

REFERENCE TITLE: probation; drug offenses; illegal aliens

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1459**

Introduced by  
Senator Gould; Representative Groe; Senator Harper

AN ACT

AMENDING SECTION 13-901.01, ARIZONA REVISED STATUTES; RELATING TO PROBATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Subject to the requirements of article IV, part 1, section  
3 1, Constitution of Arizona, section 13-901.01, Arizona Revised Statutes, is  
4 amended to read:

5 13-901.01. Probation for persons convicted of possession or use  
6 of controlled substances or drug paraphernalia;  
7 treatment; prevention; education; exceptions;  
8 definition

9 A. Notwithstanding any law to the contrary, any person who is  
10 convicted of the personal possession or use of a controlled substance or drug  
11 paraphernalia is eligible for probation. The court shall suspend the  
12 imposition or execution of sentence and place the person on probation.

13 B. Any person who has been convicted of or indicted for a violent  
14 crime as defined in section 13-604.04 is not eligible for probation as  
15 provided for in this section but instead shall be sentenced pursuant to  
16 chapter 34 of this title.

17 C. Personal possession or use of a controlled substance pursuant to  
18 this section shall not include possession for sale, production, manufacturing  
19 or transportation for sale of any controlled substance.

20 D. If a person is convicted of personal possession or use of a  
21 controlled substance or drug paraphernalia, as a condition of probation, the  
22 court shall require participation in an appropriate drug treatment or  
23 education program administered by a qualified agency or organization that  
24 provides such programs to persons who abuse controlled substances. Each  
25 person who is enrolled in a drug treatment or education program shall be  
26 required to pay for participation in the program to the extent of the  
27 person's financial ability.

28 E. A person who has been placed on probation pursuant to this section  
29 and who is determined by the court to be in violation of probation shall have  
30 new conditions of probation established by the court. The court shall select  
31 the additional conditions it deems necessary, including intensified drug  
32 treatment, community restitution, intensive probation, home arrest or any  
33 other sanctions except that the court shall not impose a term of  
34 incarceration unless the court determines that the person violated probation  
35 by committing an offense listed in chapter 34 or 34.1 of this title or an act  
36 in violation of an order of the court relating to drug treatment.

37 F. If a person is convicted a second time of personal possession or  
38 use of a controlled substance or drug paraphernalia, the court may include  
39 additional conditions of probation it deems necessary, including intensified  
40 drug treatment, community restitution, intensive probation, home arrest or  
41 any other action within the jurisdiction of the court.

42 G. At any time while the defendant is on probation, if after having a  
43 reasonable opportunity to do so the defendant fails or refuses to participate  
44 in drug treatment, the probation department or the prosecutor may petition  
45 the court to revoke the defendant's probation. If the court finds that the

1 defendant refused to participate in drug treatment, the defendant shall no  
2 longer be eligible for probation under this section but instead shall be  
3 sentenced pursuant to chapter 34 of this title.

4 H. A person is not eligible for probation under this section but  
5 instead shall be sentenced pursuant to chapter 34 of this title if the court  
6 finds the person either:

7 1. Had been convicted three times of personal possession of a  
8 controlled substance or drug paraphernalia.

9 2. Refused drug treatment as a term of probation.

10 3. Rejected probation.

11 4. Was convicted of the personal possession or use of a controlled  
12 substance or drug paraphernalia and the offense involved methamphetamine.

13 I. Subsections G and H of this section do not prohibit the defendant  
14 from being placed on probation pursuant to section 13-901 if the defendant  
15 otherwise qualifies for probation under that section.

16 J. IF A PERSON IS CONVICTED A FIRST OR SECOND TIME OF PERSONAL  
17 POSSESSION OR USE OF A CONTROLLED SUBSTANCE OR DRUG PARAPHERNALIA AND THE  
18 PERSON WAS IN VIOLATION OF 8 UNITED STATES CODE SECTION 1325 AT THE TIME OF  
19 THE COMMISSION OF THE OFFENSE, THE COURT SHALL ORDER THAT AS AN INITIAL TERM  
20 OF PROBATION THE PERSON BE IMPRISONED IN THE COUNTY JAIL FOR \_\_\_\_\_ DAYS.  
21 THIS JAIL TERM OF INCARCERATION SHALL NOT BE DELETED, DEFERRED OR OTHERWISE  
22 SUSPENDED AND SHALL COMMENCE ON THE DATE OF SENTENCING.

23 ~~J.~~ K. For the purposes of this section, "controlled substance" has  
24 the same meaning prescribed in section 36-2501.

25 Sec. 2. Requirements for enactment; three-fourths vote

26 Pursuant to article IV, part 1, section 1, Constitution of Arizona,  
27 section 13-901.01, Arizona Revised Statutes, as amended by this act, is  
28 effective only on the affirmative vote of at least three-fourths of the  
29 members of each house of the legislature.