

REFERENCE TITLE: drug offenses; classification

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2736

Introduced by
Representative Hernandez M

AN ACT

AMENDING SECTIONS 13-901.02, 13-3402, 13-3403, 13-3404.01, 13-3405, 13-3407, 13-3408 AND 13-3411, ARIZONA REVISED STATUTES; AMENDING SECTION 13-3415, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 222, SECTION 5; REPEALING SECTION 13-3415, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 372, SECTION 1; 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 13-901.02, Arizona Revised Statutes, is amended
3 to read:

4 13-901.02. Drug treatment and education fund; definition

5 A. The drug treatment and education fund is established. The
6 administrative office of the ~~supreme court~~ COURTS shall administer the
7 fund.

8 B. Fifty ~~per cent~~ PERCENT of the monies deposited in the drug
9 treatment and education fund shall be distributed by the administrative
10 office of the ~~supreme court~~ COURTS to EACH PARTICIPATING COURT. The
11 MONIES MUST BE USED BY A PARTICIPATING COURT OR BY superior court
12 probation departments to cover the costs of placing persons in drug
13 education and treatment programs administered by a qualified agency or
14 organization that provides ~~such~~ EVIDENCE-BASED programs to persons who
15 abuse controlled substances. ~~Such~~ THE monies shall be allocated to
16 ~~superior court probation departments~~ EACH PARTICIPATING COURT according to
17 a formula based on ~~probation~~ THE POPULATION OF THE JURISDICTION AND THE
18 COURT'S DRUG POSSESSION caseload to be established by the administrative
19 office of the ~~supreme court~~ COURTS.

20 C. Fifty ~~per cent~~ PERCENT of the monies deposited in the drug
21 treatment and education fund shall be distributed to the Arizona parents
22 commission on drug education and prevention established by section
23 41-1604.17.

24 D. The administrative office of the ~~supreme court~~ COURTS shall
25 ~~cause to be prepared~~ PREPARE at the end of each fiscal year ~~after 1997~~ an
26 accountability report card that details the cost savings realized from the
27 diversion of persons from prisons OR JAILS to probation. A copy of the
28 report shall be submitted to the governor and the legislature, and a copy
29 of the report shall be sent to each public library in ~~the~~ THIS
30 state. ~~Beginning July 1, 2011,~~ The report shall be submitted
31 electronically. The administrative office of the ~~supreme court~~ COURTS
32 shall receive reimbursement from the drug treatment and education fund for
33 any administrative costs it incurs in ~~the implementation of~~ IMPLEMENTING
34 this section

35 E. FOR THE PURPOSE OF THIS SECTION, "PARTICIPATING COURT" INCLUDES
36 SUPERIOR COURTS, MUNICIPAL COURTS AND JUSTICE COURTS.

37 Sec. 2. Section 13-3402, Arizona Revised Statutes, is amended to
38 read:

39 13-3402. Possession and sale of peyote; classification

40 A. A person who knowingly ~~possesses,~~ sells, transfers or offers to
41 sell or transfer peyote is guilty of a class 6 felony.

42 B. A PERSON WHO KNOWINGLY POSSESSES PEYOTE IS GUILTY OF A CLASS 3
43 MISDEMEANOR.

1 ~~B.~~ C. In a prosecution for violation of this section, it is a
2 defense that the peyote is being used or is intended for use:

3 1. In connection with the bona fide practice of a religious belief,
4 and

5 2. As an integral part of a religious exercise, and

6 3. In a manner not dangerous to public health, safety or morals.

7 Sec. 3. Section 13-3403, Arizona Revised Statutes, is amended to
8 read:

9 13-3403. Possession and sale of a vapor-releasing substance
10 containing a toxic substance; regulation of sale;
11 exceptions; classification

12 A. A person shall not knowingly:

13 1. Breathe, inhale or drink a vapor-releasing substance containing
14 a toxic substance.

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

18 3. Sell, transfer or offer to sell or transfer a vapor-releasing
19 substance containing a toxic substance if ~~such~~ THE person is not, at the
20 time of sale, transfer or offer, employed by or engaged in operating a
21 licensed commercial establishment at a fixed location regularly offering
22 such substance for sale and ~~such~~ THE sale, transfer or offer is made in
23 the course of employment or operation.

