

FENTANYL-SPECIFIC CRIMINAL PROVISIONS: SUMMARY OF STATE LAWS

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FENTANYL-SPECIFIC CRIMINAL PROVISIONS: SUMMARY OF STATE LAWS

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SUMMARY

An estimated 109,680 individuals in the United States died as the result of a drug overdose in 2022.¹ Of those, more than 75,000 deaths involved synthetic opioids (not including methadone).² Fentanyl is classified as a synthetic opioid and is up to 50 times stronger than heroin and 100 times stronger than morphine.³ Illicit drugs are increasingly being adulterated with illicitly manufactured fentanyl “because of its extreme potency, which makes drugs cheaper, more powerful, more addictive, and more dangerous.”⁴ Reports from local, state, and federal forensic laboratories on fentanyl – both pharmaceutical and illicitly manufactured – increased by nearly 10 percent during the three-year period from 2014 to 2017.⁵

Likely as a result of these factors, states across the country either already have fentanyl-specific criminal provisions related to possession, manufacture, or trafficking of fentanyl or have proposed legislation to enact such criminal provisions. The information set forth in the bullets below is current as of June 8, 2023.

- Twenty-two (22) states have one or more fentanyl-specific criminal provisions already in place;
- Five (5) states, the District of Columbia, and three U.S. territories – Guam, Puerto Rico, and the U.S. Virgin Islands – do not currently have any fentanyl-specific criminal provisions in place and do not have any legislation pending to enact such provisions; and
- Twenty-one (21) states do not currently have any fentanyl-specific criminal provisions in place but have one or more bills pending to enact such provisions.

¹ *Provisional Drug Overdose Death Counts*, CTRS. FOR DISEASE CONTROL & PREVENTION (last reviewed May 17, 2023), [Products - Vital Statistics Rapid Release - Provisional Drug Overdose Data \(cdc.gov\)](#).

² *Id.*

³ *Fentanyl Facts*, CTRS. FOR DISEASE CONTROL & PREVENTION (last reviewed May 12, 2023), [Fentanyl Facts \(cdc.gov\)](#).

⁴ *Id.*

⁵ *Drug Fact Sheet: Fentanyl*, DRUG ENF’T ADMIN. (Apr. 2020), [Drug Fact Sheet: Fentanyl \(dea.gov\)](#).

<u>ALABAMA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ALA. CODE § 13A-12-211 (West 2022). (Unlawful distribution of controlled substances; possession with intent to distribute a controlled substance). • ALA. CODE § 13A-12-231 (West 2022). (Trafficking in cannabis, cocaine, etc.; mandatory minimum terms of imprisonment; trafficking in illegal drugs; trafficking in amphetamine and methamphetamine; habitual felony offender act).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; synthetic controlled substance fentanyl analogue.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • April 6, 2018 (§§ 13A-12-211 and 13A-12-231).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 13A-12-211(c) – a person commits the crime of unlawful possession with intent to distribute a controlled substance if, except as otherwise authorized by law, he or she knowingly possesses:</p> <ul style="list-style-type: none"> - More than two grams, but less than four grams, of any mixture of morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin or any mixture containing fentanyl or any synthetic controlled substance fentanyl analogue; - More than one-half gram, but less than one gram, of fentanyl or any synthetic controlled substance fentanyl analogue, as a single component. <p>(b) Unlawful possession with intent to distribute a controlled substance is a Class B felony.</p> <p>§ 13A-12-231(3) – any person, except as otherwise authorized by law, who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, or any mixture containing fentanyl or any synthetic controlled substance fentanyl analogue, is guilty of a felony, which felony shall be known as “trafficking in illegal drugs.” If the quantity involved is:</p> <ul style="list-style-type: none"> - Four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of

<u>ALABAMA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>imprisonment of three calendar years and pay a fine of \$50,000;</p> <ul style="list-style-type: none"> - 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and pay a fine of \$100,000; - 28 grams or more, but less than 56 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,000; - 56 grams or more, the person shall be sentenced to a mandatory term of imprisonment of life. <p><i>(eff. until June 30, 2023)</i> (13) Any person, unless otherwise authorized by law, who knowingly sells, manufactures, delivers, or brings into this state, or who is in actual or constructive possession of, one gram or more of fentanyl or any synthetic controlled substance fentanyl analogue, as a single component as described in §§ 20-2-23 and 20-2-25, is guilty of a felony, which felony shall be known as “trafficking in illegal drugs.” If the quantity involved is:</p> <ul style="list-style-type: none"> - One gram or more, but less than two grams, the person shall be ordered to pay a minimum fine of \$50,000; - Two grams or more, but less than four grams, the person shall be ordered to pay a minimum fine of \$100,000; - Four grams or more, but less than eight grams, the person shall be ordered to pay a minimum fine of \$500,000; - Eight grams or more, the person shall be ordered to pay a minimum fine of \$750,000. <p><i>(eff. July 1, 2023)</i> (13)(a) Any person, unless otherwise authorized by law, who knowingly sells, manufactures, delivers, or brings into this state, or who is in actual or constructive possession of, one gram or more of fentanyl or any synthetic controlled substance fentanyl analogue, as a single component, is guilty of a felony, which shall be known as “trafficking in illegal drugs.” If the quantity involved is:</p> <ul style="list-style-type: none"> - One gram or more, but less than two grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a minimum fine of \$50,000;

<u>ALABAMA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<ul style="list-style-type: none"> - Two grams or more, but less than four grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a minimum fine of \$100,000; - Four grams or more, but less than eight grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a minimum fine of \$500,000; and - Eight grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of life and to pay a minimum fine of \$750,000. <p><i>(eff. July 1, 2023)</i> (13)(b.1) Notwithstanding any other provision of law, in addition to the penalties provided by law, upon a second conviction of this subdivision, the person shall be sentenced to an additional term of imprisonment of five calendar years, which is not subject to suspension or probation.</p> <p><i>(eff. July 1, 2023)</i> (13)(b.2) Upon a third or subsequent conviction of this subdivision, in addition to the penalties provided by law, the person shall be sentenced to an additional term of imprisonment of 10 calendar years, which is not subject to suspension or probation.</p> <p>(15) The felonies listed above shall be treated as Class A felonies.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes and no; certain penalties for fentanyl are the same as those for morphine and opium, while others are specific to fentanyl.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>ALASKA</u>	
Statute(s) and regulation(s)	• ALASKA STAT. ANN. § 11.71.140 (West 2022). (Schedule IA).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 11.71.140 - fentanyl and carfentanil are included in Schedule IA. All criminal provisions in Alaska related to Schedule IA apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>ARIZONA</u>	
Statute(s) and regulation(s)	• ARIZ. REV. STAT. ANN. § 13-3401 (West 2023). (Definitions).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil; fentanyl mimetic substances; narcotic drug.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 13-3401(20) – “narcotic drugs” is defined to include carfentanil, fentanyl, and fentanyl mimetic substances. All criminal provisions in Arizona related to narcotic drugs apply to fentanyl, carfentanil, and fentanyl mimetic substances.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>ARKANSAS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ARK. CODE ANN. § 5-10-202 (West 2023). (Aggravated death by delivery). • ARK. CODE ANN. § 5-10-207 (West 2023). (Consensual ingestion not a defense). • ARK. CODE ANN. § 5-13-214 (West 2023). (Knowingly exposing another person to fentanyl in the first and second degree). • ARK. CODE ANN. § 5-64-421 (West 2023). (Possession of fentanyl—possession of fentanyl with the purpose to deliver—delivery of fentanyl—manufacture of fentanyl). • ARK. CODE ANN. - § 5-64-440 (West 2023). (Trafficking a controlled substance). • ARK. CODE ANN. - § 5-64-443 (West 2023). (Possession of drug paraphernalia).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 28, 2021 (§ 5-64-443). • April 11, 2023 (§§ 5-10-202, 5-10-207, 5-13-214, 5-64-421, and 5-64-440).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 5-10-202 – a person commits the offense of aggravated death by delivery if:</p> <ul style="list-style-type: none"> - (1) He or she knowingly delivers or conveys fentanyl to another person and the injection, ingestion, inhalation, or other introduction of the fentanyl, including any adulterants or diluents, is the cause of death of the other person; - (2) He or she knowingly delivers or conveys fentanyl, methamphetamine, heroin, or cocaine to a minor and the injection, ingestion, inhalation, or other introduction of the fentanyl, methamphetamine, heroin, or cocaine, including any adulterants or diluents, causes the death of the minor. <p>A violation of (1) is an unclassified felony with a sentence of no less than 20 years and no more than 60 years, or life.</p> <p>Except as otherwise provided, a violation of (2) is an unclassified felony with a sentence of life. A person who violates (2) and is no less than three years older than the minor whose death was caused is guilty of an unclassified felony and</p>

<u>ARKANSAS</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>shall be sentenced to a term of imprisonment of no less than 20 years nor more than 60 years, or life.</p> <p>§ 5-10-207 – it is not a defense to a prosecution under this chapter that a person knowingly and voluntarily consented to the injection, ingestion, inhalation, or other introduction of the controlled substance or counterfeit substance.</p> <p>§ 5-13-214 – a person commits the offense of knowingly exposing another person to fentanyl in the first degree if the person knowingly exposes another person to fentanyl and the other person suffers serious physical injury as a result of the exposure. Knowingly exposing another person to fentanyl in the first degree is:</p> <ul style="list-style-type: none"> - A Class Y felony if the other person is a first responder or an employee of a correctional facility; or - A Class A felony if otherwise committed. <p>A person commits the offense of knowingly exposing another person to fentanyl in the second degree if the person knowingly exposes another person to fentanyl and the other person suffers physical injury as a result of the exposure. Knowingly exposing another person to fentanyl in the second degree is:</p> <ul style="list-style-type: none"> - A Class A felony if the other person is a first responder or an employee of a correctional facility; or - A Class B felony if otherwise committed. <p>§ 5-64-421(a) – (d) – except as otherwise provided by law, it is unlawful for a person to:</p> <ul style="list-style-type: none"> - Possess fentanyl; a violation is a Class C felony; - Possess fentanyl with the purpose to deliver fentanyl; a violation is a Class A felony; - Deliver fentanyl; a violation is a Class Y felony; or - Manufacture fentanyl; a violation is a Class Y felony. <p>(e) It is an affirmative defense to simple possession if the person has a valid prescription and is using the fentanyl lawfully.</p> <p>(i)(1) A person commits the offense of predatory marketing of fentanyl to minors if he or she possesses fentanyl with the</p>

<u>ARKANSAS</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>purpose to deliver, delivers fentanyl, or manufactures fentanyl, and the fentanyl possessed, delivered, or manufactured is likely to appeal to minors due to the shape, color, taste, or design of the fentanyl or the fentanyl's packaging, including without limitation:</p> <ul style="list-style-type: none"> - Products that are modeled after noncontrolled substance products primarily consumed by and marketed to minors; - Products in the shape of an animal, a vehicle, a person, or a character; or - Products that resemble food or beverages that are attractive to minors and that are commonly sold in retail establishments regardless of whether the food or beverages are generic, trademarked, or branded products, including without limitation products that resemble candy. <p>A person who commits predatory marketing of fentanyl to minors upon conviction is guilty of an unclassified felony and shall be sentenced to a term of life imprisonment and a fine of \$1,000,000.</p> <p>§ 5-64-440 – except as otherwise provided by law, it is unlawful for a person to engage in trafficking a controlled substance. A person engages in trafficking a controlled substance if he or she possesses, possesses with the purpose to deliver, delivers, or manufactures a controlled substance by aggregate weight, including an adulterant or diluent, in the following amounts: fentanyl, one gram or more. Trafficking in fentanyl is an unclassified felony with a sentence of imprisonment of not less than 25 years nor more than 60 years, or life, and a fine of \$1,000,000.</p> <p>§ 5-64-443 – a person who possesses drug paraphernalia with the purpose to use the drug paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or to store, contain, conceal, or weigh a controlled substance in violation of this chapter is guilty of a Class D felony if the controlled substance is methamphetamine, heroin, fentanyl, or cocaine and the person has previously been convicted of a violation of this chapter.</p>

<u>ARKANSAS</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	A person who uses or possesses with the purpose to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack or repack a controlled substance in violation of this chapter is guilty of a Class B felony if the controlled substance is methamphetamine, heroin, fentanyl, or cocaine.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs	Yes.
Recently proposed legislation	None.

<u>CALIFORNIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • CAL. HEALTH & SAFETY CODE § 11007 (West 2023). (Controlled substance). • CAL. HEALTH & SAFETY CODE § 11055 (West 2023). (Schedule II; substances included).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 11007 – “controlled substance” includes drugs listed in Schedule II.</p> <p>§ 11055(c) – Schedule II includes fentanyl.</p> <p>All criminal provisions in California related to Schedule II controlled substances apply to fentanyl.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>COLORADO</u>																												
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • COLO. REV. STAT. ANN. § 18-1.3-401.5 (West 2023). (Drug felonies classified—presumptive and aggravated penalties). • COLO. REV. STAT. ANN. § 18-18-204 (West 2023). (Schedule II). • COLO. REV. STAT. ANN. § 18-18-403.5 (West 2023). (Unlawful possession of a controlled substance—notice to revisor of statutes—repeal). • COLO. REV. STAT. ANN. § 18-18-405 (West 2023). (Unlawful distribution, manufacturing, dispensing, or sale). • COLO. REV. STAT. ANN. § 44-1-105 (West 2023). (Feasibility report—regulation of kratom—prohibited acts—definition—rules—repeal). 																											
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.																											
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 1, 2022 (§ 18-1.3-401.5(2.5) and (10)(a)(V); • § 18-18-403.5(2.5)(a), (2.5)(b), and (2.7)(a); • § 18-18-405(2)(a)(I)(D), (2)(III)(A), (2)(III)(B), (2)(b)(I)(D), and (2)(c)(V)); • August 10, 2022 (§ 44-1-105). 																											
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 18-1.3-401.5(2)(a) – for offenses committed on or after October 1, 2013, drug felonies are divided into four levels that are distinguished from one another by a range of penalties, which are authorized upon conviction of a drug felony:</p> <table style="margin-left: 40px; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Level</th> <th style="text-align: left;">Presumptive Range</th> <th style="text-align: left;">Period of Parole</th> </tr> </thead> <tbody> <tr> <td>DF1</td> <td>8-32 years</td> <td>3 years</td> </tr> <tr> <td>DF2</td> <td>4-8 years</td> <td>2 years</td> </tr> <tr> <td>DF3</td> <td>2-4 years</td> <td>1 year</td> </tr> <tr> <td>DF4</td> <td>6 months – 1 year</td> <td>1 year</td> </tr> </tbody> </table> <table style="margin-left: 40px; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Level</th> <th style="text-align: left;">Aggravated Range</th> <th style="text-align: left;">Period of Parole</th> </tr> </thead> <tbody> <tr> <td>DF2</td> <td>8-16 years</td> <td>2 years</td> </tr> <tr> <td>DF3</td> <td>4-6 years</td> <td>1 year</td> </tr> <tr> <td>DF4</td> <td>1-2 years</td> <td>1 year</td> </tr> </tbody> </table> <p>(b)(I) For any person sentenced for a drug felony committed on or after October 1, 2013, except as otherwise noted in this section, in addition to, or in lieu of, any sentence of imprisonment, probation, community corrections, or work release, a fine within the following ranges may be imposed:</p>	Level	Presumptive Range	Period of Parole	DF1	8-32 years	3 years	DF2	4-8 years	2 years	DF3	2-4 years	1 year	DF4	6 months – 1 year	1 year	Level	Aggravated Range	Period of Parole	DF2	8-16 years	2 years	DF3	4-6 years	1 year	DF4	1-2 years	1 year
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<u>COLORADO</u>			
Criminal provisions related to fentanyl and fentanyl compounds (continued)	Level	Minimum Sentence	Maximum Sentence
	DF1	\$5,000	\$1,000,000
	DF2	\$3,000	\$750,000
	DF3	\$2,000	\$500,000
	DF4	\$1,000	\$100,000
	<p>(2.5) Provides that it is the intent of the general assembly that sentencing for crimes that involve fentanyl, carfentanil, benzimidazole opiate, or any analog thereof, even in small quantities, reflect the high risk of addiction and death associated with those drugs.</p> <p>(10)(a)(V) Except for a level 1 drug felony, the presence of the following aggravating circumstance requires the court to sentence the defendant to at least the midpoint in the presumptive range but not more than the maximum term of the aggravated range: the defendant committed a violation of § 18-18-405(2)(a)(III)(A), and the unlawful distribution, manufacturing, dispensing, or sale of the material, compound, mixture, or preparation weighed more than 50 grams and contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof.</p> <p>§ 18-18-204 – includes fentanyl and carfentanil in Schedule II.</p> <p>§ 18-18-403.5(1) – except as otherwise provided by law, it is unlawful for a person to knowingly possess a controlled substance.</p> <p>(2.5)(a) On or after July 1, 2022, a person who violates this section by knowingly possessing:</p> <ul style="list-style-type: none"> - Any material, compound, mixture, or preparation that weighs more than one gram and not more than four grams and contains any quantity of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, commits a level 4 drug felony; or - Any material, compound, mixture, or preparation that weighs not more than one gram and contains any quantity of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, commits a level 1 drug misdemeanor, except that a fourth or subsequent offense for a violation of this subsection is a level 4 drug felony. 		

<u>COLORADO</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>(2.5)(b) Notwithstanding the provisions of this section, if a defendant shows supporting evidence to establish that the defendant made a reasonable mistake of fact and did not know that the substance he or she possessed contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, the matter shall be submitted to the finder of fact in the form of an interrogatory included in the verdict form. If the finder of fact determines that the defendant did make such mistake of fact, the defendant commits a level 1 drug misdemeanor.</p> <p>(2.7)(a) A person who violates subsection (1) of this section by possessing any material, compound, mixture, or preparation that contains a quantity of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof that is more than 60 percent of the total composition of the material, compound, mixture, or preparation commits a level 2 drug felony.</p> <p>§ 18-18-405(1)(a) – except as otherwise authorized by law, it is unlawful for any person knowingly to manufacture, dispense, sell, or distribute, or to possess with intent to manufacture, dispense, sell, or distribute a controlled substance; or induce, attempt to induce, or conspire with one or more other persons to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute, a controlled substance.</p> <p>(2) Any person who violates subsection (1) of this section:</p> <p>(a) Commits a level 1 drug felony and is subject to the mandatory drug sentencing provisions of § 18-1.3-401.5(7) if:</p> <ul style="list-style-type: none"> - (I)(D) The violation involves any material, compound, mixture, or preparation that weighs more than 50 grams and contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof; or - (III)(A) Except as otherwise provided by law, the defendant committed a violation of (2)(a)(I)(D) and the actions in such violation are the proximate cause of death of another person who use or consumed the material, compound, mixture, or preparation that contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof;

