

House Engrossed

drug offenses; probation; undesignated felony

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2540

AN ACT

AMENDING SECTIONS 13-3406, 13-3407 AND 13-3408, ARIZONA REVISED STATUTES;
RELATING TO DRUGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3406, Arizona Revised Statutes, is amended to
3 read:
4 13-3406. Possession, use, administration, acquisition, sale,
5 manufacture or transportation of prescription-only
6 drugs; misbranded drugs; classification;
7 definition
8 A. A person shall not knowingly:
9 1. Possess or use a prescription-only drug unless the person
10 obtains the prescription-only drug pursuant to a valid prescription of a
11 prescriber who is licensed pursuant to title 32, chapter 7, 11, 13, 14,
12 15, 16, 17, 21, 25 or 29 or is similarly licensed in another state.
13 2. Unless the person holds a license or a permit issued pursuant to
14 title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 or 29, possess a
15 prescription-only drug for sale.
16 3. Unless the person holds a license or a permit issued pursuant to
17 title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 or 29, possess
18 equipment and chemicals for the purpose of manufacturing a
19 prescription-only drug.
20 4. Unless the person holds a license or a permit issued pursuant to
21 title 32, chapter 18, manufacture a prescription-only drug.
22 5. Administer a prescription-only drug to another person whose
23 possession or use of the prescription-only drug violates this section.
24 6. Obtain or procure the administration of a prescription-only drug
25 by fraud, deceit, misrepresentation or subterfuge.
26 7. Unless the person is authorized, transport for sale, import into
27 this state or offer to transport for sale or import into this state, sell,
28 transfer or offer to sell or transfer a prescription-only drug.
29 8. Possess or use a misbranded drug.
30 9. Manufacture, sell or distribute a misbranded drug.
31 B. A person who violates:
32 1. Subsection A, paragraph 9 of this section is guilty of a class 4
33 felony. UNLESS THE PERSON WAS PREVIOUSLY CONVICTED OF A FELONY OFFENSE OR
34 A VIOLATION OF THIS SECTION OR SECTION 13-3408, THE COURT ON MOTION OF THE
35 STATE, CONSIDERING THE NATURE AND CIRCUMSTANCES OF THE OFFENSE, MAY PLACE
36 THE DEFENDANT ON PROBATION IN ACCORDANCE WITH CHAPTER 9 OF THIS TITLE AND
37 REFRAIN FROM DESIGNATING THE OFFENSE AS A FELONY OR MISDEMEANOR UNTIL THE
38 PROBATION IS SUCCESSFULLY TERMINATED. THE OFFENSE SHALL BE TREATED AS A
39 MISDEMEANOR FOR ALL PURPOSES UNTIL THE COURT ENTERS AN ORDER DESIGNATING
40 THE OFFENSE A MISDEMEANOR.
41 2. Subsection A, paragraph 2 or 7 of this section is guilty of a
42 class 6 felony.

1 3. Subsection A, paragraph 1, 3, 4, 5 or 6 of this section is
2 guilty of a class 1 misdemeanor.

3 4. Subsection A, paragraph 8 of this section is guilty of a class 2
4 misdemeanor.

5 C. In addition to any other penalty prescribed by this title, the
6 court shall order a person who is convicted of a violation of this section
7 to pay a fine of ~~one thousand dollars~~ \$1,000. A judge shall not suspend
8 any part or all of the imposition of any fine required by this subsection.

9 D. A person who is convicted of a felony violation of this section
10 for which probation or release before the expiration of the sentence
11 imposed by the court is authorized is prohibited from using any marijuana,
12 dangerous drug, narcotic drug or prescription-only drug except as lawfully
13 administered by a practitioner and as a condition of any probation or
14 release shall be required to submit to drug testing administered under the
15 supervision of the probation department of the county or the state
16 department of corrections, as appropriate, during the duration of the term
17 of probation or before the expiration of the sentence imposed.

18 E. If a person who is convicted of a violation of subsection A,
19 paragraph 2 or 7 of this section is granted probation, the court shall
20 order that as a condition of probation the person perform not less than
21 two hundred forty hours of community restitution with an agency or
22 organization providing counseling, rehabilitation or treatment for alcohol
23 or drug abuse, an agency or organization that provides medical treatment
24 to persons who abuse controlled substances, an agency or organization that
25 serves persons who are victims of crime or any other appropriate agency or
26 organization.

