

APAAC 2012 Legislative Session in Review

Directory of Criminal Justice Statutory Changes

General Effective Date: August 2, 2012

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New Crimes

HB 2034: hookah use; minors; prohibition

Amends ARS §13-3622. 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.

Adjusted Crimes:

HB 2071: resisting arrest; classification

Adds to ARS §13-2508 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” but classifies it as a class 1 misdemeanor, while other types of resistance remain class 6 felonies.

HB 2356: drugs; definition

Amends ARS §§ 13-3401 and 36-2515 to include new prohibited substances, those novelty powders often referred to as “bath salts”: Butylone, Fluoromethcathinone, Methoxymethcathinone, Methylenedioxymethcathinone, Methylenedioxypropylvalerone, Methylmethcathinone, and Naphthylprovalerone.
Emergency Clause effective February 17, 2012

HB 2384: burglary; trespass; commercial yard; definition

Amends § ARS 13-1501 by changing the definition of “fenced commercial yard” from one “used primarily” for business to one “zoned” for business.

HB 2457: hunting; possession of unauthorized weapons

Adds ARS § 17-305, establishing 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.”

SB 1146: indecent exposure; classification

Amends ARS § 13-1402 by making 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.

SB 1149: trafficking; weapons or explosives; offense

Amends ARS §§ 13-3101 and 13-3102 by adding 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”.

SB 1150: offense; theft by extortion

Amends ARS § 13-1804 by expanding the definition of extortion to include obtaining property by means of a threat to “cause death or serious physical injury to anyone.”

HB 2604: hunting; firearm magazine capacity

Amends ARS § 17-231 preventing the Game and Fish Commission from limiting or restricting the magazine capacity of any authorized firearm.

HB 2780: animal cruelty; ranching dogs

Amends ARS § 13-2910 prohibiting 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.

SB 1147: sexually violent persons; definition

Technical correction to ARS § 36-3701 clarifying that a sexually violent offense committed in another jurisdiction includes attempts of certain crimes.

HB 2555: sexually violent person; escape; sentencing

Amends ARS § 13-2503 to add “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.

Sentencing:

HB 2286: driver license violations; suspensions

Amends ARS § 28-3473 and 28-3511, allowing 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.

HB 2373: sentencing; first, second degree murder

Amends ARS § 13-170, 13-751 and 13-752 by:

1. raising 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. restricting 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. allowing 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;
4. and, allowing 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.

"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).

HB 2374: deferred prosecution program; conditions

Amends ARS § 11-361 to prohibit 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).

HB 2382: criminal offenses; sentencing

Criminal code "cleanup", amends ARS §§12-123, 13-703, 13-708, and 13-710 providing for concurrent superior court/justice of the peace jurisdiction over all misdemeanors; makes mitigated sentence for category 2, class 3 and 4 felonies 2 and 1 years respectively and for category 2 class 2 aggravated 23 years.

In the 2nd degree murder statute (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 the phrase “a dangerous offense.”

HB 2396: theft of metal; sentencing

Eliminates the word “scrap” in ARS §§ 13-1801,-1802 to expands 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.”

HB 2556: criminal restitution order

Amends ARS §13-805 to allow the court to enter the CRO at the time defendant is ordered to pay restitution; otherwise, the court must do so at the end of the imposed sentence. Monies collected pursuant to CRO shall be paid to the clerk of the Superior Court, and shall be distributed first to restitution and then to associated interest. **Effective date March 31, 2013.**

SB 1151: sentencing: out-of-state convictions

Amends ARS §§ 13-105, 13-703, and 13-704 by expanding 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.

SB 1163: accidents; failure to stop; penalties

Amends ARS § 28-661 to require revocation of driving privileges in certain cases of leaving the scene of an accident involving death or injury.

SB 1241: forfeiture of weapons and explosives

Amends ARS §§ 12-945 and 13-3105 by requiring the sale of forfeited firearms and explosives within one year.

HB 2019: sex offender registration; multiple residences

Amends ARS §§ 13-3821 and 13-3822, to require registered sex offenders with more than one residence to register every 90 days.

HB 2241: statute of limitations; moving violation

Amends ARS §§ 13-107 and 28-672 to create 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.”

HB 2284: DUI; jury trial

Returns the right of a jury trial for first time DUI cases upon defendant’s request. ARS § 28-1381. **Effective April 17, 2012**

SB 1008: 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. ARS §§ 36-3501, 36-3506, and 41-1822.

Medical Marijuana:

HB 2035: medical marijuana

Creates ARS § 32-3215 and amends § 36-2810 by declaring “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.

HB 2349: medical marijuana; cardholder; campuses; prohibition

ARS §§ 15-108 and 36-804 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.”

Victims:

HB 2550: victim's rights; criminal offense; interviews

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, defines "criminal offense" as conduct creating probable cause to believe that a felony, misdemeanor, petty offense, or violation of local criminal ordinance has occurred. ARS §§ 8-412, 13-4401, and 13-4433.

SB 1369: crime victim advocates; privileged communications

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. ARS §§ 8-412, 13-4401, and 13-4433.