

Conference Engrossed

fentanyl sales; manufacture; sentencing; testing

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2802

AN ACT

AMENDING SECTIONS 13-3408 AND 13-3411, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 34, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3424; 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; definition
7 A. Except as provided in section 36-2850, paragraph ~~16~~ 19,
8 subdivision (b), section 36-2852 and section 36-2853, subsection C, a
9 person shall not knowingly:
10 1. Possess or use a narcotic drug.
11 2. Possess a narcotic drug for sale.
12 3. Possess equipment or chemicals, or both, for the purpose of
13 manufacturing a narcotic drug.
14 4. Manufacture a narcotic drug.
15 5. Administer a narcotic drug to another person.
16 6. Obtain or procure the administration of a narcotic drug by
17 fraud, deceit, misrepresentation or subterfuge.
18 7. Transport for sale, import into this state, offer to transport
19 for sale or import into this state, sell, transfer or offer to sell or
20 transfer a narcotic drug.
21 B. A person who violates:
22 1. Subsection A, paragraph 1 of this section is guilty of a class 4
23 felony.
24 2. Subsection A, paragraph 2 of this section is guilty of a class 2
25 felony.
26 3. Subsection A, paragraph 3 of this section is guilty of a class 3
27 felony.
28 4. Subsection A, paragraph 4 of this section is guilty of a class 2
29 felony.
30 5. Subsection A, paragraph 5 of this section is guilty of a class 2
31 felony.
32 6. Subsection A, paragraph 6 of this section is guilty of a class 3
33 felony.
34 7. Subsection A, paragraph 7 of this section is guilty of a class 2
35 felony.
36 C. **EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION,** a person who
37 is convicted of a violation of subsection A, paragraph 1, 3 or 6 of this
38 section and who has not previously been convicted of any felony or who has
39 not been sentenced pursuant to section 13-703, section 13-704, subsection
40 A, B, C, D or E, section 13-706, subsection A, section 13-708, subsection
41 D or any other provision of law making the convicted person ineligible for
42 probation is eligible for probation.
43 D. **EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION,** if the
44 aggregate amount of narcotic drugs involved in one offense or all of the
45 offenses that are consolidated for trial equals or exceeds the statutory

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

7 E. A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A,
8 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION INVOLVING A SINGLE UNIT DOSE THAT
9 CONTAINS TWO OR MORE MILLIGRAMS OF FENTANYL SHALL BE SENTENCED AS FOLLOWS:

10	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
11	5 CALENDAR YEARS	10 CALENDAR YEARS	15 CALENDAR YEARS

12 A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A,
13 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION INVOLVING A SINGLE UNIT DOSE THAT
14 CONTAINS TWO OR MORE MILLIGRAMS OF FENTANYL SHALL BE SENTENCED AS FOLLOWS:

15	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
16	10 CALENDAR YEARS	15 CALENDAR YEARS	20 CALENDAR YEARS

17 ~~F.~~ F. A person who is convicted of a violation of SUBSECTION A,
18 PARAGRAPH 2, 3 OR 7 OF THIS SECTION INVOLVING A SINGLE UNIT DOSE THAT
19 CONTAINS TWO OR MORE MILLIGRAMS OF FENTANYL OR A VIOLATION OF subsection
20 A, paragraph 4 of this section is not eligible for suspension of sentence,
21 probation, pardon or release from confinement on any basis until the
22 person has served the sentence imposed by the court, the person is
23 eligible for release pursuant to section 41-1604.07 or the sentence is
24 commuted.

25 G. SUBSECTIONS E AND F OF THIS SECTION DO NOT APPLY TO A PERSON WHO
26 IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 7 OF THIS SECTION
27 THAT INVOLVES THE TRANSFER OR OFFER TO TRANSFER A SINGLE UNIT DOSE THAT
28 CONTAINS TWO OR MORE MILLIGRAMS OF FENTANYL.

