Senate Engrossed

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1205

AN ACT

AMENDING SECTIONS 13-709.03 AND 13-3407, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-709.03, Arizona Revised Statutes, is amended to read:

13-709.03. Special sentencing provisions; drug offenses

A. A person who is convicted of a violation of section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine shall be sentenced as follows:

Minimum	Presumptive	Maximum
5 calendar years	10 calendar years	15 calendar years

B. A person who is convicted of a violation of section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine and who has previously been convicted of ~~a violation of section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01~~ ANY FELONY OFFENSE shall be sentenced as follows:

Minimum	Presumptive	Maximum
10 calendar years	15 calendar years	20 calendar years

C. The presumptive, minimum and maximum sentence for a violation of section 13-3411, subsection A shall be increased by one year. A person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The additional sentence imposed under section 13-3411, subsection B is in addition to any enhanced punishment that may be applicable under section 13-703, section 13-704, section 13-708, subsection D or any provision of chapter 34 of this title.

D. The presumptive term imposed pursuant to subsections A and B of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

Sec. 2. Section 13-3407, Arizona Revised Statutes, is amended to read:

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

A. A person shall not knowingly:

1. Possess or use a dangerous drug.

2. Possess a dangerous drug for sale.

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

4. Manufacture a dangerous drug.

5. Administer a dangerous drug to another person.

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

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

B. A person who violates:

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

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

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

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

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

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

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

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

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

E. If the person is convicted of a violation of subsection A, paragraph 2, 3, 4 or 7 of this section, THE PERSON HAS NO MORE THAN ONE PRIOR FELONY CONVICTION and the drug involved is methamphetamine, the person shall be sentenced pursuant to section 13-709.03, ~~subsections~~ SUBSECTION A or B.

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

G. If a person is convicted of a violation of subsection A, paragraph 5 of this section, if the drug is administered without the other person's consent, if the other person is under eighteen years of age and if the drug is flunitrazepam, gamma hydroxy butrate or ketamine hydrochloride, the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

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

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

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