

REFERENCE TITLE: fentanyl sales; manufacture; sentencing; testing

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2802

Introduced by
Representatives Gress: Marshall, Martinez, Nguyen, Senator Shope

AN ACT

AMENDING SECTION 13-3408, ARIZONA REVISED STATUTES; RELATING TO DRUG
OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3408, Arizona Revised Statutes, is amended to
3 read:
4 13-3408. Possession, use, administration, acquisition, sale,
5 manufacture or transportation of narcotic drugs;
6 mandatory fentanyl testing; classification
7 A. Except as provided in section 36-2850, paragraph ~~16~~ 19,
8 subdivision (b), section 36-2852 and section 36-2853, subsection C, a
9 person shall not knowingly:
10 1. Possess or use a narcotic drug.
11 2. Possess a narcotic drug for sale.
12 3. Possess equipment or chemicals, or both, for the purpose of
13 manufacturing a narcotic drug.
14 4. Manufacture a narcotic drug.
15 5. Administer a narcotic drug to another person.
16 6. Obtain or procure the administration of a narcotic drug by
17 fraud, deceit, misrepresentation or subterfuge.
18 7. Transport for sale, import into this state, offer to transport
19 for sale or import into this state, sell, transfer or offer to sell or
20 transfer a narcotic drug.
21 B. A person who violates:
22 1. Subsection A, paragraph 1 of this section is guilty of a class 4
23 felony.
24 2. Subsection A, paragraph 2 of this section is guilty of a class 2
25 felony.
26 3. Subsection A, paragraph 3 of this section is guilty of a class 3
27 felony.
28 4. Subsection A, paragraph 4 of this section is guilty of a class 2
29 felony.
30 5. Subsection A, paragraph 5 of this section is guilty of a class 2
31 felony.
32 6. Subsection A, paragraph 6 of this section is guilty of a class 3
33 felony.
34 7. Subsection A, paragraph 7 of this section is guilty of a class 2
35 felony.
36 C. **EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION,** a person who
37 is convicted of a violation of subsection A, paragraph 1, 3 or 6 of this
38 section and who has not previously been convicted of any felony or who has
39 not been sentenced pursuant to section 13-703, section 13-704, subsection
40 A, B, C, D or E, section 13-706, subsection A, section 13-708, subsection
41 D or any other provision of law making the convicted person ineligible for
42 probation is eligible for probation.
43 D. **EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION,** if the
44 aggregate amount of narcotic drugs involved in one offense or all of the
45 offenses that are consolidated for trial equals or exceeds the statutory

1 threshold amount, a person who is convicted of a violation of subsection
2 A, paragraph 2, 5 or 7 of this section is not eligible for suspension of
3 sentence, probation, pardon or release from confinement on any basis until
4 the person has served the sentence imposed by the court, the person is
5 eligible for release pursuant to section 41-1604.07 or the sentence is
6 commuted.

7 E. A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A,
8 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION INVOLVING AN AMOUNT OF FENTANYL
9 HAVING A WEIGHT OF AT LEAST TWO MILLIGRAMS SHALL BE SENTENCED AS FOLLOWS:

10	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
11	5 CALENDAR YEARS	10 CALENDAR YEARS	15 CALENDAR YEARS

12 A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A,
13 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION INVOLVING AN AMOUNT OF FENTANYL
14 HAVING A WEIGHT OF AT LEAST TWO MILLIGRAMS SHALL BE SENTENCED AS FOLLOWS:

15	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
16	10 CALENDAR YEARS	15 CALENDAR YEARS	20 CALENDAR YEARS

17 ~~F.~~ F. A person who is convicted of a violation of subsection A,
18 paragraph 4 of this section OR SUBSECTION A, PARAGRAPH 2, 3 OR 7 OF THIS
19 SECTION INVOLVING FENTANYL HAVING A WEIGHT OF AT LEAST TWO MILLIGRAMS is
20 not eligible for suspension of sentence, probation, pardon or release from
21 confinement on any basis until the person has served the sentence imposed
22 by the court, the person is eligible for release pursuant to section
23 41-1604.07 or the sentence is commuted.

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

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

41 ~~H.~~ I. If a person who is convicted of a violation of this section
42 is granted probation, the court shall order that as a condition of
43 probation the person perform not less than three hundred sixty hours of
44 community restitution with an agency or organization that provides
45 counseling, rehabilitation or treatment for alcohol or drug abuse, an

1 agency or organization that provides medical treatment to persons who
2 abuse controlled substances, an agency or organization that serves persons
3 who are victims of crime or any other appropriate agency or organization.

4 J. A LAW ENFORCEMENT AGENCY THAT CONFISCATES FENTANYL DURING THE
5 COURSE OF AN INVESTIGATION OF A VIOLATION OF THIS SECTION INVOLVING
6 FENTANYL SHALL SUBMIT A SUFFICIENT SAMPLE OF THE FENTANYL TO AN ACCREDITED
7 CRIME LABORATORY FOR TESTING TO DETERMINE THE APPROPRIATE CRIMINAL
8 VIOLATION.