

REFERENCE TITLE: domestic violence offenders; firearms; seizure

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SB 1128

Introduced by
Senators Bradley, Cajero Bedford, Dalessandro, Farley, Hobbs, Sherwood:
Begay, Contreras, Pancrazi, Quezada; Representative Friese

AN ACT

AMENDING SECTIONS 13-3601 AND 13-3602, ARIZONA REVISED STATUTES; RELATING TO
DOMESTIC VIOLENCE OFFENDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-3601, Arizona Revised Statutes, is amended to
3 read:

4 13-3601. Domestic violence; definition; classification;
5 sentencing option; arrest and procedure for
6 violation; weapon seizure

7 A. "Domestic violence" means any act that is a dangerous crime against
8 children as defined in section 13-705 or an offense prescribed in section
9 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204,
10 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504,
11 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6,
12 section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection
13 A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019,
14 13-3601.02 or 13-3623, if any of the following applies:

15 1. The relationship between the victim and the defendant is one of
16 marriage or former marriage or of persons residing or having resided in the
17 same household.

18 2. The victim and the defendant have a child in common.

19 3. The victim or the defendant is pregnant by the other party.

20 4. The victim is related to the defendant or the defendant's spouse by
21 blood or court order as a parent, grandparent, child, grandchild, brother or
22 sister or by marriage as a parent-in-law, grandparent-in-law, stepparent,
23 step-grandparent, stepchild, step-grandchild, brother-in-law or
24 sister-in-law.

25 5. The victim is a child who resides or has resided in the same
26 household as the defendant and is related by blood to a former spouse of the
27 defendant or to a person who resides or who has resided in the same household
28 as the defendant.

29 6. The relationship between the victim and the defendant is currently
30 or was previously a romantic or sexual relationship. The following factors
31 may be considered in determining whether the relationship between the victim
32 and the defendant is currently or was previously a romantic or sexual
33 relationship:

34 (a) The type of relationship.

35 (b) The length of the relationship.

36 (c) The frequency of the interaction between the victim and the
37 defendant.

38 (d) If the relationship has terminated, the length of time since the
39 termination.

40 B. A peace officer, with or without a warrant, may arrest a person if
41 the officer has probable cause to believe that domestic violence has been
42 committed and the officer has probable cause to believe that the person to be
43 arrested has committed the offense, whether the offense is a felony or a
44 misdemeanor and whether the offense was committed within or without the
45 presence of the peace officer. In cases of domestic violence involving the

1 infliction of physical injury or involving the discharge, use or threatening
2 exhibition of a deadly weapon or dangerous instrument, the peace officer
3 shall arrest a person who is at least fifteen years of age, with or without a
4 warrant, if the officer has probable cause to believe that the offense has
5 been committed and the officer has probable cause to believe that the person
6 to be arrested has committed the offense, whether the offense was committed
7 within or without the presence of the peace officer, unless the officer has
8 reasonable grounds to believe that the circumstances at the time are such
9 that the victim will be protected from further injury. Failure to make an
10 arrest does not give rise to civil liability except pursuant to section
11 12-820.02. In order to arrest both parties, the peace officer shall have
12 probable cause to believe that both parties independently have committed an
13 act of domestic violence. An act of self-defense that is justified under
14 chapter 4 of this title is not deemed to be an act of domestic violence. The
15 release procedures available under section 13-3883, subsection A, paragraph 4
16 and section 13-3903 are not applicable to arrests made pursuant to this
17 subsection.

18 C. A peace officer may question the persons who are present to
19 determine if a firearm is present on the premises. On learning or observing
20 that a firearm is present on the premises, the peace officer may temporarily
21 seize the firearm if the firearm is in plain view or was found pursuant to a
22 consent to search and if the officer reasonably believes that the firearm
23 would expose the victim or another person in the household to a risk of
24 serious bodily injury or death. A firearm that is owned or possessed by the
25 victim shall not be seized unless there is probable cause to believe that
26 both parties independently have committed an act of domestic violence.

27 D. If a firearm is seized pursuant to subsection C of this section,
28 the peace officer shall give the owner or possessor of the firearm a receipt
29 for each seized firearm. The receipt shall indicate the identification or
30 serial number or other identifying characteristic of each seized firearm.
31 Each seized firearm shall be held for at least seventy-two hours by the law
32 enforcement agency that seized the firearm.

