THE ARIZONA GUN OWNER'S Guide

GUN LAW UPDATE
2007 — 2009

Changes to Ed. 23 that will eventually appear in Edition 24

Page • Bill • Statute • Chapter • Description ("D" change only affects law in Appendix D)

2007

D • SB 1084 • §13-1204 • CH47. The definitions and penalties for aggravated assault have been rewritten, shortening the statute by 68 words and arranging it in more logical fashion. Conditions that amount to an aggravated assault do not appear to have changed.

D • SB 1222 • §13-1202, 13-2409, 13-2512 • CH287. In 13-1202, threatening or intimidating is now a class 6 felony for criminal street gang members. In 13-2409, obstructing justice is now a class 3 felony for criminal street gang members. In 13-2512, hindering prosecution is now a class 3 felony for criminal street gang members.

59 • SB 1250 • §13-3112 • CH35. Removes the requirement to obtain fingerprints on first renewal of a CCW permit. Last year a bill passed eliminating fingerprint requirement after second renewal. DPS interpreted this to mean the second time you renew your permit after Aug. 2005, you don't need fingerprints—or roughly in the year 2015. SB 1250 eliminates the fingerprint renewal requirement altogether by deleting a few lines in the law. Starting Dec. 31, 2007, when you renew your concealed-weapons permit, you will no longer be required to submit a set of fingerprints. For procedures on renewing without submitting fingerprints, check with the DPS CCW Unit: http://www.dps.state.az.us/ccw/.

46 • SB 1258 • §26-303 • CH101. Prohibits the governor or adjutant general from confiscating lawfully held firearms, ammo or their components during a state of emergency, invoking federal and state constitutional guarantees. This important limit has been placed on many officials, after highly publicized abuses in Louisiana following hurricane Katrina. Specifically, emergency powers, "shall not be construed to allow the imposition of additional restrictions on the lawful possession, transfer, sale, transportation, carrying, storage, display or use of firearms or ammunition or firearms or ammunition components." Authorities can, however, move large supplies of ammo "out of the way of dangerous conditions." The governor had previously refused to sign this common-sense bill because, she said, it would prevent moving an ammo stockpile during a forest fire. AzCDL added the language to neutralize that excuse, which lead to the law's passage.

D • HB 2116 • Allows people to let their grandchildren use their big game permits and tags to take big game under certain limited circumstances.

D • HB 2117 • Allows people to let physically disabled minor children use their big game permits and tags to take big game under certain limited circumstances.

D • HB 2457 • §38-1102 • CH79. A new statute specifies that peace officers cannot be disarmed by any government entity in the state, including the state itself, as long as the officers are qualified and in compliance with department regulations. A handful of exceptions include jails and similar holding facilities, courts at court discretion, secure police facilities, places federally prohibited for peace officers and similar. Officers can also be disarmed for cause, such as physical or mental impairment, and departments can decide how many and what type of arms and ammo officers may carry. This is slightly outside *The Arizona Gun Owner's Guide's* scope, which focuses on private firearms issues, but it's interesting to note that the assault on the right to keep and bear has gotten sufficiently intense to motivate police to attempt to guarantee their own powers by statute.

56 • HB 2469 • §13-3112 • CH45. Reduces the penalty for not carrying your CCW permit with you to a petty offense (from the current Class 2 misdemeanor). It also restricts the application of the law to concealed-weapons-permit holders, and clarifies that permit holders can only be charged if they are carrying a concealed weapon when they fail to present their permit at the request of a law enforcement officer. If, on appearing in court after being cited for failure to have your permit with you, you produce a legible permit that was valid at the time of the violation, you "shall not be convicted."

D • HB 2638 • §9-461.05 • CH236. The "effective date" for a previous land-use amendment affecting shooting ranges is spelled out, Aug. 25, 2004.

D • HB 2787 • §13-610 • CH261. The paragraph that says government can collect a DNA sample from you for certain gun-related offenses (and other crimes) is renumbered, and expanded to include additional crimes and an arrest (before any conviction) for repeat offenders, "involving the discharge, use or threatening exhibition of a deadly weapon."

2008

D • HB 2251 • Title 15 and 17 • CH37. Changes to hunting and fishing licenses, expands training opportunities for youngsters, defines penalties for guides who violate the rules.

