



# Arizona State Senate *Issue Paper*

June 30, 2010

## **Note to Reader:**

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## **DOMESTIC VIOLENCE**

### **FEDERAL LAW**

The original Violence Against Women Act (VAWA), enacted as Title IV of the Violent Crime Control and Law Enforcement Act, became law in 1994. To help combat violence against women, the original VAWA rewrote several areas of federal criminal law. Penalties were created for interstate stalking and domestic abuse in cases where an abuser crossed a state line to injure or harass a victim, or forced a person to cross a state line under duress and then physically harmed the victim in the course of a violent crime. Additionally, the law strengthened existing penalties for repeat sexual offenders and required restitution to victims in federal sex offense cases. VAWA called for pretrial detention in federal sex offense or child pornography felonies and allowed evidence of prior sex offenses to be used in some subsequent trials regarding federal sex crimes. The law also set new rules of evidence specifying that a victim's past sexual behavior generally was not admissible in federal civil or criminal cases regarding sexual misconduct.

The Violence Against Women Act of 2000 and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (acts) reauthorized many VAWA programs, set new funding levels and created new grant programs. The acts encourage collaboration among law enforcement, judicial personnel, and public and private service providers to victims of domestic and sexual violence; increase public awareness of domestic violence; address the special needs of victims of domestic and sexual violence, including the elderly, disabled and youth; provide transitional and long-term housing for victims; make some provisions gender-neutral; and require studies and reports on the effectiveness of approaches used for certain grants in combating violence.

VAWA programs are funded through annual appropriations for the Departments of Justice (DOJ) and Health and Human Services (HHS). Funding under the bills emphasizes enforcement as well as educational and social programs to prevent crime. Since 1995, VAWA has been a source of funding for programs to reduce rape, stalking and domestic violence. DOJ administers VAWA grants designed to aid law enforcement officers and prosecutors, encourage mandatory arrest policies, reduce domestic violence and

child abuse, establish and operate training programs for victim advocates and counselors, and train probation and parole officers who work with released sex offenders. Under HHS, grants include funds for battered women's shelters, rape prevention and education, reduction of sexual abuse of runaway and homeless street youth, and community programs on domestic violence.

## ARIZONA LAW

The Arizona Legislature created the state's first domestic violence laws in 1980, which have been amended many times since. Domestic violence is not categorized as a separate crime by Arizona law, with the exception of aggravated domestic violence, which can be charged when a person commits multiple domestic violence offenses. Instead, the phrase refers to any of nearly two dozen crimes when committed between individuals who are related by blood or court order, reside in the same household, have a child in common or have engaged in a romantic or sexual relationship. The statutory definition of domestic violence encompasses a broad range of crimes and offenses, such as murder, endangerment, threatening or intimidating, sexual assault or sexual misconduct, harassment, stalking, child abuse or vulnerable adult abuse. The penalties for domestic violence depend on the severity of the act, as well as the age of the victim and perpetrator, and range from a minimum class 3 misdemeanor to a maximum class 1 felony.

The Arizona Department of Public Safety (DPS) collects data on domestic violence-related arrests and dispositions. The Governor's Office for Children, Youth and Families compiles statistics from law enforcement agencies on domestic violence calls. However, Arizona does not have a comprehensive system for tracking the incidents and resolution of domestic violence offenses from the initial 911 call through the final disposition of the case. According to DPS, there were 25,829 arrest records with at least one domestic violence count in calendar year 2007. There were 42,098

domestic violence counts contained in those arrest records.<sup>1</sup>

## Peace Officer Response and Penalties

Domestic violence in the U.S. has been treated as a criminal matter only in the last three decades. The domestic violence arrest laws that exist today in nearly all states, including Arizona, are variously referred to as mandatory arrest laws, pro-arrest laws or presumptive arrest laws.

Under Arizona statute, if an officer has probable cause to believe that domestic violence has been committed and that the person to be arrested has committed the offense, the officer may arrest the person. The arrest can be made whether the offense is a felony or a misdemeanor without regard to whether it was committed in the presence of the officer. In other circumstances, however, Arizona's mandatory arrest laws require officers responding to a scene of a domestic violence incident to make an arrest, even if the alleged victim does not desire it. Specifically, in a case of infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, an officer *must* make an arrest, unless he or she has reasonable grounds to believe that the victim will be protected from further injury.

