

# Table of Contents

Sections Affected by 2003 Legislation .....	Page xv
---	------------

## Arizona Revised Statutes

### Title 13

#### Criminal Code

Chapter 9. Probation and Restoration of Civil Rights, 13-914 .....	1
Chapter 12. Assault and Related Offenses, 13-1204 .....	2
Chapter 16. Criminal Damage to Property, 13-1604 .....	5
Chapter 29. Offenses Against Public Order, 13-2905, 13-2911, 13-2912, 13-2917 .....	5
Chapter 31. Weapons and Explosives, 13-3102, 13-3107, 13-3111 .....	6
Chapter 34. Drug Offenses, 13-3411 .....	10
Chapter 36. Family Offenses, 13-3620 .....	11
Chapter 37. Miscellaneous Offenses, 13-3716 .....	13
Chapter 38. Miscellaneous	
Article 13. Trials, 13-3990 .....	13

### Title 15

#### Education

Chapter 1. General Provisions	
Article 1. General Provisions, 15-101, 15-102 .....	15
Article 2. Employee Annuity and Deferred Compensation Plans, 15-121 .....	16
Article 3. Teacher Exchange, 15-131 to 15-135 .....	16
Article 4. Educational Records, 15-141, 15-142 .....	17
Article 5. Safety Requirements, 15-151 to 15-156 .....	17
Article 6. State Prohibitions, 15-161 .....	19
Article 8. Charter Schools, 15-181 to 15-189.03 .....	19
Article 9. Family Literacy Pilot Program, 15-191, 15-191.01 .....	26
Chapter 2. State Governance of Schools	
Article 1. State Board of Education, 15-201 to 15-214 .....	27
Article 2. Department of Education, 15-231 to 15-241 .....	33
Article 3. Superintendent of Public Instruction, 15-251 to 15-256 .....	37
Article 4. Uniform System of Financial Records, 15-271, 15-272 .....	38
Chapter 3. Local Governance of Schools	
Article 1. County School Superintendent, 15-301 to 15-308 .....	39
Article 2. Organizational Powers of School District Governing Boards, 15-321 to 15-328 .....	40
Article 3. Powers and Duties of School District Governing Boards, 15-341 to 15-350	42
Article 3.1. Decentralization Process, 15-351 to 15-354 .....	48
Article 4. Establishment of Special Services, 15-361 to 15-365 .....	49
Article 5. Provisions for Insurance Coverage, 15-381 to 15-388 .....	51
Article 6. Joint Technological Education Districts, 15-391 to 15-396 .....	53
Chapter 4. School Elections	

TABLE OF CONTENTS

viii

	Page
Article 1. General Provisions, 15-401 to 15-407 .....	56
Article 2. School District Governing Board Elections, 15-421 to 15-431 .....	57
Article 3. School District Boundary Provisions and Elections, 15-441 to 15-469 .....	60
Article 4. School District Budget Override Elections, 15-481, 15-482 .....	70
Article 5. Bond Elections, 15-491 to 15-493 .....	75
Chapter 5. School Employees	
Article 1. General Provisions, 15-501 to 15-515 .....	77
Article 2. Duties of Teachers, 15-521 .....	83
Article 3. Certification and Employment of Teachers, 15-531 to 15-551 .....	83
Chapter 7. Instruction	
Article 1. Curriculum, 15-701 to 15-720 .....	91
Article 2. Courses of Study and Textbooks, 15-721 to 15-730 .....	96
Article 3. Assessment and Accountability, 15-741 to 15-747 .....	97
Article 3.1. English Language Education for Children in Public Schools, 15-751 to 15-756.01 .....	100
Article 4. Special Education for Exceptional Children, 15-761 to 15-774 .....	102
Article 5. Career and Technical Education and Vocational Education, 15-781 to 15-790	109
Article 7. Alternative Education Programs, 15-796 to 15-798 .....	111
Chapter 8. School Attendance	
Article 1. School Year and Attendance Requirements, 15-801 to 15-809 .....	112
Article 1.1. Open School Enrollment, 15-816 to 15-816.07 .....	116
Article 2. Admission Requirements, 15-821 to 15-829 .....	117
Article 3. Suspension and Expulsion of Pupils, 15-840 to 15-844 .....	121
Article 4. Part-Time Schools and Year-Round School Year Operation, 15-854, 15-855	123
Article 5. Four Day School Week and Alternative Kindergarten Programs, 15-861 ..	124
Article 6. School Immunization, 15-871 to 15-874 .....	124
Article 7. Extended School Year for Handicapped Pupils, 15-881 .....	125
Chapter 9. School District Budgeting and Financial Assistance	
Article 1. General Provisions for School District Budgets, 15-901 to 15-916 .....	127
Article 1.1. Career Ladder and Other Performance Incentive Programs, 15-918 to 15-920 .....	145
Article 2. Pupil Transportation, 15-921 to 15-923 .....	149
Article 3. School District Revenue Limitation for Maintenance and Operation, 15-941 to 15-954 .....	150
Article 4. Provisions for Capital Outlay and Capital Levy, 15-961 to 15-964 .....	158
Article 5. State and Local Assistance to School Districts and Accommodation Schools, 15-971 to 15-979 .....	160
Article 6. County Finance Responsibilities for School Districts, 15-991 to 15-1002 ...	165
Article 7. Bond Issues and Bonded Indebtedness, 15-1021 to 15-1033 .....	169
Article 8. Student Accountability Information System, 15-1041 to 15-1043 .....	172
Chapter 10. School District Funds and Related Operations	
Article 1. Revolving Funds; School Plant, Insurance Proceeds, Unemployment Com- pensation, Civic Center School and Permanent Teacherage Funds, 15-1101 to 15-1108 .....	174
Article 2. Student Activities and Auxiliary Operations Funds, 15-1121 to 15-1126 ...	176
Article 3. Community School Program Fund, 15-1141 to 15-1143 .....	177
Article 4. School Lunch Program Fund, 15-1151 to 15-1158 .....	177
Article 5. Arizona Youth Farm Loan Fund, 15-1171 to 15-1175 .....	179
Article 6. Special Education Voucher Fund for Private Placement, 15-1181 to 15-1185	179
Article 7. Special Education Voucher Fund for State Institutional Placement, 15-1201 to 15-1205 .....	181

	Page
Article 8. Governing Board Bank Accounts, 15-1221 to 15-1224 .....	182
Article 9. Career and Technical Education and Vocational and Technical Education Projects Fund, 15-1231 .....	183
Article 10. Academic Contests Fund, 15-1241 .....	183
Article 11. State Block Grant for Early Childhood Education Program, 15-1251 .....	184
Chapter 11. Arizona State School for the Deaf and the Blind	
Article 1. General Provisions, 15-1301 to 15-1306 .....	184
Article 2. Administration and Employment of Personnel, 15-1321 to 15-1331 .....	185
Article 3. Instruction and Students, 15-1341 to 15-1346 .....	188
Chapter 11.1. State Educational System for Committed Youth Funding	
Article 1. General Provisions, 15-1371 to 15-1373 .....	189
Chapter 12. Community Colleges	
Article 1. General Provisions for and Establishment of Community College Districts, 15-1401 to 15-1410 .....	192
Article 2. State Board of Directors for Community Colleges, 15-1421 to 15-1429 .....	194
Article 3. Community College District Boards, 15-1441 to 15-1452 .....	195
Article 4. Community College District Finance, 15-1461 to 15-1472 .....	200
Article 5. Issuance of Bonds for Revenue Producing Buildings, 15-1481 to 15-1491 .....	206
Chapter 13. Universities and Related Institutions	
Article 1. Universities and Colleges, 15-1601, 15-1606 .....	209
Article 2. Arizona Board of Regents, 15-1621 to 15-1648 .....	209
Article 3. Teacher Training Schools, 15-1651 to 15-1654 .....	220
Article 4. Financial Provisions, 15-1661 to 15-1670 .....	220
Article 5. Issuance of Bonds, 15-1681 to 15-1695 .....	222
Article 7. Medical Student Loans, 15-1721 to 15-1726 .....	226
Article 8. Compact for Western Regional Cooperation in Higher Education, 15-1741 to 15-1746 .....	228
Article 9. Medical Programs, 15-1751 to 15-1754 .....	230
Article 10. Uniform Athlete Agents Act, 15-1761 to 15-1776 .....	231
Chapter 14. Provisions Relating to Both Community Colleges and Universities	
Article 1. Classification of Students for Tuition Purposes, 15-1801 to 15-1808 .....	235
Article 2. Admission of Students, 15-1821 to 15-1824 .....	237
Article 3. Vocational Programs, 15-1831 .....	239
Article 4. Selective Service Registration and Student Loan Repayment, 15-1841 .....	240
Article 5. Commission for Postsecondary Education, 15-1851 to 15-1854 .....	240
Article 6. Guaranteed Tuition Programs, 15-1861 to 15-1864 .....	242
Article 7. College Savings Plan, 15-1871 to 15-1879 .....	243
Chapter 15. Interstate Compacts	
Article 1. Compact for Education, 15-1901 .....	247
Chapter 16. School Capital Finance	
Article 1. School Facilities Board, 15-2001 to 15-2006 .....	250
Article 2. Building Adequacy Standards, 15-2011 .....	256
Article 3. Deficiencies Correction, 15-2021, 15-2022 .....	257
Article 4. Building Renewal, 15-2031 .....	258
Article 5. New School Facilities, 15-2041 .....	259
Article 6. State School Facilities Revenue Bonds, 15-2051 to 15-2066 .....	261
Article 7. State School Improvement Revenue Bonds, 15-2081 to 15-2095 .....	264
Article 8. Impact Aid Revenue Bonds, 15-2101 to 15-2115 .....	266
Chapter 17. Local Education Accountability Program	
Article 1. General Provisions, 15-2201 to 15-2203 .....	269
Chapter 18. Hazing Prevention Policies	

