ARTICLE 9. AUTHENTICATION AND IDENTIFICATION

Rule 901(b)(1). Authenticating and Identifying Evidence — Testimony of witness with knowledge.

901.b.1.010 This section permits authentication or identification by a person with knowledge that the matter is what it is claimed to be.

Cal X-tra v. W.V.S.V. Holdings, 229 Ariz. 377, 276 P.3d 11, ¶ 58 (Ct. App. 2012) (plaintiffs included statements from two plaintiffs stating from where documents were obtained).

Rule 901(b)(3). Authenticating and Identifying Evidence — Comparison by trier or expert.

901.b.3.020 Authentication or identification may be made by comparison by expert witness.

Cal X-tra v. W.V.S.V. Holdings, 229 Ariz. 377, 276 P.3d 11, ¶ 58 (Ct. App. 2012) (forensic document examiner testified handwriting on disk and documents matched that of defendant).

Rule 901(b)(4). Authenticating and Identifying Evidence — Distinctive characteristics and the like.

901.b.4.010 Distinctive characteristics, taken in conjunction with other circumstances, may provide authentication or identification.

Cal X-tra v. W.V.S.V. Holdings, 229 Ariz. 377, 276 P.3d 11, ¶ 58 (Ct. App. 2012) (some documents contained personal information from one defendant, and other documents referred to real estate deals for other defendants).

Rule 902(4). Evidence That Is Self-Authenticating — Certified copies of public records.

902.4.010 A copy of a public record is admissible if it is accompanied by a certificate from the custodian or other person so authorized certifying that the copy is correct, and the certificate satisfies the requirements of either paragraph (1), (2), or (3).

State v. Shivers, 230 Ariz. 91, 280 P.3d 635, ¶ 6 n.2 (Ct. App. 2012) (defendant charged with interfering with judicial process; defendant did not contest that written declaration of service qualified as self-authenticating).

ARTICLE 10. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001(1). Definitions That Apply to This Article — Writings and recordings.

1001.a.010 A "writing" consists of letters, words, numbers, or their equivalent set down in any form, which includes handwritten documents.

Henricks v. Arizona DES, 229 Ariz. 47, 270 P.3d 874, ¶¶ 20–21 (Ct. App. 2012) (court held Administrative Law Judge could properly consider handwritten documents at administrative hearing).

March 7, 2013

CONSTITUTIONAL LAW REPORTER

Arizona Constitution

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Ariz. Const. art. 2, sec. 8. Right to privacy.

az.2.8.150 Interception of wire, electronic, or oral communications pursuant to A.R.S. § 13–3015 does not violate the Arizona Constitution.

State v. Hausner, 230 Ariz. 60, 280 P.3d 604, ¶¶ 40–42 (2012) (court noted Arizona statute complied with federal requirements).

Ariz. Const. art. 2, sec. 13. Equal privileges and immunities.

az.2.13.020 The Equal Protection Clause guarantees like treatment to all persons who are similarly situated; it does not deny a state the power to treat different classes of people in different ways as long as the classification is reasonable.

State v. McPherson, 228 Ariz. 557, 269 P.3d 1181, ¶¶ 17–24 (Ct. App. 2012) (defendant possessed DVD disk with seven separate images on it, was convicted of seven counts of sexual exploitation of minor, and received seven consecutive sentences; court held it was within powers of legislature to determine possession of images of child pornography should be punished more seriously than engaging in sexual conduct with minors).

Ariz. Const. art. 2, sec. 15. Cruel and unusual punishment.

az.2.15.cu.010 There is nothing in the language of the Arizona Constitution, or in the opinions interpreting that language, to indicate that the Arizona Constitution gives a defendant any greater rights against cruel and unusual punishment than does the United States Constitution.

State v. McPherson, 228 Ariz. 557, 269 P.3d 1181, ¶ 16 (Ct. App. 2012) (defendant possessed DVD disk with seven separate images on it, was convicted of seven counts of sexual exploitation of minor, and received seven consecutive sentences; court of appeals was required to follow Arizona Supreme Court opinion holding consecutive sentences were not cruel and unusual punishment).

