

Conference Engrossed

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2389

AN ACT

AMENDING SECTIONS 13-1407, 13-3102 AND 13-3105, ARIZONA REVISED STATUTES;
AMENDING SECTION 13-3112, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008,
CHAPTER 269, SECTION 1; RELATING TO CRIME.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section. 1. Section 13-1407, Arizona Revised Statutes, is amended to
3 read:

4 13-1407. Defenses

5 A. It is a defense to a prosecution pursuant to sections 13-1404 and
6 13-1405 involving a minor if the act was done in furtherance of lawful
7 medical practice.

8 B. It is a defense to a prosecution pursuant to sections 13-1404 and
9 13-1405 in which the victim's lack of consent is based on incapacity to
10 consent because the victim was fifteen, sixteen or seventeen years of age if
11 at the time the defendant engaged in the conduct constituting the offense the
12 defendant did not know and could not reasonably have known the age of the
13 victim.

14 C. It is a defense to a prosecution pursuant to section 13-1402,
15 13-1404, 13-1405 or 13-1406 if the act was done by a duly licensed physician
16 or registered nurse or a person acting under the physician's or nurse's
17 direction, or any other person who renders emergency care at the scene of an
18 emergency occurrence, the act consisted of administering a recognized and
19 lawful form of treatment that was reasonably adapted to promoting the
20 physical or mental health of the patient and the treatment was administered
21 in an emergency when the duly licensed physician or registered nurse or a
22 person acting under the physician's or nurse's direction, or any other person
23 rendering emergency care at the scene of an emergency occurrence, reasonably
24 believed that no one competent to consent could be consulted and that a
25 reasonable person, wishing to safeguard the welfare of the patient, would
26 consent.

27 D. It is a defense to a prosecution pursuant to section 13-1404 or
28 13-1405 that the person was the spouse of the other person at the time of
29 commission of the act. It is not a defense to a prosecution pursuant to
30 section 13-1406 that the defendant was the spouse of the victim at the time
31 of commission of the act.

32 E. It is a defense to a prosecution pursuant to section 13-1404 or
33 13-1410 that the defendant was not motivated by a sexual interest. It is a
34 defense to a prosecution pursuant to section 13-1404 involving a victim under
35 fifteen years of age that the defendant was not motivated by a sexual
36 interest.

37 F. It is a defense to a prosecution pursuant to section 13-1405 if the
38 victim is fifteen, sixteen or seventeen years of age, the defendant is under
39 ~~nineteen~~ TWENTY years of age or attending high school and is no more than
40 ~~twenty-four~~ THIRTY-SIX months older than the victim and the conduct is
41 consensual.

1 Sec. 2. Section 13-3102, Arizona Revised Statutes, is amended to read:
2 13-3102. Misconduct involving weapons; defenses;
3 classification; definitions
4 A. A person commits misconduct involving weapons by knowingly:
5 1. Carrying a deadly weapon without a permit pursuant to section
6 13-3112 except a pocket knife concealed on his person; or
7 ~~2. Carrying a deadly weapon without a permit pursuant to section~~
8 ~~13-3112 concealed within immediate control of any person in or on a means of~~
9 ~~transportation; or~~
10 ~~3.~~ 2. Manufacturing, possessing, transporting, selling or
11 transferring a prohibited weapon; or
12 ~~4.~~ 3. Possessing a deadly weapon or prohibited weapon if such person
13 is a prohibited possessor; or
14 4. POSSESSING AMMUNITION IF SUCH PERSON IS A PROHIBITED POSSESSOR; OR
15 5. Selling or transferring a deadly weapon to a prohibited possessor;
16 or
17 6. Defacing a deadly weapon; or
18 7. Possessing a defaced deadly weapon knowing the deadly weapon was
19 defaced; or
20 8. Using or possessing a deadly weapon during the commission of any
21 felony offense included in chapter 34 of this title; or
22 9. Discharging a firearm at an occupied structure in order to assist,
23 promote or further the interests of a criminal street gang, a criminal
24 syndicate or a racketeering enterprise; or
25 10. Unless specifically authorized by law, entering any public
26 establishment or attending any public event and carrying a deadly weapon on
27 his person after a reasonable request by the operator of the establishment or
28 the sponsor of the event or the sponsor's agent to remove his weapon and
29 place it in the custody of the operator of the establishment or the sponsor
30 of the event for temporary and secure storage of the weapon pursuant to
31 section 13-3102.01; or
32 11. Unless specifically authorized by law, entering an election polling
33 place on the day of any election carrying a deadly weapon; or
34 12. Possessing a deadly weapon on school grounds; or
35 13. Unless specifically authorized by law, entering a nuclear or
36 hydroelectric generating station carrying a deadly weapon on his person or
37 within the immediate control of any person; or
38 14. Supplying, selling or giving possession or control of a firearm to
39 another person if the person knows or has reason to know that the other
40 person would use the firearm in the commission of any felony; or
41 15. Using, possessing or exercising control over a deadly weapon in
42 furtherance of any act of terrorism as defined in section 13-2301 or
43 possessing or exercising control over a deadly weapon knowing or having
44 reason to know that it will be used to facilitate any act of terrorism as
45 defined in section 13-2301.

