

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE BILL 1097

AN ACT

AMENDING SECTION 13-3602, ARIZONA REVISED STATUTES; RELATING TO ORDERS OF PROTECTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3602, Arizona Revised Statutes, is amended to
3 read:

4 13-3602. Order of protection; procedure; contents; arrest for
5 violation; penalty; protection order from another
6 jurisdiction

7 A. A person may file a verified petition, as in civil actions, with a
8 magistrate, justice of the peace or superior court judge for an order of
9 protection for the purpose of restraining a person from committing an act
10 included in domestic violence. If the person is a minor, the parent, legal
11 guardian or person who has legal custody of the minor shall file the petition
12 unless the court determines otherwise. The petition shall name the parent,
13 guardian or custodian as the plaintiff and the minor is a specifically
14 designated person for the purposes of subsection G of this section. If a
15 person is either temporarily or permanently unable to request an order, a
16 third party may request an order of protection on behalf of the plaintiff.
17 After the request, the judicial officer shall determine if the third party is
18 an appropriate requesting party for the plaintiff. For the purposes of this
19 section, notwithstanding the location of the plaintiff or defendant, any
20 court in this state may issue or enforce an order of protection.

21 B. An order of protection shall not be granted:

22 1. Unless the party who requests the order files a written verified
23 petition for an order.

24 2. Against a person who is less than twelve years of age unless the
25 order is granted by the juvenile division of the superior court.

26 3. Against more than one defendant.

27 C. The petition shall state the:

28 1. Name of the plaintiff. The plaintiff's address shall be disclosed
29 to the court for purposes of service. If the address of the plaintiff is
30 unknown to the defendant, the plaintiff may request that the address be
31 protected. On the plaintiff's request, the address shall not be listed on
32 the petition. Whether the court issues an order of protection, the protected
33 address shall be maintained in a separate document or automated database and
34 is not subject to release or disclosure by the court or any form of public
35 access except as ordered by the court.

36 2. Name and address, if known, of the defendant.

37 3. Specific statement, including dates, of the domestic violence
38 alleged.

39 4. Relationship between the parties pursuant to section 13-3601,
40 subsection A and whether there is pending between the parties an action for
41 maternity or paternity, annulment, legal separation or dissolution of
42 marriage.

43 5. Name of the court in which any prior or pending proceeding or order
44 was sought or issued concerning the conduct that is sought to be restrained.

45 6. Desired relief.

1 D. A fee shall not be charged for filing a petition under this section
2 or for service of process. On request of the plaintiff, each order of
3 protection that is issued by a municipal court shall be served by the police
4 agency for that city if the defendant can be served within the city. If the
5 defendant cannot be served within the city, the police agency in the city in
6 which the defendant can be served shall serve the order. If the order cannot
7 be served within a city, the sheriff shall serve the order. On request of
8 the plaintiff, each order of protection that is issued by a justice of the
9 peace shall be served by the constable or sheriff for that jurisdiction if
10 the defendant can be served within the jurisdiction. If the defendant cannot
11 be served within that jurisdiction, the constable or sheriff in the
12 jurisdiction in which the defendant can be served shall serve the order. On
13 request of the plaintiff, each order of protection that is issued by a
14 superior court judge or commissioner shall be served by the sheriff of the
15 county. If the defendant cannot be served within that jurisdiction, the
16 sheriff in the jurisdiction in which the defendant can be served shall serve
17 the order. Each court shall provide, without charge, forms for purposes of
18 this section for assisting parties without counsel. The court shall make
19 reasonable efforts to provide to both parties an appropriate information
20 sheet on emergency and counseling services that are available in the local
21 area.

22 E. The court shall review the petition, any other pleadings on file
23 and any evidence offered by the plaintiff to determine whether the orders
24 requested should issue without further hearing. The court shall issue an
25 order of protection under subsection G of this section if the court
26 determines that there is reasonable cause to believe any of the following:

- 27 1. The defendant may commit an act of domestic violence.
- 28 2. The defendant has committed an act of domestic violence within the
29 past year or within a longer period of time if the court finds that good
30 cause exists to consider a longer period.

