

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1286

AN ACT

AMENDING SECTIONS 12-253, 13-804, 13-810, 13-820, 13-902, 13-3602, 13-4409, 13-4411, 13-4430, 13-4434, 13-4435 AND 39-127, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4440; REPEALING LAWS 2005, CHAPTER 260, SECTION 15; RELATING TO VICTIMS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-253, Arizona Revised Statutes, is amended to
3 read:

4 12-253. Powers and duties

5 The adult probation officer shall:

6 1. Make and file a complete record of persons placed under suspended
7 sentence by the court, and of all reports made to the officer in writing or
8 in person, in accordance with the conditions imposed by the court.

9 2. Exercise general supervision and observation over persons under
10 suspended sentence, subject to control and direction by the court.

11 3. Serve warrants, make arrests and bring persons before the court who
12 are under suspended sentences. The officer has the authority of a peace
13 officer in the performance of the officer's duties.

14 4. Investigate cases referred to the officer for investigation by the
15 court in which the officer is serving and report to the court. In an
16 investigation for a presentence report, the adult probation officer shall
17 promptly inquire into the circumstances of the offense, the convicted
18 person's history of delinquency or criminality, social history, employment
19 history, family situation, economic status, including the ability to
20 contribute to reimbursement for the costs of the person's legal defense
21 pursuant to section 11-584, education and personal habits. The presentence
22 report shall contain a recommendation by the officer regarding contribution
23 by the convicted person toward the costs of legal defense pursuant to section
24 11-584. The officer shall also promptly inquire into the physical, emotional
25 and financial impact of the offense on the victim and the emotional and
26 financial impact of the offense on the immediate family of the victim and
27 shall notify the victim or the immediate family of the victim of the right to
28 appear personally or by counsel at any aggravation or mitigation proceeding.

29 5. Secure and keep a complete identification record of every person
30 released under a suspended sentence and a written statement of the conditions
31 of the suspension.

32 6. Obtain and assemble information concerning the conduct of persons
33 placed under suspended sentence and report the information to the court.

34 7. Bring defaulting probationers into court when in ~~his~~ **THE PROBATION**
35 **OFFICER'S** judgment the conduct of the probationer justifies the court to
36 revoke suspension of the sentence.

37 **8. MONITOR THE PAYMENT OF RESTITUTION AND TAKE APPROPRIATE ACTION IF**
38 **THE PROBATIONER FAILS TO PAY RESTITUTION.**

39 Sec. 2. Section 13-804, Arizona Revised Statutes, is amended to read:

40 13-804. Restitution for offense causing economic loss; fine for
41 reimbursement of public monies

42 A. ~~Upon~~ **ON** a defendant's conviction for an offense causing economic
43 loss to any person, the court, in its sole discretion, may order that all or
44 any portion of the fine imposed be allocated as restitution to be paid by the

1 defendant to any person who suffered an economic loss caused by the
2 defendant's conduct.

3 B. In ordering restitution for economic loss pursuant to section
4 13-603, subsection C or subsection A of this section, the court shall
5 consider all losses caused by the criminal offense or offenses for which the
6 defendant has been convicted.

7 C. The court shall not consider the economic circumstances of the
8 defendant in determining the amount of restitution.

9 D. Restitution payments that are ordered pursuant to section
10 13-603 and this section shall not be stayed if the defendant files a notice
11 of appeal, and the payments may be held by the court pending the outcome of
12 an appeal **UNLESS A VICTIM REQUESTS THAT PAYMENT NOT BE HELD AND A COURT**
13 **DETERMINES THERE ARE NOT REASONABLE GROUNDS TO BELIEVE THAT THE CONVICTION**
14 **MAY BE SET ASIDE ON A MOTION FOR A NEW TRIAL, REVERSED ON APPEAL OR VACATED**
15 **IN A POSTCONVICTION PROCEEDING. THE CLERK OF THE COURT SHALL STOP HOLDING**
16 **ANY PAYMENTS IF THE DEFENDANT FAILS TO DILIGENTLY PROSECUTE THE APPEAL.**

