

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: SUBSTANTIVE CRIMINAL LAW 2.11

SUBJECT:	Substantive Criminal Law
AZ POST DESIGNATION:	2.11 Chapter 34 Drug Offenses
HOURS:	1
COURSE CONTENT:	An analysis of the most frequently used statutes in this chapter.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:

- 2.11.34.1 Given a copy of A.R.S. Title 13 and a written, verbal or visual description depicting the possible commission of the following crime(s), identify if a crime occurred and, if so, the appropriate code section and crime classification:
- A. Possession, manufacture, delivery or advertisement of drug paraphernalia (A.R.S. §13-3415).
 - B. Possession, use, administration, acquisition, manufacture, sale or transportation of the following controlled/ dangerous drugs:
 - 1. Peyote (A.R.S. §13-3402).
 - 2. Precursor or regulated chemicals (A.R.S. §§13-3404 and 3404.01).
 - 3. Marijuana (A.R.S. §13-3405).
 - 4. Prescription-only drugs (A.R.S. §13-3406).
 - 5. Dangerous drugs (A.R.S. §13-3407).
 - 6. Narcotic drugs (A.R.S. §13-3408).
 - C. Possession and sale of a vapor-releasing substance containing a toxic substance (A.R.S. §13-3403).

DATE FIRST PREPARED: November 2000

PREPARED BY: SME Committee

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AZ POST – APPROVAL: Steve Enteman DATE: August 2019

AZ POST – APPROVAL: Mandy Faust DATE: February 2021

AZ POST – APPROVAL: Lori Wait DATE: October 2021

INSTRUCTOR REFERENCES: A.R.S. Title 13

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

DATE RELEASED INTO SHARE FILE: May 27, 2022

I. INTRODUCTION

- A. Instructor – (self) introduction. ***INSTRUCTOR NOTE:*** Use if taught as a “stand alone” lesson plan.
- B. Preview of performance objectives.

II. 13-3402 – POSSESSION AND SALE OF PEYOTE

P.O. 2.11.34.1B1

- A. A person who knowingly possesses, sells, transfers or offers to sell or transfer peyote is guilty of a felony.
- B. In a prosecution for violation of this section, it is a defense that the peyote is being used (or is intended to be used):
 - 1. In connection with the bona fide practice of a religious belief; and
 - 2. As an integral part of a religious exercise; and
 - 3. In a manner not dangerous to public health, safety or morals.

III. 13-3403 – POSSESSION AND SALE OF A VAPOR-RELEASING SUBSTANCE CONTAINING A TOXIC SUBSTANCE (VRSCS)

P.O. 2.11.34.1C

- A. A person shall not knowingly:
 - 1. Breathe, inhale or drink a VRSCS.
 - 2. Sell, transfer or offer to sell or transfer a VRSCS to a person under 18 years of age.
 - 3. Sell, transfer or offer to sell or transfer a VRSCS if such person is not, at the time of sale, transfer or offer, employed by (or engaged in operating) a licensed commercial establishment at a fixed location regularly offering such substances for sale and such sale, transfer or offer is made in the course of employment or operation.
- B. A person making a sale or transfer of a VR Glue CTS shall require identification of the purchaser and shall record:
 - 1. The name of the glue.
 - 2. The date and hour of delivery.
 - 3. The intended use of the glue.
 - 4. The signature and address of the purchaser.

5. The signature of the seller or deliverer.
 6. Such record shall be kept for three (3) years and be available to board inspectors and peace officers.
- C. A.R.S. §13-3403(F) holds the only exceptions to this statute.
1. A person who violates any provision of this section is guilty of a felony, but the court may, having regard to the nature and circumstances of the offense, enter judgment of a conviction for a misdemeanor.

IV. 13-3404 – SALE OF PRECURSOR CHEMICALS

P.O. 2.11.34.1B2

- A. A manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes any precursor chemical to any person in this state shall submit a report to the Department of Public Safety of all of those transactions. (See: Definitions #22 and #23 in A.R.S. §13-3401 for "Precursor Chemicals I" and "Precursor Chemicals II.")
- B. This subsection sets up the report format.
- C. This section does not apply to any practitioner as defined in A.R.S. §13-3401 or any manufacturer or D.wholesaler licensed by the state Board of Pharmacy.
- D. 13-3404(H) regulates manufacturers, wholesalers, retailers, etc.
- E. A person who fails to submit a report required by this section is guilty of a felony.

