

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: SUBSTANTIVE CRIMINAL LAW 2.11

SUBJECT:	Substantive Criminal Law
AZ POST DESIGNATION:	2.11 Chapter 31 Weapons and Explosives
HOURS:	2
COURSE CONTENT:	An analysis of the most frequently used statutes in this chapter.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will: <ul style="list-style-type: none">2.11.31.1 Given a copy of A.R.S. Title 13 and a written, verbal or visual description depicting the possible commission of the following crime(s), identify if a crime occurred and, if so, the appropriate code section and crime classification:<ul style="list-style-type: none">A. Discharge of a firearm (A.R.S. §13-3107).B. Sale or gift of a firearm to a minor (A.R.S. §13-3109).C. Misconduct involving simulated explosive devices (A.R.S. §13-3110).D. A minor prohibited from carrying or possessing firearms (A.R.S. §13-3111).E. Permit to carry a concealed weapon (A.R.S. §13-3112).2.11.31.2 Given a written, verbal or visual description depicting the possible commission of a crime related to the use of dangerous instruments or deadly weapons, identify if a crime occurred and, if so, the common crime name and classification as per A.R.S. §§13-3102, 13-3103 and 13-3104.

LESSON TITLE: SUBSTANTIVE CRIMINAL LAW
CHAPTER 31 WEAPONS AND EXPLOSIVES

PAGE: 2

DATE FIRST PREPARED: November 2000

PREPARED BY: SME Committee

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AZ POST – APPROVAL:	Steve Enteman	DATE: August 2019
AZ POST – APPROVAL:	Mandy Faust	DATE: April 2021
AZ POST – APPROVAL:	Lori Wait	DATE: January 2022

INSTRUCTOR REFERENCES: A.R.S. Title 13

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2-11 Ch 31 Weapons and Explosives

DATE RELEASED TO SHARE FILE: May 27, 2022

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives. ***INSTRUCTOR NOTE:** Use if taught as a “Stand alone” lesson plan.*

II. 13-3101 – DEFINITIONS

- A. Deadly weapon – means anything designed for lethal use. The term includes firearms.
- B. Deface – means to remove, alter or destroy the manufacturer's serial number.
- C. Explosive – means any dynamite, nitroglycerine, black powder or other similar explosive material including plastic explosives, but does not mean or include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand loading purposes. (Keep this "hand loading" exception in mind when you read the next definition of "firearms.")
- D. Firearms – means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include a firearm in permanently inoperable condition.
 - 1. **Note** that in this same definition in Chapter 1 the projectile was expelled by the action of expanding gas.
 - 2. In this chapter, the projectile is expelled by the action of an explosive. Keeping in mind that in the definition of an "explosive," that it did not include any component for hand loading purpose so at first glance it would appear that if you loaded your own ammo, your gun would not be considered a firearm under this definition.
 - 3. Although this sounds like a good argument, the courts have said "forget it" – it is still a firearm even if you hand load your own bullets.
 - 4. For all practical purposes, and to make better sense out of the definitions, we will use the Chapter 1 definition for the term **firearm**.
- E. Improvised explosive device – means a device that incorporates explosives or destructive, lethal, noxious, pyrotechnic or incendiary chemicals and that is designed to destroy, disfigure, terrify or harass.
- F. Occupied structure – means any building, object, vehicle watercraft, aircraft or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage in which one (1) or more human beings either is, or is likely to be, present or so near as to be in equivalent danger at the time the discharge of a firearm occurs.

1. This term includes any dwelling house whether occupied, unoccupied or vacant.
- G. Prohibited possessor – means any person:
1. Who has been found to constitute a danger to himself/herself or to others or to be persistently or acutely disable or gravely disable pursuant to court order under A.R.S. § 36-540 and whose right to possess a firearm has not been restored pursuant to A.R.S. § 13-925.
 2. Who has been convicted within, or outside of, this state of a felony or who had been adjudicated delinquent for a felony and whose civil rights to possess or carry have not been restored.
 3. Who is, at the time of possession, serving a term of imprisonment in any correctional or detention facility or a person who is on probation for a domestic violence offense, a felony, or under community supervision.
 4. Who is an undocumented alien or a nonimmigrant alien traveling with or without documentation in this state for business or pleasure or who is studying in this state and who maintains a foreign residence abroad. This subdivision does not apply to:
INSTRUCTOR NOTE: This section covers CO2 guns.
 - a. Nonimmigrant aliens who possess a valid hunting license or permit that is lawfully issued by a state in the United States.
 - b. Nonimmigrant aliens who enter the United States to participate in a competitive target shooting event or to display firearms at a sports or hunting trade show that is sponsored by a national, state or local firearms trade organization devoted to the competitive use or other sporting use of firearms.
 - c. Certain diplomats.
 - d. Officials of foreign governments or distinguished foreign visitors who are designated by the United States Department of State.
 - e. Persons who have received a waiver from the United States Attorney General.
- H. "Prohibited weapon":
1. Includes the following:
 - a. An item that is a bomb, grenade, rocket having a propellant charge of more than four ounces or mine and that is explosive, incendiary or poison gas.
 - b. A device that is designed, made or adapted to muffle the report of a firearm.

