

REFERENCE TITLE: justification; self defense; sentencing

State of Arizona
House of Representatives
Fifty-first Legislature
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2014

HB 2209

Introduced by
Representatives Borrelli, Kwasman, Mitchell, Seel, Senator Murphy:
Representatives Boyer, Fann, Livingston, Mesnard, Thorpe, Townsend,
Senators Shooter, Ward

AN ACT

AMENDING SECTIONS 13-404 AND 13-405, ARIZONA REVISED STATUTES; REPEALING SECTION 13-406, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-407, 13-408, 13-409, 13-410, 13-411, 13-415, 13-418, 13-421, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-422 AND 13-423; AMENDING SECTION 13-4903, ARIZONA REVISED STATUTES; RELATING TO JUSTIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-404, Arizona Revised Statutes, is amended to
3 read:

4 13-404. Justification; self-defense

5 A. Except as provided in subsection B of this section, a person is
6 justified in threatening or using physical force against another when and to
7 the extent ~~a reasonable~~ **IT IS IMMEDIATELY NECESSARY, OR THE** person ~~would~~
8 ~~believe~~ **REASONABLY BELIEVES** that physical force is immediately necessary, to
9 protect himself **OR A THIRD PERSON** against the other's use or attempted use of
10 unlawful physical force.

11 B. The threat or use of physical force against another is not
12 justified:

13 1. In response to verbal provocation alone; or

14 2. To resist an arrest that the person knows or should know is being
15 made by a peace officer or by a person acting in a peace officer's presence
16 and at his direction, whether the arrest is lawful or unlawful, unless the
17 physical force used by the peace officer exceeds that allowed by law; or

18 **3. IF THE PERSON IS COMMITTING, ATTEMPTING TO COMMIT OR FLEEING AFTER**
19 **COMMITTING A FELONY; OR**

20 ~~3.~~ 4. If the person provoked the other's use or attempted use of
21 unlawful physical force, unless:

22 (a) The person withdraws from the encounter or clearly communicates to
23 the other his intent to do so reasonably believing he cannot safely withdraw
24 from the encounter; and

25 (b) The other nevertheless continues or attempts to use unlawful
26 physical force against the person.

27 **C. A PERSON'S REASONABLE BELIEF THAT PHYSICAL FORCE IS IMMEDIATELY**
28 **NECESSARY PURSUANT TO SUBSECTION A OF THIS SECTION DOES NOT NEED TO BE THE**
29 **SOLE MOTIVATION FOR THE PERSON'S THREAT OR USE OF PHYSICAL FORCE.**

30 Sec. 2. Section 13-405, Arizona Revised Statutes, is amended to read:

31 13-405. Justification; use of deadly physical force

32 A. A person is justified in threatening or using deadly physical force
33 against another:

34 1. If ~~such~~ **THE** person would be justified in threatening or using
35 physical force against the other under section 13-404, and

36 2. When and to the degree ~~a reasonable~~ **THAT IT IS IMMEDIATELY**
37 **NECESSARY, OR THE** person ~~would believe~~ **REASONABLY BELIEVES** that deadly
38 physical force is immediately necessary, to protect himself **OR A THIRD PERSON**
39 against the other's use or attempted use of unlawful deadly physical force.

40 B. A person has no duty to retreat before threatening or using deadly
41 physical force pursuant to this section if the person is in a place where the
42 person may legally be and is not engaged in an unlawful act.

43 **C. A PERSON'S REASONABLE BELIEF THAT USING DEADLY PHYSICAL FORCE IS**
44 **IMMEDIATELY NECESSARY PURSUANT TO SUBSECTION A OF THIS SECTION DOES NOT NEED**

1 TO BE THE SOLE MOTIVATION FOR THE PERSON'S THREAT OR USE OF DEADLY PHYSICAL
2 FORCE.

3 Sec. 3. Repeal

4 Section 13-406, Arizona Revised Statutes, is repealed.

5 Sec. 4. Section 13-407, Arizona Revised Statutes, is amended to read:

6 13-407. Justification; use of physical force in defense of
7 premises; definition

8 A. A person or his agent in lawful possession or control of premises
9 is justified in threatening to use PHYSICAL FORCE OR USING deadly physical
10 force ~~or in threatening or using physical force against another~~ when and to
11 the extent that IT IS IMMEDIATELY NECESSARY, OR a reasonable person would
12 believe it immediately necessary, to prevent or terminate the commission or
13 attempted commission of a criminal trespass by the other person in or ~~upon~~ ON
14 the premises.