27 F. NOTWITHSTANDING SUBSECTION B, PARAGRAPH 1 OF THIS SECTION AND
28 UNTIL THE COURT ACTUALLY ENTERS AN ORDER DESIGNATING AN OFFENSE AS A
29 FELONY OR MISDEMEANOR, THE OFFENSE SHALL BE TREATED AS A FELONY CONVICTION
30 FOR ALL OF THE FOLLOWING PURPOSES:

31 1. PLACING THE DEFENDANT ON FELONY PROBATION PURSUANT TO CHAPTER 9
32 OF THIS TITLE, INCLUDING FOR THE PURPOSES OF TITLE 31, CHAPTER 3, ARTICLE
33 4.1.

34 2. COLLECTING DNA PURSUANT TO SECTION 13-610.

35 3. DETERMINING THE DEFENDANT'S RIGHT TO POSSESS A FIREARM PURSUANT
36 TO CHAPTER 31 OF THIS TITLE.

37 4. BEING USED AS A HISTORICAL PRIOR FELONY CONVICTION.

38 5. BEING ADMISSIBLE FOR IMPEACHMENT PURPOSES IN A SUBSEQUENT TRIAL.

39 6. BEING USED TO ENHANCE THE SENTENCE PURSUANT TO CHAPTER 7 OF THIS
40 TITLE.

41 G. THE COURT SHALL DESIGNATE AN UNDESIGNATED OFFENSE AS A
42 MISDEMEANOR ON THE DEFENDANT'S SUCCESSFUL FULFILLMENT OF THE CONDITIONS OF
43 PROBATION AND DISCHARGE BY THE COURT. THE DEFENDANT SUCCESSFULLY FULFILLS
44 THE CONDITIONS OF PROBATION IF, IN THE DISCRETION OF THE COURT, THE
45 DEFENDANT HAS SATISFIED THE CONDITIONS OF PROBATION. THIS SUBSECTION

1 APPLIES TO A DEFENDANT WHO OWES ANY OUTSTANDING MONETARY OBLIGATION UNLESS
2 THE DEFENDANT OWES VICTIM RESTITUTION OR HAS WILFULLY FAILED TO PAY THE
3 MONETARY OBLIGATION.

4 ~~F.~~ H. For the purposes of this section, "misbranded drug" means a
5 drug that is misbranded as prescribed in section 32-1967.

6 Sec. 2. Section 13-3407, Arizona Revised Statutes, is amended to
7 read:

8 13-3407. Possession, use, administration, acquisition, sale,
9 manufacture or transportation of dangerous drugs;
10 classification

11 A. A person shall not knowingly:

12 1. Possess or use a dangerous drug.

13 2. Possess a dangerous drug for sale.

14 3. Possess equipment or chemicals, or both, for the purpose of
15 manufacturing a dangerous drug.

16 4. Manufacture a dangerous drug.

17 5. Administer a dangerous drug to another person.

18 6. Obtain or procure the administration of a dangerous drug by
19 fraud, deceit, misrepresentation or subterfuge.

20 7. Transport for sale, import into this state or offer to transport
21 for sale or import into this state, sell, transfer or offer to sell or
22 transfer a dangerous drug.

23 B. A person who violates:

24 1. Subsection A, paragraph 1 of this section is guilty of a class 4
25 felony. Unless the drug involved is ~~lysergic acid diethylamide,~~
26 ~~methamphetamine, amphetamine or~~ phencyclidine or the person was previously
27 convicted of a felony offense or a violation of this section or section
28 13-3408, the court on motion of the state, considering the nature and
29 circumstances of the offense, ~~for a person not previously convicted of any~~
30 ~~felony offense or a violation of this section or section 13-3408 may enter~~
31 ~~judgment of conviction for a class 1 misdemeanor and make disposition~~
32 ~~accordingly or~~ may place the defendant on probation in accordance with
33 chapter 9 of this title and refrain from designating the offense as a
34 felony or misdemeanor until the probation is successfully terminated. The
35 offense shall be treated as a felony for all purposes until the court
36 enters an order designating the offense a misdemeanor.

37 2. Subsection A, paragraph 2 of this section is guilty of a class 2
38 felony.

39 3. Subsection A, paragraph 3 of this section is guilty of a class 3
40 felony, except that if the offense involved methamphetamine, the person is
41 guilty of a class 2 felony.

42 4. Subsection A, paragraph 4 of this section is guilty of a class 2
43 felony.

44 5. Subsection A, paragraph 5 of this section is guilty of a class 2
45 felony.

1 6. Subsection A, paragraph 6 of this section is guilty of a class 3
2 felony.