Article 3. Separation of powers — Lower courts may not usurp power of the Arizona Supreme Court.

az.3.csc.020 If a local rule or procedure is contrary to a rule promulgated by the Arizona Supreme Court, the Arizona Supreme Court rule will prevail.

State v. Simon (Jimenez), 229 Ariz. 60, 270 P.3d 887, ¶¶ 12–14 (Ct. App. 2012) (although local rule gave justice of the peace authority to impose sanctions, that local rule did not give that court authority to impose sanction contrary to Rule 15 of the Arizona Rules of Criminal Procedure; because testing results from blood samples were not done by date of case management conference and thus state had nothing to disclose, trial court erred in entering order precluding state from introducing any future testing results).

Article 3. Separation of powers — Executive may not usurp the courts.

az.3.ec.040 To determine whether a statute contravenes the constitutional mandate of separation of powers, the court must consider **four** factors, the **fourth** of which is the practical consequence of the action.

Cook v. State, 230 Ariz. 185, 281 P.3d 1053, ¶¶ 14–18 (Ct. App. 2012) (A.R.S. § 13–757(A), which provides for death by lethal injection but allows Arizona Department of Corrections to establish protocol for injection process, has potential to avoid judicial review, but avoidance judicial review has not yet happened, so statute did not violate separation of powers).

Article 3. Separation of powers — Executive may not usurp the legislature.

az.3.el.010 The legislature may not abdicate authority to the executive branch, the legislature may enact a law, but then delegate the authority to the executive branch to determine how to carry out that law.

Cook v. State, 230 Ariz. 185, 281 P.3d 1053, ¶¶ 5–9 (Ct. App. 2012) (court held A.R.S. § 13–757(A), which provides for death by lethal injection, did not violate separation of powers).

March 7, 2013

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1–602(A) Parents' bill of rights—Rights.

.010 Parents have the right to consent in writing before any record of a minor child's blood or DNA is created, except as required or authorized by certain statutes or authorized by court order.

State v. Butler (Tyler B.), 231 Ariz. 42, 290 P.3d 435, ¶¶ 3–6 (Ct. App. 2012) (juvenile admitted smoking marijuana and then driving; officer arrested him for DUI; juvenile agreed both verbally and in writing to BAC blood testing; although juvenile's father was waiting nearby, officer did not ask father for any consent; court held Parents' Bill of Rights did not apply, thus father's consent was not necessary).

1–602(B) Parents' bill of rights—Excluded conduct.

.010 This section does not prohibit courts, or law enforcement officers or employees of a governmental agency responsible for child welfare from acting in their official capacity within the scope of their authority.

State v. Butler (Tyler B.), 231 Ariz. 42, 290 P.3d 435, ¶¶ 3–6 (Ct. App. 2012) (juvenile admitted smoking marijuana and then driving; officer arrested him for DUI; juvenile agreed both verbally and in writing to BAC blood testing; although juvenile's father was waiting nearby, officer did not ask father for any consent; court held Parents' Bill of Rights did not apply, thus father's consent was not necessary).

11–459(L) Home detention program—Establishment.

.010 A county may establish a home detention program by a majority vote of the board of supervisors after a public hearing and a finding of necessity.

Scheerer v. Munger, 230 Ariz. 137, 281 P.3d 491, ¶¶ 6–7 (Ct. App. 2012) (defendant did not dispute that no home detention program for DUI offenders has been authorized or established in Pima County, thus trial court's sentence of 43 days in home detention was illegal sentence).

11–459(M)(3) Home detention program—Extreme DUI.

.010 A person who is convicted of extreme DUI is not eligible for home detention until that person has served a minimum of 20 percent of the initial term of incarceration in jail.

Scheerer v. Munger, 230 Ariz. 137, 281 P.3d 491, ¶¶ 6–7 (Ct. App. 2012) (sentence of 45 days in jail with 2 days actually in jail and 43 days of home detention was illegal).

13–105(12) Definitions. (Dangerous instrument.)

