

REFERENCE TITLE: order of protection; prohibited hearing

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2809

Introduced by
Representative Parker

AN ACT

AMENDING SECTION 13-3602, ARIZONA REVISED STATUTES; RELATING TO ORDERS OF PROTECTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-3602, Arizona Revised Statutes, is amended to
3 read:

4 13-3602. Order of protection; procedure; contents; arrest for
5 violation; penalty; protection order from another
6 jurisdiction; definition

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

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

23 1. Unless the party who requests the order files a written verified
24 petition for an order.

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

27 3. Against more than one defendant.

28 C. The petition shall state the:

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

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

38 3. Specific statement, including dates, of the domestic violence
39 alleged.

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

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

4 6. Desired relief.

5 D. A fee shall not be charged for filing a petition under this
6 section or for service of process. Each court shall provide, without
7 charge, forms for purposes of this section for assisting parties without
8 counsel. The court shall make reasonable efforts to provide the
9 appropriate information to both parties on emergency and counseling
10 services that are available in the local area.

11 E. The court shall review the petition, any other pleadings on file
12 and any evidence offered by the plaintiff, including any evidence of
13 harassment by electronic contact or communication, to determine whether
14 the orders requested should issue without further hearing. The court
15 shall issue an order of protection under subsection G of this section if
16 the court determines that there is reasonable cause to believe any of the
17 following:

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

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

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

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

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

31 2. Grant one party the use and exclusive possession of the parties'
32 residence on a showing that there is reasonable cause to believe that
33 physical harm may otherwise result. If the other party is accompanied by
34 a law enforcement officer, the other party may return to the residence on
35 one occasion to retrieve belongings. A law enforcement officer is not
36 liable for any act or omission in the good faith exercise of the officer's
37 duties under this paragraph. While the order of protection is in effect,
38 if a party was granted the use and exclusive possession of the parties'
39 residence and subsequently moves out of the house, the party must file a
40 notice in writing with the court within five days after moving out of the
41 residence. After receiving the notification from the plaintiff, the court
42 shall provide notice to the defendant that the plaintiff has moved out of
43 the residence and of the defendant's right to request a hearing pursuant
44 to subsection L of this section.

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

6 4. If the court finds that the defendant is a credible threat to
7 the physical safety of the plaintiff or other specifically designated
8 persons, prohibit the defendant from possessing or purchasing a firearm
9 for the duration of the order. If the court prohibits the defendant from
10 possessing a firearm, the court shall also order the defendant to transfer
11 any firearm owned or possessed by the defendant immediately after service
12 of the order to the appropriate law enforcement agency for the duration of
13 the order. If the defendant does not immediately transfer the firearm,
14 the defendant shall transfer the firearm within twenty-four hours after
15 service of the order.

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

21 6. Grant relief that is necessary for the protection of the alleged
22 victim and other specifically designated persons and that is proper under
23 the circumstances.

24 7. Grant the plaintiff the exclusive care, custody or control of
25 any animal that is owned, possessed, leased, kept or held by the
26 plaintiff, the defendant or a minor child residing in the residence or
27 household of the plaintiff or the defendant, and order the defendant to
28 stay away from the animal and forbid the defendant from taking,
29 transferring, encumbering, concealing, committing an act of cruelty or
30 neglect in violation of section 13-2910 or otherwise disposing of the
31 animal.

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
36 not prohibit a court from issuing cross orders of protection.

37 I. After granting an order of protection, the court shall provide
38 the order to a law enforcement agency or a constable as set forth in
39 subsection J of this section for service or to an entity that is
40 authorized in subsection K of this section to serve process. The agency
41 or entity serving the order shall provide confirmation of service to the
42 plaintiff as soon as practicable. If service of an order cannot be
43 completed within fifteen days after the agency or entity receives the
44 order, the agency or entity that is attempting service shall notify the

1 plaintiff and continue to attempt service. This notification may be
2 completed by a victim notification system, if available.

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

5 1. For each order of protection that is issued by a municipal
6 court, if the defendant can be served within that city or town, the order
7 shall be served by the law enforcement agency of that city or town. If
8 the order can be served in another city or town, the order shall be served
9 by the law enforcement agency of that city or town. If the order cannot
10 be served within a city or town, the order shall be served by the sheriff
11 or constable of the county in which the defendant can be served.