17 E. After the court determines the amount of restitution, the court or
18 a staff member designated by the court, including a probation officer, shall
19 specify the manner in which the restitution is to be paid. In deciding the
20 manner in which the restitution is to be paid, the court or a staff member
21 designated by the court, including a probation officer, shall make reasonable
22 efforts to contact any victim who has requested notice pursuant to sections
23 13-4415 and 13-4417, shall take into account the views of the victim and
24 shall consider the economic circumstances of the defendant. In considering
25 the economic circumstances of the defendant, the court shall consider all of
26 the defendant's assets and income, including workers' compensation and social
27 security benefits. The court shall make all reasonable efforts to ensure
28 that all persons **WHO ARE** entitled to restitution pursuant to a court order
29 promptly receive full restitution. The court may enter any reasonable order
30 necessary to accomplish this. If a victim has received reimbursement for the
31 victim's economic loss from an insurance company, a crime victim compensation
32 program funded pursuant to section 41-2407 or any other entity, the court
33 shall order the defendant to pay the restitution to that entity. If a victim
34 has received only partial reimbursement for the victim's economic loss, the
35 court shall order the defendant to pay restitution first to the victim and
36 then to the entity that partially reimbursed the victim. If a probation,
37 parole or community supervision officer has reason to believe that court
38 ordered restitution is not being made, the officer shall report to the court
39 supervising the probationer or the board of executive clemency that the
40 defendant has failed to make restitution in a timely manner and the court or
41 the board of executive clemency may revoke the defendant's probation, parole
42 or community supervision.

43 F. If more than one defendant is convicted of the offense ~~which~~ **THAT**
44 caused the loss, the defendants are jointly and severally liable for the
45 restitution.

1 G. If the court does not have sufficient evidence to support a finding
2 of the amount of restitution or the manner in which the restitution should be
3 paid, it may conduct a hearing ~~upon~~ ON the issue according to procedures
4 established by COURT rule ~~of-court~~. The court may call the defendant to
5 testify and to produce information or evidence. The state does not represent
6 persons who have suffered economic loss at the hearing but may present
7 evidence or information relevant to the issue of restitution.

8 H. After making the determinations in subsection B of this section the
9 trial court shall enter a restitution order for each defendant ~~which~~ THAT
10 sets forth all of the following:

- 11 1. The total amount of restitution the defendant owes all persons.
- 12 2. The total amount of restitution owed to each person.
- 13 3. The manner in which the restitution is to be paid.

14 I. The restitution order under subsection H of this section may be
15 supported by evidence or information introduced or submitted to the court
16 before sentencing or any evidence previously heard by the judge during the
17 proceedings.

18 J. A restitution lien shall be created in favor of the state for the
19 total amount of the restitution, fine, surcharges, assessments, costs,
20 incarceration costs and fees ordered, if any.

21 K. Notwithstanding any other law, a restitution lien is created in
22 favor of a victim of the defendant ordered to make restitution. Monies
23 received monthly from the defendant shall be applied first to satisfy the
24 restitution order entered by the court and the payment of any restitution in
25 arrears. Any monies that are owed by this state to a person who is under a
26 restitution order shall be assigned first to discharge the restitution order,
27 including any tax refund that is owed to the defendant.

28 L. If the defendant, the state or persons entitled to restitution
29 pursuant to a court order disagree with the manner of payment established in
30 subsection E of this section, the defendant, court or person entitled to
31 restitution may petition the court at any time to change the manner in which
32 the restitution is paid. Before modifying the order pertaining to the manner
33 in which the restitution is paid, the court shall give notice and an
34 opportunity to be heard to the defendant, the state and, ~~upon~~ ON request, ANY
35 persons entitled to restitution pursuant to a court order.