1 B. Subsection A, paragraph 1 of this section shall not apply to a
2 person in his dwelling, on his business premises, **IN OR ON A MEANS OF**
3 **TRANSPORTATION, EXCLUDING ANY PUBLIC TRANSIT**, or on real property owned, ~~or~~
4 leased **OR RENTED** by that person.

5 C. Subsection A, paragraphs 1, 2, ~~3~~, 7, 10, 11, 12 and 13 of this
6 section shall not apply to:

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

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

11 3. A warden, deputy warden or correctional officer of the state
12 department of corrections; or

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

15 D. Subsection A, paragraphs ~~3~~ **2** and 7 of this section shall not apply
16 to:

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

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

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

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

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

31 E. Subsection A, paragraph ~~3~~ **2** of this section shall not apply to the
32 merchandise of an authorized manufacturer of or dealer in prohibited weapons,
33 when such material is intended to be manufactured, possessed, transported,
34 sold or transferred solely for or to a dealer, a regularly constituted or
35 appointed state, county or municipal police department or police officer, a
36 detention facility, the military service of this or another state or the
37 United States, a museum or educational institution or a person specifically
38 licensed or permitted pursuant to federal or state law.

39 F. Subsection A, paragraph 1 of this section shall not apply to a
40 weapon or weapons **THAT ARE** carried in **ANY OF THE FOLLOWING**:

41 1. A ~~belt holster which~~ **MANNER WHERE ANY PORTION OF THE WEAPON OR A**
42 holster **IN WHICH THE WEAPON IS CARRIED** is ~~wholly or partially~~ visible. ~~, or~~
43 ~~carried in~~

1 2. A scabbard or case designed for carrying weapons ~~which~~ AND ANY
2 PORTION OF THE WEAPON, scabbard or case is ~~wholly or partially~~ visible. ~~or~~
3 ~~carried in~~

4 3. Luggage. ~~Subsection A, paragraph 2 of this section shall not apply~~
5 ~~to a weapon or weapons carried in a case, holster, scabbard, pack or luggage~~
6 ~~that is carried within a means of transportation or within a storage~~
7 ~~compartment, map pocket, trunk or glove compartment of a means of~~
8 ~~transportation.~~

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

12 H. Subsection A, paragraph ~~3~~ 2 of this section shall not apply to a
13 weapon described in section 13-3101, subsection A, paragraph 7, subdivision
14 (e), if such weapon is possessed for the purposes of preparing for,
15 conducting or participating in lawful exhibitions, demonstrations, contests
16 or athletic events involving the use of such weapon. Subsection A, paragraph
17 12 of this section shall not apply to a weapon if such weapon is possessed
18 for the purposes of preparing for, conducting or participating in hunter or
19 firearm safety courses.

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

22 1. Firearm that is not loaded and that is carried within a means of
23 transportation under the control of an adult provided that if the adult
24 leaves the means of transportation the firearm shall not be visible from the
25 outside of the means of transportation and the means of transportation shall
26 be locked.

27 2. Firearm for use on the school grounds in a program approved by a
28 school.

29 J. The operator of the establishment or the sponsor of the event or
30 the employee of the operator or sponsor or the agent of the sponsor,
31 including a public entity or public employee, is not liable for acts or
32 omissions pursuant to subsection A, paragraph 10 of this section unless the
33 operator, sponsor, employee or agent intended to cause injury or was grossly
34 negligent.

