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**FILED**

Jane Dee Hull  
 Secretary of State

CHAPTER 33

**HOUSE BILL 2028**

AN ACT

AMENDING SECTIONS 12-1809, 13-3601 AND 13-3602, ARIZONA REVISED STATUTES;  
 RELATING TO INJUNCTIONS.

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; fees;  
 5 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 a person is either temporarily or permanently unable to  
 9 request an injunction, a third party may request an injunction on behalf of  
 10 the plaintiff. After the request, the judicial officer shall determine if  
 11 the third party is an appropriate requesting party for the plaintiff.

12 B. The petition shall state all of the following:

13 1. The name of the plaintiff. The plaintiff's address shall be  
 14 disclosed to the court for purposes of service, but, on request of the  
 15 plaintiff, the address shall not be listed on the petition in order to  
 16 protect the plaintiff. The address shall not be protected if during the  
 17 previous five years it was the common residence of the plaintiff and  
 18 defendant. The protected address shall be maintained in a separate document  
 19 or automated data base and is not subject to release or disclosure by the  
 20 court or any form of public access except as ordered by the court.

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

1           3. A specific statement showing events and dates of the acts  
2           constituting the alleged harassment.

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

5           C. Venue shall be considered the residence of the plaintiff or where  
6           the harassment occurred.

7           D. The filing fee for a petition filed under this section is  
8           established pursuant to section 12-284. Filing fees and fees for service of  
9           process may be deferred or waived under any rule or law applicable to civil  
10          actions. The court shall provide, without charge, forms for purposes of this  
11          section for assisting parties without counsel.

12          E. The court shall review the petition, any other pleadings on file  
13          and any evidence offered by the plaintiff to determine whether the injunction  
14          requested should issue without further hearing. The provisions of rules  
15          65(a)(1) and 65(e) of the rules of civil procedure shall not be applicable  
16          to injunctions requested pursuant to this section. If the court finds  
17          reasonable evidence of harassment of the plaintiff by the defendant during  
18          the year preceding the filing of the petition or that good cause exists to  
19          believe that great or irreparable harm would result to the plaintiff if the  
20          injunction is not granted before the defendant or ~~his~~ THE DEFENDANT'S  
21          attorney can be heard in opposition and the court finds specific facts  
22          attesting to the plaintiff's efforts to give notice to the defendant or  
23          reasons supporting the plaintiff's claim that notice should not be given, the  
24          court shall issue an injunction as provided for in subsection F of this  
25          section. If the court denies the requested relief, it may schedule a further  
26          hearing within ten days with reasonable notice to the defendant. For  
27          purposes of determining the one year period, any time that the defendant has  
28          been incarcerated or out of this state shall not be counted.

29          F. An injunction issued by the court may include any of the following:

30           1. Either or both parties may be enjoined from committing a violation  
31           of one or more acts of harassment.

32           2. Either or both parties may be restrained from coming near the  
33           residence, place of employment or school of the other party or other  
34           specifically designated locations or persons.

35           3. Relief necessary for the protection of the alleged victim and other  
36           specifically designated persons proper under the circumstances.

37          G. At any time during the period during which the injunction is in  
38          effect, the defendant is entitled to one hearing on written request. A  
39          hearing requested by a defendant shall be held within ten days from the date  
40          requested unless the court finds compelling reasons to continue the hearing.  
41          The hearing shall be held at the earliest possible time. An ex parte  
42          injunction issued under this section shall state on its face that the  
43          defendant is entitled to a hearing on written request and shall include the

1 name and address of the judicial office where the request may be filed. After  
2 the hearing, the court may modify, revoke or continue the injunction.

3 H. The injunction shall include the following statement:

4 Warning

5 This is an official court order. If you disobey this  
6 order the court may find you in contempt of court. You may also  
7 be arrested and prosecuted for the crime of interfering with  
8 judicial proceedings and any other crime you may have committed  
9 in disobeying this order.

10 I. The injunction shall be served on the defendant within one year  
11 from the date the injunction is signed. An injunction that is not served on  
12 the defendant within one year expires. The injunction is effective on the  
13 defendant on service of a copy of the injunction and expires, unless renewed,  
14 six months after service on the defendant. A modified injunction is  
15 effective upon service and expires six months after service of the original  
16 injunction.

17 J. Within twenty-four hours after the affidavit or acceptance of  
18 service has been returned, excluding weekends and holidays, the court from  
19 which the injunction was issued shall register a certified copy of the  
20 injunction and a copy of the affidavit of service of process or acceptance  
21 of service with the sheriff's office in the county in which the plaintiff  
22 resides. Registration of an injunction means that a certified copy of the  
23 injunction and a copy of the affidavit or acceptance of service have been  
24 received by the sheriff's office. The sheriff shall maintain a central  
25 repository for injunctions so that the existence and validity of the  
26 injunctions can be easily verified. The effectiveness of an injunction does  
27 not depend on its registration, and for enforcement purposes pursuant to  
28 section 13-2810, a certified copy of an injunction, whether or not  
29 registered, is presumed to be a valid existing order of the court for a  
30 period of six months from the date of service of the injunction on the  
31 defendant. Any changes or modifications of the injunction are effective on  
32 entry by the court and shall be registered with the sheriff within  
33 twenty-four hours of the entry, excluding weekends and holidays.