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

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

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

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

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

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

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

32 ~~Such record shall be kept~~

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

36 C. The operator of a commercial establishment shall keep all
37 vapor-releasing glue containing a toxic substance in a place that is
38 unavailable to customers without the assistance of the operator or an
39 employee of the establishment.

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

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

5 F. Subsection A, paragraphs 2 and 3 and subsections B and C do not
6 apply to substances certified by the department of health services as
7 containing an additive that inhibits inhalation or induces sneezing.

8 G. A person who violates: ~~any provision~~

9 1. SUBSECTION A, PARAGRAPH 2 OR 3 OR SUBSECTION B, C OR D of this
10 section is guilty of a class 5 felony, but the court, having regard to the
11 nature and circumstances of the offense, may enter judgment of conviction
12 for a class 1 misdemeanor and make disposition accordingly or may place
13 the defendant on probation in accordance with chapter 9 of this title and
14 refrain from designating the offense as a felony or misdemeanor until the
15 probation is terminated. The offense shall be treated as a felony for all
16 purposes until such time as the court enters an order designating the
17 offense a misdemeanor.

18 2. A PERSON WHO VIOLATES SUBSECTION A, PARAGRAPH 1 OF THIS SECTION
19 IS GUILTY OF A CLASS 3 MISDEMEANOR.

20 H. For the purposes of subsections A and E OF THIS SECTION,
21 "vapor-releasing substance containing a toxic substance" means paint or
22 varnish dispensed by the use of aerosol spray, or any glue, that releases
23 vapors or fumes containing acetone, volatile acetates, benzene, butyl
24 alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl
25 alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene,
26 volatile ketones, isophorone, chloroform, methylene chloride, mesityl
27 oxide, xylene, cumene, ethylbenzene, trichloroethylene, mibk, miak, mek or
28 diacetone alcohol or isobutyl nitrite.

29 Sec. 4. Section 13-3404.01, Arizona Revised Statutes, is amended to
30 read:

31 13-3404.01. Possession or sale of precursor chemicals,
32 regulated chemicals, substances or equipment;
33 exceptions; classification

34 A. A person shall not do any of the following:

35 1. Knowingly possess a precursor chemical II.

36 2. Knowingly possess more than twenty-four grams of
37 pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine without a
38 license or permit issued pursuant to title 32, chapter 18.

39 3. Knowingly purchase more than three packages, not to exceed nine
40 grams of pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine
41 without a valid prescription order as defined in section 32-1901 or a
42 license or permit issued pursuant to title 32, chapter 18.

43 4. Knowingly possess any ephedrine that is uncombined or that is
44 the sole active ingredient of a product or more than twenty-four grams of
45 ephedrine that is combined with another active ingredient in any ephedrine

1 product without a license or permit issued pursuant to title 32,
2 chapter 18.

3 5. Knowingly purchase any ephedrine that is uncombined or is the
4 sole active ingredient of a product or more than three packages, not to
5 exceed nine grams of ephedrine that is combined with another active
6 ingredient in any ephedrine product without a license or permit issued
7 pursuant to title 32, chapter 18.

8 6. Sell, transfer or otherwise furnish any precursor chemical,
9 regulated chemical or other substance or equipment with knowledge that the
10 recipient will use the precursor chemical, regulated chemical, substance
11 or equipment to unlawfully manufacture a dangerous drug or narcotic drug.

12 7. As a manufacturer, wholesaler or retailer, knowingly possess any
13 precursor chemical or regulated chemical from which the label, the
14 national drug control number or the manufacturer's lot number has been
15 removed, altered or obliterated, except that a licensed manufacturer may
16 relabel products as permitted under the federal act.

17 8. Knowingly sell, transfer or otherwise furnish more than nine
18 grams of any precursor chemical without a license or permit issued
19 pursuant to title 32, chapter 18.

20 9. Sell, transfer or furnish ephedrine, pseudoephedrine,
21 (-)-norpseudoephedrine or phenylpropanolamine in a total amount of more
22 than nine grams in a single transaction in this state unless the recipient
23 possesses a valid and current permit issued by the board pursuant to title
24 32, chapter 18.

25 10. Sell, transfer or otherwise furnish a precursor chemical in
26 violation of any rule of the board or the department of public safety.