35 K. Misconduct involving weapons under subsection A, paragraph 9, 14 or
36 15 of this section is a class 3 felony. Misconduct involving weapons under
37 subsection A, paragraph 2, 3, ~~4~~, 8 or 13 of this section is a class 4 felony.
38 Misconduct involving weapons under subsection A, paragraph 12 of this section
39 is a class 1 misdemeanor unless the violation occurs in connection with
40 conduct which violates ~~the provisions of~~ section 13-2308, subsection A,
41 paragraph 5, section 13-2312, subsection C, section 13-3409 or section
42 13-3411, in which case the offense is a class 6 felony. Misconduct involving
43 weapons under subsection A, paragraph 4, 5, 6 or 7 of this section is a class
44 6 felony. Misconduct involving weapons under subsection A, paragraph 1, ~~2~~,
45 10 or 11 of this section is a class 1 misdemeanor.

1 L. For the purposes of this section:

2 1. "AMMUNITION" MEANS AMMUNITION, CARTRIDGE CASES, PRIMERS, BULLETS OR
3 PROPELLANT POWDER DESIGNED FOR USE IN ANY FIREARM.

4 ~~1-~~ 2. "Public establishment" means a structure, vehicle or craft that
5 is owned, leased or operated by this state or a political subdivision of this
6 state.

7 ~~2-~~ 3. "Public event" means a specifically named or sponsored event of
8 limited duration THAT IS either conducted by a public entity or conducted by
9 a private entity with a permit or license granted by a public entity. Public
10 event does not include an unsponsored gathering of people in a public place.

11 ~~3-~~ 4. "School" means a public or nonpublic kindergarten program,
12 common school or high school.

13 ~~4-~~ 5. "School grounds" means in, or on the grounds of, a school.

14 Sec. 3. Section 13-3105, Arizona Revised Statutes, is amended to read:

15 13-3105. Forfeiture of weapons and explosives

16 A. ~~Upon~~ ON the conviction of any person for ~~the~~ A violation of any
17 felony in this state in which a deadly weapon, dangerous instrument or
18 explosive was used, displayed or unlawfully possessed by ~~such~~ THE person, the
19 court shall order the article forfeited and sold, destroyed or otherwise
20 properly disposed.

21 B. ~~Upon~~ ON the conviction of any person for ~~the~~ A violation of section
22 13-2904, subsection A, paragraph 6 or section 13-3102, subsection A,
23 paragraph 1, ~~2-~~ 8 or 10, the court may order the forfeiture of the deadly
24 weapon or dangerous instrument involved in the offense.

25 C. If at any time the court finds pursuant to rule 11 of the Arizona
26 rules of criminal procedure that a person who is charged with a violation of
27 this title is incompetent, the court shall order that any deadly weapon,
28 dangerous instrument or explosive used, displayed or unlawfully possessed by
29 the person during the commission of the alleged offense be forfeited and
30 sold, destroyed or otherwise properly disposed.

31 Sec. 4. Section 13-3112, Arizona Revised Statutes, as amended by Laws
32 2008, chapter 269, section 1, is amended to read:

33 13-3112. Concealed weapons; qualification; application; permit
34 to carry; certificate of firearms proficiency;
35 training program; program instructors; report;
36 applicability; violation; classification

37 A. The department of public safety shall issue a permit to carry a
38 concealed weapon to a person who is qualified under this section. The person
39 shall carry the permit at all times when the person is in actual possession
40 of the concealed weapon and shall present the permit for inspection to any
41 law enforcement officer on request.

42 B. A person who fails to carry the permit at all times that the person
43 is in actual possession of a concealed weapon may have the permit suspended.
44 The department of public safety shall be notified of all violations of this
45 section and shall immediately suspend the permit. The permittee shall

1 present the permit to the law enforcement agency or the court. On
2 notification of the presentation of the permit, the department shall restore
3 the permit.

4 C. The permit of a person who is arrested or indicted for an offense
5 that would make the person unqualified under section 13-3101, subsection A,
6 paragraph 6 or this section shall be immediately suspended and seized. The
7 permit of a person who becomes unqualified on conviction of that offense
8 shall be revoked. The permit shall be restored on presentation of
9 documentation from the court if the permittee is found not guilty or the
10 charges are dismissed. The permit shall be restored on presentation of
11 documentation from the county attorney that the charges against the permittee
12 were dropped or dismissed.

