a common scheme or design
34 with, or conspire with one or more persons to manufacture
35 for delivery to a person under eighteen years of age a

1 ~~material, compound, mixture, preparation, or substance that~~
2 ~~contains any detectable amount of amphetamine, its salts,~~
3 ~~isomers, or salts of its isomers, or methamphetamine, its~~
4 ~~salts, isomers, or salts of its isomers~~ controlled substance,
5 counterfeit substance, simulated controlled substance, or
6 imitation controlled substance in violation of section 124.401,
7 subsection 1, paragraph "a", "b", or "c".

8 ~~b. A violation of this subsection is a felony punishable~~
9 ~~under section 902.9, subsection 1, paragraph "a"~~ A person
10 violating this subsection shall be sentenced to two times the
11 term otherwise imposed under section 124.401, subsection 1, and
12 no such judgment, sentence, or part thereof shall be deferred
13 or suspended.

14 ~~c. A second or subsequent violation of this subsection is a~~
15 ~~class "A" felony.~~

16 2. ~~a. It is unlawful for a person eighteen years of age~~
17 ~~or older to deliver, or possess with the intent to deliver to~~
18 ~~a person under eighteen years of age, a ~~material, compound,~~~~
19 ~~mixture, preparation, or substance that contains any detectable~~
20 ~~amount of amphetamine, its salts, isomers, or salts of its~~
21 ~~isomers, or methamphetamine, its salts, isomers, or salts~~
22 ~~of its isomers~~ controlled substance, counterfeit substance,
23 simulated controlled substance, or imitation controlled
24 substance in violation of section 124.401, subsection 1,
25 paragraph "a", "b", or "c", or to act with, or enter into a
26 common scheme or design with, or conspire with one or more
27 persons to deliver or possess with the intent to deliver to
28 a person under eighteen years of age a ~~material, compound,~~
29 mixture, preparation, or substance that contains any detectable
30 amount of amphetamine, its salts, isomers, or salts of its
31 isomers, or methamphetamine, its salts, isomers, or salts
32 of its isomers controlled substance, counterfeit substance,
33 simulated controlled substance, or imitation controlled
34 substance in violation of section 124.401, subsection 1,
35 paragraph "a", "b", or "c".

1 ~~b. A violation of this subsection is a felony punishable~~
2 ~~under section 902.9, subsection 1, paragraph "a" A person~~
3 ~~violating this subsection shall be sentenced to two times the~~
4 ~~term otherwise imposed under section 124.401, subsection 1, and~~
5 ~~no such judgment, sentence, or part thereof shall be deferred~~
6 ~~or suspended.~~

7 c. A second or subsequent violation of this subsection is a
8 class "A" felony.

9 3. Delivery to a minor or possession with intent to deliver
10 to a minor a controlled substance, counterfeit substance,
11 simulated controlled substance, or imitation controlled
12 substance in violation of section 124.401, subsection 1,
13 paragraph "a", "b", or "c", shall include the following products
14 if the person knew or had reasonable cause to believe the
15 controlled, counterfeit, simulated, or imitation controlled
16 substance would be delivered to a person under eighteen years
17 of age:

18 a. Combining a controlled substance listed in section
19 124.401, subsection 1, paragraph "a", "b", or "c", with a food
20 or beverage product.

21 b. Marketing or packaging a controlled substance listed in
22 section 124.401, subsection 1, paragraph "a", "b", or "c", to
23 appear similar to a food or beverage product.

24 c. Modifying the flavor or color of a controlled substance
25 listed in section 124.401, subsection 1, paragraph "a", "b", or
26 "c", to appear similar to a food or beverage product.

