

House Engrossed Senate Bill

probation; prisoners; protective orders

State of Arizona  
Senate  
Fifty-fifth Legislature  
First Regular Session  
2021

## **CHAPTER 273**

# **SENATE BILL 1412**

AN ACT

AMENDING SECTIONS 12-1809, 13-901 AND 31-411.01, ARIZONA REVISED STATUTES;  
RELATING TO PROTECTIVE ORDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-1809, Arizona Revised Statutes, is amended to  
3 read:

4 12-1809. Injunction against harassment; petition; venue;  
5 fees; notices; enforcement; definition

6 A. A person may file a verified petition with a magistrate, justice  
7 of the peace or superior court judge for an injunction prohibiting  
8 harassment. If the person is a minor, the parent, legal guardian or  
9 person who has legal custody of the minor shall file the petition unless  
10 the court determines otherwise. The petition shall name the parent,  
11 guardian or custodian as the plaintiff, and the minor is a specifically  
12 designated person for the purposes of subsection F of this section. If a  
13 person is either temporarily or permanently unable to request an  
14 injunction, a third party may request an injunction on behalf of the  
15 plaintiff. After the request, the judicial officer shall determine if the  
16 third party is an appropriate requesting party for the plaintiff.  
17 Notwithstanding the location of the plaintiff or defendant, any court in  
18 this state may issue or enforce an injunction against harassment.

19 B. An injunction against harassment shall not be granted:

20 1. Unless the party who requests the injunction files a written  
21 verified petition for injunction.

22 2. Against a person who is less than twelve years of age unless the  
23 injunction is granted by the juvenile division of the superior court.

24 3. Against more than one defendant.

25 C. The petition shall state all of the following:

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

34 2. The name and address, if known, of the defendant.

35 3. A specific statement showing events and dates of the acts  
36 constituting the alleged harassment.

37 4. The name of the court in which there was or is any prior or  
38 pending proceeding or order concerning the conduct that is sought to be  
39 restrained.

40 5. The relief requested.

41 D. A fee shall not be charged for filing a petition under this  
42 section. Fees for service of process may be deferred or waived under any  
43 rule or law applicable to civil actions, except that fees for service of  
44 process shall not be charged if the petition arises out of a dating  
45 relationship or sexual violence as defined in section 23-371. The court  
46 shall advise a plaintiff that the plaintiff may be eligible for the

1 deferral or waiver of these fees at the time the plaintiff files a  
2 petition. The court shall not require the plaintiff to perform community  
3 restitution as a condition of the waiver or deferral of fees for service  
4 of process. A law enforcement agency or constable shall not require the  
5 advance payment of fees for service of process of injunctions against  
6 harassment. If the court does not waive the fees, the serving agency may  
7 assess the actual fees against the plaintiff. On request of the  
8 plaintiff, an injunction against harassment that is issued by a municipal  
9 court may be served by the police agency for that city if the defendant  
10 can be served within the city. If the defendant cannot be served within  
11 the city, the police agency in the city in which the defendant can be  
12 served may serve the injunction. On request of the plaintiff, each  
13 injunction against harassment that is issued by a justice of the peace  
14 shall be served by the constable for that jurisdiction if the defendant  
15 can be served within the jurisdiction. If the defendant cannot be served  
16 within that jurisdiction, the constable in the jurisdiction in which the  
17 defendant can be served shall serve the injunction. On request of the  
18 plaintiff, an injunction against harassment that is issued by a superior  
19 court judge or commissioner may be served by the sheriff of the  
20 county. If the defendant cannot be served within that jurisdiction, the  
21 sheriff in the jurisdiction in which the defendant can be served may serve  
22 the order. The court shall provide, without charge, forms for purposes of  
23 this section for assisting parties without counsel.

24 E. The court shall review the petition, any other pleadings on file  
25 and any evidence offered by the plaintiff, including any evidence of  
26 harassment by electronic contact or communication, to determine whether  
27 the injunction requested should issue without a further hearing. Rules  
28 65(a)(1) and 65(e) of the Arizona rules of civil procedure do not apply to  
29 injunctions that are requested pursuant to this section. If the court  
30 finds reasonable evidence of harassment of the plaintiff by the defendant  
31 during the year preceding the filing of the petition or that good cause  
32 exists to believe that great or irreparable harm would result to the  
33 plaintiff if the injunction is not granted before the defendant or the  
34 defendant's attorney can be heard in opposition and the court finds  
35 specific facts attesting to the plaintiff's efforts to give notice to the  
36 defendant or reasons supporting the plaintiff's claim that notice should  
37 not be given, the court shall issue an injunction as provided in  
38 subsection F of this section. If the court denies the requested relief,  
39 it may schedule a further hearing within ten days with reasonable notice  
40 to the defendant. For the purposes of determining the one year period,  
41 any time that the defendant has been incarcerated or out of this state  
42 shall not be counted.

