

PROPOSED
SENATE AMENDMENTS TO S.B. 1013
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Subject to the requirements of article IV, part 1,
3 section 1, Constitution of Arizona, section 13-901.01, Arizona Revised
4 Statutes, is amended to read:

5 13-901.01. Probation for persons convicted of possession or
6 use of controlled substances or drug
7 paraphernalia; treatment; prevention; education;
8 exceptions; definition

9 A. Notwithstanding any law to the contrary, any person who is
10 convicted of the personal possession or use of a controlled substance or
11 drug paraphernalia is eligible for probation. The court shall suspend the
12 imposition or execution of sentence and place the person on probation.

13 B. Any person who has been convicted of or indicted for a violent
14 crime as defined in section 13-901.03 is not eligible for probation as
15 provided for in this section but instead shall be sentenced pursuant to
16 chapter 34 of this title.

17 C. Personal possession or use of a controlled substance pursuant to
18 this section shall not include possession for sale, production,
19 manufacturing or transportation for sale of any controlled substance.

20 D. If a person is convicted of personal possession or use of a
21 controlled substance or drug paraphernalia, as a condition of probation,
22 the court shall require participation in an appropriate drug treatment or
23 education program administered by a qualified agency or organization that
24 provides such programs to persons who abuse controlled substances. Each
25 person who is enrolled in a drug treatment or education program shall be
26 required to pay for participation in the program to the extent of the
27 person's financial ability.

1 E. A person who has been placed on probation pursuant to this
2 section and who is determined by the court to be in violation of probation
3 shall have new conditions of probation established by the court. The court
4 shall select the additional conditions it deems necessary, including
5 intensified drug treatment, community restitution, intensive probation,
6 home arrest or any other sanctions except that the court shall not impose a
7 term of incarceration unless the court determines that the person violated
8 probation by committing an offense listed in chapter 34 or 34.1 of this
9 title or an act in violation of an order of the court relating to drug
10 treatment.

11 F. If a person is convicted a second time of personal possession or
12 use of a controlled substance or drug paraphernalia, the court may include
13 additional conditions of probation it deems necessary, including
14 intensified drug treatment, community restitution, intensive probation,
15 home arrest or any other action within the jurisdiction of the court.

16 G. At any time while the defendant is on probation, if after having
17 a reasonable opportunity to do so the defendant fails or refuses to
18 participate in drug treatment, the probation department or the prosecutor
19 may petition the court to revoke the defendant's probation. If the court
20 finds that the defendant refused to participate in drug treatment, the
21 defendant shall no longer be eligible for probation under this section but
22 instead shall be sentenced pursuant to chapter 34 of this title.

23 H. A person is not eligible for probation under this section but
24 instead shall be sentenced pursuant to chapter 34 of this title if the
25 court finds the person either:

26 1. Had been convicted three times of personal possession of a
27 controlled substance or drug paraphernalia.

28 2. Refused drug treatment as a term of probation.

29 3. Rejected probation.

30 4. Was convicted of the personal possession or use of a controlled
31 substance or drug paraphernalia and the offense involved methamphetamine.

32 5. WAS CONVICTED OF THE PERSONAL POSSESSION OR USE OF A CONTROLLED
33 SUBSTANCE OR DRUG PARAPHERNALIA AND THE OFFENSE INVOLVED FENTANYL. THIS

1 PARAGRAPH DOES NOT APPLY IF THE PERSON HAD POSSESSION OF A VALID MEDICAL
2 PRESCRIPTION FOR FENTANYL.

3 I. Subsections G and H of this section do not prohibit the defendant
4 from being placed on probation pursuant to section 13-901 if the defendant
5 otherwise qualifies for probation under that section.

6 J. For the purposes of this section, "controlled substance" has the
7 same meaning prescribed in section 36-2501.

8 Sec. 2. Legislative findings

9 A. The legislature finds that:

10 1. In 1996, the voters of this state passed the drug medicalization,
11 prevention and control act, which generally provided that individuals
12 convicted for the first or second time of personal possession or use of a
13 controlled substance, including methamphetamine, were eligible for
14 probation and could not be sentenced to a term of incarceration. Only on a
15 third conviction for personal possession or use of a controlled substance
16 could an individual be sentenced to jail or prison, though probation
17 remained a possibility under general sentencing laws.

18 2. In 2006, the voters approved proposition 301 amending the law to
19 allow sentencing a person convicted for the first or second time of
20 personal possession or use of methamphetamine to a term of incarceration.
21 This amendment recognized the particularly dangerous and highly addictive
22 nature of methamphetamine and allowed courts to impose jail time as a
23 condition of probation to encourage compliance with drug treatment and
24 rehabilitation programs.

25 3. Fentanyl has emerged as a leading cause of drug-related deaths in
26 Arizona and across the United States. The department of health services
27 has reported a dramatic increase in opioid-related fatalities, with
28 fentanyl now being the primary driver of overdose deaths. Unlike many
29 other controlled substances, even minute amounts of fentanyl can result in
30 fatal consequences.

31 4. Arizona's proximity to the southern border has made it a major
32 drug cartel trafficking corridor for illicit fentanyl evidenced by law

1 enforcement agencies reporting an unprecedented rise in fentanyl-related
2 seizures.

3 5. The extreme potency of fentanyl poses a clear and present danger
4 to Arizona families, first responders and communities. Without stronger
5 legal deterrents, fentanyl will continue to fuel addiction, crime and fatal
6 overdoses at alarming rates.

7 B. The legislature intends to amend existing law to allow courts to
8 impose a term of incarceration on individuals convicted for the first or
9 second time of personal possession or use of fentanyl. This amendment
10 aligns with the policy established under proposition 301 for
11 methamphetamine and ensures that the judicial system has the necessary
12 authority to enforce treatment compliance and reduce the devastating impact
13 of fentanyl abuse on individuals, families and communities.

14 Sec. 3. Requirements for enactment; three-fourths vote

15 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
16 sections 13-901.01, Arizona Revised Statutes, as amended by this act, is
17 effective only on the affirmative vote of at least three-fourths of the
18 members of each house of the legislature."

19 Amend title to conform

QUANG H. NGUYEN

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