

PROPOSED LEGISLATION

THE PETITIONER

The petitioner of this proposed legislative change is Arizona Association of Certified Process Servers, a non-profit organization representing Arizona certified process servers statewide.

LEGISLATION AFFECTED

The legislation affected by the proposed changes herein is A.R.S. § 13-1204 at (j). and at G.

BACKGROUND AND DISCUSSION

The authority of the certified process server is established in A.R.S. § 11- 445 I.

The certified process server is designated “an officer of the court” in A.R.S. § 11-445 I, which reads in pertinent part, “[A] private process server is an officer of the court.”

Regulation of certified process servers is vested in the Supreme Court Licensing and Regulation Division.

Certification and administration of certified process servers is vested in the Superior Court, specifically the Superior Court in the county in which the certified process server resides.

Certified process servers undergo a criminal background investigation as required in A.R.S. § 11-445 I which reads in pertinent part, “[A]s a condition of registration, the Supreme Court shall require each private process server applicant to furnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine suitability of the applicant.”

Certified process servers undergo examination prior to certification as required in the Arizona Code of Judicial Administration § 7-204 at E. Initial Certification 3. Examination, which reads in pertinent part, “[E]ach applicant for certification or renewal shall personally take and pass the examination provided by the director and administered and scored by the clerk of the superior court.”

Certified process servers must undergo ten hours of continuing education per year of certification as required in the Arizona Code of Judicial Administration § 7-204 at F. Role and Responsibilities of Certificate Holders. 7. Continuing Education, which reads in pertinent part, “[C]ertified private process servers shall complete ten hours of continuing education each twelve months...”.

Certified process servers renew their certifications every three years, and a criminal background investigation is accompanied by a fingerprint card submission for both a state and federal criminal records check.

Certified process servers are required to be neutral parties as written into the Arizona Rules of Civil Procedure Rule 4 (d), which reads in pertinent part, "...[a] private process server shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served."

Certified process servers who are acting within their capacity of officers of the court and who are attempting to serve process are often erroneously viewed by parties upon whom service is being sought as instigators of the action, parties to the action, or simply messengers of bad news, thus establishing an adversarial confrontation by this circumstance.

Certified process servers who are acting within their capacity of officers of the court are too often the victims of assault and perform their duties as officers of the court alone and unarmed in often remote and very dangerous locations.

Certified process servers who are acting within their capacity of officers of the court warrant and deserve the protections offered to other vulnerable classes of persons cited in A.R.S. § 13-1204, such as law enforcers, constables, emergency responders, health care providers, and teachers.

PURPOSE AND INTENT OF PROPOSED LEGISLATION

It is the purpose and intent of this proposed legislation to provide additional protection against assault for this officer of the court, who is nearly always alone and unarmed as service of process is attempted and performed. Further purpose and intent of this proposed legislation is to serve as a deterrent against assault upon the certified process server by a member of the public. This is the identical level of deterrent protection now accorded to other potentially vulnerable parties, such as judges, law enforcers, constables, emergency responders, health care providers, and teachers.

IMPACT UPON STATE FUNDS AND ARIZONA TAXPAYERS

The proposed revision of A.R.S. § 13-1204 shall have no negative impact whatsoever upon state funds nor shall the proposed revision have a negative impact upon Arizona taxpayers, as it seeks neither funding nor tax relief of any sort.

IMPACT UPON THE PUBLIC AND CERTIFIED PROCESS SERVERS

The proposed legislation aids the public by:

- a. putting the public on notice that violence against the certified process server who is an officer of the court shall not be tolerated, and
- b. creating a safer environment that allows for more efficient and effective service of process, and
- c. serving as a deterrent to violence against the certified process server and thus minimizing negative interaction with the public.

The proposed legislation aids certified process servers by:

- a. serving as a necessary deterrent to acts of violence against certified process servers, and
- b. serving as a necessary deterrent to repeat acts of violence against the certified process server, and
- c. recognizing the inherent danger in the service of process, and
- d. establishing this officer of the court as a more protected entity in the performance of their duties.