27 11. As a wholesaler or retailer, purchase or otherwise acquire or
28 receive a precursor chemical from any person who does not possess a valid
29 and current permit issued pursuant to title 32, chapter 18.

30 12. Knowingly participate in any transaction or series of
31 transactions that is structured by any person with the intent to avoid or
32 circumvent the prohibitions or limits on sales established by this
33 section.

34 B. A retailer shall not knowingly sell, transfer or otherwise
35 furnish a precursor chemical unless:

36 1. The transaction occurs in the normal course of business at
37 premises that are permitted pursuant to title 32, chapter 18.

38 2. The retailer has a valid and current permit that is issued
39 pursuant to title 32, chapter 18 and that is prominently displayed at the
40 premises where the transaction occurs.

41 C. A retailer shall not sell more than a total of three packages,
42 not to exceed nine grams of ephedrine, pseudoephedrine,
43 (-)-norpseudoephedrine or phenylpropanolamine in a single transaction
44 unless the person has a valid prescription order as defined in section
45 32-1901.

1 D. A wholesaler shall not sell, transfer or otherwise furnish a
2 precursor chemical to any person unless:
3 1. The wholesaler has a valid and current permit issued pursuant to
4 title 32, chapter 18.
5 2. The recipient has a permit issued pursuant to title 32, chapter
6 18, is a pharmacy or is a practitioner.
7 3. The transaction does not involve payment in cash or money orders
8 in an amount of more than ~~one thousand dollars~~ \$1,000.
9 E. A manufacturer shall not sell, transfer or otherwise furnish a
10 precursor chemical to any person unless:
11 1. The recipient is licensed or has a permit issued pursuant to
12 title 32, chapter 18, is a pharmacy or is a practitioner.
13 2. The transaction does not involve payment in cash or money orders
14 in an amount of more than ~~one thousand dollars~~ \$1,000.
15 F. This section does not apply to any of the following:
16 1. The transfer by a licensee or permittee to a reclamation
17 facility for destruction.
18 2. The movement from one facility of a licensee or permittee to
19 another facility of the same licensee or permittee without sale.
20 G. Notwithstanding any other law, a county, city or town shall not
21 enact an ordinance that is more restrictive than the requirements of this
22 section.
23 H. A violation of subsection A, paragraph ~~1 or~~ 6 OF THIS SECTION is
24 a class 2 felony. A violation of subsection A, paragraph ~~2, 3, 4,~~ 5, 7,
25 9, 11 or 12 OF THIS SECTION is a class 5 felony. A violation of
26 subsection A, paragraph 8 or 10 OF THIS SECTION is a class 6 felony. A
27 VIOLATION OF SUBSECTION A, PARAGRAPH 1, 2 OR 4 OF THIS SECTION IS A CLASS
28 3 MISDEMEANOR. A violation of subsection B, D or E OF THIS SECTION is a
29 class 5 felony. A violation of subsection C OF THIS SECTION is a class 5
30 felony, except that if the violation involves less than a total of fifty
31 grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or
32 phenylpropanolamine, the first violation is a class 2 misdemeanor and the
33 second violation is a class 1 misdemeanor. An enterprise is not
34 criminally accountable for a violation of subsection C OF THIS SECTION
35 unless the conduct constituting the offense is engaged in, authorized,
36 commanded or recklessly tolerated by the directors of the enterprise in
37 any manner or by a high managerial agent acting within the scope of
38 employment.
39 Sec. 5. Section 13-3405, Arizona Revised Statutes, is amended to
40 read:
41 13-3405. Possession, use, production, sale or transportation
42 of marijuana; classification; exceptions
43 A. Except as provided in sections 36-2852 and 36-2853, a person
44 shall not knowingly:
45 1. Possess or use marijuana.

