



ARIZONA HOUSE OF REPRESENTATIVES

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House: JUD DP 5-3-0-0 | 3rd Read DPA 31-28-1-0-0
Senate: JUD DP 4-3-0-0 | 3rd Read DPA 16-12-2-0-0

HB 2802: fentanyl sales; manufacture; sentencing; testing

Sponsor: Representative Gress, LD 4
Conference Committee

Overview

Imposes specific sentencing ranges for offenders who are convicted of certain narcotic drug offenses involving a single unit dose that contains two or more milligrams of fentanyl. Adds a new section of statute establishing sentence enhancements for a person who is knowingly present in a drug-free neighborhood zone and changes the culpable mental state in existing statute establishing sentence enhancements for person who are present in a drug-free school zone to sell or transfer marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs.

History

Current law outlines certain criminal offenses and sentencing classifications specific to different types of drugs. One of these categories is that for *narcotic drugs*, which is defined to encompass a detailed list of materials, compounds, mixtures or preparations containing various substances or derivatives. Examples of narcotic drugs include cocaine, fentanyl and heroin, among many others ([A.R.S. § 13-3401](#)).

It is a criminal offense for a person to knowingly do any of the following with regard to a narcotic drug:

- 1) Possess or use the drug, which is a generally a class 4 felony;
- 2) Possess the drug for sale, which is a class 2 felony;
- 3) Possess equipment or chemicals, or both, for the purpose of manufacturing the drug, which is a class 3 felony;
- 4) Manufacture the drug, which is a class 2 felony;
- 5) Administer the drug to another person, which is a class 2 felony;
- 6) Obtain or procure the administration of the drug by fraud, deceit, misrepresentation or subterfuge, which is a class 3 felony;
- 7) Transport for sale, import into Arizona, offer to transport for sale or import into Arizona, sell, transfer or offer to sell or transfer the drug, which is a class 2 felony.

Notwithstanding the general sentencing classifications mentioned above, more specific sentencing requirements may apply in certain circumstances, including discrete sentencing ranges or probation eligibility provisions for specific drugs, amounts of drugs or repeat offenses ([A.R.S. §§ 13-3408](#), [13-3419](#), [13-3420](#)).

Current state also makes it unlawful for a person to: (1) Intentionally be present in a drug-free school zone to sell or transfer marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs; (2) possess or use the aforementioned drugs in a drug-free school zone; or (3) manufacture dangerous drugs in a drug-free school zone. A person who commits one of these violations is guilty of the same class of felony that the person would otherwise be guilty of had the violation not occurred within a drug-free school zone, except that the presumptive, minimum and maximum sentence shall be increased by one year, in addition to any enhanced punishment that

may be applicable under the chapter of the criminal code pertaining to drug offenses. Such a person is also ineligible for suspension of sentence, probation, pardon or release from confinement on any basis, with certain exceptions, until the sentence imposed by the court has been served or commuted. Finally, in addition to any other penalty prescribed in the criminal code, the court must order a person who is convicted of one of the above violations to pay a fine of at least \$2,000 or three times the value as determined by the court of the drugs involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of the criminal code. A judge may not suspend any part or all of the imposition of any fine required by these provisions.

A *drug-free school zone* is defined as the area within 300 feet of a school or its accompanying grounds, any public property within 1,000 feet of a school or its accompanying grounds, a school bus stop or on any school bus or bus contracted to transport pupils to any school. Moreover, for the above purposes, *school* is defined as any public or nonpublic kindergarten program, common school or high school. Statute further delineates requirements relating to the establishment of drug-free school zones as well as notice and reporting requirements ([A.R.S. § 13-3411](#)).

The criminal code defines each of the four *culpable mental states*, which include *intentionally* (or *with intent to*) and *knowingly* ([A.R.S. § 13-105](#)).