29 ~~F.~~ H. In addition to any other penalty prescribed by this title,
30 the court shall order a person who is convicted of a violation of this
31 section to pay a fine of not less than \$2,000 or three times the value as
32 determined by the court of the narcotic drugs involved in or giving rise
33 to the charge, whichever is greater, and not more than the maximum
34 authorized by chapter 8 of this title. A judge shall not suspend any part
35 or all of the imposition of any fine required by this subsection.

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

1 ~~H.~~ J. If a person who is convicted of a violation of this section
2 is granted probation, the court shall order that as a condition of
3 probation the person perform not less than three hundred sixty hours of
4 community restitution with an agency or organization that provides
5 counseling, rehabilitation or treatment for alcohol or drug abuse, an
6 agency or organization that provides medical treatment to persons who
7 abuse controlled substances, an agency or organization that serves persons
8 who are victims of crime or any other appropriate agency or organization.

9 K. FOR THE PURPOSES OF THIS SECTION, "SINGLE UNIT DOSE" MEANS A
10 SINGLE AMOUNT OR UNIT OF A MATERIAL, COMPOUND, MIXTURE OR PREPARATION THAT
11 IS SEPARATELY IDENTIFIABLE AND THAT IS IN A PILL, TABLET OR CAPLET FORM OR
12 ANY OTHER FORM THAT INDICATES THAT IT IS THE AMOUNT OR UNIT BY WHICH THE
13 MATERIAL, COMPOUND, MIXTURE OR PREPARATION IS SEPARATELY ADMINISTERED TO
14 OR TAKEN BY A PERSON.

15 Sec. 2. Section 13-3411, Arizona Revised Statutes, is amended to
16 read:

17 13-3411. Possession, use, sale or transfer of marijuana,
18 peyote, prescription drugs, dangerous drugs or
19 narcotic drugs or manufacture of dangerous drugs
20 in a drug-free school zone; classification;
21 definitions

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

- 23 1. ~~intentionally~~ KNOWINGLY be present in a ~~drug-free~~ DRUG-FREE
24 school zone to sell or transfer marijuana, peyote, prescription-only
25 drugs, dangerous drugs or narcotic drugs.
- 26 2. Possess or use marijuana, peyote, dangerous drugs or narcotic
27 drugs in a ~~drug-free~~ DRUG-FREE school zone.
- 28 3. Manufacture dangerous drugs in a ~~drug-free~~ DRUG-FREE school
29 zone.

30 B. A person who violates subsection A of this section is guilty of
31 the same class of felony that the person would otherwise be guilty of had
32 the violation not occurred within a ~~drug-free~~ DRUG-FREE school zone,
33 except that the presumptive, minimum and maximum sentence shall be
34 increased by one year. The additional sentence imposed under this
35 subsection is in addition to any enhanced punishment that may be
36 applicable under section 13-703, section 13-704, section 13-708,
37 subsection D or any provision in this chapter. A person is not eligible
38 for suspension of sentence, probation, pardon or release from confinement
39 on any basis except pursuant to section 31-233, subsection A or B until
40 the sentence imposed by the court has been served or commuted.

41 C. In addition to any other penalty prescribed by this title, the
42 court shall order a person who is convicted of a violation of this section
43 to pay a fine of not less than ~~two thousand dollars~~ \$2,000 or three times
44 the value as determined by the court of the drugs involved in or giving
45 rise to the charge, whichever is greater, and not more than the maximum

1 authorized by chapter 8 of this title. A judge shall not suspend any part
2 or all of the imposition of any fine required by this subsection.

3 D. Each school district's governing board or its designee, or the
4 chief administrative officer in the case of a nonpublic school, shall
5 place and maintain permanently affixed signs located in a visible manner
6 at the main entrance of each school that identifies the school and its
7 accompanying grounds as a ~~drug-free~~ DRUG-FREE school zone.

8 E. The ~~drug-free~~ DRUG-FREE school zone map prepared pursuant to
9 title 15 shall constitute an official record as to the location and
10 boundaries of each ~~drug-free~~ DRUG-FREE school zone. The school district's
11 governing board or its designee, or the chief administrative officer in
12 the case of any nonpublic school, shall promptly notify the county
13 attorney of any changes in the location and boundaries of any school
14 property and shall file with the county recorder the original map prepared
15 pursuant to title 15.