15 ~~B. A person may use deadly physical force under subsection A only in~~
16 ~~the defense of himself or third persons as described in sections 13-405 and~~
17 ~~13-406.~~

18 ~~C. B. In~~ FOR THE PURPOSES OF this section, "premises" means any real
19 property and any structure, movable or immovable, permanent or temporary,
20 adapted for both human residence and lodging whether occupied or not.

21 Sec. 5. Section 13-408, Arizona Revised Statutes, is amended to read:

22 13-408. Justification; use of physical force in defense of
23 property

24 A person is justified in using physical force against another when and
25 to the extent that IT IS NECESSARY, OR a reasonable person would believe it
26 necessary, to prevent what a reasonable person would believe is an attempt or
27 commission by the other person of theft or criminal damage involving tangible
28 movable property under his possession or control, but such person may use
29 deadly physical force under these circumstances as provided in sections
30 13-405, ~~13-406~~ and 13-411.

31 Sec. 6. Section 13-409, Arizona Revised Statutes, is amended to read:

32 13-409. Justification; use of physical force in law enforcement

33 A person is justified in threatening or using physical force against
34 another if in making or assisting in making an arrest or detention or in
35 preventing or assisting in preventing the escape after arrest or detention of
36 that other person, such person uses or threatens to use physical force and
37 all of the following exist:

38 1. IT IS IMMEDIATELY NECESSARY, OR a reasonable person would believe
39 that such force is immediately necessary, to effect the arrest or detention
40 or prevent the escape.

41 2. Such person makes known the purpose of the arrest or detention or
42 believes that it is otherwise known or cannot reasonably be made known to the
43 person to be arrested or detained.

44 3. THE ARREST OR DETENTION IS LAWFUL, OR a reasonable person would
45 believe the arrest or detention to be lawful.

1 Sec. 8. Section 13-411, Arizona Revised Statutes, is amended to read:
2 13-411. Justification: use of force in crime prevention:
3 applicability

4 A. A person is justified in threatening or using both physical force
5 and deadly physical force against another if and to the extent **THAT PHYSICAL**
6 **FORCE OR DEADLY PHYSICAL FORCE IS IMMEDIATELY NECESSARY TO PREVENT, OR THAT**
7 the person reasonably believes that physical force or deadly physical force
8 is immediately necessary to prevent, the other's commission of arson of an
9 occupied structure under section 13-1704, burglary in the second or first
10 degree under section 13-1507 or 13-1508, kidnapping under section 13-1304,
11 manslaughter under section 13-1103, second or first degree murder under
12 section 13-1104 or 13-1105, sexual conduct with a minor under section
13 13-1405, sexual assault under section 13-1406, child molestation under
14 section 13-1410, armed robbery under section 13-1904 or aggravated assault
15 under section 13-1204, subsection A, paragraphs 1, ~~and 2,~~ **3 AND 4.**

16 B. There is no duty to retreat before threatening or using physical
17 force or deadly physical force justified by subsection A of this section.

18 C. A person is presumed to be acting reasonably for the purposes of
19 this section if the person is acting to prevent what the person reasonably
20 believes is the imminent or actual commission of any of the offenses listed
21 in subsection A of this section.

22 D. This section includes the use or threatened use of physical force
23 or deadly physical force in a person's home, residence, place of business,
24 land the person owns or leases, conveyance of any kind, or any other place in
25 this state where a person has a right to be.

26 Sec. 9. Section 13-415, Arizona Revised Statutes, is amended to read:
27 13-415. Justification: domestic violence

28 If there have been past acts of domestic violence as defined in section
29 13-3601, subsection A against the defendant by the victim, the state of mind
30 of a reasonable person under sections 13-404, ~~AND 13-405 and 13-406~~ shall be
31 determined from the perspective of a reasonable person who has been a victim
32 of those past acts of domestic violence.

33 Sec. 10. Section 13-418, Arizona Revised Statutes, is amended to read:
34 13-418. Justification: use of force in defense of residential
35 structure or occupied vehicles; definitions

36 A. Notwithstanding any other provision of this chapter, a person is
37 justified in threatening to use or using physical force or deadly physical
38 force against another person ~~if the person reasonably believes himself or~~
39 ~~another person to be in imminent peril of death or serious physical injury~~
40 ~~and the person against whom the physical force or deadly physical force is~~
41 ~~threatened or used was in the process of unlawfully or forcefully entering,~~
42 ~~or had unlawfully or forcefully entered, a residential structure or occupied~~
43 ~~vehicle, or had removed or was attempting to remove another person against~~
44 ~~the other person's will from the residential structure or occupied vehicle~~
45 **WHO IS UNLAWFULLY ENTERING OR HAS ENTERED A RESIDENTIAL STRUCTURE OR OCCUPIED**

