

REFERENCE TITLE: health care workers; assault; prevention

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

HB 2538

Introduced by

Representatives Shah: Allen J, Biasiucci, Blackman, Bolick, Campbell,
Cobb, Espinoza, Finchem, Grantham, Jermaine, Lawrence, Lieberman, Longdon,
Osborne, Shope, Sierra, Teller, Thorpe, Toma, Udall

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)

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

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

4 13-1204. Aggravated assault; classification; definitions

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

8 1. If the person causes serious physical injury to another.

9 2. If the person uses a deadly weapon or dangerous instrument.

10 3. If the person commits the assault by any means of force that
11 causes temporary but substantial disfigurement, temporary but substantial
12 loss or impairment of any body organ or part or a fracture of any body
13 part.

14 4. If the person commits the assault while the victim is bound or
15 otherwise physically restrained or while the victim's capacity to resist
16 is substantially impaired.

17 5. If the person commits the assault after entering the private
18 home of another with the intent to commit the assault.

19 6. If the person is eighteen years of age or older and commits the
20 assault on a minor under fifteen years of age.

21 7. If the person commits assault as prescribed by section 13-1203,
22 subsection A, paragraph 1 or 3 and the person is in violation of an order
23 of protection issued against the person pursuant to section 13-3602 or
24 13-3624.

25 8. If the person commits the assault knowing or having reason to
26 know that the victim is any of the following:

27 (a) A peace officer or a person summoned and directed by the
28 officer.

29 (b) A constable or a person summoned and directed by the constable
30 while engaged in the execution of any official duties or if the assault
31 results from the execution of the constable's official duties.

32 (c) A firefighter, fire investigator, fire inspector, emergency
33 medical technician or paramedic engaged in the execution of any official
34 duties or a person summoned and directed by such individual while engaged
35 in the execution of any official duties or if the assault results from the
36 execution of the official duties of the firefighter, fire investigator,
37 fire inspector, emergency medical technician or paramedic.

38 (d) A teacher or other person employed by any school and the
39 teacher or other employee is on the grounds of a school or grounds
40 adjacent to the school or is in any part of a building or vehicle used for
41 school purposes, any teacher or school nurse visiting a private home in
42 the course of the teacher's or nurse's professional duties or any teacher
43 engaged in any authorized and organized classroom activity held on other
44 than school grounds.

1 (e) A HEALTH CARE WORKER WHILE ENGAGED IN THE HEALTH CARE WORKER'S
2 WORK DUTIES OR A health care practitioner who is certified or licensed
3 pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and
4 directed by the licensed health care practitioner while engaged in the
5 person's professional duties. This subdivision does not apply if the
6 person who commits the assault is seriously mentally ill, as defined in
7 section 36-550, or is afflicted with alzheimer's disease or related
8 dementia.

9 (f) A prosecutor while engaged in the execution of any official
10 duties or if the assault results from the execution of the prosecutor's
11 official duties.

12 (g) A code enforcement officer as defined in section 39-123 while
13 engaged in the execution of any official duties or if the assault results
14 from the execution of the code enforcement officer's official duties.

15 (h) A state or municipal park ranger while engaged in the execution
16 of any official duties or if the assault results from the execution of the
17 park ranger's official duties.

18 (i) A public defender while engaged in the execution of any
19 official duties or if the assault results from the execution of the public
20 defender's official duties.

21 (j) A judicial officer while engaged in the execution of any
22 official duties or if the assault results from the execution of the
23 judicial officer's official duties.

24 9. If the person knowingly takes or attempts to exercise control
25 over any of the following:

26 (a) A peace officer's or other officer's firearm and the person
27 knows or has reason to know that the victim is a peace officer or other
28 officer employed by one of the agencies listed in paragraph 10,
29 subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection.

