

REFERENCE TITLE: drug offenses; probation; undesignated felony

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

HB 2540

Introduced by
Representatives Carter: Blackman, Cook

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 FELONY FOR ALL PURPOSES UNTIL THE COURT ENTERS AN ORDER DESIGNATING THE
40 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. For the purposes of this section, "misbranded drug" means a drug
28 that is misbranded as prescribed in section 32-1967.

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

31 13-3407. Possession, use, administration, acquisition, sale,
32 manufacture or transportation of dangerous drugs;
33 classification

34 A. A person shall not knowingly:

35 1. Possess or use a dangerous drug.

36 2. Possess a dangerous drug for sale.

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

39 4. Manufacture a dangerous drug.

40 5. Administer a dangerous drug to another person.

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

1 7. Transport for sale, import into this state or offer to transport
2 for sale or import into this state, sell, transfer or offer to sell or
3 transfer a dangerous 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 drug involved is ~~lysergic acid diethylamide,~~
7 ~~methamphetamine, amphetamine or~~ phencyclidine or the person was previously
8 convicted of a felony offense or a violation of this section or section
9 13-3408, the court on motion of the state, considering the nature and
10 circumstances of the offense, ~~for a person not previously convicted of any~~
11 ~~felony offense or a violation of this section or section 13-3408 may enter~~
12 ~~judgment of conviction for a class 1 misdemeanor and make disposition~~
13 ~~accordingly or~~ may place the defendant on probation in accordance with
14 chapter 9 of this title and refrain from designating the offense as a
15 felony or misdemeanor until the probation is successfully terminated. The
16 offense shall be treated as a felony for all purposes until the court
17 enters an order designating the offense a misdemeanor.

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

20 3. Subsection A, paragraph 3 of this section is guilty of a class 3
21 felony, except that if the offense involved methamphetamine, the person is
22 guilty of a class 2 felony.

23 4. Subsection A, paragraph 4 of this section is guilty of a class 2
24 felony.

25 5. Subsection A, paragraph 5 of this section is guilty of a class 2
26 felony.

27 6. Subsection A, paragraph 6 of this section is guilty of a class 3
28 felony.

29 7. Subsection A, paragraph 7 of this section is guilty of a class 2
30 felony.

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

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

1 E. If ~~the~~ A person is convicted of a violation of subsection A,
2 paragraph 2, 3, 4 or 7 of this section and the drug involved is
3 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

6 A person who has previously been convicted of a violation of subsection A,
7 paragraph 2, 3, 4 or 7 of this section involving methamphetamine or
8 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

9
10
11 F. A person who is convicted of a violation of subsection A,
12 paragraph 4 of this section or subsection A, paragraph 2, 3 or 7 of this
13 section involving methamphetamine is not eligible for suspension of
14 sentence, probation, pardon or release from confinement on any basis until
15 the person has served the sentence imposed by the court, the person is
16 eligible for release pursuant to section 41-1604.07 or the sentence is
17 commuted.

18 G. If a person is convicted of a violation of subsection A,
19 paragraph 5 of this section, if the drug is administered without the other
20 person's consent, if the other person is under eighteen years of age and
21 if the drug is flunitrazepam, gamma hydroxy butrate or ketamine
22 hydrochloride, the convicted person is not eligible for suspension of
23 sentence, probation, pardon or release from confinement on any basis until
24 the person has served the sentence imposed by the court, the person is
25 eligible for release pursuant to section 41-1604.07 or the sentence is
26 commuted.

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

34 I. A person who is convicted of a violation of this section for
35 which probation or release before the expiration of the sentence imposed
36 by the court is authorized is prohibited from using any marijuana,
37 dangerous drug, narcotic drug or prescription-only drug except as lawfully
38 administered by a health care practitioner and as a condition of any
39 probation or release shall be required to submit to drug testing
40 administered under the supervision of the probation department of the
41 county or the state department of corrections, as appropriate, during the
42 duration of the term of probation or before the expiration of the sentence
43 imposed.