<u>COLORADO</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<ul style="list-style-type: none"> - (III)(B) Notwithstanding the above, a defendant who committed a violation of subsection (2)(c)(V) of this section, and the actions involved in that violation are the proximate cause of death of another person who used or consumed the material, compound, mixture, or preparation that contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, is not subject to the mandatory sentencing requirements. <p>(2)(b) Commits a level 2 drug felony if:</p> <ul style="list-style-type: none"> - (I)(D) The violation involves any material, compound, mixture, or preparation that weighs more than four grams, but not more than 50 grams, and contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof. <p>(2)(c)(V) Commits a level 3 drug felony if the violation involves any material, mixture, compound, or preparation that weighs not more than four grams and contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof.</p> <p>§ 44-1-105 – provides that, as of July 1, 2024, a person shall not knowingly prepare, distribute, advertise, sell, or offer to sell a kratom product that is adulterated with fentanyl or any other controlled substance listed in part 2 of article 18 of title 18.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs	Yes, along with benzimidazole opiates.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>CONNECTICUT</u>	
Statute(s) and regulation(s)	• CONN. GEN. STAT. ANN. § 21a-240 (West 2023). (Definitions).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 21a-240 – “narcotic substance” includes fentanyl and any salt, compound, derivative, or preparation of fentanyl which is similar to any such substance in chemical structure or which is similar to any such substance in physiological effect and which shows a like potential for abuse, which is a controlled substance under this chapter unless modified. All criminal provisions in Connecticut related to narcotic substances apply to fentanyl and fentanyl compounds.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>DELAWARE</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • DEL. CODE ANN. tit. 16, § 4714 (West 2023). (Schedule I). • DEL. CODE ANN. tit. 16, § 4716 (West 2023). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 4714 – Schedule I includes any fentanyl-related substances, including any substance not otherwise controlled in any schedule, that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>§ 4716 – Schedule II includes fentanyl.</p> <p>All criminal provisions in Delaware related to Schedules I and II apply to fentanyl and fentanyl-related substances.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>DISTRICT OF COLUMBIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • D.C. CODE ANN. § 48-902.04 (West 2023). (Schedule I enumerated). • D.C. CODE ANN. § 48-902.06 (West 2023). (Schedule II enumerated).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 48-902.04 – Schedule I includes classified synthetic opioids including fentanyls, which includes any compound, other than carbomethoxyfentanyls, containing or structurally derived from a listed chemical compound, including fentanyl and carfentanil.</p> <p>§ 48-902.06 – Schedule II includes fentanyl and carfentanil.</p> <p>All criminal provisions in D.C. related to Schedules I and II apply to fentanyl and carfentanil.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>FLORIDA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • FLA. STAT. ANN. § 782.04 (West 2023). (Murder). • FLA. STAT. ANN. § 893.03 (West 2023). (Standards and schedules). • FLA. STAT. ANN. § 893.135 (West 2023). (Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking). • FLA. STAT. ANN. § 893.147 (West 2023). (Use, possession, manufacture, delivery, transportation, advertisement, or retail sale).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 1, 2018 (§ 893.147). • October 1, 2017 (§893.135 – adds trafficking in fentanyl as a felony; § 782.04 – adds murder by distribution of fentanyl or carfentanil). • October 1, 2022 (§ 893.135 – changes name of felony to “trafficking in dangerous fentanyl or fentanyl analogues”).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 782.04(1)(a)(3) – murder is the unlawful killing of a human being which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to be the proximate cause of the death of the user: carfentanil or fentanyl or an analogue of such substances.</p> <p>§ 893.03 – Schedule I includes fentanyl derivatives. Schedule II includes carfentanil and fentanyl.</p> <p>§ 893.135(1)(c)(4) – a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of carfentanil, fentanyl, or a fentanyl derivative, commits a felony of the first degree, which felony shall be known as “trafficking in dangerous fentanyl or fentanyl analogues,” punishable as provided in §§ 775.082, 775.083, or 775.084. If the quantity involved is:</p> <ul style="list-style-type: none"> - Four grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of seven years, and shall be ordered to pay a fine of \$50,000; - 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of

<u>FLORIDA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>imprisonment of 20 years, and shall be ordered to pay a fine of \$100,000;</p> <ul style="list-style-type: none"> - 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of \$500,000. <p>§ 893.147(7) – except as otherwise provided, it is unlawful for any person to possess, purchase, deliver, sell, or possess with intent to sell or deliver a tableting machine, an encapsulating machine, or controlled substance counterfeiting materials knowing, intending, or having reasonable cause to believe that it will be used to manufacture a controlled substance or counterfeit controlled substance.</p> <p>(7)(b) – any person who violates this subsection knowing, intending, or having reasonable cause to believe that such action will result in the unlawful manufacture of a controlled substance or counterfeit controlled substance that contains carfentanil or fentanyl or an analogue thereof commits a felony of the second degree, punishable as provided in §§ 775.082, 775.083, or 775.084.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes and no; penalties under § 893.135 apply to fentanyl and fentanyl derivatives. Penalties under §§ 893.147 and 782.04 apply to multiple listed drugs that include carfentanil and fentanyl.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>GEORGIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • GA. CODE ANN. § 16-13-25 (West 2023). (Schedule I). • GA. CODE ANN. § 16-13-26 (West 2023). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 16-13-25(13) – Schedule I includes the fentanyl analog structural class, including any derivative, their salts, isomers, or salts of isomers, unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or for research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation or unless specifically excepted or listed in this or another schedule, structurally derived from fentanyl, and whether or not further modified.</p> <p>§ 16-13-26 – carfentanil and fentanyl are included in Schedule II.</p> <p>All criminal provisions in Georgia related to Schedules I and II apply to fentanyl and carfentanil.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>HAWAII</u>	
Statute(s) and regulation(s)	• HAW. REV. STAT. ANN. § 319-16 (West 2023). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 329-16 - fentanyl and carfentanil are included in Schedule II. All criminal provisions in Hawaii related to Schedule II apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>IDAHO</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • IDAHO CODE ANN. § 37-2705 (West 2023). (Schedule I). • IDAHO CODE ANN. § 37-2707 (West 2023). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 37-2705 – Schedule I includes “fentanyl-related substances,” which means any substance not otherwise listed and for which no exemption or approval is in effect under section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. 355, and that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>§ 37-2707 - fentanyl and carfentanil are included in Schedule II.</p> <p>All criminal provisions in Idaho related to Schedules I and II apply to fentanyl and carfentanil.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>ILLINOIS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • 720 ILL. COMP. STAT. ANN. 570/401 (West 2023). (Manufacture or delivery, or possession with intent to manufacture or deliver, a controlled substance, a counterfeit substance, or controlled substance analog). • 730 ILL. COMP. STAT. ANN. 5/5-5-3 (West 2023). (Disposition).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • August 17, 2007 (570/401 and 5/5-5-3).
Criminal provisions related to fentanyl and fentanyl compounds	<p>570/401 – except as otherwise authorized by law, it is unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance other than methamphetamine and other than bath salts as defined by law, a counterfeit substance, or a controlled substance analog.</p> <p>(a) Any person who violates this section with respect to the following amounts of controlled or counterfeit substances or controlled substance analogs, notwithstanding any provisions to the contrary, is guilty of a Class X felony and shall be sentenced to a term of imprisonment as provided herein:</p> <ul style="list-style-type: none"> - Not less than six years and not more than 30 years with respect to 15 grams or more but less than 100 grams of a substance containing fentanyl or an analog thereof; - Not less than nine years and not more than 40 years with respect to 100 grams or more but less than 400 grams of a substance containing fentanyl or an analog thereof; - Not less than 12 years and not more than 50 years with respect to 400 grams or more but less than 900 grams of a substance containing fentanyl or an analog thereof; or - Not less than 15 years and not more than 60 years with respect to 900 grams or more of a substance containing fentanyl or an analog thereof. <p>(b-1) Excluding violations of this act when the controlled substance is fentanyl, any person sentenced to a term of imprisonment with respect to certain listed violations when the substance containing the controlled substance contains any amount of fentanyl, three years shall be added to the term of</p>

<u>ILLINOIS</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>imprisonment imposed by the court, and the maximum sentence for the offense shall be increased by three years.</p> <p>(c) Any person who violates this section with regard to the following amounts of controlled or counterfeit substances or controlled substance analogs, notwithstanding any other provisions to the contrary, is guilty of a Class 1 felony. The fine for a violation of this subsection shall not be more than \$250,000 for 1 gram or more but less than 15 grams of any substance containing fentanyl or an analog thereof.</p> <p>(d) Any person who violates this section with regard to any other amount of a controlled or counterfeit substance containing fentanyl or any salt or optical isomer of fentanyl or an analog thereof is guilty of a Class 2 felony. The fine for violating this subsection shall not be more than \$200,000.</p> <p>5/5-5-3(2)(D) – provides that a period of probation, a term of periodic imprisonment or conditional discharge, shall not be imposed for the following offenses. The court shall sentence the offender to not less than the minimum term of imprisonment set forth in this code for the following offenses, and may order a fine or restitution or both in conjunction with such term of imprisonment: a violation of 570/401.1 or 570/407, or 570/401(c)(1.5) which relates to more than five grams of a substance containing fentanyl or an analog thereof.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>INDIANA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • IND. CODE ANN. § 35-31.5-2-130.5 (West 2023). (“Fentanyl related substance”). • IND. CODE ANN. § 35-31.5-2-130.6 (West 2023). (“Fentanyl containing substance”). • IND. CODE ANN. § 35-48-1-16.6 (West 2023). (“Fentanyl related substance”). • IND. CODE ANN. § 35-48-1-16.7 (West 2023). (“Fentanyl containing substance”). • IND. CODE ANN. § 35-48-4-1 (West 2023). (Dealing in cocaine or narcotic drug).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil; fentanyl related substances; fentanyl containing substances.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 1, 2019 (§§ 35-31.5-2-130.5 and 35-48-1-16.6). • July 1, 2023 (§§ 35-31.5-2-130.6, 35-48-1-16.7 and 35-48-4-1).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 35-31.5-2-130.5 – defines “fentanyl related substance” to state that it has the meaning as set forth in § 35-48-1-16.6.</p> <p><i>(eff. July 1, 2023)</i> § 35-31.5-2-130.6 – defines “fentanyl containing substance,” which has the meaning set forth in § 35-48-1-16.7.</p> <p>§ 35-48-1-16.6 – defines “fentanyl related substance,” which means any substance not listed in Schedule I through V that is structurally related to fentanyl by one or more of the listed modifications.</p> <p><i>(eff. July 1, 2023)</i> § 35-48-1-16.7 – defines “fentanyl containing substance,” which means one or more of the listed substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, and includes both fentanyl and carfentanil.</p> <p>§ 35-48-4-1(a) – a person who knowingly or intentionally manufactures, finances the manufacture of, delivers, or finances the delivery of cocaine or a narcotic drug, pure or adulterated, classified in Schedule I or II; or possesses with intent to manufacture, finance the manufacture of, deliver, or finance the delivery of cocaine or a narcotic drug, pure or adulterated, classified in Schedule I or II; commits dealing in cocaine or a narcotic drug.</p>

<u>INDIANA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p><i>(eff. July 1, 2023)</i> (c)(4) – The offense is a Level 4 felony if the drug is a fentanyl containing substance and the amount of fentanyl containing substance involved, aggregated over a period of not more than 90 days, is at least one gram but less than three grams.</p> <p><i>(eff. July 1, 2023)</i> (d)(5) and (6) – The offense is a Level 3 felony if the drug is a fentanyl containing substance and the amount of fentanyl containing substance involved, aggregated over a period of not more than 90 days, is at least three grams but less than seven grams; or, the drug is a fentanyl containing substance and the amount of fentanyl containing substance involved, aggregated over a period of not more than 90 days, is at least one gram but less than three grams and an enhancing circumstance applies.</p> <p><i>(eff. July 1, 2023)</i> (e)(5) and (6) – The offense is a Level 2 felony if the drug is a fentanyl containing substance and the amount of fentanyl containing substance involved, aggregated over a period of not more than 90 days, is at least seven grams; or the drug is a fentanyl containing substance and the amount of fentanyl containing substance involved, aggregated over a period of not more than 90 days, is at least three grams but less than seven grams, and an enhancing circumstance applies.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes and no. Fentanyl is generally included in the penalties for cocaine and other narcotic drugs in Schedules I and II. After July 1, 2023, there are separate penalties for fentanyl under 570/401.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>IOWA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • IOWA CODE ANN. § 124.401 (prohibited acts—manufacture, delivery, possession—counterfeit substances, simulated controlled substances, imitation controlled substances—penalties).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; fentanyl-related substance.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 1, 2023.
Criminal provisions related to fentanyl and fentanyl compounds	<p><i>(eff. July 1, 2023)</i> § 124.401(1) – except as otherwise authorized, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance or to act with, enter into a common scheme or design with, or conspire with one or more persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance.</p> <p>(a) Violation of this section with respect to the following substances is a class “B” felony and shall be punished by confinement for no more than 50 years and a fine of not more than one million dollars:</p> <ul style="list-style-type: none"> - (9) More than 50 grams of a mixture or substance containing a detectable amount of fentanyl or any fentanyl-related substance. <p>(b) Violation of this section with respect to the following controlled substances is a class “B” felony and shall be punished by a fine of not less than \$5,000 nor more than \$100,000:</p> <ul style="list-style-type: none"> - (10) More than five grams but not more than 50 grams of a mixture or substance containing a detectable amount of fentanyl or any fentanyl-related substance. <p>(c) Violation of this section with respect to the following controlled substances is a class “C” felony and shall be punished by a fine of not less than \$1,000 nor more than \$50,000:</p>

<u>IOWA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>- (10) Five grams or less of a mixture or substance containing a detectable amount of fentanyl or any fentanyl-related substance.</p> <p>All other criminal provisions in Iowa related to Schedules I and II apply to fentanyl and carfentanil</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>KANSAS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • KAN. STAT. ANN. § 21-5703 (unlawful manufacturing of controlled substances). • KAN. STAT. ANN. § 21-6805 (sentencing grid for drug crimes; authority and responsibility of sentencing court; presumptive disposition).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 1, 2023.
Criminal provisions related to fentanyl and fentanyl compounds	<p><i>(eff. July 1, 2023)</i> § 21-5703(a) – it shall be unlawful for any person to manufacture any controlled substance.</p> <p>(b) Violation or attempted violation of subsection (a) is a: (3) drug severity level 1 felony if the controlled substance is methamphetamine or is a fentanyl-related controlled substance.</p> <p><i>(eff. July 1, 2023)</i> § 21-6805(h) – the sentence for a violation of § 21-5703 with respect to material containing any quantity of a fentanyl-related controlled substance shall be presumed imprisonment and shall be two times the maximum duration of the presumptive term of imprisonment. Such term shall not be considered a departure and shall not be subject to appeal.</p> <p>All other criminal provisions in Kansas related to Schedule II apply to fentanyl and carfentanil.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes, for the manufacture of a fentanyl-related substance. All other criminal penalties are the same.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>KENTUCKY</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • KY. REV. STAT. ANN. § 218A.1410 (West 2023). (Importing heroin, carfentanil, fentanyl, or fentanyl derivatives). • KY. REV. STAT. ANN. § 218A.1412 (West 2023.) (Trafficking in controlled substance in first degree; penalties). • KY. REV. STAT. ANN. § 218A.142 (West 2023). (Aggravated trafficking in controlled substance in the first degree). • KY. REV. STAT. ANN. § 218A.14141 (West 2023). (Trafficking in a misrepresented controlled substance).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; fentanyl derivative; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • June 29, 2017 (§§ 218A.1410 and 218A.142).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 218A.1410 – a person is guilty of importing heroin, carfentanil, fentanyl, or fentanyl derivatives when he or she knowingly and unlawfully transports any quantity of heroin, carfentanil, fentanyl, or fentanyl derivatives into the Commonwealth by any means with the intent to sell or distribute the heroin, carfentanil, fentanyl, or fentanyl derivatives. The provisions of this section are intended to be a separate offense from others in this chapter and shall be punished in addition to violations of this chapter occurring during the same course of conduct.</p> <p>Importing carfentanil, fentanyl, or fentanyl derivatives is a Class C felony, and the defendant shall not be eligible for pretrial diversion and shall not be released on probation, shock probation, conditional discharge, or parole until he or she has served at least 85 percent of the sentence imposed.</p> <p>§ 218A.1412 – a person is guilty of trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully trafficks in any quantity of heroin, fentanyl, carfentanil, or fentanyl derivatives. A violation of this section is a Class C felony for the first offense and a Class B felony for a second or subsequent offense.</p> <p>Any person convicted of a Class C felony offense or higher under this section shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least 50 percent of the</p>

<u>KENTUCKY</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>sentence imposed in cases where the trafficked substance was heroin, fentanyl, carfentanil, or fentanyl derivatives.</p> <p>§ 218A.142 – a person is guilty of aggravated trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully trafficks in 28 grams or more of fentanyl or 10 grams or more of carfentanil or fentanyl derivatives. Aggravated trafficking of a controlled substance in the first degree is a Class B felony. The defendant shall not be eligible for pretrial diversion and shall not be released on probation, shock probation, conditional discharge, or parole until he or she has served at least 85 percent of the sentence imposed where the trafficked substance was fentanyl, carfentanil, or fentanyl derivatives.</p> <p>§ 218A.14141 – a person is guilty of trafficking in a misrepresented controlled substance when he or she knowingly and unlawfully sells or distributes any Schedule I controlled substance, carfentanil, or fentanyl while misrepresenting the identity of the Schedule I controlled substance, carfentanil, or fentanyl being sold or distributed as a legitimate pharmaceutical product. The provisions of this section are intended to be a separate offense from others in this chapter and shall be punished in addition to violations of this chapter occurring during the same course of conduct. Violations are a Class D felony.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes and no; criminal provisions in § 218A.1412 related to fentanyl also include heroin, while § 218A.14141 also includes any Schedule I substance. Remaining statutes contain fentanyl-specific provisions.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>LOUISIANA</u>	
Statute(s) and regulation(s)	• LA. STAT. ANN. § 40:967 (West 2023). (Prohibited acts— Schedule II; penalties).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	• May 30, 2018 (§ 40:967 – fentanyl specific provisions added).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 40:967(A) – it shall be unlawful for any person knowingly or intentionally to:</p> <ul style="list-style-type: none"> - produce, manufacture, distribute, or dispense or possess with intent to produce, manufacture, distribute, or dispense, a controlled dangerous substance or controlled substance analogue classified in Schedule II; or - to create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance classified in Schedule II. <p>(B)(4)(a) – Any person who violates (A) of this section with respect to fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance containing a detectable amount of its analogues, upon conviction for any amount, shall be imprisoned at hard labor for not less than five years nor more than 40 years and may, in addition, be required to pay a fine of not more than \$50,000.</p> <p>(b) – If the offender unlawfully distributes or dispenses fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance containing a detectable amount of carfentanil or its analogues, which is the direct cause of serious bodily injury to the person who ingested or consumed the substance, the offense shall be classified as a crime of violence, and the offender shall be imprisoned at hard labor for not less than five years nor more than 40 years. At least five years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. In addition, the offender may be required to pay a fine of not more than \$50,000.</p> <p>(C) – It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in</p>

<u>LOUISIANA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>Schedule II unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner or except as otherwise authorized by this part. Any person who violates this subsection with respect to fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance containing a detectable amount of carfentanil or its analogues, upon conviction for an amount of:</p> <ul style="list-style-type: none"> - An aggregate weight of less than two grams, shall be imprisoned, with or without hard labor, for not less than two years nor more than four years; - An aggregate weight of two grams or more but less than 28 grams, shall be imprisoned, with or without hard labor, for not less than two years nor more than 10 years and may, in addition, be required to pay a fine of not more than \$5,000.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>MAINE</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ME. REV. STAT. ANN. tit. 17-A, § 1103 (West 2023). (Unlawful trafficking in scheduled drugs). • ME. REV. STAT. ANN. tit. 17-A, § 1105-A (West 2023). (Aggravated trafficking of scheduled drugs). • ME. REV. STAT. ANN. tit. 17-A, § 1106 (West 2023). (Unlawfully furnishing scheduled drugs)
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 29, 2016 (§ 1107-A – adds fentanyl specific provisions). • July 9, 2018 (§ 1105-A – adds fentanyl specific provisions). • October 18, 2021 (§§ 1103 and 1106 – adds fentanyl specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 1102 – includes carfentanil, fentanyl, and any derivative of fentanyl powder in Schedule W.</p> <p>§ 1103 – except as otherwise provided by law, a person is guilty of unlawful trafficking in a scheduled drug if the person intentionally or knowingly trafficks in what the person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is a schedule W drug. Violation of this paragraph is a Class B crime.</p> <p>Proof that the person intentionally or knowingly possesses any scheduled drug that is in fact of a quantity, state, or concentration as provided in this subsection, gives rise to the permissible inference that the person is unlawfully trafficking in scheduled drugs: four grams or more of fentanyl powder.</p> <p>§ 1105-A – a person is guilty of aggravated trafficking in a scheduled drug if the person violates section 1103 and, at the time of the offense, the person trafficks in fentanyl powder in a quantity of six grams or more or 270 or more individual bags, folds, packages, envelopes, or containers of any kind containing fentanyl powder. A violation of this paragraph is a Class A crime.</p> <p>§ 1106 – except as otherwise provided by law, a person is guilty of unlawful furnishing of a scheduled drug if the person intentionally or knowingly furnishes what the person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is a schedule W drug. Violation of this paragraph is a Class C crime. Proof that the person intentionally or knowingly possesses a scheduled drug that is in fact of a</p>