36 Sec. 3. Section 13-810, Arizona Revised Statutes, is amended to read:

37 13-810. Consequences of nonpayment of fines, fees, restitution
38 or incarceration costs

39 A. **IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, INCLUDING A WRIT**
40 **OF EXECUTION OR OTHER CIVIL ENFORCEMENT**, if a defendant WHO IS sentenced to
41 pay a fine, fee, restitution or incarceration costs defaults in the payment
42 of ~~such~~ THE fine, fee, restitution or incarceration costs or of any
43 installment AS ORDERED, the clerk of the court imposing the fine, fee,
44 restitution or incarceration costs shall, **WITHIN TEN DAYS OF THE DEFAULT**,
45 notify the prosecutor, the sentencing court and any person entitled to

1 restitution pursuant to a court order. The court, on motion of the
2 prosecuting attorney, on petition of any person entitled to restitution
3 pursuant to a court order or on its own motion, shall require the defendant
4 to show cause why the defendant's default should not be treated as contempt
5 and may issue a summons or a warrant of arrest for the defendant's
6 appearance.

7 B. At any hearing on the order to show cause the court, the
8 prosecuting attorney or a person entitled to restitution may examine the
9 defendant under oath concerning the defendant's financial condition,
10 employment and assets or on any other matter relating to the defendant's
11 ability to pay restitution.

12 C. If the court finds that the defendant has wilfully failed to pay a
13 fine, A fee, restitution or incarceration costs or finds that the defendant
14 has intentionally refused to make a good faith effort to obtain the monies
15 required for the payment, the court shall find that the default constitutes
16 contempt and may do one of the following:

17 1. Order the defendant incarcerated in the county jail until the fine,
18 fee, restitution or incarceration costs, or a specified part of the fine,
19 fee, restitution or incarceration costs, is paid.

20 2. Revoke the defendant's probation, parole or community supervision
21 and sentence the defendant to prison pursuant to law.

22 3. Enter an order pursuant to section 13-812. The levy or execution
23 for the collection of a fine, A fee, restitution or incarceration costs does
24 not discharge a defendant who is incarcerated for nonpayment of the fine,
25 fee, restitution or incarceration costs until the amount of the fine, fee,
26 restitution or incarceration costs is collected.

27 D. If the court finds that the default is not wilful and that the
28 defendant cannot pay despite sufficient good faith efforts to obtain the
29 monies, the court may take any lawful action including:

30 1. Modify the manner in which the restitution, fine, fee or
31 incarceration costs are to be paid.

32 2. Enter any reasonable order ~~which~~ THAT would assure compliance with
33 the order to pay.

34 3. Enter an order pursuant to section 13-812. The levy or execution
35 for the collection of a fine, A fee, restitution or incarceration costs does
36 not discharge a defendant incarcerated for nonpayment of the fine, fee,
37 restitution or incarceration costs until the amount of the fine, fee,
38 restitution or incarceration costs is collected.

39 E. If a fine, A fee, restitution or incarceration costs are imposed on
40 an enterprise it is the duty of the person or persons authorized to make
41 disbursement from the assets of the enterprise to pay them from those assets,
42 and their failure to do so shall be held a contempt unless they make the
43 showing required in subsection A of this section.

1 Sec. 4. Section 13-820, Arizona Revised Statutes, is amended to read:
2 13-820. Contempt proceedings: failure to comply with order

3 If the garnishee fails to comply with the terms of the order of
4 criminal garnishment within thirty days after receiving the order, the victim
5 or the court, the clerk of the court or the prosecuting attorney may petition
6 the court for an order to show cause why the garnishee should not be held in
7 contempt. If the court finds that the failure was wilful or the result of
8 gross negligence, the court shall find the garnishee in contempt and:

9 1. Shall award the petitioner reasonable attorney fees, costs and an
10 additional penalty of not more than five hundred dollars.

11 2. **MAY ORDER THE DEFENDANT BE INCARCERATED IN THE COUNTY JAIL UNTIL**
12 **THE RESTITUTION, OR A SPECIFIED PORTION OF THE RESTITUTION, IS PAID.**

13 Sec. 5. Section 13-902, Arizona Revised Statutes, is amended to read:
14 13-902. Periods of probation

15 A. Unless terminated sooner, probation may continue for the following
16 periods:

- 17 1. For a class 2 felony, seven years.
- 18 2. For a class 3 felony, five years.
- 19 3. For a class 4 felony, four years.
- 20 4. For a class 5 or 6 felony, three years.
- 21 5. For a class 1 misdemeanor, three years.
- 22 6. For a class 2 misdemeanor, two years.
- 23 7. For a class 3 misdemeanor, one year.