43 F. If the court issues an injunction, the court may do any of the  
44 following:

45 1. Enjoin the defendant from committing a violation of one or more  
46 acts of harassment.



1 injunction with the national crime information center. The supreme court  
2 shall maintain a central repository for injunctions so that the existence  
3 and validity of the injunctions can be easily verified. The effectiveness  
4 of an injunction does not depend on its registration, and for enforcement  
5 purposes pursuant to section 13-2810, a copy of an injunction, whether or  
6 not registered, is presumed to be a valid existing order of the court for  
7 a period of one year from the date of service of the injunction on the  
8 defendant.

9 M. A peace officer, with or without a warrant, may arrest a person  
10 if the peace officer has probable cause to believe that the person has  
11 violated section 13-2810 by disobeying or resisting an injunction that is  
12 issued pursuant to this section, whether or not the violation occurred in  
13 the presence of the officer. The provisions for release under section  
14 13-3903 do not apply to an arrest made pursuant to this subsection. A  
15 person who is arrested pursuant to this subsection may be released from  
16 custody in accordance with the Arizona rules of criminal procedure or any  
17 other applicable statute. An order for release, with or without an  
18 appearance bond, shall include pretrial release conditions that are  
19 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  
22 counseling programs available to the defendant.

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

- 27 1. An injunction pursuant to this section.
- 28 2. The emergency telephone number for the local police agency.
- 29 3. Telephone numbers for emergency services in the local community.

30 0. The remedies provided in this section for enforcement of the  
31 orders of the court are in addition to any other civil and criminal  
32 remedies available. The municipal court and the justice court may hear  
33 and decide all matters arising pursuant to this section. After a hearing  
34 with notice to the affected party, the court may enter an order requiring  
35 any party to pay the costs of the action, including reasonable attorney  
36 fees, if any. An order that is entered by a justice court or municipal  
37 court after a hearing pursuant to this section may be appealed to the  
38 superior court as provided in title 22, chapter 2, article 4, section  
39 22-425, subsection B and the superior court rules of civil appellate  
40 procedure without regard to an amount in controversy. No fee may be  
41 charged to either party for filing an appeal.

42 P. A peace officer who makes an arrest pursuant to this section is  
43 not civilly or criminally liable for the arrest if the officer acts on  
44 probable cause and without malice. A peace officer is not civilly liable  
45 for noncompliance with subsection N of this section.

1 Q. This section does not apply to preliminary injunctions issued  
2 pursuant to an action for dissolution of marriage or legal separation or  
3 for protective orders against domestic violence.

4 R. In addition to the persons who are authorized to serve process  
5 pursuant to rule 4(d), Arizona rules of civil procedure, a peace officer  
6 or a correctional officer as defined in section 41-1661 who is acting in  
7 the officer's official capacity may serve an injunction against harassment  
8 that is issued pursuant to this section.

9 S. For the purposes of this section, "harassment":

10 1. Means ~~either~~ ANY of the following:

11 (a) A series of acts over any period of time that is directed at a  
12 specific person and that would cause a reasonable person to be seriously  
13 alarmed, annoyed or harassed and the conduct in fact seriously alarms,  
14 annoys or harasses the person and serves no legitimate purpose.

15 (b) One or more acts of sexual violence as defined in section  
16 23-371.

17 (c) ANY CONTACT IF THE PERSON IS THE VICTIM OF A CRIME THAT WAS  
18 COMMITTED BY THE DEFENDANT. FOR THE PURPOSES OF THIS SUBDIVISION, "CRIME"  
19 MEANS A CONVICTION FOR AN OFFENSE, WHETHER COMPLETED OR PREPARATORY, THAT  
20 IS A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105, A SERIOUS OFFENSE OR  
21 VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706 OR ANY OFFENSE  
22 IN TITLE 13, CHAPTER 14 OR 35.1.

23 2. Includes unlawful picketing, trespassory assembly, unlawful mass  
24 assembly, concerted interference with lawful exercise of business activity  
25 and engaging in a secondary boycott as defined in section 23-1321 and  
26 defamation in violation of section 23-1325.