.010 A "dangerous instrument" is anything that, under the circumstances that it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

State v. Mendoza-Tapia, 229 Ariz. 224, 273 P.3d 676, ¶ 16 (Ct. App. 2012) (evidence showed defendant (1) kidnapped victim first using knife and then gun, (2) forced victim into vehicle at gunpoint and held him there at gunpoint, (3) told victim not to move or he would kill him (4) hit victim in head with gun, (5) "racked the gun" to scare him, and (6) told victim's wife he would kill victim and leave his head on her doorstep if she did not pay money; court held this was sufficient evidence from which jurors could conclude defendant used deadly weapon).

13–105(39) Definitions. (Serious physical injury.)

.010 "Serious physical injury" includes a physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health, or loss or protracted impairment of the function of any bodily organ or limb; a "serious impairment of health" must be more than a temporary but substantial impairment of health and more than the usual temporary impairment caused by the fracture of a body part, and must be comparable in terms of its gravity to an injury that creates a reasonable risk of death or substantial and permanent disfigurement; "protracted impairment" must be longer than either the temporary but substantial impairment of the use of a limb or the healing time of a normal fracture.

State v. Mwandishi, 229 Ariz. 570, 278 P.3d 912, ¶¶ 2–11 (Ct. App. 2012) (defendant punched victim in left eye, resulting in following injuries and treatments: fractured more than 50 percent of orbital floor; double vision; entrapment of tissue through fracture; eye displaced 2 millimeters; damaged nerve; sinus drainage through left eye; pressure from implant; white flashes; surgery to insert titanium mesh plate to replace damaged orbital floor; court held this was sufficient evidence for jurors to find defendant committed serious physical injury).

13–116 Double punishment.

.070 In order to impose consecutive sentences for two crimes, the transaction must satisfy **two** tests: **First,** whether, after subtracting the facts necessary to support the primary charge, there are sufficient facts to support the secondary charge.

State v. McPherson, 228 Ariz. 557, 269 P.3d 1181, ¶¶ 11–12 (Ct. App. 2012) (defendant possessed DVD disk with seven separate images on it, and was convicted of seven counts of sexual exploitation of minor; because defendant was convicted of separate offenses, this section did not apply).

13–205 Affirmative defenses; burden of proof.

.030 In determining whether the state proved beyond a reasonable doubt defendant did not act with justification, the court uses the same test as used to determine whether the state proved beyond a reasonable doubt the elements of the offense.

State v. Lopez, 230 Ariz. 15, 279 P.3d 640, ¶¶ 4–7 (Ct. App. 2012) (defendant did not present any direct evidence he acted in self-defense, but instead on cross-examination of state's witnesses attempted to elicit testimony in support of self-defense theory; trial court instructed on self-defense; court noted following evidence: defendant went to victim's house intending to kill him; after victim took shelter under truck, defendant tried to shoot victim while under truck; retired law enforcement officer who witnessed events testified defendant fired shots that appeared to be intended to hit victim rather than just warn him; court held evidence was sufficient for jurors to determine defendant did not act in self-defense).

13–603(C) Authorized disposition of offenders—Restitution.

.040 The trial court may require the timely assertion of a claim for restitution, and a victim who fails to present supporting evidence by such deadline waives their right to receive restitution.

State v. Nuckols, 229 Ariz. 266, 274 P.3d 536, ¶¶ 5–6 (Ct. App. 2012) (at sentencing, trial court ordered issue of restitution would remain open for 30 days; state did not file claim for restitution until over 2 months later; court held trial court did not abuse discretion in denying award of restitution).

.050 The trial court may order restitution only for a loss resulting from an offense for which the defendant (1) was convicted, (2) admitted in court, or (3) agreed to pay restitution.

State v. Alvarez, 228 Ariz. 579, 269 P.3d 1203, ¶¶ 18–19 (Ct. App. 2012) (defendant was convicted of burglary and acquitted of theft by control; defendant contended victim suffered loss as result of theft and not from burglary; court held victim would not have suffered loss if defendant had not burglarized victim's home, thus trial court properly ordered defendant to pay restitution for items taken from victim's home).