TABLE OF CONTENTS

Article 1. General Provisions, 15-2301 .....	270
Title 28 Transportation	
Chapter 3. Traffic and Vehicle Regulation	
Article 12. Special Stops Required, 28-853, 28-857, 28-857.01 .....	271
Article 15. Miscellaneous Rules, 28-900 to 28-902 .....	271
Article 16. Equipment, 28-930 .....	272
Article 17. Inspection of Vehicles, 28-984 .....	272
Chapter 8. Motor Vehicle Driver Licenses	
Article 2. Advisory Entities, 28-3053 .....	272
Article 5. Commercial Driver Licensing, 28-3228 .....	273
Title 38 Public Officers and Employees	
Chapter 3. Conduct of Office	
Article 3. Records, 38-421 to 38-424 .....	274
Article 3.1. Public Meetings and Proceedings, 38-431 to 38-431.09 .....	274
Article 8. Conflict of Interest of Officers and Employees, 38-501 to 38-511 .....	279
Article 9. Disclosure of Information by Public Employees, 38-531 to 38-534 .....	281
Chapter 5. Social Security and Retirement	
Article 1. Social Security for Public Officers and Employees, 38-701 to 38-706 .....	284
Article 2. Arizona State Retirement System, 38-711 to 38-794 .....	285
Article 2.1. Long-Term Disability Program, 38-797 to 38-797.14 .....	316
Article 5. Tax Deferred Annuity and Deferred Compensation Programs, 38-871 to 38-874 .....	319
Title 44 Trade and Commerce	
Chapter 9. Trade Practices Generally	
Article 17. Confidentiality of Social Security Numbers, 44-1373, 44-1373.01 .....	319

**Arizona Administrative Code**

Title 7 Education	
Chapter 2. State Board of Education	
Article 1. State Board of Education Meetings, R7-2-101 to R7-2-103 .....	324
Article 2. State Board of Education Committees, R7-2-201 to R7-2-207 .....	324
Article 3. Curriculum Requirements and Special Programs, R7-2-301 to R7-2-316 ...	326
Article 4. Special Education, R7-2-401 to R7-2-408 .....	337
Article 5. Career and Vocational Education, R7-2-501 to R7-2-520 .....	345
Article 6. Certification, R7-2-601 to R7-2-619 .....	346
Article 7. Adjudications, R7-2-701 to R7-2-718 .....	369
Article 8. Compliance, R7-2-801 to R7-2-810 .....	373
Article 9. School District Budget and Accounting, R7-2-901, R7-2-902 .....	377
Article 10. School District Procurement	
In General, R7-2-1001 to R7-2-1010 .....	378
Competitive Sealed Bidding, R7-2-1021 to R7-2-1033 .....	382

## TABLE OF CONTENTS

	Page
Multistep Sealed Bidding, R7-2-1035 to R7-2-1037 .....	385
Competitive Sealed Proposals, R7-2-1041 to R7-2-1050 .....	386
Sole Source Procurements, R7-2-1053 .....	387
Emergency Procurements, R7-2-1056, R7-2-1057 .....	387
Services of Clergy, Certified Public Accountants, Physicians, Dentists and Legal Counsel, R7-2-1061 to R7-2-1068 .....	388
General Contract Requirements, R7-2-1071 to R7-2-1086 .....	389
Contract Types, R7-2-1091 to R7-2-1093 .....	391
Article 11. School District Procurement Continued	
Specifications, R7-2-1101 to R7-2-1105 .....	391
Procurement of Construction, R7-2-1111 to R7-2-1115 .....	392
Procurement of Specified Professional Services, R7-2-1117 to R7-2-1123 .....	394
Cost Principles, R7-2-1125 .....	395
Materials Management, R7-2-1131 to R7-2-1133 .....	395
Bid Protests, R7-2-1141 to R7-2-1153 .....	396
Contract Claims and Controversies, R7-2-1155 to R7-2-1159 .....	398
Debarment and Suspension, R7-2-1161 to R7-2-1171 .....	398
Hearing Procedures, R7-2-1181 to R7-2-1185 .....	400
Intergovernmental Procurements, R7-2-1191 to R7-2-1195 .....	401
Article 12. Repealed, R7-2-1201 .....	402
Article 13. Conduct, R7-2-1301 to R7-2-1307 .....	402
Article 14. Charter Schools, R7-2-1401 to R7-2-1408 .....	404

**United States Code**

Title 20  
Education

Chapter 31. General Provisions Concerning Education General Requirements and Conditions Concerning Operation and Administration of Education Programs: General Authority of Secretary Records; Privacy; Limitation on Withholding Federal Funds	
§ 1232g. Family educational and privacy rights .....	
Chapter 33. Education of Individuals with Disabilities, §§ 1400 to 1487 .....	

User's Guide to the Index .....	
Index .....	

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# ARIZONA EDUCATION LAWS AND RULES ANNOTATED

## ARIZONA REVISED STATUTES

### TITLE 13

### CRIMINAL CODE

### CHAPTER 9

### PROBATION AND RESTORATION OF CIVIL RIGHTS

#### 13-914. Intensive probation; evaluation; sentence; criteria; limit; conditions

A. An adult probation officer shall prepare a presentence report for every offender who has either:

1. Been convicted of a felony and for whom the granting of probation is not prohibited by law.
2. Violated probation by commission of a technical violation that was not chargeable or indictable as a criminal offense.

B. The adult probation officer shall evaluate the needs of the offender and the offender's risk to the community, including the nature of the offense and criminal history of the offender. If the nature of the offense and the prior criminal history of the offender indicate that the offender should be included in an intensive probation program pursuant to supreme court guidelines for intensive probation, the adult probation officer may recommend to the court that the offender be granted intensive probation.

C. The court may suspend the imposition or execution of the sentence and grant the offender a period of intensive probation in accordance with this chapter. Except for sentences that are imposed pursuant to section 13-3601, the sentence is tentative to the extent that it may be altered or revoked pursuant to this chapter, but for all other purposes it is a final judgment of conviction. This subsection does not preclude the court from imposing a term of intensive probation pursuant to section 13-3601.

D. When granting intensive probation the court shall set forth on the record the factual and legal reasons in support of the sentence.

E. Intensive probation shall be conditioned on the offender:

1. Maintaining employment or maintaining full-time student status at a school subject to the provisions of title 15 or title 32, chapter 30 and making progress deemed satisfactory to the probation officer, or both, or being involved in supervised job searches and community service work at least six days a week throughout the offender's term of intensive probation.

2. Paying restitution and probation fees of not less than fifty dollars unless, after determining the inability of the offender to pay the fee, the court assesses a lesser fee. Probation fees shall be deposited in the adult probation services fund established by section 12-267. Any amount

greater than forty dollars of the fee assessed pursuant to this subsection shall only be used to supplement monies currently used for the salaries of adult probation and surveillance officers and for support of programs and services of the superior court adult probation departments.

3. Establishing a residence at a place approved by the intensive probation team and not changing the offender's residence without the team's prior approval.

4. Remaining at the offender's place of residence at all times except to go to work, to attend school, to perform community service and as specifically allowed in each instance by the adult probation officer.

5. Allowing administration of drug and alcohol tests if requested by a member of the intensive probation team.

6. Performing not less than forty hours of community service each month. Full-time students may be exempted or required to perform fewer hours of community service. For good cause, the court may reduce the number of community service hours performed to not less than twenty hours each month.

7. Meeting any other conditions imposed by the court to meet the needs of the offender and limit the risks to the community, including participation in a program of community punishment authorized in title 12, chapter 2, article 11.

2002

#### ANALYSIS

Discretion of court.  
Ineligibility for program.  
Intensive probation supervision program.  
Sentence upheld.

#### Discretion of Court.

Intensive probation is a statutory option within the discretion of the trial court in imposing probation. *State v. Perkins*, 159 Ariz. 381, 767 P.2d 729 (Ct. App. 1988).

Subsection A of this section simply sets forth the circumstances under which the probation department is required to prepare a presentence report and subsection B sets forth the criteria that the probation officer is to employ in evaluating an offender and the circumstances under which the officer may recommend intensive probation supervision (IPS), but neither subsection restricts the trial judge's authority to place an offender on IPS. *State v. Woodruff*, 196 Ariz. 359, 997 P.2d 544, 2000 Ariz. App. LEXIS 41 (Ct. App. 2000).

A court is not precluded from placing an offending probationer on intensive probation supervision absent a recommendation from the probation department. *State v. Woodruff*, 196 Ariz. 359, 997 P.2d 544, 2000 Ariz. App. LEXIS 41 (Ct. App. 2000).

If an offender is otherwise eligible for probation, a trial court is not precluded from placing that person on intensive probation supervision for committing an act, while on standard probation, that is chargeable or indictable as a crime. *State v. Woodruff*, 196 Ariz. 359, 997 P.2d 544, 2000 Ariz. App. LEXIS 41 (Ct. App. 2000).