24 B. Notwithstanding subsection A of this section, unless terminated
25 sooner, probation may continue for the following periods:

- 26 1. For a violation of section 28-1381 or 28-1382, five years.
- 27 2. For a violation of section 28-1383, ten years.

28 C. When the court has required, as a condition of probation, that the
29 defendant make restitution for any economic loss related to the defendant's
30 offense and that condition has not been satisfied, the court at any time
31 before the termination or expiration of probation may extend the period
32 within the following limits:

- 33 1. For a felony, not more than ~~three~~ SEVEN years.
- 34 2. For a misdemeanor, not more than ~~one-year~~ THREE YEARS.

35 D. Notwithstanding any other provision of law, justice courts and
36 municipal courts may impose the probation periods specified in subsection A,
37 paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

38 E. After conviction of a felony offense or an attempt to commit any
39 offense that is included in chapter 14 or 35.1 of this title or section
40 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may
41 continue for a term of not less than the term that is specified in subsection
42 A of this section up to and including life and that the court believes is
43 appropriate for the ends of justice.

44 F. After conviction of a violation of section 13-3824, subsection A,
45 if a term of probation is imposed and the offense for which the person was

1 required to register was a felony, probation may continue for a term of not
2 less than the term that is specified in subsection A of this section up to
3 and including life and that the court believes is appropriate for the ends of
4 justice.

5 G. Beginning November 1, 2006, after conviction of a dangerous crime
6 against children as defined in section 13-604.01, if a term of probation is
7 imposed, the court shall require global position system monitoring for the
8 duration of the term of probation.

9 Sec. 6. Section 13-3602, Arizona Revised Statutes, is amended to read:

10 13-3602. Order of protection; procedure; contents; arrest for
11 violation; penalty; protection order from another
12 jurisdiction

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

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

28 1. Unless the party who requests the order files a written verified
29 petition for an order.

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

32 3. Against more than one defendant.

33 C. The petition shall state the:

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

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

43 3. Specific statement, including dates, of the domestic violence
44 alleged.

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

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

7 6. Desired relief.

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

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

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

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

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

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

3 2. Grant one party the use and exclusive possession of the parties'
4 residence on a showing that there is reasonable cause to believe that
5 physical harm may otherwise result. If the other party is accompanied by a
6 law enforcement officer, the other party may return to the residence on one
7 occasion to retrieve belongings. A law enforcement officer is not liable for
8 any act or omission in the good faith exercise of the officer's duties under
9 this paragraph.

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

15 4. If the court finds that the defendant is a credible threat to the
16 physical safety of the plaintiff or other specifically designated persons,
17 prohibit the defendant from possessing or purchasing a firearm for the
18 duration of the order. If the court prohibits the defendant from possessing
19 a firearm, the court shall also order the defendant to transfer any firearm
20 owned or possessed by the defendant immediately after service of the order to
21 the appropriate law enforcement agency for the duration of the order. If the
22 defendant does not immediately transfer the firearm, the defendant shall
23 transfer the firearm within twenty-four hours after service of the order.

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

29 6. Grant relief that is necessary for the protection of the alleged
30 victim and other specifically designated persons and that is proper under the
31 circumstances.

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

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

1 possible time. An ex parte order that is issued under this section shall
2 state on its face that the defendant is entitled to a hearing on written
3 request and shall include the name and address of the judicial office where
4 the request may be filed. After the hearing, the court may modify, quash or
5 continue the order.

6 J. The order shall include the following statement:

7 Warning

8 This is an official court order. If you disobey this
9 order, you ~~may~~ WILL 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. A copy of the petition and the order shall be served on the
13 defendant within one year from the date the order is signed. An order of
14 protection that is not served on the defendant within one year expires. An
15 order is effective on the defendant on service of a copy of the order and
16 petition. An order expires one year after service on the defendant. A
17 modified order is effective ~~upon~~ ON service and expires one year after
18 service of the initial order and petition.