31 F. For purposes of determining the period of time under subsection E,
32 paragraph 2 of this section, any time that the defendant has been
33 incarcerated or out of this state shall not be counted. If the court denies
34 the requested relief, it may schedule a further hearing within ten days, with
35 reasonable notice to the defendant.

36 G. If a court issues an order of protection, the court may do any of
37 the following:

- 38 1. Enjoin the defendant from committing a violation of one or more of
39 the offenses included in domestic violence.
- 40 2. Grant one party the use and exclusive possession of the parties'
41 residence on a showing that there is reasonable cause to believe that
42 physical harm may otherwise result. If the other party is accompanied by a
43 law enforcement officer, the other party may return to the residence on one
44 occasion to retrieve belongings. A law enforcement officer is not liable for

1 any act or omission in the good faith exercise of the officer's duties under
2 this paragraph.

3 3. Restrain the defendant from contacting the plaintiff or other
4 specifically designated persons and from coming near the residence, place of
5 employment or school of the plaintiff or other specifically designated
6 locations or persons on a showing that there is reasonable cause to believe
7 that physical harm may otherwise result.

8 4. If the court finds that the defendant is a credible threat to the
9 physical safety of the plaintiff or other specifically designated persons,
10 prohibit the defendant from possessing or purchasing a firearm for the
11 duration of the order. If the court prohibits the defendant from possessing
12 a firearm, the court shall also order the defendant to transfer any firearm
13 owned or possessed by the defendant immediately after service of the order to
14 the appropriate law enforcement agency for the duration of the order. If the
15 defendant does not immediately transfer the firearm, the defendant shall
16 transfer the firearm within twenty-four hours after service of the order.

17 5. If the order was issued after notice and a hearing at which the
18 defendant had an opportunity to participate, require the defendant to
19 complete a domestic violence offender treatment program that is provided by a
20 facility approved by the department of health services or a probation
21 department or any other program deemed appropriate by the court.

22 6. Grant relief that is necessary for the protection of the alleged
23 victim and other specifically designated persons and that is proper under the
24 circumstances.

25 H. The court shall not grant a mutual order of protection. If
26 opposing parties separately file verified petitions for an order of
27 protection, the courts after consultation between the judges involved may
28 consolidate the petitions of the opposing parties for hearing. This does not
29 prohibit a court from issuing cross orders of protection.

30 I. At any time during the period during which the order is in effect,
31 a party under an order of protection or restrained from contacting the other
32 party is entitled to one hearing on written request. No fee may be charged
33 for requesting a hearing. A hearing that is requested by a party who is
34 under an order of protection or who is restrained from contacting the other
35 party shall be held within ten days from the date requested unless the court
36 finds good cause to continue the hearing. If exclusive use of the home is
37 awarded, the hearing shall be held within five days from the date requested.
38 The hearing shall be held at the earliest possible time. An ex parte order
39 that is issued under this section shall state on its face that the defendant
40 is entitled to a hearing on written request and shall include the name and
41 address of the judicial office where the request may be filed. After the
42 hearing, the court may modify, quash or continue the order.

1 J. The order shall include the following statement:

2 Warning

3 This is an official court order. If you disobey this
4 order (EVEN IF THE PLAINTIFF CONTACTS YOU), you may be arrested
5 and prosecuted for the crime of interfering with judicial
6 proceedings and any other crime you may have committed in
7 disobeying this order. IF YOU DISAGREE WITH THIS ORDER, YOU
8 HAVE THE RIGHT TO REQUEST A HEARING IN THE COURT THAT ISSUED
9 THIS ORDER. NOTHING THE PLAINTIFF DOES CAN STOP, CHANGE OR UNDO
10 THIS ORDER WITHOUT THE COURT'S WRITTEN APPROVAL. IF YOU FEEL
11 THE PLAINTIFF SHOULD NOT CONTACT YOU, YOU HAVE THE RIGHT TO
12 REQUEST AN ORDER OF PROTECTION.

