

37-17-417. Criminal offenses and penalties

(a) It is an offense for a defendant to knowingly:

- (1)** Manufacture a controlled substance;
- (2)** Deliver a controlled substance;
- (3)** Sell a controlled substance; or
- (4)** Possess a controlled substance with intent to manufacture, deliver or sell the controlled substance.

(b) A violation of subsection (a) with respect to a **Schedule I** controlled substance is a **Class B felony** and, in addition, may be fined not more than one hundred thousand dollars (\$100,000).

(c) A violation of subsection (a) with respect to:

(1) Cocaine or methamphetamine is a **Class B felony** if the amount involved is point five **(0.5) grams or more** of any substance containing cocaine or methamphetamine and, in addition, may be fined not more than one hundred thousand dollars (\$100,000); and

(2)

(A) Any **other Schedule II** controlled substance, including cocaine or methamphetamine in an amount of less than point five (0.5) grams, is a Class C felony and, in addition, may be fined not more than one hundred thousand dollars (\$100,000); provided, that if the offense involves less than point five (0.5) grams of a controlled substance containing cocaine or methamphetamine but the defendant carried or employed a deadly weapon as defined in § 39-11-106, during commission of the offense or the offense resulted in death or bodily injury to another person, the offense is a Class B felony.

(B) As a part of any sentence imposed for a violation of subdivision (a)(1) involving a controlled substance listed in § 39-17-408(d)(2), the court shall require the defendant to make restitution to any governmental entity for the costs reasonably incurred in cleaning the area in which the offense occurred and in rendering the area safe for human use.

(C) In addition to the requirement that restitution be made to the governmental entity pursuant to subdivision (c)(2)(B), the court shall also require that restitution be made to any private property owner, either real or personal, whose property is destroyed or suffers damage as a result of the offense. In the case of property that was rented or leased, damages may also include the loss of any revenue that occurred because the property was uninhabitable or a crime scene. The type and amount of restitution permitted pursuant to this subdivision (c)(2)(C) shall be determined by the court using the procedure set out in § 40-35-304.

(d)

(1) A violation of subsection (a) with respect to **a Schedule III** controlled substance is a **Class D felony** and, in addition, may be fined not more than fifty thousand dollars (\$50,000).

(2)

(A) Notwithstanding any other law to the contrary, a person charged for the first time with delivering an **anabolic steroid** or possessing an anabolic steroid with the intent to manufacture, deliver or sell the steroid shall be eligible for pretrial diversion pursuant to title 40, chapter 15, and probation pursuant to title 40, chapter 28 and § 40-35-313.

(B) The inference permitted by the first sentence of § 39-17-419 does not apply to a person charged under subdivision (a)(4) with possession of an

anabolic steroid with intent to sell or deliver the steroid. Unless the state can prove that an actual sale or delivery occurred, the person may only be convicted of simple possession and punished as provided in § 39-17-418.

(e) A violation of subsection (a) with respect to:

(1) Flunitrazepam is a Class C felony and, in addition, may be fined not more than one hundred thousand dollars (\$100,000); and

(2) Any other **Schedule IV** controlled substance is a **Class D felony** and, in addition, may be fined not more than fifty thousand dollars (\$50,000).

(f) A violation of subsection (a) with respect to a **Schedule V** controlled substance is a **Class E felony** and, in addition, may be fined not more than five thousand dollars (\$5,000).

(g)

(1) A violation of subsection (a) with respect to a **Schedule VI** controlled substance classified as **marijuana** containing not less than one-half ($\frac{1}{2}$) **ounce (14.175 grams) nor more than ten pounds (10 lbs.)** (4535 grams) of marijuana, or a Schedule VI controlled substance defined as a non-leafy, resinous material containing tetrahydrocannabinol (hashish), containing not more than two pounds (2 lbs.) (905 grams) of hashish is a **Class E felony** and, in addition, may be fined not more than five thousand dollars (\$5,000).