#### Ineligibility for Program.

The trial court did not err when it sentenced defendant to one year of

jail time after he failed to qualify for the shock incarceration program. *State v. Gatlin*, 171 Ariz. 418, 831 P.2d 417 (Ct. App. 1992).

**Intensive Probation Supervision Program.**

The probation department is under a statutory duty to consider the appropriateness of the intensive probation supervision program for all offenders, provided probation is not prohibited by law. *State v. Galvan-Cardenas*, 165 Ariz. 399, 799 P.2d 19 (Ct. App. 1990).

**Sentence Upheld.**

No violation of the terms of the plea agreement occurred by the trial court's imposition of intensive probation. *State v. Perkins*, 159 Ariz. 381, 767 P.2d 729 (Ct. App. 1988).

## CHAPTER 12

### ASSAULT AND RELATED OFFENSES

**13-1204. Aggravated assault; classification; definition**

A. A person commits aggravated assault if the person commits assault as defined in section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
3. If the person commits the assault after entering the private home of another with the intent to commit the assault.
4. If the person is eighteen years of age or older and commits the assault upon a child the age of fifteen years or under.
5. If the person commits the assault knowing or having reason to know that the victim is a peace officer, or a person summoned and directed by the officer while engaged in the execution of any official duties.
6. If the person commits the assault knowing or having reason to know the victim is a teacher or other person employed by any school and the teacher or other employee is upon the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, or any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties, or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.
7. If the person meets both of the following conditions:
  - (a) Is imprisoned or otherwise subject to the custody of any of the following:
    - (i) The state department of corrections.
    - (ii) The department of juvenile corrections.
    - (iii) A law enforcement agency.
    - (iv) A county or city jail or an adult or juvenile detention facility of a city or county.
    - (v) Any other entity that is contracting with the state department of corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.
  - (b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities prescribed by subdivision (a) of this paragraph.
8. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
9. If the person commits the assault knowing or having reason to know that the victim is a fire fighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties.

10. If the person commits the assault knowing or having reason to know that the victim is a licensed health care practitioner who is certified or licensed pursuant to Title 32, Chapter 13, 15, 17 or 25, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. The provisions of this paragraph do not apply if the person who commits the assault is seriously mentally ill, as defined in section 36-550, or is afflicted with Alzheimer's disease or related dementia.

11. If the person commits assault by any means of force which causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part, or a fracture of any body part.

12. If the person commits assault as prescribed by section 13-1203, Subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.

13. If the person commits the assault knowing or having reason to know that the victim is a prosecutor.

B. Except pursuant to Subsections C and D of this section, aggravated assault pursuant to Subsection A, paragraph 1 or 2 of this section is a class 3 felony except if the victim is under fifteen years of age in which case it is a class 2 felony punishable pursuant to section 13-604.01. Aggravated assault pursuant to Subsection A, paragraph 11 of this section is a class 4 felony. Aggravated assault pursuant to Subsection A, paragraph 7 of this section is a class 5 felony. Aggravated assault pursuant to Subsection A, paragraph 3, 4, 5, 6, 8, 9, 10, 12 or 13 of this section is a class 6 felony.

C. Aggravated assault pursuant to Subsection A, paragraph 1 or 2 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 2 felony. Aggravated assault pursuant to Subsection A, paragraph 11 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 3 felony. Aggravated assault pursuant to Subsection A, paragraph 5 of this section resulting in any physical injury to a peace officer while the officer is engaged in the execution of any official duties is a class 5 felony.

D. Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.
2. Subsection A, paragraph 11 of this section is a class 3 felony if committed on a prosecutor.
3. Subsection A, paragraph 13 of this section is a class 5 felony if the assault results in a physical injury to a prosecutor.

E. For the purposes of this section, "prosecutor" means county attorney, municipal prosecutor or attorney general and an assistant or deputy county attorney, municipal prosecutor or attorney general. 2001

**ANALYSIS**

In general.  
 Construction.  
 Legislative intent.  
 Attached garage.  
 Burden of proof.  
 Charge.  
 Dangerous instrument.  
 Deadly weapon.  
 Elements.  
 — Circumstantial.  
 — Held sufficient.  
 — Insufficient.  
 — Prior convictions.  
 — Relevant.  
 Intent.  
 Jury instructions.  
 Lesser included offense.  
 Peace officer.

Restitution.  
 School employees.  
 Sentencing.  
 —Aggravated factors.  
 “Serious offense.”  
 “Serious physical injury.”  
 Superseding cause.

#### In General.

A person does not commit aggravated assault by entering a house with the intent to commit assault upon the occupant of the house, the accused commits aggravated assault if he commits the assault after entering the private home of another with the intent to commit the assault. *State v. Wargo*, 140 Ariz. 70, 680 P.2d 206 (Ct. App. 1984).

Reckless infliction of serious injury is one manner of committing aggravated assault. *State v. Moya*, 140 Ariz. 508, 683 P.2d 307 (Ct. App. 1984).

#### Construction.

While “health” in the phrase “serious impairment of health,” § 13-105, subsection 29, might be defined to include mental or emotional health, when read in conjunction with § 13-105, subsection 24, it is clear that the legislature intended to limit the statute to impairments of physical health. *State v. Garcia*, 138 Ariz. 211, 673 P.2d 955 (Ct. App. 1983).

The distinguishing element between aggravated assault and simple assault is whether in committing the assault appellant “use(d) a deadly weapon or dangerous instrument.” *State v. Noriega*, 142 Ariz. 474, 690 P.2d 775 (1984), overruled on other grounds, *State v. Burge*, 167 Ariz. 25, 804 P.2d 754 (1990); *State v. Torres*, 156 Ariz. 150, 750 P.2d 908 (Ct. App. 1988).

This section does not on its face “classify” persons at all; it classifies actions taken by persons. *State v. Schaffer*, 202 Ariz. 592, 376 Ariz. Adv. Rep. 6, 48 P.3d 1202, 2002 Ariz. App. LEXIS 98 (Ct. App. 2002).

#### Legislative Intent.

By excepting from the definition of “firearm” weapons which are in a permanently inoperable condition, the legislature did not intend that the state be required to prove the non-existence of the exception. *State v. Rosthenhausler*, 147 Ariz. 486, 711 P.2d 625 (Ct. App. 1985).

The legislature enacted paragraph A2 to deter criminals from using weapons that have the potential for inflicting serious injury or death. *State v. Torres*, 156 Ariz. 150, 750 P.2d 908 (Ct. App. 1988).

The legislature did not intend for every assault, whether mutual combat or otherwise, that does not cease the instant one party achieves the upper hand, to constitute an aggravated assault. In re Maricopa County Juvenile Action No. JV-123196, 172 Ariz. 74, 834 P.2d 160 (Ct. App. 1992).

#### Attached Garage.

An attached garage with a connecting door to the living quarters of a private home was such an integral part of the family sanctuary that it qualified for the protection of the aggravated assault statute. *State v. Browning*, 175 Ariz. 236, 854 P.2d 1222 (Ct. App. 1993).

#### Burden of Proof.

The state is not required to prove that the weapon is not permanently inoperable to establish a prima facie case. *State v. Rosthenhausler*, 147 Ariz. 486, 711 P.2d 625 (Ct. App. 1985).

#### Charge.

Prosecutor’s decision to charge defendant with aggravated assault pursuant to paragraph A2, rather than charging him under paragraph A1, was within the prosecutor’s discretion. *State v. Williams*, 168 Ariz. 367, 813 P.2d 1376 (Ct. App. 1991).

#### Dangerous Instrument.

Because the jury found the defendant guilty of armed burglary, three counts of aggravated assault, and one count of misconduct involving weapons, and each of these counts required the jury to consider whether the appellant exhibited a dangerous or deadly weapon, the issue of dangerousness, within the meaning of subsection A, was properly submitted to the jury. *State v. Caldera*, 141 Ariz. 634, 688 P.2d 642 (1984).

The evidence supported a finding that a belt was a dangerous instrument under this section. In re Pima County Juvenile Action No. 97036-02, 164 Ariz. 306, 792 P.2d 769 (Ct. App. 1990).

Operation of an automobile could constitute the use of a dangerous instrument for purposes of sentence enhancement where defendant was charged with aggravated assault, not driving under the influence

(DUI), and use of the automobile was not an essential element of the assault. *State v. Williams*, 168 Ariz. 367, 813 P.2d 1376 (Ct. App. 1991).

The use of a motor vehicle which injured a 14-year-old was not a “dangerous crime against children” under this section, as the defendant’s reckless actions created a risk to everyone around him and were not aimed at the young boy who ultimately became his victim; however, because the victim was under the age of 15, the classification of his felony was automatically enhanced to Class 2 under subsection B. *State v. Williams*, 175 Ariz. 98, 854 P.2d 131 (1993).

In prosecution of a juvenile for aggravated assault with a deadly weapon after defendant allegedly hit another youth with a bat, evidence was sufficient to support a finding by the juvenile court that transfer was appropriate where the judge found that the bat was a dangerous instrument for purposes of subdivision (A)(2) and that the juvenile inflicted serious injury on the victim with the bat. In re Maricopa County, Juvenile Action JV-511576, 186 Ariz. 604, 925 P.2d 745 (Ct. App. 1996).