13 K. A copy of the petition and the order shall be served on the
14 defendant within one year from the date the order is signed. An order of
15 protection that is not served on the defendant within one year expires. An
16 order is effective on the defendant on service of a copy of the order and
17 petition. An order expires one year after service on the defendant. A
18 modified order is effective upon service and expires one year after service
19 of the initial order and petition.

20 L. Each affidavit, acceptance or return of service shall be promptly
21 filed with the clerk of the issuing court. This filing shall be completed in
22 person, shall be made by fax or shall be postmarked, if sent by mail, no
23 later than the end of the seventh court business day after the date of
24 service. If the filing is made by fax, the original affidavit, acceptance or
25 return of service shall be promptly filed with the court. Within twenty-four
26 hours after the affidavit, acceptance or return of service has been filed,
27 excluding weekends and holidays, the court from which the order or any
28 modified order was issued shall forward to the sheriff of the county in which
29 the court is located a copy of the order of protection and a copy of the
30 affidavit or certificate of service of process or acceptance of service. On
31 receiving these copies, the sheriff shall register the order. Registration
32 of an order means that a copy of the order of protection and a copy of the
33 affidavit or acceptance of service have been received by the sheriff's
34 office. The sheriff shall maintain a central repository for orders of
35 protection so that the existence and validity of the orders can be easily
36 verified. The effectiveness of an order does not depend on its registration,
37 and for enforcement purposes pursuant to section 13-2810, a copy of an order
38 of the court, whether or not registered, is presumed to be a valid existing
39 order of the court for a period of one year from the date of service of the
40 order on the defendant.

41 M. A peace officer, with or without a warrant, may arrest a person if
42 the peace officer has probable cause to believe that the person has violated
43 section 13-2810 by disobeying or resisting an order that is issued in any
44 jurisdiction in this state pursuant to this section, whether or not such
45 violation occurred in the presence of the officer. Criminal violations of an

1 order issued pursuant to this section shall be referred to an appropriate law
2 enforcement agency. The law enforcement agency shall request that a
3 prosecutorial agency file the appropriate charges. A violation of an order
4 of protection shall not be adjudicated by a municipal or justice court unless
5 a complaint has been filed or other legal process has been requested by the
6 prosecuting agency. The provisions for release under section 13-3883,
7 subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made
8 pursuant to this section. For purposes of this section, any court in this
9 state has jurisdiction to enforce a valid order of protection that is issued
10 in this state and that has been violated in any jurisdiction in this state.

11 N. A person who is arrested pursuant to subsection M of this section
12 may be released from custody in accordance with the Arizona rules of criminal
13 procedure or any other applicable statute. An order for release, with or
14 without an appearance bond, shall include pretrial release conditions that
15 are necessary to provide for the protection of the alleged victim and other
16 specifically designated persons and may provide for any other additional
17 conditions that the court deems appropriate, including participation in any
18 counseling programs available to the defendant.

19 O. The remedies provided in this section for enforcement of the orders
20 of the court are in addition to any other civil and criminal remedies
21 available. The superior court shall have exclusive jurisdiction to issue
22 orders of protection in all cases if it appears from the petition that an
23 action for maternity or paternity, annulment, legal separation or dissolution
24 of marriage is pending between the parties. A municipal court or justice
25 court shall not issue an order of protection if it appears from the petition
26 that an action for maternity or paternity, annulment, legal separation or
27 dissolution of marriage is pending between the parties. After issuance of an
28 order of protection, if the municipal court or justice court determines that
29 an action for maternity or paternity, annulment, legal separation or
30 dissolution of marriage is pending between the parties, the municipal court
31 or justice court shall stop further proceedings in the action and forward all
32 papers, together with a certified copy of docket entries or any other record
33 in the action, to the superior court where they shall be docketed in the
34 pending superior court action and shall proceed as though the petition for an
35 order of protection had been originally brought in the superior court.
36 Notwithstanding any other law and unless prohibited by an order of the
37 superior court, a municipal court or justice court may hold a hearing on all
38 matters relating to its ex parte order of protection if the hearing was
39 requested before receiving written notice of the pending superior court
40 action. No order of protection shall be invalid or determined to be
41 ineffective merely because it was issued by a lower court at a time when an
42 action for maternity or paternity, annulment, legal separation or dissolution
43 of marriage was pending in a higher court. After a hearing with notice to
44 the affected party, the court may enter an order requiring any party to pay
45 the costs of the action, including reasonable attorney fees, if any. An

