

REFERENCE TITLE: marijuana; sentence; civil penalty; fines

State of Arizona  
House of Representatives  
Fifty-first Legislature  
Second Regular Session  
2014

## **HB 2474**

Introduced by  
Representatives Cardenas, Quezada, Wheeler: Alston, Campbell, Dalessandro,  
Gabaldón, Gallego, Gonzales, Mendez, Saldate, Steele, Senator Pancrazi

AN ACT

AMENDING SECTIONS 13-3405, 13-3419 AND 41-1604.16, ARIZONA REVISED STATUTES;  
RELATING TO MARIJUANA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 13-3405, Arizona Revised Statutes, is amended to  
3 read:  
4 13-3405. Possession, use, production, sale or transportation of  
5 marijuana; civil penalty; classification  
6 A. A person shall not knowingly:  
7 1. Possess or use marijuana.  
8 2. Possess marijuana for sale.  
9 3. Produce marijuana.  
10 4. Transport for sale, import into this state or offer to transport  
11 for sale or import into this state, sell, transfer or offer to sell or  
12 transfer marijuana.  
13 B. A person who violates:  
14 1. Subsection A, paragraph 1 of this section involving an amount of  
15 marijuana not possessed for sale having a weight of less than ~~two pounds~~ ONE  
16 OUNCE is ~~guilty of a class 6 felony~~ SUBJECT TO A CIVIL PENALTY OF NOT MORE  
17 THAN ONE HUNDRED DOLLARS, EXCEPT THAT IF THE PERSON DOES NOT PAY THE PENALTY  
18 IN FULL WITHIN NINETY DAYS, THE PENALTY INCREASES TO DOUBLE THE ORIGINAL  
19 AMOUNT.  
20 2. Subsection A, paragraph 1 of this section involving an amount of  
21 marijuana not possessed for sale having a weight of at least ~~two pounds~~ ONE  
22 OUNCE but less than ~~four~~ TWO pounds is guilty of a ~~class 5 felony~~ PETTY  
23 OFFENSE.  
24 3. Subsection A, paragraph 1 of this section involving an amount of  
25 marijuana not possessed for sale having a weight of ~~four~~ TWO pounds or more  
26 is guilty of a class ~~4 felony~~ 3 MISDEMEANOR.  
27 4. Subsection A, paragraph 2 of this section involving an amount of  
28 marijuana having a weight of less than two pounds is guilty of a class 4  
29 felony.  
30 5. Subsection A, paragraph 2 of this section involving an amount of  
31 marijuana having a weight of at least two pounds but not more than four  
32 pounds is guilty of a class 3 felony.  
33 6. Subsection A, paragraph 2 of this section involving an amount of  
34 marijuana having a weight of more than four pounds is guilty of a class 2  
35 felony.  
36 7. Subsection A, paragraph 3 of this section involving an amount of  
37 marijuana having a weight of less than two pounds is guilty of a class ~~5-~~  
38 ~~felony~~ 3 MISDEMEANOR.  
39 8. Subsection A, paragraph 3 of this section involving an amount of  
40 marijuana having a weight of at least two pounds but not more than four  
41 pounds is guilty of a class ~~4-~~ 6 felony.  
42 9. Subsection A, paragraph 3 of this section involving an amount of  
43 marijuana having a weight of more than four pounds is guilty of a class ~~3-~~ 5  
44 felony.

1           10. Subsection A, paragraph 4 of this section involving an amount of  
2 marijuana having a weight of less than two pounds is guilty of a class 3  
3 felony.

4           11. Subsection A, paragraph 4 of this section involving an amount of  
5 marijuana having a weight of two pounds or more is guilty of a class 2  
6 felony.

7           ~~C. If the aggregate amount of marijuana involved in one offense or all  
8 of the offenses that are consolidated for trial equals or exceeds the  
9 statutory threshold amount, a person who is sentenced pursuant to subsection  
10 B, paragraph 5, 6, 8, 9 or 11 of this section is not eligible for suspension  
11 of sentence, probation, pardon or release from confinement on any basis until  
12 the person has served the sentence imposed by the court, the person is  
13 eligible for release pursuant to section 41-1604.07 or the sentence is  
14 commuted.~~