33 E. If a firearm is seized pursuant to subsection C of this section,
34 the victim shall be notified by a peace officer before the firearm is
35 released from temporary custody.

36 F. If there is reasonable cause to believe that returning a firearm to
37 the owner or possessor may endanger the victim, the person who reported the
38 assault or threat or another person in the household, the prosecutor shall
39 file a notice of intent to retain the firearm in the appropriate superior,
40 justice or municipal court. The prosecutor shall serve notice on the owner
41 or possessor of the firearm by certified mail. The notice shall state that
42 **UNLESS THE PERSON IS CONVICTED OF A DOMESTIC VIOLENCE OFFENSE** the firearm
43 will be retained for not more than six months following the date of seizure.
44 On receipt of the notice, the owner or possessor may request a hearing for
45 the return of the firearm, to dispute the grounds for seizure or to request

1 an earlier return date. The court shall hold the hearing within ten days
2 after receiving the owner's or possessor's request for a hearing. At the
3 hearing, unless the court determines that the return of the firearm may
4 endanger the victim, the person who reported the assault or threat or another
5 person in the household, the court shall order the return of the firearm to
6 the owner or possessor.

7 G. A peace officer is not liable for any act or omission in the good
8 faith exercise of the officer's duties under subsections C, D, E and F of
9 this section.

10 H. Each indictment, information, complaint, summons or warrant that is
11 issued and that involves domestic violence shall state that the offense
12 involved domestic violence and shall be designated by the letters DV. A
13 domestic violence charge shall not be dismissed or a domestic violence
14 conviction shall not be set aside for failure to comply with this subsection.

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

23 J. When a peace officer responds to a call alleging that domestic
24 violence has been or may be committed, the officer shall inform in writing
25 any alleged or potential victim of the procedures and resources available for
26 the protection of the victim including:

27 1. An order of protection pursuant to section 13-3602, an injunction
28 pursuant to section 25-315 and an injunction against harassment pursuant to
29 section 12-1809.

30 2. The emergency telephone number for the local police agency.

31 3. Telephone numbers for emergency services in the local community.

32 4. Websites for local resources related to domestic violence.

33 K. A peace officer is not civilly liable for noncompliance with
34 subsection J of this section.

35 L. If a person is convicted of an offense involving domestic violence
36 and the victim was pregnant at the time of the commission of the offense, at
37 the time of sentencing the court shall take into consideration the fact that
38 the victim was pregnant and may increase the sentence.

39 M. An offense that is included in domestic violence carries the
40 classification prescribed in the section of this title in which the offense
41 is classified. If the defendant committed a felony offense listed in
42 subsection A of this section against a pregnant victim and knew that the
43 victim was pregnant or if the defendant committed a felony offense causing
44 physical injury to a pregnant victim and knew that the victim was pregnant,

1 the maximum sentence otherwise authorized for that violation shall be
2 increased by up to two years.

3 N. When a peace officer responds to a call alleging that domestic
4 violence has been or may be committed, the officer shall determine if a minor
5 is present. If a minor is present, the peace officer shall conduct a child
6 welfare check to determine if the child is safe and if the child might be a
7 victim of domestic violence or child abuse.

