

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

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2337

Introduced by
Representatives Barton, Borrelli, Livingston, Smith, Thorpe: Mitchell,
Petersen, Seel, Senators Crandell, Murphy

AN ACT

AMENDING SECTION 13-3102, 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 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 felony
11 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 a
19 prohibited weapon, except that if the violation involves dry ice, a person
20 commits misconduct involving weapons by knowingly possessing the dry ice with
21 the intent to cause injury to or death of another person or to cause damage
22 to the property of another person; or
23 4. Possessing a deadly weapon or prohibited weapon if such person is a
24 prohibited possessor; or
25 5. Selling or transferring a deadly weapon to a prohibited possessor;
26 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 assist,
33 promote or further the interests of a criminal street gang, a criminal
34 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 on
37 his person after a reasonable request by the operator of the establishment or
38 the sponsor of the event or the sponsor's agent to remove his weapon and
39 place it in the custody of the operator of the establishment or the sponsor
40 of the event for temporary and secure storage of the weapon pursuant to
41 section 13-3102.01; or
42 11. Unless specifically authorized by law, entering an election polling
43 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 to
5 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 order to
13 assist, promote or further the interests of a criminal street gang, a
14 criminal syndicate or a racketeering enterprise.
- 15 B. Subsection A, paragraph 2 of this section shall not apply to:
- 16 1. A person in his dwelling, on his business premises or on real
17 property owned or leased by that person or that person's parent, grandparent
18 or legal guardian.
- 19 2. A member of the sheriff's volunteer posse or reserve organization
20 who has received and passed firearms training that is approved by the Arizona
21 peace officer standards and training board and who is authorized by the
22 sheriff to carry a concealed weapon pursuant to section 11-441.
- 23 3. A firearm that is carried in:
- 24 (a) A manner where any portion of the firearm or holster in which the
25 firearm is carried is visible.
- 26 (b) A holster that is wholly or partially visible.
- 27 (c) A scabbard or case designed for carrying weapons that is wholly or
28 partially visible.
- 29 (d) Luggage.
- 30 (e) A case, holster, scabbard, pack or luggage that is carried within
31 a means of transportation or within a storage compartment, map pocket, trunk
32 or glove compartment of a means of transportation.
- 33 C. Subsection A, paragraphs 2, 3, 7, 10, 11, 12 and 13 of this section
34 shall not apply to:
- 35 1. A peace officer or any person summoned by any peace officer to
36 assist and while actually assisting in the performance of official duties; or
- 37 2. A member of the military forces of the United States or of any
38 state of the United States in the performance of official duties; or
- 39 3. A warden, deputy warden, community correctional officer, detention
40 officer, special investigator or correctional officer of the state department
41 of corrections or the department of juvenile corrections **IN THE PERFORMANCE**
42 **OF OFFICIAL DUTIES**; or

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

3 D. Subsection A, paragraphs 3 and 7 of this section shall not apply
4 to:

5 1. The possessing, transporting, selling or transferring of weapons by
6 a museum as a part of its collection or an educational institution for
7 educational purposes or by an authorized employee of such museum or
8 institution, if:

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

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

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

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

19 E. Subsection A, paragraph 3 of this section shall not apply to the
20 merchandise of an authorized manufacturer of or dealer in prohibited weapons,
21 when such material is intended to be manufactured, possessed, transported,
22 sold or transferred solely for or to a dealer, a regularly constituted or
23 appointed state, county or municipal police department or police officer, a
24 detention facility, the military service of this or another state or the
25 United States, a museum or educational institution or a person specifically
26 licensed or permitted pursuant to federal or state law.

27 F. Subsection A, paragraph 10 of this section shall not apply to
28 shooting ranges or shooting events, hunting areas or similar locations or
29 activities.

30 G. Subsection A, paragraph 3 of this section shall not apply to a
31 weapon described in section 13-3101, subsection A, paragraph 8, subdivision
32 (a), item (v), if such weapon is possessed for the purposes of preparing for,
33 conducting or participating in lawful exhibitions, demonstrations, contests
34 or athletic events involving the use of such weapon. Subsection A, paragraph
35 12 of this section shall not apply to a weapon if such weapon is possessed
36 for the purposes of preparing for, conducting or participating in hunter or
37 firearm safety courses.

38 H. Subsection A, paragraph 12 of this section shall not apply to the
39 possession of a:

40 1. Firearm that is not loaded and that is carried within a means of
41 transportation under the control of an adult provided that if the adult
42 leaves the means of transportation the firearm shall not be visible from the
43 outside of the means of transportation and the means of transportation shall
44 be locked.

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

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

8 I. Subsection A, paragraphs 2, 3, 7 and 13 of this section shall not
9 apply to commercial nuclear generating station armed nuclear security guards
10 during the performance of official duties or during any security training
11 exercises sponsored by the commercial nuclear generating station or local,
12 state or federal authorities.

13 J. The operator of the establishment or the sponsor of the event or
14 the employee of the operator or sponsor or the agent of the sponsor,
15 including a public entity or public employee, is not liable for acts or
16 omissions pursuant to subsection A, paragraph 10 of this section unless the
17 operator, sponsor, employee or agent intended to cause injury or was grossly
18 negligent.

19 K. If a law enforcement officer contacts a person who is in possession
20 of a firearm, the law enforcement officer may take temporary custody of the
21 firearm for the duration of that contact.

22 L. Misconduct involving weapons under subsection A, paragraph 15 of
23 this section is a class 2 felony. Misconduct involving weapons under
24 subsection A, paragraph 9, 14 or 16 of this section is a class 3 felony.
25 Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13 of
26 this section is a class 4 felony. Misconduct involving weapons under
27 subsection A, paragraph 12 of this section is a class 1 misdemeanor unless
28 the violation occurs in connection with conduct that violates section
29 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section
30 13-3409 or section 13-3411, in which case the offense is a class 6 felony.
31 Misconduct involving weapons under subsection A, paragraph 1, subdivision (a)
32 of this section or subsection A, paragraph 5, 6 or 7 of this section is a
33 class 6 felony. Misconduct involving weapons under subsection A, paragraph
34 1, subdivision (b) of this section or subsection A, paragraph 10 or 11 of
35 this section is a class 1 misdemeanor. Misconduct involving weapons under
36 subsection A, paragraph 2 of this section is a class 3 misdemeanor.

37 M. For the purposes of this section:

38 1. "Contacted by a law enforcement officer" means ANY OF THE
39 FOLLOWING:

- 40 (a) A lawful traffic STOP.
- 41 (b) ~~or~~ A LAWFUL criminal investigation. ~~;~~
- 42 (c) A LAWFUL arrest. ~~or~~
- 43 (d) A LAWFUL detention. ~~or~~ ~~and~~

1 (e) A **LAWFUL** investigatory stop by a law enforcement officer that is
2 based on ~~reasonable suspicion~~ **PROBABLE CAUSE** that an offense has been or is
3 about to be committed.

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

7 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 4. "School" means a public or nonpublic kindergarten program, common
12 school or high school.

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