Provisions

1. Mandates a minimum sentence of 5 calendar years, a presumptive sentence of 10 calendar years and a maximum sentence of 15 calendar years for individuals convicted of any of the following narcotic drug offenses involving a single unit dose that contains two or more milligrams of fentanyl:
 - a) Possession for sale;
 - b) Possession of equipment or chemicals for the purpose of manufacture;
 - c) Manufacture; or
 - d) Transporting for sale, importing into Arizona, offering to transport for sale or import into Arizona, sale, transfer or offer to sell or transfer. (Sec. 1)
2. Increases each of the above minimum, presumptive and maximum sentences by 5 years if the person has previously been convicted of one of the above narcotic drug offenses involving a single unit dose that contains two or more milligrams of fentanyl. (Sec. 1)
3. Prohibits an individual who has been convicted of the above-noted fentanyl offenses from being eligible for suspension of sentence, probation, pardon or release from confinement until the court-imposed sentence has been served, the person is eligible for community supervision or the sentence is commuted. (Sec. 1)
4. Specifies that the above sentence-enhancing provisions do not apply to a person who is convicted of an offense involving the transfer or offer to transfer of a single unit dose that contains two or more milligrams of fentanyl. (Sec. 1)
5. Defines a *single unit dose* as a single amount or unit of a material, compound, mixture or preparation that is separately identifiable and that is in a pill, tablet or caplet form or any other form that indicates that it is the amount or unit by which the material, compound, mixture or preparation is separately administered to or taken by a person. (Sec. 1)
6. Changes existing statute to provide that it is unlawful for a person to *knowingly*, rather than *intentionally*, be present in a drug-free school zone to sell or transfer marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs. (Sec. 2)

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7. Deems it unlawful for a person to knowingly be present in a drug-free neighborhood zone to sell fentanyl. (Sec. 3)
8. Provides that a person who commits the above violation is guilty of the same class of felony that the person would have been guilty of had the person committed the offense outside of a drug-free neighborhood except that the applicable presumptive, minimum and maximum sentence is increased by one year, in addition to any enhanced punishment that may be applicable under the chapter of the criminal code pertaining to drug offenses. (Sec. 3)
9. Requires a court to order a person convicted of a violation in a drug-free neighborhood zone to pay a minimum fine of \$2,000 or three times the value of the drugs involved in the offense, whichever is greater, and not exceeding the maximum fine of \$150,000 for felony offenses, and prohibits a judge from suspending any part or all of the fine. (Sec. 3)
10. Stipulates that a person who commits a prohibited drug offense as outlined in a drug-free neighborhood zone is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, with certain exceptions, until the sentence imposed by the court has been served or commuted. (Sec. 3)
11. Requires each drug-free neighborhood zone to have a permanent sign that is located in a visible manner in each drug-free neighborhood zone and its accompanying grounds that identifies the area as being a drug-free neighborhood zone. (Sec. 3)
12. Instructs that each drug-free neighborhood zone must have a permanently affixed sign that identifies an area as a drug-free neighborhood zone at all intersections within 300 feet of the zone measured by a straight line in all directions. (Sec. 3)
13. Specifies that the following entities are required to place and maintain drug-free neighborhood zone signs:
 - a) The city or town council, if the zone is located in a city or town; and
 - b) The county board of supervisors, if the zone is not located in a city or town. (Sec. 3)
14. Requires the entity that places and maintains a zone's signs to mail a notice providing a map with the locations and boundaries of the zone to each single-family home and multi-family residential unit resident within the zone, or within 1320 feet of the zone. (Sec. 3)
15. Allows the prescribed entities to include information regarding the zone boundaries on a sign that identifies the area as a drug-free neighborhood zone. (Sec. 3)
16. Requires the entity that places a drug-free neighborhood zone sign to prepare a map of the zone's location and boundaries and to file the original map with the county recorder and provide a copy to the county attorney, and keep the county recorder and county attorney updated with any changes made to the location and boundaries of the drug-free neighborhood zone. (Sec. 3)
17. Requires the map of the locations and boundaries of a zone to be posted to the entity's website that places and maintains the zone's signs. (Sec. 3)
18. Provides that the drug-free neighborhood zone map submitted to the county recorder is the official record of the location and boundaries of the zone. (Sec. 3)
19. Defines a *drug-free neighborhood zone* as the area within 300 feet of a hospital, a nursing home, a drug treatment center, a mental and behavioral health facility, a public park and any of the accompanying grounds of the aforementioned locations. (Sec. 3)
20. Defines a *drug treatment center* as a residential treatment center for substance use disorder, a behavioral health inpatient facility, a behavioral health residential facility, a substance abuse treatment facility and a hospital or health care facility that provides substance abuse treatment