1 VEHICLE BY FORCE OR BY STEALTH AND THE PERSON REASONABLY BELIEVES THAT THE
2 ENTRY IS ATTEMPTED OR MADE TO ASSAULT ANY PERSON IN THE RESIDENCE OR VEHICLE,
3 TO REMOVE A PERSON FROM THE RESIDENTIAL STRUCTURE OR TO COMMIT A FELONY AND
4 THE FORCE USED IS NECESSARY, OR THE PERSON REASONABLY BELIEVES IT TO BE
5 NECESSARY, TO PREVENT THE ASSAULT, REMOVAL OR FELONY.

6 B. A person has no duty to retreat before threatening or using
7 physical force or deadly physical force pursuant to this section.

8 C. For the purposes of this section:

9 1. "Residential structure" has the same meaning prescribed in section
10 13-1501.

11 2. "Vehicle" means a conveyance of any kind, whether or not motorized,
12 that is designed to transport persons or property.

13 Sec. 11. Section 13-421, Arizona Revised Statutes, is amended to read:

14 13-421. Justification; defensive display of a firearm or other
15 weapon; definition

16 A. The defensive display of a firearm OR OTHER WEAPON by a person
17 against another is justified when and to the extent THAT IT IS EITHER
18 IMMEDIATELY NECESSARY TO PROTECT HIMSELF AGAINST THE USE OR ATTEMPTED USE OF
19 UNLAWFUL PHYSICAL FORCE OR DEADLY PHYSICAL FORCE OR a reasonable person would
20 believe that physical force is immediately necessary to protect himself
21 against the use or attempted use of unlawful physical force or deadly
22 physical force.

23 B. This section does not apply to a person who:

24 1. Intentionally provokes another person to use or attempt to use
25 unlawful physical force.

26 2. Uses a firearm OR OTHER WEAPON during the commission of a serious
27 offense as defined in section 13-706 or A violent crime as defined in section
28 13-901.03.

29 C. This section does not require the defensive display of a firearm OR
30 OTHER WEAPON before ~~the use of physical force or the threat of physical force~~
31 ~~by a person who is otherwise~~ A PERSON IS justified in the use or threatened
32 use of physical force OR DEADLY PHYSICAL FORCE.

33 D. For the purposes of this section, "defensive display of a firearm
34 OR OTHER WEAPON" includes:

35 1. Verbally informing another person that the person possesses or has
36 available a firearm OR OTHER WEAPON.

37 2. Exposing or displaying a firearm OR OTHER WEAPON in a manner that a
38 reasonable person would understand was meant to protect the person against
39 another's use or attempted use of unlawful physical force or deadly physical
40 force.

41 3. Placing the person's hand on a firearm OR OTHER WEAPON while the
42 firearm OR OTHER WEAPON is contained in a pocket, purse or other means of
43 containment or transport.

1 Sec. 12. Title 13, chapter 4, Arizona Revised Statutes, is amended by
2 adding sections 13-422 and 13-423, to read:

3 13-422. No duty to retreat; evidentiary considerations

4 A. A PERSON WHO IS IN A PLACE WHERE THE PERSON MAY LAWFULLY BE HAS NO
5 DUTY TO RETREAT BEFORE THREATENING OR USING PHYSICAL FORCE OR DEADLY PHYSICAL
6 FORCE PURSUANT TO THIS CHAPTER. THE POSSIBILITY OF RETREAT SHALL NOT BE
7 CONSIDERED IN DETERMINING WHETHER THE USE OF FORCE, OR ITS EXTENT, WAS
8 NECESSARY OR WHETHER THE PERSON WHO USED FORCE HAD A REASONABLE BELIEF THAT
9 THE USE WAS NECESSARY.

10 B. IN DETERMINING WHETHER THE THREAT OR USE OF PHYSICAL FORCE OR
11 DEADLY PHYSICAL FORCE WAS IMMEDIATELY NECESSARY OR WHETHER A PERSON
12 REASONABLY BELIEVED THAT THE USE OF FORCE OR DEADLY FORCE WAS NECESSARY, A
13 COURT MAY CONSIDER THE FOLLOWING FACTORS:

- 14 1. THE NATURE AND IMMEDIACY OF THE RISK.
- 15 2. THE PROBABILITY THAT LAW ENFORCEMENT, IF SUMMONED, WOULD NOT ARRIVE
16 IN TIME TO END THE RISK OR BE UNABLE TO PROTECT AGAINST THE RISK.
- 17 3. PRIOR VIOLENT ACTS AND VIOLENT PROPENSITIES BY THE PERSON AGAINST
18 WHOM THE FORCE WAS USED.
- 19 4. THE PERSON'S BELIEFS REGARDING PRIOR VIOLENT ACTS AND VIOLENT
20 PROPENSITIES BY THE PERSON AGAINST WHOM FORCE WAS USED.