<u>MAINE</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>quantity, state, or concentration as provided in this subsection, gives rise to a permissible inference that the person is unlawfully furnishing that scheduled drug: two grams or more of fentanyl powder.</p> <p>§ 1107-A – except as otherwise provided by law, a person is guilty of unlawful possession of a scheduled drug if the person intentionally or knowingly possesses what that person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is a schedule W drug and:</p> <ul style="list-style-type: none"> - (1) The drug contains fentanyl powder and the amount possessed is more than 200 milligrams. Violation of this paragraph is a Class C crime; - (2) That drug contains any of the following and at the time of the offense the person has one or more convictions for violation section 1103, 1105-A, 1105-C, 1105-E, or section 1124, or for engaging in substantially similar conduct in another jurisdiction: fentanyl powder. Violation of this paragraph is a Class C crime.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes, the listed statutes include fentanyl-specific provisions.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>MARYLAND</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MD. CODE ANN. CRIM. LAW § 5-608.1 (West 2023). (Penalties—fentanyl or analogue of fentanyl, or heroin mixture). • MD. CODE ANN. CRIM. LAW § 5-612 (West 2023). (Manufacture, distribution, dispensing, or possession of specified amounts). • MD. CODE ANN. CRIM. LAW § 5-614 (West 2023). (Importer of certain controlled dangerous substances).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • October 1, 2002 (§ 5-614 – creates statute). • May 25, 2017 (§ 5-608.1 – creates statute). • June 1, 2018 (§ 5-612 – adds fentanyl specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 5-608.1 – a person may not knowingly violate § 5-602 of this subtitle related to manufacturing, distributing, possession with intent to distribute, or dispensing a controlled substance, with a mixture that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl. A person who violates this section is guilty of a felony and, in addition to any other penalty imposed for such a violation, on conviction is subject to imprisonment not exceeding 10 years. A sentence imposed under this section shall be consecutive to and not concurrent with any other sentence imposed under any other provision of law.</p> <p>§ 5-612 – a person may not manufacture, distribute, dispense, or possess five grams or more of fentanyl or any structural variation of fentanyl that is scheduled by the U.S. DEA or 28 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of fentanyl or any structural variation of fentanyl that is scheduled by the U.S. DEA. A person who is convicted of a violation of this section shall be sentenced to imprisonment for not less than five years and is subject to a fine not exceeding \$100,000. The court may not suspend any part of the mandatory minimum sentence of five years. Except as otherwise provided by law, the person is not eligible for parole during the mandatory minimum sentence.</p> <p>§ 5-614 – unless authorized by law to possess the substance, a person may not bring into the state four grams or more of fentanyl or a fentanyl analogue. A person who violates this</p>

<u>MARYLAND</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	subsection is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years or a fine not exceeding \$50,000 or both.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>MASSACHUSETTS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MASS. GEN. LAWS ANN. ch. 94C, § 31 (West 2023). (Classes of controlled substances; establishment of criminal penalties for violations of this chapter). • MASS. GEN. LAWS ANN. ch. 94C, § 32E (West 2023). (Trafficking in marihuana, cocaine, heroin, synthetic opioids, morphine, opium, etc.; eligibility for parole).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • April 13, 2018 (§ 18E – adds fentanyl and carfentanil specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 31 – includes carfentanil and fentanyl in the list of Class A controlled substances.</p> <p>§ 32E(c^{1/2}) – any person who trafficks in fentanyl or any derivative of fentanyl by knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense or by bringing into the Commonwealth a net weight of 10 grams or more of fentanyl or any derivative of fentanyl, or a net weight of 10 grams or more of any mixture containing fentanyl or any derivative of fentanyl, shall be punished by a term of imprisonment in state prison for not less than three and one-half nor more than 20 years. No sentence imposed under the provisions of this subsection shall be for less than a mandatory minimum term of imprisonment of three and one-half years.</p> <p>(c^{3/4}) – any person who trafficks in carfentanil, including without limitation, any derivative of carfentanil by knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense or by bringing into the Commonwealth carfentanil or any derivative of carfentanil, any mixture containing carfentanil or a derivative of carfentanil, provided, that such person had specific knowledge that such mixture contained carfentanil or any derivative of carfentanil, shall be punished by a term of imprisonment in state prison for not less than three and one-half nor more than 20 years. No sentence imposed pursuant to this subsection shall be for less than a mandatory minimum term of imprisonment of three and one-half years.</p>

<u>MASSACHUSETTS</u>	
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes, there are separate penalties for trafficking fentanyl and carfentanil. All other criminal provisions in Massachusetts related to Class A apply to fentanyl and carfentanil.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>MICHIGAN</u>	
Statute(s) and regulation(s)	• MICH. COMP. LAWS ANN. § 333.7214 (West 2023). (Schedule 2; substances included).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 333.7214 – fentanyl is included in Schedule 2. All criminal provisions in Michigan related to Schedule 2 apply to fentanyl.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>MINNESOTA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MINN. STAT. ANN. § 152.021 (West 2023). (Controlled substance crime in the first degree). • MINN. STAT. ANN. § 152.022 (West 2023). (Controlled substance crime in the second degree). • MINN. STAT. ANN. § 152.023 (West 2023). (Controlled substance crime in the third degree).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • August 1, 2023.
Criminal provisions related to fentanyl and fentanyl compounds	<p><i>(eff. August 1, 2023)</i> § 152.021 – Subd. 1, sale crimes – a person is guilty of controlled substance crime in the first degree if:</p> <ul style="list-style-type: none"> - (3) On one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 10 grams or more, or 40 dosage units or more, containing heroin or fentanyl. <p>Subd. 2, possession crimes – a person is guilty of a controlled substance crime in the first degree if:</p> <ul style="list-style-type: none"> - (3) The person unlawfully possesses one or more mixtures of a total weight of 25 grams or more, or 100 dosage units or more, containing heroin or fentanyl. <p><i>(eff. August 1, 2023)</i> § 152.022 – Subd. 1, sale crimes – a person is guilty of controlled substance crime in the second degree if:</p> <ul style="list-style-type: none"> - (3) On one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of three grams or more, or 12 dosage units or more, containing heroin or fentanyl. <p>Subd. 2, possession crimes – a person is guilty of a controlled substance crime in the second degree if:</p> <ul style="list-style-type: none"> - (3) The person unlawfully possesses one or more mixtures of a total weight of six grams or more, or 50 dosage units or more, containing heroin or fentanyl.

<u>MINNESOTA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>(<i>eff. August 1, 2023</i>) § 152.023 – Subd. 2, possession crimes – a person is guilty of controlled substance crime in the third degree if:</p> <ul style="list-style-type: none"> - (2) On one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of five grams or more, or 25 dosage units or more, containing fentanyl. <p>All other criminal penalties in Minnesota related to Schedule I and II substances apply to fentanyl.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No, penalties include heroin.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>MISSISSIPPI</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MISS. CODE ANN. § 41-29-113 (West 2023). (Schedule I). • MISS. CODE ANN. § 41-29-115 (West 2023). (Schedule II). • MISS. CODE ANN. § 41-29-139.1 (West 2023). (Fentanyl delivery resulting in death).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil; fentanyl-related substances.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 1, 2022 (§ 41-21-139.1 – creates statute).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 41-29-113 – Schedule I includes fentanyl-related substances, meaning any substance not otherwise listed that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>§ 41-29-115 - fentanyl and carfentanil are included in Schedule II.</p> <p>§ 41-29-139.1 – a person who delivers or causes the delivery of fentanyl with knowledge of the fentanyl commits the crime of “fentanyl delivery resulting in death” when, as a result of the unlawful delivery of fentanyl in exchange for anything of value to another person, death to a person results from the proximate cause of injection, oral ingestion, or inhalation of the fentanyl. Upon conviction for violation of this section, the person shall be sentenced to imprisonment no less than 20 years to a term of life.</p> <p>Includes a Good Samaritan provision for individuals who seek medical assistance for someone experiencing an overdose, which provides that such person shall not be charged or prosecuted for a violation of this section if the evidence for the charge was gained as a result of the seeking of medical attention.</p> <p>This section does not apply to individuals who share fentanyl when the sharing results in the proximate cause of a person’s death.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes, for purposes of § 41-29-139.1 only. All other criminal provisions in Mississippi related to Schedules I and II apply to fentanyl-related substances, fentanyl, and carfentanil.

<u>MISSISSIPPI</u>	
Recently proposed legislation	None.

<u>MISSOURI</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MO. ANN. STAT. § 195.017 (West 2023). (Substances, how placed in schedules—list of scheduled substances—publication of schedules annually). • MO. ANN. STAT. § 579.065 (West 2023). (Trafficking drugs, first degree—penalty). • MO. ANN. STAT. § 579.068 (West 2023). (Trafficking drugs, second degree—penalty).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil; fentanyl-related substances.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • August 28, 2020 (§§ 579.065 and 579.068 – adds fentanyl and carfentanil specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 195.017 – Schedule I includes fentanyl-related substances, which means any substance not otherwise listed that is structurally related to fentanyl by one or more of the listed modifications. Carfentanil and fentanyl are included in Schedule II.</p> <p>§ 579.065 – a person commits the offense of trafficking drugs in the first degree if, except as otherwise authorized, such person knowingly distributes, delivers, manufactures, produces, or attempts to distribute, deliver, manufacture, or produce: more than 10 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any compound, mixture, or substance containing a detectable amount of fentanyl or carfentanil, or their optical isomers or analogues. The offense of trafficking drugs in the first degree is a Class B felony.</p> <p>The offense of trafficking in drugs in the first degree is a Class A felony if the quantity involved is: 20 milligrams or more of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any compound, mixture, or substance containing a detectable amount of fentanyl or carfentanil, or their optical isomers or analogues.</p> <p>§ 579.068 – a person commits the offense of trafficking drugs in the second degree if, except as otherwise authorized, such person knowingly possesses or has under his or her control, purchases or attempts to purchase, or brings into this state: more than 10 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any compound, mixture, or substance containing a detectable</p>

<u>MISSOURI</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>amount of fentanyl or carfentanil, or their optical isomers or analogues. The offense of trafficking drugs in the second degree is a Class C felony.</p> <p>The offense of trafficking in drugs in the second degree is a Class B felony if the quantity involved is: 20 milligrams or more of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any compound, mixture, or substance containing a detectable amount of fentanyl or carfentanil, or their optical isomers or analogues.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes, there are weight-specific fentanyl and carfentanil criminal provisions for trafficking. All other criminal provisions in Missouri related to Schedules I and II apply to fentanyl-related substances, fentanyl, and carfentanil.
Recently proposed legislation	Yes. See Pending State and Federal Legislation.

<u>MONTANA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MONT. CODE ANN. § 45-9-101 (West 2023). (Criminal distribution of dangerous drugs). • MONT. CODE ANN. § 45-9-103 (West 2023). (Criminal possession with intent to distribute).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • May 18, 2023 (§§ 45-9-101 and 45-9-103 – adds fentanyl provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 45-9-101 – except as otherwise provided, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug.</p> <p>(6) A person convicted of criminal distribution of dangerous drugs that involves distribution of fentanyl, carfentanil, sufentanil, alfentanil, or a fentanyl derivative, and who possessed or distributed a mixture containing one or more of these substances in a combined amount greater than 100 pills or a combined weight greater than 10 grams in a form such as a powder, solid, or liquid, inclusive of any additives or cutting agents, shall be imprisoned in the state prison for a term of not less than two years or more than 40 years or may be fined not more than \$50,000, or both. The court may not suspend execution or defer imposition of the first two years of the sentence, except as otherwise provided by law, and during the first two years of imprisonment, the offender is not eligible for parole.</p> <p>§ 45-9-103 – except as otherwise provided, a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug in an amount greater than permitted or for which a penalty is not specified by law.</p> <p>(3) A person convicted of criminal possession with intent to distribute fentanyl shall be imprisoned in the state prison for a term of not less than two years or more than 40 years or may be fined not more than \$50,000, or both. The court may not suspend execution or defer imposition of the first two years of the sentence, and during the first two years of imprisonment, the offender is not eligible for parole.</p>

<u>MONTANA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	All other criminal provisions in Montana related to Schedule II controlled substances apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes, but only for amounts greater than 100 pills or 10 grams for criminal distribution and for criminal possession with intent to distribute. All other penalties for fentanyl are the same as for other drugs.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>NEBRASKA</u>	
Statute(s) and regulation(s)	• NEB. REV. STAT. ANN. § 28-405 (West 2023). (Controlled substances; schedules; enumerated).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 28-405 - fentanyl and carfentanil are included in Schedule IA. All criminal provisions in Nebraska related to Schedule II apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>NEVADA</u>	
Statute(s) and regulation(s)	• NEV. ADMIN. CODE § 453.520 (2022). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 453.520 - fentanyl and carfentanil are included in Schedule II. All criminal provisions in Nevada related to Schedule II apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>NEW HAMPSHIRE</u>	
Statute(s) and regulation(s)	• N.H. REV. STAT. ANN. § 318-B:26 (West 2023). (Penalties).
Specific fentanyl or fentanyl compounds referenced	Fentanyl class drug.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	• August 20, 2016 (§ 318-B:26 – adds fentanyl class drugs to criminal provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 318-B:26 – any person who manufactures, sells, prescribes, administers, or transports or possesses with intent to sell, dispense, or compound any controlled drug, controlled drug analog, or any preparation containing a controlled drug, except as authorized by this chapter; or manufactures, sells, or transports, or possesses with intent to sell, dispense, compound, package, or repackage (1) any substance which he represents to be a controlled drug or controlled drug analog, or (2) any preparation containing a substance which he represents to be a controlled drug, or a controlled drug analog, shall be sentenced as follows:</p> <p>(a)(3) in the case of a violation involving any of the following, a person shall be sentenced to a maximum term of imprisonment of not more than 30 years, a fine of not more than \$500,000, or both. If any person commits such a violation after one or more prior offenses, such person may be sentenced to a maximum term of life imprisonment, a fine of not more than \$500,000, or both: heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of 5 grams or more, including any adulterants or diluents.</p> <p>(b)(4) in the case of a violation involving any of the following, a person may be sentenced to a maximum term of imprisonment of not more than 20 years, a fine of not more than \$300,000, or both. If any person commits such a violation after one or more prior offenses, such person may be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than \$500,000, or both: heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of one gram or more, including any adulterants or diluents.</p> <p>(c)(4) in the case of a violation involving any of the following, a person may be sentenced to a maximum term of imprisonment of not more than seven years, a fine of not more</p>

<u>NEW HAMPSHIRE</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>than \$100,000, or both. If any person commits such a violation after one or more prior offenses, such person may be sentenced to a maximum term of imprisonment of not more than 15 years, a fine of not more than \$200,000, or both: heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of less than one gram, including any adulterants or diluents.</p> <p>All criminal provisions in New Hampshire related to Schedule IA apply to fentanyl and carfentanil.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No; criminal provisions related to fentanyl class drugs also include heroin and crack cocaine.
Recently proposed legislation	None.

<u>NEW JERSEY</u>	
Statute(s) and regulation(s)	• N.J. STAT. ANN. § 24:21-6 (West 2023). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 24:21-6 - fentanyl is included in Schedule II. All criminal provisions in New Jersey related to Schedule II apply to fentanyl.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>NEW MEXICO</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.M. STAT. ANN. § 30-31-7 (West 2023). (Schedule II). • N.M. CODE R. § 16.19.20.65 (West 2023). (Schedule I). • N.M. CODE R. § 16.19.20.66 (West 2023). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil; fentanyl-related substances.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 30-31-7 - fentanyl is included in Schedule II.</p> <p>§ 16.19.20.65 – Schedule I includes fentanyl-related substances, which means any substance that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>§ 16.19.20.66 – fentanyl and carfentanil are included in Schedule II.</p> <p>All criminal provisions in New Mexico related to Schedules I and II apply to fentanyl, fentanyl-related substances, and carfentanil.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>NEW YORK</u>	
Statute(s) and regulation(s)	• N.Y. PUB. HEALTH LAW § 3306 (McKinney 2023). (Schedules of controlled substances).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 3306 - fentanyl and carfentanil are included in Schedule II. All criminal provisions in New York related to Schedule II apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>NORTH CAROLINA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.C. GEN. STAT. ANN. § 90-89 (West 2023). (Schedule I controlled substances). • N.C. GEN. STAT. ANN. § 90-90 (West 2023). (Schedule II controlled substances). • N.C. GEN. STAT. ANN. § 90-95 (West 2023). (Violations; penalties).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; fentanyl derivatives; carfentanil
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • December 1, 2021 (§ 90-95 – adds fentanyl to list of drugs with increased punishment for possession)
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 90-89 – Schedule I includes fentanyl derivatives.</p> <p>§ 90-90 - fentanyl and carfentanil are included in Schedule II.</p> <p>§ 90-95(a) – except as otherwise authorized by law, it is unlawful for any person:</p> <ul style="list-style-type: none"> - (1) To manufacture, sell, or deliver, or possess with intent to manufacture, sell, or deliver a controlled substance; - (2) To create, sell, or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance; or - (3) To possess a controlled substance. <p>(d) Except as otherwise provided, any person who violates (a)(3) with respect to a controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance is methamphetamine, amphetamine, phencyclidine, cocaine, fentanyl, or carfentanil, the violation shall be punishable as a Class I felony.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No; possession of fentanyl is classified the same as other drugs listed in that statute. All other criminal provisions in North Carolina related to Schedules I and II apply to fentanyl, fentanyl derivatives, and carfentanil.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>NORTH DAKOTA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.D. CENT. CODE § 19-03.1-05 (West 2023). (Schedule I). • N.D. CENT. CODE § 19-03.1-07 (West 2023). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; fentanyl derivatives; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 19-03.1-05 – Schedule I includes fentanyl derivatives.</p> <p>§ 19-03.1-07 - fentanyl and carfentanil are included in Schedule II.</p> <p>All criminal provisions in North Dakota related to Schedules I and II apply to fentanyl, fentanyl derivatives, and carfentanil.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>OHIO</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • OHIO REV. CODE ANN. § 2925.01 (West 2023). (Definitions). • OHIO REV. CODE ANN. § 2925.03 (West 2023) (Trafficking offenses). • OHIO REV. CODE ANN. § 2925.05 (West 2023). (Aggravated funding of drug trafficking; funding of drug trafficking; funding of marihuana trafficking).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; fentanyl-related compounds; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • October 31, 2018 (§§ 2925.03, 2925.05 – adds provisions related to fentanyl-related compounds).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 2925.01 – includes definition of “fentanyl-related compound” which includes fentanyl and carfentanil.</p> <p>§ 2925.03(A) – no person shall knowingly: (1) sell or offer to sell a controlled substance or a controlled substance analog; or (2) prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or controlled substance analog is intended for sale or resale by the offender or another person.</p> <p>(C) Whoever violates (A) of this section is guilty of one of the following: (9) if the drug involved in the violation is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound and such substance is not a combination of a fentanyl-related compound and marihuana, whoever violates division (A) of this section is guilty of trafficking in a fentanyl-related compound. The penalty for the offense shall be determined as follows:</p> <ul style="list-style-type: none"> - (a) Except as otherwise provided in this section, trafficking in a fentanyl-related compound is a felony of the fifth degree and § 2929.13(B) applies in determining whether to impose a prison term on the offender; - (b) Except as otherwise provided in this section, if the offense was committed in the vicinity of a school, a juvenile, or a substance addiction services provider or recovering addict, trafficking in a fentanyl-related compound is a felony of the fourth degree, and

<u>OHIO</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>§ 2929.13(C) applies in determining whether to impose a prison term on the offender;</p> <ul style="list-style-type: none"> - (c) Except as otherwise provided in this section, if the amount of the drug involved equals or exceeds 10 dosage units but less than 50 unit doses or equals or exceeds one gram but less than five grams, trafficking in a fentanyl-related compound is a felony of the fourth degree and § 2929.13(B) applies in determining whether to impose a prison term for the offense. If the amount involved is within that range and if the offense was committed in the vicinity of a school, a juvenile, a substance addiction services provider or a recovering addict, trafficking in a fentanyl-related compound is a felony of the third degree, and there is a presumption for a prison term for the offense; - (d) Except as otherwise provided in this section, if the amount of the drug involved equals or exceeds 50 unit doses but is less than 100 unit doses or equals or exceeds five grams but less than 10 grams, trafficking in a fentanyl-related compound is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school, juvenile, or a substance addiction services provider or recovering addict, trafficking in a fentanyl-related compound is a felony of the second degree, and there is a presumption for a prison term for the offense; - (e) Except as otherwise provided in this section, if the amount of the drug involved equals or exceeds 100 unit doses but is less than 200 unit doses or equals or exceeds 10 grams but less than 20 grams, trafficking in a fentanyl-related compound is a felony of the second degree, and the court shall impose as a mandatory prison term one of the terms prescribed for a felony of the second degree. If the amount involved is within that range and the offense was committed in the vicinity of a school, juvenile, substance addiction services provider or recovering addict, trafficking in a fentanyl-related compound is a felony of the first degree, and the court shall impose as a mandatory prison term one of the terms prescribed for a felony of the first degree; - (f) If the amount of the drug involved equals or exceeds 200 unit doses but is less than 500 unit doses or equals

<u>OHIO</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>or exceeds 20 grams but less than 50 grams, trafficking in a fentanyl-related compound is a felony of the first degree, and the court shall impose as a mandatory prison term one of the terms prescribed for a felony of the first degree;</p> <ul style="list-style-type: none"> - (g) If the amount of the drug involved equals or exceeds 500 unit doses but is less than 1000 unit doses or equals or exceeds 50 grams but is less than 100 grams, trafficking in a fentanyl-related compound is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree; and - (h) If the amount of the drug involved equals or exceeds 1000 unit doses or equals or exceeds 100 grams, trafficking in a fentanyl-related compound is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree. <p>§ 2925.05(A) – no person shall knowingly provide money or other items of value to another person with the purpose that the recipient of the money or items of value use them to obtain any controlled substance for the purpose of violating § 2925.04 or for the purpose of selling or offering to sell the controlled substance in the following amount:</p> <ul style="list-style-type: none"> - (5) If the drug to be sold or offered for sale is heroin or a fentanyl-related compound, or a compound, mixture, preparation, or substance containing heroin or a fentanyl-related compound, an amount that equals or exceeds 10 unit doses or equals or exceeds 1 gram. <p>(C)(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, whoever violates (A) is guilty of aggravated funding of drug trafficking, a felony of the first degree, and, subject to (E), the court shall impose as a mandatory prison term a first degree felony term.</p> <p>(E) Notwithstanding any other provision, if the violation of (A) involves the sale, offer to sell, or possession of a schedule I or II substance, with the exception of marihuana, one of the following applies:</p>

<u>OHIO</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	- (1) If the drug involved in the violation is a fentanyl-related compound, the offense is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes and no; certain penalties related to trafficking are exclusive to fentanyl-related compounds, while other provisions include other drugs.
Recently proposed legislation	None.