A prosthetic device could be a “dangerous instrument” within the meaning of the aggravated assault statute and was a question for a jury. *State v. Schaffer*, 202 Ariz. 592, 376 Ariz. Adv. Rep. 6, 48 P.3d 1202, 2002 Ariz. App. LEXIS 98 (Ct. App. 2002).

#### Deadly Weapon.

An armed robbery may be committed with a simulated gun; however, the use of a simulated gun, or a firearm in permanently inoperable condition, would not satisfy the element requiring the use of a deadly weapon for aggravated assault. *State v. Rosthenhausler*, 147 Ariz. 486, 711 P.2d 625 (Ct. App. 1985).

A victim’s perception of the dangerousness of a deadly weapon used during an assault is not an element of aggravated assault. *State v. Torres*, 156 Ariz. 150, 750 P.2d 908 (Ct. App. 1988).

A pellet gun that used carbon dioxide cartridges to propel the pellets was a deadly weapon for purposes of the aggravated assault conviction and the dangerous nature findings. *State v. Cordova*, 198 Ariz. 242, 8 P.3d 1156, 1999 Ariz. App. LEXIS 220 (Ct. App. 1999).

#### Elements.

Defendant’s alleged ignorance concerning how to operate a gun was immaterial to aggravated assault conviction so long as she was capable of credibly threatening another with it. *State v. Noriega*, 142 Ariz. 474, 690 P.2d 775 (1984), overruled on other grounds, *State v. Burge*, 167 Ariz. 25, 804 P.2d 754 (1990).

Pain alone does not satisfy the requirements of this section. *State v. Cain*, 152 Ariz. 479, 733 P.2d 676 (Ct. App. 1987).

Under the statutory definition of aggravated assault found in this section, it would be possible to commit aggravated assault without the use or threat of violence. *State v. Fierro*, 166 Ariz. 539, 804 P.2d 72 (1990).

The reference in this section to an assault occurring while the victim is bound or physically restrained refers to conditions that would normally preexist an assault, and not to a condition or conditions which occur as a result of the assault. In re Maricopa County Juvenile Action No. JV-123196, 172 Ariz. 74, 834 P.2d 160 (Ct. App. 1992).

Substantial impairment must not always preexist the beginning of an assault before the provisions of paragraph A8 apply. If, during the course of an ongoing assault, the assailant bound the victim, or sprayed the victim in the eyes with a blinding substance, so that the victim could not resist, and the assailant then committed an additional assault, the assailant would be guilty of a violation of this section. In re Maricopa County Juvenile Action No. JV-123196, 172 Ariz. 74, 834 P.2d 160 (Ct. App. 1992).

The state must prove the defendant caused serious injury to the victim when serious injury is an element of the crime. *State v. Freeland*, 176 Ariz. 544, 863 P.2d 263 (Ct. App. 1993).

The trial court did not abuse its discretion in imposing separate felony penalties for convictions of aggravated robbery and aggravated assault, as different elements are required for each offense. *State v. Alexander*, 175 Ariz. 535, 858 P.2d 680 (Ct. App. 1993).

#### —Circumstantial.

Circumstantial evidence that a knife was held to the victim’s throat and was followed by a cut on the neck was held sufficient to prove fear and apprehension on the victim’s part, without the testimony of the victim himself. *State v. Valdez*, 160 Ariz. 9, 770 P.2d 313 (1989).

#### —Held Sufficient.

Evidence was sufficient to support finding aggravated assault on wife. *State v. Angle*, 149 Ariz. 499, 720 P.2d 100 (Ct. App. 1985), modified on other grounds, 149 Ariz. 478, 720 P.2d 79 (1986).

Evidence supported finding of guilt. *State v. Barger*, 167 Ariz. 563, 810 P.2d 191 (Ct. App. 1990), review denied, 168 Ariz. 155, 812 P.2d 628 (1991); *State v. Barnett*, 173 Ariz. 282, 842 P.2d 1295 (Ct. App. 1991).

—**Insufficient.**

The state failed to present substantial evidence to support a finding that assault was aggravated. *State v. Garcia*, 138 Ariz. 211, 673 P.2d 955 (Ct. App. 1983).

—**Prior Convictions.**

The trial court properly considered defendant's prior California conviction as a dangerous prior conviction. *State v. Adams*, 155 Ariz. 117, 745 P.2d 175 (Ct. App. 1987).

—**Relevant.**

The trial court did not abuse its discretion in finding photographs of injuries suffered by the victim relevant to proving serious physical injury under paragraph A1. *State v. Rushing*, 156 Ariz. 1, 749 P.2d 910 (1988).

**Intent.**

This section does not require a showing of specific intent to do harm. *State v. Williams*, 168 Ariz. 367, 813 P.2d 1376 (Ct. App. 1991).

Evidence of the defendant's gang membership was both relevant with regard to his motive and intent in the shooting and not more unfairly prejudicial than probative. *State v. Romero*, 178 Ariz. 45, 870 P.2d 1141 (Ct. App. 1993).

Trial court's jury instruction on transferred intent was erroneous where it permitted the state to argue that defendant's intent to shoot a police officer, for which he had been previously convicted, could have been transferred to serve as the intent for aggravated assaults on the bystanders. *State v. Johnson*, — Ariz. —, 402 Ariz. Adv. Rep. 3, 72 P.3d 343, 2003 Ariz. App. LEXIS 89 (Ct. App. 2003).

While common sense suggests that a person who shoots at one person likely knows that bystanders will be frightened by the shot, the apprehension form of assault requires proof of intentionally placing a person in apprehension; knowingly placing a person in apprehension is a less culpable mental state and is not sufficient for this crime. *State v. Johnson*, — Ariz. —, 402 Ariz. Adv. Rep. 3, 72 P.3d 343, 2003 Ariz. App. LEXIS 89 (Ct. App. 2003).

**Jury Instructions.**

In determining the sufficiency of the evidence necessary to require the giving of a lesser included offense instruction, the question is whether the jury could rationally fail to find the distinguishing element of the greater offense. *State v. Noriega*, 142 Ariz. 474, 690 P.2d 775 (1984), overruled on other grounds, *State v. Burge*, 167 Ariz. 25, 804 P.2d 754 (1990).

Defendant's contention that the jury verdicts did not establish whether he was convicted of Class 3 felonies or Class 6 felonies was meritless, as the jurors were properly instructed regarding the elements of the aggravated assaults, and they properly found defendant guilty of two counts of aggravated assault, hence, the defendant was properly convicted of and sentenced for Class 3 felonies. *State v. Suniga*, 145 Ariz. 389, 701 P.2d 1197 (Ct. App. 1985).

Where there was substantial evidence that the wife was in reasonable apprehension of imminent bodily injury, and there was some evidence which would permit the inference that she was not, as there was some evidence which could lead a reasonable jury to acquit on the greater offense of aggravated assault but convict on the lesser offense of attempt, an instruction on the lesser included offense was proper. *State v. Angle*, 149 Ariz. 499, 720 P.2d 100 (Ct. App. 1985), modified on other grounds, 149 Ariz. 478, 720 P.2d 79 (1986).

Where there was evidence which could lead a reasonable jury to acquit on the greater offense of aggravated assault but convict on the lesser offense of attempt, an instruction on the lesser included offense was proper. *State v. Angle*, 149 Ariz. 499, 720 P.2d 100 (Ct. App. 1985), modified on other grounds, 149 Ariz. 478, 720 P.2d 79 (1986).

Failure of the state to obtain the identity of and/or interview witnesses also available to the defendant did not entitle the defendant to a *State v. Willits*, 96 Ariz. 184, 393 P.2d 274 (1964) or missing person instruction. *State v. Walters*, 155 Ariz. 548, 748 P.2d 777 (Ct. App. 1987).

Where it was undisputed that the defendant used a gun during an attempted assault, the trial court did not err in refusing to instruct on assault as a lesser included offense of aggravated assault even though the victim did not believe the gun was real. *State v. Torres*, 156 Ariz. 150, 750 P.2d 908 (Ct. App. 1988).

When the victim dies as a result of an assault, the trial court is not

required to instruct on the lesser included offense of aggravated assault. *State v. Sanchez*, 165 Ariz. 164, 797 P.2d 703 (Ct. App. 1990).

Where direct testimony of the medical examiner was that death resulted from blunt force trauma caused by kicking and punching, the defendants were not entitled to an aggravated assault instruction absent evidence of their theory that other suspects could have inflicted the fatal blow. *State v. Sanchez*, 165 Ariz. 164, 797 P.2d 703 (Ct. App. 1990).

An instruction based on aggravated assault is proper where there is reasonable support in the record that the defendants' conduct was not the proximate cause of the victim's death. *State v. Sanchez*, 165 Ariz. 164, 797 P.2d 703 (Ct. App. 1990).

The rule under *State v. Hunter*, 142 Ariz. 88, 688 P.2d 980 (1984), which held that an instruction that misled the jury about the defendant's burden on the issue of self-defense was both reversible and fundamental error, is to be applied retroactively to all cases that had not become final at the time *Hunter* was decided. To the extent *State v. Garcia*, 152 Ariz. 245, 731 P.2d 610, holds to the contrary, that case is disapproved. *State v. Slemmer*, 170 Ariz. 174, 823 P.2d 41 (1991).

Trial court's instruction to jury on the elements of aggravated assault were improper where indictment did not charge defendant with such an assault. *State v. Craig*, 214 Ariz. Adv. Rep. 11 (Ct. App. 4/9/96).

