

## NEW STATUTES IN EFFECT AUGUST 2, 2012

### A.R.S. SECTION

### CHANGES TO STATUTE

8-412, 13-4401,  
& 13-4433

#### **VICTIM RIGHTS; OFFICERS**

A peace officer is now considered a victim even when the act making the officer a victim occurs in the scope of the officer's duties. For purposes of victim's rights, "criminal offense" is conduct creating probable cause to believe that a felony, misdemeanor, petty offense, or violation of local criminal ordinance has occurred.

8-412, 13-4401,  
& 13-4433

#### **VICTIM ADVOCATE CONFIDENTIALITY**

Expands the victim-advocate communications privilege by preventing victim advocates from disclosing communications with victims even when those communications were made in the presence of others.

9-499.07 D-R,  
11-251.15 D-N &  
11-459.D

#### **HOME DETENTION PROGRAMS**

County/municipal home detention prisoners are no longer required to be employed within the county. The court now has discretion to terminate a prisoner's participation and order an electronic monitoring fee.

11-361

#### **DIVERSION**

Prohibits county attorneys from diverting or deferring the prosecution of anyone previously convicted of a serious offense (§ 13- 706); an offense under title 13, chapter 14; a dangerous offense (§ 13-105); a dangerous crime against children (§ 13-705) or after three or more convictions of either drug possession (§ 13-2501) or paraphernalia (§14-3415).

12-123, 13-703,  
13-708 &13-710

#### **SENTENCING**

Provide concurrent superior court/justice of the peace jurisdiction over all misdemeanors; mitigated sentence for category 2, class 3 and 4 felonies to 2 and 1 years respectively and for category 2 class 2 aggravated to 23 years. RE: 2nd degree murder (13-710), replaces the phrase "use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another" with "a dangerous offense."

12-945 & 13-3105

#### **FORFEITED ARMS**

Requires the sale of forfeited firearms and explosives within one year.

12-990, 12-1000 &  
13-3423

#### **DRUG LAB REMEDIATION; INVESTIGATORS**

Owners of property where a clandestine drug lab is discovered who knowingly allow the posted notice of removal to be disturbed are subject to a civil penalty of up to \$2,000 for a first offense and criminal prosecution for a class 5 felony for a second or subsequent offense. It is a class 4 felony for those owners to knowingly allow a child or vulnerable adult to enter or occupy the property, and a class 5 felony to knowingly sell any items from the contaminated portion of the property or to lease or rent the property before remediation is complete.

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13-105, 13-703,  
& 13-704

#### **HISTORICAL PRIORS – OUT-OF-STATE FELONIES**

Expands the definition of historical prior felony conviction to include out-of-state felony convictions:

- 1) punishable as felonies in the jurisdiction in which they were committed, even if they would not have been felonies in Arizona, so long as those felonies were committed within 5 years of the present offense . The five-year period does not include time spent on absconder status while on probation, on escape status, or while incarcerated;
- 2) with no time limit on the look back period if the conviction involved the discharge, use, or threatening exhibition of a deadly weapon or the intentional/knowing infliction of death/serious physical injury except for weapons possession convictions that would not be felonies in Arizona, even when those convictions were felonies in another jurisdiction.

13-107 & 28-672

#### **STATUTE OF LIMITATIONS**

Creates statute of limitations for certain moving violations resulting in death or serious physical injury to “two years after actual discovery...of the offense or discovery...that should have occurred with the exercise of reasonable diligence.”

13-1402

#### **INDECENT EXPOSURE**

Makes indecent exposure a class 6 felony when the defendant has two or more prior convictions for indecent exposure, or one or more prior convictions for sexual assault (13-1406) and a class 3 felony when a person convicted of a felony indecent exposure has two or more historical prior felony convictions under 13-1402 or 13-1403 (public sexual indecency) involving exposure/indecency to a minor under 15 years of age.

13-1501

#### **FENCED COMMERCIAL YARD**

Changes the definition of “fenced commercial yard” from one “used primarily” for business to one “zoned” for business.

13-170, 13-751 &  
13-752

#### **SENTENCING**

1. Raises the maximum 2nd degree murder penalty from 22 to 25 years and if it is with a previous conviction of a class 2 or 3 felony with a deadly weapon from 25 to 29 years;
2. Restricts sentencing to either natural life or death for 1st degree murder for defendants at least 18 years old at the time of the offense;
3. Allows a sentence of life, natural life, or death in cases of felony murder, or where the defendant was under 18 years of age at the time of the offense; and,
4. Allows the state to present character, propensity, criminal record or other acts evidence demonstrating that the defendant does not deserve leniency, regardless of whether the defendant presents mitigation evidence.

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“Life” means not less than 25 years when victim was 15 or older, and not less than 35 years when victim is under 15 or an unborn child (considered the same as a minor less than 12 years of age).

13-1801,-1802

#### **SCRAP METAL**

Eliminates the word “scrap” to expand beyond the theft of “scrap metal” so as to include theft of any metal; sets the value at “the fair market value of the metal in the local area.”

