

REFERENCE TITLE: **disorderly conduct**

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2426

Introduced by
Representatives Townsend: Campbell

AN ACT

**AMENDING SECTIONS 13-2904, 13-3105, 13-3601 AND 20-448, ARIZONA REVISED
STATUTES; RELATING TO DISORDERLY CONDUCT.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-2904, Arizona Revised Statutes, is amended to
3 read:

4 13-2904. Disorderly conduct; classification

5 A. A person commits disorderly conduct if, with intent to disturb the
6 peace or quiet of a neighborhood, family or person, or with knowledge of
7 doing so, such person:

8 1. Engages in fighting, violent or seriously disruptive behavior; or

9 2. Makes unreasonable noise; or

10 ~~3. Uses abusive or offensive language or gestures to any person~~
11 ~~present in a manner likely to provoke immediate physical retaliation by such~~
12 ~~person; or~~

13 ~~4.~~ 3. Makes any protracted commotion, utterance or display with the
14 intent to prevent the transaction of the business of a lawful meeting,
15 gathering or procession; or

16 ~~5.~~ 4. Refuses to obey a lawful order to disperse issued to maintain
17 public safety in dangerous proximity to a fire, a hazard or any other
18 emergency; or

19 ~~6.~~ 5. Recklessly handles, ~~displays or discharges~~ a deadly weapon or
20 dangerous instrument.

21 6. RECKLESSLY DISPLAYS A DEADLY WEAPON OR DANGEROUS INSTRUMENT.

22 7. RECKLESSLY DISCHARGES A DEADLY WEAPON OR DANGEROUS INSTRUMENT.

23 B. Disorderly conduct under subsection A, paragraph 5, 6 OR 7 is a
24 class 6 felony. Disorderly conduct under subsection A, paragraph 1, 2, 3,
25 OR 4 ~~or 5~~ is a class 1 misdemeanor.

26 Sec. 2. Section 13-3105, Arizona Revised Statutes, is amended to read:

27 13-3105. Forfeiture of weapons and explosives

28 A. On the conviction of any person for a violation of any felony in
29 this state in which a deadly weapon, dangerous instrument or explosive was
30 used, displayed or unlawfully possessed by the person, the court shall order
31 the article forfeited and sold within one year after its forfeiture to any
32 business that is authorized to receive and dispose of the article under
33 federal and state law and that shall sell the article to the public according
34 to federal and state law, unless the article is otherwise prohibited from
35 being sold under federal and state law, in which case it shall be destroyed
36 or otherwise properly disposed.

37 B. On the conviction of any person for a violation of section 13-2904,
38 subsection A, paragraph 5, 6 OR 7 or section 13-3102, subsection A, paragraph
39 1 or 8, the court may order the forfeiture of the deadly weapon or dangerous
40 instrument involved in the offense.

41 C. If at any time the court finds pursuant to rule 11 of the Arizona
42 rules of criminal procedure that a person who is charged with a violation of
43 this title is incompetent, the court shall order that any deadly weapon,
44 dangerous instrument or explosive used, displayed or unlawfully possessed by
45 the person during the commission of the alleged offense be forfeited and sold

1 within one year after its forfeiture to any business that is authorized to
2 receive and dispose of the article under federal and state law and that shall
3 sell the article to the public according to federal and state law, unless the
4 article is otherwise prohibited from being sold under federal and state law,
5 in which case it shall be destroyed or otherwise properly disposed.

6 Sec. 3. Section 13-3601, Arizona Revised Statutes, is amended to read:
7 13-3601. Domestic violence; definition; classification;
8 sentencing option; arrest and procedure for
9 violation; weapon seizure

10 A. "Domestic violence" means any act that is a dangerous crime against
11 children as defined in section 13-705 or an offense prescribed in section
12 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204,
13 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504,
14 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, ~~3~~ or 5, 6
15 OR 7, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915,
16 subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923,
17 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

18 1. The relationship between the victim and the defendant is one of
19 marriage or former marriage or of persons residing or having resided in the
20 same household.

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

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

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

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

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

37 (a) The type of relationship.

38 (b) The length of the relationship.

39 (c) The frequency of the interaction between the victim and the
40 defendant.

41 (d) If the relationship has terminated, the length of time since the
42 termination.

