



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
First Regular Session

House: HHS DPA/SE 6-3-0-0

HB 2469: fentanyl; border; public health crisis
S/E: homicide; drug offenses; sentencing
Sponsor: Representative Montenegro, LD 29
Caucus & COW

Summary of the Strike-Everything Amendment to HB 2469

Overview

Establishes drug trafficking homicide as a criminal offense carrying a class 1 felony designation and delineates elements and sentencing ranges specific to the offense. Includes drug trafficking homicide in existing statutes allowing for enhanced sentencing under certain circumstances.

History

Current law outlines certain criminal offenses and sentencing classifications specific to different types of drugs. Two of the main drug categories currently recognized in statute are those for *dangerous drugs* and *narcotic drugs*, both of which are defined to encompass a detailed list of materials, compounds, mixtures or preparations containing various substances or derivatives. Each definition is quite comprehensive, but examples of dangerous drugs include methamphetamine, phencyclidine (PCP) and anabolic steroids, while examples of narcotic drugs include cocaine, fentanyl and heroin ([A.R.S. § 13-3401](#)).

With respect to either a dangerous drug or a narcotic drug, it is a criminal offense for a person to knowingly do any of the following:

- 1) possess or use the drug, which is generally a class 4 felony but may in certain circumstances be designated a class 1 misdemeanor for first time offenses involving certain dangerous drugs;
- 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 or, if the drug involved is methamphetamine, a class 2 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; or
- 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. §§ 13-3407](#), [13-3408](#), [13-3419](#), [13-3420](#)).

Current law also provides for enhanced sentencing for various recognized categories of offenses, including crimes that fall within the definitions of a *dangerous offense* ([A.R.S. § 13-105](#)), a *dangerous crime against children (DCAC)* ([A.R.S. § 13-705](#)), a *serious offense* or a *violent or*

aggravated felony ([A.R.S. § 13-706](#)). The applicable term of imprisonment for an offense may also be subject to change based on certain aggravating or mitigating circumstances found to be present by a court or jury ([A.R.S. § 13-701](#)).

Statute currently requires that a person be sentenced to life imprisonment without eligibility for suspension of sentence, probation, pardon or release from confinement, except for in specific circumstances such as work release or compassionate leave, until the person has served at least 25 years or the sentence is commuted, if the following qualifications are met:

- 1) the person is at least 18 years old and has been tried as an adult;
- 2) the person is convicted of a serious offense except a drug offense, first degree murder or any DCAC, whether a completed or preparatory offense; and
- 3) the person has previously been convicted of two or more serious offenses not committed on the same occasion ([A.R.S. § 13-706](#)).

Many terms specific to the above-mentioned drug offenses, including *administer*, *manufacture*, *sale* (or *sell*) and *transfer*, as well as the *threshold amount* of a certain drug for sentencing purposes, are defined in ([A.R.S. § 13-3401](#)). Other terms that are generally applicable throughout Title 13, such as *possess* and *possession*, in addition to *culpable mental state*, which includes specific definitions for *intentionally*, *knowingly*, *recklessly* and *criminal negligence*, are defined in ([A.R.S. § 13-105](#)).

Provisions

1. Establishes *drug trafficking homicide* as a criminal offense with the following two elements, both of which must be met:
 - a) the person sells a dangerous drug in violation of [A.R.S. § 13-3407](#) or a narcotic drug in violation of [A.R.S. § 13-3408](#) and injecting, inhaling, absorbing or ingesting the drug causes another person's death; and
 - b) the sale of the dangerous drug or narcotic drug to the other person was a contributing cause of the other person's death and the death did not result from a cause that is not connected to the defendant. (Sec. 3)
2. Specifies that, for the second element mentioned above, the prosecution is not required to prove that the sale of the dangerous drug or narcotic drug was the sole and immediate cause of the other person's death. (Sec. 3)
3. Classifies *drug trafficking homicide* as a class 1 felony with a 10-25 year prison sentence (16 year presumptive), unless the convicted person has previously been convicted of drug trafficking homicide or a class 2 or 3 felony involving a dangerous offense, in which case the offense carries a 15-29 year prison sentence (20 year presumptive). (Sec. 3)
4. Allows the presumptive prison terms mentioned above to be aggravated or mitigated pursuant to [A.R.S. § 13-701](#). (Sec. 3)
5. Specifies that *drug trafficking homicide* is punishable as a DCAC if the victim is under 15 years old and includes the offense in the definition of a DCAC and certain special sentencing provisions applicable to such offenses. (Sec. 1, 3)
6. Adds *drug trafficking homicide* to the list of offenses currently included in the definitions of a serious offense and a violent or aggravated felony. (Sec. 2)
7. Includes a serious offense that is also a drug offense as an offense that, upon conviction and if other circumstances are met, requires a person to be sentenced to 25 years to life imprisonment. (Sec. 2)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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8. Entitles this act as the *Ashley Dunn Act*. (Sec. 4)
9. Makes technical changes. (Sec. 1)