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

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

1 enforcement agency. The law enforcement agency shall request that a
2 prosecutorial agency file the appropriate charges. A violation of an order
3 of protection shall not be adjudicated by a municipal or justice court unless
4 a complaint has been filed or other legal process has been requested by the
5 prosecuting agency. The provisions for release under section 13-3883,
6 subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made
7 pursuant to this section. For THE purposes of this section, any court in
8 this state has jurisdiction to enforce a valid order of protection that is
9 issued in this state and that has been violated in any jurisdiction in this
10 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. THE RELEASING AUTHORITY
19 SHALL MAKE REASONABLE EFFORTS TO CONTACT THE VICTIM AND OTHER SPECIFICALLY
20 DESIGNATED PERSONS IN THE ORDER OF PROTECTION WHO REQUESTED NOTIFICATION
21 IMMEDIATELY ON RELEASE OF THE ARRESTED PERSON FROM CUSTODY.

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

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

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

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

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

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

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

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

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

1 within the time required by the laws of the issuing state, a United States
2 territory or an Indian tribe and within a reasonable time after the order was
3 issued.

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

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

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

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

20 Sec. 7. Section 13-4409, Arizona Revised Statutes, is amended to read:

21 13-4409. Notice of criminal proceedings

22 A. Except as provided in subsection B, the court shall provide notice
23 of criminal proceedings, for criminal offenses filed by information,
24 complaint or indictment, except initial appearances and arraignments, to the
25 prosecutor's office at least five days before a scheduled proceeding to allow
26 the prosecutor's office to provide notice to the victim.

27 B. If the court finds that it is not reasonable to provide the five
28 days' notice to the prosecutor's office under subsection A, the court shall
29 state in the record why it was not reasonable to provide five days' notice.

30 C. On receiving the notice from the court, the prosecutor's office
31 shall, on request, give notice to the victim in a timely manner of scheduled
32 proceedings and any changes in that schedule, INCLUDING ANY CONTINUANCES.

33 Sec. 8. Section 13-4411, Arizona Revised Statutes, is amended to read:

34 13-4411. Notice of post-conviction review and appellate
35 proceedings

36 A. Within fifteen days after sentencing the prosecutor's office shall,
37 on request, notify the victim of the sentence imposed on the defendant.

38 B. The prosecutor's office shall provide the victim with a form that
39 allows the victim to request post-conviction notice of all post-conviction
40 review and appellate proceedings, all post-conviction release proceedings,
41 all probation modification proceedings that impact the victim, all probation
42 revocation or termination proceedings, any decisions that arise out of these
43 proceedings, all releases and all escapes.

1 C. The prosecutor's office shall advise the victim on how the
2 completed request form may be filed with the appropriate agencies and
3 departments.

4 D. On request of the victim, the prosecutor's office that is
5 responsible for handling any post-conviction or appellate proceedings shall
6 notify the victim of the proceedings and any decisions that arise out of the
7 proceedings.

8 E. A VICTIM WHO REQUESTS NOTICE OF APPELLATE PROCEEDINGS SHALL RECEIVE
9 NOTICE FROM THE COURT OF ANY MEMORANDUM DECISION OR OPINION BY THE COURT
10 CONCURRENTLY WITH THE MEMORANDUM DECISION OR OPINION BEING ISSUED TO THE
11 PARTIES.

12 Sec. 9. Section 13-4430, Arizona Revised Statutes, is amended to read:
13 13-4430. Consultation between crime victim advocate and victim;
14 privileged information; exception

15 A. A crime victim advocate shall not disclose as a witness or
16 otherwise any communication except compensation or restitution information
17 between himself and the victim unless the victim consents in writing to the
18 disclosure.

19 B. Unless the victim consents in writing to the disclosure, a crime
20 victim advocate shall not disclose records, notes, documents, correspondence,
21 reports or memoranda, except compensation or restitution information, that
22 contain opinions, theories or other information made while advising,
23 counseling or assisting the victim or that are based on the communication
24 between the victim and the advocate.

25 C. The communication is not privileged if the crime victim advocate
26 knows that the victim will give or has given perjured testimony or if the
27 communication contains exculpatory ~~material~~ EVIDENCE.

28 D. A defendant may make a motion for disclosure of privileged
29 information. If the court finds there is reasonable cause to believe the
30 material is exculpatory, the court shall hold a hearing in camera. Material
31 that the court finds is exculpatory shall be disclosed to the defendant.

