

REFERENCE TITLE: sentencing; increased punishment; fentanyl

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1018

Introduced by
Senator Kavanagh

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 classification
7 A. A person shall not knowingly:
8 1. Possess or use a narcotic drug.
9 2. Possess a narcotic drug for sale.
10 3. Possess equipment or chemicals, or both, for the purpose of
11 manufacturing a narcotic drug.
12 4. Manufacture a narcotic drug.
13 5. Administer a narcotic drug to another person.
14 6. Obtain or procure the administration of a narcotic drug by
15 fraud, deceit, misrepresentation or subterfuge.
16 7. Transport for sale, import into this state, offer to transport
17 for sale or import into this state, sell, transfer or offer to sell or
18 transfer a narcotic drug.
19 B. A person who violates:
20 1. Subsection A, paragraph 1 of this section is guilty of a class 4
21 felony, **EXCEPT THAT IF THE NARCOTIC DRUG IS FENTANYL, THE PERSON IS GUILTY**
22 **OF A CLASS 3 FELONY.**
23 2. Subsection A, paragraph 2 of this section is guilty of a class 2
24 felony.
25 3. Subsection A, paragraph 3 of this section is guilty of a class 3
26 felony.
27 4. Subsection A, paragraph 4 of this section is guilty of a class 2
28 felony.
29 5. Subsection A, paragraph 5 of this section is guilty of a class 2
30 felony.
31 6. Subsection A, paragraph 6 of this section is guilty of a class 3
32 felony.
33 7. Subsection A, paragraph 7 of this section is guilty of a class 2
34 felony.
35 C. A person who is convicted of a violation of subsection A,
36 paragraph 1, 3 or 6 of this section and who has not previously been
37 convicted of any felony or who has not been sentenced pursuant to section
38 13-703, section 13-704, subsection A, B, C, D or E, section 13-706,
39 subsection A, section 13-708, subsection D or any other provision of law
40 making the convicted person ineligible for probation is eligible for
41 probation.
42 D. If the aggregate amount of narcotic drugs involved in one
43 offense or all of the offenses that are consolidated for trial equals or
44 exceeds the statutory threshold amount, a person who is convicted of a
45 violation of subsection A, paragraph 2, 5 or 7 of this section is not

1 eligible for suspension of sentence, probation, pardon or release from
2 confinement on any basis until the person has served the sentence imposed
3 by the court, the person is eligible for release pursuant to section
4 41-1604.07 or the sentence is commuted.

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

11 F. A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A,
12 PARAGRAPH 2, 3, 5, 6 OR 7 OF THIS SECTION INVOLVING FENTANYL IS NOT
13 ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM
14 CONFINEMENT ON ANY BASIS UNTIL THE PERSON HAS SERVED THE SENTENCE IMPOSED
15 BY THE COURT, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION
16 41-1604.07 OR THE SENTENCE IS COMMUTED.

17 ~~F.~~ G. In addition to any other penalty prescribed by this title,
18 the court shall order a person who is convicted of a violation of this
19 section to pay a fine of not less than two thousand dollars or three times
20 the value as determined by the court of the narcotic drugs involved in or
21 giving rise to the charge, whichever is greater, and not more than the
22 maximum authorized by chapter 8 of this title. A judge shall not
23 suspend any part or all of the imposition of any fine required by this
24 subsection.

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

35 ~~H.~~ I. If a person who is convicted of a violation of this section
36 is granted probation, the court shall order that as a condition of
37 probation the person perform not less than three hundred sixty hours of
38 community restitution with an agency or organization that provides
39 counseling, rehabilitation or treatment for alcohol or drug abuse, an
40 agency or organization that provides medical treatment to persons who
41 abuse controlled substances, an agency or organization that serves persons
42 who are victims of crime or any other appropriate agency or organization.