23 • HB 2486 • §13-3101 • CH3. Adds undocumented immigrants to the prohibited possessor list, and narrow exceptions for nonimmigrant visa legitimate hunters, competitors and persons with a waiver from the U.S. Attorney General.

37 • HB 2574 • §28-8429 • CH116. Carrying a deadly weapon in the secure area of an airport is a class 1 misdemeanor, with exceptions for the proper authorities; makes clear that carrying in other areas or for lawful transport in general is OK.

57, 68 • HB 2634 • §13-3112 • CH269. Allows a former felon whose conviction has been expunged, set aside or vacated to possibly obtain a CCW permit. Previously, only a presidential pardon would do—clearing your record had been deemed inadequate.

58, 63 • SB 1070 • §13-3112 • CH263. Documents showing proper completion of an approved training class are valid for CCW-permit application for five years from the date of training. A current or expired permit is also suitable proof for the application. Properly DPS-approved or NRA-certified instructors are valid trainers.

D • HB 2444 • §13-1204 • CH179. Adds constables to the list of people against whom an assault is aggravated; renumbering.

D • SB 1336 • §13-1405 • CH210. Adds teacher, clergyman or priest to the list for class 2 felony for sexual conduct with a minor.

85, 118 • SB 1153 • §§13-3101, 3102, 3110, 3112 • CH274. Minor grammar in each section; makes misconduct with a simulated explosive device a class 5 felony (was class 1 misdemeanor); adds improvised explosive device and 'gas-pressure bomb' to the list of class 5 felony devices. Adds use of dry ice as a weapon as a class 4 felony.

HB 2207 • CH301. 128-page supposedly technical fix bill changes Title 13 §§105, 107, 501, 604, 610, 701, 702, 703, 707, 751, 905, 906, 909, 910, 912.01, 1104, 1105, 1204, 1304, 1405, 1406, 1410, 2308.01, 3107, 3113, 3601; 15-341.

Mostly overhaul of sentencing but makes significant changes. Replaces somewhat haphazard enumerated penalties by using *dangerous offense* (§13-105 and §13-704) and *serious offense* (§13-706). Also codifies aggravating and mitigating circumstance (§13-702), and applies uniform first-time and repeat-offender penalties. Changes each statute by renumbering to comply, and grammatical changes (e.g. "such person" becomes "the person," "which" becomes "that" as needed, etc.

119 • §13-105 (definitions): Adds new item number one, defining "**absconder**" (person who skips out on probation) forcing all other numbers to increment up; minor grammar (e.g., "thusly defined" becomes "defined," "his or her" becomes "the person's," etc.); "**Dangerous offense**" defined as: "an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person"; "**historical prior felony conviction**" increases sentences, defined to include numerous felonies including a prior with deadly weapon or dangerous instrument, and serious physical injury, certain drug offenses, syndicates, aggravated DUI, skips, priors, (374 words long); "**preconviction custody**" defined for felony charges here or elsewhere; renumbering (list goes to 42, was 38).

D • §13-604 is repealed and replaced as part of revamp to sentencing; non-dangerous class 6 felony can be reduced to class 1 misdemeanor at court discretion if it's otherwise "unduly harsh," with conditions; other wobblers can be reduced at prosecutor's request, with conditions.

84 • §13-701 felony categories have been deleted here and moved to §13-702 et. seq.; 701 now defines aggravating and mitigating sentencing factors, which among others includes use of deadly weapon or dangerous instrument, wearing body armor, heinous cruel or depraved acts, use of accomplice, acting for pay, acts against public servants, emotional, physical or financial harm, death of an unborn, priors, acts against aged or infirm, hate component (malice) to favored groups, DUI, ambush, retaliation against crime reporting, acts in presence of a child, impersonating an LEO, illegal immigrant, use of stun gun, anything else state deems relevant, more. Mitigating includes age, awareness of wrongfulness, duress, minimal involvement, renunciation during act, anything else state deems relevant. 1,395 words.

D • §13-702 Replaces all language concerning first-time felony offenses with the new penalty structure, including designated prison terms for mitigated, minimum, presumptive, maximum and aggravated sentencing; The term "dangerous offense" exercises ambiguous control, and replaces the formerly ubiquitous "the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another." All the new penalty ranges here and below in the revamp scheme, because they stipulate time frames for repeat, aggravated and maximums, include longer prison terms.