13–701(D)(2) Sentence of imprisonment for felony—Aggravating circumstances—Use of deadly weapon or dangerous instrument.

.010 It is an aggravating circumstance if the defendant used, threatened to use, or possessed a deadly weapon or dangerous instrument during the commission of the crime, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under A.R.S. § 13–704.

State v. Mendoza-Tapia, 229 Ariz. 224, 273 P.3d 676, ¶¶ 12–13 (Ct. App. 2012) (evidence showed defendant (1) kidnapped victim first using knife and then gun, (2) forced victim into vehicle at gunpoint and held him there at gunpoint, (3) told victim not to move or he would kill him (4) hit victim in head with gun, (5) "racked the gun" to scare him, and (6) told victim's wife he would kill victim and leave his head on her doorstep if she did not pay money; court held this was sufficient evidence from which jurors could conclude defendant sought to obtain money by means of threat to cause physical injury by means of deadly weapon).

13–701(D)(5) Sentence of imprisonment for felony—Aggravating circumstances—Especially cruel, heinous, or depraved.

.010 The especially cruel, heinous, or depraved aggravating circumstance is one aggravating circumstance and not two.

State v. Johnson, 229 Ariz. 475, 276 P.3d 544, ¶ 24 (Ct. App. 2012) (state conceded trial court erroneously double-counted that aggravating circumstance).

.020 A killing is especially cruel if the victim suffers and the defendant knew or should have known the defendant was making victim suffer.

State v. Johnson, 229 Ariz. 475, 276 P.3d 544, ¶¶ 5–9 (Ct. App. 2012) (evidence that defendant inflicted at least 37 stab wounds in victim's face, neck, chest, back, and upper extremities, victim had defensive wounds on hands and arms, victim had been moving during at least some of attack, attack would have been 30 to 90 seconds or longer, and death was not instantaneous was sufficient to support finding that victim consciously suffered and defendant knew or should have known he was making victim suffer).

13–701(E)(6) Sentence of imprisonment for felony—Mitigating circumstances—Any other factor.

.010 A defendant may present as mitigation evidence that tends to negate the state's aggravating circumstance.

State v. Johnson, 229 Ariz. 475, 276 P.3d 544, ¶¶ 10–18 (Ct. App. 2012) (court held trial court erred in precluding opinion testimony of defendant's expert that defendant had bipolar disorder and on night of homicide, defendant had ingested too much prescription medication, which caused amnestic dissociative state in which he committed the homicide).

13–703 Repetitive offenders; sentencing.

.030 If a person is convicted of two felony offenses that were not committed on the same occasion and are consolidated for trial purposes, the person shall be sentenced as a category one repetitive offender for only one of the two offenses.

State v. Loney, 230 Ariz. 542, 287 P.3d 836, ¶¶ 14–22 (Ct. App. 2012) (defendant was convicted of two counts of sexual conduct with minor; court held trial court erred in treating defendant as repetitive offender for both counts; court remanded for resentencing on one count).

13–901.01(A) Probation for persons convicted of possession and use of controlled substances; treatment; prevention; education—First conviction.

.120 *Attempting to obtain or procure the administration of a narcotic drug by fraud, deceit, misrepresentation, or subterfuge* is not treated the same as personal possession or use of a controlled substance for probation eligibility purposes.

State ex rel. Montgomery v. Woodburn (Schmeissing), 231 Ariz. 15, 292 P.3d 201, ¶¶ 7–12 (Ct. App. 2012) (defendant attempted to obtain oxycodone tablets from pharmacy by presenting prescription form that had not been issued by doctor whose name was on form; court held attempting to obtain drugs by fraud was inherently different from personal possession of drugs, thus Proposition 200 did not apply).

13–901.01(B) Probation for persons convicted of possession and use of controlled substances; treatment; prevention; education—Prior indictment or conviction for a violent crime.

.070 The determination whether a prior conviction is a dangerous offense must be based on the elements in the statute itself or any sentencing provisions, and not on any extrinsic evidence about the conviction.