16 F. All school personnel who observe a violation of this section
17 shall immediately report the violation to a school administrator. The
18 administrator shall immediately report the violation to a peace officer.
19 It is unlawful for any school personnel or school administrator to fail to
20 report a violation as prescribed in this section.

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

31 H. A person who violates subsection F of this section is guilty of
32 a class 3 misdemeanor.

33 I. For the purposes of this section:

34 1. "~~Drug-free~~ DRUG-FREE school zone" means the area within three
35 hundred feet of a school or its accompanying grounds, any public property
36 within one thousand feet of a school or its accompanying grounds, a school
37 bus stop or on any school bus or bus contracted to transport pupils to any
38 school.

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

1 Sec. 3. Title 13, chapter 34, Arizona Revised Statutes, is amended
2 by adding section 13-3424, to read:

3 13-3424. Sale of fentanyl in drug-free neighborhood zone;
4 drug-free neighborhood zone map; classification;
5 definitions

6 A. IT IS UNLAWFUL FOR A PERSON TO KNOWINGLY BE PRESENT IN A
7 DRUG-FREE NEIGHBORHOOD ZONE TO SELL FENTANYL.

8 B. A PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS GUILTY OF
9 THE SAME CLASS OF FELONY THAT THE PERSON WOULD OTHERWISE BE GUILTY OF HAD
10 THE VIOLATION NOT OCCURRED WITHIN A DRUG-FREE NEIGHBORHOOD ZONE, EXCEPT
11 THAT THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCE SHALL BE INCREASED BY
12 ONE YEAR. THE ADDITIONAL SENTENCE IMPOSED UNDER THIS SUBSECTION IS IN
13 ADDITION TO ANY ENHANCED PUNISHMENT THAT MAY BE APPLICABLE UNDER SECTION
14 13-703, SECTION 13-704, SECTION 13-708, SUBSECTION D OR ANY PROVISION IN
15 THIS CHAPTER. A PERSON IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE,
16 PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT PURSUANT
17 TO SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE
18 COURT HAS BEEN SERVED OR COMMUTED.

19 C. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY THIS TITLE, THE
20 COURT SHALL ORDER A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION
21 TO PAY A FINE OF NOT LESS THAN \$2,000 OR THREE TIMES THE VALUE AS
22 DETERMINED BY THE COURT OF THE DRUGS INVOLVED IN OR GIVING RISE TO THE
23 CHARGE, WHICHEVER IS GREATER, AND NOT MORE THAN THE MAXIMUM AUTHORIZED BY
24 CHAPTER 8 OF THIS TITLE. A JUDGE SHALL NOT SUSPEND ANY PART OR ALL OF THE
25 IMPOSITION OF ANY FINE REQUIRED BY THIS SUBSECTION.

26 D. EACH DRUG-FREE NEIGHBORHOOD ZONE MUST HAVE A PERMANENTLY AFFIXED
27 SIGN THAT IS LOCATED IN A VISIBLE MANNER IN EACH DRUG-FREE NEIGHBORHOOD
28 ZONE AND AT ALL INTERSECTIONS WITHIN 300 FEET OF A LOCATION LISTED IN
29 SUBSECTION F, PARAGRAPH 3 OF THIS SECTION MEASURED BY A STRAIGHT LINE IN
30 ANY DIRECTION AND THAT IDENTIFIES THE DRUG-FREE NEIGHBORHOOD ZONE AND ITS
31 ACCOMPANYING GROUNDS AS A DRUG-FREE NEIGHBORHOOD ZONE. A DRUG-FREE
32 NEIGHBORHOOD ZONE MAY INCLUDE INFORMATION REGARDING THE DRUG-FREE
33 NEIGHBORHOOD ZONE BOUNDARIES ON A SIGN THAT IDENTIFIES THE AREA AS A
34 DRUG-FREE NEIGHBORHOOD ZONE. THE FOLLOWING ENTITIES SHALL PLACE AND
35 MAINTAIN THE DRUG-FREE NEIGHBORHOOD ZONE SIGNS:

36 1. IF THE DRUG-FREE NEIGHBORHOOD ZONE IS LOCATED IN A CITY OR TOWN,
37 THE CITY OR TOWN COUNCIL.

