

REFERENCE TITLE: domestic violence; pregnant victim; sentencing

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2427

Introduced by
Representative Gress

AN ACT

AMENDING SECTIONS 13-1204 AND 13-3601, ARIZONA REVISED STATUTES; RELATING
TO DOMESTIC VIOLENCE OFFENSES.

(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, 14, 15, 17 or 25, or a person summoned
4 and 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 does not have the ability to form the
7 culpable mental state because of a mental disability or because the person
8 is seriously mentally ill, as defined in section 36-550.

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.

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

1 paragraph 1 or 2 of this section and the victim is under fifteen years of
2 age it is a class 2 felony punishable pursuant to section 13-705.
3 Aggravated assault pursuant to subsection A, paragraph 3 or subsection B
4 of this section is a class 4 felony. Aggravated assault pursuant to
5 subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section
6 is a class 5 felony. Aggravated assault pursuant to subsection A,
7 paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section
8 is a class 6 felony.

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

17 G. Aggravated assault pursuant to:

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

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

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

24 H. For the purposes of this section:

25 1. "Health care worker" means:

26 (a) A person who is employed by or contracted to work at a health
27 care institution that is licensed pursuant to title 36.

28 (b) A person who is employed or contracted to provide health care
29 or related services in a fieldwork setting, including:

30 (i) Home health care, home-based hospice and home-based social
31 work, unless the worker is employed or contracted by an individual who
32 privately employs, in the individual's residence, the worker to perform
33 covered services for the individual or a family member of the individual.

34 (ii) Any emergency services and transport, including the services
35 provided by firefighters and emergency responders.

36 2. "Judicial officer" means a justice of the supreme court, judge,
37 justice of the peace or magistrate or a commissioner or hearing officer of
38 a state, county or municipal court.

39 3. "Mental disability" means a disabling neurological condition, or
40 brain injury, or involuntary impairment as a result of a medication that
41 is administered by a health care provider or a medical procedure that is
42 performed at a health care treatment site.

43 4. "Prosecutor" means a county attorney, a municipal prosecutor or
44 the attorney general and includes an assistant or deputy county attorney,
45 municipal prosecutor or attorney general.

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

3 13-3601. Domestic violence; definition; classification;
4 sentencing option; arrest and procedure for
5 violation; weapon seizure

6 A. "Domestic violence" means any act that is a dangerous crime
7 against children as defined in section 13-705 or an offense prescribed in
8 section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203,
9 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503,
10 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1,
11 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section
12 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921,
13 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the
14 following applies:

15 1. The relationship between the victim and the defendant is one of
16 marriage or former marriage or of persons residing or having resided in
17 the same household.

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

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

20 4. The victim is related to the defendant or the defendant's spouse
21 by blood or court order as a parent, grandparent, child, grandchild,
22 brother or sister or by marriage as a parent-in-law, grandparent-in-law,
23 stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law
24 or sister-in-law.

25 5. The victim is a child who resides or has resided in the same
26 household as the defendant and is related by blood to a former spouse of
27 the defendant or to a person who resides or who has resided in the same
28 household as the defendant.

29 6. The relationship between the victim and the defendant is
30 currently or was previously a romantic or sexual relationship. The
31 following factors may be considered in determining whether the
32 relationship between the victim and the defendant is currently or was
33 previously a romantic or sexual relationship:

34 (a) The type of relationship.

35 (b) The length of the relationship.

36 (c) The frequency of the interaction between the victim and the
37 defendant.

38 (d) If the relationship has terminated, the length of time since
39 the termination.