12 2. For each order of protection that is issued by a justice of the
13 peace, the order of protection shall be served by the sheriff or constable
14 of the county in which the defendant can be served or by a municipal law
15 enforcement agency.

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

19 K. In addition to persons authorized to serve process pursuant to
20 rule 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
23 issued pursuant to this section. Service of the order of protection has
24 priority over other service of process that does not involve an immediate
25 threat to the safety of a person.

26 L. At any time during the period during which the order is in
27 effect, [UNLESS THE PARTY IS CURRENTLY CHARGED WITH A VIOLATION OF SECTION](#)
28 [13-1404, 13-1405, 13-1406, 13-1410 OR 13-1417 AND THE PLAINTIFF IS A](#)
29 [VICTIM IN THE CASE](#), a party who is under an order of protection or who is
30 restrained from contacting the other party is entitled to one hearing on
31 written request. No fee may be charged for requesting a hearing. A
32 hearing that is requested by a party who is under an order of protection
33 or who is restrained from contacting the other party shall be held within
34 ten days from the date requested unless the court finds good cause to
35 continue the hearing. If exclusive use of the home is awarded, the
36 hearing shall be held within five days from the date requested. The
37 hearing shall be held at the earliest possible time. An ex parte order
38 that is issued under this section shall state on its face that the
39 defendant is entitled to a hearing on written request and shall include
40 the name and address of the judicial office where the request may be
41 filed. After the hearing, the court may modify, quash or continue the
42 order. If the exclusive use of the home is awarded to the party, the
43 court, on written request of a party, may hold additional hearings at any
44 time if there is a change in circumstances related to the primary
45 residence.

1 M. The order shall include the following statement:

2 Warning

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

7 N. An order of protection that is not served on the defendant
8 within one year after the date that the order is issued expires. An order
9 is effective on the defendant on service of a copy of the order and
10 petition. An order expires one year after service on the defendant. A
11 modified order is effective on service and expires one year after service
12 of the initial order and petition.

13 O. A supplemental information form that is used by the court or a
14 law enforcement agency solely for the purposes of service of process on
15 the defendant and that contains information provided by the plaintiff is
16 confidential.

17 P. Each affidavit, declaration, acceptance or return of service
18 shall be filed as soon as practicable but not later than seventy-two
19 hours, excluding weekends and holidays, with the clerk of the issuing
20 court or as otherwise required by court rule. This filing shall be
21 completed in person, electronically or by fax.

22 Q. The supreme court shall maintain a central repository for orders
23 of protection. Within twenty-four hours after the affidavit, declaration,
24 acceptance or return of service has been filed, excluding weekends and
25 holidays, the court from which the order or any modified order was issued
26 shall enter the order and proof of service into the supreme court's
27 central repository for orders of protection. The supreme court shall
28 register the order with the national crime information center. The
29 effectiveness of an order does not depend on its registration, and for
30 enforcement purposes pursuant to section 13-2810, a copy of an order of
31 the court, whether or not registered, is presumed to be a valid existing
32 order of the court for a period of one year from the date of service of
33 the order on the defendant.

34 R. A peace officer, with or without a warrant, may arrest a person
35 if the peace officer has probable cause to believe that the person has
36 violated section 13-2810 by disobeying or resisting an order that is
37 issued in any jurisdiction in this state pursuant to this section, whether
38 or not such violation occurred in the presence of the officer. Criminal
39 violations of an order issued pursuant to this section shall be referred
40 to an appropriate law enforcement agency. The provisions for release
41 under section 13-3883, subsection A, paragraph 4 and section 13-3903 do
42 not apply to an arrest made pursuant to this section. For the purposes of
43 this section, any court in this state has jurisdiction to enforce a valid
44 order of protection that is issued in this state and that has been
45 violated in any jurisdiction in this state.

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

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

1 filing an appeal. For the purposes of this subsection, "pending" means,
2 with respect to an action for annulment, legal separation or dissolution
3 of marriage or for maternity or paternity, either that:

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

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

8 U. A peace officer who makes an arrest pursuant to this section or
9 section 13-3601 is not civilly or criminally liable for the arrest if the
10 officer acts on probable cause and without malice.

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

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

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

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

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

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

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

9 W. For the purposes of this section, "victim notification system"
10 means an automated system that may provide plaintiffs and crime victims
11 with an automated notification regarding the person's case.