

REFERENCE TITLE: orders of protection; animals.

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1395

Introduced by
Senators Johnson, Aboud: Aguirre, Allen, Chevront, Harper, Huppenthal,
Soltero, Verschoor

AN ACT

AMENDING SECTION 13-3602, ARIZONA REVISED STATUTES; RELATING TO FAMILY
OFFENSES.

(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 7. GRANT THE PETITIONER THE EXCLUSIVE CARE, CUSTODY OR CONTROL OF ANY
26 ANIMAL THAT IS OWNED, POSSESSED, LEASED, KEPT OR HELD BY THE PETITIONER, THE
27 RESPONDENT OR A MINOR CHILD RESIDING IN THE RESIDENCE OR HOUSEHOLD OF THE
28 PETITIONER OR THE RESPONDENT, AND ORDER THE RESPONDENT TO STAY AWAY FROM THE
29 ANIMAL AND FORBID THE RESPONDENT FROM TAKING, TRANSFERRING, ENCUMBERING,
30 CONCEALING, HARMING OR OTHERWISE DISPOSING OF THE ANIMAL.

31 H. The court shall not grant a mutual order of protection. If
32 opposing parties separately file verified petitions for an order of
33 protection, the courts after consultation between the judges involved may
34 consolidate the petitions of the opposing parties for hearing. This does not
35 prohibit a court from issuing cross orders of protection.

36 I. At any time during the period during which the order is in effect,
37 a party who is under an order of protection or who is restrained from
38 contacting the other party is entitled to one hearing on written request. No
39 fee may be charged for requesting a hearing. A hearing that is requested by
40 a party who is under an order of protection or who is restrained from
41 contacting the other party shall be held within ten days from the date
42 requested unless the court finds good cause to continue the hearing. If
43 exclusive use of the home is awarded, the hearing shall be held within five
44 days from the date requested. The hearing shall be held at the earliest
45 possible time. An ex parte order that is issued under this section shall

1 state on its face that the defendant is entitled to a hearing on written
2 request and shall include the name and address of the judicial office where
3 the request may be filed. After the hearing, the court may modify, quash or
4 continue the order.

5 J. Through December 31, 2007, the order shall include the following
6 statement:

7 Warning

8 This is an official court order. If you disobey this
9 order, you may be arrested and prosecuted for the crime of
10 interfering with judicial proceedings and any other crime you
11 may have committed in disobeying this order.

12 K. Beginning January 1, 2008, the order shall include the following
13 statement:

14 Warning

15 This is an official court order. If you disobey this
16 order, you will be subject to arrest and prosecution for the
17 crime of interfering with judicial proceedings and any other
18 crime you may have committed in disobeying this order.

19 L. A copy of the petition and the order shall be served on the
20 defendant within one year from the date the order is signed. An order of
21 protection that is not served on the defendant within one year expires. An
22 order is effective on the defendant on service of a copy of the order and
23 petition. An order expires one year after service on the defendant. A
24 modified order is effective on service and expires one year after service of
25 the initial order and petition.

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

1 order of the court for a period of one year from the date of service of the
2 order on the defendant.

3 N. A peace officer, with or without a warrant, may arrest a person if
4 the peace officer has probable cause to believe that the person has violated
5 section 13-2810 by disobeying or resisting an order that is issued in any
6 jurisdiction in this state pursuant to this section, whether or not such
7 violation occurred in the presence of the officer. Criminal violations of an
8 order issued pursuant to this section shall be referred to an appropriate law
9 enforcement agency. The law enforcement agency shall request that a
10 prosecutorial agency file the appropriate charges. A violation of an order
11 of protection shall not be adjudicated by a municipal or justice court unless
12 a complaint has been filed or other legal process has been requested by the
13 prosecuting agency. The provisions for release under section 13-3883,
14 subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made
15 pursuant to this section. For the purposes of this section, any court in
16 this state has jurisdiction to enforce a valid order of protection that is
17 issued in this state and that has been violated in any jurisdiction in this
18 state.

