

Senate Engrossed House Bill

~~commission; review of laws~~

(now: judge; superior court; emergency orders)

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2604

AN ACT

AMENDING SECTIONS 13-3602 AND 13-3624, 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; definition

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

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

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

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

27 3. Against more than one defendant.

28 C. The petition shall state the:

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

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

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

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

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

1 6. Desired relief.

2 D. A fee shall not be charged for filing a petition under this
3 section or for service of process. Each court shall provide, without
4 charge, forms for purposes of this section for assisting parties without
5 counsel. The court shall make reasonable efforts to provide the
6 appropriate information to both parties on emergency and counseling
7 services that are available in the local area.

8 E. The court shall review the petition, any other pleadings on file
9 and any evidence offered by the plaintiff, including any evidence of
10 harassment by electronic contact or communication, to determine whether
11 the orders requested should issue without further hearing. The court
12 shall issue an order of protection under subsection G of this section if
13 the court determines that there is reasonable cause to believe any of the
14 following:

15 1. The defendant may commit an act of domestic violence.

16 2. The defendant has committed an act of domestic violence within
17 the past year or within a longer period of time if the court finds that
18 good cause exists to consider a longer period.

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

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

26 1. Enjoin the defendant from committing a violation of one or more
27 of the offenses included in domestic violence.

28 2. Grant one party the use and exclusive possession of the parties'
29 residence on a showing that there is reasonable cause to believe that
30 physical harm may otherwise result. If the other party is accompanied by
31 a law enforcement officer, the other party may return to the residence on
32 one occasion to retrieve belongings. A law enforcement officer is not
33 liable for any act or omission in the good faith exercise of the officer's
34 duties under this paragraph. While the order of protection is in effect,
35 if a party was granted the use and exclusive possession of the parties'
36 residence and subsequently moves out of the house, the party must file a
37 notice in writing with the court within five days after moving out of the
38 residence. After receiving the notification from the plaintiff, the court
39 shall provide notice to the defendant that the plaintiff has moved out of
40 the residence and of the defendant's right to request a hearing pursuant
41 to subsection L of this section.

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

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

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

16 6. Grant relief that is necessary for the protection of the alleged
17 victim and other specifically designated persons and that is proper under
18 the circumstances.

19 7. Grant the plaintiff the exclusive care, custody or control of
20 any animal that is owned, possessed, leased, kept or held by the
21 plaintiff, the defendant or a minor child residing in the residence or
22 household of the plaintiff or the defendant, and order the defendant to
23 stay away from the animal and forbid the defendant from taking,
24 transferring, encumbering, concealing, committing an act of cruelty or
25 neglect in violation of section 13-2910 or otherwise disposing of the
26 animal.

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

32 I. After granting an order of protection, the court shall provide
33 the order to a law enforcement agency or a constable as set forth in
34 subsection J of this section for service or to an entity that is
35 authorized in subsection K of this section to serve process. The agency
36 or entity serving the order shall provide confirmation of service to the
37 plaintiff as soon as practicable. If service of an order cannot be
38 completed within fifteen days after the agency or entity receives the
39 order, the agency or entity that is attempting service shall notify the
40 plaintiff and continue to attempt service. This notification may be
41 completed by a victim notification system, if available.

42 J. If the order of protection is provided to a law enforcement
43 agency or a constable, service of an order of protection is as follows:

44 1. For each order of protection that is issued by a municipal
45 court, if the defendant can be served within that city or town, the order
46 shall be served by the law enforcement agency of that city or town. If

1 the order can be served in another city or town, the order shall be served
2 by the law enforcement agency of that city or town. If the order cannot
3 be served within a city or town, the order shall be served by the sheriff
4 or constable of the county in which the defendant can be served.

5 2. For each order of protection that is issued by a justice of the
6 peace, the order of protection shall be served by the sheriff or constable
7 of the county in which the defendant can be served or by a municipal law
8 enforcement agency.

9 3. For each order of protection that is issued by a superior court
10 judge or commissioner, the order of protection shall be served by the
11 sheriff or constable of the county where the defendant can be served.