1 2. Possess marijuana for sale.
2 3. Produce marijuana.
3 4. Transport for sale, import into this state or offer to transport
4 for sale or import into this state, sell, transfer or offer to sell or
5 transfer marijuana.
6 B. Except as provided in sections 36-2852 and 36-2853, a person who
7 violates:
8 1. Subsection A, paragraph 1 of this section involving an amount of
9 marijuana not possessed for sale having a weight of less than ~~two~~ FOUR
10 pounds is guilty of a class ~~6 felony~~ 3 MISDEMEANOR.
11 ~~2. Subsection A, paragraph 1 of this section involving an amount of~~
12 ~~marijuana not possessed for sale having a weight of at least two pounds~~
13 ~~but less than four pounds is guilty of a class 5 felony.~~
14 ~~3.~~ 2. Subsection A, paragraph 1 of this section involving an
15 amount of marijuana not possessed for sale having a weight of four pounds
16 or more is guilty of a class ~~4 felony~~ 2 MISDEMEANOR.
17 ~~4.~~ 3. Subsection A, paragraph 2 of this section involving an
18 amount of marijuana having a weight of less than two pounds is guilty of a
19 class 4 felony.
20 ~~5.~~ 4. Subsection A, paragraph 2 of this section involving an
21 amount of marijuana having a weight of at least two pounds but not more
22 than four pounds is guilty of a class 3 felony.
23 ~~6.~~ 5. Subsection A, paragraph 2 of this section involving an
24 amount of marijuana having a weight of more than four pounds is guilty of
25 a class 2 felony.
26 ~~7.~~ 6. Subsection A, paragraph 3 of this section involving an
27 amount of marijuana having a weight of less than two pounds is guilty of a
28 class 5 felony.
29 ~~8.~~ 7. Subsection A, paragraph 3 of this section involving an
30 amount of marijuana having a weight of at least two pounds but not more
31 than four pounds is guilty of a class 4 felony.
32 ~~9.~~ 8. Subsection A, paragraph 3 of this section involving an
33 amount of marijuana having a weight of more than four pounds is guilty of
34 a class 3 felony.
35 ~~10.~~ 9. Subsection A, paragraph 4 of this section involving an
36 amount of marijuana having a weight of less than two pounds is guilty of a
37 class 3 felony.
38 ~~11.~~ 10. Subsection A, paragraph 4 of this section involving an
39 amount of marijuana having a weight of two pounds or more is guilty of a
40 class 2 felony.
41 C. If the aggregate amount of marijuana involved in one offense or
42 all of the offenses that are consolidated for trial equals or exceeds the
43 statutory threshold amount, a person who is sentenced pursuant to
44 subsection B, paragraph 4, 5, ~~6~~ 7, 8, ~~9~~ or ~~11~~ 10 of this section is not
45 eligible for suspension of sentence, probation, pardon or release from

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

4 D. In addition to any other penalty prescribed by this title, the
5 court shall order a person who is convicted of a violation of any
6 provision of this section to pay a fine of not less than \$750 or three
7 times the value ~~as determined by the court~~ of the marijuana involved in or
8 giving rise to the charge, whichever is greater, and not more than the
9 maximum authorized by chapter 8 of this title. A judge shall not suspend
10 any part or all of the imposition of any fine required by this subsection.

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

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

31 G. If a person who is sentenced pursuant to subsection B, paragraph
32 ~~1, OR 2 or 3~~ of this section is granted probation for a felony violation
33 of this section, the court shall order that as a condition of probation
34 the person perform not less than twenty-four hours of community
35 restitution with an agency or organization providing counseling,
36 rehabilitation or treatment for alcohol or drug abuse, an agency or
37 organization that provides medical treatment to persons who abuse
38 controlled substances, an agency or organization that serves persons who
39 are victims of crime or any other appropriate agency or organization.

40 H. If a person is granted probation for a misdemeanor violation of
41 this section, the court shall order as a condition of probation that the
42 person attend eight hours of instruction on the nature and harmful effects
43 of narcotic drugs, marijuana and other dangerous drugs on the human
44 system, and on the laws related to the control of these substances, or
45 perform twenty-four hours of community restitution.

1 I. This section does not apply to either:

2 1. A person who is licensed pursuant to title 3, chapter 2, article
3 4.1 and who possesses, uses, sells, produces, manufactures or transports
4 industrial hemp as defined in section 3-311.

5 2. A person who engages in the commercial production, processing,
6 manufacturing, distribution or commerce of industrial hemp as defined in
7 section 3-311 in this state outside of the agricultural pilot program
8 established pursuant to title 3, chapter 2, article 4.1 if the person's
9 actions are authorized under federal law.

