

Senate Engrossed

~~carfentanil; fentanyl; threshold amount; minors~~
NOW: carfentanil; fentanyl; minors; penalties

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1027

AN ACT

AMENDING SECTIONS 13-705 AND 13-3408, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 34, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3408.01; RELATING TO NARCOTIC DRUGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-705, Arizona Revised Statutes, is amended to
3 read:

4 13-705. Dangerous crimes against children; sentences;
5 definitions

6 A. A person who is at least eighteen years of age and who is
7 convicted of a dangerous crime against children in the first degree
8 involving commercial sexual exploitation of a minor or child sex
9 trafficking and the person has previously been convicted of a dangerous
10 crime against children in the first degree shall be sentenced to
11 imprisonment in the custody of the state department of corrections for
12 natural life. A person who is sentenced to natural life is not eligible
13 for commutation, parole, work furlough, work release or release from
14 confinement on any basis for the remainder of the person's natural life.

15 B. A person who is at least eighteen years of age and who is
16 convicted of a dangerous crime against children in the first degree
17 involving sexual assault of a minor who is twelve years of age or younger
18 or sexual conduct with a minor who is twelve years of age or younger shall
19 be sentenced to life imprisonment and is not eligible for suspension of
20 sentence, probation, pardon or release from confinement on any basis
21 except as specifically authorized by section 31-233, subsection A or B
22 until the person has served thirty-five years or the sentence is commuted.
23 This subsection does not apply to masturbatory contact.

24 C. Except as otherwise provided in this section, a person who is at
25 least eighteen years of age or who has been tried as an adult and who is
26 convicted of a dangerous crime against children in the first degree
27 involving attempted first degree murder of a minor who is under twelve
28 years of age, sexual assault of a minor who is under twelve years of age,
29 sexual conduct with a minor who is under twelve years of age, ~~OR~~
30 manufacturing methamphetamine under circumstances that cause physical
31 injury to a minor who is under twelve years of age OR MANUFACTURING
32 CARFENTANIL, FENTANYL OR FENTANYL MIMETIC SUBSTANCES UNDER CIRCUMSTANCES
33 THAT CAUSE PHYSICAL INJURY TO A MINOR WHO IS UNDER TWELVE YEARS OF AGE may
34 be sentenced to life imprisonment and is not eligible for suspension of
35 sentence, probation, pardon or release from confinement on any basis
36 except as specifically authorized by section 31-233, subsection A or B
37 until the person has served thirty-five years or the sentence is commuted.
38 If a life sentence is not imposed pursuant to this subsection, the person
39 shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13 years	20 years	27 years

42 D. Except as otherwise provided in this section, a person who is at
43 least eighteen years of age or who has been tried as an adult and who is
44 convicted of a dangerous crime against children in the first degree
45 involving second degree murder of a minor who is under fifteen years of

1 age may be sentenced to life imprisonment and is not eligible for
2 suspension of sentence, probation, pardon or release from confinement on
3 any basis except as specifically authorized by section 31-233, subsection
4 A or B until the person has served thirty-five years or the sentence is
5 commuted. If a life sentence is not imposed pursuant to this subsection,
6 the person shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
25 years	30 years	35 years

9 E. Except as otherwise provided in this section, a person who is
10 at least eighteen years of age or who has been tried as an adult and who
11 is convicted of a dangerous crime against children in the first degree
12 involving attempted first degree murder of a minor who is twelve, thirteen
13 or fourteen years of age, sexual assault of a minor who is twelve,
14 thirteen or fourteen years of age, taking a child for the purpose of
15 prostitution, child sex trafficking, commercial sexual exploitation of a
16 minor, sexual conduct with a minor who is twelve, thirteen or fourteen
17 years of age, ~~OR~~ manufacturing methamphetamine under circumstances that
18 cause physical injury to a minor who is twelve, thirteen or fourteen years
19 of age OR MANUFACTURING CARFENTANIL, FENTANYL OR FENTANYL MIMETIC
20 SUBSTANCES UNDER CIRCUMSTANCES THAT CAUSE PHYSICAL INJURY TO A MINOR WHO
21 IS TWELVE, THIRTEEN OR FOURTEEN YEARS OF AGE or involving or using minors
22 in drug offenses shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13 years	20 years	27 years