8 O. THE COURT SHALL ORDER A PERSON WHO IS PLACED ON PROBATION FOR A
9 DOMESTIC VIOLENCE OFFENSE TO TRANSFER FOR THE DURATION OF THE PERSON'S
10 PROBATION ANY FIREARMS THAT THE PERSON OWNS OR POSSESSES TO THE APPROPRIATE
11 LAW ENFORCEMENT AGENCY WITHIN TWENTY-FOUR HOURS AFTER THE PERSON IS SENTENCED
12 OR, IF THE PERSON DOES NOT OWN OR POSSESS A FIREARM, TO PROVIDE THE
13 APPROPRIATE LAW ENFORCEMENT AGENCY WITH AN AFFIDAVIT CERTIFYING THAT THE
14 PERSON DOES NOT OWN OR POSSESS A FIREARM. THE COURT SHALL PROVIDE A COPY OF
15 THE ORDER TO THE APPROPRIATE LAW ENFORCEMENT AGENCY. THE LAW ENFORCEMENT
16 AGENCY SHALL PROVIDE THE OWNER OR POSSESSOR OF A SURRENDERED OR SEIZED
17 FIREARM WITH A RECEIPT FOR EACH FIREARM. WITHIN TWENTY-FOUR HOURS AFTER
18 RECEIVING A COPY OF THE COURT'S ORDER, IF THE LAW ENFORCEMENT AGENCY HAS NOT
19 RECEIVED AN AFFIDAVIT OR ANY FIREARMS FROM THE PERSON, THE LAW ENFORCEMENT
20 AGENCY SHALL NOTIFY THE COURT AND REQUEST A SEARCH WARRANT FOR THE PERSON'S
21 HOME AND VEHICLE, IF APPROPRIATE.

22 Sec. 2. Section 13-3602, Arizona Revised Statutes, is amended to read:
23 13-3602. Order of protection; procedure; contents; arrest for
24 violation; penalty; protection order from another
25 jurisdiction

26 A. A person may file a verified petition, as in civil actions, with a
27 magistrate, justice of the peace or superior court judge for an order of
28 protection for the purpose of restraining a person from committing an act
29 included in domestic violence. If the person is a minor, the parent, legal
30 guardian or person who has legal custody of the minor shall file the petition
31 unless the court determines otherwise. The petition shall name the parent,
32 guardian or custodian as the plaintiff and the minor is a specifically
33 designated person for the purposes of subsection G of this section. If a
34 person is either temporarily or permanently unable to request an order, a
35 third party may request an order of protection on behalf of the plaintiff.
36 After the request, the judicial officer shall determine if the third party is
37 an appropriate requesting party for the plaintiff. For the purposes of this
38 section, notwithstanding the location of the plaintiff or defendant, any
39 court in this state may issue or enforce an order of protection.

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

41 1. Unless the party who requests the order files a written verified
42 petition for an order.

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

45 3. Against more than one defendant.

1 C. The petition shall state the:

2 1. Name of the plaintiff. The plaintiff's address shall be disclosed
3 to the court for purposes of service. If the address of the plaintiff is
4 unknown to the defendant, the plaintiff may request that the address be
5 protected. On the plaintiff's request, the address shall not be listed on
6 the petition. Whether the court issues an order of protection, the protected
7 address shall be maintained in a separate document or automated database and
8 is not subject to release or disclosure by the court or any form of public
9 access except as ordered by the court.

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

11 3. Specific statement, including dates, of the domestic violence
12 alleged.

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

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

19 6. Desired relief.

20 D. A fee shall not be charged for filing a petition under this section
21 or for service of process. On request of the plaintiff, each order of
22 protection that is issued by a municipal court shall be served by the police
23 agency for that city if the defendant can be served within the city. If the
24 defendant cannot be served within the city, the police agency in the city in
25 which the defendant can be served shall serve the order. If the order cannot
26 be served within a city, the sheriff shall serve the order. On request of
27 the plaintiff, each order of protection that is issued by a justice of the
28 peace shall be served by the constable or sheriff for that jurisdiction if
29 the defendant can be served within the jurisdiction. If the defendant cannot
30 be served within that jurisdiction, the constable or sheriff in the
31 jurisdiction in which the defendant can be served shall serve the order. On
32 request of the plaintiff, each order of protection that is issued by a
33 superior court judge or commissioner shall be served by the sheriff of the
34 county. If the defendant cannot be served within that jurisdiction, the
35 sheriff in the jurisdiction in which the defendant can be served shall serve
36 the order. Each court shall provide, without charge, forms for purposes of
37 this section for assisting parties without counsel. The court shall make
38 reasonable efforts to provide to both parties an appropriate information
39 sheet on emergency and counseling services that are available in the local
40 area.