- c. A firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger.
 - d. A rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than twenty-six inches.
 - e. A breakable container that contains a flammable liquid with a flash point of one hundred fifty degrees Fahrenheit or less and that has a wick or similar device capable of being ignited.
 - f. A chemical or combination of chemicals, compounds or materials, including dry ice, that is possessed or manufactured for the purpose of generating a gas to cause a mechanical failure, rupture or bursting or an explosion or detonation of the chemical or combination of chemicals, compounds or materials.
 - g. An improvised explosive device.
 - h. Any combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in item (i), (vi) or (viii) of this subdivision.
2. Does not include:
- a. Any fireworks that are imported, distributed or used in compliance with state laws or local ordinances.
 - b. Any propellant, propellant actuated devices or propellant actuated industrial tools that are manufactured, imported or distributed for their intended purposes.
 - c. A device that is commercially manufactured primarily for illumination.
- I. "Trafficking" means to sell, transfer, distribute, dispense or otherwise dispose of a weapon or explosive to another person, or to buy, receive, possess or obtain control of a weapon or explosive, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the weapon or explosive to another person.

III. 13-3102 – MISCONDUCT INVOLVING WEAPONS

P. O. 2.11.31.2

- A. A person commits misconduct involving weapons by knowingly:
 - 1. Carrying a deadly weapon, except a pocket knife, concealed on his/her person or within his immediate control in or on a means of transportation.

- a. in the furtherance of a serious offense as defined in 13-706, a violent crime as defined in section 13-901.03, or any other felony offense; OR
 - b. When contacted by a law enforcement officer and failing to accurately answer the officer if the officer asks whether the person is carrying a concealed deadly weapon.
 - i. “contacted by a law enforcement officer” means a lawful traffic or criminal investigation, arrest or detention or an investigatory stop by a law enforcement officer that is based on reasonable suspicion that an offense has been or is about to be committed. It does not include consensual contacts.
2. Carrying a deadly weapon, except a pocket knife, concealed on his person or concealed within his immediate control in, or on, a means of transportation if the person is under twenty one years of age. This subsection shall not apply to:
- a. A person in his dwelling, on his business premises or on real property owned or leased by that person or that person’s parent, grandparent or legal guardian.
 - b. A member of the sheriff’s posse or reserves who has received and passed POST firearms training and authorized to carry by sheriff per ARS 11-441.
 - c. A firearm that is carried in:
 - i. A manner where any portion of the firearm or holster in which the firearm is carried is visible.
 - ii. A holster that is wholly or partially visible.
 - iii. A scabbard or case designed for carrying weapons that is wholly or partially visible.
 - iv. Luggage.
 - v. A case, holster, scabbard, pack or luggage that is carried within a means of transportation or within a storage compartment, map pocket, trunk or glove compartment of a means of transportation.
3. Manufacturing, processing, transporting, selling or transferring a prohibited weapon; except that if the violation involves dry ice, a person commits misconduct involving weapons by knowingly possessing the dry ice with the intent to cause injury to or death of another person or to cause damage to the property of another person; 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 syndicate or a racketeering enterprise; or
 10. Unless authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his/her person after a reasonable request by the operator of the establishment or the sponsor's agent to remove his/her weapon and place it in the custody of the operator of the establishment or the sponsor of the event; or
 11. Unless 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.
 13. To enter a commercial nuclear or hydroelectric generating station carrying a deadly weapon on his/her person or within his/her immediate control, unless specifically authorized by law, which includes subsection C.
 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 a felony.
 15. Using, possessing or exercising control over a deadly weapon in furtherance of any act of terrorism as defined in A.R.S. §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 A.R.S. §13-2301.
 16. Trafficking in weapons or explosives for financial gain in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise.
- B. If a law enforcement officer contacts a person who is in possession of a firearm, the law enforcement officer may take temporary custody of the firearm for the duration of that contact.
1. "Contacted by a law enforcement officer" means a lawful traffic or criminal investigation, arrest or detention or an investigatory stop by a law enforcement officer that is based on

reasonable suspicion that an offense has been or is about to be committed. It does not include consensual encounters.