**Lesser Included Offense.**

The crime of attempted threatening or intimidating is not a lesser included offense of attempted aggravated assault. *State v. May*, 137 Ariz. 183, 669 P.2d 616 (Ct. App. 1983).

Threatening or intimidating under § 13-1202 is not a lesser included offense within aggravated assault. *State v. Noriega*, 142 Ariz. 474, 690 P.2d 775 (1984), overruled on other grounds, *State v. Burge*, 167 Ariz. 25, 804 P.2d 754 (1990).

Where jury did find defendant not guilty of manslaughter, and having rejected the "guilty of manslaughter" verdict form, the jury was left with three choices of verdict form, two of which would have found defendant guilty of another offense, and none of which explicitly included a verdict of not guilty of aggravated assault, fundamental error occurred in the failure to submit a verdict form to the jury that would have found defendant not guilty of aggravated assault. *State v. Knorr*, 186 Ariz. 300, 921 P.2d 703 (Ct. App. 1996).

Disorderly conduct instructions are appropriate as a lesser included offense in aggravated assault cases if the facts support both instructions. *State v. Miranda*, 200 Ariz. 67, 346 Ariz. Adv. Rep. 26, 22 P.3d 506, 2001 Ariz. LEXIS 71 (2001).

**Peace Officer.**

"Peace officer," as used in subsection (A)(5), includes a juvenile probation officer. *In re David H.*, 192 Ariz. 459, 967 P.2d 134 (Ct. App. 1998).

An officer was engaged in "official duties" when, in response to a report that defendant was suicidal, she entered and remained in defendant's apartment and restrained her when she attempted to leave. *State v. Yoshida*, 195 Ariz. 183, 986 P.2d 216 (Ct. App. 1998).

The term "official duties" encompasses all aspects of a peace officer's good faith performance of his or her job-related duties, even if the officer's actions are later found to be unconstitutionally unreasonable. *State v. Yoshida*, 195 Ariz. 183, 986 P.2d 216 (Ct. App. 1998).

An off-duty sheriff's deputy, employed as a plainclothes security officer by a supermarket, who was attempting to arrest a suspected shoplifter was a "peace officer" engaged in the execution of official duties for purposes of the crimes of aggravated assault on a peace officer and resisting arrest. *State v. Fontes*, 195 Ariz. 229, 986 P.2d 897 (Ct. App. 1998).

**Restitution.**

Restitution award to the victim was not barred where juvenile defendant was found not delinquent on a charged offense and defendant was found delinquent of another criminal offense that properly supported the award; as such, defendant's acquittal on the § 13-1204(A)(11) charge was accordingly not a bar in light of the fact that she was adjudicated delinquent on the § 13-1204(A)(8) charge. *In re Stephanie B.*, 204 Ariz. 466, 396 Ariz. Adv. Rep. 69, 65 P.3d 114, 2003 Ariz. App. LEXIS 49 (Ct. App. 2003).

**School Employees.**

Paragraph A6 protects a school bus driver employed by a school district from assault while he is driving a school bus. *State v. Reed*, 171 Ariz. 677, 832 P.2d 694 (Ct. App. 1992).

**Sentencing.**

Defendant was not properly credited with the time he served while awaiting trial; therefore, pursuant to this subsection defendant's sentences for armed burglary, and aggravated assault were credited. *State v. Caldera*, 141 Ariz. 634, 688 P.2d 642 (1984).

The trial court is bound by the statutory mandate of § 13-604.02, subsection A, to impose a life sentence for each of the defendant's convictions under §§ 13-1203, 13-3102, and this section. *State v. Hudson*, 152 Ariz. 121, 730 P.2d 830 (1986).

Aggravated assault was not a lesser included offense of sexual assault; sentences for each offense were to be served concurrently. *State v. Schackart*, 153 Ariz. 422, 737 P.2d 398 (Ct. App. 1987).

Trial court did not err in sentencing defendant for aggravated assault as a class 2 felony rather than a class 3 felony, where the victims, passengers in a car he struck, were under the age of 15; the legislature's decision to increase the felony classification for aggravated assaults upon victims under fifteen is consistent with a retributive theory of criminal punishment. *State v. Flannigan*, 194 Ariz. 150, 978 P.2d 127, 1998 Ariz. App. LEXIS 192 (Ct. App. 1998), cert. denied, 528 U.S. 1074, 120 S. Ct. 785, 145 L. Ed. 2d 663 (2000).

#### —Aggravated Factors.

Pursuant to § 13-703, a "serious offense" includes aggravated assault resulting in serious physical injury or committed by the use of a deadly weapon which can be committed under subdivision (A)(2) of this section and § 13-1206. *State v. Martinez*, 196 Ariz. 451, 999 P.2d 795, 2000 Ariz. LEXIS 37, cert. denied, 531 U.S. 934, 121 S. Ct. 320, 148 L. Ed. 2d 257 (2000).

#### "Serious Offense."

Since it is possible to commit assault under paragraph A2 without the use or threat of violence, conviction for aggravated assault does not satisfy the § 13-703 factor. *State v. Walden*, 183 Ariz. 595, 905 P.2d 974 (1995), cert. denied, 517 U.S. 1146, 116 S. Ct. 1444, 134 L. Ed. 2d 564 (1996).

#### "Serious Physical Injury."

The fact that a victim suffered pain when molested did not constitute "serious physical injury." *State v. Cain*, 152 Ariz. 479, 733 P.2d 676 (Ct. App. 1987).

A broken nose is a "fracture of any body part" within the meaning of this section. *State v. Tiscareno*, 190 Ariz. 542, 950 P.2d 1163 (Ct. App. 1997).

#### Superseding Cause.

A victim's failure to wear a seat belt did not constitute an intervening, superseding cause that relieved the intoxicated driver of criminal responsibility for the victim's enhanced injuries. *State v. Freeland*, 176 Ariz. 544, 863 P.2d 263 (Ct. App. 1993).

## CHAPTER 16

### CRIMINAL DAMAGE TO PROPERTY

#### 13-1604. Aggravated criminal damage; classification

A. A person commits aggravated criminal damage by intentionally or recklessly without the express permission of the owner:

1. Defacing, damaging or in any way changing the appearance of any building, structure, personal property or place used for worship or any religious purpose.

2. Defacing or damaging any building, structure or place used as a school or as an educational facility.

3. Defacing, damaging or tampering with any cemetery, mortuary or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead.

B. Aggravated criminal damage is punishable as follows:

1. Aggravated criminal damage is a class 4 felony if the person intentionally or recklessly does any act described in subsection A which causes damage to the property of another in an amount of ten thousand dollars or more.

2. Aggravated criminal damage is a class 5 felony if the person intentionally or recklessly damages property of another in an amount of one thousand five hundred dollars or more but less than ten thousand dollars.

3. In all other cases aggravated criminal damage is a class 6 felony.

C. In determining the amount of damage to property, damages include the cost of repair or replacement of the property that was damaged. 1994

## CHAPTER 29

### OFFENSES AGAINST PUBLIC ORDER

Section	
13-2905.	Loitering; classification.
13-2911.	Interference with or disruption of an educational institution; violation; classification; definitions.
13-2912.	Unlawful introduction of disease or parasite; classification.
13-2917.	Public nuisance; abatement; classification.

#### 13-2905. Loitering; classification

A. A person commits loitering if such person intentionally:

1. Is present in a public place and in an offensive manner or in a manner likely to disturb the public peace solicits another person to engage in any sexual offense; or

2. Is present in a transportation facility and after a reasonable request to cease or unless specifically authorized to do so solicits or engages in any business, trade or commercial transactions involving the sale of merchandise or services; or

3. Is present in a public place to beg, unless specifically authorized by law; or

4. Is present in a public place, unless specifically authorized by law, to gamble with any cards, dice or other similar gambling devices; or

5. Is present in or about a school, college or university building or grounds after a reasonable request to leave and either does not have any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there or does not have written permission to be there from anyone authorized to grant permission.

B. Loitering under subsection A, paragraph 5 is a class 1 misdemeanor. Loitering under subsection A, paragraphs 1, 2, 3 and 4 is a class 3 misdemeanor. 1988

#### Lesser Included Offenses.

Loitering is not a lesser included offense of unlawful use of a narcotic drug, however, notwithstanding the disparity in punishment, unlawful use of a narcotic drug is a lesser included offense of the loitering offense. *State v. Bowling*, 163 Ariz. 22, 785 P.2d 591 (Ct. App. 1989).

#### 13-2911. Interference with or disruption of an educational institution; violation; classification; definitions

A. A person commits interference with or disruption of an educational institution by doing any of the following:

1. Intentionally, knowingly or recklessly interfering with or disrupting the normal operations of an educational institution by either:

(a) Threatening to cause physical injury to any employee or student of an educational institution or any person on the property of an educational institution.

(b) Threatening to cause damage to any educational institution, the property of any educational institution or the property of any employee or student of an educational institution.

2. Intentionally or knowingly entering or remaining on the property of any educational institution for the purpose of interfering with the lawful use of the property or in any manner as to deny or interfere with the lawful use of the property by others.

3. Intentionally or knowingly refusing to obey a lawful order given pursuant to subsection C of this section.

B. To constitute a violation of this section, the acts that are prohibited by subsection A, paragraph 1 of this section are not required to be directed at a specific individual, a specific educational institution or any specific property of an educational institution.