<u>OKLAHOMA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • OKLA. STAT. ANN. tit. 63, § 2-206 (West 2023). (Schedule II). • OKLA. STAT. ANN. tit. 63, § 2-415 (West 2023). (application—fines and penalties).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil; fentanyl analogs.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • April 4, 2019 (§ 2-415 – adds fentanyl-specific trafficking provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 2-206 – fentanyl is included in Schedule II.</p> <p>§ 2-415(A) – the provisions of the trafficking in illegal drugs act shall apply to persons convicted of violations with respect to the following substances: fentanyl and its analogs and derivatives.</p> <p>(B) Except as otherwise provided by law, it shall be unlawful for any person to:</p> <ul style="list-style-type: none"> - (1) Knowingly distribute, manufacture, bring into this state, or possess a controlled substance specified in (A) of this section in the quantities specified in (C) of this section; - (2) Possess any controlled substance with the intent to manufacture a controlled substance specified in (A) of this section in the quantities specified in (C) of this section; or - (3) Use or solicit the use of services of a person less than 18 years of age to distribute or manufacture a controlled dangerous substance specified in (A) of this section in quantities specified in (C) of this section. <p>Violation of this section shall be known as “trafficking in illegal drugs.”</p> <p>(C) In the case of a violation of the provisions of (B) of this section involving fentanyl and its analogs and derivatives:</p> <ul style="list-style-type: none"> - (a) One gram or more of a mixture containing fentanyl, carfentanil, or any fentanyl analogs or derivatives shall be trafficking punishable by a term of imprisonment not to exceed 20 years and by a fine of not less than \$100,000 and not more than \$250,000; or - (b) Five grams or more of a mixture containing fentanyl or carfentanil, or any fentanyl analogs or derivatives

<u>OKLAHOMA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	shall be aggravated trafficking punishable by a term of imprisonment of not less than two years nor more than life and by a fine of not less than \$250,000 and not more than \$500,000.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes and no. There are fentanyl-specific provisions related to trafficking. All other criminal provisions in Oklahoma related to Schedule II apply to fentanyl.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>OREGON</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • OR. REV. STAT. ANN. § 475.900 (West 2023). (Crime category classification for commercial drug offense). • OR. REV. STAT. ANN. § 475.925 (West 2023). (Sentencing for unlawful delivery or manufacture of a controlled substance convictions).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 19, 2021 (§§ 475.900 and 475.925 – adds fentanyl-specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 475.900(1) – a violation of §§ 475.752, 475.806 to 475.894, or 475.904 to 475.906 shall be classified as a crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:</p> <ul style="list-style-type: none"> - (a) The violation constitutes delivery or manufacture of a controlled substance and involves substantial quantities of a controlled substance. For purposes of this paragraph, the following amounts constitute substantial quantities of the following controlled substances: (B) five grams or more of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl; - (b) the violation constitutes possession, delivery, or manufacture of a controlled substance and the possession, delivery, or manufacture is a commercial drug offense. A possession, delivery, or manufacture is a commercial drug offense for purposes of this subsection if it is accompanied by at least three of the following factors: (K) the offender was in possession of controlled substances in an amount greater than: (ii) three grams or more of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl. <p>(2) A violation of §§ 475.752 or 475.806 to 475.894 shall be classified as a crime category 6 of the sentencing guidelines if: (b) the violation constitutes possession of substantial quantities of a controlled substance. For purposes of this paragraph, the following amounts constitute substantial quantities of the following controlled substances: (B) five grams or more of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl.</p>

<u>OREGON</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>§ 475.925 – when a person is convicted of the unlawful delivery or manufacture of a controlled substance, the court shall sentence the person to a term of incarceration ranging from:</p> <ul style="list-style-type: none"> - (1) 58 months to 130 months, depending on the person’s criminal history, if the delivery or manufacture involves: (d) 100 grams or more of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl; - (2) 34 months to 72 months, depending on the person’s criminal history, if the delivery or manufacture involves: (d) 50 grams or more of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>PENNSYLVANIA</u>	
Statute(s) and regulation(s)	• 35 PA. STAT. AND CONS. STAT. ANN. § 780-104. (West 2023) (Schedules of controlled substances).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil; fentanyl derivatives.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 780-104 – Schedule I includes fentanyl derivatives. Fentanyl and carfentanil are included in Schedule II. All criminal provisions in Pennsylvania related to Schedules I and II apply to fentanyl, fentanyl derivatives, and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>RHODE ISLAND</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • 21 R.I. GEN. LAWS ANN. § 28-4.01.1 (West 2023). (Certain quantities of controlled substances). • 21 R.I. GEN. LAWS ANN. § 28-4.01.2 (West 2023). (Certain quantities of controlled substances).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • June 30, 2017 (§§ 21-28-4.01.1 and 21-28-4.01.2 – adds fentanyl specific provision). • July 9, 2021 (§§ 21-28-4.01.1 and 21-28-4.01.2 – adds language regarding fentanyl analogs and carfentanil).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 21-28-4.01.1(a) – except as otherwise authorized by law, it shall be unlawful for any person to manufacture, sell, or possess with intent to manufacture or sell, a controlled substance classified in schedule I or II (excluding marijuana) or to possess or deliver the following enumerated quantities of certain controlled substances:</p> <ul style="list-style-type: none"> - (7) 1 oz to 1 kg of a mixture or substance containing a detectable amount of fentanyl or its analogs; or - (8) 1 oz to 1 kg of a mixture or substance containing a detectable amount of carfentanil. <p>(b) Any person who violates this section shall be guilty of a crime and, upon conviction, may be imprisoned for a term up to 50 years and fined not more than \$500,000.</p> <p>§ 21-28-4.01.2(a) – except as otherwise authorized by law, it shall be unlawful for any person to possess, manufacture, sell, or deliver the following enumerated quantities of certain controlled substances:</p> <ul style="list-style-type: none"> - (7) more than 1 kg of a mixture or substance containing a detectable amount of fentanyl or its analogs; or - (8) more than 1 kg of a mixture or substance containing a detectable amount of carfentanil. <p>(b) Any person who violates this section shall be guilty of a crime and, upon conviction, may be imprisoned for a term up to life and fined not more than \$1,000,000.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes.

<u>RHODE ISLAND</u>	
Recently proposed legislation	None.

<u>SOUTH CAROLINA</u>	
Statute(s) and regulation(s)	• S.C. CODE ANN. § 44-53-210 (2023).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 44-53-210 – fentanyl is listed in Schedule II. All criminal provisions in South Carolina related to Schedule II apply to fentanyl.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>SOUTH DAKOTA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • S.D. CODIFIED LAWS § 32-20B-13 (2023). (Opium derivatives and opiates included in Schedule I). • S.D. CODIFIED LAWS § 32-20B-17 (2023). (Opiates included in Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; fentanyl analogs; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 34-20B-13 – fentanyl analogs, which means any substituted derivatives of fentanyl that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>§ 34-20B-17 – fentanyl and carfentanil are included in Schedule II.</p> <p>All criminal provisions in South Dakota related to Schedules I and II apply to fentanyl, fentanyl analogs, and carfentanil.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>TENNESSEE</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • TENN. CODE ANN. § 39-13-210 (West 2023). (Second degree murder). • TENN. CODE ANN. § 39-17-417 (West 2023). (Offenses; violations; fines; habitual drug offenders).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 1, 2018 (§ 39-13-210 – adds fentanyl specific provisions). • July 1, 2023 (§ 39-17-417 – adds fentanyl specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 39-13-210 – second degree murder is a killing of another by unlawful distribution or unlawful delivery or unlawful dispensation of fentanyl or carfentanil, when those substances alone or in combination with any controlled substance, including controlled substance analogs, is the proximate death of the user. Second degree murder is a Class A felony.</p> <p>§ 39-17-417(a) – it is an offense for a defendant to knowingly manufacture, deliver, or sell a controlled substance, or possess a controlled substance with intent to manufacture, deliver, or sell the controlled substance.</p> <p><i>(eff. July 1, 2023)</i> (c)(1)(B) or (c)(1) – A violation of subsection (a) with respect to cocaine, methamphetamine, fentanyl, carfentanil, remifentanil, alfentanil, thiafentanil, or any fentanyl derivative or analogue is a Class B felony if the amount involved is 0.5 grams or more of any substance containing such substance and, in addition, may be fined not more than \$100,000.</p> <p><i>(eff. July 1, 2023)</i> (c)(1)(C) – A violation of subsection (a) with respect to fentanyl, carfentanil, remifentanil, alfentanil, thiafentanil, or any fentanyl derivative or analogue in an amount of less than 0.5 grams is a Class C felony and, in addition, may be fined not more than \$100,000; provided, that if the offense involves less than 0.5 grams of a controlled substance containing such substance and the defendant carried or employed a deadly weapon during the commission of the offense or the offense resulted in death or bodily injury, the offense is a Class B felony.</p> <p><i>(eff. July 1, 2023)</i> (c)(2)(A) – A violation of subsection (a) with respect to any other Schedule II controlled substance, including</p>

<u>TENNESSEE</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>cocaine, methamphetamine, fentanyl, carfentanil, remifentanil, alfentanil, thiafentanil, or any fentanyl derivative or analogue in an amount of less than 0.5 grams, is a Class C felony and, in addition may be fined not more than \$100,000; provided that if the offense involves less than 0.5 grams of such substance but the defendant carried or employed a deadly weapon during the commission of the offense or the offense resulted in death or bodily injury to another person, the offense is a Class B felony.</p> <p>(i) A violation of subsection (a) with respect to the following amounts of a controlled substance, or conspiracy to violate subsection (a) with respect to such amounts, is a Class B felony and, in addition, may be fined not more than \$200,000: (12) 15 grams or more of any substance containing fentanyl, carfentanil, or any fentanyl derivative or analogue.</p> <p>(j) A violation of subsection (a) with respect to the following amounts of a controlled substance, or conspiracy to violate subsection (a) with respect to such amounts is a Class A felony and, in addition, may be fined not more than \$500,000: (12) 150 grams or more of any substance containing fentanyl, carfentanil, or any fentanyl derivative or analogue.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No, because the penalties related to fentanyl also apply to cocaine and methamphetamine.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>TEXAS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • TEX. HEALTH & SAFETY CODE ANN. § 481.032 (2023). (Schedules). • TEX. HEALTH & SAFETY CODE ANN. § 481.102 (2023). (Penalty Group 1). • TEX. HEALTH & SAFETY CODE ANN. § 481.1022 (2023). (Penalty Group 1-B).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; fentanyl-related substances; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 481.032 – Schedule I includes fentanyl-related substances, which means any substance that is structurally related to fentanyl by one or more of the listed modifications. Fentanyl and carfentanil are included in Schedule II.</p> <p>§ 481.102 – carfentanil is included in Penalty Group 1.</p> <p>§ 481.1022 – Penalty Group 1-B consists of fentanyl and any other derivative of fentanyl.</p> <p>All criminal provisions in Texas related to Schedules I and II apply to fentanyl, fentanyl-related substances, and carfentanil. All criminal provisions related to Penalty Group 1 apply to carfentanil. All criminal provisions related to Penalty Group 1-B apply to fentanyl and any derivative of fentanyl.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>UTAH</u>	
Statute(s) and regulation(s)	• UTAH CODE ANN. § 58-37-4 (West 2023). (Schedules of controlled substances—Schedules I through V—findings required—specific substances included in schedules).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 58-37-4 - fentanyl and carfentanil are included in Schedule II. All criminal provisions in Utah related to Schedule II apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>VERMONT</u>	
Statute(s) and regulation(s)	• VT. STAT. ANN. tit. 18, § 4233a (West 2023). (Fentanyl)
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	• July 1, 2017 (§ 4233a created).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 4233a(a) – (1) a person knowingly and unlawfully dispensing fentanyl shall be imprisoned not more than three years or fined not more than \$75,000, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned not more than five years or fined not more than \$100,000, or both.</p> <p>(a)(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000, or both.</p> <p>(a)(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000, or both.</p> <p>(a)(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000, or both.</p> <p>(b) A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned not more than 30 years or fined not more than \$1,000,000, or both. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl.</p>

<u>VERMONT</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	(c) In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into the state with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000, or both.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>VIRGINIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • VA. CODE ANN. § 18.2-46.4 (West 2023). (Definitions). • VA. CODE ANN. § 18.2-46.6 (West 2023). (Possession, manufacture, distribution, etc., of weapon of terrorism or hoax device prohibited; penalty).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • July 1, 2023 (§§ 18.2-46.4 and 18.2-46.6 – adds fentanyl specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p><i>(eff. July 1, 2023)</i> § 18.2-46.4 – “weapon of terrorism” means any device or material that is designed, intended, or used to cause death, bodily injury, or serious bodily harm, through the release, dissemination, or impact of: (i) poisonous chemicals; (ii) an infectious biological substance; or (iii) release of radiation or radioactivity. “Weapon of terrorism” also means any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, as described in Schedule II of the Drug Control Act, except as authorized by law.</p> <p><i>(eff. July 1, 2023)</i> § 18.2-46.6 – any person who knowingly and intentionally manufactures or knowingly and intentionally distributes a weapon of terrorism when such person knows that such weapon of terrorism is, or contains, any mixture or substance containing a detectable amount of fentanyl, is guilty of a Class 4 felony.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes, but only as it relates to § 18.2-46.6. All other penalties related to fentanyl are the same as for other controlled substances.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>WASHINGTON</u>	
Statute(s) and regulation(s)	• WASH. REV. CODE ANN. § 69.50.206 (West 2023). (Schedule II).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 69.50.206 - fentanyl and carfentanil are included in Schedule II. All criminal provisions in Washington related to Schedule II apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>WEST VIRGINIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • W. VA. CODE ANN. § 60A-4-401 (West 2023). (Prohibited acts; penalties). • W. VA. CODE ANN. § 60A-4-409 (West 2023). (Prohibited acts—transportation of controlled substances into state; penalties).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	<ul style="list-style-type: none"> • June 10, 2022 (§§ 60A-4-401 and 60A-4-409 – adds fentanyl specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 60A-4-401(a)(i) – except as otherwise authorized, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to a controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned. Provided, that any person who violates this section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000, or be imprisoned in a state correctional facility for not less than three nor more than 15 years, or both fined and imprisoned.</p> <p>(e) It is unlawful for any person knowingly or intentionally:</p> <ul style="list-style-type: none"> - to adulterate another controlled substance using fentanyl as an adulterant; - to create a counterfeit substance or imitation controlled substance using fentanyl; or - to cause the adulteration or counterfeiting or imitation of another controlled substance using fentanyl. <p>Any person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years, or fined not more than \$50,000, or both fined and imprisoned.</p> <p>§ 60A-4-409(a) – except as otherwise authorized, it is unlawful for any person to transport or cause to be transported into this</p>

<u>WEST VIRGINIA</u>	
Criminal provisions related to fentanyl and fentanyl compounds (continued)	<p>state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.</p> <p>(b)(1) Any person who violates this section with respect to a controlled substance classified in Schedule I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both. Provided, that any person who violates this section knowing that the controlled substance in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000 or imprisoned in a state correctional facility for a definite term of not less than 10 nor more than 20 years, or both fined and imprisoned.</p>
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>WISCONSIN</u>	
Statute(s) and regulation(s)	• WIS. STAT. ANN. § 961.41 (West 2023). (Prohibited acts A—penalties).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	• March 18, 2022 (§ 961.41 – adds fentanyl specific provisions).
Criminal provisions related to fentanyl and fentanyl compounds	<p>§ 961.41(1) – except as otherwise authorized by law, it is unlawful for any person to manufacture, distribute, or deliver a controlled substance or controlled substance analog.</p> <p>(1)(dm) Any person who violates this subsection with respect to fentanyl, a controlled substance analog of fentanyl, or a fentanyl analog, and the amount manufactured, distributed, or delivered is:</p> <ul style="list-style-type: none"> - (1) 10 grams or less, the person is guilty of a Class E felony; - (2) More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony; and - (3) More than 50 grams, the person is guilty of a Class C felony. <p>(1m) Except as otherwise authorized by law, it is unlawful for any person to possess, with intent to manufacture, distribute, or deliver, a controlled substance or controlled substance analog.</p> <p>(1m)(dm) Any person who violates this subsection with respect to fentanyl, a controlled substance analog of fentanyl, or a fentanyl analog, and the amount possessed, with intent to manufacture, distribute, or deliver is:</p> <ul style="list-style-type: none"> - (1) 10 grams or less, the person is guilty of a Class E felony; - (2) More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony; and - (3) More than 50 grams, the person is guilty of a Class C felony.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	Yes.

<u>WISCONSIN</u>	
Recently proposed legislation	None.

<u>WYOMING</u>	
Statute(s) and regulation(s)	• WYO. STAT. ANN. § 35-7-1016 (West 2023). (Schedule II)
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 35-7-1016 - fentanyl and carfentanil are included in Schedule II. All criminal provisions in Wyoming related to Schedule II apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	Yes. See Pending State and Federal Legislation .

<u>GUAM</u>	
Statute(s) and regulation(s)	• 9 GUAM CODE ANN., Appendix B (2022).
Specific fentanyl or fentanyl compounds referenced	Fentanyl; carfentanil.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	Appendix B - fentanyl and carfentanil are included in the controlled substances schedules. All criminal provisions in Guam related to controlled substances schedules apply to fentanyl and carfentanil.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>PUERTO RICO</u>	
Statute(s) and regulation(s)	• P.R. LAWS ANN. tit. 24, § 2202 (2023). (Schedules of controlled substances).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 2202 - fentanyl is included in Schedule II. All criminal provisions in Puerto Rico related to Schedule II apply to fentanyl.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>U.S. VIRGIN ISLANDS</u>	
Statute(s) and regulation(s)	• V.I. CODE ANN. tit. 19, § 595 (2023).
Specific fentanyl or fentanyl compounds referenced	Fentanyl.
Effective date(s) of provisions related to fentanyl and fentanyl compounds	No fentanyl specific provisions.
Criminal provisions related to fentanyl and fentanyl compounds	§ 595 - fentanyl is included in Schedule II. All criminal provisions in the U.S. Virgin Islands related to Schedule II apply to fentanyl.
Are the penalties for fentanyl and fentanyl analogues different than those for other drugs?	No.
Recently proposed legislation	None.

