

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HOUSE BILL 2645

AN ACT

AMENDING SECTION 12-2101, ARIZONA REVISED STATUTES; REPEALING SECTION 13-925, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-925; AMENDING TITLE 13, CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4441; AMENDING SECTION 38-1102, ARIZONA REVISED STATUTES; RELATING TO FIREARMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 12-2101, Arizona Revised Statutes, is amended to  
3 read:  
4 12-2101. Judgments and orders that may be appealed  
5 A. An appeal may be taken to the court of appeals from the superior  
6 court in the FOLLOWING instances ~~specified in this section.:~~  
7 ~~B.~~ 1. From a final judgment entered in an action or special  
8 proceeding commenced in a superior court, or brought into a superior court  
9 from any other court, except in actions of forcible entry and detainer when  
10 the annual rental value of the property is less than three hundred dollars.  
11 ~~C.~~ 2. From any special order made after final judgment.  
12 ~~D.~~ 3. From any order affecting a substantial right made in any action  
13 when the order in effect determines the action and prevents judgment from  
14 which an appeal might be taken.  
15 ~~E.~~ 4. From a final order affecting a substantial right made in a  
16 special proceeding or ~~upon~~ ON a summary application in an action after  
17 judgment.  
18 ~~F.~~ 5. From an order:  
19 ~~I.~~ (a) Granting or refusing a new trial, or granting a motion in  
20 arrest of judgment.  
21 ~~J.~~ (b) Granting or dissolving an injunction, or refusing to grant or  
22 dissolve an injunction or appointing a receiver.  
23 ~~K.~~ (c) Dissolving or refusing to dissolve an attachment or  
24 garnishment.  
25 (d) GRANTING OR DENYING A PETITION TO RESTORE A PERSON'S RIGHT TO  
26 POSSESS A FIREARM PURSUANT TO SECTION 13-925.  
27 ~~G.~~ 6. From an interlocutory judgment ~~which~~ THAT determines the rights  
28 of the parties and directs an accounting or other proceeding to determine the  
29 amount of the recovery.  
30 ~~H.~~ 7. From an interlocutory judgment in any action for partition  
31 ~~which~~ THAT determines the rights and interests of the respective parties, and  
32 directs partition to be made.  
33 ~~I.~~ 8. From any interlocutory judgment, decree or order made or  
34 entered in actions to redeem real or personal property from a mortgage  
35 thereof or lien thereon, determining such right to redeem and directing an  
36 accounting.  
37 ~~J.~~ 9. From a judgment, decree or order entered in any formal  
38 proceedings under title 14.  
39 ~~K.~~ 10. From an order or judgment:  
40 ~~L.~~ (a) Adjudging a person insane or incompetent, or committing a  
41 person to the state hospital.  
42 ~~M.~~ (b) Revoking or refusing to revoke an order or judgment adjudging  
43 a person insane or incompetent, or restoring or refusing to restore to  
44 competency any person who has been declared insane or incompetent.

1           ~~1-~~ 11. From an order or judgment made and entered on habeas corpus  
2 proceedings:

3           ~~1-~~ (a) The petitioner may appeal from an order or judgment refusing  
4 his discharge.

5           ~~2-~~ (b) The officer having the custody of the petitioner, or the  
6 county attorney on behalf of the state, from an order or judgment discharging  
7 the petitioner whereupon the court may admit the petitioner to bail pending  
8 the appeal.

9           ~~M.~~ B. If any ~~of the orders~~ ORDER or ~~judgments~~ JUDGMENT referred to in  
10 this section ~~are~~ IS made or rendered by a judge ~~they are~~ IT IS appealable as  
11 if made by the court.

12           Sec. 2. Repeal

13           Section 13-925, Arizona Revised Statutes, is repealed.

14           Sec. 3. Title 13, chapter 9, Arizona Revised Statutes, is amended by  
15 adding a new section 13-925, to read:

16           13-925. Restoration of right to possess a firearm; mentally ill  
17 persons; petition

18           A. A PERSON MAY PETITION THE COURT THAT ENTERED AN ORDER, FINDING OR  
19 ADJUDICATION THAT RESULTED IN THE PERSON BEING A PROHIBITED POSSESSOR AS  
20 DEFINED IN SECTION 13-3101, SUBSECTION A, PARAGRAPH 7, SUBDIVISION (a) OR  
21 SUBJECT TO 18 UNITED STATES CODE SECTION 922(d)(4) OR (g)(4) TO RESTORE THE  
22 PERSON'S RIGHT TO POSSESS A FIREARM.

23           B. THE PERSON OR THE PERSON'S GUARDIAN OR ATTORNEY MAY FILE THE  
24 PETITION. THE PETITION SHALL BE SERVED ON THE ATTORNEY FOR THE STATE WHO  
25 APPEARED IN THE UNDERLYING CASE.