40 B. A peace officer, with or without a warrant, may arrest a person
41 if the officer has probable cause to believe that domestic violence has
42 been committed and the officer has probable cause to believe that the
43 person to be arrested has committed the offense, whether the offense is a
44 felony or a misdemeanor and whether the offense was committed within or
45 without the presence of the peace officer. In cases of domestic violence

1 involving the infliction of physical injury or involving the discharge,
2 use or threatening exhibition of a deadly weapon or dangerous instrument,
3 the peace officer shall arrest a person who is at least fifteen years of
4 age, with or without a warrant, if the officer has probable cause to
5 believe that the offense has been committed and the officer has probable
6 cause to believe that the person to be arrested has committed the offense,
7 whether the offense was committed within or without the presence of the
8 peace officer, unless the officer has reasonable grounds to believe that
9 the circumstances at the time are such that the victim will be protected
10 from further injury. Failure to make an arrest does not give rise to
11 civil liability except pursuant to section 12-820.02. In order to arrest
12 both parties, the peace officer shall have probable cause to believe that
13 both parties independently have committed an act of domestic violence. An
14 act of self-defense that is justified under chapter 4 of this title is not
15 deemed to be an act of domestic violence. The release procedures
16 available under section 13-3883, subsection A, paragraph 4 and section
17 13-3903 are not applicable to arrests made pursuant to this subsection.

18 C. A peace officer may question the persons who are present to
19 determine if a firearm is present on the premises. On learning or
20 observing that a firearm is present on the premises, the peace officer may
21 temporarily seize the firearm if the firearm is in plain view or was found
22 pursuant to a consent to search and if the officer reasonably believes
23 that the firearm would expose the victim or another person in the
24 household to a risk of serious bodily injury or death. A firearm that is
25 owned or possessed by the victim shall not be seized unless there is
26 probable cause to believe that both parties independently have committed
27 an act of domestic violence.

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

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

37 F. If there is reasonable cause to believe that returning a firearm
38 to the owner or possessor may endanger the victim, the person who reported
39 the assault or threat or another person in the household, the prosecutor
40 shall file a notice of intent to retain the firearm in the appropriate
41 superior, justice or municipal court. The prosecutor shall serve notice
42 on the owner or possessor of the firearm by certified mail. The notice
43 shall state that the firearm will be retained for not more than six months
44 following the date of seizure. On receipt of the notice, the owner or
45 possessor may request a hearing for the return of the firearm, to dispute

1 the grounds for seizure or to request an earlier return date. The court
2 shall hold the hearing within ten days after receiving the owner's or
3 possessor's request for a hearing. At the hearing, unless the court
4 determines that the return of the firearm may endanger the victim, the
5 person who reported the assault or threat or another person in the
6 household, the court shall order the return of the firearm to the owner or
7 possessor.

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

11 H. Each indictment, information, complaint, summons or warrant that
12 is issued and that involves domestic violence shall state that the offense
13 involved domestic violence and shall be designated by the letters DV. A
14 domestic violence charge shall not be dismissed or a domestic violence
15 conviction shall not be set aside for failure to comply with this
16 subsection.

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

25 J. When a peace officer responds to a call alleging that domestic
26 violence has been or may be committed, the officer shall inform in writing
27 any alleged or potential victim of the procedures and resources available
28 for the protection of the victim including:

29 1. An order of protection pursuant to section 13-3602, an
30 injunction pursuant to section 25-315 and an injunction against harassment
31 pursuant to section 12-1809.

32 2. The emergency telephone number for the local police agency.

33 3. Telephone numbers for emergency services in the local community.

34 4. Websites for local resources related to domestic violence.

35 K. A peace officer is not civilly liable for noncompliance with
36 subsection J of this section.

37 L. If a person is convicted of an offense involving domestic
38 violence and the victim was pregnant at the time of the commission of the
39 offense, at the time of sentencing the court shall take into consideration
40 the fact that the victim was pregnant and ~~may~~ SHALL increase the sentence.

41 M. An offense that is included in domestic violence carries the
42 classification prescribed in the section of this title in which the
43 offense is classified. If the defendant committed a felony offense listed
44 in subsection A of this section against a pregnant victim and knew that
45 the victim was pregnant or if the defendant committed a felony offense

1 causing physical injury to a pregnant victim and knew that the victim was
2 pregnant, the maximum sentence otherwise authorized for that violation
3 shall be increased by up to ~~two~~ FIVE years.

4 N. When a peace officer responds to a call alleging that domestic
5 violence has been or may be committed, the officer shall determine if a
6 minor is present. If a minor is present, the peace officer shall conduct
7 a child welfare check to determine if the child is safe and if the child
8 might be a victim of domestic violence or child abuse.