D • §13-703 et. seq. death sentence is now §13-751 et. seq. in new chapter 7.1 Capital Sentencing; New §13-703 now has complex (1,239 words) repeat-offense descriptions and penalties with aggravating/mitigating standards and penalties.

D • §13-704 is now dangerous-offense sentencing, with repeat-dangerous-offense descriptions and penalties, which includes certain gun-related offenses (as defined in §13-105, with some prosecutorial discretion). Seven separate sets of prison terms (dangerous, repeat dangerous, lower three felony classes, etc.) specified.

119 • §13-706 is now serious, violent or aggravated sentencing; defines "**serious offense**" to include 12 crimes from murder 1 and 2 to sexual conduct with a minor under 15, and including aggravated assault involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, armed robbery, burglary 1 (armed); 12 other serious crimes including a repeat of murder 1 and 2, plus drive by shooting and shooting at occupied residence, moved to a "violent or aggravated felony" class for sentencing. It's a confusing scheme, with some apparent errors and contradictions that may need fixing.

There seems to be a critical error here, since some of the violations under "serious offense" are comparatively low (e.g., underage consensual sex, technically a class 2 felony) but are now lumped together at the level of murder 1 (capital offense) or armed robbery. In contrast "dangerous offense," categorized separately, could involve relatively minor firearm violations (mere discharge or threatening display) but receives different penalty treatment, which prosecutors typically only allege for violent felonies; needs analysis to see if punishments rightly fit the crimes, and if "serious" or "dangerous" is uniformly the higher crime. See for example §13-909 and 910 below which seems inverse of what it should be -- "serious" (very bad list) allows restoration of RKBA but "dangerous" (not very bad list) does not, and *serious* is defined, whereas *dangerous* appears to be an optional charge. It looks like a plea bargaining tool for prosecutors, who can allege dangerousness and threaten a greater sentence, to help obtain a defendant's plea agreement.

D • §13-707 remains misdemeanor sentencing with the same jail times, but with new repeat offender stipulations -- second offense in two years (excluding jail time served) is next higher class of offense, presumably including felony though this isn't specified.

D • §13-751, formerly §13-703, death sentence, now includes, as an aggravating factor for determining sentence, use of a remote stun gun or an authorized remote stun gun (a handheld zapper, or a Taser-like device, respectively).

48 • §13-905, restoration of RKBA after probation for two or more felonies, as determined by the releasing judge: for dangerous offense, no restoration; at court's

discretion, for serious offense person may apply ten years later, any other felony wait two years to apply. Numerous inconsequential and politically correct grammatical changes (e.g., "such court" becomes "the court," "his offense" becomes "the offense," "his right" becomes "the right," etc.) here and in the other restoration laws.

48 • §13-906, RKBA restored after release from prison for two or more felonies, as determined by the releasing judge; for dangerous offense, no restoration; at court's discretion, for serious offense you may apply 10 years later, other felony wait 2 years.

48 • §13-909, restoration of RKBA after probation for two or more federal felonies, and §13-910, restoration of RKBA after release from prison for two or more federal felonies, same as above (i.e., two or more felonies judge's discretion, for dangerous offense, none, serious offense apply after ten years, any other felony, apply after two years, all at court discretion and only upon felon's application for restoration).

48 • §13-912.01, restoration of RKBA for delinquent minors, who must wait until 30 years old for dangerous offenses, or two years after discharge for other felonies.

Minor stuff: §§13-107 (renumbered), 610 (renumbered), 1104 (renumbered), 1105 (renumbered), 1204 (grammar and renumbered), 1304 (grammar and renumbered), 1405 (renumbered), 1406 (renumbered), 1410 (renumbered), 2308.01 (terrorism life sentence to conform to new sentencing guidelines), 3107 (renumbered, grammar, BB-range clarification), 3113 (renumbered), 3601 (renumbered), 15-341 (renumbered).

2009

43, 71, 79, 80 / SB 1113 / §§ 4-229, 4-244, 4-246, 11-441, 13-3102, 13-3112, 38-1102. Carry in restaurants for CCW permitees only: CCW-permit holders can carry in places licensed to serve alcohol, unless the places post official signs from the Dept. of Liquor Licenses banning entry to anyone with a firearm. The ban was written broadly enough to prohibit anyone from carrying, even on-duty police or employees, if signs are posted.