10 Sec. 6. Section 13-3407, Arizona Revised Statutes, is amended to
11 read:

12 13-3407. Possession, use, administration, acquisition, sale,
13 manufacture or transportation of dangerous drugs;
14 classification

15 A. A person shall not knowingly:

16 1. Possess or use a dangerous drug.

17 2. Possess a dangerous drug for sale.

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

20 4. Manufacture a dangerous drug.

21 5. Administer a dangerous drug to another person.

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

24 7. Transport for sale, import into this state or offer to transport
25 for sale or import into this state, sell, transfer or offer to sell or
26 transfer a dangerous drug.

27 B. A person who violates:

28 1. ~~Subsection A, paragraph 1 of this section is guilty of a class 4~~
29 ~~felony. Unless the drug involved is lysergic acid diethylamide,~~
30 ~~methamphetamine, amphetamine or phencyclidine or the person was previously~~
31 ~~convicted of a felony offense or a violation of this section or section~~
32 ~~13-3408, the court on motion of the state, considering the nature and~~
33 ~~circumstances of the offense, for a person not previously convicted of any~~
34 ~~felony offense or a violation of this section or section 13-3408 may enter~~
35 ~~judgment of conviction for a class 1 misdemeanor and make disposition~~
36 ~~accordingly or may place the defendant on probation in accordance with~~
37 ~~chapter 9 of this title and refrain from designating the offense as a~~
38 ~~felony or misdemeanor until the probation is successfully terminated. The~~
39 ~~offense shall be treated as a felony for all purposes until the court~~
40 ~~enters an order designating the offense a 3~~ misdemeanor.

41 2. Subsection A, paragraph 2 of this section is guilty of a class 2
42 felony.

43 3. Subsection A, paragraph 3 of this section is guilty of a class 3
44 felony, except that if the offense involved methamphetamine, the person is
45 guilty of a class 2 felony.

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

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

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

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

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

15 D. Except as provided in subsection E of this section, if the
16 aggregate amount of dangerous drugs involved in one offense or all of the
17 offenses that are consolidated for trial equals or exceeds the statutory
18 threshold amount, a person who is convicted of a violation of subsection
19 A, paragraph 2, 5 or 7 of this section is not eligible for suspension of
20 sentence, probation, pardon or release from confinement on any basis until
21 the person has served the sentence imposed by the court, the person is
22 eligible for release pursuant to section 41-1604.07 or the sentence is
23 commuted.

24 E. If ~~the~~ A person is convicted of a violation of subsection A,
25 paragraph 2, 3, 4 or 7 of this section and the drug involved is
26 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 |

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

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

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

41 G. If a person is convicted of a violation of subsection A,
42 paragraph 5 of this section, if the drug is administered without the other
43 person's consent, if the other person is under eighteen years of age and
44 if the drug is flunitrazepam, gamma hydroxy butrate or ketamine
45 hydrochloride, the convicted person is not eligible for suspension of

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

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

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

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

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

33 Sec. 7. Section 13-3408, Arizona Revised Statutes, is amended to
34 read:

35 13-3408. Possession, use, administration, acquisition, sale,
36 manufacture or transportation of narcotic drugs:
37 classification

38 A. Except as provided in section 36-2850, paragraph 16, subdivision
39 (b), section 36-2852 and section 36-2853, subsection C, a person shall not
40 knowingly:

- 41 1. Possess or use a narcotic drug.
- 42 2. Possess a narcotic drug for sale.
- 43 3. Possess equipment or chemicals, or both, for the purpose of
44 manufacturing a narcotic drug.
- 45 4. Manufacture a narcotic drug.