27 Sec. 2. Section 13-901, Arizona Revised Statutes, is amended to  
28 read:

29 13-901. Probation

30 A. If a person who has been convicted of an offense is eligible for  
31 probation, the court may suspend the imposition or execution of sentence  
32 and, if so, shall without delay place the person on intensive probation  
33 supervision pursuant to section 13-913 or supervised or unsupervised  
34 probation on such terms and conditions as the law requires and the court  
35 deems appropriate, including participation in any programs authorized in  
36 title 12, chapter 2, article 11. If a person is not eligible for  
37 probation, imposition or execution of sentence shall not be suspended or  
38 delayed. If the court imposes probation, it may also impose a fine as  
39 authorized by chapter 8 of this title. If probation is granted the court  
40 shall impose a condition that the person waive extradition for any  
41 probation revocation procedures and it shall order restitution pursuant to  
42 section 13-603, subsection C where there is a victim who has suffered  
43 economic loss. When granting probation to an adult the court, as a  
44 condition of probation, shall assess a monthly fee of not less than  
45 ~~sixty-five dollars~~ \$65 unless, after determining the inability of the  
46 probationer to pay the fee, the court assesses a lesser fee. This fee is

1 not subject to any surcharge. In justice and municipal courts the fee  
2 shall only be assessed when the person is placed on supervised probation.  
3 For persons placed on probation in the superior court, the fee shall be  
4 paid to the clerk of the superior court and the clerk of the court shall  
5 pay all monies collected from this fee to the county treasurer for deposit  
6 in the adult probation services fund established by section 12-267. For  
7 persons placed on supervised probation in the justice court, the fee shall  
8 be paid to the justice court and the justice court shall transmit all of  
9 the monies to the county treasurer for deposit in the adult probation  
10 services fund established by section 12-267. For persons placed on  
11 supervised probation in the municipal court, the fee shall be paid to the  
12 municipal court. The municipal court shall transmit all of the monies to  
13 the city treasurer who shall transmit the monies to the county treasurer  
14 for deposit in the adult probation services fund established by section  
15 12-267. Any amount assessed pursuant to this subsection shall be used to  
16 supplement monies used for the salaries of adult probation and  
17 surveillance officers and for support of programs and services of the  
18 superior court adult probation departments.

19 B. The period of probation shall be determined according to section  
20 13-902, except that if a person is released pursuant to section 31-233,  
21 subsection B and community supervision is waived pursuant to section  
22 13-603, subsection K, the court shall extend the period of probation by  
23 the amount of time the director of the state department of corrections  
24 approves for the inmate's temporary release.

25 C. The court, in its discretion, may issue a warrant for the  
26 rearrest of the defendant and may modify or add to the conditions or, if  
27 the defendant commits an additional offense or violates a condition, may  
28 revoke probation in accordance with the rules of criminal procedure at any  
29 time before the expiration or termination of the period of probation. If  
30 the court revokes the defendant's probation and the defendant is serving  
31 more than one probationary term concurrently, the court may sentence the  
32 person to terms of imprisonment to be served consecutively.

33 D. At any time during the probationary term of the person released  
34 on probation, any probation officer, without warrant or other process and  
35 at any time until the final disposition of the case, may rearrest any  
36 person and bring the person before the court.

37 E. The court, on its own initiative or on application of the  
38 probationer, after notice and an opportunity to be heard for the  
39 prosecuting attorney and, on request, the victim, may terminate the period  
40 of probation or intensive probation and discharge the defendant at a time  
41 earlier than that originally imposed if in the court's opinion the ends of  
42 justice will be served and if the conduct of the defendant on probation  
43 warrants it. ON THE PETITION OF THE VICTIM PURSUANT TO SECTION 12-1809  
44 AND BEFORE THE COURT TERMINATES THE PERIOD OF PROBATION OR INTENSIVE  
45 PROBATION EARLY, THE COURT AFTER HEARING FROM THE VICTIM SHALL DETERMINE  
46 WHETHER TO PROHIBIT THE DEFENDANT FROM CONTACTING THE VICTIM AND, IF

1 NECESSARY, ISSUE AN INJUNCTION AGAINST HARASSMENT AGAINST THE  
2 DEFENDANT. IF THE COURT ISSUES AN INJUNCTION AGAINST HARASSMENT, THE  
3 INJUNCTION MUST BE SERVED ON THE DEFENDANT BEFORE TERMINATING THE PERIOD  
4 OF PROBATION OR INTENSIVE PROBATION.