(2) A violation of subsection (a) with respect to a **Schedule VI** controlled substance classified as **marijuana** and containing not less than ten pounds (**10 lbs.**), **one gram (4536 grams) of marijuana nor more than seventy pounds (70 lbs.)** (31,696 grams) of marijuana, or a Schedule VI controlled substance defined as a non-leafy, resinous material containing tetrahydrocannabinol (**hashish**) and containing not less than two pounds (2 lbs.), one gram (906 grams) nor more than four pounds (4 lbs.) (1810 grams) of hashish, or a Schedule VI controlled substance classified as marijuana consisting of not less than ten (10) marijuana plants nor more than nineteen (19) marijuana plants, regardless of weight, is a **Class D felony** and, in addition, may be fined not more than fifty thousand dollars (\$50,000).

(3) A violation of subsection (a) with respect to a Schedule VI controlled substance defined as a non-leafy, resinous material containing tetrahydrocannabinol (**hashish**) and containing not less than four pounds (4 lbs.), one gram (1811 grams) nor more than eight pounds (8 lbs.) (3620 grams) of hashish, or a Schedule VI controlled substance classified as marijuana consisting of not less than twenty (20) marijuana plants nor more than ninety-nine (99) marijuana plants, regardless of weight, is a Class C felony and, in addition, may be fined not more than one hundred thousand dollars (\$100,000).

(h) A violation of subsection (a) with respect to a **Schedule VII** controlled substance is a **Class E felony** and, in addition, may be fined not more than one thousand dollars (\$1,000).

(i) A violation of subsection (a) with respect to the **following amounts** of a controlled substance, **or conspiracy** to violate subsection (a) with respect to such amounts, is a **Class B felony** and, in addition, may be fined not more than two hundred thousand dollars (\$200,000):

(1) Fifteen (15) grams or more of any substance containing heroin;

(2) Fifteen (15) grams or more of any substance containing morphine;

(3) Five (5) grams or more of any substance containing hydromorphone;

(4) Five (5) grams or more of any substance containing lysergic acid diethylamide (LSD);

(5) Twenty-six (26) grams or more of any substance containing cocaine;

(6) Five (5) grams or more of any substance containing a combination of pentazocine and tripelethamine or joint possession of pentazocine and tripelethamine;

(7) Thirty (30) grams or more of any substance containing phencyclidine;

(8) One hundred (100) grams or more of any substance containing a derivative of barbituric acid or any of the salts of a derivative of barbituric acid;

- (9) Fifty (50) grams or more of any substance containing phenmetrazine;
- (10) Twenty-six (26) grams or more of any substance containing amphetamine or methamphetamine or any salt of an optical isomer of amphetamine or methamphetamine;
- (11) One thousand (1,000) grams or more of any substance containing peyote;
- (12) Fifteen (15) grams or more of any substance containing fentanyl, carfentanil, remifentanil, alfentanil, thiafentanil, or any fentanyl derivative or analogue under § 39-17-406(b)(48);
- (13) Two hundred (200) grams or more of any substance containing a controlled substance classified in Schedule I or II not listed in subdivisions (i)(1)-(12); or
- (14) Not less than seventy pounds (70 lbs.) (31,697 grams) nor more than three hundred pounds (300 lbs.) (136,050 grams) of any substance containing marijuana, or a Schedule VI controlled substance defined as a non-leafy, resinous material containing tetrahydrocannabinol (hashish) and containing not less than eight pounds (8 lbs.), one gram (3621 grams) nor more than fifteen pounds (15 lbs.) (6,792 grams) of any substance containing hashish, or not less than one hundred (100) marijuana plants nor more than four hundred ninety-nine (499) marijuana plants, regardless of weight.