When a peace officer responds to a domestic violence call, the officer is required to inform any alleged or potential victim, in writing, of the procedures and resources available for his or her protection including: 1) an order of protection, preliminary injunction or injunction against harassment; 2) the emergency telephone number for the local police agency; and 3) telephone numbers for emergency services in the local community. Officers are usually also expected to arrange for medical assistance if necessary, provide victims' rights information and alert the

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<sup>1</sup> Of the 42,098 domestic violence-related counts, 664 were charged as aggravated domestic violence and 41,434 were charged with the underlying offense, for example assault, with domestic violence noted in the record.

victim to other services such as emergency shelters and family advocacy centers. Some law enforcement agencies have victims' advocates or counselors available to respond to the scene.

An order for release from custody of a person arrested for a domestic violence offense must include pretrial release conditions that are necessary to provide for the protection of the alleged victim and may provide for additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant. Statute requires a judge to order a person convicted of misdemeanor domestic violence to complete a domestic violence offender treatment program unless the person has previously completed a program as ordered, and the judge deems alternative sanctions more appropriate. If a person is convicted of two misdemeanor domestic violence offenses within a period of five years, Arizona law allows the judge to order the person to be placed on supervised probation and to be incarcerated as a condition of probation. If the person is incarcerated and is either employed or a student, the judge may provide in the sentence that the person may continue employment or studies for not more than 12 hours a day or more than five days a week, and be allowed out of jail only long enough to complete the actual hours of employment or studies.

### ***Other Domestic Violence-Related Statutes***

A person may file a verified petition with a magistrate, justice of the peace or superior court judge for an order of protection to restrain a person from committing an act of domestic violence. The court must issue the order of protection if the court determines there is reasonable cause to believe the defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year or a longer period of time under certain circumstances.

In Arizona, a person commits aggravated domestic violence, a class 5 felony, if he or she commits a third or subsequent domestic violence offense within a period of seven years. A person who has committed three domestic violence

offenses must serve at least four months, and a person convicted of four or more domestic violence offenses must serve at least eight months in jail before the person may be eligible for probation, pardon, commutation or suspension of sentence or release on any other basis.

A person who commits domestic violence could incur additional penalties under certain circumstances. For example, if a person commits a felony domestic violence offense and knows the victim is pregnant, the maximum sentence is increased by up to two years. In addition, a history of domestic violence can influence child custody and parenting time. In custody decisions, if the court makes a finding of the existence of significant domestic violence, the court is prohibited from awarding joint custody. The court is required to consider evidence of domestic violence as being contrary to the best interests of the child.

Arizona statute prohibits life, disability, property or liability insurers from denying a claim incurred or denying, refusing or limiting coverage or charging a different rate for the same coverage solely on the basis that the person has been a victim of domestic violence. The same protection applies for entities or individuals that provide counseling, shelter, protection or other services to victims of domestic violence.

In 2004, the Legislature enacted legislation prohibiting a landlord from waiving or limiting a tenant's right to summon a peace officer or other emergency assistance in response to domestic violence. Landlords are prohibited from penalizing or demanding payment from a tenant for summoning a peace officer if domestic violence was the cause. In 2005, the Legislature abolished the spousal defense to prosecution of sexual assault and the sexual assault of a spouse statute, eliminating the law providing lesser penalties for sexual assault of a spouse than for sexual assault of a stranger. Additionally, 2007 legislation allows a tenant who is a victim of domestic violence to terminate a rental agreement under certain circumstances, or to require the landlord to install a new lock if the tenant pays for the cost of the installation.

Finally, legislation enacted in 2010 allows the court to grant a petitioner of an order of protection the custody of any animal owned by one of the parties and to forbid the perpetrator from coming near or harming the animal. The same bill classifies strangulation and suffocation as aggravated assault, a class 4 felony, if the victim and perpetrator have a relationship that requires the assault to be classified as domestic violence.

