

REFERENCE TITLE: **undesignated felony; misdemeanor designation**

State of Arizona
House of Representatives
Fifty-fourth Legislature
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2019

HB 2424

Introduced by
Representatives Weninger: Blackman, Cobb, Engel, Espinoza, Finchem,
Hernandez D, Jermaine, Toma, Senator Alston

AN ACT

**AMENDING SECTIONS 13-604, 13-3403, 13-3403.01 AND 13-3407, ARIZONA REVISED
STATUTES; RELATING TO SENTENCING.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-604, Arizona Revised Statutes, is amended to
3 read:

4 13-604. Class 6 felony; designation

5 A. Notwithstanding any other provision of this title, if a person
6 is convicted of any class 6 felony not involving a dangerous offense and
7 if the court, having regard to the nature and circumstances of the crime
8 and to the history and character of the defendant, is of the opinion that
9 it would be unduly harsh to sentence the defendant for a felony, the court
10 may enter judgment of conviction for a class 1 misdemeanor and make
11 disposition accordingly or may place the defendant on probation in
12 accordance with chapter 9 of this title and refrain from designating the
13 offense as a felony or misdemeanor until the probation is terminated. The
14 offense shall be treated as a ~~felony~~ MISDEMEANOR for all purposes until
15 such time as the court may actually enter an order designating the offense
16 a ~~misdemeanor~~ FELONY. This subsection does not apply to any person who
17 stands convicted of a class 6 felony and who has previously been convicted
18 of two or more felonies.

19 B. If a crime or public offense is punishable in the discretion of
20 the court by a sentence as a class 6 felony or a class 1 misdemeanor, the
21 offense shall be deemed a misdemeanor if the prosecuting attorney files
22 any of the following:

23 1. An information in superior court designating the offense as a
24 misdemeanor.

25 2. A complaint in justice court or municipal court designating the
26 offense as a misdemeanor within the jurisdiction of the respective court.

27 3. A complaint, with the consent of the defendant, before or during
28 the preliminary hearing amending the complaint to charge a misdemeanor.

29 Sec. 2. Section 13-3403, Arizona Revised Statutes, is amended to
30 read:

31 13-3403. Possession and sale of a vapor-releasing substance
32 containing a toxic substance; regulation of sale;
33 exceptions; classification

34 A. A person shall not knowingly:

35 1. Breathe, inhale or drink a vapor-releasing substance containing
36 a toxic substance.

37 2. Sell, transfer or offer to sell or transfer a vapor-releasing
38 substance containing a toxic substance to a person WHO IS under eighteen
39 years of age.

40 3. Sell, transfer or offer to sell or transfer a vapor-releasing
41 substance containing a toxic substance if ~~such~~ THE person is not, at the
42 time of sale, transfer or offer, employed by or engaged in operating a
43 licensed commercial establishment at a fixed location regularly offering
44 such substance for sale and ~~such~~ THE sale, transfer or offer is made in
45 the course of employment or operation.

1 B. A person making a sale or transfer of a vapor-releasing glue
2 containing a toxic substance shall:

3 1. Require identification of the purchaser and shall record:

4 ~~1.~~ (a) The name of the glue.

5 ~~2.~~ (b) The date and hour of delivery.

6 ~~3.~~ (c) The intended use of the glue.

7 ~~4.~~ (d) The signature and address of the purchaser.

8 ~~5.~~ (e) The signature of the seller or deliverer.

9 ~~Such record shall be kept~~

10 2. KEEP THE RECORD PRESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION for
11 three years and ~~be~~ MAKE THE RECORD available to board inspectors and peace
12 officers.

13 C. The operator of a commercial establishment shall keep all
14 vapor-releasing glue containing a toxic substance in a place that is
15 unavailable to customers without the assistance of the operator or an
16 employee of the establishment.

17 D. The operator of a commercial establishment selling
18 vapor-releasing paints and varnishes containing a toxic substance
19 dispensed by the use of any aerosol spray device shall conspicuously
20 display an easily legible sign of not less than eleven by fourteen inches
21 ~~which~~ THAT states: "Warning: inhalation of vapors can be dangerous".

22 E. This section is not applicable to the transfer of a
23 vapor-releasing substance containing a toxic substance from a parent or
24 guardian to ~~his~~ THE PARENT'S OR GUARDIAN'S child or ward, or the sale or
25 transfer made for manufacturing or industrial purposes.

26 F. Subsection A, paragraphs 2 and 3 and subsections B and C OF THIS
27 SECTION do not apply to substances certified by the department of health
28 services as containing an additive that inhibits inhalation or induces
29 sneezing.

30 G. A person who violates ~~any provision of~~ this section is guilty of
31 a class 5 felony, but the court, having regard to the nature and
32 circumstances of the offense, may enter judgment of conviction for a class
33 1 misdemeanor and make disposition accordingly or may place the defendant
34 on probation in accordance with chapter 9 of this title and refrain from
35 designating the offense as a felony or misdemeanor until the probation is
36 terminated. The offense shall be treated as a ~~felony~~ MISDEMEANOR for all
37 purposes until such time as the court enters an order designating the
38 offense a ~~misdemeanor~~ FELONY.

39 H. For the purposes of subsections A and E OF THIS SECTION,
40 "vapor-releasing substance containing a toxic substance" means paint or
41 varnish dispensed by the use of aerosol spray, or any glue, that releases
42 vapors or fumes containing acetone, volatile acetates, benzene, butyl
43 alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl
44 alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene,
45 volatile ketones, isophorone, chloroform, methylene chloride, mesityl

1 oxide, xylene, cumene, ethylbenzene, trichloroethylene, mibk, miak, mek or
2 diacetone alcohol or isobutyl nitrite.