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
Alabama H.B. 230 (2023) (5/11/2023 – read second time in Senate)	Creates § 13A-6-30, the crime of chemical endangerment of a first responder and establish penalties for violations. New statute provides that a person commits the crime of chemical endangerment of a first responder if he or she knowingly, recklessly, or intentionally causes or permits a first responder, or a coroner or deputy coroner, to be exposed to, to ingest or inhale, or to have contact with a Schedule I controlled substance, or a mixture or combination thereof. Provides that “serious physical injury” includes exposure, ingestion, inhalation, or contact with fentanyl, any mixture containing fentanyl, any synthetic controlled substance fentanyl, and any synthetic controlled substance fentanyl analogue. Chemical endangerment of a first responder that causes physical injury is a Class C felony. Chemical endangerment of a first responder that causes serious physical injury is a Class B felony. Chemical endangerment of a first responder that results in the death of the first responder is a Class A felony.
Arizona H.B. 2802 (2023) (5/15/2023 – transmitted to House)	<p>Amends § 13-3408 to provide that a person who is convicted of a violation of paragraphs (2), (3), (4), or (7) of this section involving a single unit dose of fentanyl having a weight of at least two milligrams shall be sentenced as follows: minimum – five calendar years; presumptive – 10 calendar years; maximum – 15 calendar years.</p> <p>A person who has previously been convicted of a violation of paragraphs (2), (3), (4), or (7) of this section involving a single unit dose of fentanyl having a weight of at least two milligrams shall be sentenced as followed: minimum – 10 calendar years; presumptive – 15 calendar years; maximum – 20 calendar years.</p> <p>Further provides that a law enforcement agency that confiscates fentanyl during the course of an investigation of a violation of this section involving fentanyl shall submit a sufficient sample of the fentanyl to an accredited crime laboratory for testing to determine the appropriate criminal violation.</p>
Arizona S.B. 1027 (2023) (4/11/2023 – vetoed by Governor)	Amends § 13-705 to provide that a person who is at least 18 years of age or who has been tried as an adult and who is convicted of a dangerous crime against children involving manufacturing carfentanil, fentanyl, or fentanyl mimetic substances under circumstances that cause physical injury to a minor who is under 12 years of age may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon, or release

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>Arizona, cont'd. S.B. 1027 (2023) (4/11/2023 – vetoed by Governor)</p>	<p>from confinement on any basis except as specifically authorized by law until the person has served 35 years or the sentence is commuted.</p> <p>Further amends § 13-705 to provide that a person who is at least 18 years of age or who has been tried as an adult and who is convicted of a dangerous crime against children involving manufacturing carfentanil, fentanyl, or fentanyl mimetic substances that cause physical injury to a minor who is 12, 13, or 14 years of age shall be sentenced to a term of imprisonment as follows: minimum 13 years; presumptive 20 years; maximum 27 years.</p> <p>Further amends § 13-705 to provide that “dangerous crime against children” means any of the following that is committed against a minor who is under 15 years of age: manufacturing carfentanil, fentanyl, or fentanyl mimetic substances under circumstances the cause physical injury to a minor.</p> <p>Amends § 13-3401(36), definition of “threshold amount” to provide that it means a weight, market value, or other form of measurement of an unlawful substance as follows: two milligrams of fentanyl; one-quarter milligram of a fentanyl mimetic substance; one-quarter milligram of carfentanil.</p> <p>Amends § 13-3408, possession, use, administration, acquisition, sale, manufacture, or transportation of narcotic drugs, to provide that if a person is convicted of a violation of any of the following: knowingly possessing a narcotic drug for sale; knowingly manufacturing a narcotic drug; administering a narcotic drug to another person; or transporting for sale, importing into this state, offering to transport for sale or import into this state, selling, transferring, or offering to sell or transfer a narcotic drug and the drug involved is heroin, carfentanil, fentanyl, or a fentanyl mimetic substance, the person shall be sentenced as follows: minimum five years; presumptive 10 years; maximum 15 years. A person who has previously been convicted of a violation of these provisions involving heroin, carfentanil, fentanyl, or fentanyl mimetic substances shall be sentenced as follows: minimum 10 years; presumptive 15 years; maximum 20 years.</p> <p>Amends § 13-3408.1, manufacturing carfentanil, fentanyl, or fentanyl mimetic substances under circumstances that cause injury to a minor, to provide that a person shall not knowingly manufacture carfentanil,</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
Arizona, cont'd. S.B. 1027 (2023) (4/11/2023 – vetoed by Governor)	fentanyl, or fentanyl mimetic substances under any circumstances that causes physical injury to a minor who is under 15 years of age. A violation shall be a class 2 felony.
California A.B. 675 (2023) (5/18/2023 – in committee; held under submission)	Amends Health & Safety § 11370.1 to add fentanyl to the list of controlled substances that a person may not possess while in possession of a loaded, operable firearm. Provides that where the substance possessed is fentanyl or a fentanyl analog, the person must have knowledge that the specific controlled substance possessed is fentanyl or a fentanyl analog.
California A.B. 701 (2023) (5/26/2023 – in Senate; read first time; to committee on RLS for assignment) S.B. 62 (2023) (3/28/2023 – failed passage in committee; reconsideration granted)	Amends Health & Safety Code § 11370.4 to add fentanyl to the list of substances – which include heroin and cocaine – to receive an additional term of imprisonment.
California A.B. 955 (2023) (5/1/2023 – from committee: that the measure be retained in committee and that it be referred to the committee on rules for assignment)	Adds Health & Safety Code § 11351.7 which provides that, except as otherwise provided by law, every person who sells fentanyl on a social media platform in California shall be punished by imprisonment for a period of 3, 6, or 9 years.
California A.B. 1058 (2023) (4/27/2023 – in committee; reconsideration granted)	Amends Health & Safety Code § 11351 to provide that, notwithstanding any other provision to the contrary, a person who possesses for sale or purchases for sale more than 28.35 grams of fentanyl, more than 28.35 grams of a fentanyl analog, a substance containing more than 28.35 grams of fentanyl, or a substance containing more than 28.35 grams of a fentanyl analog, shall be punished by imprisonment for 4-6 years. Further amends Health & Safety Code § 11352 to provide that, notwithstanding any other provision of law, a person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>California, cont'd. A.B. 1058 (2023) (4/27/2023 – in committee; reconsideration granted)</p>	<p>give away, or attempts to import into this state or transport more than 28.35 grams of fentanyl, more than 28.35 grams of a fentanyl analog, a substance containing more than 28.35 grams of fentanyl, or a substance containing more than 28.35 grams of a fentanyl analog shall be punished by imprisonment for 7-9 years.</p> <p>Further provides that, notwithstanding the above, a person who transports more than 28.35 grams of fentanyl, more than 28.35 grams of a fentanyl analog, a substance containing more than 28.35 grams of fentanyl, or a substance containing more than 28.35 grams of a fentanyl analog within this state from one county to another noncontiguous county shall be punished by imprisonment for 7-13 years.</p>
<p>California S.B. 237 (2023) (4/18/2023 – failed passage in committee; reconsideration granted)</p>	<p>Amends Health & Safety Code § 11351 to provide that every person who possesses for sale or purchase for purposes of sale any fentanyl shall be punished by imprisonment for 4-6 years.</p> <p>Further amends Health & Safety Code § 11352 to provide that every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer or give away or attempts to import into this state or transport any fentanyl shall be punished by imprisonment for 7-9 years. Any person who transports any fentanyl within this state from one county to another noncontiguous county shall be punished by imprisonment for 7-13 years.</p>
<p>California S.B. 325 (2023) (4/18/2023 – set for first hearing; failed passage in committee; reconsideration granted)</p>	<p>Creates Health & Safety Code § 11352.3, which provides that, notwithstanding any other law to the contrary, a person who is convicted of a violation of § 11351 or § 11352 involving fentanyl or a fentanyl analog that was designed, shaped, colored, advertised, or packaged in such a way as to resemble food or candy shall receive an additional punishment of 3-5 years, at the court's discretion.</p>
<p>Colorado H.B. 23-1164 (2023) (4/11/2023 – postponed indefinitely)</p>	<p>If passed, would amend § 18-18-403.5(2.5)(b) to delete that section related to a reasonable mistake of fact.</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>Colorado S.B. 23-109 (2023) (5/5/2023 – House committee on judiciary postpone indefinitely)</p>	<p>Amends § 18-18-405, unlawful distribution, manufacturing, dispensing, or sale, to provide that any person who violates any of the provisions of this section commits a level 1 drug felony and is subject to the mandatory sentencing provisions in § 18-1.3-401.5(7) if, except as otherwise provided by law, the defendant committed a violation of subsection (2)(a)(I), (2)(b)(I), or 2(c) of this section and the actions in violation of said subsections are the proximate cause of death of another person who used or consumed the material, compound, mixture, or preparation that contained any amount of a Schedule I or II substance.</p> <p>Further amends § 18-18-405 to provide that any person who violates any of the provisions of this section commits a level 1 drug felony if, except as otherwise provided by law, the defendant who committed a violation of subsection 2(c) of this section, and the actions in violation are the proximate cause of death of another person who consumed the material, compound, mixture, or preparation that contained any amount of a Schedule I or II substance, is not subject to the mandatory sentencing requirement as described in § 18-1.3-401.5(7).</p> <p>Further provides that it is not a violation of this section if the violation involves distribution or transfer of the controlled substance if the distribution or transfer is done without remuneration and is for the purpose of consuming all of the substance with another person or persons at a time substantially contemporaneous with the transfer; except that this subsection applies only if the distribution or transfer involves not more than four grams of a Schedule I or II controlled substance, not more than two grams of methamphetamine, heroin, ketamine, or cathinones, or not more than one gram of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof.</p> <p>Amends § 18-1.3-401.5 to provide that, except for a level 1 drug felony, the presence of one or more of the following aggravating circumstances at the time of the commission of a drug felony offense requires the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than the maximum term of the aggravated range: the defendant committed a violation of § 18-18-405 and the unlawful distribution, manufacturing, dispensing, or sale of the material, compound, mixture, or preparation weighed more than 225 grams and contains a Schedule I or II controlled substance;</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
Colorado, cont'd. S.B. 23-109 (2023) (5/5/2023 – House committee on judiciary postpone indefinitely)	more than 112 grams and contains methamphetamine, heroin, ketamine, or cathinones; more than 50 milligrams and contains flunitrazepam; or more than 50 grams and contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof.
Connecticut H.B. 5057 (2023) (1/9/2023 – referred to joint committee on judiciary)	Creates the new crime of murder in the case of a person selling fentanyl to another person who dies from an overdose of such fentanyl.
Connecticut H.B. 5181 (2023) (1/11/2023 – referred to joint committee on judiciary)	Amends general statutes to increase the criminal penalties for illegal manufacture, distribution, or sale of fentanyl, and to create a new offense specifically for the sale of fentanyl to a minor.
Connecticut S.B. 784 (2023) (1/19/2023 – referred to joint committee on judiciary)	Amends the general statutes to increase the penalty for the illegal sale of fentanyl.
Connecticut S.B. 880 (2023) (1/23/2023 – referred to joint committee on judiciary)	Amends the general statutes to increase the penalty for manufacture, sale, or distribution of fentanyl.
Connecticut S.B. 889 (2023) (1/23/2023 – referred to joint committee on judiciary)	Amends general statutes to increase the penalties for the manufacture, sale, or distribution of fentanyl and creates a new offense of mixing, blending, or combining fentanyl with any drug or substance.
Delaware S.B. 101 (2023) (4/26/2023 – introduced and assigned to Health & Social Services Committee in Senate)	Amends tit. 16, § 4751C, quantity tiers related to drug offenses, to provide that “tier 3 controlled substances quantity” means 60 or more doses containing fentanyl, or 2 grams or more of fentanyl or of any mixture containing such substance, or any analog or derivative thereof. Provides that “tier 2 controlled substances quantity” means 24 or more doses containing fentanyl, or 0.8 grams or more of fentanyl or of any mixture containing such substance, or any analog or derivative thereof. Further provides that “tier 1 controlled substances quantity” means 12 or more doses containing fentanyl, or 0.4 grams or more of fentanyl or of any mixture containing such substance, or any analog or derivative thereof.

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>Florida H.B. 355 (2023) (5/5/2023 – died in criminal justice subcommittee) S.B. 354 (2023) (5/5/2023 – died in criminal justice committee)</p>	<p>Amends § 893.135 to change the minimum terms of imprisonment as follows:</p> <ul style="list-style-type: none"> - 4 grams or more, but less than 14 grams, a mandatory minimum term of imprisonment of 15 years, and ordered to pay a fine of \$75,000; - 14 grams or more, but less than 28 grams, a mandatory minimum term of imprisonment of 25 years, and ordered to pay a fine of \$150,000; - 28 grams or more, a mandatory minimum term of imprisonment of 30 years, and ordered to pay a fine of \$500,000.
<p>Florida H.B. 365 (2023) (4/26/2023 – in senate committee) S.B. 280 (2023) (4/17/2023 – committee substitute by fiscal policy read first time)</p>	<p>Creates § 893.131, distribution of controlled substances resulting in injury or overdose. Provides that, except as otherwise provided, a person 18 years of age or older who unlawfully distributes alfentanil, carfentanil, fentanyl, sufentanil, fentanyl derivatives, an analog thereof, or a mixture containing any such substance, and an injury or overdose of the user results, commits a felony of the second degree, punishable as provided in §§ 775.082, 775.083, or 775.084, when such substance or mixture is proven to have caused or been a substantial factor in causing the injury or overdose of the user.</p> <p>A person who commits a violation of this section and who has previously been convicted of such a violation, commits a felony of the first degree.</p> <p>A person violates this section if he or she, either directly or indirectly through another person, distributed to the user who was injured or who overdosed, the substance or mixture specified above.</p> <p>Provides that the administration of medical care by an emergency responder, including, but not limited to, a law enforcement officer, a paramedic, or an emergency medical technician, or the administration of an emergency opioid antagonist by such emergency responder, is prima facie evidence that the person receiving medical care was injured or overdose.</p> <p>Also amends § 782.04, murder, to provide that murder is the unlawful killing of a human which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to have caused, or is proven to be a substantial factor in producing, the death of the</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>Florida, cont'd. H.B. 365 (2023) (4/26/2023 – in senate committee) S.B. 280 (2023) (4/17/2023 – committee substitute by fiscal policy read first time)</p>	<p>user: carfentanil, fentanyl, or analogue thereof. As currently in effect, must be the proximate cause of death.</p>
<p>Florida H.B. 1359 (2023) (4/26/2023 – in Senate committee) S.B. 1226 (2023) (4/26/2023 – pending reference review (committee substitute); read first time)</p>	<p>Amends § 893.13, prohibited acts; penalties, to provide that, except as authorized by law, a person commits a felony of the first degree, punishable as provided in §§ 775.082, 775.083, or 775.084, and must be sentenced to a mandatory minimum term of imprisonment of 3 years, if:</p> <ul style="list-style-type: none"> - the person sells, manufactures, or delivers, or possesses with intent to sell, manufacture, or delivery, any of the following: <ul style="list-style-type: none"> - Alfentanil, carfentanil, fentanyl, sufentanil, a fentanyl derivative, a controlled substance analogue of any such substances, or a mixture containing any such substance; and <p>The substance or mixture listed above is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:</p> <ul style="list-style-type: none"> - Resembles the trade dress of a branded food product, consumer food product, or logo food product; - Incorporates an actual or fake registered copyright, service mark, or trademark; - Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or - Contains a cartoon character imprint. <p>Amends § 893.135 to provide that a person, 18 years of age or older, who violates sub-subparagraph a. by knowingly selling or delivering to a minor at least 4 grams of a substance or mixture listed in sub-subparagraph a., that is, fentanyl, carfentanil, or a fentanyl derivative, shall be sentenced to a mandatory minimum term of not less than 25 years and not exceeding life imprisonment, and shall be ordered to pay a fine of \$1 million if the substance or mixture is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>Florida, cont'd. H.B. 1359 (2023) (4/26/2023 – in Senate committee) S.B. 1226 (2023) (4/26/2023 – pending reference review (committee substitute); read first time)</p>	<p>with or into, a product, when such product or its packaging further has at least one of the following attributes:</p> <ul style="list-style-type: none"> - Resembles the trade dress of a branded food product, consumer food product, or logo food product; - Incorporates an actual or fake registered copyright, service mark, or trademark; - Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or <p>Contains a cartoon character imprint.</p>
<p>Georgia H.B. 197 (2023) (2/6/2023 – House second readers)</p>	<p>Amends § 16-5-1, relating to murder, malice murder, felony murder, and murder in the second degree, to provide that a person commits the offense of murder when, in the commission of a violation of subsection (b), related to the manufacture, delivery, distribution, dispensing, administering, selling, or possessing with intent to distribute a controlled substance, or (c), related to purchasing, possessing, or having under his or her control any controlled substance in Schedule I or a narcotic drug in Schedule II, of § 16-13-30 or a violation of § 16-13-32.7, he or she causes the death of another human being, irrespective of malice or intent, by manufacturing or distributing any controlled substance that also contains the Schedule II controlled substance fentanyl. Provides that lack of knowledge that the controlled substance contained fentanyl is not a defense to this provision.</p> <p>Amends § 16-13-30, relating to purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana and penalties, to provide that any person who violates subsection (a) of this section with respect to fentanyl shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:</p> <ul style="list-style-type: none"> - If the aggregate weight, including any mixture, is four grams or more, but less than 14 grams, such person shall be sentenced to a minimum term of imprisonment for not less than seven nor more than 10 years and shall pay a fine of up to \$50,000; - If the aggregate weight, including any mixture, is 14 grams or more, but less than 28 grams, such person shall be sentenced to a minimum term of imprisonment of not less than 10 years nor more than 20 years and shall pay a fine of up to \$100,000; and - If the aggregate weight, including any mixture, is 28 grams or more, such person shall be sentenced to a minimum term of

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
Georgia, cont'd. H.B. 197 (2023) (2/6/2023 – House second readers)	imprisonment of 25 years and shall pay a fine of up to \$250,000. Provides that any sentence imposed shall not be suspended, probated, deferred, or withheld, and the charge shall not be reduced to a lesser offense, merged with any other offense, or served concurrently with any other offense.
Georgia H.B. 253 (2023) (2/8/2023 – House second readers)	Amends § 16-5-1, relating to murder, malice murder, felony murder, and murder in the second degree, to provide that a person commits the offense of murder when, in the commission of a violation of subsection (b), related to the manufacture, delivery, distribution, dispensing, administering, selling, or possessing with intent to distribute a controlled substance, or (c), related to purchasing, possessing, or having under his or her control any controlled substance in Schedule I or a narcotic drug in Schedule II, of § 16-13-30 or a violation of § 16-13-32.7, he or she causes the death of another human being, irrespective of malice or intent, by manufacturing or distributing any controlled substance that also contains the Schedule II controlled substance fentanyl. Provides that lack of knowledge that the controlled substance contained fentanyl is not a defense to this provision. Further amends § 16-13-30, relating to purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana and penalties, to provide that any person who violates subsection (a) of this section with respect to fentanyl shall be guilty of a felony and, upon conviction thereof, shall be punished as follows: <ul style="list-style-type: none"> - If the aggregate weight, including any mixture, is 4 grams or more, but less than 14 grams, such person shall be sentenced to a minimum term of imprisonment for not less than three nor more than seven years; - If the aggregate weight, including any mixture, is 14 grams or more, but less than 28 grams, such person shall be sentenced to a minimum term of imprisonment for not less than 15 nor more than 20 years; and - If the aggregate weight, including any mixture, is 28 grams or more, such person shall be sentenced to a term of life imprisonment.