**Shelters**

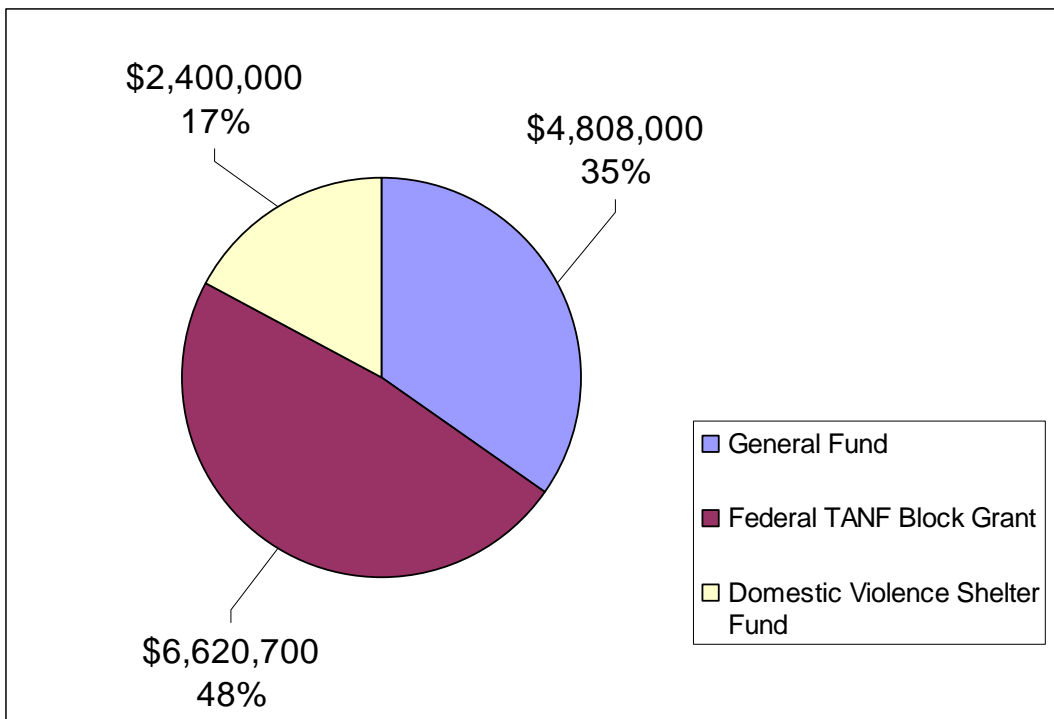
A domestic violence shelter is a facility that provides temporary residential service or facilities to family or household members who are victims of domestic violence. Arizona’s Domestic Violence Shelter Fund (Fund) consists of 8.87 percent of the statutory filing and copy fees received by the superior court and is managed by the program administrator of the Community Services Administration in the Department of Economic Security (Department), who may also accept and expend federal monies, private grants, gifts and contributions. According to the Department, \$2.28 million is appropriated from the Fund to shelters with which the Department contracts in FY 2009.

For a shelter to be eligible to receive Fund monies, it must provide crisis interventions, advocacy and support services, and information and referrals for community-based services to victims of domestic violence. These requirements are included in the Department’s request for proposals for domestic violence shelter services.

Victims of domestic violence stay in shelters an average of 33 days. During their stay, clients are helped with plans to find a safe living environment as well as legal assistance for their domestic violence issues.

In FY 2009, 11,209 adults and children received services in 32 shelters located in 13 counties. Individual domestic violence shelters reported having to turn away 8,468 clients because shelter was unavailable at the time of the request. The reported turn-away rate may represent some duplication because each shelter reports its numbers independently from other shelters.

The chart below illustrates the \$13,828,700 provided for domestic violence prevention in FY 2011.



## **ADDITIONAL RESOURCES**

- Arizona's Domestic Violence Statutes  
A.R.S. §§ 13-3601, 13-3601.01, 13-3601.02  
and 13-3602
- Department of Economic Security  
[www.azdes.gov](http://www.azdes.gov)
- Governor's Commission to Prevent Violence  
Against Women  
*State Plan on Domestic and Sexual Violence:  
A Guide for Safety and Justice in Arizona*  
<http://gocyf.az.gov/>
- Arizona Coalition Against Domestic  
Violence  
<http://www.azcadv.org/>  
(602) 279-2900  
1-800-782-6400
- National Domestic Violence Hotline  
1-800-799-SAFE (7233)
- Community Information and Referral  
1-800-799-7739, in the 602, 623 and 480 area  
codes  
1-800-352-3792, in the 520 area code
- Arizona Supreme Court  
How to obtain an order of protection  
<http://www.supreme.state.az.us/>
- Arizona Humane Society Project Safe House  
(provides temporary foster care for pets of  
domestic violence victims)  
(602) 997-7585 Ext. 134
- Office on Violence Against Women  
800 K Street, N.W., Suite 920  
Washington, D.C. 20530  
(202) 307-6026  
[www.usdoj.gov/ovw](http://www.usdoj.gov/ovw)