

REFERENCE TITLE: fentanyl; heroin; carfentanil; homicide sentencing

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

## **HB 2779**

Introduced by  
Representative Pratt

AN ACT

AMENDING TITLE 13, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1106; 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. Title 13, chapter 11, Arizona Revised Statutes, is  
3 amended by adding section 13-1106, to read:

4 13-1106. Drug trafficking homicide; classification

5 A. A PERSON COMMITS DRUG TRAFFICKING HOMICIDE IF THE PERSON  
6 DELIVERS A DANGEROUS DRUG IN VIOLATION OF SECTION 13-3407 OR A NARCOTIC  
7 DRUG IN VIOLATION OF SECTION 13-3408 AND THE INJECTION, INHALATION,  
8 ABSORPTION OR INGESTION OF THE DANGEROUS DRUG OR NARCOTIC DRUG CAUSES A  
9 PERSON'S DEATH.

10 B. DRUG TRAFFICKING HOMICIDE IS A CLASS 1 FELONY AND IS PUNISHABLE  
11 AS FOLLOWS:

12 <u>MINIMUM</u>	13 <u>PRESUMPTIVE</u>	14 <u>MAXIMUM</u>
15 10 CALENDAR YEARS	16 16 CALENDAR YEARS	17 25 CALENDAR YEARS

18 C. EXCEPT AS PROVIDED IN SECTION 13-704, A PERSON WHO IS CONVICTED  
19 OF DRUG TRAFFICKING HOMICIDE AND WHO HAS PREVIOUSLY BEEN CONVICTED OF DRUG  
20 TRAFFICKING HOMICIDE OR A CLASS 2 OR 3 FELONY INVOLVING A DANGEROUS  
21 OFFENSE SHALL BE SENTENCED AS FOLLOWS:

22 <u>MINIMUM</u>	23 <u>PRESUMPTIVE</u>	24 <u>MAXIMUM</u>
25 15 CALENDAR YEARS	26 20 CALENDAR YEARS	27 29 CALENDAR YEARS

28 D. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTIONS B AND C OF  
29 THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,  
30 SUBSECTIONS D AND E.

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

33 13-3408. Possession, use, administration, acquisition, sale,  
34 manufacture or transportation of narcotic drugs;  
35 classification

36 A. A person shall not knowingly:

- 37 1. Possess or use a narcotic drug.
- 38 2. Possess a narcotic drug for sale.
- 39 3. Possess equipment or chemicals, or both, for the purpose of  
40 manufacturing a narcotic drug.
- 41 4. Manufacture a narcotic drug.
- 42 5. Administer a narcotic drug to another person.
- 43 6. Obtain or procure the administration of a narcotic drug by  
44 fraud, deceit, misrepresentation or subterfuge.
- 45 7. Transport for sale, import into this state, offer to transport  
46 for sale or import into this state, sell, transfer or offer to sell or  
47 transfer a narcotic drug.

48 B. A person who violates:

- 49 1. Subsection A, paragraph 1 of this section is guilty of a class 4  
50 felony.
- 51 2. Subsection A, paragraph 2 of this section is guilty of a class 2  
52 felony.

1           3. Subsection A, paragraph 3 of this section is guilty of a class 3  
2 felony.

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

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

7           6. Subsection A, paragraph 6 of this section is guilty of a class 3  
8 felony.

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

11           C. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, a person who  
12 is convicted of a violation of subsection A, paragraph 1, 3 or 6 of this  
13 section and who has not previously been convicted of any felony or who has  
14 not been sentenced pursuant to section 13-703, section 13-704, subsection  
15 A, B, C, D or E, section 13-706, subsection A, section 13-708, subsection  
16 D or any other provision of law making the convicted person ineligible for  
17 probation is eligible for probation.

18           D. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, if the  
19 aggregate amount of narcotic drugs involved in one offense or all of the  
20 offenses that are consolidated for trial equals or exceeds the statutory  
21 threshold amount, a person who is convicted of a violation of subsection  
22 A, paragraph 2, 5 or 7 of this section is not eligible for suspension of  
23 sentence, probation, pardon or release from confinement on any basis until  
24 the person has served the sentence imposed by the court, the person is  
25 eligible for release pursuant to section 41-1604.07 or the sentence is  
26 commuted.

27           E. IF A PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,  
28 PARAGRAPH 2, 3, 4, 5 OR 7 OF THIS SECTION AND THE DRUG INVOLVED IS  
29 FENTANYL, HEROIN, CARFENTANIL OR A FENTANYL MIMETIC SUBSTANCE, THE PERSON  
30 SHALL BE SENTENCED AS FOLLOWS:

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
5 CALENDAR YEARS	10 CALENDAR YEARS	15 CALENDAR YEARS
A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2, 3, 4, 5 OR 7 OF THIS SECTION INVOLVING FENTANYL, HEROIN, CARFENTANIL OR A FENTANYL MIMETIC SUBSTANCE SHALL BE SENTENCED AS FOLLOWS:		
<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
10 CALENDAR YEARS	15 CALENDAR YEARS	20 CALENDAR YEARS

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38           ~~E.~~ F. A person who is convicted of a violation of subsection A,  
39 paragraph 4 of this section OR SUBSECTION A, PARAGRAPH 2, 3, 5 OR 7 OF  
40 THIS SECTION INVOLVING FENTANYL, HEROIN, CARFENTANIL OR A FENTANYL MIMETIC  
41 SUBSTANCE is not eligible for suspension of sentence, probation, pardon or  
42 release from confinement on any basis until the person has served the  
43 sentence imposed by the court, the person is eligible for release pursuant  
44 to section 41-1604.07 or the sentence is commuted.

1           ~~F.~~ G. In addition to any other penalty prescribed by this title,  
2 the court shall order a person who is convicted of a violation of this  
3 section to pay a fine of not less than ~~two thousand dollars~~ \$2,000 or  
4 three times the value as determined by the court of the narcotic drugs  
5 involved in or giving rise to the charge, whichever is greater, and not  
6 more than the maximum authorized by chapter 8 of this title. A judge  
7 shall not suspend any part or all of the imposition of any fine required  
8 by this subsection.

9           ~~G.~~ H. A person who is convicted of a violation of this section for  
10 which probation or release before the expiration of the sentence imposed  
11 by the court is authorized is prohibited from using any marijuana,  
12 dangerous drug, narcotic drug or prescription-only drug except as lawfully  
13 administered by a health care practitioner and as a condition of any  
14 probation or release shall be required to submit to drug testing  
15 administered under the supervision of the probation department of the  
16 county or the state department of corrections, as appropriate, during the  
17 duration of the term of probation or before the expiration of the sentence  
18 imposed.

19           ~~H.~~ I. If a person who is convicted of a violation of this section  
20 is granted probation, the court shall order that as a condition of  
21 probation the person perform not less than three hundred sixty hours of  
22 community restitution with an agency or organization that provides  
23 counseling, rehabilitation or treatment for alcohol or drug abuse, an  
24 agency or organization that provides medical treatment to persons who  
25 abuse controlled substances, an agency or organization that serves persons  
26 who are victims of crime or any other appropriate agency or organization.