State v. Bernini (Lopez), 230 Ariz. 223, 282 P.3d 424, ¶¶ 7–14 (Ct. App. 2012) (although person can commit aggravated assault on police officer without using weapon or causing physical injury, defendant pled guilty to aggravated assault on police officer as the higher class of felony, which applied only when defendant caused physical injury to officer, thus court concluded defendant had prior conviction involving use of violence and was not eligible for probation for possession of narcotic drug).

13–1105 First-degree murder—Premeditated.

.010 To prove premeditated first-degree murder, the state must prove to the jurors beyond a reasonable doubt the defendant actually reflected; to the extent the statute provides that "proof of actual reflection is not required," that only means proof by direct evidence is not required, thus the state may prove reflection by circumstantial evidence, such as the passage of time.

State v. VanWinkle, 230 Ariz. 387, 285 P.3d 308, ¶¶ 15–16 (2012) (defendant killed victim while they were inmates in Maricopa County jail; video showed defendant on top of victim, hitting him; after brief struggle, victim became still, but defendant continued to beat him for another 18 minutes, strangling him, stomping on him, punching him, and jumping up and down on his motionless body; court stated jurors could have concluded defendant acted with premeditation upon watching his prolonged, brutal attack, during which he took breaks before renewing his attack on unresisting victim).

State v. VanWinkle, 230 Ariz. 387, 285 P.3d 308, ¶ 17 (2012) (defendant killed victim while they were inmates in Maricopa County jail; before defendant was transferred to victim's jail unit, defendant told his mother he planned to get into fight and would likely experience loss of privileges; evidence also showed defendant was aware of jail surveillance practices, suggesting he planned to kill victim when he was less likely to be stopped).

State v. Nelson, 229 Ariz. 180, 273 P.3d 632, ¶¶ 14–19 (2012) (defendant left motel room, walked to nearby Kmart, purchased rubber mallet, returned to motel room within hour, and hit female victim (age 14 years, 10 months) in head with mallet, killing her; after that, defendant hid murder weapon under bed, disposed of his bloody shirt, and returned to store sleeping bag that had victim's blood on it; court held defendant's actions both before and after killing was circumstantial evidence of premeditation).

13–1105 First-degree murder—Felony murder.

.110 Although the felony of aggravated assault will not support a charge of felony murder, any of the other listed predicate felonies will, and they do not merge into the murder.

State v. Hardy, 230 Ariz. 281, 283 P.3d 12, ¶¶ 23–26 (2012) (defendant was charged with two counts of first-degree murder, first-degree burglary, and kidnapping; court rejected defendant's contention that felony murder could not be predicated on kidnapping that is itself based on intent to murder).

13–1201 Endangerment.

.020 Endangerment does not require that the person endangered be actually physically injured or even aware they were endangered, and although a victim is a necessary element of proof of endangerment, the name or exact identity of the victim is not a necessary element.

State v. Villegas-Rojas, ___ Ariz. ___, ___ P.3d ___, ¶¶ 6–11 (Ct. App. Sep. 28, 2012) (information charged defendant with reckless endangering unnamed motorist on southbound I–17; officer saw defendant make aggressive unsafe lane change between two commercial vehicles; at sentencing hearing, prosecutor stated they were not able to learn name of semi-truck drive who was cut off; court held state did not have to know name of driver to establish factual basis for guilty plea to endangerment).

13–1204(A)(8)(a) Aggravated assault—Peace officer.

.050 Aggravated assault on a peace officer engaged in execution of official duties is a class 5 felony, but if it results in physical injury to the officer, it is a class 4 felony.

State v. Bernini (Lopez), 230 Ariz. 223, 282 P.3d 424, ¶¶ 7–14 (Ct. App. 2012) (although person can commit aggravated assault on police officer without using weapon or causing physical injury, defendant pled guilty to aggravated assault on police officer as the higher class of felony, thus court concluded defendant had prior conviction involving use of violence and was not eligible for probation for possession of narcotic drug).