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

19 L. At any time during the period during which the order is in
20 effect, a party who is under an order of protection or who is restrained
21 from contacting the other party is entitled to one hearing on written
22 request. No fee may be charged for requesting a hearing. A hearing that
23 is requested by a party who is under an order of protection or who is
24 restrained from contacting the other party shall be held within ten days
25 from the date requested unless the court finds good cause to continue the
26 hearing. If exclusive use of the home is awarded, the hearing shall be
27 held within five days from the date requested. The hearing shall be held
28 at the earliest possible time. An ex parte order that is issued under
29 this section shall state on its face that the defendant is entitled to a
30 hearing on written request and shall include the name and address of the
31 judicial office where the request may be filed. After the hearing, the
32 court may modify, quash or continue the order. If the exclusive use of
33 the home is awarded to the party, the court, on written request of a
34 party, may hold additional hearings at any time if there is a change in
35 circumstances related to the primary residence.

36 M. The order shall include the following statement:

37 Warning

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

42 N. An order of protection that is not served on the defendant
43 within one year after the date that the order is issued expires. An order
44 is effective on the defendant on service of a copy of the order and
45 petition. An order expires ~~one year~~ TWO YEARS after service on the

1 defendant. A modified order is effective on service and expires ~~one year~~
2 TWO YEARS after service of the initial order and petition.

3 O. A supplemental information form that is used by the court or a
4 law enforcement agency solely for the purposes of service of process on
5 the defendant and that contains information provided by the plaintiff is
6 confidential.

7 P. Each affidavit, declaration, acceptance or return of service
8 shall be filed as soon as practicable but not later than seventy-two
9 hours, excluding weekends and holidays, with the clerk of the issuing
10 court or as otherwise required by court rule. This filing shall be
11 completed in person, electronically or by fax.

12 Q. The supreme court shall maintain a central repository for orders
13 of protection. Within twenty-four hours after the affidavit, declaration,
14 acceptance or return of service has been filed, excluding weekends and
15 holidays, the court from which the order or any modified order was issued
16 shall enter the order and proof of service into the supreme court's
17 central repository for orders of protection. The supreme court shall
18 register the order with the national crime information center. The
19 effectiveness of an order does not depend on its registration, and for
20 enforcement purposes pursuant to section 13-2810, a copy of an order of
21 the court, whether or not registered, is presumed to be a valid existing
22 order of the court for a period of ~~one year~~ TWO YEARS from the date of
23 service of the order on the defendant.

24 R. A peace officer, with or without a warrant, may arrest a person
25 if the peace officer has probable cause to believe that the person has
26 violated section 13-2810 by disobeying or resisting an order that is
27 issued in any jurisdiction in this state pursuant to this section, whether
28 or not such violation occurred in the presence of the officer. Criminal
29 violations of an order issued pursuant to this section shall be referred
30 to an appropriate law enforcement agency. The provisions for release
31 under section 13-3883, subsection A, paragraph 4 and section 13-3903 do
32 not apply to an arrest made pursuant to this section. For the purposes of
33 this section, any court in this state has jurisdiction to enforce a valid
34 order of protection that is issued in this state and that has been
35 violated in any jurisdiction in this state.

36 S. A person who is arrested pursuant to subsection R of this
37 section may be released from custody in accordance with the Arizona rules
38 of criminal procedure or any other applicable statute. An order for
39 release, with or without an appearance bond, shall include pretrial
40 release conditions that are necessary to provide for the protection of the
41 alleged victim and other specifically designated persons and may provide
42 for any other additional conditions that the court deems appropriate,
43 including participation in any counseling programs available to the
44 defendant. The agency with custody of the defendant shall make reasonable
45 efforts to contact the victim and other specifically designated persons in

1 the order of protection, if known to the custodial agency, who requested
2 notification immediately on release of the arrested person from custody.