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

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

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

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

- 1 (i) The state department of corrections.
- 2 (ii) The department of juvenile corrections.
- 3 (iii) A law enforcement agency.
- 4 (iv) A county or city jail or an adult or juvenile detention
- 5 facility of a city or county.
- 6 (v) Any other entity that is contracting with the state department
- 7 of corrections, the department of juvenile corrections, a law enforcement
- 8 agency, another state, any private correctional facility, a county, a city
- 9 or the federal bureau of prisons or other federal agency that has
- 10 responsibility for sentenced or unsentenced prisoners.
- 11 (b) Commits an assault knowing or having reason to know that the
- 12 victim is acting in an official capacity as an employee of any of the
- 13 entities listed in subdivision (a) of this paragraph.
- 14 11. If the person uses a simulated deadly weapon.
- 15 B. A person commits aggravated assault if the person commits
- 16 assault by either intentionally, knowingly or recklessly causing any
- 17 physical injury to another person, intentionally placing another person in
- 18 reasonable apprehension of imminent physical injury or knowingly touching
- 19 another person with the intent to injure the person, and both of the
- 20 following occur:
 - 21 1. The person intentionally or knowingly impedes the normal
 - 22 breathing or circulation of blood of another person by applying pressure
 - 23 to the throat or neck or by obstructing the nose and mouth either manually
 - 24 or through the use of an instrument.
 - 25 2. Any of the circumstances exists that are set forth in section
 - 26 13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.
- 27 C. A person who is convicted of intentionally or knowingly
- 28 committing aggravated assault on a peace officer pursuant to subsection A,
- 29 paragraph 1 or 2 of this section shall be sentenced to imprisonment for
- 30 not less than the presumptive sentence authorized under chapter 7 of this
- 31 title and is not eligible for suspension of sentence, commutation or
- 32 release on any basis until the sentence imposed is served.
- 33 D. It is not a defense to a prosecution for assaulting a peace
- 34 officer or a mitigating circumstance that the peace officer was not on
- 35 duty or engaged in the execution of any official duties.
- 36 E. Except pursuant to subsections F and G of this section,
- 37 aggravated assault pursuant to subsection A, paragraph 1 or 2, paragraph
- 38 9, subdivision (a) or paragraph 11 of this section is a class 3 felony
- 39 except if the aggravated assault is a violation of subsection A, paragraph
- 40 1 or 2 of this section and the victim is under fifteen years of age it is
- 41 a class 2 felony punishable pursuant to section 13-705. Aggravated assault
- 42 pursuant to subsection A, paragraph 3 or subsection B of this section is a
- 43 class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9,
- 44 subdivision (b) or paragraph 10 of this section is a class 5 felony.
- 45 Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or

1 paragraph 9, subdivision (c) of this section is a class 6 felony EXCEPT
2 THAT AGGRAVATED ASSAULT PURSUANT TO SUBSECTION A, PARAGRAPH 8, SUBDIVISION
3 (c) OR (e) OF THIS SECTION IS A CLASS 5 FELONY IF THE ASSAULT INVOLVES
4 PHYSICAL INJURY.

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

13 G. Aggravated assault pursuant to:

14 1. Subsection A, paragraph 1 or 2 of this section is a class 2
15 felony if committed on a prosecutor.

16 2. Subsection A, paragraph 3 of this section is a class 3 felony if
17 committed on a prosecutor.

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

20 H. For the purposes of this section:

21 1. "HEALTH CARE WORKER" MEANS:

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

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

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

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

32 ~~1.~~ 2. "Judicial officer" means a justice of the supreme court,
33 judge, justice of the peace or magistrate or a commissioner or hearing
34 officer of a state, county or municipal court.

35 ~~2.~~ 3. "Prosecutor" means a county attorney, a municipal prosecutor
36 or the attorney general and includes an assistant or deputy county
37 attorney, municipal prosecutor or attorney general.

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

40 36-420. Health care employers; workplace violence prevention
41 plan; investigation; reporting; non-retaliation;
42 definitions