3 Sec. 3. Section 13-3403.01, Arizona Revised Statutes, is amended to
4 read:

5 13-3403.01. Nitrous oxide containers; sale to minors;
6 classification

7 A. A person shall not knowingly sell, give or deliver to a person
8 WHO IS under eighteen years of age any container exclusively containing
9 nitrous oxide, unless the person WHO IS under eighteen years of age is
10 delivering or accepting delivery in the person's capacity as an employee.

11 B. A person who violates this section is guilty of a class 5 felony
12 unless the court does either of the following:

13 1. Enters a judgment of conviction for a class 1 misdemeanor and
14 makes disposition accordingly.

15 2. Places the person on probation in accordance with chapter 9 of
16 this title and refrains from designating the offense as a felony or
17 misdemeanor until the probation is terminated. The offense shall be
18 treated as a ~~felony~~ MISDEMEANOR for all purposes until such time as the
19 court may actually enter an order designating the offense as a ~~misdemeanor~~
20 FELONY.

21 Sec. 4. Section 13-3407, Arizona Revised Statutes, is amended to
22 read:

23 13-3407. Possession, use, administration, acquisition, sale,
24 manufacture or transportation of dangerous drugs;
25 classification

26 A. A person shall not knowingly:

27 1. Possess or use a dangerous drug.

28 2. Possess a dangerous drug for sale.

29 3. Possess equipment or chemicals, or both, for the purpose of
30 manufacturing a dangerous drug.

31 4. Manufacture a dangerous drug.

32 5. Administer a dangerous drug to another person.

33 6. Obtain or procure the administration of a dangerous drug by
34 fraud, deceit, misrepresentation or subterfuge.

35 7. Transport for sale, import into this state or offer to transport
36 for sale or import into this state, sell, transfer or offer to sell or
37 transfer a dangerous drug.

38 B. A person who violates:

39 1. Subsection A, paragraph 1 of this section is guilty of a class 4
40 felony. Unless the drug involved is lysergic acid diethylamide,
41 methamphetamine, amphetamine or phencyclidine or the person was previously
42 convicted of a felony offense or a violation of this section or section
43 13-3408, the court on motion of the state, considering the nature and
44 circumstances of the offense, for a person not previously convicted of any
45 felony offense or a violation of this section or section 13-3408 may enter

1 judgment of conviction for a class 1 misdemeanor and make disposition
2 accordingly or may place the defendant on probation in accordance with
3 chapter 9 of this title and refrain from designating the offense as a
4 felony or misdemeanor until the probation is successfully terminated. The
5 offense shall be treated as a ~~felony~~ MISDEMEANOR for all purposes until
6 the court enters an order designating the offense a ~~misdemeanor~~ FELONY.

7 2. Subsection A, paragraph 2 of this section is guilty of a class 2
8 felony.

9 3. Subsection A, paragraph 3 of this section is guilty of a class 3
10 felony, except that if the offense involved methamphetamine, the person is
11 guilty of a class 2 felony.

12 4. Subsection A, paragraph 4 of this section is guilty of a class 2
13 felony.

14 5. Subsection A, paragraph 5 of this section is guilty of a class 2
15 felony.

16 6. Subsection A, paragraph 6 of this section is guilty of a class 3
17 felony.

18 7. Subsection A, paragraph 7 of this section is guilty of a class 2
19 felony.

20 C. Except as provided in subsection E of this section, a person who
21 is convicted of a violation of subsection A, paragraph 1, 3 or 6 and who
22 has not previously been convicted of any felony or who has not been
23 sentenced pursuant to section 13-703, section 13-704, section 13-706,
24 subsection A, section 13-708, subsection D or any other law making the
25 convicted person ineligible for probation is eligible for probation.

26 D. Except as provided in subsection E of this section, if the
27 aggregate amount of dangerous drugs involved in one offense or all of the
28 offenses that are consolidated for trial equals or exceeds the statutory
29 threshold amount, a person who is convicted of a violation of subsection
30 A, paragraph 2, 5 or 7 of this section is not eligible for suspension of
31 sentence, probation, pardon or release from confinement on any basis until
32 the person has served the sentence imposed by the court, the person is
33 eligible for release pursuant to section 41-1604.07 or the sentence is
34 commuted.

35 E. If the person is convicted of a violation of subsection A,
36 paragraph 2, 3, 4 or 7 of this section and the drug involved is
37 methamphetamine, the person shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 calendar years	10 calendar years	15 calendar years

40 A person who has previously been convicted of a violation of subsection A,
41 paragraph 2, 3, 4 or 7 of this section involving methamphetamine or
42 section 13-3407.01 shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 calendar years	15 calendar years	20calendar years

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

8 G. If a person is convicted of a violation of subsection A,
9 paragraph 5 of this section, if the drug is administered without the other
10 person's consent, if the other person is under eighteen years of age and
11 if the drug is flunitrazepam, gamma hydroxy butrate or ketamine
12 hydrochloride, the convicted person is not eligible for suspension of
13 sentence, probation, pardon or release from confinement on any basis until
14 the person has served the sentence imposed by the court, the person is
15 eligible for release pursuant to section 41-1604.07 or the sentence is
16 commuted.

17 H. In addition to any other penalty prescribed by this title, the
18 court shall order a person who is convicted of a violation of this section
19 to pay a fine of not less than ~~one thousand dollars~~ \$1,000 or three times
20 the value as determined by the court of the dangerous 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 suspend
23 any part or all of the imposition of any fine required by this subsection.

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

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

42 K. The presumptive term imposed pursuant to subsection E of this
43 section may be mitigated or aggravated pursuant to section 13-701,
44 subsections D and E.