

REFERENCE TITLE: **misconduct involving weapons; instigation**

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2874

Introduced by
Representatives Hernandez L: Hernandez A, Hernandez C, Tsosie; Senator
Miranda

AN ACT

AMENDING SECTION 13-3102, ARIZONA REVISED STATUTES; RELATING TO WEAPONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3102, Arizona Revised Statutes, is amended to
3 read:
4 13-3102. Misconduct involving weapons; defenses;
5 classification; definitions
6 A. A person commits misconduct involving weapons by knowingly:
7 1. Carrying a deadly weapon except a pocket knife concealed on his
8 person or within his immediate control in or on a means of transportation:
9 (a) In the furtherance of a serious offense as defined in section
10 13-706, a violent crime as defined in section 13-901.03 or any other
11 felony offense; or
12 (b) When contacted by a law enforcement officer and failing to
13 accurately answer the officer if the officer asks whether the person is
14 carrying a concealed deadly weapon; or
15 2. Carrying a deadly weapon except a pocket knife concealed on his
16 person or concealed within his immediate control in or on a means of
17 transportation if the person is under twenty-one years of age; or
18 3. Manufacturing, possessing, transporting, selling or transferring
19 a prohibited weapon, except that if the violation involves dry ice, a
20 person commits misconduct involving weapons by knowingly possessing the
21 dry ice with the intent to cause injury to or death of another person or
22 to cause damage to the property of another person; or
23 4. Possessing a deadly weapon or prohibited weapon if such person
24 is a prohibited possessor; or
25 5. Selling or transferring a deadly weapon to a prohibited
26 possessor; or
27 6. Defacing a deadly weapon; or
28 7. Possessing a defaced deadly weapon knowing the deadly weapon was
29 defaced; or
30 8. Using or possessing a deadly weapon during the commission of any
31 felony offense included in chapter 34 of this title; or
32 9. Discharging a firearm at an occupied structure in order to
33 assist, promote or further the interests of a criminal street gang, a
34 criminal syndicate or a racketeering enterprise; or
35 10. Unless specifically authorized by law, entering any public
36 establishment or attending any public event and carrying a deadly weapon
37 on his person after a reasonable request by the operator of the
38 establishment or the sponsor of the event or the sponsor's agent to remove
39 his weapon and place it in the custody of the operator of the
40 establishment or the sponsor of the event for temporary and secure storage
41 of the weapon pursuant to section 13-3102.01; or
42 11. Unless specifically authorized by law, entering an election
43 polling place on the day of any election carrying a deadly weapon; or
44 12. Possessing a deadly weapon on school grounds; or

1 13. Unless specifically authorized by law, entering a nuclear or
2 hydroelectric generating station carrying a deadly weapon on his person or
3 within the immediate control of any person; or

4 14. Supplying, selling or giving possession or control of a firearm
5 to another person if the person knows or has reason to know that the other
6 person would use the firearm in the commission of any felony; or

7 15. Using, possessing or exercising control over a deadly weapon in
8 furtherance of any act of terrorism as defined in section 13-2301 or
9 possessing or exercising control over a deadly weapon knowing or having
10 reason to know that it will be used to facilitate any act of terrorism as
11 defined in section 13-2301; or

12 16. Trafficking in weapons or explosives for financial gain in
13 order to assist, promote or further the interests of a criminal street
14 gang, a criminal syndicate or a racketeering enterprise; ~~OR~~ —

15 17. ~~INSTIGATING ANOTHER PERSON TO COMMIT AN OFFENSE LISTED IN~~
16 ~~PARAGRAPH 1 OR 8 OF THIS SUBSECTION AND THAT PERSON COMMITS THE OFFENSE.~~

17 B. Subsection A, paragraph 2 of this section shall not apply to:

18 1. A person in his dwelling, on his business premises or on real
19 property owned or leased by that person or that person's parent,
20 grandparent or legal guardian.

21 2. A member of the sheriff's volunteer posse or reserve
22 organization who has received and passed firearms training that is
23 approved by the Arizona peace officer standards and training board and who
24 is authorized by the sheriff to carry a concealed weapon pursuant to
25 section 11-441.

26 3. A firearm that is carried in:

27 (a) A manner where any portion of the firearm or holster in which
28 the firearm is carried is visible.

29 (b) A holster that is wholly or partially visible.

30 (c) A scabbard or case designed for carrying weapons that is wholly
31 or partially visible.

32 (d) Luggage.

33 (e) A case, holster, scabbard, pack or luggage that is carried
34 within a means of transportation or within a storage compartment, map
35 pocket, trunk or glove compartment of a means of transportation.

36 C. Subsection A, paragraphs 2, 3, 7, 10, 11, 12 and 13 of this
37 section shall not apply to:

38 1. A peace officer or any person summoned by any peace officer to
39 assist and while actually assisting in the performance of official duties;
40 or

41 2. A member of the military forces of the United States or of any
42 state of the United States in the performance of official duties; or

43 3. A warden, deputy warden, community correctional officer,
44 detention officer, special investigator or correctional officer of the

1 state department of corrections or the department of juvenile corrections;
2 or

3 4. A person specifically licensed, authorized or permitted pursuant
4 to a statute of this state or of the United States.