38 2. IF THE DRUG-FREE NEIGHBORHOOD ZONE IS NOT LOCATED IN A CITY OR
39 TOWN, THE COUNTY BOARD OF SUPERVISORS.

40 E. THE ENTITY THAT PLACES AND MAINTAINS THE SIGN REQUIRED BY
41 SUBSECTION D OF THIS SECTION SHALL PREPARE A MAP OF THE DRUG-FREE
42 NEIGHBORHOOD ZONE'S LOCATION AND BOUNDARIES. THE ENTITY SHALL FILE THE
43 ORIGINAL MAP WITH THE COUNTY RECORDER AND PROVIDE A COPY TO THE COUNTY
44 ATTORNEY. THE DRUG-FREE NEIGHBORHOOD ZONE MAP IS THE OFFICIAL RECORD AS
45 TO THE LOCATION AND BOUNDARIES OF EACH DRUG-FREE NEIGHBORHOOD ZONE. THE

1 ENTITY SHALL PROMPTLY NOTIFY THE COUNTY RECORDER AND COUNTY ATTORNEY OF
2 ANY CHANGES IN THE LOCATION AND BOUNDARIES OF ANY DRUG-FREE NEIGHBORHOOD
3 ZONE.

4 F. THE ENTITY THAT PLACES AND MAINTAINS THE SIGNS REQUIRED BY
5 SUBSECTION D OF THIS SECTION SHALL ALSO MAIL NOTICE TO EACH INDIVIDUAL
6 SINGLE FAMILY HOME AND MULTI-FAMILY RESIDENTIAL UNIT RESIDENTS WITHIN THE
7 DRUG-FREE NEIGHBORHOOD ZONE OR WITHIN 1320 FEET OF THE DRUG-FREE
8 NEIGHBORHOOD ZONE TO PROVIDE A MAP OF THE DRUG-FREE NEIGHBORHOOD ZONE'S
9 LOCATION AND BOUNDARIES. THE MAP OF THE DRUG-FREE NEIGHBORHOOD ZONE'S
10 LOCATION AND BOUNDARIES SHALL ALSO BE POSTED TO THE ENTITY'S WEBSITE.

11 G. FOR THE PURPOSES OF THIS SECTION:

12 1. "DRUG-FREE NEIGHBORHOOD ZONE" MEANS THE AREA THAT IS DESIGNATED
13 WITH A PERMANENTLY AFFIXED SIGN AND THAT IS WITHIN THREE HUNDRED FEET OF A
14 HOSPITAL, A NURSING HOME, A DRUG TREATMENT CENTER, A MENTAL AND BEHAVIORAL
15 HEALTH FACILITY OR A PUBLIC PARK AND ANY OF THE ACCOMPANYING GROUNDS OF A
16 LOCATION LISTED IN THIS PARAGRAPH.

17 2. "DRUG TREATMENT CENTER" MEANS A RESIDENTIAL TREATMENT CENTER FOR
18 SUBSTANCE USE DISORDER, A BEHAVIORAL HEALTH INPATIENT FACILITY, A
19 BEHAVIORAL HEALTH RESIDENTIAL FACILITY, A SUBSTANCE ABUSE TREATMENT
20 FACILITY AND A HOSPITAL OR HEALTH CARE FACILITY THAT PROVIDES SUBSTANCE
21 ABUSE TREATMENT.

22 3. "PERMANENTLY AFFIXED SIGN" MEANS A DUAL COLOR SIGN THAT IS AT
23 LEAST 18 INCHES BY 24 INCHES WITH CAPITALIZED LETTERS OF AT LEAST 200
24 POINT TYPE SIZE.