21 13-423. Imperfect self-defense motion; sentencing

22 A. NOTWITHSTANDING ANY OTHER LAW, A PERSON WHO PRESENTS EVIDENCE OF
23 JUSTIFICATION PURSUANT TO THIS CHAPTER AND WHO IS FOUND GUILTY AFTER A TRIAL
24 MAY FILE A MOTION FOR IMPERFECT SELF-DEFENSE BEFORE SENTENCE IS IMPOSED. IF
25 THE COURT GRANTS THE MOTION, THE COURT SHALL SENTENCE THE PERSON AS FOLLOWS:

- 26 1. IF THE PERSON WAS FOUND GUILTY OF FIRST OR SECOND DEGREE MURDER
27 PURSUANT TO SECTION 13-1104 OR 13-1105, THE PERSON SHALL BE SENTENCED FOR
28 MANSLAUGHTER PURSUANT TO SECTION 13-1103.
- 29 2. IF THE PERSON IS CONVICTED OF AN OFFENSE THAT IS NOT LISTED IN
30 PARAGRAPH 1 OF THIS SUBSECTION, THE PERSON MAY BE PLACED ON PROBATION IN
31 ACCORDANCE WITH CHAPTER 9 OF THIS TITLE.

32 B. THE COURT SHALL GRANT A MOTION FOR IMPERFECT SELF-DEFENSE IF ANY OF
33 THE FOLLOWING OCCURS:

- 34 1. THE PERSON USED PHYSICAL FORCE OR DEADLY PHYSICAL FORCE WITH THE
35 BELIEF THAT THE USE OF THE FORCE WAS IMMEDIATELY NECESSARY PURSUANT TO THIS
36 CHAPTER BUT THAT BELIEF WAS NOT REASONABLE UNDER THE CIRCUMSTANCES.
- 37 2. THE PERSON OR A THIRD PERSON WAS THE VICTIM OF A FELONY OR
38 ATTEMPTED FELONY AND THE PERSON ACTED OUT OF OUTRAGE, SHOCK OR ANGER
39 RESULTING FROM THAT CRIME.

40 Sec. 13. Section 13-4903, Arizona Revised Statutes, is amended to
41 read:

42 13-4903. Use of force; armed nuclear security guards

43 A. An armed nuclear security guard is justified in using physical
44 force against another person at a commercial nuclear generating station or
45 structure or fenced yard of a commercial nuclear generating station if the

1 armed nuclear security guard reasonably believes that such force is necessary
2 to prevent or terminate the commission or attempted commission of criminal
3 damage under section 13-1602, subsection A, paragraph 3 and subsection B,
4 paragraph 1 or 2, misconduct involving weapons under section 13-3102,
5 subsection A, paragraph 13 or criminal trespass on a commercial nuclear
6 generating station under section 13-4902.

7 B. Notwithstanding sections 13-403, 13-404, 13-405, ~~13-406~~, 13-408,
8 13-409, 13-410 and 13-411, an armed nuclear security guard is justified in
9 using physical force up to and including deadly physical force against
10 another person at a commercial nuclear generating station or structure or
11 fenced yard of a commercial nuclear generating station if the armed nuclear
12 security guard reasonably believes that such force is necessary to:

13 1. Prevent the commission of manslaughter under section 13-1103,
14 second or first degree murder under section 13-1104 or 13-1105, aggravated
15 assault under section 13-1204, subsection A, paragraph 1 or 2, kidnapping
16 under section 13-1304, burglary in the second or first degree under section
17 13-1507 or 13-1508, arson of a structure or property under section 13-1703,
18 arson of an occupied structure under section 13-1704, armed robbery under
19 section 13-1904 or an act of terrorism under section 13-2308.01.

20 2. Defend oneself or a third person from the use or imminent use of
21 deadly physical force.

22 C. Notwithstanding any other provision of this chapter, an armed
23 nuclear security guard is justified in threatening to use physical or deadly
24 physical force if and to the extent a reasonable armed nuclear security guard
25 believes it necessary to protect oneself or others against another person's
26 potential use of physical force or deadly physical force.

27 D. An armed nuclear security guard is not subject to civil liability
28 for engaging in conduct that is otherwise justified pursuant to this chapter.