

REFERENCE TITLE: chemical agents; prohibited uses; police

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2385

Introduced by
Representatives Hernandez M: Aguilar, Travers

AN ACT

AMENDING SECTION 13-2902, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 38, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3805; RELATING TO PEACE OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-2902, Arizona Revised Statutes, is amended to
3 read:

4 13-2902. Unlawful assembly; prohibited order; classification

5 A. A person commits unlawful assembly by:

6 1. Assembling with two or more other persons with the intent to
7 engage in conduct constituting a riot as defined in section 13-2903; or

8 2. Being present at an assembly of two or more other persons who
9 are engaged in or who have the readily apparent intent to engage in
10 conduct constituting a riot as defined in section 13-2903 and knowingly
11 remaining there and refusing to obey an official order to disperse.

12 B. A PEACE OFFICER OR LAW ENFORCEMENT AGENCY MAY NOT ORDER A PERSON
13 TO DISPERSE PURSUANT TO THIS SECTION FOR THE SOLE PURPOSE OF PUNISHING A
14 PERSON WHO IS EXERCISING A CONSTITUTIONALLY PROTECTED RIGHT TO ENGAGE IN
15 EXPRESSIVE ACTIVITY.

16 ~~B.~~ C. Unlawful assembly is a class 1 misdemeanor.

17 Sec. 2. Title 13, chapter 38, article 1, Arizona Revised Statutes,
18 is amended by adding section 13-3805, to read:

19 13-3805. Prohibited use of chemical agent by a peace officer;
20 definition

21 A. UNLESS A PEACE OFFICER IS ACTING PURSUANT TO SECTION 13-409 OR
22 13-410, A PEACE OFFICER MAY NOT DO ANY OF THE FOLLOWING:

23 1. USE A CHEMICAL AGENT, BY ANY METHOD OF DEPLOYMENT, AGAINST ANY
24 PERSON WHO IS ENGAGED IN EXPRESSIVE, NONVIOLENT ACTIVITY UNLESS THERE IS
25 PROBABLE CAUSE TO ARREST THE PERSON AND WITHOUT FIRST ISSUING A CLEAR AND
26 UNAMBIGUOUS WARNING THAT THE PERSON IS SUBJECT TO ARREST AND THAT A
27 CHEMICAL AGENT WILL BE USED AND PROVIDING THE PERSON WITH A SUFFICIENT
28 OPPORTUNITY TO HEED THE WARNING AND COMPLY WITH THE PEACE OFFICER'S
29 COMMAND.

30 2. USE OR THREATEN TO USE A CHEMICAL AGENT, BY ANY METHOD OF
31 DEPLOYMENT, AGAINST A PERSON WHO IS ENGAGED IN EXPRESSIVE, NONVIOLENT
32 ACTIVITY TO PUNISH THE PERSON FOR EXERCISING A CONSTITUTIONAL RIGHT.

33 3. ISSUE AN ORDER OR USE A CHEMICAL AGENT, BY ANY METHOD OF
34 DEPLOYMENT, TO DISPERSE PERSONS WHO ARE ENGAGED IN EXPRESSIVE, NONVIOLENT
35 ACTIVITY WITHOUT FIRST DOING ALL OF THE FOLLOWING:

36 (a) SPECIFYING, WITH REASONABLE PARTICULARITY, THE AREA THAT IS
37 SUBJECT TO THE DISPERSAL ORDER.

38 (b) ISSUING AN AUDIBLE AND UNAMBIGUOUS ORDER IN A MANNER THAT IS
39 DESIGNED TO NOTIFY ALL PERSONS WHO ARE WITHIN THE AREA THAT IS SUBJECT TO
40 THE DISPERSAL ORDER.

41 (c) PROVIDING SUFFICIENT WARNINGS OF THE CONSEQUENCES OF FAILING TO
42 DISPERSE, INCLUDING, WHEN APPLICABLE, THAT A CHEMICAL AGENT WILL BE USED.

43 (d) PROVIDING A SUFFICIENT AND ANNOUNCED AMOUNT OF TIME THAT IS
44 PROXIMATELY RELATED TO THE ISSUANCE OF THE DISPERSAL ORDER IN WHICH TO
45 HEED THE WARNINGS AND EXIT THE AREA.

1 (e) ANNOUNCING AND ENSURING A MEANS OF SAFE EGRESS FROM THE AREA
2 THAT IS ACTUALLY AVAILABLE TO ALL PERSONS IN THE AREA.
3 B. FOR THE PURPOSES OF THIS SECTION, "CHEMICAL AGENT" INCLUDES
4 MACE, OLEORESIN CAPSICUM SPRAY OR MIST, PEPPER SPRAY, PEPPER GAS, TEAR
5 GAS, SKUNK, INERT SMOKE, PEPPER PELLETS AND XYLYL BROMIDE.