15           C. NOTWITHSTANDING ANY OTHER PENALTY PRESCRIBED BY THIS TITLE, A  
16 JUVENILE WHO IS ADJUDICATED DELINQUENT FOR A FIRST VIOLATION OF THIS SECTION  
17 SHALL BE SENTENCED PURSUANT TO THIS SUBSECTION. THE COURT SHALL ORDER THE  
18 JUVENILE TO COMPLETE AT LEAST TEN HOURS OF COMMUNITY RESTITUTION WITH AN  
19 AGENCY OR ORGANIZATION PROVIDING COUNSELING, REHABILITATION OR TREATMENT FOR  
20 ALCOHOL OR DRUG ABUSE, AN AGENCY OR ORGANIZATION THAT PROVIDES MEDICAL  
21 TREATMENT TO PERSONS WHO ABUSE CONTROLLED SUBSTANCES, AN AGENCY OR  
22 ORGANIZATION THAT SERVES PERSONS WHO ARE VICTIMS OF CRIME OR ANY OTHER  
23 APPROPRIATE AGENCY OR ORGANIZATION. IF THE JUVENILE DOES NOT COMPLETE  
24 COMMUNITY RESTITUTION WITHIN ONE YEAR, THE JUVENILE IS SUBJECT TO ALL OTHER  
25 PENALTIES PRESCRIBED BY THIS SECTION. THE JUVENILE'S PARENT OR GUARDIAN  
26 SHALL BE NOTIFIED OF THE JUVENILE'S VIOLATION OF THIS SECTION AND DRUG  
27 AWARENESS PROGRAMS THAT ARE AVAILABLE.

28           D. In addition to any other penalty prescribed by this title, the  
29 court shall order a person who is convicted of a violation of any provision  
30 of this section to pay a fine of not less than seven hundred fifty dollars or  
31 three times the value as determined by the court of the marijuana involved in  
32 or giving rise to the charge, whichever is greater, and not more than the  
33 maximum authorized by chapter 8 of this title. A judge ~~shall not~~ MAY suspend  
34 any part or all of the imposition of any fine required by this subsection.

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

1 F. If the aggregate amount of marijuana involved in one offense or all  
2 of the offenses that are consolidated for trial is less than the statutory  
3 threshold amount, a person who is sentenced pursuant to subsection B,  
4 paragraph 4, 7 or 10 and who is granted probation by the court shall be  
5 ordered by the court that as a condition of probation the person perform not  
6 less than two hundred forty hours of community restitution with an agency or  
7 organization providing counseling, rehabilitation or treatment for alcohol or  
8 drug abuse, an agency or organization that provides medical treatment to  
9 persons who abuse controlled substances, an agency or organization that  
10 serves persons who are victims of crime or any other appropriate agency or  
11 organization.

12 G. If a person who is sentenced pursuant to subsection B, paragraph ~~1~~,  
13 2 or 3 of this section is granted probation for a ~~felony~~ violation of this  
14 section, the court shall order that as a condition of probation the person  
15 perform not less than ~~twenty-four~~ EIGHT hours of community restitution with  
16 an agency or organization providing counseling, rehabilitation or treatment  
17 for alcohol or drug abuse, an agency or organization that provides medical  
18 treatment to persons who abuse controlled substances, an agency or  
19 organization that serves persons who are victims of crime or any other  
20 appropriate agency or organization.

21 ~~H. If a person is granted probation for a misdemeanor violation of~~  
22 ~~this section, the court shall order as a condition of probation that the~~  
23 ~~person attend eight hours of instruction on the nature and harmful effects of~~  
24 ~~narcotic drugs, marijuana and other dangerous drugs on the human system, and~~  
25 ~~on the laws related to the control of these substances, or perform~~  
26 ~~twenty-four hours of community restitution.~~

27 Sec. 2. Section 13-3419, Arizona Revised Statutes, is amended to read:  
28 13-3419. Multiple drug offenses not committed on the same  
29 occasion; sentencing

30 A. Except for a person WHO IS FOUND RESPONSIBLE FOR OR convicted of  
31 possession offenses pursuant to section 13-3405, subsection A, paragraph 1,  
32 OR WHO IS CONVICTED OF POSSESSION OFFENSES PURSUANT TO section 13-3407,  
33 subsection A, paragraph 1 or section 13-3408, subsection A, paragraph 1, a  
34 person who is convicted of two or more offenses under this chapter that were  
35 not committed on the same occasion but that either are consolidated for trial  
36 purposes or are not historical prior felony convictions shall be sentenced  
37 for the second or subsequent offense pursuant to this section. The person  
38 shall not be eligible for suspension of sentence, probation, pardon or  
39 release from confinement on any basis except as specifically authorized by  
40 section 31-233, subsection A or B until the sentence imposed by the court has  
41 been served, the person is eligible for release pursuant to section  
42 41-1604.07 or the sentence is commuted, except that a person sentenced  
43 pursuant to paragraph 1 of this subsection shall be eligible for probation.  
44 The presumptive term for paragraph 1, 2, 3 or 4 of this subsection may be  
45 aggravated under this section pursuant to section 13-701, subsections C