3 7. Subsection A, paragraph 7 of this section is guilty of a class 2
4 felony.

5 C. Except as provided in subsection E of this section, a person who
6 is convicted of a violation of subsection A, paragraph 1, 3 or 6 and who
7 has not previously been convicted of any felony or who has not been
8 sentenced pursuant to section 13-703, section 13-704, section 13-706,
9 subsection A, section 13-708, subsection D or any other law making the
10 convicted person ineligible for probation is eligible for probation.

11 D. Except as provided in subsection E of this section, if the
12 aggregate amount of dangerous drugs involved in one offense or all of the
13 offenses that are consolidated for trial equals or exceeds the statutory
14 threshold amount, a person who is convicted of a violation of subsection
15 A, paragraph 2, 5 or 7 of this section is not eligible for suspension of
16 sentence, probation, pardon or release from confinement on any basis until
17 the person has served the sentence imposed by the court, the person is
18 eligible for release pursuant to section 41-1604.07 or the sentence is
19 commuted.

20 E. If ~~the~~ A person is convicted of a violation of subsection A,
21 paragraph 2, 3, 4 or 7 of this section and the drug involved is
22 methamphetamine, the person shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 calendar years	10 calendar years	15 calendar years

25 A person who has previously been convicted of a violation of subsection A,
26 paragraph 2, 3, 4 or 7 of this section involving methamphetamine or
27 section 13-3407.01 shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 calendar years	15 calendar years	20 calendar years

28 F. A person who is convicted of a violation of subsection A,
29 paragraph 4 of this section or subsection A, paragraph 2, 3 or 7 of this
30 section involving methamphetamine is not eligible for suspension of
31 sentence, probation, pardon or release from confinement on any basis until
32 the person has served the sentence imposed by the court, the person is
33 eligible for release pursuant to section 41-1604.07 or the sentence is
34 commuted.

35 G. If a person is convicted of a violation of subsection A,
36 paragraph 5 of this section, if the drug is administered without the other
37 person's consent, if the other person is under eighteen years of age and
38 if the drug is flunitrazepam, gamma hydroxy butrate or ketamine
39 hydrochloride, the convicted person is not eligible for suspension of
40 sentence, probation, pardon or release from confinement on any basis until
41 the person has served the sentence imposed by the court, the person is
42 eligible for release pursuant to section 41-1604.07 or the sentence is
43 commuted.

1 H. In addition to any other penalty prescribed by this title, the
2 court shall order a person who is convicted of a violation of this section
3 to pay a fine of not less than ~~one thousand dollars~~ \$1,000 or three times
4 the value as determined by the court of the dangerous drugs involved in or
5 giving rise to the charge, whichever is greater, and not more than the
6 maximum authorized by chapter 8 of this title. A judge shall not suspend
7 any part or all of the imposition of any fine required by this subsection.

8 I. A person who is convicted of a violation of this section for
9 which probation or release before the expiration of the sentence imposed
10 by the court is authorized is prohibited from using any marijuana,
11 dangerous drug, narcotic drug or prescription-only drug except as lawfully
12 administered by a health care practitioner and as a condition of any
13 probation or release shall be required to submit to drug testing
14 administered under the supervision of the probation department of the
15 county or the state department of corrections, as appropriate, during the
16 duration of the term of probation or before the expiration of the sentence
17 imposed.

18 J. If a person who is convicted of a violation of this section is
19 granted probation, the court shall order that as a condition of probation
20 the person perform not less than three hundred sixty hours of community
21 restitution with an agency or organization that provides counseling,
22 rehabilitation or treatment for alcohol or drug abuse, an agency or
23 organization that provides medical treatment to persons who abuse
24 controlled substances, an agency or organization that serves persons who
25 are victims of crime or any other appropriate agency or organization.

26 K. The presumptive term imposed pursuant to subsection E of this
27 section may be mitigated or aggravated pursuant to section 13-701,
28 subsections D and E.

29 Sec. 3. Section 13-3408, Arizona Revised Statutes, is amended to
30 read:

31 13-3408. Possession, use, administration, acquisition, sale,
32 manufacture or transportation of narcotic drugs:
33 classification

34 A. Except as provided in section 36-2850, paragraph 16, subdivision
35 (b), section 36-2852 and section 36-2853, subsection C, a person shall not
36 knowingly:

- 37 1. Possess or use a narcotic drug.
- 38 2. Possess a narcotic drug for sale.
- 39 3. Possess equipment or chemicals, or both, for the purpose of
40 manufacturing a narcotic drug.
- 41 4. Manufacture a narcotic drug.
- 42 5. Administer a narcotic drug to another person.
- 43 6. Obtain or procure the administration of a narcotic drug by
44 fraud, deceit, misrepresentation or subterfuge.