If access is not banned and you possess a firearm, you may not drink. If you enter you have an affirmative defense against prosecution (meaning you must prove your innocence) if you were not informed of the ban, the sign fell down, the sign was posted less than 30 days before you were charged, or you weren't a resident of the state. The exemption for going in to seek aid in an emergency has been preserved, and you have permission to go in far enough to see if there's a sign posted.

You can expect to see No Guns Allowed signs springing up all over the state, featuring official wording and an image of a gun inside a red circle with a slash through it. Drinking while carrying in a liquor-serving establishment, or carrying in such a place if it's posted for no guns, is a class 3 misdemeanor.

The guns-in-restaurants bill also says: Members of a sheriff's volunteer posse who have received specified training (AZPOST) can bear arms while on duty, with conditions. A U.S. law enforcement officer with 10 consecutive years of service and a special picture ID can carry concealed without a permit, and their most recent law-enforcement employer must issue the card on request. AZPOST-certified LEOs who volunteer for their agency's reserve program are exempt from taking the CCW training program. Misconduct with weapons in an act of terrorism is raised to a class 2 felony. Note that terrorism is broadly defined (§13-2301) and this law could be applied beyond the common understanding of terrorism (e.g., a felony with a firearm intended to influence policy or affect the conduct of the state). Another extra guarantee against localities banning LEOs from carrying firearms has been added.

24 / SB 1088 / §13-3601 / Domestic violence expansion: Penalties for domestic-violence offenses, including restraining orders and firearms confiscations, can now be applied, in addition to problems between family members, to people who are or were in "a romantic or sexual relationship." The law is a response to the case of a woman murdered by her boyfriend. A restraining order was unavailable because they weren't married. It's unclear, as always, how much a piece of paper from a court would have influenced a murderer. Now, people in a casual relationship have an enormously powerful weapon they can use on each other in the event of a quarrel—confiscation of any collection of arms and a ban on possession. Questions linger as to how much of a relationship qualifies, which the statute left ambiguous.

55, 70 / SB 1168 / §12-781 / Ban on prohibiting guns in parked vehicles: It's unlawful for a property owner, tenant, public or private employer or business entity (called the "responsible party" below for brevity) to create a policy or rule that prevents a person from lawfully transporting or storing any firearm in a privately owned motor vehicle if: 1 - the vehicle is locked or the firearm is in a locked compartment on a motorcycle; and 2 - the firearm is not visible. Any attempt to do so is null, void, unenforceable and without legal effect.

The ban on gun bans in private vehicles doesn't apply under four conditions: 1 - possession of the firearm is already banned under federal or state law; 2 - the vehicle is owned or leased by the responsible party in which case the ban is at their discretion; 3 - the responsible party has a facility secured by a fence or other physical barrier, and also limits access by a guard or other security measure, and the responsible party provides secure storage with ready access and retrieval, similar to the gun-locker rules for public buildings and events; and 4 - compliance with this statute would violate another applicable federal or state law. Nuclear generating stations must comply with gun-locker requirements.

The parking area for a single-family detached residence is exempt from this law. Department of Defense contractors whose property is located wholly or partially on a military base are exempt from this law. A responsible party can provide an alternate parking facility close to the main facility, ban firearms at the main one, and allow them at the alternate facility, as long as they don't charge any extra fee.

Anticipating possible legal challenges from large corporations or other property owners whose parking space is open to the public, the legislature includes a six-point set of findings, rare in state bills, to clarify that: 1 - the state and federal Constitutions provide strong protection for the fundamental right to keep and bear arms for self defense; 2 - the enjoyment of this right is impaired if people are deprived the right to keep arms in their vehicles; 3 - people are deprived of their rights if firearms cannot be kept in their private vehicles; 4 - your locked private vehicle is a private, not a public space, you have the right to furnish it any way you like that is legal to enhance your comfort, security, ease of movement and enjoyment of liberty; 5 - parking lot operators are not unduly burdened by the presence of legally possessed property secured within the vehicle by its owner; and 6 - this act is for the benefit and protection of people who choose to exercise and enforce their fundamental right to bear arms in self defense in their movements throughout this state, including in their personal motor vehicles.

114 / SB 1243 / §13-421 / Defensive display of firearms protection: "Defensive display of a firearm" means: 1 - Verbally telling someone that you have a firearm or can get one; 2 - Exposing or displaying a gun in a way that a reasonable person would understand means you can protect yourself against illegal physical or deadly physical force; and 3 - Placing your hand on a firearm while it is in your pocket, purse or other means of containment or transport.