13-1804

#### **EXTORTION**

Expands the definition of extortion to include obtaining property by means of a threat to “cause death or serious physical injury to anyone.”

13-2503

#### **ESCAPE**

Adds “escape in the second degree,” a class 5 felony if a person committed for treatment pursuant to title 36, chapter 37 escapes or attempts to escape from the Arizona State Hospital.

13-2508

#### **PASSIVE ARREST RESISTANCE**

Resisting Arrest the act of “engaging in passive resistance,” defined as “a nonviolent physical act or failure to act that is intended to impede, hinder or delay the effecting of an arrest” is a class 1 misdemeanor, while other types of resistance remain class 6 felonies.

13-2910

#### **RANCHING DOGS – REGULATION**

Prohibits any city, town, or county from adopting ordinances restricting any activity involving a dog when that activity is directly related to shepherding or herding livestock and necessary for the safety of a human, the dog, or livestock, or when the activity is permitted by Title 3.

13-2916 &  
13-2923

#### **ELECTRONIC; DIGITAL DEVICES; STALKING; THREATENING**

“Stalking” now includes using any electronic, digital or GPS device to surveil a specific person or the person's Internet or wireless activity continuously for 12 hours or more, or on two or more occasions over a period of time, however short, without authorization (some exceptions). Threatening or harassing now includes the use of any electronic communication (rather than only a telephone).

13-3101 & 13-3102

#### **WEAPONS MISCONDUCT**

Adds to the definition of misconduct involving weapons “trafficking in weapons or explosives for financial gain in order to assist, promote, or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise.”

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- 13-3401                    **BATH SALTS**  
New prohibited substances, those novelty powders often referred to as “bath salts”: Butylone, Fluoromethcathinone, Methoxymethcathinone, Methylenedioxy methcathinone, Methylenedioxypropylone, Methylmethcathinone, and Naphthylprovalerone. **Emergency Clause effective February 17, 2012**
- 13-3622                    **HOOKAH**  
Creates a petty offense for selling or providing an instrument “solely designed for the smoking or ingestion of tobacco or shisha” including a hookah or water-pipe to a minor: \$100 fine and 30-hours community service for minors possessing such instruments. Exemption for: religious use/possession for use in religious ceremonies; gifts or souvenirs that are not intended to be used.
- 13-3821 & 13-3822       **REGISTERED SEX OFFENDER**  
Requires registered sex offenders with more than one residence to register every 90 days.
- 13-805                    **RESTITUTION ORDER**  
Court may enter the CRO at the time defendant is ordered to pay restitution; but must do so no later than the end of the imposed sentence. Monies collected through the clerk of the Superior Court and distributed first to restitution and then to associated interest. Effective date March 31, 2013.
- 15-108 & 36-804       **MEDICAL MARIJUANA; CAMPUSES**  
Now prohibits the possession or use of medical marijuana on the campus of any “public university, college, community college or post-secondary educational institution” or on the campus of any “high school, junior high school, middle school or preschool,” or in “any child care facility in this state.”
- 17-231                    **WEAPONS REGULATION**  
Prevents the Game and Fish Commission from limiting or restricting the magazine capacity of any authorized firearm.
- 17-305                    **HUNTING**  
Establishes a class 1 misdemeanor for the act of “taking wildlife by using a weapon, device, ammunition or magazine that is not authorized to take wildlife.”
- 28-1381                   **DUI JURY TRIAL**  
Returns the right of a jury trial for first time DUI cases upon defendant’s request. **Effective April 17, 2012.**

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- 28-3473 & 28-3511     **SUSPENDED LICENSE**  
Allows courts to dismiss charges of driving under a suspended driver's license when the suspension was based on 28- 1601 and the person presents evidence that their privilege to drive has been reinstated.
- 28-661     **LICENSE REVOCATION**  
To require revocation of driving privileges in certain cases of leaving the scene of an accident involving death or injury.
- 32-3215 & 36-2810     **MEDICAL MARIJUANA**  
Declares "it is an act of unprofessional conduct" for a health professional to recommend medical marijuana for conditions not in 36-1801 and requiring medical boards to report complaints of unprofessional conduct related to marijuana while also allowing Department of Health Services to report unprofessional conduct to medical boards.
- 36-2515     **BATH SALTS**  
Includes new prohibited substances, those novelty powders often referred to as "bath salts": Butylone, Fluoromethcathinone, Methoxymethcathinone, Methylenedioxy methcathinone, Methylenedioxypropylone, Methylenedioxypropylone, and Naphthylprovalerone. **Emergency Clause effective February 17, 2012.**
- 36-3501, 36-3506,  
& 41-1822     **CHILD FATALITY REVIEW TEAM**  
Changes the membership and duties of the child fatality review team, AZ Peace Officer Standards and Training Board duties; and the infant death investigation checklist.
- 36-3701     **SEXUALLY VIOLENT OFFENSE**  
Technical correction to clarify that a sexually violent offense committed in another jurisdiction includes attempts of certain crimes.