1 J. If a person who is convicted of a violation of this section is
2 granted probation, the court shall order that as a condition of probation
3 the person perform not less than three hundred sixty hours of community
4 restitution with an agency or organization that provides counseling,
5 rehabilitation or treatment for alcohol or drug abuse, an agency or
6 organization that provides medical treatment to persons who abuse
7 controlled substances, an agency or organization that serves persons who
8 are victims of crime or any other appropriate agency or organization.

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

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

14 13-3408. Possession, use, administration, acquisition, sale,
15 manufacture or transportation of narcotic drugs;
16 classification

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

- 20 1. Possess or use a narcotic drug.
- 21 2. Possess a narcotic drug for sale.
- 22 3. Possess equipment or chemicals, or both, for the purpose of
23 manufacturing a narcotic drug.
- 24 4. Manufacture a narcotic drug.
- 25 5. Administer a narcotic drug to another person.
- 26 6. Obtain or procure the administration of a narcotic drug by
27 fraud, deceit, misrepresentation or subterfuge.
- 28 7. Transport for sale, import into this state, offer to transport
29 for sale or import into this state, sell, transfer or offer to sell or
30 transfer a narcotic drug.

31 B. A person who violates:

32 1. Subsection A, paragraph 1 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 13-3407, 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 **FELONY FOR ALL PURPOSES UNTIL THE COURT ENTERS AN ORDER DESIGNATING THE**
40 **OFFENSE A MISDEMEANOR.**

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

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

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

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

7 6. Subsection A, paragraph 6 of this section is guilty of a class 3
8 felony.

9 7. Subsection A, paragraph 7 of this section is guilty of a class 2
10 felony.

11 C. A person who is convicted of a violation of subsection A,
12 paragraph 1, 3 or 6 of this section and who has not previously been
13 convicted of any felony or who has not been sentenced pursuant to section
14 13-703, section 13-704, subsection A, B, C, D or E, section 13-706,
15 subsection A, section 13-708, subsection D or any other provision of law
16 making the convicted person ineligible for probation is eligible for
17 probation.

18 D. If the aggregate amount of narcotic drugs involved in one
19 offense or all of the offenses that are consolidated for trial equals or
20 exceeds the statutory threshold amount, a person who is convicted of a
21 violation of subsection A, paragraph 2, 5 or 7 of this section is not
22 eligible for suspension of sentence, probation, pardon or release from
23 confinement on any basis until the person has served the sentence imposed
24 by the court, the person is eligible for release pursuant to section
25 41-1604.07 or the sentence is commuted.

26 E. A person who is convicted of a violation of subsection A,
27 paragraph 4 of this section is not eligible for suspension of sentence,
28 probation, pardon or release from confinement on any basis until the
29 person has served the sentence imposed by the court, the person is
30 eligible for release pursuant to section 41-1604.07 or the sentence is
31 commuted.

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

39 G. A person who is convicted of a violation of this section for
40 which probation or release before the expiration of the sentence imposed
41 by the court is authorized is prohibited from using any marijuana,
42 dangerous drug, narcotic drug or prescription-only drug except as lawfully
43 administered by a health care practitioner and as a condition of any
44 probation or release shall be required to submit to drug testing
45 administered under the supervision of the probation department of the

1 county or the state department of corrections, as appropriate, during the
2 duration of the term of probation or before the expiration of the sentence
3 imposed.

4 H. If a person who is convicted of a violation of this section is
5 granted probation, the court shall order that as a condition of probation
6 the person perform not less than three hundred sixty hours of community
7 restitution with an agency or organization that provides counseling,
8 rehabilitation or treatment for alcohol or drug abuse, an agency or
9 organization that provides medical treatment to persons who abuse
10 controlled substances, an agency or organization that serves persons who
11 are victims of crime or any other appropriate agency or organization.