26           C. ON FILING OF THE PETITION THE COURT SHALL SET A HEARING. AT THE  
27 HEARING, THE PERSON SHALL PRESENT PSYCHOLOGICAL OR PSYCHIATRIC EVIDENCE IN  
28 SUPPORT OF THE PETITION. THE STATE SHALL PROVIDE THE COURT WITH THE PERSON'S  
29 CRIMINAL HISTORY RECORDS, IF ANY. THE COURT SHALL RECEIVE EVIDENCE ON AND  
30 CONSIDER THE FOLLOWING BEFORE GRANTING OR DENYING THE PETITION:

31           1. THE CIRCUMSTANCES THAT RESULTED IN THE PERSON BEING A PROHIBITED  
32 POSSESSOR AS DEFINED IN SECTION 13-3101, SUBSECTION A, PARAGRAPH 7,  
33 SUBDIVISION (a) OR SUBJECT TO 18 UNITED STATES CODE SECTION 922(d)(4) OR  
34 (g)(4).

35           2. THE PERSON'S RECORD, INCLUDING THE PERSON'S MENTAL HEALTH RECORD  
36 AND CRIMINAL HISTORY RECORD, IF ANY.

37           3. THE PERSON'S REPUTATION BASED ON CHARACTER WITNESS STATEMENTS,  
38 TESTIMONY OR OTHER CHARACTER EVIDENCE.

39           4. WHETHER THE PERSON IS A DANGER TO SELF OR OTHERS, IS PERSISTENTLY,  
40 ACUTELY OR GRAVELY DISABLED OR WHETHER THE CIRCUMSTANCES THAT LED TO THE  
41 ORIGINAL ORDER, ADJUDICATION OR FINDING REMAIN IN EFFECT.

42           5. ANY CHANGE IN THE PERSON'S CONDITION OR CIRCUMSTANCES THAT IS  
43 RELEVANT TO THE RELIEF SOUGHT.

44           6. ANY OTHER EVIDENCE DEEMED ADMISSIBLE BY THE COURT.

1 D. THE PETITIONER SHALL PROVE BY CLEAR AND CONVINCING EVIDENCE BOTH OF  
2 THE FOLLOWING:

3 1. THE PETITIONER IS NOT LIKELY TO ACT IN A MANNER THAT IS DANGEROUS  
4 TO PUBLIC SAFETY.

5 2. GRANTING THE REQUESTED RELIEF IS NOT CONTRARY TO THE PUBLIC  
6 INTEREST.

7 E. AT THE CONCLUSION OF THE HEARING, THE COURT SHALL ISSUE FINDINGS OF  
8 FACT AND CONCLUSIONS OF LAW.

9 F. IF THE COURT GRANTS THE PETITION FOR RELIEF, THE ORIGINAL ORDER,  
10 FINDING OR ADJUDICATION IS DEEMED NOT TO HAVE OCCURRED FOR THE PURPOSES OF  
11 APPLYING SECTION 13-3101, SUBSECTION A, PARAGRAPH 7, SUBDIVISION (a), PUBLIC  
12 LAW 110-180, SECTION 105(A) OR 18 UNITED STATES CODE SECTION 922(d)(4) OR  
13 (g)(4) TO THAT PERSON.

14 G. THE GRANTING OF A PETITION UNDER THIS SECTION ONLY RESTORES THE  
15 PERSON'S RIGHT TO POSSESS A FIREARM AND DOES NOT APPLY TO AND HAS NO AFFECT  
16 ON ANY OTHER RIGHTS OR BENEFITS THE PERSON RECEIVES.

17 H. THE COURT SHALL PROMPTLY NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF  
18 AN ORDER GRANTING A PETITION UNDER THIS SECTION. AS SOON THEREAFTER AS  
19 PRACTICABLE THE DEPARTMENT SHALL UPDATE, CORRECT, MODIFY OR REMOVE THE  
20 PERSON'S RECORD IN ANY DATABASE THAT THE DEPARTMENT MAINTAINS AND MAKES  
21 AVAILABLE TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM CONSISTENT  
22 WITH THE RULES PERTAINING TO THE DATABASE. WITHIN TEN BUSINESS DAYS AFTER  
23 RECEIVING THE NOTIFICATION FROM THE COURT, THE DEPARTMENT SHALL NOTIFY THE  
24 UNITED STATES ATTORNEY GENERAL THAT THE PERSON NO LONGER FALLS WITHIN THE  
25 PROVISIONS OF SECTION 13-3101, SUBSECTION A, PARAGRAPH 7, SUBDIVISION (a) OR  
26 18 UNITED STATES CODE SECTION 922(d)(4) OR (g)(4).