- 1 5. Administer a narcotic drug to another person.
- 2 6. Obtain or procure the administration of a narcotic drug by
3 fraud, deceit, misrepresentation or subterfuge.
- 4 7. Transport for sale, import into this state, offer to transport
5 for sale or import into this state, sell, transfer or offer to sell or
6 transfer a narcotic drug.
- 7 B. A person who violates:
- 8 1. Subsection A, paragraph 1 of this section is guilty of a class ~~4~~
9 ~~felony~~ 3 MISDEMEANOR.
- 10 2. Subsection A, paragraph 2 of this section is guilty of a class 2
11 felony.
- 12 3. Subsection A, paragraph 3 of this section is guilty of a class 3
13 felony.
- 14 4. Subsection A, paragraph 4 of this section is guilty of a class 2
15 felony.
- 16 5. Subsection A, paragraph 5 of this section is guilty of a class 2
17 felony.
- 18 6. Subsection A, paragraph 6 of this section is guilty of a class 3
19 felony.
- 20 7. Subsection A, paragraph 7 of this section is guilty of a class 2
21 felony.
- 22 C. A person who is convicted of a violation of subsection A,
23 paragraph 1, 3 or 6 of this section and who has not previously been
24 convicted of any felony or who has not been sentenced pursuant to section
25 13-703, section 13-704, subsection A, B, C, D or E, section 13-706,
26 subsection A, section 13-708, subsection D or any other provision of law
27 making the convicted person ineligible for probation is eligible for
28 probation.
- 29 D. If the aggregate amount of narcotic drugs involved in one
30 offense or all of the offenses that are consolidated for trial equals or
31 exceeds the statutory threshold amount, a person who is convicted of a
32 violation of subsection A, paragraph 2, 5 or 7 of this section is not
33 eligible for suspension of sentence, probation, pardon or release from
34 confinement on any basis until the person has served the sentence imposed
35 by the court, the person is eligible for release pursuant to section
36 41-1604.07 or the sentence is commuted.
- 37 E. A person who is convicted of a violation of subsection A,
38 paragraph 4 of this section is not eligible for suspension of sentence,
39 probation, pardon or release from confinement on any basis until the
40 person has served the sentence imposed by the court, the person is
41 eligible for release pursuant to section 41-1604.07 or the sentence is
42 commuted.
- 43 F. In addition to any other penalty prescribed by this title, the
44 court shall order a person who is convicted of a violation of this section
45 to pay a fine of not less than \$2,000 or three times the value ~~as~~

1 ~~determined by the court~~ of the narcotic drugs involved in or giving rise
2 to the charge, whichever is greater, and not more than the maximum
3 authorized by chapter 8 of this title. A judge shall not suspend any part
4 or all of the imposition of any fine required by this subsection.

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

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

23 Sec. 8. Section 13-3411, Arizona Revised Statutes, is amended to
24 read:

25 13-3411. Possession, use, sale or transfer of marijuana,
26 peyote, prescription drugs, dangerous drugs or
27 narcotic drugs or manufacture of dangerous drugs
28 in a drug free school zone; violation;
29 classification; definitions

30 A. It is unlawful for a person to do any of the following:

31 1. Intentionally be present in a drug free school zone to sell or
32 transfer marijuana, peyote, prescription-only drugs, dangerous drugs or
33 narcotic drugs.

34 2. **INTENTIONALLY BE PRESENT IN A DRUG FREE SCHOOL ZONE AND** possess
35 or use marijuana, peyote, dangerous drugs or narcotic drugs ~~in a drug free~~
36 ~~school zone~~.

37 3. Manufacture dangerous drugs in a drug free school zone.

38 B. A person who violates subsection A **PARAGRAPH 1 OR 3** of this
39 section is guilty of the same class of felony that the person would
40 otherwise be guilty of had the violation not occurred within a drug free
41 school zone, except that the presumptive, minimum and maximum sentence
42 shall be increased by one year. The additional sentence imposed under
43 this subsection is in addition to any enhanced punishment that may be
44 applicable under section 13-703, section 13-704, section 13-708,
45 subsection D or any provision in this chapter. A person is not eligible

1 for suspension of sentence, probation, pardon or release from confinement
2 on any basis except pursuant to section 31-233, subsection A or B until
3 the sentence imposed by the court has been served or commuted.

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

11 D. Each school district's governing board or its designee, or the
12 chief administrative officer in the case of a nonpublic school, shall
13 place and maintain permanently affixed signs located in a visible manner
14 at the main entrance of each school that identifies the school and its
15 accompanying grounds as a drug free school zone.

16 E. The drug free school zone map prepared pursuant to title 15
17 shall constitute an official record as to the location and boundaries of
18 each drug free school zone. The school district's governing board or its
19 designee, or the chief administrative officer in the case of any nonpublic
20 school, shall promptly notify the county attorney of any changes in the
21 location and boundaries of any school property and shall file with the
22 county recorder the original map prepared pursuant to title 15.