27 Sec. 8. Section 811.1, subsections 1 and 2, Code 2023, are
28 amended to read as follows:

29 1. A defendant awaiting judgment of conviction and
30 sentencing following either a plea or verdict of guilty of a
31 class "A" felony; forcible felony as defined in section 702.11;
32 any class "B" felony included in section 462A.14 or 707.6A; any
33 felony included in section 124.401, subsection 1, paragraph
34 "a" or "b"; a second or subsequent offense under section
35 124.401, subsection 1, paragraph "c"; ~~any felony punishable~~

1 ~~under section 902.9, subsection 1, paragraph "a";~~ any public
2 offense committed while detained pursuant to [section 229A.5](#);
3 or any public offense committed while subject to an order of
4 commitment pursuant to [chapter 229A](#).

5 2. A defendant appealing a conviction of a class "A"
6 felony; forcible felony as defined in [section 702.11](#); any class
7 "B" or "C" felony included in [section 462A.14](#) or [707.6A](#); any
8 felony included in [section 124.401, subsection 1, paragraph](#)
9 ["a"](#) or ["b"](#); or a second or subsequent conviction under section
10 [124.401, subsection 1, paragraph "c"](#); ~~any felony punishable~~
11 ~~under section 902.9, subsection 1, paragraph "a";~~ any public
12 offense committed while detained pursuant to [section 229A.5](#);
13 or any public offense committed while subject to an order of
14 commitment pursuant to [chapter 229A](#).

15 Sec. 9. Section 901.2, subsection 2, paragraph b, Code 2023,
16 is amended to read as follows:

17 b. The court shall order a presentence investigation when
18 the offense is ~~any felony punishable under section 902.9,~~
19 ~~subsection 1, paragraph "a",~~ or a class "B", class "C", or
20 class "D" felony. A presentence investigation for ~~any felony~~
21 ~~punishable under section 902.9, subsection 1, paragraph "a",~~
22 or a class "B", class "C", or class "D" felony shall not
23 be waived. The court may order, with the consent of the
24 defendant, that the presentence investigation begin prior to
25 the acceptance of a plea of guilty, or prior to a verdict of
26 guilty.

27 Sec. 10. Section 902.9, subsection 1, paragraph a, Code
28 2023, is amended by striking the paragraph.

29 Sec. 11. Section 906.5, subsection 1, paragraph a, Code
30 2023, is amended to read as follows:

31 a. The board shall establish and implement a plan by which
32 the board systematically reviews the status of each person who
33 has been committed to the custody of the director of the Iowa
34 department of corrections and considers the person's prospects
35 for parole or work release. The board at least annually shall

1 review the status of a person other than a class "A" felon, a
2 class "B" felon serving a sentence of more than twenty-five
3 years, ~~or a felon serving an offense punishable under section~~
4 ~~902.9, subsection 1, paragraph "a",~~ or a felon serving a
5 mandatory minimum sentence other than a class "A" felon, and
6 provide the person with notice of the board's parole or work
7 release decision.

8 Sec. 12. REPEAL. Section 901.5A, Code 2023, is repealed.

9

DIVISION II

10 RECEIPT, PROVISION, AND ADMINISTRATION OF OPIOID ANTAGONISTS

11 Sec. 13. Section 135.190, subsection 1, Code 2023, is
12 amended by adding the following new paragraph:

13 NEW PARAGRAPH. e. "*Secondary distributor*" means a law
14 enforcement agency, emergency medical services program, fire
15 department, school district, health care provider, licensed
16 behavioral health provider, county health department, or the
17 department of health and human services.

18 Sec. 14. Section 135.190, subsections 2 and 4, Code 2023,
19 are amended to read as follows:

20 2. a. Notwithstanding any other provision of law to the
21 contrary, a licensed health care professional may prescribe an
22 opioid antagonist to a person in a position to assist or to a
23 secondary distributor.

24 b. (1) Notwithstanding any other provision of law to the
25 contrary, a pharmacist licensed under [chapter 155A](#) may, by
26 standing order or through collaborative agreement, dispense,
27 furnish, or otherwise provide an opioid antagonist to a person
28 in a position to assist or to a secondary distributor.