27 Sec. 4. Title 13, chapter 40, Arizona Revised Statutes, is amended by  
28 adding section 13-4441, to read:

29 13-4441. Right to be heard on a petition to restore the right  
30 to possess a firearm; notice

31 A. A VICTIM HAS THE RIGHT TO BE PRESENT AND BE HEARD AT ANY PROCEEDING  
32 IN WHICH THE DEFENDANT HAS FILED A PETITION PURSUANT TO SECTION 13-925 TO  
33 RESTORE THE DEFENDANT'S RIGHT TO POSSESS A FIREARM.

34 B. IF THE VICTIM HAS MADE A REQUEST FOR POSTCONVICTION NOTICE, THE  
35 ATTORNEY FOR THE STATE SHALL PROVIDE NOTICE TO THE VICTIM AT LEAST FIVE DAYS  
36 BEFORE THE HEARING.

37 Sec. 5. Section 38-1102, Arizona Revised Statutes, is amended to read:

38 38-1102. Carrying of firearms by peace officers; exceptions;  
39 definitions

40 A. Notwithstanding any other law and except as provided pursuant to  
41 subsection ~~B~~-C of this section, a peace officer shall not be prohibited from  
42 carrying a firearm if the peace officer is in compliance with the firearm  
43 requirements prescribed by the Arizona peace officer standards and training  
44 board.

1           B. NOTWITHSTANDING ANY OTHER LAW AND EXCEPT AS PROVIDED PURSUANT TO  
2 SUBSECTION C, PARAGRAPHS 1, 2, 4, 5, 6, 7 AND 8, A RETIRED PEACE OFFICER  
3 SHALL NOT BE PROHIBITED FROM CARRYING A FIREARM.

4           ~~B.~~ C. A peace officer OR RETIRED PEACE OFFICER may be prohibited from  
5 carrying a firearm as follows:

6           1. In a jail, correctional facility or juvenile detention facility.

7           2. By order of:

8           (a) The presiding judge or justice when attending any court that is  
9 established pursuant to the constitution of this state or title 12, except if  
10 the peace officer OR RETIRED PEACE OFFICER is providing court security or  
11 responding to an emergency.

12           (b) A justice court when attending the justice court, except if the  
13 peace officer OR RETIRED PEACE OFFICER is providing court security or  
14 responding to an emergency.

15           (c) A municipal court when attending the municipal court, except if  
16 the peace officer OR RETIRED PEACE OFFICER is providing court security or  
17 responding to an emergency.

18           3. When the peace officer is relieved of duty and is under a criminal  
19 or administrative investigation.

20           4. When in a secured police facility.

21           5. When consuming alcohol at a licensed liquor establishment operated  
22 by this state, a county, a city or town or any other political subdivision of  
23 this state, except if ~~the~~ A peace officer's employing agency authorizes the  
24 consumption of alcohol in the performance of the peace officer's duties.

25           6. In a location prohibited by federal law.

26           7. Pursuant to court order.

27           8. Pursuant to any state or federal law that makes the officer a  
28 prohibited possessor.

29           9. When in the judgment of the department head, or the department  
30 head's designee, the peace officer exhibits any impairment, including any  
31 physical or mental impairment that would cause concern for the well-being and  
32 safety of the officer, the officer's law enforcement agency, law enforcement  
33 agency employees or the community.

34           ~~C.~~ D. A law enforcement agency that employs a peace officer may  
35 establish rules that are consistent with this section. The law enforcement  
36 agency may determine the number, type, model, caliber and brand of firearm  
37 and the ammunition that is carried by its peace officers on or off duty.

38           ~~D.~~ E. This section does not create any civil liability for acting or  
39 failing to act.

40           ~~E.~~ F. For the purposes of this section:

41           1. "Firearm" has the same meaning prescribed in section 13-105.

42           2. "Peace officer" has the same meaning prescribed in section 1-215.

43           3. "Relieved of duty" means when a peace officer is no longer required  
44 to perform, either temporarily or permanently, the duties for which the  
45 officer was employed.

1           4. "RETIRED PEACE OFFICER" MEANS A PERSON WHO HAS HONORABLY SERVED AS  
2 A LAW ENFORCEMENT OFFICER IN THE UNITED STATES FOR AT LEAST TEN CONSECUTIVE  
3 YEARS AND WHO POSSESSES A PHOTOGRAPHIC IDENTIFICATION OR A LETTER FROM A LAW  
4 ENFORCEMENT AGENCY THAT STATES THE PERSON HAS SERVED FOR AT LEAST TEN  
5 CONSECUTIVE YEARS AS A LAW ENFORCEMENT OFFICER IN THE UNITED STATES.  
6           ~~4.~~ 5. "Secured police facility" means a building or structure that is  
7 used primarily by a public agency and that is not accessible to the general  
8 public except by controlled access.