3 T. The remedies provided in this section for enforcement of the
4 orders of the court are in addition to any other civil and criminal
5 remedies available. The superior court shall have exclusive jurisdiction
6 to issue orders of protection in all cases if it appears from the petition
7 that an action for maternity or paternity, annulment, legal separation or
8 dissolution of marriage is pending between the parties. A municipal court
9 or justice court shall not issue an order of protection if it appears from
10 the petition that an action for maternity or paternity, annulment, legal
11 separation or dissolution of marriage is pending between the parties.
12 After issuance of an order of protection, if the municipal court or
13 justice court determines that an action for maternity or paternity,
14 annulment, legal separation or dissolution of marriage is pending between
15 the parties, the municipal court or justice court shall stop further
16 proceedings in the action and forward all papers, together with a
17 certified copy of docket entries or any other record in the action, to the
18 superior court where they shall be docketed in the pending superior court
19 action and shall proceed as though the petition for an order of protection
20 had been originally brought in the superior court. Notwithstanding any
21 other law and unless prohibited by an order of the superior court, a
22 municipal court or justice court may hold a hearing on all matters
23 relating to its ex parte order of protection if the hearing was requested
24 before receiving written notice of the pending superior court action. No
25 order of protection shall be invalid or determined to be ineffective
26 merely because it was issued by a lower court at a time when an action for
27 maternity or paternity, annulment, legal separation or dissolution of
28 marriage was pending in a higher court. After a hearing with notice to
29 the affected party, the court may enter an order requiring any party to
30 pay the costs of the action, including reasonable attorney fees, if any.
31 An order that is entered by a justice court or municipal court after a
32 hearing pursuant to this section may be appealed to the superior court as
33 provided in title 22, chapter 2, article 4, section 22-425, subsection B
34 and the superior court rules of civil appellate procedure without regard
35 to an amount in controversy. No fee may be charged to either party for
36 filing an appeal. For the purposes of this subsection, "pending" means,
37 with respect to an action for annulment, legal separation or dissolution
38 of marriage or for maternity or paternity, either that:

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

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

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

1 V. A valid protection order that is related to domestic or family
2 violence and that is issued by a court in another state, a court of a
3 United States territory or a tribal court shall be accorded full faith and
4 credit and shall be enforced as if it were issued in this state for as
5 long as the order is effective in the issuing jurisdiction. For the
6 purposes of this subsection:

7 1. A protection order includes any injunction or other order that
8 is issued for the purpose of preventing violent or threatening acts or
9 harassment against, contact or communication with or physical proximity to
10 another person. A protection order includes temporary and final orders
11 other than support or child custody orders that are issued by civil and
12 criminal courts if the order is obtained by the filing of an independent
13 action or is a pendente lite order in another proceeding. The civil order
14 shall be issued in response to a complaint, petition or motion that was
15 filed by or on behalf of a person seeking protection.

16 2. A protection order is valid if the issuing court had
17 jurisdiction over the parties and the matter under the laws of the issuing
18 state, a United States territory or an Indian tribe and the person against
19 whom the order was issued had reasonable notice and an opportunity to be
20 heard. If the order is issued ex parte, the notice and opportunity to be
21 heard shall be provided within the time required by the laws of the
22 issuing state, a United States territory or an Indian tribe and within a
23 reasonable time after the order was issued.

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

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

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

33 4. A peace officer may presume the validity of and rely on a copy
34 of a protection order that is issued by another state, a United States
35 territory or an Indian tribe if the order was given to the officer by any
36 source. A peace officer may also rely on the statement of any person who
37 is protected by the order that the order remains in effect. A peace
38 officer who acts in good faith reliance on a protection order is not
39 civilly or criminally liable for enforcing the protection order pursuant
40 to this section.

41 W. For the purposes of this section, "victim notification system"
42 means an automated system that may provide plaintiffs and crime victims
43 with an automated notification regarding the person's case.

1 Sec. 2. Section 13-3624, Arizona Revised Statutes, is amended to
2 read:

3 13-3624. Emergency orders of protection

4 A. In counties with a population of one hundred fifty thousand
5 persons or more, the presiding judge of the superior court, during the
6 hours that the courts are closed, shall make available on a rotating basis
7 a JUDGE, JUSTICE OF THE PEACE, MAGISTRATE OR COMMISSIONER WHO SHALL ISSUE
8 EMERGENCY ORDERS OF PROTECTION BY TELEPHONE. IN COUNTIES WITH A
9 POPULATION OF LESS THAN ONE HUNDRED FIFTY THOUSAND PERSONS, ANY judge,
10 justice of the peace, magistrate or commissioner ~~who shall~~ MAY issue
11 emergency orders of protection by telephone DURING THE HOURS THAT THE
12 COURTS ARE CLOSED.