32 E. If, with the consent of the victim, the crime victim advocate
33 discloses to the prosecutor or a law enforcement agency any communication
34 between the victim and the crime victim advocate or any records, notes,
35 documents, correspondence, reports or memoranda, the prosecutor or law
36 enforcement agent shall disclose such material to the defendant's attorney
37 only if such information is otherwise discoverable.

38 F. Notwithstanding ~~the provisions of~~ subsections A and B, ~~if a crime~~
39 ~~victim advocate is employed or authorized by a prosecutor's office, the~~
40 ~~advocate may disclose information to the prosecutor with the oral consent of~~
41 ~~the victim~~ A CRIME VICTIM ADVOCATE MAY DISCLOSE INFORMATION TO OTHER
42 PROFESSIONALS AND ADMINISTRATIVE SUPPORT PERSONS THAT THE ADVOCATE WORKS WITH
43 FOR THE PURPOSE OF ASSISTING THE ADVOCATE IN PROVIDING SERVICES TO THE
44 VICTIM.

1 Sec. 10. Section 13-4434, Arizona Revised Statutes, is amended to
2 read:

3 13-4434. Victim's right to privacy

4 ~~Beginning January 1, 1992~~ The victim has the right at any court
5 proceeding not to testify regarding the victim's addresses, telephone
6 numbers, ~~place~~ PLACES of employment or other locating information unless the
7 victim consents or the court orders disclosure on finding that a compelling
8 need for the information exists. A court proceeding on the motion shall be
9 in camera. A VICTIM'S CONTACT AND IDENTIFYING INFORMATION THAT IS OBTAINED,
10 COMPILED OR REPORTED BY A LAW ENFORCEMENT AGENCY SHALL BE REDACTED BY THE
11 ORIGINATING AGENCY IN PUBLICLY ACCESSIBLE RECORDS PERTAINING TO THE CRIMINAL
12 CASE INVOLVING THE VICTIM.

13 Sec. 11. Section 13-4435, Arizona Revised Statutes, is amended to
14 read:

15 13-4435. Speedy trial; continuance; notice

16 A. In any criminal proceeding, the court, prosecutor and law
17 enforcement officials shall take appropriate action to ensure a speedy trial
18 for the victim.

19 B. A MOTION TO CONTINUE SHALL BE IN WRITING AND SHALL STATE WITH
20 SPECIFICITY ANY REASON JUSTIFYING THE CONTINUANCE. IF THE VICTIM IS NOT
21 REPRESENTED BY COUNSEL, THE PROSECUTOR SHALL ENSURE THE VICTIM RECEIVES
22 NOTICE OF THE MOTION.

23 C. THE COURT SHALL GRANT A CONTINUANCE ONLY IF EXTRAORDINARY
24 CIRCUMSTANCES EXIST AND THE DELAY IS INDISPENSABLE TO THE INTERESTS OF
25 JUSTICE. A CONTINUANCE MAY BE GRANTED ONLY FOR THE TIME NECESSARY TO SERVE
26 THE INTERESTS OF JUSTICE.

27 ~~B. D. In any criminal proceeding in which a continuance is requested~~
28 BEFORE RULING ON A MOTION FOR A CONTINUANCE, the court shall consider the
29 victim's views and the victim's right to a speedy trial. If a continuance is
30 granted, the court shall state on the record the SPECIFIC reason for the
31 continuance AND ON REQUEST OF THE VICTIM SHALL MAKE A TRANSCRIPT OF THE
32 PROCEEDING AVAILABLE TO THE VICTIM.