5 D. Subsection A, paragraph 10 of this section does not apply to an
6 elected or appointed judicial officer in the court facility where the
7 judicial officer works if the judicial officer has demonstrated competence
8 with a firearm as prescribed in section 13-3112, subsection N, except that
9 the judicial officer shall comply with any rule or policy adopted by the
10 presiding judge of the superior court while in the court facility. For
11 the purposes of this subsection, appointed judicial officer does not
12 include a hearing officer or a judicial officer pro tempore who is not a
13 full-time officer.

14 E. Subsection A, paragraphs 3 and 7 of this section shall not apply
15 to:

16 1. The possessing, transporting, selling or transferring of weapons
17 by a museum as a part of its collection or an educational institution for
18 educational purposes or by an authorized employee of such museum or
19 institution, if:

20 (a) Such museum or institution is operated by the United States or
21 this state or a political subdivision of this state, or by an organization
22 described in 26 United States Code section 170(c) as a recipient of a
23 charitable contribution; and

24 (b) Reasonable precautions are taken with respect to theft or
25 misuse of such material.

26 2. The regular and lawful transporting as merchandise; or

27 3. Acquisition by a person by operation of law such as by gift,
28 devise or descent or in a fiduciary capacity as a recipient of the
29 property or former property of an insolvent, incapacitated or deceased
30 person.

31 F. Subsection A, paragraph 3 of this section shall not apply to the
32 merchandise of an authorized manufacturer of or dealer in prohibited
33 weapons, when such material is intended to be manufactured, possessed,
34 transported, sold or transferred solely for or to a dealer, a regularly
35 constituted or appointed state, county or municipal police department or
36 police officer, a detention facility, the military service of this or
37 another state or the United States, a museum or educational institution or
38 a person specifically licensed or permitted pursuant to federal or state
39 law.

40 G. Subsection A, paragraph 10 of this section shall not apply to
41 shooting ranges or shooting events, hunting areas or similar locations or
42 activities.

43 H. Subsection A, paragraph 12 of this section shall not apply to a
44 weapon if ~~such~~ THE weapon is possessed for the purposes of preparing for,
45 conducting or participating in hunter or firearm safety courses.

1 I. Subsection A, paragraph 12 of this section shall not apply to
2 the possession of a:

3 1. Firearm that is not loaded and that is carried within a means of
4 transportation under the control of an adult provided that if the adult
5 leaves the means of transportation the firearm shall not be visible from
6 the outside of the means of transportation and the means of transportation
7 shall be locked.

8 2. Firearm for use on the school grounds in a program approved by a
9 school.

10 3. Firearm by a person who possesses a certificate of firearms
11 proficiency pursuant to section 13-3112, subsection T and who is
12 authorized to carry a concealed firearm pursuant to the law enforcement
13 officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States
14 Code sections 926B and 926C).

15 J. Subsection A, paragraphs 2, 3, 7 and 13 of this section shall
16 not apply to commercial nuclear generating station armed nuclear security
17 guards during the performance of official duties or during any security
18 training exercises sponsored by the commercial nuclear generating station
19 or local, state or federal authorities.

20 K. The operator of the establishment or the sponsor of the event or
21 the employee of the operator or sponsor or the agent of the sponsor,
22 including a public entity or public employee, is not liable for acts or
23 omissions pursuant to subsection A, paragraph 10 of this section unless
24 the operator, sponsor, employee or agent intended to cause injury or was
25 grossly negligent.

26 L. If a law enforcement officer contacts a person who is in
27 possession of a firearm, the law enforcement officer may take temporary
28 custody of the firearm for the duration of that contact.

29 M. Misconduct involving weapons under subsection A, paragraph 15 of
30 this section is a class 2 felony. Misconduct involving weapons under
31 subsection A, paragraph 9, 14 or 16 of this section is a class 3 felony.
32 Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13
33 of this section is a class 4 felony. Misconduct involving weapons under
34 subsection A, paragraph 12 of this section is a class 1 misdemeanor unless
35 the violation occurs in connection with conduct that violates section
36 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section
37 13-3409 or section 13-3411, in which case the offense is a class 6 felony.
38 Misconduct involving weapons under subsection A, paragraph 1, subdivision
39 (a) of this section or subsection A, paragraph 5, 6 or 7 of this section
40 is a class 6 felony. Misconduct involving weapons under subsection A,
41 paragraph 1, subdivision (b) of this section or subsection A, paragraph 10
42 or 11 of this section is a class 1 misdemeanor. Misconduct involving
43 weapons under subsection A, paragraph 2 OR 17 of this section is a class 3
44 misdemeanor.

1 N. For the purposes of this section:

2 1. "Contacted by a law enforcement officer" means a lawful traffic
3 or criminal investigation, arrest or detention or an investigatory stop by
4 a law enforcement officer that is based on reasonable suspicion that an
5 offense has been or is about to be committed.

6 2. "INSTIGATING" MEANS ENCOURAGING OR DIRECTING ANOTHER PERSON TO
7 COMMIT A CRIME OR ENGAGING IN AN ACT THAT IS LIKELY TO RESULT IN A CRIME.

8 ~~2.~~ 3. "Public establishment" means a structure, vehicle or craft
9 that is owned, leased or operated by this state or a political subdivision
10 of this state.

11 ~~3.~~ 4. "Public event" means a specifically named or sponsored event
12 of limited duration that is either conducted by a public entity or
13 conducted by a private entity with a permit or license granted by a public
14 entity. Public event does not include an unsponsored gathering of people
15 in a public place.

16 ~~4.~~ 5. "School" means a public or nonpublic kindergarten program,
17 common school or high school.

18 ~~5.~~ 6. "School grounds" means in, or on the grounds of, a school.