29 (2) A pharmacist or secondary distributor who dispenses,
30 furnishes, or otherwise provides an opioid antagonist pursuant
31 to a valid prescription, standing order, or collaborative
32 agreement shall provide written instruction, which shall
33 include emergency, crisis, and substance use referral contact
34 information, to the recipient in accordance with any protocols
35 and instructions developed by the department under this

1 section.

2 4. A person in a position to assist, a secondary
3 distributor, or a prescriber of an opioid antagonist who has
4 acted reasonably and in good faith shall not be liable for
5 any injury arising from the provision, administration, or
6 assistance in the administration of an opioid antagonist as
7 provided in this section.

8 Sec. 15. Section 147A.18, subsections 1 and 2, Code 2023,
9 are amended to read as follows:

10 1. *a.* Notwithstanding any other provision of law to the
11 contrary, a licensed health care professional may prescribe
12 an opioid antagonist in the name of a service program,
13 law enforcement agency, ~~or~~ fire department, or secondary
14 distributor to be maintained for use as provided in this
15 section. For purposes of this section, "secondary distributor"
16 means the same as defined in section 135.190.

17 *b.* (1) Notwithstanding any other provision of law to the
18 contrary, a pharmacist licensed under chapter 155A may, by
19 standing order or through collaborative agreement, dispense,
20 furnish, or otherwise provide an opioid antagonist in the
21 name of a service program, law enforcement agency, ~~or~~
22 department, or secondary distributor to be maintained for use
23 as provided in this section.

24 (2) A pharmacist or secondary distributor who dispenses,
25 furnishes, or otherwise provides an opioid antagonist pursuant
26 to a valid prescription, standing order, or collaborative
27 agreement shall provide written instruction, which shall
28 include emergency, crisis, and substance referral contact
29 information, to the recipient in accordance with the protocols
30 and instructions developed by the department under this
31 section.

32 2. A service program, law enforcement agency, ~~or~~ fire
33 department, or secondary distributor may obtain a prescription
34 for and maintain a supply of opioid antagonists. A service
35 program, law enforcement agency, ~~or~~ fire department, or

1 secondary distributor that obtains such a prescription shall
2 replace an opioid antagonist upon its use or expiration.

3 Sec. 16. Section 147A.18, Code 2023, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 3A. A secondary distributor may possess
6 and provide an opioid antagonist to a person in a position to
7 assist as defined in section 135.190.

8 Sec. 17. Section 147A.18, subsection 4, paragraph b, Code
9 2023, is amended to read as follows:

10 b. A service program, law enforcement agency, ~~or~~ fire
11 department, or secondary distributor.

12 Sec. 18. Section 147A.18, subsection 4, Code 2023, is
13 amended by adding the following new paragraph:

14 NEW PARAGRAPH. d. The pharmacist who dispenses the opioid
15 antagonist.

16 Sec. 19. Section 155A.3, subsections 24 and 54, Code 2023,
17 are amended to read as follows:

18 24. "*Limited distributor*" means a person operating or
19 maintaining a location, regardless of the location, where
20 prescription drugs or devices are distributed at wholesale or
21 to a patient pursuant to a prescription drug order, who is
22 not eligible for a wholesale distributor license or pharmacy
23 license. "*Limited distributor*" does not include a secondary
24 distributor as defined in section 135.190.

25 54. "*Wholesale distributor*" means a person, other than
26 a manufacturer, a manufacturer's co-licensed partner, a
27 third-party logistics provider, or repackager, engaged in the
28 wholesale distribution of a drug. "*Wholesale distributor*"
29 does not include a secondary distributor as defined in section
30 135.190.

31 Sec. 20. Section 155A.46, subsection 1, paragraph a,
32 subparagraph (1), Code 2023, is amended to read as follows:

33 (1) ~~Naloxone~~ Opioid antagonists for overdose reversals.

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 This bill relates to controlled substances including the
3 manufacture, delivery, or possession of a controlled substance
4 including fentanyl; the manufacture of a controlled substance
5 in the presence of a minor; a conspiracy to manufacture for
6 delivery or delivery or intent or conspiracy to deliver a
7 controlled substance to a minor; the receipt, provision, and
8 administration of opioid antagonists, including by secondary
9 distributors, provides for immunity; and provides penalties.
10 The bill is organized by divisions.