13–1304(A) Kidnapping—Elements.

.070 Kidnapping is an offense that continues as long as the victim is restrained.

State v. Bustamante, 229 Ariz. 256, 274 P.3d 526, ¶ 8 (Ct. App. 2012) (police found victim in back seat of vehicle, defendant was in front passenger seat, and driver retrieved ransom money; even if jurors did not find defendant was involved in initial abduction of victim, evidence showed defendant was present when victim was restrained in back seat of vehicle).

13–1803 Unlawful use of means of transportation.

.020 The elements of theft of a means of transportation under A.R.S. § 13–1814(A)(5) are that a person (1) without lawful authority (2) knowingly controls (3) another person's means of transportation (4) knowing or having reason to know the property is stolen, while the elements of unlawful use of a means of transportation under A.R.S. § 13–1803(A)(1) are that a person (1) without lawful authority (2) knowingly controls (3) another person's means of transportation; it is not possible to commit theft of a means of transportation under A.R.S. § 13–1814(A)(5) without committing unlawful use of a means of transportation under A.R.S. § 13–1803(A)(1), thus unlawful use of a means of transportation under A.R.S. § 13–1803(A)(1) is a lesser-included offense of theft of a means of transportation under A.R.S. § 13–1814(A)(5).

State v. Breed, 230 Ariz. 462, 286 P.3d 806, ¶¶ 5–8 (Ct. App. 2012) (defendant borrowed vehicle on condition he would return it within 1½ hours; when defendant did not return vehicle, after several days, owner reported missing vehicle to police; about 1 month later, police located vehicle and arrested defendant).

13–1804(A) Theft by extortion—Elements.

.010 Subsection (A)(1) does not require the threat to use a deadly weapon or dangerous instrument to be communicated to the person from whom the property is demanded.

State v. Mendoza-Tapia, 229 Ariz. 224, 273 P.3d 676, ¶¶ 14–15 (Ct. App. 2012) (evidence showed defendant told victim's wife he would kill victim and leave his head on her doorstep if she did not pay money; defendant contended none of calls to victim's wife mentioned use of deadly weapon or dangerous instrument; court held it was not necessary to show victim's wife knew defendant would use deadly weapon or dangerous instrument to remove victim's head).

13–1804(C) Theft by extortion—Punishment.

.010 Theft by extortion under subsection (A)(1) is a class 2 felony if the defendant knowingly obtains or seeks to obtain property by means of a threat to cause physical injury to anyone by means of a deadly weapon or dangerous instrument; otherwise it is a class 4 felony.

State v. Mendoza-Tapia, 229 Ariz. 224, 273 P.3d 676, ¶¶ 12–13 (Ct. App. 2012) (evidence showed defendant (1) kidnapped victim first using knife and then gun, (2) forced victim into vehicle at gunpoint and held him there at gunpoint, (3) told victim not to move or he would kill him (4) hit victim in head with gun, (5) "racked the gun" to scare him, and (6) told victim's wife he would kill victim and leave his head on her doorstep if she did not pay money; court held this was sufficient evidence from which jurors could conclude defendant sought to obtain money by means of threat to cause physical injury by means of deadly weapon).

13–2802 Influencing a witness.

.010 A person commits the crime of influencing a witness if the person either threatens or offers benefits to a witness or a person the person believes may be call as a witness, for the purpose of influencing the witness's testimony.

State v. Lopez, 230 Ariz. 15, 279 P.3d 640, ¶¶ 8–9 (Ct. App. 2012) (defendant contended evidence was not sufficient because, at time he contacted T., she had not been identified as witness; court noted T. was eyewitness to events and indeed participated in events, thus at minimum defendant had to know state would contact T. and seek her account of events, thus evidence was sufficient to support guilty verdict).

13–3015(A) Emergency interceptions—Existence of emergency.

.010 The attorney general or a county attorney may authorize the interception of wire, electronic, or oral communications if there exists an emergency situation involving immediate danger of death or serious physical injury and the interception of those wire, electronic, or oral communications may avert the death or serious physical injury.