43 B. A peace officer, with or without a warrant, may arrest a person if
44 the officer has probable cause to believe that domestic violence has been
45 committed and the officer has probable cause to believe that the person to be

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

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

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

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

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

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

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

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

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

29 1. An order of protection pursuant to section 13-3602, an injunction
30 pursuant to section 25-315 and an injunction against harassment pursuant to
31 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 violence
38 and the victim was pregnant at the time of the commission of the offense, at
39 the time of sentencing the court shall take into consideration the fact that
40 the victim was pregnant and may 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 offense
43 is classified. If the defendant committed a felony offense listed in
44 subsection A of this section against a pregnant victim and knew that the
45 victim was pregnant or if the defendant committed a felony offense causing

1 physical injury to a pregnant victim and knew that the victim was pregnant,
2 the maximum sentence otherwise authorized for that violation shall be
3 increased by up to two 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 minor
6 is present. If a minor is present, the peace officer shall conduct a child
7 welfare check to determine if the child is safe and if the child might be a
8 victim of domestic violence or child abuse.

9 Sec. 4. Section 20-448, Arizona Revised Statutes, is amended to read:

10 20-448. Unfair discrimination: definitions

11 A. A person shall not make or permit any unfair discrimination between
12 individuals of the same class and equal expectation of life in the rates
13 charged for any contract of life insurance or of life annuity or in the
14 dividends or other benefits payable or in any other of the terms and
15 conditions of the contract.

16 B. A person shall not make or permit any unfair discrimination
17 respecting hemophiliacs or between individuals of the same class and of
18 essentially the same hazard in the amount of premium, policy fees or rates
19 charged for any policy or contract of disability insurance or in the benefits
20 payable or in any of the terms or conditions of the contract, or in any other
21 manner whatever. The provisions of this subsection regarding hemophiliacs do
22 not apply to any policy or subscription contract ~~which~~ THAT provides only
23 benefits for specific diseases or for accidental injuries or ~~which~~ THAT
24 provides only indemnity for blood transfusion services or replacement of
25 whole blood products, fractions or derivatives.

26 C. As to kinds of insurance other than life and disability, a person
27 shall not make or permit any unfair discrimination in favor of particular
28 persons or between insureds or subjects of insurance having substantially
29 like insuring, risk and exposure factors, or expense elements, in the terms
30 or conditions of any insurance contract, or in the rate or amount of premium
31 charged.

32 D. An insurer shall not refuse to consider an application for life or
33 disability insurance on the basis of a genetic condition, developmental delay
34 or developmental disability.

35 E. The rejection of an application or the determining of rates, terms
36 or conditions of a life or disability insurance contract on the basis of a
37 genetic condition, developmental delay or developmental disability
38 constitutes unfair discrimination, unless the applicant's medical condition
39 and history and either claims experience or actuarial projections establish
40 that substantial differences in claims are likely to result from the genetic
41 condition, developmental delay or developmental disability.

42 F. In addition to the provisions in subsection E of this section, the
43 rejection of an application or the determination of rates, terms or
44 conditions of a disability insurance contract on the basis of a genetic

1 condition constitutes unfair discrimination in the absence of a diagnosis of
2 the condition related to information obtained as a result of a genetic test.

3 G. An insurer that offers life, disability, property or liability
4 insurance contracts shall not deny a claim incurred or deny, refuse, refuse
5 to renew, restrict, cancel, exclude or limit coverage or charge a different
6 rate for the same coverage solely on the basis that the insured or proposed
7 insured is or has been a victim of domestic violence or is an entity or
8 individual that provides counseling, shelter, protection or other services to
9 victims of domestic violence. If an insurer that offers life, disability,
10 property or liability insurance contracts denies a claim incurred or denies,
11 refuses, refuses to renew, restricts, cancels, excludes or limits coverage or
12 charges a different rate for the same coverage on the basis of a mental or
13 physical condition and the insured or the proposed insured is or has been a
14 victim of domestic violence, the insurer shall submit a written explanation
15 to the insured or proposed insured of the reasons for the insurer's actions,
16 in accordance with section 20-2110. The fact that an insured or proposed
17 insured is or has been the victim of domestic violence is not a mental or
18 physical condition. ~~Nothing contained in~~ This subsection is NOT intended to
19 provide any private right or cause of action to or on behalf of any applicant
20 or insured. It is the specific intent of this subsection to provide solely
21 an administrative remedy to the director for any violation of this section.
22 Nothing in this subsection prevents an insurer from refusing to issue a life
23 insurance policy insuring a person who has been the victim of domestic
24 violence if either of the following is true:

25 1. The family or household member who commits the act of domestic
26 violence is the applicant for or prospective owner of the policy or would be
27 the beneficiary of the policy and any of the following is true:

28 (a) The applicant or prospective beneficiary of the policy is known,
29 on the basis of police or court records, to have committed an act of domestic
30 violence.