- C. Subsection A, paragraphs 2, 3, 7, 10, 11, 12 and 13 do 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.
 - a. NOTE: The phrase “in the performance of official duties” applies to both the person summoned by the officer AS WELL as the officer.
 2. A member of the military forces of the U.S. or of any state of the U.S. in the performance of official duties.
 3. A warden, deputy warden or correctional officer of the state Department of Corrections.
 4. 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 do not apply to:
1. The possession, transportation, selling or transferring of weapons by a museum as 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 a political subdivision of this state or an organization described 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 or dealer in prohibited weapons when such material is intended to be manufactured, possessed, transported, sold (or transferred solely for) to a dealer or a regularly constituted or appointed state, county or municipal police department or police officer, a detention facility, the military service of this or another state or the United States, a museum or educational institution or a person specifically licensed or permitted pursuant to federal or state law.

1. Misconduct involving weapons under subsection A, paragraph 15, is a felony; Misconduct involving weapons under subsection A, paragraph 9 or 14 is a felony; Misconduct under subsection A, paragraphs 3, 4, 8, or 13 is a felony.
2. Paragraph 12 is a misdemeanor unless the violation occurs in connection with conduct which violates the provisions of A.R.S. §§13-2308(A)(5), 13-2312(C), 13-3409 or 13-3411, in which case it is a felony.
3. Paragraphs 5, 6 and 7 are felonies and paragraphs 1, 2, 10, 11 and 13, are felonies. Paragraph 1(b), 10 or 11 is a misdemeanor. Paragraph 2 is a misdemeanor.

IV. 13-3103 – MISCONDUCT INVOLVING EXPLOSIVES

P. O. 2.11.31.2

- A. A person commits this crime by knowingly:
1. Keeping or storing a greater quantity than 50 pounds of explosives in or upon any building or premises within a distance of one-half (½) mile of the exterior limits of a city or town, except in vessels, railroad cars or vehicles receiving and keeping them in the course of, and for the purpose of, transportation; or
 2. Keeping or storing percussion caps or any blasting powder within 200 feet of a building or premises where explosives are kept or stored; or
 3. Selling, transporting or possessing explosives without having plainly marked, in a conspicuous place on the box or package containing the explosive, its name, explosive character and date of manufacture.
 4. This section shall not apply to any person who legally keeps, stores or transports explosives, percussion caps or blasting powder as a part of his/ her business.
- B. This is a misdemeanor.

V. 13-3104 – DEPOSITING EXPLOSIVES

P. O. 2.11.31.2

- A. A person commits this crime if with the intent to physically endanger, injure, intimidate or terrify any person, such person knowingly deposits any explosive on, in or near any vehicle, building or place where persons inhabit, frequent or assemble.
- B. This is a felony.

VI. 13-3107 – UNLAWFUL DISCHARGE OF FIREARMS

P. O. 2.11.31.1A

- A. Discharge of a firearm within or into the limits of any municipality is a felony except:
1. As allowed under Chapter 4 of Title 13.

2. On a properly supervised range.
3. In an area recommended as a hunting area by Arizona Game and Fish (AG&F).
4. For the control of nuisance wildlife by permit from AG&F.
5. By special permit from the chief of police of the municipality.
6. As required by animal control officers.
7. Using blanks.
8. More than one mile from any occupied structure as defined in section 13-3101.

VII. 13-3109 – SALE OR GIFT OF FIREARM TO A MINOR

P. O. 2.11.31.1B

- A. A person who sells or gives to a minor (without written consent of the minor's parent or legal guardian) a firearm, ammunition or toy pistol by which dangerous and explosive substances may be discharged, is guilty of a felony.
- B. Exempts temporary transfer of firearms and ammunition by firearms safety instructors, hunter safety instructors or competition coaches or their assistants if the minor's parent or guardian has given consent for the minor to participate in the safety courses, competition or training.
- C. Exempt also are adults who temporarily transfer firearms or ammunition to minors they are accompanying while engaged in hunting or formal or informal target shooting, if consent is given by the minor's parent or guardian for these activities.