C. The chief administrative officer of an educational institution or an officer or employee designated by the chief administrative officer to maintain order may order a person to leave the property of the educational institution if the officer or employee has reasonable grounds to believe either that:

1. Any person or persons are committing any act that interferes with or disrupts the lawful use of the property by others at the educational institution.

2. Any person has entered on the property of an educational institution for the purpose of committing any act that interferes with or disrupts the lawful use of the property by others at the educational institution.

D. The appropriate governing board of every educational institution shall adopt rules pursuant to Title 41, Chapter 6 for the maintenance of public order on all property of any educational institution under its jurisdiction that is used for educational purposes and shall provide a program for the enforcement of its rules. The rules shall govern the conduct of students, faculty and other staff and all members of the public while on the property of the educational institution. Penalties for violations of the rules shall be clearly set forth and enforced. Penalties shall include provisions for the ejection of a violator from the property and, in the case of a student, faculty member or other staff violator, the violator's suspension or expulsion or any other appropriate disciplinary action. A governing board shall amend its rules as necessary to ensure the maintenance of public order. Any deadly weapon, dangerous instrument or explosive that is used, displayed or possessed by a person in violation of a rule adopted pursuant to this subsection shall be forfeited and sold, destroyed or otherwise disposed of pursuant to Chapter 39 of this title. This subsection does not do either of the following:

1. Preclude school districts from conducting approved gun safety programs on school campuses.

2. Apply to private universities, colleges, high schools or common schools or other private educational institutions.

E. An educational institution is not eligible to receive any state aid or assistance unless rules are adopted in accordance with this section.

F. This section does not prevent or limit the authority of the governing board of any educational institution to discharge any employee or expel, suspend or otherwise punish any student for any violation of its rules, even though the violation is unlawful under this chapter or is otherwise an offense.

G. This section may be enforced by any peace officer in this state wherever and whenever a violation occurs.

H. Restitution under sections 8-341, 8-345 and 13-603 applies to any financial loss that is suffered by a person or educational institution as a result of a violation of this section.

I. Interference with or disruption of an educational institution pursuant to subsection A, paragraph 1 of this section is a class 6 felony. Interference with or disruption of an educational institution pursuant to subsection A, paragraph 2 or 3 of this section is a class 1 misdemeanor.

J. For the purposes of this section:

1. "Educational institution" means, except as otherwise provided, any university, college, community college, high school or common school in this state.

2. "Governing board" means the body, whether appointed or elected, that has responsibility for the maintenance and government of an educational institution.

3. "Interference with or disruption of" includes any act that might reasonably lead to the evacuation or closure of any property of the educational institution or the postponement, cancellation or suspension of any class or other school activity. For the purposes of this paragraph, an actual evacuation, closure, postponement, cancellation or suspension is not required for the act to be considered an interference or disruption.

4. "Property of an educational institution" means all land, buildings and other facilities that are owned, operated or controlled by the governing board of an educational institution and that are devoted to educational purposes. 2002

### 13-2912. Unlawful introduction of disease or parasite; classification

A. It is unlawful for a person to knowingly introduce into this state a disease or parasite of animals or poultry that constitutes a threat to:

1. Livestock or poultry industry in this state.
2. Human health.
3. Human life.

B. This section does not apply to research conducted by government or educational institutions.

C. A violation of subsection A:

1. Paragraph 1 is a class 5 felony.
2. Paragraph 2 is a class 4 felony.
3. Paragraph 3 is a class 2 felony.

2002

### 13-2917. Public nuisance; abatement; classification

A. It is a public nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal, for anything:

1. To be injurious to health, indecent, offensive to the senses or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons.

2. To unlawfully obstruct the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin, or any public park, square, street or highway.

B. It is a public nuisance for any person to sell, offer to sell, transfer, trade or disseminate any item which is obscene as defined in section 13-3501, within two thousand feet, measured in a straight line, of the nearest boundary line of any of the following:

1. Any building used as a private or public elementary or high school.
2. Any public park.
3. Any residence district as defined in section 28-101.

C. The county attorney, the attorney general or the city attorney may bring an action in superior court to abate, enjoin and prevent the activity described in subsections A and B of this section.

D. Any person who knowingly maintains or commits a public nuisance or who knowingly fails or refuses to perform any legal duty relating to the removal of a public nuisance is guilty of a class 2 misdemeanor. 1999

## CHAPTER 31

### WEAPONS AND EXPLOSIVES

Section	
13-3102.	Misconduct involving weapons; defenses; classification; definitions.
13-3107.	Unlawful discharge of firearms; exceptions; classification; definitions.
13-3111.	Minors prohibited from carrying or possessing firearms; exceptions; seizure and forfeiture; penalties; classification.

**13-3102. Misconduct involving weapons; defenses; classification; definitions**

A. A person commits misconduct involving weapons by knowingly:

1. Carrying a deadly weapon without a permit pursuant to section 13-3112 except a pocket knife concealed on his person; or

2. Carrying a deadly weapon without a permit pursuant to section 13-3112 concealed within immediate control of any person in or on a means of transportation; or

3. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon; or

4. Possessing a deadly weapon if such person is a prohibited possessor; or

5. Selling or transferring a deadly weapon to a prohibited possessor; or

6. Defacing a deadly weapon; or

7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or

8. Using or possessing a deadly weapon during the commission of any felony offense included in Chapter 34 of this title; or

9. Discharging a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise; or

10. Unless specifically authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his person after a reasonable request by the operator of the establishment or the sponsor of the event or the sponsor's agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor of the event; or

11. Unless specifically authorized by law, entering an election polling place on the day of any election carrying a deadly weapon; or

12. Possessing a deadly weapon on school grounds; or

13. Unless specifically authorized by law, entering a nuclear or hydroelectric generating station carrying a deadly weapon on his person or within the immediate control of any person; or

14. Supplying, selling or giving possession or control of a firearm to another person if the person knows or has reason to know that the other person would use the firearm in the commission of any felony; or

15. Using, possessing or exercising control over a deadly weapon in furtherance of any act of terrorism as defined in section 13-2301 or possessing or exercising control over a deadly weapon knowing or having reason to know that it will be used to facilitate any act of terrorism as defined in section 13-2301.

B. Subsection A, paragraph 1 of this section shall not apply to a person in his dwelling, on his business premises or on real property owned or leased by that person.

C. Subsection A, paragraphs 1, 2, 3, 7, 10, 11, 12 and 13 of this section shall not apply to:

1. A peace officer or any person summoned by any peace officer to assist and while actually assisting in the performance of official duties; or

2. A member of the military forces of the United States or of any state of the United States in the performance of official duties; or

3. A warden, deputy warden or correctional officer of the state department of corrections; or

4. A person specifically licensed, authorized or permitted pursuant to a statute of this state or of the United States.

D. Subsection A, paragraphs 3 and 7 of this section shall not apply to:

1. The possessing, transporting, selling or transferring of weapons by a museum as a part of its collection or an

educational institution for educational purposes or by an authorized employee of such museum or institution, if:

(a) Such museum or institution is operated by the United States or this state or a political subdivision of this state, or by an organization described in section 170(c) of Title 26 of the United States Code as a recipient of a charitable contribution; and

(b) Reasonable precautions are taken with respect to theft or misuse of such material.

2. The regular and lawful transporting as merchandise; or

3. Acquisition by a person by operation of law such as by gift, devise or descent or in a fiduciary capacity as a recipient of the property or former property of an insolvent, incapacitated or deceased person.

E. Subsection A, paragraph 3 of this section shall not apply to the merchandise of an authorized manufacturer of or dealer in prohibited weapons, when such material is intended to be manufactured, possessed, transported, sold or transferred solely for or to a dealer or a regularly constituted or appointed state, county or municipal police department or police officer, or a detention facility, or the military service of this or another state or the United States, or a museum or educational institution or a person specifically licensed or permitted pursuant to federal or state law.

F. Subsection A, paragraph 1 of this section shall not apply to a weapon or weapons carried in a belt holster which holster is wholly or partially visible, or carried in a scabbard or case designed for carrying weapons which scabbard or case is wholly or partially visible or carried in luggage. Subsection A, paragraph 2 of this section shall not apply to a weapon or weapons carried in a case, holster, scabbard, pack or luggage that is carried within a means of transportation or within a storage compartment, trunk or glove compartment of a means of transportation.

G. Subsection A, paragraph 10 of this section shall not apply to shooting ranges or shooting events, hunting areas or similar locations or activities.

H. Subsection A, paragraph 3 of this section shall not apply to a weapon described in section 13-3101, paragraph 7, subdivision (e), if such weapon is possessed for the purposes of preparing for, conducting or participating in lawful exhibitions, demonstrations, contests or athletic events involving the use of such weapon. Subsection A, paragraph 12 of this section shall not apply to a weapon if such weapon is possessed for the purposes of preparing for, conducting or participating in hunter or firearm safety courses.

I. Subsection A, paragraph 12 of this section shall not apply to the possession of a:

1. Firearm that is not loaded and that is carried within a means of transportation under the control of an adult provided that if the adult leaves the means of transportation the firearm shall not be visible from the outside of the means of transportation and the means of transportation shall be locked.