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>Hawaii H.B. 265 (2023) (1/25/2023 – referred to committee)</p>	<p>Amends § 706-620 to provide that a defendant who has been convicted of a crime may be sentenced to a term of probation unless the crime is a class A felony, except class A felonies defined in chapter 712, part IV, but not including any offense involving possession of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers.</p> <p>Further amends § 706-622.5 to exclude crimes involving the possession of fentanyl from the provision regarding eligibility for a sentence of probation.</p> <p>Amends § 706-659 to provide that a person who has been convicted of the class A felony based on possession of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, shall be sentenced to an indeterminate term of imprisonment of 20 years with a mandatory minimum term of imprisonment of no less than one year.</p> <p>Amends § 706-660 to provide that a person who has been convicted of a class B or C felony based on the possession of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, shall be sentenced to an indeterminate term of imprisonment. When ordering such a sentence, the court shall impose the maximum length of imprisonment of 10 years for the class B felony and five years for the class C felony, with a mandatory minimum term of imprisonment of no less than one year.</p>
<p>Hawaii H.B. 506 (2023) (1/27/2023 – referred to committee) S.B. 1431 (2023) (1/30/2023 – referred to committees)</p>	<p>Creates new section that provides that a person commits the offense of fentanyl possession if the person knowingly possesses, produces, or distributes fentanyl in any amount. Fentanyl possession is a class A felony.</p>

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<p>Idaho H.B. 67 (2023) (2/2/2023 – reported printed and referred to judiciary, rules & administration committee) H.B. 233 (2023) (3/1/2023 – reported printed; filed in the Office of the Chief Clerk)</p>	<p>Amends § 37-2732B to add a subsection that provides that any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, seven grams or more of: alfentanil, carfentanil, fentanyl, sufentanil, fentanyl-related substances, or any mixture or substance containing a detectable amount of any such substance is guilty of a felony, which felony shall be known as “trafficking in fentanyl.” If the quantity involved is:</p> <ul style="list-style-type: none"> - Seven grams or more but less than 14 grams, or if such substances are in pill form, consists of 100 pills or more but fewer than 250 pills, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three years and fined \$10,000; - 14 grams or more but less than 28 grams, or if such substances are in pill form, consists of 250 pills or more but fewer than 500 pills, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five years and fined \$15,000; or - 28 grams or more, or if such substances are in pill form, consists of 500 pills or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of 10 years and fined \$25,000.
<p>Idaho H.B. 234 (2023) (3/1/2023 – reported printed; filed in the Office of the Chief Clerk)</p>	<p>Amends § 37-2732B to add a subsection that provides that any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, seven grams or more of: alfentanil, carfentanil, fentanyl, sufentanil, fentanyl-related substances, or any mixture or substance containing a detectable amount of any such substance is guilty of a felony, which felony shall be known as “trafficking in fentanyl.” If the quantity involved is:</p> <ul style="list-style-type: none"> - Seven grams or more but less than 14 grams, or if such substances are in pill form, consists of 100 pills or more but fewer than 250 pills, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three years and fined \$10,000; - 14 grams or more but less than 28 grams, or if such substances are in pill form, consists of 250 pills or more but fewer than 500 pills, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five years and fined \$15,000; or - 28 grams or more, or if such substances are in pill form, consists of 500 pills or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of 10 years and fined \$25,000. <p>Provides that a determination of weight shall be based solely on the weight of the controlled substance itself and shall not include the weight of surrounding component materials or ingredients.</p>

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<p>Illinois H.B. 2414 (2023) (2-15-2023 – referred to rules committee)</p>	<p>Amends the criminal provisions of subsection (a)(1.5) of section 570/401 related to fentanyl to increase the minimum terms of imprisonment as follows:</p> <ul style="list-style-type: none"> - not less than nine years and not more than 40 years with respect to 15 grams or more but less than 100 grams of a substance containing fentanyl, or an analog thereof; - not less than 12 years and not more than 40 years with respect to 100 grams or more but less than 400 grams of a substance containing fentanyl, or an analog thereof; - not less than 15 years and not more than 60 years with respect to 400 grams or more but less than 900 grams of a substance containing fentanyl, or an analog thereof; and - not less than 18 years and not more than 70 years with respect to 900 grams or more of a substance containing fentanyl, or an analog thereof. <p>Amends subsection (c) of 570/401 to provide that a violation of this subsection with regard to the listed amounts is a Class 1 felony, except any person who violates this section with regards to subsection (a)(1.5) is guilty of a Class X felony.</p> <p>Also amends section 570/401.1(b) to provide that, a person convicted of controlled substance trafficking and the substance trafficked contains any amount of fentanyl, a person convicted of controlled substance trafficking shall be sentenced to a term of imprisonment not less than three times the minimum term and fined an amount as authorized by section 570/401 of this Act, based upon the amount of fentanyl brought or caused to be brought into this state, and not more than three times the maximum term of imprisonment and fined three times the amount as authorized by section 570/401 of this Act, based upon the amount of fentanyl brought or caused to be brought into this state.</p>
<p>Illinois H.B. 3210 (2023) (2/17/2023 – referred to rules committee)</p>	<p>Amends 570/401 to add new subsections related to fentanyl penalties. Adds (d-1) which provides that, in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any scheduled drug containing a detectable amount of fentanyl is guilty of a Class X felony and shall be sentenced to a term of imprisonment of not less than 9 years and not more than 40 years or fined not more than \$250,000, or both.</p> <p>Further amends 570/401 to add (d-2) which provides that, in addition to any other penalties imposed under this section, not less than six</p>

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<p>Illinois, cont'd. H.B. 3210 (2023) (2/17/2023 – referred to rules committee)</p>	<p>years and not more than 30 years shall be imposed with respect to any amount of carfentanil or fentanyl, or any analog thereof, in excess of 150 milligrams that is stored or transmitted as a powder, blotter paper, tablet, patch, or spray.</p> <p>Adds (d-3) which provides that, in addition to any other penalties imposed under this section, with respect to fentanyl, or an analog thereof, an additional sentence of five years shall be imposed if the fentanyl or analog thereof is in a form that resembles, or was mixed, granulated, absorbed, adsorbed, spray-dried, aerosolized as or onto, coated on in whole or in part, or solubilized with or into, a product, where the product or its packaging further has at least one of the following attributes:</p> <ul style="list-style-type: none"> - A resemblance to the trade dress of a consumer food product, branded food product, or logo food product, or incorporates an actual or satirical version of a registered trademark, service mark, or copyright; - A bright color or coloring scheme; - The appearance of a cereal, candy, vitamin, gummy, or chewable product such as a gum or gelatin-based product; - A cartoon character imprint; or - Incorporation into a separate product or package approved by the FDA, or approved by a regulatory agency for food or drug products in another country, if the addition of fentanyl, carfentanil, or any analog thereof, would render the approved product an adulterated product under the standards of the FDA.
<p>Illinois S.B. 73 (2023) (3/10/2023 – re-referred to assignments)</p>	<p>Amends 570/401 to add new subsection (d-1) to provide that, in addition to any other penalties provided by law, a person unlawfully selling or dispensing any scheduled drug containing a detectable amount of fentanyl is guilty of a Class X felony and shall be sentenced to a term of imprisonment of not less than nine years and not more than 40 years or fined not more than \$250,000, or both.</p> <p>Also amends 570/401.1 to add new subsection (d) to provide that it shall be a Class 1 felony for which a fine not to exceed \$100,000 may be imposed for any person to knowingly use an electronic communication device in the furtherance of controlled substance trafficking involving a substance containing any amount of fentanyl, which penalty shall be in addition to any other penalties imposed by law.</p>

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Illinois S.B. 1830 (2023) (3/10/2023 – re-referred to assignments)	<p>Amends 720 s. 570/402 to add new subsection (b-1) to provide that any person that violates this section with regard to the following amounts of controlled or counterfeit substances or controlled substance analogs, notwithstanding any provisions to the contrary, is guilty of a Class 4 felony, and the fine for a violation of this subsection (b-1) shall not be more than \$25,000: 3 grams or more but less than 200 grams of any substance containing fentanyl, or an analog thereof.</p>
Illinois S.B. 1948 (2023) (2/9/2023 – referred to assignments)	<p>Amends 570/401(c)(1.5) to provide that any person who violates this section with regard to the following amounts of a controlled or counterfeit substances or controlled substance analogs, notwithstanding any provisions to the contrary, is guilty of a Class 1 felony. The fine for violation of this section shall not be more than \$250,000: three grams or more but less than 15 grams of any substance containing fentanyl, or an analog thereof.</p> <p>Adds subsection (k) to provide that any person who knowingly manufactures or delivers any other amount of a controlled or counterfeit substance containing dihydrocodeine or classified in Schedules I or II, or an analog thereof, which is any substance containing amphetamine or fentanyl or any salt or optical isomer of amphetamine or fentanyl, or an analog thereof, is guilty of a Class 4 felony. The fine for violation of this subsection shall not be more than \$25,000.</p> <p>Amends section 570/402 to add new subsection (a-1) to provide that any person who violates this section with regard to the following controlled substances and is guilty of a Class 4 felony: three grams or more but less than 200 grams of a substance containing fentanyl.</p> <p>Also adds new subsection (a-5) to provide that any person who violates this section with regard to the following controlled substances and amounts is guilty of a Class A misdemeanor: less than three grams of a substance containing fentanyl or an analog thereof.</p>
Indiana H.B. 1325 (2023) (1/13/2023 – first reading; referred to committee on courts and criminal code)	<p>Amends § 1-1-2-2.5 to provide that this section, which applies to every crime in which proof that a person has a prior conviction or judgment for an infraction increases the class or level of the crime or the penalty for the crime, does not apply to dealing in fentanyl or a dangerous opiate containing substance.</p> <p>Amends § 11-12-3.7-3 to provide that “drug dealing offense” includes dealing in fentanyl or a dangerous opiate containing</p>

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<p>Indiana, cont'd. H.B. 1325 (2023) (1/13/2023 – first reading; referred to committee on courts and criminal code)</p>	<p>substance, unless the person received only minimal consideration as a result of the drug transaction.</p> <p>Creates new section § 35-31.5-2-130.6, which states that “fentanyl or a dangerous opiate containing substance,” has the meaning set forth in § 35-38-1-16.7.</p> <p>Amends § 35-31.5-2-217 to provide that “offense relating to controlled substances” includes dealing in or possession of fentanyl or a dangerous opiate containing substance.</p> <p>Amends § 35-42-1-1 to provide that a person who kills another human being while committing or attempting to commit dealing fentanyl or a dangerous opiate containing substance commits murder, a felony.</p> <p>Amends § 35-42-1-1.5 to add that a person who knowingly or intentionally manufactures or delivers a controlled substance or controlled substance analog, in violation of dealing in fentanyl or a dangerous opiate containing substance that, when used, injected, inhaled, absorbed, or ingested, results in the death or catastrophic injury of a human being who used the controlled substance, commits dealing in a controlled substance resulting in death or catastrophic injury, a Level 1 felony.</p> <p>Adds subsection (b) to provide that a person who knowingly or intentionally manufactures or delivers a controlled substance or controlled substance analog in violation of dealing in fentanyl or a dangerous opiate containing substance that, when the controlled substance is used, injected, inhaled, absorbed, or ingested, results in seriously bodily injury of a human being commits dealing in a controlled substance resulting in serious bodily injury, a Level 2 felony.</p> <p>Creates new section § 35-48-1-16.7 which defines “fentanyl or a dangerous opiate containing substance,” which means a substance, including the isomers, esters, ethers, salts, and salts of isomers, esters, and ethers as defined in Schedule I or schedule II.</p> <p>Creates new section § 35-48-4-1.3 which provides that a person who knowingly or intentionally delivers or finances the delivery of fentanyl or a dangerous opiate containing substance, pure or</p>

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<p>Indiana, cont'd. H.B. 1325 (2023) (1/13/2023 – first reading; referred to committee on courts and criminal code)</p>	<p>adulterated, or possesses with intent to deliver or finance the delivery of fentanyl or a dangerous opiate containing substance, pure or adulterated, commits dealing in fentanyl or a dangerous opiate containing substance, a Level 4 felony, except as otherwise provided by law.</p> <p>Creates new section § 35-48-4-6.3 which provides that a person who, without a valid prescription or order of a practitioner, knowingly or intentionally possesses fentanyl or a dangerous opiate containing substance, pure or adulterated, commits possession of fentanyl or a dangerous opiate containing substance, a Level 5 felony, except as otherwise provided. Sets out the felony level based on the weight of the substance involved.</p>
<p>Indiana S.B. 139 (2023) (1/9/2023 – first reading; referred to committee on corrections on criminal law)</p>	<p>Creates new section § 35-31.5-2-130.6, which states that “fentanyl containing substance” has the meaning as set forth in § 35-48-1-16.7.</p> <p>Creates new section § 35-48-1-16.7, which defines “fentanyl containing substance” to mean one or more of the listed substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, and includes fentanyl related substances, fentanyl, and carfentanil.</p> <p>Amends § 35-48-4-1, related to manufacturing or possessing cocaine or a narcotic drug, pure or adulterated, classified in Schedule I or II, to add provisions related to fentanyl.</p>
<p>Kansas H.B. 2398 (2023) (3/2/2023 – referred to Senate committee on judiciary) S.B. 174 (2023) (5/11/2023 – signed by Governor; eff. July 1, 2023)</p>	<p>Amends § 21-5703 to provide that it shall be unlawful for any person to manufacture any controlled substance or controlled substance analog. A violation or attempted violation is a drug severity level 1 felony if the controlled substance is a fentanyl-related controlled substance.</p> <p>Amends § 21-6805 to provide that the following sentencing guidelines for drug crimes shall be applicable to felony crimes, and further provides that the sentence for a violation of § 21-5703 with respect to material containing any quantity of a fentanyl-related controlled substance shall be presumed imprisonment and shall be two times the maximum duration of the presumptive term of imprisonment.</p>

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Kentucky H.B. 371 (2023) (2/23/2023 – referred to judiciary committee)	Amends § 520.050, promoting contraband in the first degree, to provide that a violation is a Class D felony, unless the dangerous contraband is fentanyl, carfentanil, or fentanyl derivatives, in which case it is a Class B felony.
Louisiana H.B. 75 (2023) (5/3/2023 – read second time and referred to committee on judiciary)	Amends § 40:967 to provide that a person who violates (A) with respect to fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance containing a detectable amount of carfentanil or its analogues, shall be punished as follows: - (1) on conviction of an aggregate weight of less than 28 grams, imprisonment at hard labor for not less than five years nor more than 40 years, at least five years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$50,000; - (2) on a first conviction of an aggregate weight of 28 grams or more but less than 250 grams, imprisonment at hard labor for not less than seven years nor more than 40 years, at least seven years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$50,000; - (3) on a first conviction of an aggregate weight of 250 grams or more, imprisonment at hard labor for not less than 10 years not more than 40 years, at least 10 years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$50,000; - (4) on a second conviction of an aggregate weight of 28 grams or more, imprisonment at hard labor for not less than 30 years nor more than 40 years, at least 10 years of which shall be served without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$5,000; and - (5) on a third conviction of an aggregate weight of 38 grams or more, imprisonment at hard labor for not less than 99 years without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$5,000.
Louisiana H.B. 90 (2023) (6/6/2023 – House rejected Senate amendments)	Amends § 40:967 to provide that any person who violates (A) with respect to fentanyl or a mixture containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture containing a detectable amount of carfentanil or its analogues, upon conviction for an amount of:

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Louisiana, cont'd. H.B. 90 (2023) (6/6/2023 – House rejected Senate amendments)	<ul style="list-style-type: none"> - (1) an aggregate weight of less than 28 grams, shall be imprisoned at hard labor for not less than five years nor more than 40 years and may, in addition, be required to pay a fine of not more than \$50,000; - (2) an aggregate weight of 28 grams or more, shall be sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, and may, in addition, be required to pay a fine of not more than \$50,000.
Louisiana S.B. 49 (2023) (6/2/2023 – sent to Governor by Secretary of the Senate)	<p>Amends § 40:983 to provide that, except as otherwise provided by law, whoever commits the crime of creation or operation of a clandestine laboratory for the unlawful manufacture of fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance containing a detectable amount of carfentanil or its analogues, shall be sentenced as follows:</p> <ul style="list-style-type: none"> - (1) on a first conviction, imprisonment at hard labor for not less than 10 years nor more than 40 years, at least 10 years of which shall be served without benefit of parole, probation, or suspension of sentence and may, in addition, be required to pay a fine of not more than \$50,000; - (2) on a second conviction, imprisonment at hard labor for not less than 30 years nor more than 40 years, at least 10 years of which shall be served without benefit of parole, probation, or suspension of sentence and may, in addition, be required to pay a fine of not more than \$500,000; and - (3) on a third or subsequent conviction, imprisonment at hard labor for not less than 99 years, which shall be served without benefit of parole, probation, or suspension of sentence and may, in addition, be required to pay a fine of not more than \$500,000.
Louisiana S.B. 112 (2023) (5/15/2023 – read by title and returned to calendar, subject to call)	<p>Amends § 14:30.1, second degree murder, to provide that second degree murder is the killing of a human being:</p> <ul style="list-style-type: none"> - (5)(a) – when the offender unlawfully distributes or dispenses fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance containing a detectable amount of carfentanil or its analogues, which is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance. Whoever commits the crime of second-degree murder as defined in this paragraph shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence; - (7)(a) – when the offender unlawfully distributes or dispenses fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, or carfentanil or a mixture or substance

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Louisiana, cont'd. S.B. 112 (2023) (5/15/2023 – read by title and returned to calendar, subject to call)	containing a detectable amount of carfentanil or its analogues, to another who subsequently distributes or dispenses such controlled dangerous substance which is the direct cause of the death of the person who ingested or consumed the controlled dangerous substance. Whoever commits the crime of second-degree murder as defined in this paragraph shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.
Maine H.P. 964 (2023) (5/4/2023 – pursuant to joint rule, placed in legislative files DEAD)	Amends § 1101 to add that “traffick” also means to possess two grams or more of fentanyl powder or 90 or more individual bags, folds, packages, envelopes, or containers of any kind containing fentanyl powder. Amends § 1101 to add that “furnish” also means to possess more than 200 milligrams but less than two grams of fentanyl powder or at least 45 but fewer than 90 individual bags, folds, packages, envelopes, or containers of any kind containing fentanyl powder.
Maine H.P. 997 (2023) (5/25/2023 – pursuant to joint rule, placed in legislative files DEAD)	Amends § 1105-A to change the language related to fentanyl to “any compound, mixture or substance in a quantity of 6 grams or more containing a detectable quantity of fentanyl powder or 270 or more individual bags, folds, packages, envelopes or containers of any kind containing any compound, mixture or substance containing a detectable quantity of fentanyl powder. Violation of this paragraph is a Class A crime.”
Maine S.P. 405 (2023) (3/30/2023 – carried over, in the same posture, to a subsequent special or regular session)	Amends § 1103 to provide that, except as otherwise provided by law, a person is guilty of unlawful trafficking in a scheduled drug if the person intentionally or knowingly trafficks in what the person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is a schedule W drug and the scheduled drug is W-18; W-15; carfentanil; sufentanil; fentanyl powder; and any derivative of fentanyl powder. Violation of this paragraph is a Class A crime; or a scheduled drug in schedule X, marijuana in listed amounts, a schedule Y drug, or a schedule Z drug, and the scheduled drug contains a detectable quantity of W-18; W-15; carfentanil; sufentanil; fentanyl powder; and any derivative of fentanyl powder. Violation is a Class A crime. Creates § 1103-A, unlawful use of electronic communication device in furtherance of fentanyl trafficking, which provides that a person is guilty of unlawful use of an electronic communication device in furtherance of fentanyl trafficking if that person intentionally or knowingly uses an electronic communication device in furtherance of

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Maine, cont'd. S.P. 405 (2023) (3/30/2023 – carried over, in the same posture, to a subsequent special or regular session)	trafficking in a scheduled drug under section 1103, subsection 1-A, paragraph I or J. Violation is a Class B crime.
Maryland S.B. 464 (2023) (2/14/2023 – hearing scheduled for March 7 at 1:00 p.m.)	Amends Criminal Law § 5-608.1 to increase the maximum term of imprisonment from 10 years to 20 years.
Massachusetts H.B. 1497 (2023) (6/6/2023 – hearing scheduled for June 13 from 1pm – 5pm)	Creates 94C § 59, drug distribution causing death, to provide that any person who, in violation of chapter 94C, manufactures, distributes, or dispenses any of the listed controlled substances, including fentanyl, is strictly liable for a death which results from the injection, inhalation, or ingestion of that substance, and shall be punished by imprisonment for life or for any term of years as the court may order, and by a fine of not more than \$25,000; provided, however, that the sentence of imprisonment imposed upon such person shall not be reduced to less than five years, nor suspended, nor shall any such person be eligible for probation, parole, or furlough, or receive a deduction from his or her sentence for good conduct until such person has served five years of such sentence. Provides that it is not a defense to prosecution under this section that the decedent purposefully, knowingly, recklessly, or negligently injected, inhaled, or ingested the substance or consented to the administration of such substance by another. Further provides that nothing in this section shall be construed to preclude or limit any other prosecution for homicide.
Massachusetts S.B. 929 (2023) (2/16/2023 – referred to committee on the judiciary; House concurred)	Amends 94C § 32E to eliminate the mandatory minimum terms of imprisonment.
Massachusetts S.B. 1087 (2023) (2/16/2023 – referred to committee on the judiciary; House concurred)	Strikes current subsection (c½) of § 32E and replaces it with the following: Any person who trafficks in fentanyl or any derivative of fentanyl by knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, or - (4) eight grams or more, be punished by a term of imprisonment in

