

House Engrossed

**State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020**

HOUSE BILL 2538

AN ACT

AMENDING SECTION 13-1204, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-420; RELATING TO HEALTH CARE WORKERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-1204, Arizona Revised Statutes, is amended to read:

13-1204. Aggravated assault; classification; definitions

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
5. If the person commits the assault after entering the private home of another with the intent to commit the assault.
6. If the person is eighteen years of age or older and commits the assault on a minor under fifteen years of age.
7. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.
8. If the person commits the assault knowing or having reason to know that the victim is any of the following:
 - (a) A peace officer or a person summoned and directed by the officer.
 - (b) A constable or a person summoned and directed by the constable while engaged in the execution of any official duties or if the assault results from the execution of the constable's official duties.
 - (c) A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties or a person summoned and directed by such individual while engaged in the execution of any official duties or if the assault results from the execution of the official duties of the firefighter, fire investigator, fire inspector, emergency medical technician or paramedic.
 - (d) A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.
 - (e) A **HEALTH CARE WORKER WHILE ENGAGED IN THE HEALTH CARE WORKER'S WORK DUTIES OR** a health care practitioner who is certified or licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. This subdivision does not apply if the person who commits the assault is seriously mentally ill, as defined in section 36-550, or is afflicted with alzheimer's disease or related dementia.
 - (f) A prosecutor while engaged in the execution of any official duties or if the assault results from the execution of the prosecutor's official duties.
 - (g) A code enforcement officer as defined in section 39-123 while engaged in the execution of any official duties or if the assault results from the execution of the code enforcement officer's official duties.
 - (h) A state or municipal park ranger while engaged in the execution of any official duties or if the assault results from the execution of the park ranger's official duties.
 - (i) A public defender while engaged in the execution of any official duties or if the assault results from the execution of the public defender's official duties.
 - (j) A judicial officer while engaged in the execution of any official duties or if the assault results from the execution of the judicial officer's official duties.
9. If the person knowingly takes or attempts to exercise control over any of the following:
 - (a) A peace officer's or other officer's firearm and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph

10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection.

(b) Any weapon other than a firearm that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection.

(c) Any implement that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection. For the purposes of this subdivision, "implement" means an object that is designed for or that is capable of restraining or injuring an individual. Implement does not include handcuffs.

10. If the person meets both of the following conditions:

(a) Is imprisoned or otherwise subject to the custody of any of the following:

(i) The state department of corrections.

(ii) The department of juvenile corrections.

(iii) A law enforcement agency.

(iv) A county or city jail or an adult or juvenile detention facility of a city or county.

(v) Any other entity that is contracting with the state department of corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

(b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (a) of this paragraph.

11. If the person uses a simulated deadly weapon.

B. A person commits aggravated assault if the person commits assault by either intentionally, knowingly or recklessly causing any physical injury to another person, intentionally placing another person in reasonable apprehension of imminent physical injury or knowingly touching another person with the intent to injure the person, and both of the following occur:

1. The person intentionally or knowingly impedes the normal breathing or circulation of blood of another person by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or through the use of an instrument.

2. Any of the circumstances exists that are set forth in section 13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.

C. A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer pursuant to subsection A, paragraph 1 or 2 of this section shall be sentenced to imprisonment for not less than the presumptive sentence authorized under chapter 7 of this title and is not eligible for suspension of sentence, commutation or release on any basis until the sentence imposed is served.

D. It is not a defense to a prosecution for assaulting a peace officer or a mitigating circumstance that the peace officer was not on duty or engaged in the execution of any official duties.

E. Except pursuant to subsections F and G of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2, paragraph 9, subdivision (a) or paragraph 11 of this section is a class 3 felony except if the aggravated assault is a violation of subsection A, paragraph 1 or 2 of this section and the victim is under fifteen years of age it is a class 2 felony punishable pursuant to section 13-705. Aggravated assault pursuant to subsection A, paragraph 3 or subsection B of this section is a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6 felony **EXCEPT THAT AGGRAVATED ASSAULT PURSUANT TO SUBSECTION A, PARAGRAPH 8, SUBDIVISION (c) OR (e) OF THIS SECTION IS A CLASS 5 FELONY IF THE ASSAULT INVOLVES PHYSICAL INJURY.**

F. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 3 of this section committed on a peace officer is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 8, subdivision (a) of this section committed on a peace officer is a class 5 felony unless the assault results in any physical injury to the peace officer, in which case it is a class 4 felony.

G. Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.
2. Subsection A, paragraph 3 of this section is a class 3 felony if committed on a prosecutor.
3. Subsection A, paragraph 8, subdivision (f) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

H. For the purposes of this section:

1. "HEALTH CARE WORKER" MEANS:

(a) A PERSON WHO IS EMPLOYED BY OR CONTRACTED TO WORK AT A HEALTH CARE INSTITUTION THAT IS LICENSED PURSUANT TO TITLE 36.

(b) A PERSON WHO IS EMPLOYED OR CONTRACTED TO PROVIDE HEALTH CARE OR RELATED SERVICES IN A FIELD WORK SETTING, INCLUDING:

(i) HOME HEALTH CARE, HOME-BASED HOSPICE AND HOME-BASED SOCIAL WORK, UNLESS THE WORKER IS EMPLOYED OR CONTRACTED BY AN INDIVIDUAL WHO PRIVATELY EMPLOYS, IN THE INDIVIDUAL'S RESIDENCE, THE WORKER TO PERFORM COVERED SERVICES FOR THE INDIVIDUAL OR A FAMILY MEMBER OF THE INDIVIDUAL.

(ii) ANY EMERGENCY SERVICES AND TRANSPORT, INCLUDING THE SERVICES PROVIDED BY FIREFIGHTERS AND EMERGENCY RESPONDERS.

~~1:~~ 2. "Judicial officer" means a justice of the supreme court, judge, justice of the peace or magistrate or a commissioner or hearing officer of a state, county or municipal court.

~~2:~~ 3. "Prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.

Sec. 2. Title 36, chapter 4, article 1, Arizona Revised Statutes, is amended by adding section 36-420, to read:

36-420. Health care employers; workplace violence prevention plan; investigation; reporting; non-retaliation; definitions

A. WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, HEALTH CARE EMPLOYERS SHALL DEVELOP, IMPLEMENT AND MAINTAIN A WRITTEN WORKPLACE VIOLENCE PREVENTION PLAN THAT DOES ALL OF THE FOLLOWING:

1. INCLUDES COMPONENTS THAT ARE SPECIFICALLY TAILORED TO THE CONDITIONS AND HAZARDS OF THE HEALTH CARE EMPLOYER'S SITES AND PATIENT-SPECIFIC RISK FACTORS.

2. IDENTIFIES THE INDIVIDUAL WHO IS RESPONSIBLE FOR IMPLEMENTING AND OVERSEEING THE PLAN.

3. REQUIRES THE CONSPICUOUS POSTING OF SIGNS IN PUBLIC AREAS THROUGHOUT THE HEALTH CARE EMPLOYER'S SITES, INCLUDING ALL EMERGENCY FACILITIES, THAT ARE AT LEAST EIGHTEEN INCHES BY EIGHTEEN INCHES IN SIZE AND THAT PROVIDE NOTICE THAT ASSAULT ON A HEALTH CARE WORKER MAY BE PROSECUTED AS A FELONY.

4. INCLUDES REPORTING, INCIDENT RESPONSE AND POSTINCIDENT INVESTIGATION PROCEDURES, INCLUDING PROCEDURES:

(a) FOR HEALTH CARE WORKERS TO REPORT WORKPLACE VIOLENCE RISKS, HAZARDS AND INCIDENTS.

(b) FOR HEALTH CARE EMPLOYERS TO RESPOND TO REPORTS OF WORKPLACE VIOLENCE.

(c) FOR HEALTH CARE EMPLOYERS TO PERFORM A POSTINCIDENT INVESTIGATION AND DEBRIEFING OF ALL REPORTS OF WORKPLACE VIOLENCE WITH THE PARTICIPATION OF HEALTH CARE WORKERS.

5. INCLUDES PROCEDURES FOR EMERGENCY RESPONSE AND INCIDENTS INVOLVING A FIREARM OR A DANGEROUS WEAPON.

6. REQUIRES HEALTH CARE EMPLOYEES TO PROVIDE INFORMATION TO HEALTH CARE WORKERS ABOUT THE WORKER'S ABILITY TO REPORT ANY ASSAULT TO LAW ENFORCEMENT AND, ON REQUEST, TO ASSIST THE WORKER IN REPORTING THE ASSAULT.

B. EACH HEALTH CARE EMPLOYER SHALL MAKE ITS WORKPLACE VIOLENCE PREVENTION PLAN AVAILABLE AT ALL TIMES TO ALL HEALTH CARE WORKERS AND CONTRACTORS.