2. Firearm for use on the school grounds in a program approved by a school.

J. Misconduct involving weapons under subsection A, paragraph 9, 14 or 15 of this section is a class 3 felony. Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13 of this section is a class 4 felony. Misconduct involving weapons under subsection A, paragraph 12 of this section is a class 1 misdemeanor unless the violation occurs in connection with conduct which violates the provisions of section 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section 13-3409 or section 13-3411, in which case the offense is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 5, 6 or 7 of this section is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 1, 2, 10 or 11 of this section is a class 1 misdemeanor.

K. For purposes of this section:

1. "Public establishment" means a structure, vehicle or craft that is owned, leased or operated by this state or a political subdivision of this state.
2. "Public event" means a specifically named or sponsored event of limited duration either conducted by a public entity or conducted by a private entity with a permit or license granted by a public entity. Public event does not include an unsponsored gathering of people in a public place.
3. "School" means a public or nonpublic kindergarten program, common school or high school.
4. "School grounds" means in, or on the grounds of, a school.

2002

## ANALYSIS

Constitutionality.  
 Construction.  
 Purpose.  
 Legislative intent.  
 City ordinance.  
 Constructive possession.  
 Concealed weapon.  
 Dominion or control.  
 Evidence not sufficient.  
 Firearms.  
 Indian reservations.  
 Knowingly possessed.  
 Minors.  
 Pretrial identification.  
 "Prohibited possessor."  
 Sentencing.

**Constitutionality.**

Subsection (A)(3) of this section is not unconstitutionally vague for failure to define the "barrel" of a gun. *State v. Davila*, 189 Ariz. 44, 938 P.2d 93 (Ct. App. 1997).

Since the particular drug felony at issue is not composed of the same elements as the use or possession of a deadly weapon during the commission of any felony, the presumption that the legislature did not intend to authorize multiple punishments is not applicable here. *State v. Siddle*, 202 Ariz. 512, 376 Ariz. Adv. Rep. 35, 47 P.3d 1150, 2002 Ariz. App. LEXIS 95 (Ct. App. 2002).

**Construction.**

Although Ariz. Laws 1991, ch. 316, § 3 and Ariz. Laws 1991, ch. 237, § 1, both of which amended this section, overlap in their organization, that is, different amendments are given the subsection A and paragraph 11 designation, they are not inconsistent or contradictory in any substantive matter. In *re Pima County Juvenile Delinquency Action No. 108965-02*, 172 Ariz. 466, 837 P.2d 1201 (Ct. App. 1992).

**Purpose.**

The purpose of the criminal street gang statute is to curb the activity of people who band together for the purpose of committing crimes. *State v. Torres-Mercado*, 191 Ariz. 279, 955 P.2d 35 (Ct. App. 1997).

A "fanny pack" is not a "case" for purposes of subsection F. *State v. Moerman*, 182 Ariz. 255, 895 P.2d 1018 (Ct. App. 1994).

**Legislative Intent.**

This section was drafted to protect the public by preventing an individual from having on hand a deadly weapon of which the public is unaware and which an individual may use in a sudden heat of passion. *State v. Moerman*, 182 Ariz. 255, 895 P.2d 1018 (Ct. App. 1994).

Since § 13-3102(A)(8) by its express terms requires commission of another felony offense, the legislature clearly intended to permit multiple punishments. *State v. Siddle*, 202 Ariz. 512, 376 Ariz. Adv. Rep. 35, 47 P.3d 1150, 2002 Ariz. App. LEXIS 95 (Ct. App. 2002).

**City Ordinance.**

City ordinance prohibiting using or possessing firearms within city parks was not preempted by the provisions of this chapter, and did not violate the right to bear arms under the Arizona Constitution. *City of Tucson v. Rineer*, 193 Ariz. 160, 971 P.2d 207 (Ct. App. 1998).

**Constructive Possession.**

While one cannot violate paragraph A3 by the constructive possession of merely being in the home of a registered owner, actual

possession by anyone other than the registered owner is prohibited. *State v. Kerr*, 142 Ariz. 426, 690 P.2d 145 (Ct. App. 1984).

The trial court properly instructed the jury on constructive possession, where the state presented evidence that a conspiracy to buy and ship military weapons existed. *State v. Coley*, 158 Ariz. 471, 763 P.2d 535 (Ct. App. 1988).

**Concealed Weapon.**

The standard of "ordinary observation," when applied with common sense, will serve to determine whether a weapon is concealed. *State v. Adams*, 189 Ariz. 235, 941 P.2d 908 (Ct. App. 1997).

Semi-automatic weapon wedged between the passenger seat and door of automobile was concealed, as there was nothing about its location that put others on notice of its presence. *State v. Adams*, 189 Ariz. 235, 941 P.2d 908 (Ct. App. 1997).

**Dominion or Control.**

Where the jury was instructed that, for the possession to be criminal, the defendant needed to exercise dominion or control over the prohibited weapon the instruction was proper. *State v. Tyler*, 149 Ariz. 312, 718 P.2d 214 (Ct. App. 1986).

**Evidence Not Sufficient.**

Conviction for weapons misconduct was reversed where the trial court erred in admitting certain evidence and in failing to instruct the jury that, to convict, it had to find more than a mere temporal nexus between the guns and the drugs that formed the factual basis for the charge. *State v. Petrak*, 198 Ariz. 260, 8 P.3d 1174, 2000 Ariz. App. LEXIS 133 (Ct. App. 2000).

**Firearms.**

Even though a weapon has been registered in the National Firearms Registry, a person can be indicted and convicted of possession of a prohibited weapon in violation of § 13-3101 and this section. *State v. Kerr*, 142 Ariz. 426, 690 P.2d 145 (Ct. App. 1984).

Evidence that disassembled shotgun could be easily reassembled by readjusting a bolt and replacing the firing pin was sufficient to allow jury to determine that the firearm was not permanently inoperable within the meaning of A.R.S. § 13-3101 and that defendant knew it was not permanently inoperable. *State v. Young*, 192 Ariz. 303, 965 P.2d 37 (Ct. App. 1998).

Superior court properly denied a motion to suppress a shotgun seized without a warrant where the officers had consent to be in the house, they could have reasonably perceived an immediate danger to their safety that warranted lifting a mattress and temporarily seizing the shotgun, and the shotgun's seizure and removal were justified by one officer's observation that it was an illegal weapon under §§ 13-3101(A)(7)(d) and 13-3102(A)(3). *State v. Rodriguez*, — Ariz. —, 403 Ariz. Adv. Rep. 18, 71 P.3d 919, 2003 Ariz. App. LEXIS 99 (Ct. App. 2003).

**Indian Reservations.**

State had jurisdiction to try a non-Indian defendant in a state court where the offense occurred on an Indian reservation and the victim was also a non-Indian. *State v. Burrola*, 137 Ariz. 181, 669 P.2d 614 (Ct. App. 1983).

**Knowingly Possessed.**

In prosecution for possession of a shotgun with a barrel shorter than the legal length, the state was not required to prove that defendant knew the length of the shotgun or the barrel, only that he knowingly possessed the weapon. *State v. Young*, 192 Ariz. 303, 965 P.2d 37 (Ct. App. 1998).

**Minors.**

Where police officer received a tip from a school security officer that there as a student near the school grounds with a gun that he had been showing to other students, the subsequent stop, search and arrest, and statements by juvenile were all legally conducted or obtained and admissible as evidence. In *re Roy L.*, 197 Ariz. 441, 4 P.3d 984, 2000 Ariz. App. LEXIS 4 (Ct. App. 2000).

**Pretrial Identification.**

Pretrial identification could not be extended from its role of pretrial personal identification of a defendant to identification of items of evidence. *State v. Tyler*, 149 Ariz. 312, 718 P.2d 214 (Ct. App. 1986).

**"Prohibited Possessor."**

In applying the definition of "prohibited possessor" under paragraph

A4, the court may take judicial notice that certain crimes, by nature, involve violence. *State v. Hudson*, 152 Ariz. 121, 730 P.2d 830 (1986).

Where the evidence showed that the defendant had been convicted of robbery and that defendant's civil rights had not been restored, the defendant was a "prohibited possessor" under paragraph A4. *State v. Hudson*, 152 Ariz. 121, 730 P.2d 830 (1986).

Paragraph A4 seeks to prevent prohibited possessors from being in control of deadly weapons. *State v. Coley*, 158 Ariz. 471, 763 P.2d 535 (Ct. App. 1988).

#### **Sentencing.**

The trial court is bound by the statutory mandate of § 13-604.02, subsection A, to impose a life sentence for each of the defendant's convictions under §§ 13-1204, 13-1203 and this section. *State v. Hudson*, 152 Ariz. 121, 730 P.2d 830 (1986).

Because defendant was on parole and living in his aunt's house at the time of possession, he was not "serving a term of imprisonment in a correctional or detention facility" and, therefore, was not a prohibited possessor as defined in § 13-3101, paragraph 5 (now 6) for purposes of this section. *State v. Johnson*, 171 Ariz. 39, 827 P.2d 1134 (Ct. App. 1992).

Defendant was not a prohibited possessor under § 13-3101, paragraph 5 (now 6) and this section, paragraph A4, although he was a parole violator. *State v. Johnson*, 171 Ariz. 39, 827 P.2d 1134 (Ct. App. 1992).

#### **13-3107. Unlawful discharge of firearms; exceptions; classification; definitions**

A. A person who with criminal negligence discharges a firearm within or into the limits of any municipality is guilty of a Class 6 felony.