State v. Hausner, 230 Ariz. 60, 280 P.3d 604, ¶¶ 30–32 (2012) (trial court found police needed emergency intercept in order to prevent another random shooting).

.020 The attorney general or a county attorney may authorize the interception of wire, electronic, or oral communications only if a court order could not be obtained with due diligence in time to avert the death or serious physical injury.

State v. Hausner, 230 Ariz. 60, 280 P.3d 604, ¶¶ 35–38 (2012) (facts showed officers would not have been able to obtain court order with due diligence in time to avert emergency situation).

.030 If it is necessary to authorize the interception of wire, electronic, or oral communications to avert death or serious physical injury, it does not matter if the officers have a subjective desire to intercept the communications for investigative purposes.

State v. Hausner, 230 Ariz. 60, 280 P.3d 604, ¶ 39 (2012) (court held trial court did not have to inquire whether county attorney approved interception for investigative purposes).

13–3102(A)(4) Misconduct involving weapons—Prohibited acts—Possessing deadly weapon or prohibited weapon by prohibited possessor.

.020 A defendant does not have to have exclusive dominion and control over a prohibited weapon to be guilty of this offense.

State v. Bustamante, 229 Ariz. 256, 274 P.3d 526, ¶¶ 10–11 (Ct. App. 2012) (gun was found on driver's side floorboard; although defendant was in front passenger seat, gun was visible to him and within reach, and defendant had ability to use gun if necessary to subdue victim, thus evidence supported defendant's conviction for this offense).

13–3116 Misconduct involving body armor; classification; definition.

.010 A person commits misconduct involving body armor by knowingly wearing or otherwise using body armor during the commission of any felony offense.

State v. Tucker, 231 Ariz. 125, 290 P.3d 1248, ¶¶ 25–38 (Ct. App. 2012) (defendant was charged with one count of conspiracy to commit armed robbery, aggravated robbery, aggravated assault, or kidnapping, and one count of misconduct involving body armor; evidence showed police set up sting with three persons who told officers they planned to bring in fourth person; at pre-arranged meeting, three persons brought defendant with them; one person told undercover officer he had discussed with defendant details of plan to invade home; defendant inspected assault rifle and donned bulletproof vest while discussing planned home invasion; court held this was sufficient evidence to support conviction of misconduct involving body armor).

13–3405(A) Possession, use, production, sale, or transportation of marijuana—Prohibited acts.

.060 Because neither transportation of a drug nor possession of a drug requires a showing of a particular amount, and because a person cannot transport a drug without also possessing it, possession of a drug is a lesser-included offense of transportation of a drug.

State v. Estrella, 230 Ariz. 401, 286 P.3d 150, ¶¶ 16–17 (Ct. App. 2012) (defendant was convicted of transporting marijuana for sale, possession of marijuana for sale, and possession of marijuana; because possession of marijuana for sale and possession of marijuana are lesser-included offenses of transportation of marijuana for sale, court vacated convictions for possession of marijuana for sale and possession of marijuana).

.070 When possession of marijuana for sale is incidental to transporting the marijuana for sale, because a person cannot transport marijuana for sale without also possessing it for sale, possession of marijuana for sale is a lesser-included offense of transporting marijuana for sale.

State v. Estrella, 230 Ariz. 401, 286 P.3d 150, ¶¶ 16–17 (Ct. App. 2012) (defendant was convicted of transporting marijuana for sale, possession of marijuana for sale, and possession of marijuana; because possession of marijuana for sale and possession of marijuana are lesser-included offenses of transportation of marijuana for sale, court vacated convictions for possession of marijuana for sale and possession of marijuana).

13–3602 Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction.

.010 When a court issues an order of protection, it may prohibit the possession of firearms if the court finds the defendant is a credible threat to the physical safety of the plaintiff or another specifically designated person.

Mahar v. Acuna, 230 Ariz. 530, 287 P.3d 824, ¶¶ 15–20 (Ct. App. 2012) (court found no evidence in record of any threatened or used force against person filing petition, thus there was no support for trial court's order prohibiting possession of firearm).

