

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

HOUSE BILL 2515

AN ACT

AMENDING TITLE 13, CHAPTER 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1425; AMENDING SECTION 13-3601, ARIZONA REVISED STATUTES; RELATING TO SEXUAL OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 14, Arizona Revised Statutes, is amended
3 by adding section 13-1425, to read:

4 13-1425. Unlawful distribution of images: state of nudity:
5 classification: definitions

6 A. IT IS UNLAWFUL TO INTENTIONALLY DISCLOSE, DISPLAY, DISTRIBUTE,
7 PUBLISH, ADVERTISE OR OFFER A PHOTOGRAPH, VIDEOTAPE, FILM OR DIGITAL
8 RECORDING OF ANOTHER PERSON IN A STATE OF NUDITY OR ENGAGED IN SPECIFIC
9 SEXUAL ACTIVITIES IF THE PERSON KNOWS OR SHOULD HAVE KNOWN THAT THE DEPICTED
10 PERSON HAS NOT CONSENTED TO THE DISCLOSURE.

11 B. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

12 1. LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, REPORTING UNLAWFUL
13 ACTIVITY, OR WHEN PERMITTED OR REQUIRED BY LAW OR RULE IN LEGAL PROCEEDINGS.

14 2. LAWFUL AND COMMON PRACTICES OF MEDICAL TREATMENT.

15 3. IMAGES INVOLVING VOLUNTARY EXPOSURE IN A PUBLIC OR COMMERCIAL
16 SETTING.

17 4. AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 UNITED STATES
18 CODE SECTION 230(f)(2), OR AN INFORMATION SERVICE, AS DEFINED IN 47 UNITED
19 STATES CODE SECTION 153, WITH REGARD TO CONTENT PROVIDED BY ANOTHER PERSON.

20 C. A VIOLATION OF THIS SECTION IS A CLASS 5 FELONY, EXCEPT THAT A
21 VIOLATION OF THIS SECTION IS A CLASS 4 FELONY IF THE DEPICTED PERSON IS
22 RECOGNIZABLE.

23 D. FOR THE PURPOSES OF THIS SECTION, "STATE OF NUDITY" AND "SPECIFIC
24 SEXUAL ACTIVITIES" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 11-811.

25 Sec. 2. Section 13-3601, Arizona Revised Statutes, is amended to read:

26 13-3601. Domestic violence: definition: classification:
27 sentencing option: arrest and procedure for
28 violation: weapon seizure

29 A. "Domestic violence" means any act that is a dangerous crime against
30 children as defined in section 13-705 or an offense prescribed in section
31 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204,
32 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504,
33 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6,
34 section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection
35 A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019,
36 13-3601.02 or 13-3623, if any of the following applies:

37 1. The relationship between the victim and the defendant is one of
38 marriage or former marriage or of persons residing or having resided in the
39 same household.

40 2. The victim and the defendant have a child in common.

41 3. The victim or the defendant is pregnant by the other party.

42 4. The victim is related to the defendant or the defendant's spouse by
43 blood or court order as a parent, grandparent, child, grandchild, brother or
44 sister or by marriage as a parent-in-law, grandparent-in-law, stepparent,

1 step-grandparent, stepchild, step-grandchild, brother-in-law or
2 sister-in-law.

3 5. The victim is a child who resides or has resided in the same
4 household as the defendant and is related by blood to a former spouse of the
5 defendant or to a person who resides or who has resided in the same household
6 as the defendant.

7 6. The relationship between the victim and the defendant is currently
8 or was previously a romantic or sexual relationship. The following factors
9 may be considered in determining whether the relationship between the victim
10 and the defendant is currently or was previously a romantic or sexual
11 relationship:

12 (a) The type of relationship.

13 (b) The length of the relationship.

14 (c) The frequency of the interaction between the victim and the
15 defendant.

16 (d) If the relationship has terminated, the length of time since the
17 termination.

18 B. A peace officer, with or without a warrant, may arrest a person if
19 the officer has probable cause to believe that domestic violence has been
20 committed and the officer has probable cause to believe that the person to be
21 arrested has committed the offense, whether the offense is a felony or a
22 misdemeanor and whether the offense was committed within or without the
23 presence of the peace officer. In cases of domestic violence involving the
24 infliction of physical injury or involving the discharge, use or threatening
25 exhibition of a deadly weapon or dangerous instrument, the peace officer
26 shall arrest a person who is at least fifteen years of age, with or without a
27 warrant, if the officer has probable cause to believe that the offense has
28 been committed and the officer has probable cause to believe that the person
29 to be arrested has committed the offense, whether the offense was committed
30 within or without the presence of the peace officer, unless the officer has
31 reasonable grounds to believe that the circumstances at the time are such
32 that the victim will be protected from further injury. Failure to make an
33 arrest does not give rise to civil liability except pursuant to section
34 12-820.02. In order to arrest both parties, the peace officer shall have
35 probable cause to believe that both parties independently have committed an
36 act of domestic violence. An act of self-defense that is justified under
37 chapter 4 of this title is not deemed to be an act of domestic violence. The
38 release procedures available under section 13-3883, subsection A, paragraph 4
39 and section 13-3903 are not applicable to arrests made pursuant to this
40 subsection.

