
Wisconsin Legislative Council

ACT MEMO



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March 21, 2022

2021 Wisconsin Act 179
[2021 Senate Bill 352]

**Penalties for Prohibited Acts
Involving Fentanyl**

BACKGROUND

Under state law, controlled substances are regulated by placement on a schedule numbering I to V based on a substance's potential for abuse and medical uses. Subject to certain exceptions, it is a Class E felony to manufacture, distribute, or deliver (or possess with intent to do any of those acts) a controlled substance, or controlled substance analog, that is included in Schedule I or II, regardless of the amount involved. Under prior law, fentanyl and fentanyl analogs were subject to this general penalty.

2021 WISCONSIN ACT 179

2021 Wisconsin Act 179 creates a specific penalty structure for prohibited acts involving fentanyl and fentanyl analogs. Specifically, the act provides the following penalties for the manufacture, distribution, or delivery (or possession with intent to do any of those acts) of fentanyl, a controlled substance analog of fentanyl, or certain fentanyl analogs specified in statute:

- Class E felony, if the amount involved is 10 grams or less.
- Class D felony, if the amount involved is more than 10 grams, but not more than 50 grams.
- Class C felony, if the amount involved is more than 50 grams.

Similar to other controlled substances specified in state law, the act allows the maximum term of imprisonment for the violations above involving fentanyl or fentanyl analogs to be increased by five years if the prohibited act takes place in certain locations, such as while in, on, or within 1,000 feet of a park, correctional facility, public swimming pool, youth center, school, or approved treatment facility.

When determining the amount involved, the act allows for inclusion of the weight of any compound or other substance mixed or combined with the fentanyl or fentanyl analog, similar to the way in which state law allows for determination of the amount of other controlled substances with weight-based penalty structures, such as cocaine, heroin, and methamphetamine.

Finally, similar to other specific controlled substances with a weight-based penalty structure, the act allows, in any case involving fentanyl or fentanyl analogs with more than one violation, that all violations may be prosecuted as a single crime, if committed pursuant to a single intent and design.

Effective date: March 18, 2022

AO:jal