19 O. A person who is arrested pursuant to subsection N of this section
20 may be released from custody in accordance with the Arizona rules of criminal
21 procedure or any other applicable statute. An order for release, with or
22 without an appearance bond, shall include pretrial release conditions that
23 are necessary to provide for the protection of the alleged victim and other
24 specifically designated persons and may provide for any other additional
25 conditions that the court deems appropriate, including participation in any
26 counseling programs available to the defendant. The agency with custody of
27 the defendant shall make reasonable efforts to contact the victim and other
28 specifically designated persons in the order of protection, if known to the
29 custodial agency, who requested notification immediately on release of the
30 arrested person from custody.

31 P. The remedies provided in this section for enforcement of the orders
32 of the court are in addition to any other civil and criminal remedies
33 available. The superior court shall have exclusive jurisdiction to issue
34 orders of protection in all cases if it appears from the petition that an
35 action for maternity or paternity, annulment, legal separation or dissolution
36 of marriage is pending between the parties. A municipal court or justice
37 court shall not issue an order of protection if it appears from the petition
38 that an action for maternity or paternity, annulment, legal separation or
39 dissolution of marriage is pending between the parties. After issuance of an
40 order of protection, if the municipal court or justice court determines that
41 an action for maternity or paternity, annulment, legal separation or
42 dissolution of marriage is pending between the parties, the municipal court
43 or justice court shall stop further proceedings in the action and forward all
44 papers, together with a certified copy of docket entries or any other record
45 in the action, to the superior court where they shall be docketed in the

1 pending superior court action and shall proceed as though the petition for an
2 order of protection had been originally brought in the superior court.
3 Notwithstanding any other law and unless prohibited by an order of the
4 superior court, a municipal court or justice court may hold a hearing on all
5 matters relating to its ex parte order of protection if the hearing was
6 requested before receiving written notice of the pending superior court
7 action. No order of protection shall be invalid or determined to be
8 ineffective merely because it was issued by a lower court at a time when an
9 action for maternity or paternity, annulment, legal separation or dissolution
10 of marriage was pending in a higher court. After a hearing with notice to
11 the affected party, the court may enter an order requiring any party to pay
12 the costs of the action, including reasonable attorney fees, if any. An
13 order that is entered by a justice court or municipal court after a hearing
14 pursuant to this section may be appealed to the superior court as provided in
15 title 22, chapter 2, article 4, section 22-425, subsection B and the superior
16 court rules of civil appellate procedure without regard to an amount in
17 controversy. No fee may be charged to either party for filing an appeal.
18 For the purposes of this subsection, "pending" means, with respect to an
19 action for annulment, legal separation or dissolution of marriage or for
20 maternity or paternity, either that:

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

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

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

28 R. In addition to persons authorized to serve process pursuant to rule
29 4(d) of the Arizona rules of civil procedure, a peace officer or a
30 correctional officer as defined in section 41-1661 who is acting in the
31 officer's official capacity may serve an order of protection that is issued
32 pursuant to this section. Service of the order of protection has priority
33 over other service of process that does not involve an immediate threat to
34 the safety of a person.

35 S. A valid protection order that is related to domestic or family
36 violence and that is issued by a court in another state, a court of a United
37 States territory or a tribal court shall be accorded full faith and credit
38 and shall be enforced as if it were issued in this state for as long as the
39 order is effective in the issuing jurisdiction. For the purposes of this
40 subsection:

41 1. A protection order includes any injunction or other order that is
42 issued for the purpose of preventing violent or threatening acts or
43 harassment against, contact or communication with or physical proximity to
44 another person. A protection order includes temporary and final orders other
45 than support or child custody orders that are issued by civil and criminal

1 courts if the order is obtained by the filing of an independent action or is
2 a pendente lite order in another proceeding. The civil order shall be issued
3 in response to a complaint, petition or motion that was filed by or on behalf
4 of a person seeking protection.

5 2. A protection order is valid if the issuing court had jurisdiction
6 over the parties and the matter under the laws of the issuing state, a United
7 States territory or an Indian tribe and the person against whom the order was
8 issued had reasonable notice and an opportunity to be heard. If the order is
9 issued ex parte, the notice and opportunity to be heard shall be provided
10 within the time required by the laws of the issuing state, a United States
11 territory or an Indian tribe and within a reasonable time after the order was
12 issued.

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

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

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

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