25 A person who has been previously convicted of one predicate felony shall
26 be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23 years	30 years	37 years

29 F. Except as otherwise provided in this section, a person who is at
30 least eighteen years of age or who has been tried as an adult and who is
31 convicted of a dangerous crime against children in the first degree
32 involving aggravated assault, unlawful mutilation, molestation of a child,
33 sexual exploitation of a minor, aggravated luring a minor for sexual
34 exploitation, child abuse or kidnapping shall be sentenced to a term of
35 imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 years	17 years	24 years

38 A person who has been previously convicted of one predicate felony shall
39 be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
21 years	28 years	35 years

42 G. Except as otherwise provided in this section, if a person is at
43 least eighteen years of age or has been tried as an adult and is convicted
44 of a dangerous crime against children involving luring a minor for sexual
45 exploitation, sexual extortion or unlawful age misrepresentation and is

1 sentenced to a term of imprisonment, the term of imprisonment is as
2 follows and the person is not eligible for release from confinement on any
3 basis except as specifically authorized by section 31-233, subsection A or
4 B until the sentence imposed by the court has been served or is commuted,
5 except that if the person is convicted of unlawful age misrepresentation
6 the person is eligible for release pursuant to section 41-1604.07:

7	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8	5 years	10 years	15 years

9 A person who has been previously convicted of one predicate felony shall
10 be sentenced to a term of imprisonment as follows and the person is not
11 eligible for suspension of sentence, probation, pardon or release from
12 confinement on any basis except as specifically authorized by section
13 31-233, subsection A or B until the sentence imposed by the court has been
14 served or is commuted, except that if the person is convicted of unlawful
15 age misrepresentation the person is eligible for release pursuant to
16 section 41-1604.07:

17	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
18	8 years	15 years	22 years

19 H. Except as otherwise provided in this section, if a person is at
20 least eighteen years of age or has been tried as an adult and is convicted
21 of a dangerous crime against children involving sexual abuse or bestiality
22 under section 13-1411, subsection A, paragraph 2 and is sentenced to a
23 term of imprisonment, the term of imprisonment is as follows and the
24 person is not eligible for release from confinement on any basis except as
25 specifically authorized by section 31-233, subsection A or B until the
26 sentence imposed by the court has been served, the person is eligible for
27 release pursuant to section 41-1604.07 or the sentence is commuted:

28	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
29	2.5 years	5 years	7.5 years

30 A person who has been previously convicted of one predicate felony shall
31 be sentenced to a term of imprisonment as follows and the person is not
32 eligible for suspension of sentence, probation, pardon or release from
33 confinement on any basis except as specifically authorized by section
34 31-233, subsection A or B until the sentence imposed by the court has been
35 served, the person is eligible for release pursuant to section 41-1604.07
36 or the sentence is commuted:

37	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
38	8 years	15 years	22 years

39 I. Except as otherwise provided in this section, a person who is at
40 least eighteen years of age or who has been tried as an adult and who is
41 convicted of a dangerous crime against children in the first degree
42 involving continuous sexual abuse of a child shall be sentenced to a term
43 of imprisonment as follows:

44	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
45	39 years	60 years	81 years

1 A person who has been previously convicted of one predicate felony shall
2 be sentenced to a term of imprisonment as follows:

3 <u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4 69 years	90 years	111 years

5 J. The presumptive sentences prescribed in subsections C, D, E, ~~and~~
6 F and I of this section or subsections G and H of this section if the
7 person has previously been convicted of a predicate felony may be
8 increased or decreased pursuant to section 13-701, subsections C, D and E.

9 K. Except as provided in subsections G, H, M and N of this section,
10 a person who is sentenced for a dangerous crime against children in the
11 first degree pursuant to this section is not eligible for suspension of
12 sentence, probation, pardon or release from confinement on any basis
13 except as specifically authorized by section 31-233, subsection A or B
14 until the sentence imposed by the court has been served or commuted.

15 L. A person who is convicted of any dangerous crime against
16 children in the first degree pursuant to subsection C, D, E, ~~or~~ F or I of
17 this section and who has been previously convicted of two or more
18 predicate felonies shall be sentenced to life imprisonment and is not
19 eligible for suspension of sentence, probation, pardon or release from
20 confinement on any basis except as specifically authorized by section
21 31-233, subsection A or B until the person has served not fewer than
22 thirty-five years or the sentence is commuted.