Defensive display is justified when and to the extent a reasonable person would believe physical force is immediately necessary to protect yourself against another person's use or attempted use of unlawful physical or deadly physical force. A defensive display is not required before using or threatening physical force, in a situation where you would be justified in using or threatening physical force.

Defensive display is not justified if you intentionally provoke the other person, or if you use a firearm in the commission of a serious offense or violent crime (defined in §13-706 and §13-901.3).

This important new law clarifies that a proper defensive reach for or announcement of firearm possession is an acceptable element in the continuum of self defense, and should not be charged as a crime. Improper display of a firearm can be anything from a class 1 misdemeanor (e.g., disorderly conduct) to a class 3 felony (e.g., aggravated assault). It also helps balance out the problematic and arbitrary "threatening exhibition" of a gun allegation that prosecutors can make in charging a felony as a "dangerous offense" (§13-702 and 704). The threat of this extra charge can be used to coerce a plea agreement, and now this is balanced with a specified stipulation of proper display of a gun without firing at a potential assailant.

44 / SB 1437 / §15-714.01 / High school marksmanship training expansion: Instructors for the Arizona Gun Safety Program, a marksmanship course for high school students, can be certified by a national association of firearms owners, in addition to the Arizona Game and Fish Dept.

SB 1449 / Retroactive self defense (Harold Fish law): In certain cases, "Laws 2006, chapter 199 applies retroactively... regardless of when the conduct underlying the charges occurred."

The state enacted amendments in 2006 to make it clear that, if a person claims self defense, the state must prove beyond a reasonable doubt that the defendant acted without justification (the appropriate "innocent until proven guilty" standard). One of the laws amended, which had been quietly slipped in by prosecutors without review ten years earlier, forced a defendant to prove innocence, the exact opposite of what American laws should be (it made you guilty unless you could prove your innocence, a tyrannical standard). Part of these changes became known as the **Castle Doctrine**—you can stand your ground if attacked, intruders in your home are a legally recognized threat, and self defense was to receive robust protection under the law.

The new rules were supposed to protect people in a predicament like Harold Fish, a school teacher with a clean record out hiking in May 2004. He was attacked by a homeless known troublemaker with violent dogs on a forest trail outside Payson. Mr. Fish, who survived by shooting his assailant three times in the chest at close range, was at first released in what appeared an obvious self defense, but was then attacked by the county attorney, in a trial that reeked of unfairness.

The legislature is here making it clear that people are entitled to the full protection of the law, and the public's safety will likely be enhanced with this small measure that serves notice on the powers that be. Other problems, like failure to fully inform juries, bad jury instructions, exclusion of exculpatory or illuminating evidence, exorbitant cost and inordinate timeframes, and other potholes in the criminal justice system remain to be fixed.

HB 2569 (§13-2319) and SB 1242 (§13-3102): Two additional gun laws will affect the statutes in the back of The Arizona Gun Owner's Guide, but have little direct impact on the general public or the text of the book. §13-2319 is amended to make smuggling people for profit or a commercial purpose a class 2 felony if the offense "involved the use of a deadly weapon or dangerous instrument." In §13-3102, we find that more "proper authorities" have been exempted from gun laws that restrict the public, like carrying without a permit, concealed carry in a car without a permit, making, having, transporting or selling prohibited weapons, having a defaced deadly weapon, entering a public establishment or public event with a deadly weapon after being told not to, and more. The new crop of exempt special people includes community correctional officers, detention officers, and special investigators with DOC or the Dept. of Juvenile Corrections. Other sections of the bill repeat language found in SB 1113, a common practice to help assure passage (if one bill fails, the language gets through in the other bill).

It's interesting to note that, at the federal level, a growth process like this took place for decades, with a new batch of people added 32 times, until the statute grew so embarrassingly long (one sentence of 741 words) Congress shortened the law by 610 words, cutting out all the named groups, but expanded the impact by simply making it applicable to "any officer or employee of the United States. That statute, 18 USC §1114, makes it a greater crime to kill them than to kill you or me. How that comports with equal protection under the law is unclear.

49 • HB 2532, adds §13-924, amends §§13-3101, 32-2612, 36-540: New rules were added so a person formerly denied the right to keep and bear arms due to mental incapacity can apply to a court to have the right to possess firearms (but no other gun rights) restored.

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