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<p>Massachusetts, cont'd. S.B. 1087 (2023) (2/16/2023 – referred to committee on the judiciary; House concurred)</p>	<p>by bringing into the Commonwealth, shall, if the net weight of the fentanyl in pure form is:</p> <ul style="list-style-type: none"> - (1) four grams or more but less than 9 grams, be punished by a term of imprisonment in the state prison for not less than five nor more than 35 years, with a mandatory minimum term of imprisonment of five years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed; - (2) nine grams or more but less than 20 grams, be punished by a term of imprisonment in the state prison for not less than 10 nor more than 40 years, with a mandatory minimum term of imprisonment of 10 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed; - (3) 20 grams or more but less than 40 grams, be punished by a term of imprisonment in the state prison for not less than 25 years and up to any term of years, with a mandatory minimum term of imprisonment of 25 years, and a fine of not less than \$10,000 nor more than \$100,000 may be imposed; and - (4) 40 grams or more, be punished by a term of imprisonment in the state prison for life, which is a mandatory minimum sentence, and a fine of not more than \$500,000 may be imposed. <p>Also strikes subsection (c³/₄) of § 32E and replaces it with the following:</p> <p>Any person who trafficks in carfentanil by knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense shall, if the net weight of the carfentanil in pure form is:</p> <ul style="list-style-type: none"> - (1) one-third of a gram or more but less than 2 grams, be punished by a term of imprisonment in the state prison for not less than five nor more than 35 years, with a mandatory minimum term of imprisonment of five years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed; - (2) two grams or more but less than 4 grams, be punished by a term of imprisonment in the state prison for not less than 10 nor more than 40 years, with a mandatory minimum term of imprisonment of 10 years, and a fine of not more than \$5,000 nor more than \$50,000 may be imposed; - (3) four grams or more but less than 8 grams, be punished by a term of imprisonment in the state prison for not less than 25 years and up to any term of years, with a mandatory minimum sentence of 25 years, and a fine of not less than \$10,000 nor more than \$100,000 may be imposed; and

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<p>Massachusetts, cont'd. S.B. 1087 (2023) (2/16/2023 – referred to committee on the judiciary; House concurred)</p>	<p>- (4) eight grams or more, be punished by a term of imprisonment in the state prison for life, which is a mandatory minimum sentence, and a fine of not more than \$500,000 may be imposed.</p>
<p>Minnesota H.F. 625 (2023) (1/19/2023 – introduction and first reading; referred to public safety finance and policy) H.F. 2453 (2023) (3/2/2023 – introduction and first reading; referred to public safety finance and policy) H.F. 3036 (2023) (3/22/2023 – introduction and first reading; referred to public safety finance and policy) S.F. 2138 (2023) (2/27/2023 – introduction and first reading; referred to judiciary and public safety) S.F. 2659 (2023) (3/6/2023 – referred to judiciary and public safety)</p>	<p>Amends § 152.021(1), sale crimes, to provide that a person is guilty of controlled substance crime in the first degree if, on one or more occasions within a 90-day period, the person unlawfully sells one or more mixtures of a total weight of 10 grams or more containing heroin or fentanyl.</p> <p>Amends § 152.021(2), possession crimes, to provide that a person is guilty of a controlled substance crime in the first degree if the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing heroin or fentanyl.</p> <p>Amends § 152.022(1), sale crimes, to provide that a person is guilty of controlled substance crime in the second degree if, on one or more occasions within a 90-day period, the person unlawfully sells one or more mixtures of a total weight of three grams or more containing heroin or fentanyl.</p> <p>Amends § 152.022(2), possession crimes, to provide that a person is guilty of controlled substance crime in the second degree if the person unlawfully possesses one or more mixtures of a total weight of six grams or more containing heroin or fentanyl.</p> <p>Amends § 152.023(2), possession crimes, to provide that a person is guilty of controlled substance crime in the third degree if, on one or more occasions within a 90-day period, the person unlawfully possesses one or more mixtures of a total weight of three grams or more containing heroin or fentanyl.</p> <p>Amends § 152.025(4), penalty, to provide that a person convicted under this section who has not been previously convicted of a violation of this chapter or a similar offense in another jurisdiction, is guilty of a gross misdemeanor if the controlled substance possessed is heroin or fentanyl and the amount possessed is less than 0.05 grams.</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>Missouri H.B. 250 (2023) (5/5/2023 – placed on informal perfection calendar) H.B. 1108 (2023) (5/1/2023 – Senate committee voted do pass)</p>	<p>Amends § 579.065 to provide that a person commits the offense of trafficking drugs in the first degree if, except as otherwise authorized, such person knowingly distributes, delivers, manufactures, produces, or attempts to distribute, deliver, manufacture, or produce: more than three but less than 14 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any compound, mixture, or substance containing a detectable amount of fentanyl or carfentanil, or their optical isomers or analogues.</p> <p>Further amends § 579.065 to provide that the offense of trafficking in drugs in the first degree is a Class A felony if the quantity involved is: 14 milligrams or more of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any compound, mixture, or substance containing a detectable amount of fentanyl or carfentanil, or their optical isomers or analogues.</p> <p>Also amends § 579.068 to provide that a person commits the offense of trafficking drugs in the second degree if, except as otherwise authorized, such person knowingly possesses or has under his or her control, purchases or attempts to purchase, or brings into this state: more than three but less than 14 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any compound, mixture, or substance containing a detectable amount of fentanyl or carfentanil, or their optical isomers or analogues.</p> <p>Further amends § 579.068 to provide that the offense of trafficking in drugs in the second degree is a Class B felony if the quantity involved is: 14 milligrams or more of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any compound, mixture, or substance containing a detectable amount of fentanyl or carfentanil, or their optical isomers or analogues.</p>
<p>Nebraska L.B. 352 (1/25/2023 – notice of hearing for Feb. 1, 2023) L.B. 432 (1/25/2023 – notice of hearing for Feb. 1, 2023)</p>	<p>Amends § 28-416 to provide that, a person knowingly or intentionally possessing a controlled substance, except as otherwise authorized by law, shall, if the substance is fentanyl, a fentanyl analogue, or a compound structurally derived from fentanyl, be guilty of a Class IV felony.</p>

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State/Bill Number/ Status	Description
<p>Nevada S.B. 35 (2023) (6/5/2023 – conference report adopted by Assembly; to enrollment)</p>	<p>Creates new section 1.5 in chapter 453 which provides that, except as otherwise authorized by law, a person who knowingly and intentionally sells, manufactures, delivers, or brings into this state or who is knowingly or intentionally in actual or constructive possession of any mixture which contains illicitly manufactured fentanyl, unless a greater penalty is provided pursuant to § 453.322, if the quantity involved:</p> <ul style="list-style-type: none"> - (1) is 28 grams or more, but less than 42 grams, is guilty of trafficking and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than one year and a maximum term of not more than 10 years; - (2) is 42 grams or more, but less than 100 grams, is guilty of high-level trafficking and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than two years and a maximum term of not more than 15 years. <p>Creates new section 1.7 in chapter 453 which provides that, unless a greater penalty is provided pursuant to §§ 453.333 or 453.334, a person who sells to another person a mixture containing fentanyl and another controlled substance and who: (1) knows that the mixture contains fentanyl; and (2) intentionally fails to inform the purchaser that the mixture contains fentanyl, is guilty of intentional misrepresentation of a fentanyl product and shall be punished by a category B felony by imprisonment in the state prison for a maximum term of not less than two years and a maximum term of not more than 20 years and by a fine of not more than \$50,000.</p>
<p>Nevada S.B. 343 (2023) (5/20/2023 – pursuant to joint standing rule, no further action allowed)</p>	<p>Creates new section in chapter 453 which provides that, except as otherwise authorized by law, a person who knowingly or intentionally sells, manufactures, delivers, or brings into this state or who is knowingly or intentionally in actual or constructive possession of four grams or more but less than 14 grams of illicitly manufactured fentanyl, any derivative of fentanyl or any mixture which contains fentanyl or any derivative of fentanyl, unless a greater penalty is provided pursuant to § 453.322, is guilty of low-level trafficking and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than one year and a maximum term of not more than six years and by a fine of not more than \$50,000.</p>

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New Jersey S.B. 3096 (2022) (2/13/2023 – referred to Senate budget and appropriations committee)	Amends § 2C:35-5 to add criminal provisions specific to fentanyl related to manufacturing, distributing, or dispensing.
New Jersey S.B. 3325 (2022) (2/13/2023 – referred to Senate budget and appropriations committee)	Amends § 2C:35-5 to add criminal provisions specific to fentanyl related to manufacturing, distributing, or dispensing in quantities as follows: - 10 grams or more, including any adulterants or diluents, or a fentanyl mixture, in a quantity of 100 grams or more, is guilty of a crime of the first degree and a fine of up to \$500,000 may be imposed; - five grams or more but less than 10 grams, including any adulterants or diluents, or a fentanyl mixture, in a quantity of 50 grams or more but less than 100 grams, is guilty of a crime of the second degree; or - less than five grams, including any adulterants or diluents, or a fentanyl mixture, in a quantity of less than 50 grams, is guilty of a crime of the third degree, except that a fine of up to \$75,000 may be imposed. Also amends § 2C:35-10 related to possession to provide that possession of less than 10 grams of fentanyl shall be a crime of the third degree and possession of 10 grams or more of fentanyl shall be a crime of the first degree.
New Mexico H.B. 60 (2023) (1/28/2023 – referred to various committees)	Creates new section to provide for an enhanced sentence for possession of fentanyl. Provides that the basic sentence of imprisonment shall be enhanced when the fentanyl possessed is: - (1) between 25 to 49 pills or in any form equaling 50-90 milligrams of fentanyl, the sentence imposed shall be increased by three years; - (2) between 50 to 74 pills or in any form equaling 100 to 149 milligrams of fentanyl, the sentence imposed shall be increased by five years; and - (3) exceeding 75 pills or in any form exceeding 150 milligrams of fentanyl, the sentence imposed shall be increased by seven years.
New York A.B. 4085 (2023) (5/16/2023 – held for consideration in codes)	Amends Penal Law § 120.10, assault in the first degree, to provide that a person is guilty of assault in the first degree when, with intent to cause serious physical injury to a first responder or a correction officer, he or she causes such injury by exposing such first responder or correction officer to fentanyl, a fentanyl derivative, or an opiate containing fentanyl or a fentanyl derivative by any means, including,

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New York, cont'd. A.B. 4085 (2023) (5/16/2023 – held for consideration in codes)	but not limited to, throwing or tossing at or injecting such first responder or correction officer with any such substance. Provides that assault in the first degree is a class B felony.
New York A.B. 4492 (2023) (2/16/2023 – referred to codes committee) S.B. 695 (2023) (1/6/2023 – referred to codes committee)	Creates new section, Penal Law § 220.79, that provides that a person is guilty of criminal possession of fentanyl when he or she knowingly and unlawfully possesses, manufactures, distributes, or uses fentanyl, or any fentanyl analogs, to enhance another illegal substance. Further provides that criminal possession of fentanyl is a class E felony.
New York S.B. 6208 (2023) (4/3/2023 – referred to codes committee)	Amends Penal Law § 220.06(5) to classify possession of one or more preparations, compounds, mixtures, or substances containing fentanyl, carfentanyl (<i>sic.</i>), or analogs thereof when such preparations, compounds, mixtures, or substances are an aggregate weight of 500 milligrams or more as criminal possession of a controlled substance in the fifth degree.
North Carolina S.B. 189 (2023) (3/16/2023 – referred to committee on rules, calendar, and operations of the House)	Amends § 90-95, violations and penalties, to provide that any person who sells, manufactures, delivers, transports, or possesses four grams or more of the listed substances shall be guilty of a felony, which felony shall be known as “trafficking in opium, opiate, opioid, or heroin,” and if the quantity of such controlled substance or mixture involved: <ul style="list-style-type: none"> - (1) is four grams or more but less than 14 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the state’s prison and shall be fined as follows: a fine of \$500,000 if the controlled substance is heroin, fentanyl, or carfentanil, or any mixture containing any of these substances; - (2) is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the state’s prison and shall be fined as follows: a fine of \$750,000 if the controlled substance is heroin, fentanyl, or carfentanil, or any mixture containing any of these substances; - (3) is 28 grams or more, such person shall be punished as a Class C felony and shall be sentenced to a minimum term of 225 months and a maximum term of 282 months in the state’s prison and shall be fined as follows: a fine of \$1,000,000 if the controlled substance is heroin, fentanyl, or carfentanil, or any mixture containing any of these substances.

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<p>Oklahoma H.B. 2156 (2023) (2/7/2023 – second reading; referred to alcohol, tobacco, and controlled substances committee)</p>	<p>Amends § 2-402, related to possession of controlled substances, to provide that it shall be unlawful for any person knowingly or intentionally to possess any mixture or substance containing a detectable amount of fentanyl and its analogs and derivatives, heroin, or methamphetamine, unless such substance was lawfully obtained. Any person who violates the provisions of this subsection shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than five years, and a fine not exceeding \$5,000.</p>
<p>Oklahoma H.B. 2586 (2023) (2/7/2023 – second reading; referred to rules)</p>	<p>Amends § 2-402, related to possession of controlled substances, to provide that it shall be unlawful for any person knowingly or intentionally to possess fentanyl and its analogs and derivatives unless such substance was lawfully obtained. Any person who violates the provisions of this subsection shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than two years, or a fine not exceeding \$1,000, or both.</p> <p>Also amends § 2-415 to provide that trafficking in one gram or more of a mixture containing a detectable amount of fentanyl or carfentanil, or any fentanyl analogs or derivatives, shall be trafficking punishable by death or by a term of imprisonment for life or life without parole. Deletes all other minimum and maximum terms of imprisonment and fines.</p>
<p>Oklahoma S.B. 1100 (2023) (2/7/2023 – second reading; referred to public safety committee then to appropriations committee)</p>	<p>Amends § 2-415(C)(a) and (b) to increase the minimum terms of imprisonment to five years. Increases the maximum term under (C)(a) from 20 years to 30 years and increases the fine to a minimum of \$150,000 and a maximum of \$300,000. Amends (C)(b) to increase the minimum fine to \$300,000 and maximum fine to \$600,000. Also provides that a person convicted in violation of these paragraphs shall not be eligible for probation.</p>
<p>Oregon H.B. 2645 (2023) (6/7/2023 – recommendation: do pass B-Eng. bill)</p>	<p>Amends § 475.752 to provide that unlawful possession of a controlled substance in Schedule II is a Class A misdemeanor if the person possesses one gram or more or five or more user units of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl.</p> <p>Also amends § 475.900(1)(a)(B) to provide that the following amounts constitute substantial quantities of the following controlled substances: five grams or more or 25 or more user units of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl.</p>

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<p>Oregon, cont'd. H.B. 2645 (2023) (6/7/2023 – recommendation: do pass B-Eng. bill)</p>	<p>Amends § 475.900(1)(b)(A) related to possession to provide that a possession, delivery, or manufacture is a commercial drug offense for purposes of this subsection if it is accompanied by at least three of the following factors: (A) the delivery was of heroin, fentanyl, cocaine, methamphetamine, LSD, psilocybin, or psilocin, and was for consideration; (K)(ii) three grams or more or 15 or more user units of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl.</p> <p>Amends § 475.900(2)(a) to provide that a violation of §§ 475.752 or 275.896 to 475.894 shall be classified as crime category 6 of the sentencing guidelines if: (a) the violation constitutes delivery of heroin, cocaine, fentanyl, or other listed drugs.</p> <p>Amends § 475.900(2)(b) to provide that the violation constitutes possession of substantial quantities of a controlled substance. For purposes of this paragraph, the following amounts constitute substantial quantities of the following controlled substances: (B) five grams or more or 25 or more user units of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl.</p>
<p>Oregon S.B. 988 (2023) (4/10/2023 – motion to withdraw from committee on judiciary failed)</p>	<p>Adds new sections related to fentanyl.</p> <p>Creates new section that provides that it is unlawful for any person knowingly or intentionally to possess fentanyl, or any substituted derivative of fentanyl, unless the fentanyl or derivative was obtained as authorized by law. Unlawful possession is a Class E violation. Provides that, notwithstanding the above, unlawful possession of fentanyl is a Class A misdemeanor if the person possesses one gram or more or five or more user units of a mixture or substance containing a detectable amount of fentanyl, or any substituted derivative of fentanyl.</p> <p>Further provides that, notwithstanding the above, unlawful possession of fentanyl is a Class C felony if: (a) the possession is a commercial drug offense under § 475.900(1)(b); or (b) the person possesses a substantial quantity under § 475.900(2)(b).</p> <p>Creates new section that provides that, except as otherwise authorized, it is unlawful for any person to delivery fentanyl, or any substituted derivative of fentanyl. Unlawful delivery of fentanyl is a</p>

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<p>Oregon, cont'd. S.B. 988 (2023) (4/10/2023 – motion to withdraw from committee on judiciary failed)</p>	<p>Class B felony. Unlawful delivery of fentanyl is a Class A felony if the delivery is to a person under 18 years of age.</p> <p>Creates new section that provides that, except as otherwise authorized, it is unlawful for any person to deliver fentanyl, or any substituted derivative of fentanyl, within 1000 feet of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors. Such violation is a Class A felony.</p> <p>Creates new section that provides that, except as otherwise authorized, it is unlawful for any person to manufacture fentanyl, or any substituted derivative of fentanyl. Such violation is a Class B felony.</p> <p>Creates new section that provides that, except as otherwise authorized, it is unlawful for any person to manufacture fentanyl, or any substituted derivative of fentanyl, within 1000 feet of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors. Such violation is a Class A felony.</p> <p>Amends § 475.900(1)(a)(B) to add “or 25 or more user units” to the amount of fentanyl that constitutes a substantial quantity.</p> <p>Amends § 475.900(b)(A), regarding commercial drug offenses, to add fentanyl to the list of drugs. Further amends § 475.900(b)(K)(ii) to add “or 15 or more user units” to the amount of fentanyl that constitutes a commercial drug offense.</p> <p>Amends § 475.900(2)(a) to add fentanyl to the list of drugs that are classified as crime category 6, and (2)(b)(B) to add “or 25 or more user units” to the amount of fentanyl that constitutes a substantial quantity.</p> <p>Amends § 475.907 to add fentanyl to the list of drugs subject to enhanced sentencing if the drug is delivered to a person under 18 years of age.</p>

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Pennsylvania H.B. 384 (2023) (3/14/2023 – referred to judiciary)	Amends section 13(f) to add a new subsection that reads: an individual who knowingly or intentionally violates clause (12), (14), or (30) of subsection (a) with respect to fentanyl, or an analogue of fentanyl, or a controlled or counterfeit substance containing a trace of fentanyl or an analogue of fentanyl, is guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment not exceeding 20 years, or to pay a fine not exceeding \$500,000, or both.
Pennsylvania S.B. 235 (2023) (1/31/2023 – referred to judiciary)	Creates 18 § 2506.1, fentanyl delivery resulting in death, to provide that a person commits a felony of the first degree if the person intentionally sells or engages in a monetary transaction to distribute fentanyl and the distribution results in the death of another person due to the use of the fentanyl. Provides a mandatory minimum penalty of 25 years of total confinement and not more than 50 years of total confinement.
South Carolina H.B. 3476 (2023) (1/10/2023 – referred to committee on judiciary)	<p>Creates § 16-3-80 to provide that a person who knowingly and unlawfully delivers, dispenses, or otherwise provides fentanyl or a fentanyl-related substance to another person commits the felony offense of fentanyl-induced homicide if the proximate cause of the death of any other person is the injection, inhalation, absorption, or ingestion of any amount of fentanyl or fentanyl-related substance that was unlawfully delivered, dispensed, or otherwise provided. A person convicted of a fentanyl-induced homicide must be imprisoned not more than 30 years. Further provides that it is not a defense that a decedent contributed to his own death by his purposeful, knowing, reckless, or negligent injection, inhalation, absorption, or ingestion of the controlled substance or by consenting to the administration of the controlled substance by another person.</p> <p>Amends § 44-53-190, Schedule I, to add fentanyl-related substances, which means any material, compound, mixture, or preparation that is structurally related to fentanyl by one or more of the listed modifications.</p>
South Carolina H.B. 3503 (2023) (6/7/2023 – concurred in Senate amendment and enrolled) S.B. 330 (2023) (5/16/2023 – non-concurrence in Senate amendment)	<p>Amends § 44-53-190, Schedule I, to add fentanyl-related substances, which means any material, compound, mixture, or preparation, that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>Amends § 44-53-370(d) to provide that a person who violates subsection (c) related to knowingly and intentionally possessing a controlled substance with respect to more than two grains of fentanyl or a fentanyl-related substance is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
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<p>South Carolina, cont'd. H.B. 3503 (2023) (6/7/2023 – concurred in Senate amendment and enrolled) S.B. 330 (2023) (5/16/2023 – non- concurrence in Senate amendment)</p>	<p>more than \$5,000, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than 10 years or fined not more than \$7,500, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than 15 years or fined not more than \$10,000, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Further amends § 44-53-370(d) to provide that possession of more than two grains of fentanyl or a fentanyl-related substance is prima facie guilty of a violation of subsection (a) related to the unlawful manufacture, distribution, dispensing, delivery, purchase of a controlled substance.</p> <p>Amends § 44-53-370(e) to provide that any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this state, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this state, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of four grams or more of any fentanyl or fentanyl-related substance, or four grams or more of any mixture containing fentanyl or any fentanyl-related substance, is guilty of a felony which is known as “trafficking in fentanyl” and, upon conviction, must be punished as follows:</p> <ul style="list-style-type: none"> - Four grams or more, but less than 14 grams: (1) for a first offense, a term of imprisonment of not less than seven years nor more than 25 years, no part of which may be suspended nor probation granted, and a fine of \$50,000; or (2) for a second or subsequent offense, a mandatory minimum term of imprisonment of 25 years, no part of which may be suspended nor probation granted, and a fine of \$100,000; - 14 grams or more but less than 28 grams, a mandatory term of imprisonment of 25 years, no part of which may be suspended nor probation granted, and a fine of \$200,000; - 28 grams or more, a mandatory term of imprisonment of not less than 25 years nor more than 40 years, no part of which may be suspended nor probation granted, and a fine of \$200,000.

