

House Engrossed

sentencing; concealed weapons permit; surrender

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HOUSE BILL 2764

AN ACT

AMENDING SECTIONS 13-603 AND 13-3602, ARIZONA REVISED STATUTES; RELATING
TO CONCEALED WEAPONS PERMIT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-603, Arizona Revised Statutes, is amended to
3 read:

4 13-603. Authorized disposition of offenders

5 A. Every person convicted of any offense defined in this title or
6 defined outside this title shall be sentenced in accordance with this
7 chapter and chapters 7, 8 and 9 of this title unless otherwise provided by
8 law.

9 B. If a person is convicted of an offense, the court, if authorized
10 by chapter 9 of this title, may suspend the imposition or execution of
11 sentence and grant such person a period of probation except as otherwise
12 provided by law. The sentence is tentative to the extent that it may be
13 altered or revoked in accordance with chapter 9 of this title, but for all
14 other purposes it is a final judgment of conviction.

15 C. If a person is convicted of an offense, the court shall require
16 the convicted person to make restitution to the person who is the victim
17 of the crime or to the immediate family of the victim if the victim has
18 died, in the full amount of the economic loss as determined by the court
19 and in the manner as determined by the court or the court's designee
20 pursuant to chapter 8 of this title. Restitution ordered pursuant to this
21 subsection shall be paid to the clerk of the court for disbursement to the
22 victim and is a criminal penalty for the purposes of a federal bankruptcy
23 involving the person convicted of an offense.

24 D. If the court imposes probation it may also impose a fine as
25 authorized by chapter 8 of this title.

26 E. If a person is convicted of an offense and not granted a period
27 of probation, or when probation is revoked, any of the following sentences
28 may be imposed:

29 1. A term of imprisonment authorized by this chapter or chapter 7
30 of this title.

31 2. A fine authorized by chapter 8 of this title. The sentence is
32 tentative to the extent it may be modified or revoked in accordance with
33 chapter 8 of this title, but for all other purposes it is a final judgment
34 of conviction. If the conviction is of a class 2, 3 or 4 felony, the
35 sentence cannot consist solely of a fine.

36 3. Both imprisonment and a fine.

37 4. Intensive probation, subject to the provisions of chapter 9 of
38 this title.

39 5. Intensive probation, subject to the provisions of chapter 9 of
40 this title, and a fine.

41 6. A new term of probation or intensive probation.

42 7. If the conviction is for a misdemeanor, in addition to any
43 sentence authorized by law, a term of:

44 (a) Community restitution pursuant to section 13-717, subsection A.

1 (b) Education or treatment pursuant to section 13-717,
2 subsection B.

3 F. If an enterprise is convicted of any offense, a fine may be
4 imposed as authorized by chapter 8 of this title.

5 G. If a person or an enterprise is convicted of any felony, the
6 court, in addition to any other sentence authorized by law, may order the
7 forfeiture, suspension or revocation of any charter, license, permit or
8 prior approval granted to the person or enterprise by any department or
9 agency of the state or of any political subdivision.

10 H. A court authorized to pass sentence on a person convicted of any
11 offense defined within or without this title shall have a duty to
12 determine and impose the punishment prescribed for such offense.

13 I. If a person is convicted of a felony offense and the court
14 sentences the person to a term of imprisonment, the court at the time of
15 sentencing shall impose on the convicted person a term of community
16 supervision. The term of community supervision shall be served
17 consecutively to the actual period of imprisonment if the person signs and
18 agrees to abide by conditions of supervision established by the state
19 department of corrections. Except pursuant to subsection J of this
20 section, the term of community supervision imposed by the court shall be
21 for a period equal to one day for every seven days of the sentence or
22 sentences imposed.

23 J. In calculating the term of community supervision, all fractions
24 shall be decreased to the nearest month, except for a class 5 or 6 felony
25 which shall not be less than one month.

26 K. Notwithstanding subsection I of this section, if the court
27 sentences a person to serve a consecutive term of probation immediately
28 after the person serves a term of imprisonment, the court may waive
29 community supervision and order that the person begin serving the term of
30 probation on the person's release from confinement. The court may
31 retroactively waive the term of community supervision or that part
32 remaining to be served if the community supervision was imposed before
33 July 21, 1997. If the court waives community supervision, the term of
34 probation imposed shall be equal to or greater than the term of community
35 supervision that would have been imposed. If the court does not waive
36 community supervision, the person shall begin serving the term of
37 probation after the person serves the term of community supervision. The
38 state department of corrections shall provide reasonable notice to the
39 probation department of the scheduled release of the inmate from
40 confinement by the department.