23 M. Notwithstanding chapter 10 of this title, a person who is at
24 least eighteen years of age or who has been tried as an adult and who is
25 convicted of a dangerous crime against children in the second degree
26 pursuant to subsection B, C, E, ~~or~~ F or I of this section is guilty of a
27 class 3 felony and if the person is sentenced to a term of imprisonment,
28 the term of imprisonment is as follows and the person is not eligible for
29 release from confinement on any basis except as specifically authorized by
30 section 31-233, subsection A or B until the person has served the sentence
31 imposed by the court, the person is eligible for release pursuant to
32 section 41-1604.07 or the sentence is commuted:

33 <u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
34 5 years	10 years	15 years

35 N. A person who is convicted of any dangerous crime against
36 children in the second degree and who has been previously convicted of one
37 or more predicate felonies is not eligible for suspension of sentence,
38 probation, pardon or release from confinement on any basis except as
39 specifically authorized by section 31-233, subsection A or B until the
40 sentence imposed by the court has been served, the person is eligible for
41 release pursuant to section 41-1604.07 or the sentence is commuted.

42 O. Section 13-704, subsection J and section 13-707, subsection B
43 apply to the determination of prior convictions.

44 P. The sentence imposed on a person by the court for a dangerous
45 crime against children under subsection H of this section involving sexual

1 abuse may be served concurrently with other sentences if the offense
2 involved only one victim. The sentence imposed on a person for any other
3 dangerous crime against children in the first or second degree shall be
4 consecutive to any other sentence imposed on the person at any time,
5 including sexual abuse of the same victim.

6 Q. In this section, for purposes of punishment an unborn child
7 shall be treated like a minor who is under twelve years of age.

8 R. A dangerous crime against children is in the first degree if it
9 is a completed offense and is in the second degree if it is a preparatory
10 offense, except attempted first degree murder is a dangerous crime against
11 children in the first degree.

12 S. It is not a defense to a dangerous crime against children that
13 the minor is a person posing as a minor or is otherwise fictitious if the
14 defendant knew or had reason to know the purported minor was under fifteen
15 years of age.

16 T. For the purposes of this section:

17 1. "Dangerous crime against children" means any of the following
18 that is committed against a minor who is under fifteen years of age:

19 (a) Second degree murder.

20 (b) Aggravated assault resulting in serious physical injury or
21 involving the discharge, use or threatening exhibition of a deadly weapon
22 or dangerous instrument.

23 (c) Sexual assault.

24 (d) Molestation of a child.

25 (e) Sexual conduct with a minor.

26 (f) Commercial sexual exploitation of a minor.

27 (g) Sexual exploitation of a minor.

28 (h) Child abuse as prescribed in section 13-3623, subsection A,
29 paragraph 1.

30 (i) Kidnapping.

31 (j) Sexual abuse.

32 (k) Taking a child for the purpose of prostitution as prescribed in
33 section 13-3206.

34 (l) Child sex trafficking as prescribed in section 13-3212.

35 (m) Involving or using minors in drug offenses.

36 (n) Continuous sexual abuse of a child.

37 (o) Attempted first degree murder.

38 (p) Sex trafficking.

39 (q) Manufacturing methamphetamine under circumstances that cause
40 physical injury to a minor.

41 (r) Bestiality as prescribed in section 13-1411, subsection A,
42 paragraph 2.

43 (s) Luring a minor for sexual exploitation.

44 (t) Aggravated luring a minor for sexual exploitation.

45 (u) Unlawful age misrepresentation.

1 (v) Unlawful mutilation.

2 (w) Sexual extortion as prescribed in section 13-1428.

3 (x) MANUFACTURING CARFENTANIL, FENTANYL OR FENTANYL MIMETIC
4 SUBSTANCES UNDER CIRCUMSTANCES THAT CAUSE PHYSICAL INJURY TO A MINOR.

5 2. "Predicate felony" means any felony involving child abuse
6 pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense,
7 conduct involving the intentional or knowing infliction of serious
8 physical injury or the discharge, use or threatening exhibition of a
9 deadly weapon or dangerous instrument, or a dangerous crime against
10 children in the first or second degree.