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<p>South Carolina H.B. 3904 (2023) (2/8/2023 – referred to committee on judiciary)</p>	<p>Amends § 44-53-370(e) to provide that any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this state, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this state, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of powdered fentanyl or powdered fentanyl-related substance, that is at least 20 percent pure fentanyl, is guilty of a felony and, upon conviction, must be punished as follows if the quantity involved is:</p> <ul style="list-style-type: none"> - Less than 15 milligrams, guilty of possession with intent to distribute, dispense, or deliver fentanyl or a fentanyl-related substance and, upon conviction, is subject to a term of imprisonment of up to five years; - 15 milligrams but less than 50 milligrams, guilty of trafficking in fentanyl and, upon conviction, is subject to a term of imprisonment of up to 15 years; - 50 milligrams but less than 100 milligrams, guilty of trafficking in fentanyl and, upon conviction, is subject to a term of imprisonment of up to 25 years; and - 100 milligrams or more, guilty of trafficking in fentanyl and, upon conviction, is subject to a term of imprisonment of up to 30 years.
<p>South Carolina S.B. 1 (2023) (2/28/2023 – referred to House committee on judiciary)</p>	<p>Creates § 16-3-80 to provide that a person who knowingly and unlawfully delivers, dispenses, or otherwise provides fentanyl or a fentanyl-related substance to another person commits the felony offense of fentanyl-induced homicide if the proximate cause of the death of any other person is the injection, inhalation, absorption, or ingestion of any amount of fentanyl or fentanyl-related substance that was unlawfully delivered, dispensed, or otherwise provided. A person convicted of a fentanyl-induced homicide must be imprisoned not more than 30 years. Further provides that it is not a defense that a decedent contributed to his own death by his purposeful, knowing, reckless, or negligent injection, inhalation, absorption, or ingestion of the controlled substance or by consenting to the administration of the controlled substance by another person, unless there exists clear and convincing evidence that the decedent intended to commit suicide.</p> <p>Creates § 16-1-10(D), fentanyl-induced homicide.</p>

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<p>South Carolina, cont'd. S.B. 1 (2023) (2/28/2023 – referred to House committee on judiciary)</p>	<p>Amends § 44-53-190, Schedule I, to add fentanyl-related substances, which means any material, compound, mixture, or preparation that is structurally related to fentanyl by one or more of the listed modifications.</p>
<p>South Carolina S.B. 153 (2023) (2/23/2023 – referred to House committee on judiciary)</p>	<p>Amends § 44-53-190, Schedule I, to add fentanyl-related substances, which means any material, compound, mixture, or preparation that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>Amends § 44-53-370(e) to provide that any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this state, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this state, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of four grams or more of any fentanyl or fentanyl-related substance, or four grams or more of any mixture containing fentanyl or any fentanyl-related substance, is guilty of a felony which is known as “trafficking in fentanyl” and, upon conviction, must be punished as follows if the quantity involved is:</p> <ul style="list-style-type: none"> - Four grams or more, but less than 14 grams: (1) for a first offense, a term of imprisonment of not less than seven years nor more than 25 years, no part of which may be suspended or probation granted, and a fine of \$50,000; or (2) for a second or subsequent offense, a mandatory minimum term of imprisonment of 25 years, no part of which may be suspended or probation granted, and a fine of \$100,000; - 14 grams or more but less than 28 grams, a mandatory term of imprisonment of 25 years, no part of which may be suspended nor probation granted, and a fine of \$200,000; and - 28 grams or more, a mandatory term of imprisonment of not less than 25 years nor more than 40 years, no part of which may be suspended nor probation granted, and a fine of \$200,000. <p>Amends § 44-53-370(d) to provide that it shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained lawfully, and a person who</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
South Carolina, cont'd. S.B. 153 (2023) (2/23/2023 – referred to House committee on judiciary)	violates such provision with respect to more than two grains of fentanyl or fentanyl-related substance is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than \$5,000, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than 10 years or fined not more than \$7,500, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than 15 years or fined not more than \$10,000, or both.
South Carolina S.B. 236 (2023) (1/12/2023 – referred to subcommittee)	<p>Amends § 44-53-190, Schedule I, to add fentanyl-related substances, which means any material, compound, mixture, or preparation that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>Amends § 44-53-370(e) to provide that any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this state, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this state, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of four grams or more of any fentanyl or fentanyl-related substance, or four grams or more of any mixture containing fentanyl or any fentanyl-related substance, is guilty of a felony which is known as “trafficking in fentanyl” and, upon conviction, must be punished as follows:</p> <ul style="list-style-type: none"> - For a first offense, a term of imprisonment of not less than three years nor more than 20 years, no part of which may be suspended or probation granted, and a fine of \$50,000; or - For a second or subsequent offense, a term of imprisonment of not less than five years nor more than 30 years, no part of which may be suspended or probation granted, and a fine of \$100,000.
South Carolina S.B. 242 (2023) (1/12/2023 – referred to subcommittee)	<p>Amends § 44-53-190, Schedule I, to add fentanyl-related substances, which means any material, compound, mixture, or preparation that is structurally related to fentanyl by one or more of the listed modifications.</p> <p>Amends § 44-53-370(e) to provide that any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this state, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver,</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>South Carolina, cont'd. S.B. 242 (2023) (1/12/2023 – referred to subcommittee)</p>	<p>purchase, or bring into this state, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of four grams or more of any fentanyl or fentanyl-related substance, or four grams or more of any mixture containing fentanyl or any fentanyl-related substance, is guilty of a felony which is known as “trafficking in fentanyl” and, upon conviction, must be punished as follows if the quantity involved is:</p> <ul style="list-style-type: none"> - Four grams or more, but less than 14 grams: (1) for a first offense, a term of imprisonment of not less than seven years nor more than 25 years, no part of which may be suspended or probation granted, and a fine of \$50,000; or (2) for a second or subsequent offense, a mandatory minimum term of imprisonment of 25 years, no part of which may be suspended or probation granted, and a fine of \$100,000; - 14 grams or more but less than 28 grams, a mandatory term of imprisonment of 25 years, no part of which may be suspended nor probation granted, and a fine of \$200,000; and - 28 grams or more, a mandatory term of imprisonment of not less than 25 years nor more than 40 years, no part of which may be suspended nor probation granted, and a fine of \$200,000. <p>For an offense that results in a fatal overdose, the term of imprisonment must be increased by an additional sentence of up to 20 years, to run consecutively.</p>
<p>Tennessee S.B. 193 (2023) (4/21/2023 – companion bill H.B. 702 substituted)</p>	<p>Amends § 39-17-417, offenses, violations, fines, habitual drug offenders, to provide that a violation of subsection (a) which provides that it is unlawful to manufacture, deliver, or sell a controlled substance or possess a controlled substance with intent to manufacture, deliver, or sell the controlled substance, with respect to:</p> <ul style="list-style-type: none"> - (c)(1) cocaine, methamphetamine, fentanyl, carfentanil, or any fentanyl derivative or analogue is a Class B felony if the amount involved is 0.5 grams or more of any substance containing cocaine, methamphetamine, fentanyl, carfentanil, or any fentanyl derivative or analogue and, in addition, may be fined not more than \$100,000; and - (c)(2)(A) any other Schedule II controlled substance, including cocaine, methamphetamine, fentanyl, carfentanil, or any fentanyl derivative or analogue in an amount of less than

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
Tennessee, cont'd. S.B. 193 (2023) (4/21/2023 – companion bill H.B. 702 substituted)	0.5 grams is a Class C felony and, in addition, may be fined not more than \$100,000; provided, that if the offense involves less than 0.5 grams of a controlled substance containing cocaine, methamphetamine, fentanyl, carfentanil, or any fentanyl derivative or analogue but the defendant carried or employed a deadly weapon during the commission of the offense or the offense resulted in death or bodily injury to another person, the offense is a Class B felony.
Tennessee S.B. 1398 (2023) (4/21/2023 – companion bill H.B. 1242 substituted)	Amends § 39-17-417, offenses, violations, fines, habitual drug offenders, to provide that a violation of subsection (a) which provides that it is unlawful to manufacture, deliver, or sell a controlled substance or possess a controlled substance with intent to manufacture, deliver, or sell the controlled substance, with respect to: <ul style="list-style-type: none"> - (B) fentanyl, carfentanil, or any fentanyl derivative or analogue is a Class B felony if the amount involved is 0.5 grams or more of any substance containing fentanyl, carfentanil, or any fentanyl derivative or analogue and, in addition, may be fined not more than \$100,000; or - (C) fentanyl, carfentanil, or any fentanyl derivative or analogue is a Class C felony if the amount is less than 0.5 grams and, in addition, may be fined not more than \$100,000; provided, that if the offense involves than 0.5 grams of a controlled substance containing fentanyl, carfentanil, or any fentanyl derivative or analogue, and the defendant carried or employed a deadly weapon during the commission of the offense or the offense resulted in death or bodily injury, then the offense is a Class B felony.
Texas H.B. 6 (2023) (5/24/2023 – sent to Governor)	Deletes carfentanil from Penalty Group 1 in Health & Safety Code § 481.102. Adds carfentanil and other fentanyl analogues to Penalty Group 1-B in Health & Safety Code § 481.1022. Amends Penal Code § 19.02 to provide that a person commits an offense if the person knowingly manufactures or delivers a controlled substance included in Penalty Group 1-B and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance manufactured or delivered by the actor, regardless of whether the controlled substance as used by itself or with another substance, including a drug, adulterant, or dilutant. Provides that it is a defense to prosecution under this provision if the actor's conduct was authorized by law.

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State/Bill Number/ Status	Description
Texas, cont'd. H.B. 6 (2023) (5/24/2023 – sent to Governor)	Amends Penal Code § 71.02 to provide that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following: (5-b) unlawful possession with intent to deliver a controlled substance listed in Penalty Group 1-B.
Texas H.B. 939 (2023) (4/26/2023 – committee report sent to calendars)	Amends Health & Safety Code § 481.115 to provide that, except as otherwise provided, an offense under subsection (a) related to knowingly or intentionally possessing a controlled substance listed in Penalty Groups 1 or 1-B unless authorized by law is a state jail felony if the controlled substance is listed in Penalty Group 1-B and the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.
Texas H.B. 4642 (2023) (5/12/2023 – referred to criminal justice committee in Senate)	<p>Creates Penal Code § 19.07, lethal opioid poisoning, to provide that a person commits an offense if the person knowingly manufactures or delivers a controlled substance listed in Penalty Group 1-B under Health & Safety Code § 481.1022 (which only includes fentanyl and any derivative of fentanyl) and an individual dies as a result of the injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance manufactured or delivered by the actor, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant.</p> <p>Provides that it is a defense to prosecution under this section that the actor's conduct in manufacturing or delivering the controlled substance was authorized by law.</p> <p>Further provides that if conduct constitutes an offense under this section also constitutes an offense under another penal code section, the actor may be prosecuted under this section or the other, but not both. An offense under this section is a felony of the first degree.</p>
Vermont H.B. 399 (2023) (2/28/2023 – read first time and referred to committee on judiciary)	<p>Amends § 4233a to provide that a person knowingly and unlawfully dispensing or selling fentanyl in any amount shall be imprisoned not less than 10 years and fined not more than \$100,000. All other provisions related to dispensing and selling fentanyl would be repealed.</p> <p>Amends trafficking subsection of § 4233a to provide that a person knowingly and unlawfully possessing fentanyl in any amount of one or more preparations, compounds, mixtures, or substances containing</p>

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State/Bill Number/ Status	Description
Vermont, cont'd. H.B. 399 (2023) (2/28/2023 – read first time and referred to committee on judiciary)	<p>fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned for life and fined not less than \$1,000,000.</p> <p>Amends subsection (c) of § 4233a to provide that a person knowingly and unlawfully transporting fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned for life and fined not more than \$1,000,000.</p>
Virginia H.B. 1455 (2023) (2/15/2023 – passed by indefinitely in Senate judiciary committee) S.B. 1490 (2023) (1/25/2023 – passed by indefinitely in judiciary)	<p>Creates § 18.2-248.05 related to selling, giving, or distributing a substance containing fentanyl to another without such person's knowing that the substance contains fentanyl. Provides that any person who sells, gives, or distributes a substance he knows contains two milligrams or more of any mixture or substance containing a detectable amount of fentanyl to another person without such person's knowledge is guilty of attempted murder of the first degree by poison. If such sale, gift, or distribution of two milligrams or more of any mixture or substance containing a detectable amount of fentanyl results in the death of such other person from his use of such substance, the person who sold, gave, or distributed the mixture or substance is guilty of murder of the first degree by poison. A violation of this section shall constitute a separate and distinct offense.</p>
Washington H.B. 1520 (2023) (1/23/2023 – first reading; referred to community safety, justice, and reentry)	<p>Amends § 69.50.4013 related to possession of a controlled substance unless otherwise authorized by law to provide that any person who violates this section by knowingly possessing fentanyl is guilty of a class C felony.</p>
Washington S.B. 5010 (2023) (4/23/2023 – by resolution, returned to Senate rules committee for third reading)	<p>Amends § 9A.42.100 to provide that a person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with fentanyl or synthetic opioids, or the smoke of a substance that the person knows, or reasonably should know, contains, or is contaminated with, fentanyl or synthetic opioids, excepting medications administered or provided during the delivery of healthcare services or pursuant to a valid prescription. Endangerment with a controlled substance is a class B felony.</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
West Virginia H.B. 2847 (2023) (1/20/2023 – to House prevention and treatment of substance abuse committee)	Amends § 60A-4-401 to provide that any person who violates this section knowing that the controlled substance is fentanyl, either alone or in combination with any other substance, shall be imprisoned in a state correctional facility for the remainder of their life.
West Virginia S.B. 304 (2023) (1/20/2023 – in judiciary committee)	Amends § 60A-4-401 to provide that any person who violates this section knowing that the controlled substance is fentanyl, either alone or in combination with any other substance, shall be fined not more than \$50,000, or be imprisoned in a state correctional facility for not less than 10 nor more than 20 years, or both.
West Virginia S.B. 547 (2023) (3/1/2023 – to House judiciary)	<p>Amends § 60A-4-401 to delete provision in subsection (a)(i) related specifically to fentanyl and to provide pursuant to (a)(i) that a person who violates the subsection with respect to a controlled substance classified in Schedule I or II which is a narcotic drug is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than three years nor more than 15 years, or fined not more than \$50,000, or both.</p> <p>Deletes § 60A-4-401(b) and substitutes the following: notwithstanding the provisions of (a), any person who willfully manufactures, delivers, or possesses with the intent to manufacture or deliver 1 kg or more of heroin, 1 kg or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of LSD, 50 grams or more of methamphetamine, or five grams or more of fentanyl, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than 10 nor more than 30 years, or fined not more than \$100,000, or both.</p> <p>Deletes § 60A-4-401(d) and substitutes the following: notwithstanding the provisions of (a), any person who willfully manufactures or delivers or possesses with intent to manufacture or deliver not less than 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of LSD, or not less than five but fewer than 50 grams of methamphetamine, or one gram or more but less than five grams of fentanyl, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than five nor more than 20 years, or fined not more than \$75,000, or both.</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
<p>West Virginia, cont'd. S.B. 547 (2023) (3/1/2023 – to House judiciary)</p>	<p>Amends § 60A-4-409 to delete provision in (b)(1) related specifically to fentanyl and to provide pursuant to (b)(1) that a person who violates this section with regard to a controlled substance classified in Schedules I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than five years nor more than 20 years, or fined not more than \$50,000, or both.</p> <p>Amends § 60A-4-409(c) to include a provision related to five grams or more of fentanyl which, upon conviction thereof, shall result in imprisonment for an indeterminate sentence of not less than 15 nor more than 30 years.</p> <p>Amends § 60A-4-409(d) to include a provision related to one gram or more but less than five grams of fentanyl which, upon conviction thereof, shall result in imprisonment for an indeterminate sentence of not less than seven nor more than 20 years.</p> <p>Amends § 60A-4-409(e) to include a provision related to less than one gram of fentanyl which, upon conviction thereof, shall result in imprisonment for an indeterminate sentence of not less than five nor more than 20 years.</p> <p>Amends § 60A-4-414, conspiracy, to add fentanyl-specific language. Amends § 60A-4-414(b) to include five grams or more of fentanyl which, upon conviction thereof, shall result in imprisonment for an indeterminate sentence of not less than five nor more than 30 years.</p> <p>Amends § 60A-4-414(c) to include one gram or more but less than five grams of fentanyl which, upon conviction thereof, shall result in imprisonment for an indeterminate sentence of not less than three years nor more than 20 years.</p> <p>Amends § 60A-4-141(d) to include less than one gram of fentanyl which, upon conviction thereof, shall result in imprisonment for an indeterminate sentence of not less than two nor more than 15 years.</p>
<p>Wyoming S.F. 181 (2023) (3/1/2023 – third reading failed in House)</p>	<p>Amends § 6-2-108, drug induced homicide, to provide that a person is guilty of drug induced homicide if he is an adult or is at least four years older than the victim and he delivers fentanyl, heroin, or methamphetamine to another person and that person dies as a result of the injection, inhalation, ingestion, or administration by any other means of any amount of such substance. Further provides that drug-</p>

<u>PENDING STATE AND FEDERAL LEGISLATION</u>	
State/Bill Number/ Status	Description
Wyoming, cont'd. S.F. 181 (2023) (3/1/2023 – third reading failed in House)	induced homicide is a felony punishable by imprisonment for not more than 20 years. Provides that it shall be a mitigating circumstance at sentencing that the person contacted law enforcement or emergency medical services to report the need for medical assistance for the victim as a result of the drug-related overdose or provided first aid or other medical assistance to the victim if the victim experienced a drug-related overdose.

ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Based in Washington D.C., and led by and comprised of experienced attorneys, the Legislative Analysis and Public Policy Association is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces timely model laws and policies that can be used by national, state, and local public health, public safety, and substance use disorder practitioners who want the latest comprehensive information on law and policy as well as up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to fact sheets. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication-assisted treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.



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