23 F. All school personnel who observe a violation of this section
24 shall immediately report the violation to a school administrator. The
25 administrator shall immediately report the violation to a peace
26 officer. It is unlawful for any school personnel or school administrator
27 to fail to report a violation as prescribed in this section.

28 G. School personnel having custody or control of school records of
29 a student involved in an alleged violation of this section shall make the
30 records available to a peace officer ~~upon~~ ON written request signed by a
31 magistrate. Records disclosed pursuant to this subsection are
32 confidential and may be used only in a judicial or administrative
33 proceeding. A person furnishing records required under this subsection or
34 a person participating in a judicial or administrative proceeding or
35 investigation resulting from the furnishing of records required under this
36 subsection is immune from civil or criminal liability by reason of such
37 action unless the person acted with malice.

38 H. **A PERSON WHO VIOLATES SUBSECTION A, PARAGRAPH 2 OF THIS SECTION**
39 **IS GUILTY OF A CLASS 1 MISDEMEANOR.** A person who violates subsection F of
40 this section is guilty of a class 3 misdemeanor.

41 I. For the purposes of this section:

42 1. "Drug free school zone" means the area within three hundred feet
43 of a school or its accompanying grounds, any public property within one
44 thousand feet of a school or its accompanying grounds, a school bus stop
45 or on any school bus or bus contracted to transport pupils to any school.

1 2. "School" means any public or nonpublic kindergarten program,
2 common school or high school.

3 Sec. 9. Section 13-3415, Arizona Revised Statutes, as amended by
4 Laws 2021, chapter 222, section 5, is amended to read:

5 13-3415. Possession, manufacture, delivery and advertisement
6 of drug paraphernalia; classification; civil
7 forfeiture; factors; definitions

8 A. Except as provided in section 36-2852 and section 36-2853,
9 subsection C, it is unlawful for any person to use, or to possess with
10 intent to use, drug paraphernalia to plant, propagate, cultivate, grow,
11 harvest, manufacture, compound, convert, produce, process, prepare, test,
12 analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or
13 otherwise introduce into the human body a drug in violation of this
14 chapter. ~~Any person who violates this subsection is guilty of a class 6~~
15 ~~felony.~~

16 B. Except as provided in section 36-2852 and section 36-2853,
17 subsection C, it is unlawful for any person to deliver, possess with
18 intent to deliver or manufacture with intent to deliver drug paraphernalia
19 knowing, or under circumstances where one reasonably should know, that it
20 will be used to plant, propagate, cultivate, grow, harvest, manufacture,
21 compound, convert, produce, process, prepare, test, analyze, pack, repack,
22 store, contain, conceal, inject, ingest, inhale or otherwise introduce
23 into the human body a drug in violation of this chapter. ~~Any person who~~
24 ~~violates this subsection is guilty of a class 6 felony.~~

25 C. It is unlawful for a person to place in a newspaper, magazine,
26 handbill or other publication any advertisement knowing, or under
27 circumstances where one reasonably should know, that the purpose of the
28 advertisement, in whole or in part, is to promote the sale of objects
29 designed or intended for use as drug paraphernalia. ~~Any person who~~
30 ~~violates this subsection is guilty of a class 6 felony.~~

31 D. All drug paraphernalia is subject to forfeiture pursuant to
32 chapter 39 of this title. The failure to charge or acquittal of an owner
33 or anyone in control of drug paraphernalia in violation of this chapter
34 does not prevent a finding that the object is intended for use or designed
35 for use as drug paraphernalia.

36 E. In determining whether an object is drug paraphernalia, a court
37 or other authority shall consider, in addition to all other logically
38 relevant factors, the following:

39 1. Statements by an owner or by anyone in control of the object
40 concerning its use.

41 2. Prior convictions, if any, of an owner, or of anyone in control
42 of the object, under any state or federal law relating to any drug.

43 3. The proximity of the object, in time and space, to a direct
44 violation of this chapter.

45 4. The proximity of the object to drugs.