1 order that is entered by a justice court or municipal court after a hearing
2 pursuant to this section may be appealed to the superior court as provided in
3 title 22, chapter 2, article 4, section 22-425, subsection B and the superior
4 court rules of civil appellate procedure without regard to an amount in
5 controversy. No fee may be charged to either party for filing an appeal.
6 For the purposes of this subsection, "pending" means, with respect to an
7 action for annulment, legal separation or dissolution of marriage or for
8 maternity or paternity, either that:

9 1. An action has been commenced but a final judgment, decree or order
10 has not been entered.

11 2. A post-decree proceeding has been commenced but a judgment, decree
12 or order finally determining the proceeding has not been entered.

13 P. A peace officer who makes an arrest pursuant to this section or
14 section 13-3601 is not civilly or criminally liable for the arrest if the
15 officer acts on probable cause and without malice.

16 Q. In addition to persons authorized to serve process pursuant to rule
17 4(d) of the Arizona rules of civil procedure, a peace officer or a
18 correctional officer as defined in section 41-1661 who is acting in the
19 officer's official capacity may serve an order of protection that is issued
20 pursuant to this section. Service of the order of protection has priority
21 over other service of process that does not involve an immediate threat to
22 the safety of a person.

23 R. A valid protection order that is related to domestic or family
24 violence and that is issued by a court in another state, a court of a United
25 States territory or a tribal court shall be accorded full faith and credit
26 and shall be enforced as if it were issued in this state for as long as the
27 order is effective in the issuing jurisdiction. For the purposes of this
28 subsection:

29 1. A protection order includes any injunction or other order that is
30 issued for the purpose of preventing violent or threatening acts or
31 harassment against, contact or communication with or physical proximity to
32 another person. A protection order includes temporary and final orders other
33 than support or child custody orders that are issued by civil and criminal
34 courts if the order is obtained by the filing of an independent action or is
35 a pendente lite order in another proceeding. The civil order shall be issued
36 in response to a complaint, petition or motion that was filed by or on behalf
37 of a person seeking protection.

38 2. A protection order is valid if the issuing court had jurisdiction
39 over the parties and the matter under the laws of the issuing state, a United
40 States territory or an Indian tribe and the person against whom the order was
41 issued had reasonable notice and an opportunity to be heard. If the order is
42 issued ex parte, the notice and opportunity to be heard shall be provided
43 within the time required by the laws of the issuing state, a United States
44 territory or an Indian tribe and within a reasonable time after the order was
45 issued.

1 3. A mutual protection order that is issued against both the party who
2 filed a petition or a complaint or otherwise filed a written pleading for
3 protection against abuse and the person against whom the filing was made is
4 not entitled to full faith and credit if either:

5 (a) The person against whom an initial order was sought has not filed
6 a cross or counter petition or other written pleading seeking a protection
7 order.

8 (b) The issuing court failed to make specific findings supporting the
9 entitlement of both parties to be granted a protection order.

10 4. A peace officer may presume the validity of and rely on a copy of a
11 protection order that is issued by another state, a United States territory
12 or an Indian tribe if the order was given to the officer by any source. A
13 peace officer may also rely on the statement of any person who is protected
14 by the order that the order remains in effect. A peace officer who acts in
15 good faith reliance on a protection order is not civilly or criminally liable
16 for enforcing the protection order pursuant to this section.