41 L. If at the time of sentencing the court is of the opinion that a
42 sentence that the law requires the court to impose is clearly excessive,
43 the court may enter a special order allowing the person sentenced to
44 petition the board of executive clemency for a commutation of sentence
45 within ninety days after the person is committed to the custody of the

1 state department of corrections. If the court enters a special order
2 regarding commutation, the court shall set forth in writing its specific
3 reasons for concluding that the sentence is clearly excessive. The court
4 shall allow both the state and the victim to submit a written statement on
5 the matter. The court's order, and reasons for its order, and the
6 statements of the state and the victim shall be sent to the board of
7 executive clemency.

8 M. THE COURT SHALL INQUIRE IF THE PERSON POSSESSES A CONCEALED
9 WEAPONS PERMIT AND, IF THE PERSON'S CONVICTION RESULTS IN THE PERSON BEING
10 A PROHIBITED POSSESSOR AS DEFINED IN SECTION 13-3101 OR OTHERWISE
11 UNQUALIFIED TO POSSESS A CONCEALED WEAPONS PERMIT PURSUANT TO SECTION
12 13-3112, THE COURT SHALL REQUIRE THE PERSON TO SURRENDER THE PERMIT AT THE
13 TIME OF SENTENCING OR, IF THE PERMIT CANNOT BE LOCATED, TO SUBMIT AN
14 AFFIDAVIT DECLARING THAT THE PERMIT IS LOST. IF THE PERSON DOES NOT
15 SURRENDER THE PERMIT AT THE TIME OF SENTENCING, THE COURT SHALL ORDER THE
16 PERMIT REVOKED. THE COURT SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY
17 THAT THE PERSON'S CONCEALED WEAPONS PERMIT IS REVOKED. IF THE PERSON IS
18 PLACED ON PROBATION AND HAS NOT SUBMITTED AN AFFIDAVIT DECLARING THAT THE
19 PERMIT IS LOST OR DOES NOT SURRENDER THE PERMIT AFTER THE PERMIT IS
20 REVOKED, THE PROBATION DEPARTMENT SHALL LOCATE THE DEFENDANT AND SEIZE THE
21 PERMIT. THE PROBATION DEPARTMENT SHALL TRANSFER THE SURRENDERED OR SEIZED
22 PERMIT TO THE DEPARTMENT OF PUBLIC SAFETY.

23 Sec. 2. Section 13-3602, Arizona Revised Statutes, is amended to
24 read:

25 13-3602. Order of protection; procedure; contents; arrest for
26 violation; penalty; protection order from another
27 jurisdiction; definition

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

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

44 1. Unless the party who requests the order files a written verified
45 petition for an order.

1 2. Against a person who is less than twelve years of age unless the
2 order is granted by the juvenile division of the superior court.
3 3. Against more than one defendant.
4 C. The petition shall state the:
5 1. Name of the plaintiff. The plaintiff's address and contact
6 information shall be disclosed to the court for purposes of service and
7 notification. The address and contact information shall not be listed on
8 the petition. Whether or not the court issues an order of protection, the
9 plaintiff's address and contact information shall be maintained in a
10 separate document or automated database and is not subject to release or
11 disclosure by the court or any form of public access except as ordered by
12 the court.
13 2. Name and address, if known, of the defendant.
14 3. Specific statement, including dates, of the domestic violence
15 alleged.
16 4. Relationship between the parties pursuant to section 13-3601,
17 subsection A and whether there is pending between the parties an action
18 for maternity or paternity, annulment, legal separation or dissolution of
19 marriage.
20 5. Name of the court in which any prior or pending proceeding or
21 order was sought or issued concerning the conduct that is sought to be
22 restrained.
23 6. Desired relief.
24 D. A fee shall not be charged for filing a petition under this
25 section or for service of process. Each court shall provide, without
26 charge, forms for purposes of this section for assisting parties without
27 counsel. The court shall make reasonable efforts to provide the
28 appropriate information to both parties on emergency and counseling
29 services that are available in the local area.
30 E. The court shall review the petition, any other pleadings on file
31 and any evidence offered by the plaintiff, including any evidence of
32 harassment by electronic contact or communication, to determine whether
33 the orders requested should issue without further hearing. The court
34 shall issue an order of protection under subsection G of this section if
35 the court determines that there is reasonable cause to believe any of the
36 following:
37 1. The defendant may commit an act of domestic violence.
38 2. The defendant has committed an act of domestic violence within
39 the past year or within a longer period of time if the court finds that
40 good cause exists to consider a longer period.
41 F. For the purposes of determining the period of time under
42 subsection E, paragraph 2 of this section, any time that the defendant has
43 been incarcerated or out of this state shall not be counted. If the court
44 denies the requested relief, it may schedule a further hearing within ten
45 days, with reasonable notice to the defendant.