11 Sec. 2. Section 13-3408, Arizona Revised Statutes, is amended to
12 read:

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

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

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

30 B. A person who violates:

- 31 1. Subsection A, paragraph 1 of this section is guilty of a class 4
32 felony.
- 33 2. Subsection A, paragraph 2 of this section is guilty of a class 2
34 felony.
- 35 3. Subsection A, paragraph 3 of this section is guilty of a class 3
36 felony.
- 37 4. Subsection A, paragraph 4 of this section is guilty of a class 2
38 felony.
- 39 5. Subsection A, paragraph 5 of this section is guilty of a class 2
40 felony.
- 41 6. Subsection A, paragraph 6 of this section is guilty of a class 3
42 felony.
- 43 7. Subsection A, paragraph 7 of this section is guilty of a class 2
44 felony.

1 C. A person who is convicted of a violation of subsection A,
2 paragraph 1, 3 or 6 of this section and who has not previously been
3 convicted of any felony or who has not been sentenced pursuant to section
4 13-703, section 13-704, subsection A, B, C, D or E, section 13-706,
5 subsection A, section 13-708, subsection D or any other provision of law
6 making the convicted person ineligible for probation is eligible for
7 probation.

8 D. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, if the
9 aggregate amount of narcotic drugs involved in one offense or all of the
10 offenses that are consolidated for trial equals or exceeds the statutory
11 threshold amount, a person who is convicted of a violation of subsection
12 A, paragraph 2, 4, 5 or 7 of this section is not eligible for suspension
13 of sentence, probation, pardon or release from confinement on any basis
14 until the person has served the sentence imposed by the court, the person
15 is eligible for release pursuant to section 41-1604.07 or the sentence is
16 commuted.

17 ~~E. A person who is convicted of a violation of subsection A,
18 paragraph 4 of this section is not eligible for suspension of sentence,
19 probation, pardon or release from confinement on any basis until the
20 person has served the sentence imposed by the court, the person is
21 eligible for release pursuant to section 41-1604.07 or the sentence is
22 commuted.~~

23 E. IF A PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,
24 PARAGRAPH 2, 4, 5 OR 7 OF THIS SECTION AND THE DRUG INVOLVED IS HEROIN,
25 CARFENTANIL, FENTANYL OR A FENTANYL MIMETIC SUBSTANCE, THE PERSON SHALL BE
26 SENTENCED AS FOLLOWS:

27	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
28	5 CALENDAR YEARS	10 CALENDAR YEARS	15 CALENDAR YEARS

29 A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A,
30 PARAGRAPH 2, 4, 5 OR 7 OF THIS SECTION INVOLVING HEROIN, CARFENTANIL,
31 FENTANYL OR FENTANYL MIMETIC SUBSTANCES OR SECTION 13-3408.01 SHALL BE
32 SENTENCED AS FOLLOWS:

33	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
34	10 CALENDAR YEARS	15 CALENDAR YEARS	20 CALENDAR YEARS

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

42 G. A person who is convicted of a violation of this section for
43 which probation or release before the expiration of the sentence imposed
44 by the court is authorized is prohibited from using any marijuana,
45 dangerous drug, narcotic drug or prescription-only drug except as lawfully

1 administered by a health care practitioner and as a condition of any
2 probation or release shall be required to submit to drug testing
3 administered under the supervision of the probation department of the
4 county or the state department of corrections, as appropriate, during the
5 duration of the term of probation or before the expiration of the sentence
6 imposed.

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

15 I. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTION E OF THIS
16 SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,
17 SUBSECTIONS D AND E.

18 Sec. 3. Title 13, chapter 34, Arizona Revised Statutes, is amended
19 by adding section 13-3408.01, to read:

20 13-3408.01. Manufacturing carfentanil, fentanyl or fentanyl
21 mimetic substances under circumstances that
22 cause physical injury to a minor;
23 classification

24 A. A PERSON SHALL NOT KNOWINGLY MANUFACTURE CARFENTANIL, FENTANYL
25 OR FENTANYL MIMETIC SUBSTANCES UNDER ANY CIRCUMSTANCE THAT CAUSES PHYSICAL
26 INJURY TO A MINOR WHO IS UNDER FIFTEEN YEARS OF AGE.

27 B. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 2 FELONY
28 AND IS PUNISHABLE AS PROVIDED BY SECTION 13-705.
29