VIII. 13-3110 – MISCONDUCT INVOLVING SIMULATED EXPLOSIVE DEVICES

P. O. 2.11.31.1C

- A. A person commits this crime by intentionally giving or sending to another person or placing in a private or public place a simulated explosive device with the intent to terrify, intimidate, threaten or harass.
- B. The placing or sending of a simulated explosive device without written notice attached to the device in a conspicuous place that the device has been rendered inert and is possessed for the purpose of curio, relic collection, display or other similar purpose, is prima facie evidence of intent to terrify, intimidate, threaten or harass.
- C. The term "simulated explosive device" means a simulation of a prohibited weapon which a reasonable person would believe is such a prohibited weapon.
- D. This is a felony.

IX. 13-3111 – MINORS PROHIBITED FROM CARRYING OR POSSESSING FIREARMS

P. O. 2.11.31.1D

- A. Except as provided in subsection B, an unemancipated person who is under 18 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/her person, within his/her immediate control or in or on a means of transportation a firearm in any place that is open to the public, 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 is a felony.
- C. This section does not apply to a person who is 14, 15, 16 or 17 years of age and 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 firearms 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.
- D. This subsection gives peace officers the authority to seize any firearm possessed in violation of subsection A when no exemption applies under subsection B.

X. 13-3112 – PERMIT TO CARRY A CONCEALED WEAPON

P. O. 2.11.31.1E

- A. The Department of Public Safety (DPS) shall issue a permit to carry a concealed weapon to a person who is qualified under this section.
- B. As per Article 4-229 and 4-244, the person shall carry the permit at all times when the person is in actual possession of the concealed weapon and shall present the permit for inspection to any law enforcement officer on request.
- C. If a permittee is arrested or indicted for any offense that would make that person a prohibited possessor, the permit shall be suspended immediately and the permit seized.
- D. If the charges are later dismissed or if the person is found not guilty of the charges, the permit shall be restored.
- E. There is a civil penalty of up to \$300 and permit suspension by DPS for a person who fails to present a permit when requested by an officer. Person can avoid these penalties by presenting a valid permit to the court. **INSTRUCTOR NOTE: No arrest authorized.**
- F. Permittees must meet the following conditions:

1. Must be a resident of this state or a United States citizen.
 2. Must be at least 21 years of age.
 3. Is not under indictment for and has not been convicted in any jurisdiction of a felony unless that conviction has been expunged, set aside or vacated or the applicant's rights have been restored and the applicant is currently not a prohibited possessor under state or federal law.
 4. Does not suffer from mental illness and has not been found to be mentally incompetent.
 5. Is not unlawfully in the United States.
 6. Has ever satisfactorily completed a firearms safety training program and shows competence with a firearm. There are numerous ways to accomplish this under the statutes.
- G. The permittee does not have to specify the type of firearm for which a permit is sought – this is important because it specifically states firearm – not just any weapon.
- H. The DPS conducts a check of the applicant's criminal history.
- I. The DPS completes all required checks within 60 days after receipt of the application and shall issue a permit within 15 working days after the permittee meets all of the qualifications.
- J. The permit is good for not more than five (5) years.
- K. The DPS maintains a computerized permit record system.
- L. Before a permit is renewed, a criminal history check is made within 60 days after receipt of the renewal request.
- M. For the purpose of the first permit renewal only, the permit holder is required to submit additional fingerprints.
- N. For the purpose of the second or subsequent permit renewal the permit holder is not required to submit additional fingerprints.
- O. Applications for renewal must be accompanied by a fee and a certificate of completion of a two (2) hour firearms safety refresher course.
- P. This statute permits out-of-state residents to carry concealed weapons while in Arizona without obtaining an Arizona concealed weapons permit if both of the following apply:
1. The permit or license is recognized as valid in the issuing state.

2. The person is both:
 - a. Legally present in this state AND
 - b. Not legally prohibited from possessing a firearm in this state.
3. Notwithstanding the provisions of this section, a person with a concealed weapons permit from another state may not carry a concealed weapon in this state if the person is under twenty-one years of age or is under indictment for, or has been convicted of, a felony offense in any jurisdiction, that conviction is expunged, set aside or vacated or the person's right have been restored and the applicant is currently not a prohibited possessor under state or federal law.

XI. 13-3117 – REMOTE STUN GUNS; USE; DEFINITION

- A. It is unlawful for a person to knowingly use or threaten to use a remote stun gun against a law enforcement officer who is engaged in the performance of the officer's official duties. Use against a law enforcement officer in violation of this section is a felony.
- B. "Remote stun gun" means an electronic device that emits an electrical charge and that is designed and primarily employed to incapacitate a person or animal either through contact with electrodes on the device itself or remotely through wired probes that are attached to the device or through spark, plasma, ionization or other conductive means emitted from the device.

XII. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).