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

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

5 2. Grant one party the use and exclusive possession of the parties'
6 residence on a showing that there is reasonable cause to believe that
7 physical harm may otherwise result. If the other party is accompanied by
8 a law enforcement officer, the other party may return to the residence on
9 one occasion to retrieve belongings. A law enforcement officer is not
10 liable for any act or omission in the good faith exercise of the officer's
11 duties under this paragraph. While the order of protection is in effect,
12 if a party was granted the use and exclusive possession of the parties'
13 residence and subsequently moves out of the house, the party must file a
14 notice in writing with the court within five days after moving out of the
15 residence. After receiving the notification from the plaintiff, the court
16 shall provide notice to the defendant that the plaintiff has moved out of
17 the residence and of the defendant's right to request a hearing pursuant
18 to subsection L of this section.

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

24 4. If the court finds that the defendant is a credible threat to
25 the physical safety of the plaintiff or other specifically designated
26 persons, prohibit the defendant from possessing or purchasing a firearm
27 for the duration of the order. If the court prohibits the defendant from
28 possessing a firearm, the court shall also order the defendant to transfer
29 any firearm owned or possessed by the defendant immediately after service
30 of the order to the appropriate law enforcement agency for the duration of
31 the order. If the defendant does not immediately transfer the firearm,
32 the defendant shall transfer the firearm within twenty-four hours after
33 service of the order. IF, AFTER HOLDING A HEARING PURSUANT TO SUBSECTION
34 L OF THIS SECTION, THE COURT PROHIBITS THE DEFENDANT FROM POSSESSING OR
35 PURCHASING A FIREARM FOR THE DURATION OF THE ORDER, THE COURT SHALL
36 INQUIRE IF THE DEFENDANT POSSESSES A CONCEALED WEAPONS PERMIT ISSUED
37 PURSUANT TO SECTION 13-3112. IF THE DEFENDANT POSSESSES A CONCEALED
38 WEAPONS PERMIT, THE COURT SHALL REQUIRE THE DEFENDANT TO SURRENDER THE
39 PERMIT OR, IF THE PERMIT CANNOT BE LOCATED, TO SUBMIT AN AFFIDAVIT
40 DECLARING THAT THE PERMIT IS LOST. IF THE DEFENDANT DOES NOT SURRENDER
41 THE PERMIT AT THE HEARING, THE COURT SHALL REVOKE THE PERMIT. THE COURT
42 SHALL ORDER THE DEFENDANT, WITHIN THREE BUSINESS DAYS AFTER THE DATE OF
43 THE HEARING THAT WAS HELD PURSUANT TO SUBSECTION L OF THIS SECTION, TO
44 SURRENDER THE PERMIT OR, IF THE PERMIT CANNOT BE LOCATED, TO SUBMIT AN
45 AFFIDAVIT DECLARING THAT THE PERMIT IS LOST, TO THE DEPARTMENT OF PUBLIC

1 SAFETY. THE COURT SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY THAT THE
2 DEFENDANT'S CONCEALED WEAPONS PERMIT IS REVOKED.

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

8 6. Grant relief that is necessary for the protection of the alleged
9 victim and other specifically designated persons and that is proper under
10 the circumstances.

11 7. Grant the plaintiff the exclusive care, custody or control of
12 any animal that is owned, possessed, leased, kept or held by the
13 plaintiff, the defendant or a minor child residing in the residence or
14 household of the plaintiff or the defendant, and order the defendant to
15 stay away from the animal and forbid the defendant from taking,
16 transferring, encumbering, concealing, committing an act of cruelty or
17 neglect in violation of section 13-2910 or otherwise disposing of the
18 animal.

19 H. The court shall not grant a mutual order of protection. If
20 opposing parties separately file verified petitions for an order of
21 protection, the courts after consultation between the judges involved may
22 consolidate the petitions of the opposing parties for hearing. This does
23 not prohibit a court from issuing cross orders of protection.