13 B. ~~In counties with a population of less than one hundred fifty~~
14 ~~thousand persons, a judge, justice of the peace, magistrate or~~
15 ~~commissioner may issue an emergency order by telephone.~~ The court, within
16 twenty-four hours after a defendant is arrested for an act of domestic
17 violence, shall register a certified copy of the release order with the
18 sheriff's office of the county in which the order was issued. The court
19 shall notify the sheriff's office of material changes in the release
20 order, if the conditions of the release order are no longer in effect and
21 when the charges are resolved. The sheriff in each county shall maintain
22 a central repository for release orders so that the existence and validity
23 of the orders can be easily verified. The law enforcement agency shall
24 advise domestic violence victims where the victim may verify the
25 registration and conditions of a release order.

26 C. The judge, justice of the peace, magistrate or commissioner who
27 is authorized to issue emergency orders of protection may issue a written
28 or oral ex parte emergency order of protection if a peace officer states
29 that the officer has reasonable grounds to believe that a person is in
30 immediate and present danger of domestic violence based on an allegation
31 of a recent incident of actual domestic violence pursuant to section
32 13-3601, subsection A.

33 D. An emergency order of protection may include any of the
34 following:

35 1. The defendant may be enjoined from committing a violation of one
36 or more of the offenses included in domestic violence.

37 2. One party may be granted the use and exclusive possession of the
38 parties' residence on a showing that there is reasonable cause to believe
39 that physical harm may otherwise result.

40 3. The defendant may be restrained from contacting the plaintiff
41 and coming near the residence, place of employment or school of the
42 plaintiff or other specifically designated locations or persons on a
43 showing that there is reasonable cause to believe that physical harm may
44 otherwise result.

1 4. If the court finds that the defendant may inflict bodily injury
2 or death on the plaintiff, the defendant may be prohibited from possessing
3 or purchasing a firearm for the duration of the order.

4 E. An emergency order of protection expires ~~at the close of the~~
5 ~~next day of judicial business following the day of issue or seventy-two~~
6 ~~hours~~ SEVEN CALENDAR DAYS after issuance, ~~whichever is longer,~~ unless
7 otherwise continued by the court.

8 F. A judge, justice of the peace, magistrate or commissioner may
9 issue an oral emergency order of protection pursuant to subsection C of
10 this section on request of the alleged victim, if there is a finding that
11 a person's life or health is in imminent danger. If a person is either
12 temporarily or permanently unable to request an order, a third party may
13 request an order of protection on behalf of the plaintiff. After the
14 request, the judicial officer shall determine if the third party is an
15 appropriate requesting party for the plaintiff. The judicial officer who
16 issues an oral emergency order of protection shall document the issuance
17 of the order as soon as practicable. The officer who receives the verbal
18 order shall write and sign the order. The emergency order shall be served
19 on the defendant, and a copy shall be given to the protected party. The
20 emergency order shall be filed as soon as practicable after its issuance.
21 The law enforcement agency shall file a certificate of service with the
22 court and shall register the emergency order with the national crime
23 information center as soon as practicable. If a person who is named in
24 the order and who has not received personal service of the order but has
25 received actual notice of the existence and substance of the order commits
26 an act that violates the order, the person is subject to any penalty for
27 the violation.

28 G. The availability of an emergency order of protection is not
29 affected by either party leaving the residence.

30 H. A law enforcement agency that has jurisdiction to enforce an
31 emergency order of protection shall enforce the emergency order when it
32 has reasonable cause to believe that the order has been violated.

33 I. Failure of a law enforcement agency to enforce an emergency
34 order of protection pursuant to this section does not give rise to civil
35 liability except pursuant to section 12-820.02.

36 Sec. 3. Applicability

37 Section 13-3602, Arizona Revised Statutes, as amended by this act,
38 applies to an order of protection that is served from and after the
39 effective date of this act.