- 1 5. The existence of any residue of drugs on the object.
- 2 6. Direct or circumstantial evidence of the intent of an owner, or
- 3 of anyone in control of the object, to deliver it to persons whom he
- 4 knows, or should reasonably know, intend to use the object to facilitate a
- 5 violation of this chapter.
- 6 7. Instructions, oral or written, provided with the object
- 7 concerning its use.
- 8 8. Descriptive materials accompanying the object that explain or
- 9 depict its use.
- 10 9. National and local advertising concerning its use.
- 11 10. The manner in which the object is displayed for sale.
- 12 11. Whether the owner, or anyone in control of the object, is a
- 13 legitimate supplier of like or related items to the community, such as a
- 14 licensed distributor or dealer of tobacco products.
- 15 12. Direct or circumstantial evidence of the ratio of sales of the
- 16 object to the total sales of the business enterprise.
- 17 13. The existence and scope of legitimate uses for the object in
- 18 the community.
- 19 14. Expert testimony concerning its use.
- 20 F. A VIOLATION OF THIS SECTION IS A CLASS 3 MISDEMEANOR.
- 21 ~~F. G. For the purposes of this section, unless the context~~
- 22 ~~otherwise requires:~~
- 23 1. "Drug" means any narcotic drug, dangerous drug, marijuana or
- 24 peyote.
- 25 2. "Drug paraphernalia" means all equipment, products and materials
- 26 of any kind that are used, intended for use or designed for use in
- 27 planting, propagating, cultivating, growing, harvesting, manufacturing,
- 28 compounding, converting, producing, processing, preparing, testing,
- 29 analyzing, packaging, repackaging, storing, containing, concealing,
- 30 injecting, ingesting, inhaling or otherwise introducing into the human
- 31 body a drug in violation of this chapter. Drug paraphernalia includes:
- 32 (a) Kits used, intended for use or designed for use in planting,
- 33 propagating, cultivating, growing or harvesting any species of plant that
- 34 is a drug or from which a drug can be derived.
- 35 (b) Kits used, intended for use or designed for use in
- 36 manufacturing, compounding, converting, producing, processing or preparing
- 37 drugs.
- 38 (c) Isomerization devices used, intended for use or designed for
- 39 use in increasing the potency of any species of plant that is a drug.
- 40 (d) Testing equipment used, intended for use or designed for use in
- 41 identifying or analyzing the strength, effectiveness or purity of drugs,
- 42 OTHER THAN NARCOTIC DRUG TESTING PRODUCTS THAT ARE USED TO DETERMINE
- 43 WHETHER A CONTROLLED SUBSTANCE CONTAINS FENTANYL OR A FENTANYL ANALOG.
- 44 (e) Scales and balances used, intended for use or designed for use
- 45 in weighing or measuring drugs.

1 (f) Diluents and adulterants, such as quinine hydrochloride,
2 mannitol, mannite, dextrose and lactose, used, intended for use or
3 designed for use in cutting drugs.

4 (g) Separation gins and sifters used, intended for use or designed
5 for use in removing twigs and seeds from, or in otherwise cleaning or
6 refining, marijuana.

7 (h) Blenders, bowls, containers, spoons and mixing devices used,
8 intended for use or designed for use in compounding drugs.

9 (i) Capsules, balloons, envelopes and other containers used,
10 intended for use or designed for use in packaging small quantities of
11 drugs.

12 (j) Containers and other objects used, intended for use or designed
13 for use in storing or concealing drugs.

14 (k) Hypodermic syringes, needles and other objects used, intended
15 for use or designed for use in parenterally injecting drugs into the human
16 body.

17 (l) Objects used, intended for use or designed for use in
18 ingesting, inhaling or otherwise introducing marijuana, a narcotic drug, a
19 dangerous drug, hashish or hashish oil into the human body, such as:

20 (i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes
21 with or without screens, permanent screens, hashish heads or punctured
22 metal bowls.

23 (ii) Water pipes.

24 (iii) Carburetion tubes and devices.

25 (iv) Smoking and carburetion masks.

26 (v) Roach clips, meaning objects used to hold burning material,
27 such as a marijuana cigarette, that has become too small or too short to
28 be held in the hand.

29 (vi) Miniature cocaine spoons and cocaine vials.

30 (vii) Chamber pipes.

31 (viii) Carburetor pipes.

32 (ix) Electric pipes.

33 (x) Air-driven pipes.

34 (xi) Chillums.

35 (xii) Bongs.

36 (xiii) Ice pipes or chillers.

37 Sec. 10. [Repeal](#)

38 Section [13-3415](#), Arizona Revised Statutes, as amended by Laws 2021,
39 chapter 372, section 1, is repealed.