41 C. A peace officer may question the persons who are present to
42 determine if a firearm is present on the premises. On learning or observing
43 that a firearm is present on the premises, the peace officer may temporarily
44 seize the firearm if the firearm is in plain view or was found pursuant to a
45 consent to search and if the officer reasonably believes that the firearm

1 would expose the victim or another person in the household to a risk of
2 serious bodily injury or death. A firearm that is owned or possessed by the
3 victim shall not be seized unless there is probable cause to believe that
4 both parties independently have committed an act of domestic violence.

5 D. If a firearm is seized pursuant to subsection C of this section,
6 the peace officer shall give the owner or possessor of the firearm a receipt
7 for each seized firearm. The receipt shall indicate the identification or
8 serial number or other identifying characteristic of each seized firearm.
9 Each seized firearm shall be held for at least seventy-two hours by the law
10 enforcement agency that seized the firearm.

11 E. If a firearm is seized pursuant to subsection C of this section,
12 the victim shall be notified by a peace officer before the firearm is
13 released from temporary custody.

14 F. If there is reasonable cause to believe that returning a firearm to
15 the owner or possessor may endanger the victim, the person who reported the
16 assault or threat or another person in the household, the prosecutor shall
17 file a notice of intent to retain the firearm in the appropriate superior,
18 justice or municipal court. The prosecutor shall serve notice on the owner
19 or possessor of the firearm by certified mail. The notice shall state that
20 the firearm will be retained for not more than six months following the date
21 of seizure. On receipt of the notice, the owner or possessor may request a
22 hearing for the return of the firearm, to dispute the grounds for seizure or
23 to request an earlier return date. The court shall hold the hearing within
24 ten days after receiving the owner's or possessor's request for a hearing.
25 At the hearing, unless the court determines that the return of the firearm
26 may endanger the victim, the person who reported the assault or threat or
27 another person in the household, the court shall order the return of the
28 firearm to the owner or possessor.

29 G. A peace officer is not liable for any act or omission in the good
30 faith exercise of the officer's duties under subsections C, D, E and F of
31 this section.

32 H. Each indictment, information, complaint, summons or warrant that is
33 issued and that involves domestic violence shall state that the offense
34 involved domestic violence and shall be designated by the letters DV. A
35 domestic violence charge shall not be dismissed or a domestic violence
36 conviction shall not be set aside for failure to comply with this subsection.

37 I. A person who is arrested pursuant to subsection B of this section
38 may be released from custody in accordance with the Arizona rules of criminal
39 procedure or any other applicable statute. Any order for release, with or
40 without an appearance bond, shall include pretrial release conditions that
41 are necessary to provide for the protection of the alleged victim and other
42 specifically designated persons and may provide for additional conditions
43 that the court deems appropriate, including participation in any counseling
44 programs available to the defendant.

1 J. When a peace officer responds to a call alleging that domestic
2 violence has been or may be committed, the officer shall inform in writing
3 any alleged or potential victim of the procedures and resources available for
4 the protection of the victim including:
5 1. An order of protection pursuant to section 13-3602, an injunction
6 pursuant to section 25-315 and an injunction against harassment pursuant to
7 section 12-1809.
8 2. The emergency telephone number for the local police agency.
9 3. Telephone numbers for emergency services in the local community.
10 4. Websites for local resources related to domestic violence.
11 K. A peace officer is not civilly liable for noncompliance with
12 subsection J of this section.
13 L. If a person is convicted of an offense involving domestic violence
14 and the victim was pregnant at the time of the commission of the offense, at
15 the time of sentencing the court shall take into consideration the fact that
16 the victim was pregnant and may increase the sentence.
17 M. An offense that is included in domestic violence carries the
18 classification prescribed in the section of this title in which the offense
19 is classified. If the defendant committed a felony offense listed in
20 subsection A of this section against a pregnant victim and knew that the
21 victim was pregnant or if the defendant committed a felony offense causing
22 physical injury to a pregnant victim and knew that the victim was pregnant,
23 the maximum sentence otherwise authorized for that violation shall be
24 increased by up to two years.
25 N. When a peace officer responds to a call alleging that domestic
26 violence has been or may be committed, the officer shall determine if a minor
27 is present. If a minor is present, the peace officer shall conduct a child
28 welfare check to determine if the child is safe and if the child might be a
29 victim of domestic violence or child abuse.