1 7. Transport for sale, import into this state, offer to transport
2 for sale or import into this state, sell, transfer or offer to sell or
3 transfer a narcotic drug.

4 B. A person who violates:

5 1. Subsection A, paragraph 1 of this section is guilty of a class 4
6 felony. **UNLESS THE PERSON WAS PREVIOUSLY CONVICTED OF A FELONY OFFENSE OR**
7 **A VIOLATION OF THIS SECTION OR SECTION 13-3407, THE COURT ON MOTION OF THE**
8 **STATE, CONSIDERING THE NATURE AND CIRCUMSTANCES OF THE OFFENSE, MAY PLACE**
9 **THE DEFENDANT ON PROBATION IN ACCORDANCE WITH CHAPTER 9 OF THIS TITLE AND**
10 **REFRAIN FROM DESIGNATING THE OFFENSE AS A FELONY OR MISDEMEANOR UNTIL THE**
11 **PROBATION IS SUCCESSFULLY TERMINATED. THE OFFENSE SHALL BE TREATED AS A**
12 **FELONY FOR ALL PURPOSES UNTIL THE COURT ENTERS AN ORDER DESIGNATING THE**
13 **OFFENSE A MISDEMEANOR.**

14 2. Subsection A, paragraph 2 of this section is guilty of a class 2
15 felony.

16 3. Subsection A, paragraph 3 of this section is guilty of a class 3
17 felony.

18 4. Subsection A, paragraph 4 of this section is guilty of a class 2
19 felony.

20 5. Subsection A, paragraph 5 of this section is guilty of a class 2
21 felony.

22 6. Subsection A, paragraph 6 of this section is guilty of a class 3
23 felony.

24 7. Subsection A, paragraph 7 of this section is guilty of a class 2
25 felony.

26 C. A person who is convicted of a violation of subsection A,
27 paragraph 1, 3 or 6 of this section and who has not previously been
28 convicted of any felony or who has not been sentenced pursuant to section
29 13-703, section 13-704, subsection A, B, C, D or E, section 13-706,
30 subsection A, section 13-708, subsection D or any other provision of law
31 making the convicted person ineligible for probation is eligible for
32 probation.

33 D. If the aggregate amount of narcotic drugs involved in one
34 offense or all of the offenses that are consolidated for trial equals or
35 exceeds the statutory threshold amount, a person who is convicted of a
36 violation of subsection A, paragraph 2, 5 or 7 of this section is not
37 eligible for suspension of sentence, probation, pardon or release from
38 confinement on any basis until the person has served the sentence imposed
39 by the court, the person is eligible for release pursuant to section
40 41-1604.07 or the sentence is commuted.

41 E. A person who is convicted of a violation of subsection A,
42 paragraph 4 of this section is not eligible for suspension of sentence,
43 probation, pardon or release from confinement on any basis until the
44 person has served the sentence imposed by the court, the person is

1 eligible for release pursuant to section 41-1604.07 or the sentence is
2 commuted.

3 F. In addition to any other penalty prescribed by this title, the
4 court shall order a person who is convicted of a violation of this section
5 to pay a fine of not less than \$2,000 or three times the value as
6 determined by the court of the narcotic drugs involved in or giving rise
7 to the charge, whichever is greater, and not more than the maximum
8 authorized by chapter 8 of this title. A judge shall not suspend any part
9 or all of the imposition of any fine required by this subsection.

10 G. A person who is convicted of a violation of this section for
11 which probation or release before the expiration of the sentence imposed
12 by the court is authorized is prohibited from using any marijuana,
13 dangerous drug, narcotic drug or prescription-only drug except as lawfully
14 administered by a health care practitioner and as a condition of any
15 probation or release shall be required to submit to drug testing
16 administered under the supervision of the probation department of the
17 county or the state department of corrections, as appropriate, during the
18 duration of the term of probation or before the expiration of the sentence
19 imposed.

20 H. If a person who is convicted of a violation of this section is
21 granted probation, the court shall order that as a condition of probation
22 the person perform not less than three hundred sixty hours of community
23 restitution with an agency or organization that provides counseling,
24 rehabilitation or treatment for alcohol or drug abuse, an agency or
25 organization that provides medical treatment to persons who abuse
26 controlled substances, an agency or organization that serves persons who
27 are victims of crime or any other appropriate agency or organization.