The proposed legislation aids the courts by:

- a. better protecting their officers of the court from violent acts, and
- b. helping to ensure more efficient and effective service of process in an environment of reduced violence.

OTHER STATE’S LEGISLATIVE APPROACH

It is noted that most other states do not have a certified process server program like that in Arizona. Arizona has one of the most evolved and sophisticated certified process server programs in the United States.

Other states that do have private process server programs have encountered similar problems in the absence of appropriate legislation and have successfully addressed their respective issues legislatively as follows:

- a. Illinois: The State of Illinois in 2011 revised its aggravated assault statute to include the process server in Section 5. Criminal Code § 12.2 Aggravated Assault a. (20), which now reads in pertinent part, “[K]nows the individual to be either (A) a person authorized to serve process...” or (B) a special process server appointed by the circuit court while that individual is in the performance of his or her duties as a process server.”

PROPOSED STATUTORY REVISION

The proposed statutory revision to A.R.S. § 13-1204 shall add wording as follows in bold type:

A.R.S. § 13-1204. Aggravated assault; classification; definition

A person can be charged with Felony Aggravated Assault if that person commits Misdemeanor Assault under any of the following circumstances:

A. A person commits aggravated assault if the person commits assault as prescribed by §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 by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
4. 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.
5. If the person commits the assault after entering the private home of another with the intent to commit the assault.
6. If the person is eighteen years of age or older and commits the assault on a minor under fifteen years of age.
7. If the person commits assault as prescribed by §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 §13-3602 or 13-3624.
8. If the person commits the assault knowing or having reason to know that the victim is any of the following:
 - (a) A peace officer, or a person summoned and directed by the officer while engaged in the execution of any official duties.
 - (b) A constable, or a person summoned and directed by the constable while engaged in the execution of any official duties.
 - (c) A firefighter, 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.

(d) A teacher or other person employed by any school and the teacher or other employee is on 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, 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.

(e) A 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. This subdivision does not apply if the person who commits the assault is seriously mentally ill, as defined in §36-550, or is afflicted with Alzheimer's disease or related dementia.

(f) A prosecutor.

(g) A code enforcement officer as defined in §39-123.

(h) A state or municipal park ranger.

(i) A public defender.

(j) A certified process server while engaged in the performance of attempting to serve process and while serving process.

9. If the person knowingly takes or attempts to exercise control over any of the following:

(a) A peace officer's or other officer's firearm and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.

(b) Any weapon other than a firearm that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.

(c) Any implement that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the

execution of any official duties. For the purposes of this subdivision, "implement" means an object that is designed for or that is capable of restraining or injuring an individual. Implement does not include handcuffs.

10. 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 listed in subdivision (a) of this paragraph.

B. A person commits aggravated assault if the person commits assault by either intentionally, knowingly or recklessly causing any physical injury to another person, intentionally placing another person in reasonable apprehension of imminent physical injury or knowingly touching another person with the intent to injure the person, and both of the following occur:

1. The person intentionally or knowingly impedes the normal breathing or circulation of blood of another person by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or through the use of an instrument.

2. Any of the circumstances exists that are set forth in §13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.

C. A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer while the officer is engaged in the execution of any official duties pursuant to subsection A, paragraph 1 or 2 of this section shall be sentenced to imprisonment for not less than the presumptive sentence authorized under chapter 7 of this title and is not eligible

for suspension of sentence, commutation or release on any basis until the sentence imposed is served.

D. Except pursuant to subsections E and F of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9, subdivision (a) 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 §13-705.

Aggravated assault pursuant to subsection A, paragraph 3 or subsection B of this section is a class 4 felony.

Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony.

Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6 felony.

E. 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 3 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 8, subdivision (a) of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 5 felony unless the assault results in any physical injury to the peace officer while the officer is engaged in the execution of any official duties, in which case it is a class 4 felony.

F. 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 3 of this section is a class 3 felony if committed on a prosecutor.

3. Subsection A, paragraph 8, subdivision (f) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

G. For the purposes of this section:

1. **“Certified Process Server” means any officer of the superior court who is certified to serve process.**