B. Notwithstanding the fact that the offense involves the discharge of a deadly weapon, unless the dangerous nature of the felony is charged and proven pursuant to section 13-604, subsection P, the provisions of section 13-702, subsection G apply to this offense.

C. This section does not apply if the firearm is discharged:

1. As allowed pursuant to the provisions of Chapter 4 of this title.
2. On a properly supervised range.
3. In an area recommended as a hunting area by the Arizona game and fish department, approved and posted as required by the chief of police, but any such area may be closed when deemed unsafe by the chief of police or the director of the game and fish department.
4. For the control of nuisance wildlife by permit from the Arizona game and fish department or the United States Fish and Wildlife Service.
5. By special permit of the chief of police of the municipality.
6. As required by an animal control officer in the performance of duties as specified in section 9-499.04.
7. Using blanks.
8. More than one mile from any occupied structure as defined in section 13-3101.
9. In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.

D. For the purposes of this section:

1. "Municipality" means any city or town and includes any property that is fully enclosed within the city or town.
2. "Properly supervised range" means a range that is operated:
  - (a) By a club affiliated with the National Rifle Association of America, the amateur trapshooting association, the national skeet association or any other nationally recognized shooting organization, or by any public or private school, or
  - (b) Approved by any agency of the federal government, this state, a county or city within which the range is located or
  - (c) With adult supervision for shooting air or carbon dioxide gas operated guns, or for shooting in underground ranges on private or public property.

2000

#### **City Ordinance.**

City ordinance prohibiting using or possessing firearms within city parks was not preempted by the provisions of this chapter, and did not violate the right to bear arms under the Arizona Constitution. *City of Tucson v. Rineer*, 193 Ariz. 160, 971 P.2d 207 (Ct. App. 1998).

#### **13-3111. Minors prohibited from carrying or possessing firearms; exceptions; seizure and forfeiture; penalties; classification**

A. Except as provided in subsection B, an unemancipated person who is under eighteen years of age and who is unaccompanied by a parent, grandparent or guardian, or a certified hunter safety instructor or certified firearms safety instructor acting with the consent of the unemancipated person's parent or guardian, shall not knowingly carry or possess on his person, within his immediate control, or in or on a means of transportation a firearm in any place that is open to the public or on any street or highway or on any private property except private property owned or leased by the minor or the minor's parent, grandparent or guardian.

B. This section does not apply to a person who is fourteen, fifteen, sixteen or seventeen years of age and who is any of the following:

1. Engaged in lawful hunting or shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.
  2. Engaged in lawful transportation of an unloaded firearm for the purpose of lawful hunting.
  3. Engaged in lawful transportation of an unloaded firearm between the hours of 5:00 a.m. and 10:00 p.m. for the purpose of shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.
  4. Engaged in activities requiring the use of a firearm that are related to the production of crops, livestock, poultry, livestock products, poultry products, ratites or in the production or storage of agricultural commodities.
- C. If the minor is not exempt under subsection B and is in possession of a firearm, a peace officer shall seize the firearm at the time the violation occurs.

D. In addition to any other penalty provided by law a person who violates subsection A shall be subject to the following penalties:

1. If adjudicated a delinquent juvenile for an offense involving an unloaded firearm, a fine of not more than two hundred fifty dollars, and the court may order the suspension or revocation of the person's driver license until the person reaches eighteen years of age. If the person does not have a driver license at the time of the adjudication, the court may direct that the department of transportation not issue a driver license to the person until the person reaches eighteen years of age.
2. If adjudicated a delinquent juvenile for an offense involving a loaded firearm, a fine of not more than five hundred dollars, and the court may order the suspension or revocation of the person's driver license until the person reaches eighteen years of age. If the person does not have a driver license at the time of the adjudication, the court may direct that the department of transportation not issue a driver license to the person until the person reaches eighteen years of age.
3. If adjudicated a delinquent juvenile for an offense involving a loaded or unloaded firearm, if the person possessed the firearm while the person was the driver or an occupant of a motor vehicle, a fine of not more than five hundred dollars and the court shall order the suspension or revocation of the person's driver license until the person reaches eighteen years of age. If the person does not have a driver license at the time of adjudication, the court shall direct that the department of transportation not issue a driver license to the person until

the person reaches eighteen years of age. If the court finds that no other means of transportation is available, the driving privileges of the child may be restricted to travel between the child's home, school and place of employment during specified periods of time according to the child's school and employment schedule.

E. Firearms seized pursuant to subsection C shall be held by the law enforcement agency responsible for the seizure until the charges have been adjudicated or disposed of otherwise or the person is convicted. Upon adjudication or conviction of a person for a violation of this section, the court shall order the firearm forfeited. However, the law enforcement agency shall return the firearm to the lawful owner if the identity of that person is known.

F. If the court finds that the parent or guardian of a minor found responsible for violating this section knew or reasonably should have known of the minor's unlawful conduct and made no effort to prohibit it, the parent or guardian is jointly and severally responsible for any fine imposed pursuant to this section or for any civil actual damages resulting from the unlawful use of the firearm by the minor.

G. This section is supplemental to any other law imposing a criminal penalty for the use or exhibition of a deadly weapon. A minor who violates this section may be prosecuted and convicted for any other criminal conduct involving the use or exhibition of the deadly weapon.

H. This section applies only in counties with populations of more than five hundred thousand persons according to the most recent decennial census. Counties with populations of five hundred thousand persons or less according to the most recent decennial census, or cities or towns within those counties, may adopt an ordinance identical to this section.

I. A person who violates subsection A is guilty of a class 6 felony. 1997

#### ANALYSIS

Constitutionality.  
Reasonable suspicion.

#### Constitutionality.

Although the legislature expressly enacted this section to address a "statewide concern," subsection H of the statute limits its application to Pima and Maricopa Counties and makes improbable the entry and exit by the other counties; therefore, the statute constitutes a special or local law and violates Article IV, Part 2, § 19(7) of the Arizona Constitution. In re Cesar R., 197 Ariz. 437, 4 P.3d 980, 1999 Ariz. App. LEXIS 213 (Ct. App. 1999).

This section is a special law in violation of Article IV, Part 2, section 19(7) of the Arizona Constitution. In re Marxus B., 199 Ariz. 11, 13 P.3d 290, 2000 Ariz. App. LEXIS 168 (Ct. App. 2000).

#### Reasonable Suspicion.

Where police officer received a tip from a school security officer that there as a student near the school grounds with a gun that he had been showing to other students, the subsequent stop, search and arrest, and statements by juvenile were all legally conducted or obtained and admissible as evidence. In re Roy L., 197 Ariz. 441, 4 P.3d 984, 2000 Ariz. App. LEXIS 4 (Ct. App. 2000).

## CHAPTER 34

### DRUG OFFENSES

#### **13-3411. Possession, use, sale or transfer of marijuana, peyote, prescription drugs, dangerous drugs or narcotic drugs or manufacture of dangerous drugs in a drug free school zone; violation; classification; definitions**

A. It is unlawful for a person to do any of the following:

1. Intentionally be present in a drug free school zone to sell or transfer marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs.

2. Possess or use marijuana, peyote, dangerous drugs or narcotic drugs in a drug free school zone.

3. Manufacture dangerous drugs in a drug free school zone.

B. A person who violates subsection A of this section is guilty of the same class of felony that the person would otherwise be guilty of had the violation not occurred within a drug free school zone, but the minimum, maximum and presumptive sentence for that violation shall be increased by one year. A person convicted of violating subsection A of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The additional sentence imposed under this subsection is in addition to any enhanced punishment that may be applicable under section 13-604 or other provisions of this chapter.

C. In addition to any other penalty prescribed by this title, the court shall order a person convicted of a violation of this section to pay a fine of not less than two thousand dollars or three times the value as determined by the court of the drugs involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

D. Each school district's governing board or its designee, or the chief administrative officer in the case of a nonpublic school, shall place and maintain permanently affixed signs located in a visible manner at the main entrance of each school that identifies the school and its accompanying grounds as a drug free school zone.

E. The drug free school zone map prepared pursuant to title 15 shall constitute an official record as to the location and boundaries of each drug free school zone. The school district's governing board or its designee, or the chief administrative officer in the case of any nonpublic school, shall promptly notify the county attorney of any changes in the location and boundaries of any school property and shall file with the county recorder the original map prepared pursuant to title 15.

F. All school personnel who observe a violation of this section shall immediately report the violation to a school administrator. The administrator shall immediately report the violation to a peace officer. It is unlawful for any school personnel or school administrator to fail to report a violation as prescribed in this section.

G. School personnel having custody or control of school records of a student involved in an alleged violation of this section shall make the records available to a peace officer upon written request signed by a magistrate. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding. A person furnishing records required under this subsection or a person participating in a judicial or administrative proceeding or investigation resulting from the furnishing of records required under this subsection is immune from civil or criminal liability by reason of such action unless the person acted with malice.

H. A person who violates subsection F of this section is guilty of a class 3 misdemeanor.

I. For purposes of this section:

1. "Drug free school zone" means the area within three hundred feet of a school or its accompanying grounds, any public property within one thousand feet of a school or its accompanying grounds, a school bus stop or on any school bus or bus contracted to transport pupils to any school.

2. "School" means any public or nonpublic kindergarten program, common school or high school. 1999

#### ANALYSIS

Applicability.  
Elements of offense.