V. 13-3404.01 – POSSESSION OF PRECURSOR CHEMICALS II

P.O. 2.11.34.1B2

- A. A person shall not knowingly possess a precursor chemical II or sell, transfer or otherwise furnish a precursor chemical with knowledge that the recipient will use the precursor chemical to unlawfully manufacture a dangerous drug or narcotic drug.
- B. This is a felony.

VI. 13-3405 – POSSESSION, USE, PRODUCTION, SALE OR TRANSPORTATION OF MARIJUANA

P.O. 2.11.34.1B3

- A. A person shall not knowingly:
1. Possess or use marijuana.
 2. Possess marijuana for sale.
 3. Produce marijuana.
 4. 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 marijuana.

B. Medical Marijuana.

1. 3 categories of persons may possess marijuana under State law.
 - a. Qualifying patient (up to 2.5 usable oz every two weeks; 36-2816.A) **INSTRUCTOR NOTE: A.R.S. 36-2801.**
 - b. Caregiver. (2.5 oz. per patient; 36-2801.1)
 - c. Medical dispensary. (no limit)
2. Cultivation.
 - a. Limited. (PERMISSION TO CULTIVATE WILL BE NOTED ON REGISTRY CARD; 36-2804.04.A.7)
 - i. Qualifying patients that reside more than 25 miles from a dispensary. (limit 12 plants; 36-2801.1.a)
 - ii. Caregivers whose patients reside more than 25 miles from a dispensary. (limit 12 plants per patient living more than 25 miles from dispensary; 36-2801.a.b)
 - iii. Medical dispensary. (no limit)
 - b. Cardholders that are allowed to grow their own supply may do so only in an enclosed locked facility. 36-2801.6.
 - i. Enclosed - surrounded by a solid 10-foot walls constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, with a one-inch thick metal gate.
 - ii. Locked - with locks or other security devices that permit access only by a cardholder.
3. Arizona does recognize out of State medical marijuana cards, EXCEPT out of State cardholders may not purchase marijuana from a dispensary. 36-2801.17; 36-2804.03.C
4. Possession of Marijuana is still a violation of Federal Law.
5. Several activities still prohibited by State Law even with a valid card:
 - a. Possessing or using medical marijuana on a school bus, on the grounds of a preschool, primary school, or high school, or in a correctional facility. 36-2802.B

- b. Smoking marijuana on public transportation or in a public place. (Though they may consume it in food or drink in public). 36-2802.C.
- c. Smoking on private property contrary to owners wishes - private property owners may forbid the use of medical marijuana on their property, cardholder's that refuse to cooperate could face trespassing charges. 36-2814.2
- d. Dispensing Marijuana is limited to dispensaries and caregivers; cardholders may not transfer marijuana to each other unless there is nothing of value transferred in return. 36-2816.B; 36-2811.B.3; 36-2815.C.
- e. A valid medical marijuana cardholder may establish an affirmative defense to DUI A3 by showing that the marijuana in their blood was insufficient to cause impairment. **INSTRUCTOR NOTE:** *Dobson V. McClennen, 238 Ariz. 389 (2015); Ishak V. McClennen, 241 Ariz. 364 (app. 2016)*

C. Violations – are felonies. See: Subsection B.

VII. SMART AND SAFE ARIZONA ACT (PROPOSITION 207)

A. Possession if over 21 years of age.

- 1. It is legal for anyone at least 21 years old to possess 1 ounce of marijuana or less, or no more than 5 grams of marijuana concentrates (extracts). A.R.S. § 36-2852(A)(1).
- 2. It is legal, with some restrictions, to possess not more than 6 plants for personal use at the person's primary residence, and not more than 12 if two people who are at least 21 years old are residing at the residence at the same time. A.R.S. § 26-2852(2).
- 3. It is legal to transfer one ounce or less of marijuana, of which not more than five grams may be in the form of marijuana concentrate, to an individual who is at least twenty-one years of age if the transfer is without remuneration and is not advertised or promoted to the public. A.R.S. 36-2852(A)(3).
- 4. It is legal to transfer up to six marijuana plants to an individual who is at least twenty-one years of age if the transfer is without remuneration and is not advertised or promoted to the public. A.R.S. 36-2852(A)(4).
- 5. Possessing marijuana paraphernalia is legal. A.R.S. § 3652(A)(5).
- 6. It is a petty offense to possess between 1 ounce and 2.5 ounces of marijuana (not more than 12.5 grams is in the form of marijuana concentrate). A.R.S. § 36-2853(A),