(j) A violation of subsection (a) with respect to the following amounts of a controlled substance, or conspiracy to violate subsection (a) with respect to such amounts is a **Class A felony** and, in addition, may be fined not more than five hundred thousand dollars (\$500,000):

- (1) One hundred fifty (150) grams or more of any substance containing heroin;
- (2) One hundred fifty (150) grams or more of any substance containing morphine;
- (3) Fifty (50) grams or more of any substance containing hydromorphone;
- (4) Fifty (50) grams or more of any substance containing lysergic acid diethylamide (LSD);
- (5) Three hundred (300) grams or more of any substance containing cocaine;
- (6) Fifty (50) grams or more of any substance containing a combination of pentazocine and tripeleminamine or joint possession of pentazocine and tripeleminamine;
- (7) Three hundred (300) grams or more of any substance containing phencyclidine;
- (8) One thousand (1,000) grams or more of any substance containing a derivative of barbituric acid or any of the salts of a derivative of barbituric acid;
- (9) Five hundred (500) grams or more of any substance containing phenmetrazine;
- (10) Three hundred (300) grams or more of any substance containing amphetamine or methamphetamine or any salt of an optical isomer of amphetamine or methamphetamine;
- (11) Ten thousand (10,000) grams or more of any substance containing peyote;
- (12) One hundred fifty (150) grams or more of any substance containing fentanyl, carfentanil, remifentanil, alfentanil, thiafentanil, or any fentanyl derivative or analogue under § 39-17-406(b)(48);
- (13) Two thousand (2,000) grams or more of any substance containing a controlled substance classified in Schedule I or II not listed in subdivisions (i)(1)-(12); or
- (14) Three hundred pounds (300 lbs.) (136,050 grams) or more of any substance containing marijuana, or a Schedule VI controlled substance defined as a non-leafy, resinous material containing tetrahydrocannabinol (hashish) and containing not less than fifteen pounds (15 lbs.), one gram (6,793 grams) of any substance containing hashish, or five hundred (500) or more marijuana plants, regardless of weight.

(k) A violation of this section or a conspiracy to violate this section where the recipient or the intended recipient of the controlled substance is under eighteen (18) years of age shall be punished one (1) classification higher than provided in subsections (b)-(i).

(l)

(1) If the district attorney general believes that a defendant should be sentenced as a **habitual drug offender**, the district attorney general shall file notice of the defendant's record of prior convictions for violations specified in this subsection (l) in conformity with § 40-35-202.

(2) The trial court, upon the request of the district attorney general, shall enter injunctions, restraining orders, directions or prohibitions, or take other actions, including the acceptance of satisfactory performance bonds, **liens** on real property, security interests in personal property, for the purpose of collecting any fine imposed pursuant to this entire section.

(3) Any person found guilty of a violation of this section that constitutes a Class A or Class B felony or attempts to commit a Class A or Class B violation of this section or conspiracy to commit a Class A or Class B violation of this section and who has at least **three (3) prior Class A or Class B felony convictions** or any combination thereof under this section or § 39-6-417 [repealed] or under the laws of any other state or jurisdiction, which if committed in this state would have constituted a Class A or Class B felony violation under this section or § 39-6-417 [repealed]; provided, that the prior convictions were for violations committed at different times and on separate occasions at least twenty-four (24) hours apart, shall be found to be an **habitual drug offender** and shall be sentenced to one range of punishment higher than the range of punishment otherwise provided for in § 40-35-105, and, in addition, shall be fined not more than two hundred thousand dollars (\$200,000).

(m) The offense described in subdivision (a)(1) with respect to any substance defined in § 39-17-408(d)(2) shall include the preparation or compounding of a controlled substance by an individual for the individual's own use.

(n)

(1) A violation of subdivision (a)(1) with respect to any amount of **methamphetamine** shall be punished by confinement for not less than one hundred eighty (180) days, and the person shall serve at least one hundred percent (100%) of the one hundred eighty (180) day minimum.

(2)

(A) The one hundred eighty (180) day minimum sentence required by subdivision (n)(1) shall not be construed to prohibit a person sentenced pursuant to this subsection (n) from participating in a **drug or recovery court** that is certified by the department of mental health and substance abuse services.

(B) Any person participating in such a court may receive sentence credit for up to the full one hundred eighty (180) day minimum required by subdivision (n)(1).