1 and D. The presumptive term for paragraph 1, 2 or 3 of this subsection may  
 2 be mitigated within the range under this section pursuant to section 13-701,  
 3 subsections C and E. The terms are as follows:

4 1. For two offenses for which the aggregate amount of drugs involved  
 5 in one offense or both of the offenses is less than the statutory threshold  
 6 amount for the second offense:

7 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
8 Class 2	3 years	4 years	5 years	10 years	12.5 years
9 Class 3	1.8 years	2.5 years	3.5 years	7 years	8.7 years
10 Class 4	1.1 years	1.5 years	2.5 years	3 years	3.7 years
11 Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years

12 2. For three or more offenses for which the aggregate amount of drugs  
 13 involved in one offense or all of the offenses is less than the statutory  
 14 threshold amount for any offense subsequent to the second offense:

15 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
16 Class 2	3 years	4 years	5 years	10 years	12.5 years
17 Class 3	1.8 years	2.5 years	3.5 years	7 years	8.7 years
18 Class 4	1.1 years	1.5 years	2.5 years	3 years	3.7 years
19 Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years

20 3. For two offenses for which the aggregate amount of drugs involved  
 21 in one offense or all of the offenses equals or exceeds the statutory  
 22 threshold amount for the second offense:

23 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
24 Class 2	3 years	4 years	5 years	10 years	12.5 years
25 Class 3	1.8 years	2.5 years	3.5 years	7 years	8.7 years
26 Class 4	1.1 years	1.5 years	2.5 years	3 years	3.7 years
27 Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years

28 4. For three or more offenses for which the aggregate amount of drugs  
 29 involved in one offense or all of the offenses equals or exceeds the  
 30 statutory threshold amount for any offense subsequent to the second offense:

31 <u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
32 Class 2	4 years	7 years	12 years	15 years
33 Class 3	2.5 years	5 years	9 years	11.2 years
34 Class 4	1.5 years	3 years	5 years	6.2 years
35 Class 5	.75 years	2.5 years	4 years	5 years

36 B. If the court increases or decreases a sentence pursuant to this  
 37 section, the court shall state on the record the reasons for the increase or  
 38 decrease.

39 C. The court shall inform all of the parties before the sentencing  
 40 occurs of its intent to increase or decrease a sentence pursuant to this  
 41 section. If the court fails to inform the parties, a party waives its right  
 42 to be informed unless the party timely objects at the time of sentencing.

1           Sec. 3. Section 41-1604.16, Arizona Revised Statutes, is amended to  
2 read:

3           41-1604.16. Parole or community supervision eligibility for  
4                                   persons previously convicted of possession or use  
5                                   of marijuana, a dangerous drug or a narcotic drug

6           A. Notwithstanding any law to the contrary, if a prisoner has been  
7 convicted of **OR FOUND RESPONSIBLE FOR** the possession or use of marijuana  
8 pursuant to section 13-3405, subsection A, paragraph 1, ~~OR CONVICTED OF THE~~  
9 possession or use of a dangerous drug pursuant to section 13-3407, subsection  
10 A, paragraph 1 or possession or use of a narcotic drug pursuant to section  
11 13-3408, subsection A, paragraph 1 and the prisoner is not concurrently  
12 serving another sentence, the prisoner is eligible for parole or if the  
13 offense for which the prisoner was incarcerated was committed on or after  
14 January 1, 1994, the prisoner is eligible for community supervision.

15           B. Any person who has previously been convicted of a violent crime as  
16 defined in section 13-901.03 or who has previously been convicted and  
17 sentenced in any jurisdiction in the United States of any felony offense is  
18 not eligible for parole or community supervision pursuant to this section. If  
19 the department is unable to determine if a person has a prior felony  
20 conviction, the department shall refer the inmate record to the sentencing  
21 court. The sentencing court shall determine if the person has a prior felony  
22 conviction. For the purposes of this subsection, the age of the conviction  
23 does not matter.

24           C. On or before June 3, 1997, the director of the state department of  
25 corrections shall prepare a list that identifies each person who is eligible  
26 for parole or community supervision pursuant to this section and shall  
27 deliver the list to the board of executive clemency.

28           D. An offense that is committed in another jurisdiction and that is  
29 not classified as a felony in Arizona is not a felony offense for purposes of  
30 this section.