5 F. When granting probation the court may require that the defendant  
6 be imprisoned in the county jail at whatever time or intervals,  
7 consecutive or nonconsecutive, the court shall determine, within the  
8 period of probation, as long as the period actually spent in confinement  
9 does not exceed one year or the maximum period of imprisonment permitted  
10 under chapter 7 of this title, whichever is the shorter.

11 G. If the defendant is placed on lifetime probation and has served  
12 one year in the county jail as a term of probation, the court may require  
13 that the defendant be additionally imprisoned in the county jail at  
14 whatever time or intervals, consecutive or nonconsecutive, the court shall  
15 determine, within the period of probation if the defendant's probation is  
16 revoked by the court and the defendant is subsequently reinstated on  
17 probation. The period actually spent in confinement as a term of being  
18 reinstated on probation shall not exceed one year or, when including the  
19 initial one year period of incarceration imposed as a term of probation,  
20 the maximum period of imprisonment permitted under chapter 7 of this  
21 title, whichever is ~~the~~ shorter.

22 H. If restitution is made a condition of probation, the court shall  
23 fix the amount of restitution and the manner of performance pursuant to  
24 chapter 8 of this title.

25 I. When granting probation, the court shall set forth at the time  
26 of sentencing and on the record the factual and legal reasons in support  
27 of each sentence.

28 J. If the defendant meets the criteria set forth in section  
29 13-901.01 or 13-3422, the court may place the defendant on probation  
30 pursuant to either section. If a defendant is placed on probation  
31 pursuant to section 13-901.01 or 13-3422, the court may impose any term of  
32 probation that is authorized pursuant to this section and that is not in  
33 violation of section 13-901.01.

34 Sec. 3. Section 31-411.01, Arizona Revised Statutes, is amended to  
35 read:

36 31-411.01. Parole or community supervision for persons  
37 previously convicted of possession or use of  
38 marijuana, a dangerous drug or a narcotic drug;  
39 treatment; prevention; education; termination of  
40 parole or community supervision

41 A. Notwithstanding any law to the contrary, every prisoner who is  
42 eligible for parole or community supervision pursuant to section  
43 41-1604.16 shall be released ~~अपरा~~ ON parole or community supervision if in  
44 its sole discretion the board of executive clemency determines that there  
45 is a substantial probability that the prisoner will remain at liberty  
46 without violating the law and the release is in the best interests of the



1 people of this state. If a prisoner is denied release on parole or  
2 community supervision, the prisoner is not entitled to a rehearing under  
3 this section.

4 B. If a prisoner is released ~~upon~~ ON parole or community  
5 supervision pursuant to this section, the board of executive clemency  
6 shall order that as a condition of parole or community supervision the  
7 person:

8 1. Be required to participate in an appropriate drug treatment or  
9 education program that is administered by a qualified agency, organization  
10 or individual approved by the department of health services and that  
11 provides the treatment or education to persons who abuse controlled  
12 substances. Each person who is enrolled in a drug treatment or education  
13 program shall pay for the costs of participation in the program to the  
14 extent of the person's financial ability.

15 2. ON THE REQUEST OF THE VICTIM, BE PROHIBITED FROM CONTACTING THE  
16 VICTIM. THE BOARD OF EXECUTIVE CLEMENCY MAY INFORM THE VICTIM OF THE  
17 VICTIM'S ABILITY TO PETITION THE COURT FOR AN INJUNCTION AGAINST  
18 HARASSMENT PURSUANT TO SECTION 12-1809 PROHIBITING THE PERSON FROM  
19 CONTACTING THE VICTIM.

20 C. A prisoner who is released ~~upon~~ ON parole or community  
21 supervision pursuant to this section shall remain on parole or community  
22 supervision until the prisoner reaches the earned release credit date  
23 pursuant to section 41-1604.10 or the community supervision expiration  
24 date pursuant to section 41-1604.07. A prisoner who is on earned release  
25 credit release pursuant to section 41-1604.10 is not under the control of  
26 the state department of corrections and the department is not required to  
27 provide parole services or to otherwise supervise any prisoner released  
28 except that the department may revoke the release of the prisoner until  
29 the final expiration of the prisoner's sentence if the department believes  
30 that the released prisoner has engaged in criminal conduct during the term  
31 of the prisoner's release.

32 D. The board of executive clemency may revoke the prisoner's  
33 release if the prisoner violates the conditions of supervision that are  
34 imposed by the board or the state department of corrections.

APPROVED BY THE GOVERNOR APRIL 20, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2021.