.020 When post-decree proceeding has been commenced but not finally determined in superior court, a municipal court shall stop further proceedings and forward all papers to superior court, which shall proceed as though the petition for order of protection had been originally brought in that court.

Cardoso v. Soldo, ___ Ariz. ___, 277 P.3d 811, ¶¶ 2–3 (Ct. App. 2012) (when municipal court learned ex-wife brought proceeding in superior court to have ex-husband held in contempt for non-payment of child support, municipal court transferred proceeding to superior court on ex-husband's petition for order of protection).

13–3821 Persons required to register; procedure.

.020 Even though a person who is convicted for a certain crime in another state that requires them to register there and thus must register in Arizona, while a person who is convicted of that same crime in Arizona would not have to register in Arizona, there is a rational basis for this system, and thus this statute is not unconstitutional.

State v. Lowery, 230 Ariz. 536, 287 P.3d 830, ¶¶ 2, 11–17 (Ct. App. 2012) (defendant was convicted of criminal sexual conduct in Michigan and required to register there).

13–3821(A) Persons required to register; procedure—Elements.

.010 A person moving into a county must register within 10 days of entering and remaining in that county.

State v. Lowery, 230 Ariz. 536, 287 P.3d 830, ¶¶ 5–6 (Ct. App. 2012) (evidence that defendant had been in Pima County on 8/31, 9/21, 10/05, and 10/06 was substantial evidence from which jurors could conclude defendant had been in Pima County for a least 10 days).

13–3821(A) Persons required to register; procedure—Enumerated offenses.

.010 This section requires a person convicted of certain listed offenses to register as a sex offender.

State v. Espinoza, 229 Ariz. 421, 276 P.3d 55, ¶¶ 15–33 (Ct. App. 2012) (when defendant was 12 years old, he was adjudicated delinquent, but juvenile court did not order him to register as sex offender, even though his probation was later revoked and he went to ADOJC; when defendant was 19 years old, he was convicted of burglary and trial court ordered him to register as sex offender; 5 months later and 4 years later, defendant was convicted of failing to register as sex offender and each time he was sentenced to 2½ years in prison; court held juvenile court had authority to order defendant to register as sex offender, but did not do so, and trial court did not have authority to order registration based on burglary conviction, and could not do so based on juvenile adjudication because trial court was not juvenile court, thus defendant never was lawfully order to register).

13–4240(K) Post-conviction deoxyribonucleic acid testing—Hearing.

.010 If the results of Post-conviction DNA testing are favorable to the petitioner, the court shall order some type of a Rule 32 hearing.

State v. Gutierrez, 299 Ariz. 573, 278 P.3d 1276, ¶¶ 19–32 (2012) (drive-by shooting occurred in 1998; when arrested that night, defendant was riding in front passenger's seat and testing of his hands showed gunshot residue; witness testified gunman had bandana over face and was wearing black cap; along route shooters took leaving scene, police found black cap bearing gang insignia of defendant's gang; state's theory was defendant had fired the fatal shot; defense theory was defendant was merely present and had no idea shooting would happen; jurors convicted defendant of second-degree murder; in 2007, hair and sweat stain were found in black cap, and DNA testing revealed hair belonged to another person who was in car and stain had mixture of DNA from at least three individuals, none of whom was defendant; court held this evidence was "favorable" to defendant and thus trial court was required to hold non-evidentiary hearing to permit parties to argue why petitioner should or should not be entitled to relief or further evidentiary hearing as matter of law; because new evidence did not exonerate defendant, defendant was not entitled to evidentiary hearing at this point).

13–4505(B) Appointment of experts; costs—Order to submit to examination.

.010 The court may order the defendant to submit to physical, neurological, or psychological examinations, if necessary, to adequately determine the defendant's mental condition.

State v. Bunton, 230 Ariz. 51, 279 P.3d 1213, ¶¶ 7–8 (Ct. App. 2012) (trial court appointed psychiatrist and board-certified neuropsychologist to evaluate defendant).