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

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

36 1. For each order of protection that is issued by a municipal
37 court, if the defendant can be served within that city or town, the order
38 shall be served by the law enforcement agency of that city or town. If
39 the order can be served in another city or town, the order shall be served
40 by the law enforcement agency of that city or town. If the order cannot
41 be served within a city or town, the order shall be served by the sheriff
42 or constable of the county in which the defendant can be served.

43 2. For each order of protection that is issued by a justice of the
44 peace, the order of protection shall be served by the sheriff or constable

1 of the county in which the defendant can be served or by a municipal law
2 enforcement agency.

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

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

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

30 M. The order shall include the following statement:

31 Warning

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

36 N. An order of protection that is not served on the defendant
37 within one year after the date that the order is issued expires. An order
38 is effective on the defendant on service of a copy of the order and
39 petition. An order expires one year after service on the defendant. A
40 modified order is effective on service and expires one year after service
41 of the initial order and petition.

42 O. A supplemental information form that is used by the court or a
43 law enforcement agency solely for the purposes of service of process on
44 the defendant and that contains information provided by the plaintiff is
45 confidential.

1 P. Each affidavit, declaration, acceptance or return of service
2 shall be filed as soon as practicable but not later than seventy-two
3 hours, excluding weekends and holidays, with the clerk of the issuing
4 court or as otherwise required by court rule. This filing shall be
5 completed in person, electronically or by fax. Within twenty-four hours
6 after the affidavit, declaration, acceptance or return of service has been
7 filed, excluding weekends and holidays, the court from which the order or
8 any modified order was issued shall register the order with the national
9 crime information center. The supreme court shall maintain a central
10 repository for orders of protection so that the existence and validity of
11 the orders can be easily verified. The effectiveness of an order does not
12 depend on its registration, and for enforcement purposes pursuant to
13 section 13-2810, a copy of an order of the court, whether or not
14 registered, is presumed to be a valid existing order of the court for a
15 period of one year from the date of service of the order on the defendant.

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

28 R. A person who is arrested pursuant to subsection Q of this
29 section may be released from custody in accordance with the Arizona rules
30 of criminal procedure or any other applicable statute. An order for
31 release, with or without an appearance bond, shall include pretrial
32 release conditions that are necessary to provide for the protection of the
33 alleged victim and other specifically designated persons and may provide
34 for any other additional conditions that the court deems appropriate,
35 including participation in any counseling programs available to the
36 defendant. The agency with custody of the defendant shall make reasonable
37 efforts to contact the victim and other specifically designated persons in
38 the order of protection, if known to the custodial agency, who requested
39 notification immediately on release of the arrested person from custody.

40 S. The remedies provided in this section for enforcement of the
41 orders of the court are in addition to any other civil and criminal
42 remedies available. The superior court shall have exclusive jurisdiction
43 to issue orders of protection in all cases if it appears from the petition
44 that an action for maternity or paternity, annulment, legal separation or
45 dissolution of marriage is pending between the parties. A municipal court

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

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

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

35 T. A peace officer who makes an arrest pursuant to this section or
36 section 13-3601 is not civilly or criminally liable for the arrest if the
37 officer acts on probable cause and without malice.

38 U. A valid protection order that is related to domestic or family
39 violence and that is issued by a court in another state, a court of a
40 United States territory or a tribal court shall be accorded full faith and
41 credit and shall be enforced as if it were issued in this state for as
42 long as the order is effective in the issuing jurisdiction. For the
43 purposes of this subsection:

44 1. A protection order includes any injunction or other order that
45 is issued for the purpose of preventing violent or threatening acts or

1 harassment against, contact or communication with or physical proximity to
2 another person. A protection order includes temporary and final orders
3 other than support or child custody orders that are issued by civil and
4 criminal courts if the order is obtained by the filing of an independent
5 action or is a pendente lite order in another proceeding. The civil order
6 shall be issued in response to a complaint, petition or motion that was
7 filed by or on behalf of a person seeking protection.

8 2. A protection order is valid if the issuing court had
9 jurisdiction over the parties and the matter under the laws of the issuing
10 state, a United States territory or an Indian tribe and the person against
11 whom the order was issued had reasonable notice and an opportunity to be
12 heard. If the order is issued ex parte, the notice and opportunity to be
13 heard shall be provided within the time required by the laws of the
14 issuing state, a United States territory or an Indian tribe and within a
15 reasonable time after the order was issued.

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

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

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

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

33 V. For the purposes of this section, "victim notification system"
34 means an automated system that may provide plaintiffs and crime victims
35 with an automated notification regarding the person's case.