21. Defines *permanently affixed sign* as a dual color sign that is at least 18 inches by 24 inches with capitalized letters of at least 200 point type size. (Sec. 3)
22. Makes technical conforming changes. (Sec. 1, 2)

Conference Committee Amendments

1. Removes requirement for a law enforcement agency that confiscates fentanyl during the course of certain investigations of offenses involving fentanyl to submit a sufficient sample of the fentanyl to an accredited crime laboratory for testing to determine the appropriate criminal violation.
2. Changes existing statute to provide that it is unlawful for a person to knowingly, rather than intentionally, be present in a drug-free school zone to sell or transfer marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs.
3. Deems it unlawful for a person to knowingly be present in a drug-free neighborhood zone to sell fentanyl.
4. Provides that a person who commits the above violation is guilty of the same class of felony that the person would have been guilty of had the person committed the offense outside of a drug-free neighborhood except that the applicable presumptive, minimum and maximum sentence is increased by one year, in addition to any enhanced punishment that may be applicable under the chapter of the criminal code pertaining to drug offenses.
5. Requires a court to order a person convicted of a violation in a drug-free neighborhood zone to pay a minimum fine of \$2,000 or three times the value of the drugs involved in the offense, whichever is greater, and not exceeding the maximum fine of \$150,000 for felony classifications, and prohibits a judge from suspending any part or all of the fine.
6. Stipulates that a person who commits a prohibited drug offense as outlined in a drug-free neighborhood zone is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, with certain exceptions, until the sentence imposed by the court has been served or commuted.
7. Requires each drug-free neighborhood zone to have a permanent sign that is located in a visible manner in each drug-free neighborhood zone and its accompanying grounds that identifies the area as being a drug-free neighborhood zone.
8. Instructs that each drug-free neighborhood zone must have a permanently affixed sign that identifies an area as a drug-free neighborhood zone at all intersections within 300 feet of the zone measured by a straight line in all directions.
9. Specifies that the following entities are required to place and maintain drug-free neighborhood zone signs:
 - a) The city or town council, if the zone is located in a city or town; and
 - b) The county board of supervisors, if the zone is not located in a city or town.
10. Requires the entity that places and maintains a zone's signs to mail a notice providing a map with the locations and boundaries of the zone to each single-family home and multi-family residential unit resident within the zone, or within 1320 feet of the zone.
11. Allows the prescribed entities to include information regarding the zone boundaries on a sign that identifies the area as a drug-free neighborhood zone.
12. Instructs the entity that places a drug-free neighborhood zone sign to prepare a map of the zone's location and boundaries and to file the original map with the county recorder and provide a copy to the county attorney, and keep the county recorder and county attorney

updated with any changes made to the location and boundaries of the drug-free neighborhood zone.

13. Requires the map of the locations and boundaries of a zone to be posted to the entity's website that places and maintains the zone's signs.
14. Provides that the drug-free neighborhood zone map submitted to the county recorder is the official record of the location and boundaries of the zone.
15. Defines a *drug-free neighborhood zone* as the area within 300 feet of a hospital, a nursing home, a drug treatment center, a mental and behavioral health facility, a public park and any of the accompanying grounds of the aforementioned locations.
16. Defines a *drug treatment center* as a residential treatment center for substance use disorder, a behavioral health inpatient facility, a behavioral health residential facility, a substance abuse treatment facility and a hospital or health care facility that provides substance abuse treatment
17. Defines *permanently affixed sign* as a dual color sign that is at least 18 inches by 24 inches with capitalized letters of at least 200 point type size.
18. Makes technical conforming changes.