33 Sec. 12. Title 13, chapter 40, Arizona Revised Statutes, is amended by
34 adding section 13-4440, to read:

35 13-4440. Victim access; defendant's medical records

36 ON REQUEST OF THE PROSECUTOR OR THE VICTIM, THE COURT SHALL ORDER THAT
37 THE DEFENDANT MAKE AVAILABLE TO THE PROSECUTOR OR COUNSEL FOR THE VICTIM ANY
38 MEDICAL RECORDS OR REPORTS THAT THE DEFENDANT OR ANY OF THE DEFENDANT'S
39 AGENTS PROVIDE OR MAKE AVAILABLE TO THE COURT OR TRIER OF FACT FOR PURPOSES
40 OF DECIDING WHETHER TO DISMISS A CHARGE OR CHARGES, WITH OR WITHOUT
41 PREJUDICE, AS GROUNDS FOR A JURY FINDING OF GUILTY EXCEPT INSANE UNDER
42 SECTION 13-502 OR FOR PURPOSES OF MITIGATION. THE COURT MAY ISSUE A
43 PROTECTIVE ORDER TO RESTRICT USE OF THE RECORDS PROVIDED PURSUANT TO THIS
44 SECTION.

1 Sec. 13. Section 39-127, Arizona Revised Statutes, is amended to read:
2 39-127. Free copies of police reports and transcripts for crime
3 victims; definitions

4 A. A victim of a criminal offense that is a part I crime under the
5 statewide uniform crime reporting program or an immediate family member of
6 the victim if the victim is killed or incapacitated has the right to receive
7 one copy of the police report from the investigating law enforcement agency
8 at no charge AND, ON REQUEST OF THE VICTIM, THE COURT SHALL PROVIDE ONE COPY
9 OF THE TRANSCRIPT OF ANY PROCEEDING IN THE CASE ARISING OUT OF THE OFFENSE
10 COMMITTED AGAINST THE VICTIM AT NO CHARGE FOR THE PURPOSE OF LITIGATION OR
11 REPRESENTATION REGARDING A CLAIMED VICTIM'S RIGHT.

12 B. For the purposes of this section, "criminal offense", "immediate
13 family" and "victim" have the same meanings prescribed in section 13-4401.

14 Sec. 14. Repeal

15 Laws 2005, chapter 260, section 15 is repealed.

16 Sec. 15. Purpose

17 A. The people of the state of Arizona overwhelmingly passed the
18 Arizona victims' bill of rights in 1990.

19 B. Before passage of the victims' bill of rights, victims had no
20 ascertainable right to a speedy and prompt resolution or to a prompt and final
21 conclusion of a case after the conviction and sentence.

22 C. Among the rights guaranteed to crime victims by the Arizona
23 victims' bill of rights are:

24 1. The right to be treated with fairness, respect and dignity, and to
25 be free from intimidation, harassment or abuse, throughout the criminal
26 justice process.

27 2. To receive prompt restitution from the person or persons convicted
28 of the criminal conduct that caused the victim's loss or injury.

29 3. To be heard at any proceeding when any postconviction release from
30 confinement is being considered.

31 4. The right to a speedy trial or disposition and prompt and final
32 conclusion of the case after the conviction and sentence.

33 5. To have all rules governing criminal procedure and the
34 admissibility of evidence in all criminal proceedings protect victims' rights
35 and to have these rules be subject to amendment or repeal by the legislature
36 to ensure the protection of these rights.

37 D. The victims' bill of rights gave the legislature the power to enact
38 substantive and procedural laws to define, implement, preserve and protect
39 the rights guaranteed to crime victims by the victims' bill of rights.

40 E. The legislature finds that the rights guaranteed to crime victims
41 by the victims' bill of rights are being violated by the excessive amount of
42 time it takes for criminal defendants to be brought to trial and for all
43 postconviction matters pending in state court to be completed.

1 F. The purpose of the legislature in passing this bill is to protect
2 and preserve the rights guaranteed to crime victims by the victims' bill of
3 rights by ensuring that victims are paid restitution, are given due notice
4 throughout criminal cases and have their privacy protected, that capital
5 defendants are brought to trial in a reasonable time and that all
6 postconviction matters pending in state court are initiated and completed
7 within a reasonable amount of time.

8 Sec. 16. Intent

9 It is the intent of the legislature to give effect to the victims' bill
10 of rights and, if necessary, enact future legislation addressing the
11 timelines for filing notice for postconviction relief in noncapital and
12 capital cases, postconviction relief discovery procedures, speedy trial
13 requirements and case transfer procedures that are currently being addressed
14 by both the capital case task force established by the chief justice of the
15 supreme court on February 12, 2007, and the superior court of Maricopa
16 County.