13 D. A permittee who carries a concealed weapon and who fails to present
14 a permit for inspection on the request of a law enforcement officer is guilty
15 of a petty offense. A permittee shall not be convicted of a violation of
16 this subsection if the permittee produces to the court a legible permit that
17 is issued to the permittee and that was valid at the time the violation of
18 this subsection occurred.

19 E. The department of public safety shall issue a permit to an
20 applicant who meets all of the following conditions:

- 21 1. Is a resident of this state or a United States citizen.
- 22 2. Is twenty-one years of age or older.
- 23 3. Is not under indictment for and has not been convicted in any
24 jurisdiction of a felony unless that conviction has been expunged, set aside
25 or vacated or the applicant's rights have been restored and the applicant is
26 currently not a prohibited possessor under state or federal law.
- 27 4. Does not suffer from mental illness and has not been adjudicated
28 mentally incompetent or committed to a mental institution.
- 29 5. Is not unlawfully present in the United States.
- 30 6. Satisfactorily completes a firearms safety training program
31 approved by the department of public safety pursuant to subsection 0 of this
32 section. This paragraph does not apply to:

33 (a) A person who is an active duty Arizona peace officer standards and
34 training board certified or federally credentialed peace officer or who is
35 honorably retired as a federal, state or local peace officer with a minimum
36 of ten years of service.

37 (b) A person who is an active duty county detention officer and who
38 has been weapons certified by the officer's employing agency.

39 (c) A person who is issued a certificate of firearms proficiency
40 pursuant to subsection X of this section.

41 F. The application shall be completed on a form prescribed by the
42 department of public safety. The form shall not require the applicant to
43 disclose the type of firearm for which a permit is sought. The applicant
44 shall attest under penalty of perjury that all of the statements made by the
45 applicant are true. The applicant shall submit the application to the

1 department with a certificate of completion from an approved firearms safety
2 training program, two sets of fingerprints and a reasonable fee determined by
3 the director of the department.

4 G. On receipt of a concealed weapon permit application, the department
5 of public safety shall conduct a check of the applicant's criminal history
6 record pursuant to section 41-1750. The department of public safety may
7 exchange fingerprint card information with the federal bureau of
8 investigation for federal criminal history record checks.

9 H. The department of public safety shall complete all of the required
10 qualification checks within sixty days after receipt of the application and
11 shall issue a permit within fifteen working days after completing the
12 qualification checks if the applicant meets all of the conditions specified
13 in subsection E of this section. If a permit is denied, the department of
14 public safety shall notify the applicant in writing within fifteen working
15 days after the completion of all of the required qualification checks and
16 shall state the reasons why the application was denied. On receipt of the
17 notification of the denial, the applicant has twenty days to submit any
18 additional documentation to the department. On receipt of the additional
19 documentation, the department shall reconsider its decision and inform the
20 applicant within twenty days of the result of the reconsideration. If
21 denied, the applicant shall be informed that the applicant may request a
22 hearing pursuant to title 41, chapter 6, article 10.

23 I. On issuance, a permit is valid for five years, except a permit that
24 is held by a member of the United States armed forces, including a member of
25 the Arizona national guard or a member of the reserves of any military
26 establishment of the United States, who is on federal active duty and who is
27 deployed overseas shall be extended until ninety days after the end of the
28 member's overseas deployment.

29 J. The department of public safety shall maintain a computerized
30 permit record system that is accessible to criminal justice agencies for the
31 purpose of confirming the permit status of any person who claims to hold a
32 valid permit issued by this state. This information and any other records
33 that are maintained regarding applicants, permit holders or instructors shall
34 not be available to any other person or entity except on an order from a
35 state or federal court.

36 K. Notwithstanding subsection J of this section, it is a defense to
37 any charge for carrying a deadly weapon without a permit by a member of the
38 United States armed forces, including a member of the Arizona national guard
39 or a member of the reserves of any military establishment of the United
40 States, if the member was on federal active duty at the time the permit
41 expired and the member presents documentation indicating release from active
42 duty or reassignment from overseas deployment within the preceding ninety
43 days.