C. AS SOON AS PRACTICABLE AFTER A WORKPLACE VIOLENCE INCIDENT THAT A HEALTH CARE EMPLOYER HAS KNOWLEDGE OF, THE EMPLOYER SHALL INVESTIGATE THE INCIDENT AND SHALL DO ALL OF THE FOLLOWING:

- 1. REVIEW THE CIRCUMSTANCES OF THE INCIDENT.**
- 2. SOLICIT INPUT FROM INVOLVED HEALTH CARE WORKERS AND SUPERVISORS ABOUT THE CAUSE OF THE INCIDENT AND WHETHER FURTHER CORRECTIVE MEASURES COULD HAVE PREVENTED THE INCIDENT.**
- 3. DOCUMENT THE FINDINGS, RECOMMENDATIONS AND CORRECTIVE MEASURES TAKEN FOR EACH INVESTIGATION CONDUCTED.**
- 4. FILE AN ANNUAL REPORT WITH THE DEPARTMENT OF HEALTH SERVICES DOCUMENTING THE NUMBER OF INCIDENTS EACH YEAR.**

D. EACH HEALTH CARE EMPLOYER SHALL PROVIDE TRAINING AND EDUCATION TO ITS HEALTH CARE WORKERS WHO MAY BE EXPOSED TO WORKPLACE VIOLENCE HAZARDS AND RISKS.

E. EACH HEALTH CARE EMPLOYER SHALL MAINTAIN:

- 1. RECORDS THAT RELATE TO EACH OF THE EMPLOYER'S WORKPLACE VIOLENCE PREVENTION PLANS, INCLUDING IDENTIFYING, EVALUATING AND CORRECTING HAZARDS AND RISKS AND TRAINING PROCEDURES.**
- 2. A VIOLENT INCIDENT LOG FOR RECORDING ALL WORKPLACE VIOLENCE INCIDENTS AND RECORDS OF ALL INCIDENT INVESTIGATIONS. THE LOG SHALL INCLUDE THE DATE, TIME AND LOCATION OF THE INCIDENT, THE NAMES OF PERSONS INVOLVED IN THE INCIDENT, A DESCRIPTION OF THE INCIDENT AND THE NATURE AND EXTENT OF INJURIES TO HEALTH CARE WORKERS.**

F. THE HEALTH CARE EMPLOYER SHALL ANNUALLY EVALUATE THE IMPLEMENTATION AND EFFECTIVENESS OF THE WORKPLACE VIOLENCE PREVENTION PLAN, INCLUDING A REVIEW OF THE VIOLENT INCIDENT LOG AND COMPLIANCE WITH ANY TRAINING. THE ANNUAL EVALUATION SHALL BE IN WRITING.

G. THE HEALTH CARE EMPLOYER SHALL ADOPT A POLICY THAT PROHIBITS ANY PERSON FROM DISCRIMINATING OR RETALIATING AGAINST ANY HEALTH CARE WORKER FOR EITHER:

- 1. REPORTING TO OR SEEKING ASSISTANCE OR INTERVENTION FROM THE EMPLOYER, LAW ENFORCEMENT, LOCAL EMERGENCY SERVICES OR A GOVERNMENT AGENCY OR PARTICIPATING IN AN INCIDENT INVESTIGATION.**
- 2. ACTING IN SELF DEFENSE OR DEFENSE OF OTHERS, IN RESPONSE TO A WORKPLACE VIOLENCE INCIDENT, THREAT OR CONCERN.**

H. A HEALTH CARE EMPLOYER MAY NOT DISCRIMINATE OR RETALIATE AGAINST A HEALTH CARE WORKER FOR EITHER:

- 1. REPORTING TO OR SEEKING ASSISTANCE OR INTERVENTION FROM THE EMPLOYER, LAW ENFORCEMENT, LOCAL EMERGENCY SERVICES OR A GOVERNMENT AGENCY OR FOR EXERCISING ANY OTHER RIGHTS UNDER THIS SECTION.**
- 2. ACTING IN SELF DEFENSE OR DEFENSE OF OTHERS IN RESPONSE TO A WORKPLACE VIOLENCE INCIDENT, THREAT OR CONCERN.**

I. FOR THE PURPOSES OF THIS SECTION:

- 1. "HEALTH CARE EMPLOYER" MEANS A HEALTH CARE INSTITUTION THAT IS LICENSED PURSUANT TO THIS TITLE AND THAT HAS MORE THAN FIFTY EMPLOYEES.**
- 2. "HEALTH CARE WORKER" MEANS AN EMPLOYEE OR CONTRACTOR OF A HEALTH CARE EMPLOYER.**