41 E. The court shall review the petition, any other pleadings on file
42 and any evidence offered by the plaintiff, including any evidence of
43 harassment by electronic contact or communication, to determine whether the
44 orders requested should issue without further hearing. The court shall issue

1 an order of protection under subsection G of this section if the court
2 determines that there is reasonable cause to believe any of the following:

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

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

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

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

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

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

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

28 4. If the court finds that the defendant is a credible threat to the
29 physical safety of the plaintiff or other specifically designated persons,
30 prohibit the defendant from possessing or purchasing a firearm for the
31 duration of the order. If the court prohibits the defendant from possessing
32 a firearm, the court shall also order the defendant to transfer any firearm
33 owned or possessed by the defendant immediately after service of the order to
34 the appropriate law enforcement agency for the duration of the order. If the
35 defendant does not immediately transfer the firearm, the defendant shall
36 transfer the firearm within twenty-four hours after service of the order. IF
37 THE FIREARM IS NOT TRANSFERRED TO THE LAW ENFORCEMENT AGENCY WITHIN
38 TWENTY-FOUR HOURS, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE COURT AND
39 REQUEST A SEARCH WARRANT FOR THE PERSON'S HOME AND VEHICLE, IF APPROPRIATE,
40 TO RETRIEVE THE FIREARM. THE LAW ENFORCEMENT AGENCY SHALL PROVIDE THE PERSON
41 WITH A RECEIPT FOR EACH FIREARM THAT IS SURRENDERED OR SEIZED. AFTER THE
42 ORDER HAS EXPIRED OR IS DISMISSED, ON APPLICATION BY THE OWNER OR POSSESSOR
43 OF THE FIREARM, THE LAW ENFORCEMENT AGENCY SHALL RETURN THE FIREARM TO THE
44 PERSON UNLESS THE PERSON IS PROHIBITED FROM POSSESSING OR OWNING A FIREARM
45 PURSUANT TO STATE OR FEDERAL LAW.

1 modified order is effective on service and expires one year after service of
2 the initial order and petition.

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

28 N. A peace officer, with or without a warrant, may arrest a person if
29 the peace officer has probable cause to believe that the person has violated
30 section 13-2810 by disobeying or resisting an order that is issued in any
31 jurisdiction in this state pursuant to this section, whether or not such
32 violation occurred in the presence of the officer. Criminal violations of an
33 order issued pursuant to this section shall be referred to an appropriate law
34 enforcement agency. The law enforcement agency shall request that a
35 prosecutorial agency file the appropriate charges. A violation of an order
36 of protection shall not be adjudicated by a municipal or justice court unless
37 a complaint has been filed or other legal process has been requested by the
38 prosecuting agency. The provisions for release under section 13-3883,
39 subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made
40 pursuant to this section. For the purposes of this section, any court in
41 this state has jurisdiction to enforce a valid order of protection that is
42 issued in this state and that has been violated in any jurisdiction in this
43 state.

44 O. A person who is arrested pursuant to subsection ~~M~~ N of this
45 section may be released from custody in accordance with the Arizona rules of

1 criminal procedure or any other applicable statute. An order for release,
2 with or without an appearance bond, shall include pretrial release conditions
3 that are necessary to provide for the protection of the alleged victim and
4 other specifically designated persons and may provide for any other
5 additional conditions that the court deems appropriate, including
6 participation in any counseling programs available to the defendant. The
7 agency with custody of the defendant shall make reasonable efforts to contact
8 the victim and other specifically designated persons in the order of
9 protection, if known to the custodial agency, who requested notification
10 immediately on release of the arrested person from custody.

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

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

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

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

8 R. In addition to persons authorized to serve process pursuant to rule
9 4(d) of the Arizona rules of civil procedure, a peace officer or a
10 correctional officer as defined in section 41-1661 who is acting in the
11 officer's official capacity may serve an order of protection that is issued
12 pursuant to this section. Service of the order of protection has priority
13 over other service of process that does not involve an immediate threat to
14 the safety of a person.

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

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

30 2. A protection order is valid if the issuing court had jurisdiction
31 over the parties and the matter under the laws of the issuing state, a United
32 States territory or an Indian tribe and the person against whom the order was
33 issued had reasonable notice and an opportunity to be heard. If the order is
34 issued ex parte, the notice and opportunity to be heard shall be provided
35 within the time required by the laws of the issuing state, a United States
36 territory or an Indian tribe and within a reasonable time after the order was
37 issued.

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

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

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

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