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

- 1 1. INCLUDES COMPONENTS THAT ARE SPECIFICALLY TAILORED TO THE
2 CONDITIONS AND HAZARDS OF THE HEALTH CARE EMPLOYER'S SITES AND
3 PATIENT-SPECIFIC RISK FACTORS.
- 4 2. IDENTIFIES THE INDIVIDUAL WHO IS RESPONSIBLE FOR IMPLEMENTING
5 AND OVERSEEING THE PLAN.
- 6 3. REQUIRES THE CONSPICUOUS POSTING OF SIGNS IN PUBLIC AREAS
7 THROUGHOUT THE HEALTH CARE EMPLOYER'S SITES, INCLUDING ALL EMERGENCY
8 FACILITIES, THAT ARE AT LEAST EIGHTEEN INCHES BY EIGHTEEN INCHES IN SIZE
9 AND THAT PROVIDE NOTICE THAT ASSAULT ON A HEALTH CARE WORKER MAY BE
10 PROSECUTED AS A FELONY.
- 11 4. INCLUDES REPORTING, INCIDENT RESPONSE AND POSTINCIDENT
12 INVESTIGATION PROCEDURES, INCLUDING PROCEDURES:
 - 13 (a) FOR HEALTH CARE WORKERS TO REPORT WORKPLACE VIOLENCE RISKS,
14 HAZARDS AND INCIDENTS.
 - 15 (b) FOR HEALTH CARE EMPLOYERS TO RESPOND TO REPORTS OF WORKPLACE
16 VIOLENCE.
 - 17 (c) FOR HEALTH CARE EMPLOYERS TO PERFORM A POSTINCIDENT
18 INVESTIGATION AND DEBRIEFING OF ALL REPORTS OF WORKPLACE VIOLENCE WITH THE
19 PARTICIPATION OF HEALTH CARE WORKERS.
- 20 5. INCLUDES PROCEDURES FOR EMERGENCY RESPONSE AND INCIDENTS
21 INVOLVING A FIREARM OR A DANGEROUS WEAPON.
- 22 6. REQUIRES HEALTH CARE EMPLOYEES TO PROVIDE INFORMATION TO HEALTH
23 CARE WORKERS ABOUT THE WORKER'S ABILITY TO REPORT ANY ASSAULT TO LAW
24 ENFORCEMENT AND, ON REQUEST, TO ASSIST THE WORKER IN REPORTING THE
25 ASSAULT.
- 26 B. EACH HEALTH CARE EMPLOYER SHALL MAKE ITS WORKPLACE VIOLENCE
27 PREVENTION PLAN AVAILABLE AT ALL TIMES TO ALL HEALTH CARE WORKERS AND
28 CONTRACTORS.
- 29 C. AS SOON AS PRACTICABLE AFTER A WORKPLACE VIOLENCE INCIDENT THAT
30 A HEALTH CARE EMPLOYER HAS KNOWLEDGE OF, THE EMPLOYER SHALL INVESTIGATE
31 THE INCIDENT AND SHALL DO ALL OF THE FOLLOWING:
 - 32 1. REVIEW THE CIRCUMSTANCES OF THE INCIDENT.
 - 33 2. SOLICIT INPUT FROM INVOLVED HEALTH CARE WORKERS AND SUPERVISORS
34 ABOUT THE CAUSE OF THE INCIDENT AND WHETHER FURTHER CORRECTIVE MEASURES
35 COULD HAVE PREVENTED THE INCIDENT.
 - 36 3. DOCUMENT THE FINDINGS, RECOMMENDATIONS AND CORRECTIVE MEASURES
37 TAKEN FOR EACH INVESTIGATION CONDUCTED.
 - 38 4. FILE AN ANNUAL REPORT WITH THE DEPARTMENT OF HEALTH SERVICES
39 DOCUMENTING THE NUMBER OF INCIDENTS EACH YEAR.
- 40 D. EACH HEALTH CARE EMPLOYER SHALL PROVIDE TRAINING AND EDUCATION
41 TO ITS HEALTH CARE WORKERS WHO MAY BE EXPOSED TO WORKPLACE VIOLENCE
42 HAZARDS AND RISKS.
- 43 E. EACH HEALTH CARE EMPLOYER SHALL MAINTAIN:

1 1. RECORDS THAT RELATE TO EACH OF THE EMPLOYER'S WORKPLACE VIOLENCE
2 PREVENTION PLANS, INCLUDING IDENTIFYING, EVALUATING AND CORRECTING HAZARDS
3 AND RISKS AND TRAINING PROCEDURES.

4 2. A VIOLENT INCIDENT LOG FOR RECORDING ALL WORKPLACE VIOLENCE
5 INCIDENTS AND RECORDS OF ALL INCIDENT INVESTIGATIONS. THE LOG SHALL
6 INCLUDE THE DATE, TIME AND LOCATION OF THE INCIDENT, THE NAMES OF PERSONS
7 INVOLVED IN THE INCIDENT, A DESCRIPTION OF THE INCIDENT AND THE NATURE AND
8 EXTENT OF INJURIES TO HEALTH CARE WORKERS.

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

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

16 1. REPORTING TO OR SEEKING ASSISTANCE OR INTERVENTION FROM THE
17 EMPLOYER, LAW ENFORCEMENT, LOCAL EMERGENCY SERVICES OR A GOVERNMENT AGENCY
18 OR PARTICIPATING IN AN INCIDENT INVESTIGATION.

19 2. ACTING IN SELF DEFENSE OR DEFENSE OF OTHERS, IN RESPONSE TO A
20 WORKPLACE VIOLENCE INCIDENT, THREAT OR CONCERN.

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

23 1. REPORTING TO OR SEEKING ASSISTANCE OR INTERVENTION FROM THE
24 EMPLOYER, LAW ENFORCEMENT, LOCAL EMERGENCY SERVICES OR A GOVERNMENT AGENCY
25 OR FOR EXERCISING ANY OTHER RIGHTS UNDER THIS SECTION.

26 2. ACTING IN SELF DEFENSE OR DEFENSE OF OTHERS IN RESPONSE TO A
27 WORKPLACE VIOLENCE INCIDENT, THREAT OR CONCERN.

28 I. FOR THE PURPOSES OF THIS SECTION:

29 1. "HEALTH CARE EMPLOYER" MEANS A HEALTH CARE INSTITUTION THAT IS
30 LICENSED PURSUANT TO THIS TITLE AND THAT HAS MORE THAN FIFTY EMPLOYEES.

31 2. "HEALTH CARE WORKER" MEANS AN EMPLOYEE OR CONTRACTOR OF A HEALTH
32 CARE EMPLOYER.