11 DIVISION I — MANUFACTURE, DELIVERY, OR POSSESSION OF A
12 CONTROLLED SUBSTANCE.

13 FENTANYL. The bill provides that the manufacture, delivery
14 or possession of a controlled substance containing more than 50
15 grams of a mixture or substance containing a detectable amount
16 of fentanyl or any fentanyl-related substance identified in
17 Code section 124.204(9) is a class "B" felony, punishable by
18 confinement for no more than 50 years and a fine of not more
19 than \$1 million.

20 The bill provides that the manufacture, delivery or
21 possession of a controlled substance containing more
22 than 5 grams but not more than 50 grams of a mixture or
23 substance containing a detectable amount of fentanyl or
24 any fentanyl-related substance identified in Code section
25 124.204(9) is a class "B" felony, punishable by confinement for
26 no more than 25 years and a fine of not less than \$5,000 nor
27 more than \$100,000.

28 The bill provides that the manufacture, delivery or
29 possession of a controlled substance containing 5 grams or
30 less of a mixture or substance containing a detectable amount
31 of fentanyl or any fentanyl-related substance identified in
32 Code section 124.204(9) is a class "C" felony, punishable by
33 confinement for no more than 10 years and a fine of not less
34 than \$1,000 nor more than \$50,000.

35 MANUFACTURE, DELIVERY, OR POSSESSION OF CONTROLLED

1 SUBSTANCES — SENTENCING ENHANCEMENTS. The bill provides
2 that a person who causes the death of another person while
3 participating in the manufacture, delivery, or possession of
4 a controlled substance and who is not entitled to protection
5 under Code section 124.418 (persons seeking medical assistance
6 for drug-related overdose), shall be sentenced to three times
7 the term otherwise imposed by law, and no such judgment,
8 sentence, or part thereof shall be deferred or suspended.

9 The bill provides that a person who causes serious bodily
10 injury to another person while participating in a violation
11 of the manufacture, delivery, or possession of a controlled
12 substance and who is not entitled to protection under Code
13 section 124.418, shall be sentenced to two times the term
14 otherwise imposed by law, and no such judgment, sentence, or
15 part thereof shall be deferred or suspended.

16 MANUFACTURE OF CONTROLLED SUBSTANCES IN PRESENCE OF A MINOR.
17 Current law provides that in addition to any other penalties
18 provided in Code chapter 124, a person who is 18 years of age
19 or older and who either directly or by extraction from natural
20 substances, or independently by means of chemical processes,
21 or both, unlawfully manufactures methamphetamine, its salts,
22 isomers, or salts of its isomers in the presence of a minor
23 shall be sentenced up to an additional term of confinement
24 of five years. The bill amends current law to apply to all
25 controlled substances listed in Code section 124.401(1)(a,
26 b, and c) and provides that a person in violation of this
27 provision shall be sentenced to two times the term otherwise
28 imposed by law, and no such judgment, sentence, or part thereof
29 shall be deferred or suspended.

30 CONSPIRACY TO MANUFACTURE CONTROLLED SUBSTANCES FOR DELIVERY
31 TO MINOR. Current law provides that it is unlawful for a
32 person 18 years of age or older to act with, or enter into a
33 common scheme or design with, or conspire with one or more
34 persons to manufacture for delivery to a person under 18 years
35 of age a material, compound, mixture, preparation, or substance

1 that contains any detectable amount of amphetamine, its salts,
2 isomers, or salts of its isomers, or methamphetamine, its
3 salts, isomers, or salts of its isomers. A person in violation
4 of this provision shall be confined for no more than 99 years.
5 The bill strikes this penalty. The bill amends current law
6 to apply to all controlled substances listed in Code section
7 124.401(1)(a, b, and c) and provides that a person in violation
8 of this provision shall be sentenced to two times the term
9 otherwise imposed by law, and no such judgment, sentence, or
10 part thereof shall be deferred or suspended. A second or
11 subsequent violation is a class "A" felony.