44 L. A permit issued pursuant to this section is renewable every five
45 years. Before a permit may be renewed, a criminal history records check

1 shall be conducted pursuant to section 41-1750 within sixty days after
2 receipt of the application for renewal. For the purposes of permit renewal,
3 the permit holder is not required to submit additional fingerprints.

4 M. Applications for renewal shall be accompanied by a fee determined
5 by the director of the department of public safety.

6 N. The department of public safety shall suspend or revoke a permit
7 issued under this section if the permit holder becomes ineligible pursuant to
8 subsection E of this section. The department of public safety shall notify
9 the permit holder in writing within fifteen working days after the revocation
10 or suspension and shall state the reasons for the revocation or suspension.

11 O. An organization shall apply to the department of public safety for
12 approval of its firearms safety training program. The department shall
13 approve a program that meets the following requirements:

- 14 1. Is at least eight hours in length.
- 15 2. Is conducted on a pass or fail basis.
- 16 3. Addresses all of the following topics in a format approved by the
17 director of the department:

- 18 (a) Legal issues relating to the use of deadly force.
- 19 (b) Weapon care and maintenance.
- 20 (c) Mental conditioning for the use of deadly force.
- 21 (d) Safe handling and storage of weapons.
- 22 (e) Marksmanship.
- 23 (f) Judgmental shooting.

- 24 4. Is conducted by instructors who submit to a background
25 investigation, including a check for warrants and a criminal history records
26 check.

27 P. If approved pursuant to subsection O of this section, the
28 organization shall submit to the department of public safety two sets of
29 fingerprints from each instructor and a fee to be determined by the director
30 of the department of public safety. On receipt of the fingerprints and fee,
31 the department of public safety shall conduct a check of each instructor's
32 criminal history record pursuant to section 41-1750. The department of
33 public safety may exchange this fingerprint card information with the federal
34 bureau of investigation for federal criminal history record checks.

35 Q. The proprietary interest of all approved instructors and programs
36 shall be safeguarded, and the contents of any training program shall not be
37 disclosed to any person or entity other than a bona fide criminal justice
38 agency, except on an order from a state or federal court.

39 R. If the department of public safety rejects a program, the rejected
40 organization may request a hearing pursuant to title 41, chapter 6,
41 article 10.

42 S. The department of public safety shall maintain information
43 comparing the number of permits requested, the number of permits issued and
44 the number of permits denied. The department shall annually report this
45 information to the governor and the legislature.

1 T. The director of the department of public safety shall adopt rules
2 for the purpose of implementing and administering the concealed weapons
3 permit program including fees relating to permits and certificates that are
4 issued pursuant to this section.

5 U. This state and any political subdivision of this state shall
6 recognize a concealed weapon, firearm or handgun permit or license that is
7 issued by another state or a political subdivision of another state if both:

8 1. The permit or license is recognized as valid in the issuing state.

9 2. The permit or license holder is all of the following:

10 (a) Not a resident of this state.

11 (b) Legally present in this state.

12 (c) Not legally prohibited from possessing a firearm in this state.

13 V. For the purpose of establishing mutual permit or license
14 recognition with other states, the department of public safety shall enter
15 into a written agreement if another state requires a written agreement.

16 W. Notwithstanding the provisions of this section, a person with a
17 concealed weapons permit from another state may not carry a concealed weapon
18 in this state if the person is under twenty-one years of age or is under
19 indictment for, or has been convicted of, a felony offense in any
20 jurisdiction, unless the person's rights have been restored and the
21 conviction is expunged, set aside or vacated and the ~~applicant~~ PERSON is
22 currently not a prohibited possessor under state or federal law.

23 X. The department of public safety may issue certificates of firearms
24 proficiency according to the Arizona peace officer standards and training
25 board firearms qualification for the purposes of implementing the law
26 enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18
27 United States Code sections 926B and 926C). A law enforcement agency shall
28 issue to a law enforcement officer who has honorably retired a photographic
29 identification that states that the officer has honorably retired from the
30 agency. The chief law enforcement officer shall determine whether an officer
31 has honorably retired and the determination is not subject to review. A law
32 enforcement agency has no obligation to revoke, alter or modify the honorable
33 discharge photographic identification based on conduct that the agency
34 becomes aware of or that occurs after the officer has separated from the
35 agency.