

REFERENCE TITLE: heroin; fentanyl; sales; mandatory prison

State of Arizona  
House of Representatives  
Fifty-third Legislature  
Second Regular Session  
2018

# HB 2241

Introduced by  
Representative Farnsworth E

AN ACT

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. 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  
7 A. A person shall not knowingly:  
8 1. Possess or use a narcotic drug.  
9 2. Possess a narcotic drug for sale.  
10 3. Possess equipment or chemicals, or both, for the purpose of  
11 manufacturing a narcotic drug.  
12 4. Manufacture a narcotic drug.  
13 5. Administer a narcotic drug to another person.  
14 6. Obtain or procure the administration of a narcotic drug by  
15 fraud, deceit, misrepresentation or subterfuge.  
16 7. Transport for sale, import into this state, offer to transport  
17 for sale or import into this state, sell, transfer or offer to sell or  
18 transfer a narcotic drug.  
19 B. A person who violates:  
20 1. Subsection A, paragraph 1 of this section is guilty of a class 4  
21 felony.  
22 2. Subsection A, paragraph 2 of this section is guilty of a class 2  
23 felony.  
24 3. Subsection A, paragraph 3 of this section is guilty of a class 3  
25 felony.  
26 4. Subsection A, paragraph 4 of this section is guilty of a class 2  
27 felony.  
28 5. Subsection A, paragraph 5 of this section is guilty of a class 2  
29 felony.  
30 6. Subsection A, paragraph 6 of this section is guilty of a class 3  
31 felony.  
32 7. Subsection A, paragraph 7 of this section is guilty of a class 2  
33 felony.  
34 C. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, a person who  
35 is convicted of a violation of subsection A, paragraph 1, 3 or 6 of this  
36 section and who has not previously been convicted of any felony or who has  
37 not been sentenced pursuant to section 13-703, section 13-704, subsection  
38 A, B, C, D or E, section 13-706, subsection A, section 13-708, subsection  
39 D or any other provision of law making the convicted person ineligible for  
40 probation is eligible for probation.  
41 D. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, if the  
42 aggregate amount of narcotic drugs involved in one offense or all of the  
43 offenses that are consolidated for trial equals or exceeds the statutory  
44 threshold amount, a person who is convicted of a violation of subsection  
45 A, paragraph 2, 5 or 7 of this section 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 E. IF A PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,  
6 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION AND THE DRUG INVOLVED IS HEROIN,  
7 FENTANYL, CARFENTANIL OR FENTANYL MIMETIC SUBSTANCES, THE PERSON SHALL BE  
8 SENTENCED AS FOLLOWS:

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

11 A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A,  
12 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION INVOLVING HEROIN, FENTANYL,  
13 CARFENTANIL OR FENTANYL MIMETIC SUBSTANCES SHALL BE SENTENCED AS FOLLOWS:

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

16 F. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTION E OF THIS  
17 SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,  
18 SUBSECTIONS D AND E.

19 ~~F.~~ G. A person who is convicted of a violation of subsection A,  
20 paragraph 4 of this section OR SUBSECTION A, PARAGRAPH 2, 3, 4 OR 7 OF  
21 THIS SECTION INVOLVING HEROIN, FENTANYL, CARFENTANIL OR FENTANYL MIMETIC  
22 SUBSTANCES is not eligible for suspension of sentence, probation, pardon  
23 or release from confinement on any basis until the person has served the  
24 sentence imposed by the court, the person is eligible for release pursuant  
25 to section 41-1604.07 or the sentence is commuted.

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

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