31 (b) The insurer has knowledge of an arrest or conviction for a
32 domestic violence related offense by the family or household member.

33 (c) The insurance company has other reasonable grounds to believe, and
34 those grounds are corroborated, that the applicant or proposed beneficiary of
35 a policy is a family or household member committing acts of domestic
36 violence.

37 2. The applicant or prospective owner of the policy lacks an insurable
38 interest in the insured.

39 H. Nothing in subsection G of this section prevents an insurer that:

40 1. Offers life or disability insurance contracts from underwriting
41 coverage on the basis of an insured's or proposed insured's mental or
42 physical condition if the underwriting:

43 (a) Does not consider whether or not the mental or physical condition
44 was caused by an act of domestic violence.

1 (b) Is the same for an insured or proposed insured who is not the
2 victim of domestic violence as it is for an insured or proposed insured who
3 is the victim of domestic violence.

4 (c) Does not violate any other rule or law.

5 2. Offers property or liability insurance contracts from underwriting
6 coverage on the basis of the insured's claims history or characteristics of
7 the insured's property and using rating criteria consistent with section
8 20-384.

9 I. Any determination made pursuant to section 20-2537 by the external
10 independent review organization shall not be considered in connection with
11 the evaluation of whether any person subject to this article has complied
12 with this section.

13 J. A property or liability insurer may exclude coverage for losses
14 caused by an insured's intentional or fraudulent act. The exclusion shall
15 not deny an insured's otherwise covered property loss if the property loss is
16 caused by an act of domestic violence by another insured under the policy and
17 the insured who claims the property loss cooperates in any investigation
18 relating to the loss and did not cooperate in or contribute to the creation
19 of the property loss. The insurer may apply reasonable standards of proof
20 for claims filed under this subsection. The insurer may limit the payment to
21 the insured's insurable interest in the property minus any payment made to
22 any mortgagee or other party with a secured interest in the property. This
23 subsection does not require an insurer to pay any amount that is more than
24 the amount of the loss or property coverage limits. An insurer who pays a
25 claim under this subsection has the right of subrogation against any person
26 except the victim of the domestic violence.

27 K. All insurers shall adopt and adhere to written policies that are
28 consistent with chapter 11 of this title and that specify the procedures to
29 be followed by employees, contractors, producers, agents and brokers to
30 ensure the privacy of and to help protect the safety of a victim of domestic
31 violence when taking an application, investigating a claim, pursuing
32 subrogation or taking any other action relating to a policy or claim
33 involving a victim of domestic violence. Insurers shall distribute the
34 written policies to employees, contractors, producers, agents and brokers who
35 have access to personal or privileged information regarding domestic
36 violence.

37 L. For the purposes of this section:

38 1. "Developmental delay" means a delay of at least one and one-half
39 standard deviations from the norm.

40 2. "Developmental disability" has the same meaning prescribed in
41 section 36-551.

42 3. "Domestic violence" means any act that is a dangerous crime against
43 children as defined in section 13-705 or an offense defined in section
44 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or
45 13-1602, section 13-2810, section 13-2904, subsection A, paragraph 1, 2,

1 ~~3 or~~ 5, 6 OR 7, section 13-2916 or section 13-2921, 13-2921.01, 13-2923 or
2 13-3623, if any of the following applies:

3 (a) The relationship between the victim and the defendant is one of
4 marriage or former marriage or of persons residing or having resided in the
5 same household.

6 (b) The victim and the defendant have a child in common.

7 (c) The victim or the defendant is pregnant by the other party.

8 (d) The victim is related to the defendant or the defendant's spouse
9 by blood or court order as a parent, grandparent, child, grandchild, brother
10 or sister, or by marriage as a parent-in-law, grandparent-in-law, stepparent,
11 step-grandparent, stepchild, step-grandchild, brother-in-law or
12 sister-in-law.

13 (e) The victim is a child who resides or has resided in the same
14 household as the defendant and is related by blood to a former spouse of the
15 defendant or to a person who resides or has resided in the same household as
16 the defendant.

17 4. "Gene products" means gene fragments, nucleic acids or proteins
18 derived from deoxyribonucleic acids that would be a reflection of or indicate
19 DNA sequence information.

20 5. "Genetic condition" means a specific chromosomal or single-gene
21 genetic condition.

22 6. "Genetic test" means an analysis of an individual's DNA, gene
23 products or chromosomes that indicates a propensity for or susceptibility to
24 illness, disease, impairment or other disorders, whether physical or mental,
25 or that demonstrates genetic or chromosomal damage due to environmental
26 factors, or carrier status for a disease or disorder.