12 Current law provides that it is unlawful for a person 18
13 years of age or older to deliver, or possess with the intent
14 to deliver to a person under 18 years of age, a material,
15 compound, mixture, preparation, or substance that contains any
16 detectable amount of amphetamine, its salts, isomers, or salts
17 of its isomers, or methamphetamine, its salts, isomers, or
18 salts of its isomers. A person in violation of this provision
19 shall be confined for no more than 99 years. The bill strikes
20 this penalty. The bill amends current law to apply to all
21 controlled substances listed in Code section 124.401(1)(a,
22 b, and c) and provides that a person in violation of this
23 provision shall be sentenced to two times the term otherwise
24 imposed by law, and no such judgment, sentence, or part
25 thereof shall be deferred or suspended. A second or subsequent
26 violation is a class "A" felony.

27 The bill makes conforming Code changes due to the strike of
28 the 99-year penalty.

29 DELIVERY OF A CONTROLLED SUBSTANCE TO MINOR — FOOD OR
30 BEVERAGE PRODUCTS. The bill provides that delivery to a minor
31 or possession with intent to deliver to a minor a controlled
32 substance, counterfeit substance, simulated controlled
33 substance, or imitation controlled substance shall include the
34 following products if the person knew or had reasonable cause
35 to believe the controlled substance, counterfeit substance,

1 simulated controlled substance, or imitation controlled
2 substance would be delivered to a person under 18 years of
3 age: combining a controlled substance with a food or beverage
4 product; marketing or packaging a controlled substance to
5 appear similar to a food or beverage product; or modifying the
6 flavor or color of a controlled substance to appear similar to
7 a food or beverage product.

8 DIVISION II — RECEIPT, PROVISION, AND ADMINISTRATION OF
9 OPIOID ANTAGONISTS — SECONDARY DISTRIBUTORS — IMMUNITY.

10 Current law provides that a licensed health care professional
11 may prescribe an opioid antagonist to a person in a position
12 to assist. The bill expands this authorization to provide
13 that a licensed health care provider may prescribe an opioid
14 antagonist to a secondary distributor as defined in the bill.

15 Current law provides that a licensed pharmacist may, by
16 standing order or through collaborative agreement, dispense,
17 furnish, or otherwise provide an opioid antagonist in the
18 name of a service program, law enforcement agency, or fire
19 department. The bill expands this authorization to provide
20 that a licensed pharmacist may, by standing order or through
21 collaborative agreement, dispense, furnish, or otherwise
22 provide an opioid antagonist in the name of a secondary
23 distributor.

24 The bill includes secondary distributors and the pharmacist
25 who dispenses the opioid antagonist, provided they have acted
26 reasonably and in good faith, to the list of persons who shall
27 not be liable for any injury arising from the provision,
28 administration, or assistance in the administration of an
29 opioid antagonist.

30 The bill provides that a secondary distributor may obtain a
31 prescription for and maintain a supply of opioid antagonists.
32 A secondary distributor that obtains such a prescription shall
33 replace an opioid antagonist upon its use or expiration.

34 The bill provides that a pharmacist or secondary distributor
35 who dispenses, furnishes, or otherwise provides an opioid

1 antagonist pursuant to a valid prescription, standing order,
2 or collaborative agreement shall provide written instruction,
3 including emergency, crisis, and substance use referral contact
4 information, to the recipient.

5 The bill provides that a secondary distributor may possess
6 and provide an opioid antagonist to a person in a position to
7 assist.

8 The bill provides that the terms "limited distributor" and
9 "wholesale distributor" do not include a secondary distributor
10 for purposes of Code chapter 155A (pharmacy).

11 The bill provides that a pharmacist may order and administer
12 opioid antagonists for overdose reversals to patients ages 18
13 years and older instead of naloxone.