B. Possession if-under 21 years old.

1. It is illegal for anyone under 21 years old to possess any amount of marijuana and paraphernalia. A.R.S. § 36-2853(B).
 - a. The penalty for these violations range from a civil penalty for the first two offenses, and a class 1 misdemeanor for the third. A.R.S. § 36-2853(B)(1)-(3).
 - b. If the subject is under 18 years of age, they fall under the jurisdiction of the Juvenile court system.
- C. Possession for any age in an amount over 2.5 ounces and 12.5 grams in the form of marijuana concentrate is still a violation of A.R.S. § 13-3405. Note: If subject has a medical marijuana card, exceptions may apply and the AMMA.
- D. Marijuana smoking is banned in public places, and it is a petty offense. A.R.S. §§ 36-2851(8)(a) and 36-2853(C).
 1. Note: Smoking is different from eating or vaping. Local ordinances may apply.
- E. It is still illegal to drive while impaired by marijuana under 28-1381(A)(1). However, in order to charge an A3 DUI, a person must also be impaired to the slightest degree. A.R.S. § 36-2852(B).
- F. It is illegal to consume marijuana or marijuana products while driving, operating, or riding in the passenger seat of an operating vehicle. A.R.S. § 36-2851(8)(b).
- G. The odor of marijuana or burnt marijuana does not by itself constitute reasonable suspicion of a crime. This does not apply when an officer is investigating whether a person has violated A.R.S. § 28-1381. A.R.S. § 36-2852(C).

VIII. 13-3406 – POSSESSION, USE, ADMINISTRATION, ACQUISITION, SALE, MANUFACTURE OR TRANSPORTATION OF PRESCRIPTION-ONLY DRUGS **P.O. 2.11.34.1B4**

- A. A person shall not knowingly:
 1. Possess or use a prescription-only drug.
 2. Possess a prescription-only drug for sale.
 3. Possess equipment and chemicals for the purpose of manufacturing a prescription-only drugs.
 4. Manufacture a prescription-only drug.
 5. Administer a prescription-only drug to another person whose possession or use of the a prescription-only drug violates any provision of this section.
 6. Obtain or procure the administration of a prescription-only 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 prescription-only drug.
8. Possess or use a misbranded drug as defined in 32-1967.
9. Manufacture, sell or distribute a misbranded drug.

B. Violations:

1. Violation of A1, 3, 4, 5 or 6 is a misdemeanor.
2. Violation of A2 or 7 is a felony.

IX. 13-3407 – POSSESSION, USE, ADMINISTRATION, ACQUISITION, SALE, MANUFACTURE OR TRANSPORTATION OF DANGEROUS DRUGS P.O. 2.11.34.1B5

A. A person shall not knowingly:

1. Possess or use a dangerous drug.
2. Possess a dangerous drug for sale.
3. Possess equipment and chemicals 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. Violations: Are Felonies.

X. 13-3408 – POSSESSION, USE, ADMINISTRATION, ACQUISITION, SALE, MANUFACTURE OR TRANSPORTATION OF NARCOTIC DRUGS P.O. 2.11.34.1B6

A. A person shall not knowingly:

1. Possess or use a narcotic drug.
2. Possess a narcotic drug for sale.

3. Possess equipment and chemicals for the purpose of manufacturing a narcotic drug.
4. Manufacture a narcotic drug.
5. Administer a narcotic drug to another person.
6. Obtain or procure the administration of a narcotic 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 narcotic drug.

B. Violations: Are felonies.

XI. 13-3415 – DRUG PARAPHERNALIA

P.O. 2.11.34.1A

A. It is unlawful for any person to use (or to possess with intent to use) drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, inhale or otherwise introduce into the human body a drug in violation of this chapter.

B. Violation is a Class 6 felony.

1. Exception: If over 21, it is legal to possess marijuana paraphernalia. A.R.S. § 36-2852(A)(5).

C. It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing (or should have known) that it will be used to plant, propagate, grow, ingest, etc., a drug in violation of this chapter. Violation is a Class 6 felony.

XI. CONCLUSION

A. Review of performance objectives.

B. Final questions and answers.

C. Instructor closing comment(s).