34 K. A peace officer may, with or without a warrant, arrest a person if  
35 the peace officer has probable cause to believe that the person has violated  
36 section 13-2810 by disobeying or resisting an injunction issued pursuant to  
37 this section, whether or not the violation occurred in the presence of the  
38 officer. The provisions for release under section 13-3903 do not apply to  
39 an arrest made pursuant to this subsection. A person arrested pursuant to  
40 this subsection may be released from custody in accordance with the rules of  
41 criminal procedure or other applicable statute. An order for release, with  
42 or without an appearance bond, shall include pretrial release conditions  
43 necessary to provide for the protection of the alleged victim and other  
44 specifically designated persons and may provide for additional conditions

1 which the court deems appropriate, including participation in any counseling  
2 programs available to the defendant.

3 L. If a peace officer responds to a call alleging that harassment has  
4 been or may be committed, the officer shall inform in writing any alleged or  
5 potential victim of the procedures and resources available for the protection  
6 of the victim including:

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

10 M. The remedies provided in this section for enforcement of the orders  
11 of the court are in addition to any other civil and criminal remedies  
12 available. The police court and the justice court may hear and decide all  
13 matters arising pursuant to this section. After a hearing with notice to the  
14 affected party, the court may enter an order requiring any party to pay the  
15 costs of the action, including reasonable attorney fees, if any. An order  
16 entered by a justice court or police court after a hearing pursuant to this  
17 section may be appealed to the superior court as provided in title 22,  
18 chapter 2, article 4, section 22-425, subsection B and the superior court  
19 rules of civil appellate procedure without regard to an amount in  
20 controversy.

21 N. A peace officer making an arrest pursuant to this section is not  
22 civilly or criminally liable for the arrest if the officer acts on probable  
23 cause and without malice. A peace officer is not civilly liable for  
24 noncompliance with subsection L of this section.

25 O. This section does not apply to preliminary injunctions issued  
26 pursuant to an action for dissolution of marriage or legal separation or for  
27 protective orders against domestic violence.

28 P. In addition to the persons who are authorized to serve process  
29 pursuant to rule 4(c), Arizona rules of civil procedure, a peace officer may  
30 serve an injunction against harassment that is issued pursuant to this  
31 section.

32 Q. In this section,

33 ~~1. "Course of conduct" means a pattern of conduct composed of a series~~  
34 ~~of acts over any period of time evidencing a continuity of purpose but does~~  
35 ~~not include constitutionally protected activity.~~

36 ~~2. "harassment" means a knowing course of conduct~~ SERIES OF ACTS OVER  
37 ANY PERIOD OF TIME THAT IS directed at a specific person ~~which~~ AND THAT WOULD  
38 CAUSE A REASONABLE PERSON TO BE SERIOUSLY ALARMED, ANNOYED OR HARASSED AND  
39 THE CONDUCT IN FACT seriously alarms, annoys or harasses the person and ~~which~~  
40 serves no legitimate purpose. ~~The course of conduct must be such as would~~  
41 ~~cause a reasonable person to suffer substantial emotional distress and must~~  
42 ~~actually cause substantial emotional distress to the plaintiff.~~

1           Sec. 2. Section 13-3601, Arizona Revised Statutes, is amended to read:  
2           13-3601. Domestic violence; definition; classification;  
3                   sentencing option; arrest and procedure for  
4                   violation; notice; report; diversion

5           A. "Domestic violence" means any act which is a dangerous crime  
6           against children as defined in section 13-604.01 or an offense defined in  
7           section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through  
8           13-1504 or 13-1602, section 13-2904, subsection A, paragraph 1, 2, 3 or 6 or  
9           section 13-3921, 13-2923 OR 13-3623, if the relationship between the victim  
10          and the defendant is one of marriage or former marriage or of persons of the  
11          opposite sex residing or having resided in the same household, if the victim  
12          and defendant or the defendant's spouse are related to each other by  
13          consanguinity or affinity to the second degree, if the victim and defendant  
14          have a child in common or if the victim or the defendant is pregnant by the  
15          other party.

16          B. A peace officer may, with or without a warrant, arrest a person if  
17          the officer has probable cause to believe that domestic violence has been  
18          committed and the officer has probable cause to believe that the person to  
19          be arrested has committed the offense, whether such offense is a felony or  
20          a misdemeanor and whether such offense was committed within or without the  
21          presence of the peace officer. In cases of domestic violence involving the  
22          infliction of physical injury or involving the discharge, use or threatening  
23          exhibition of a deadly weapon or dangerous instrument, the peace officer  
24          shall arrest a person, with or without a warrant, if the officer has probable  
25          cause to believe that the offense has been committed and the officer has  
26          probable cause to believe that the person to be arrested has committed the  
27          offense, whether such offense was committed within or without the presence  
28          of the peace officer, unless the officer has reasonable grounds to believe  
29          that the circumstances at the time are such that the victim will be protected  
30          from further injury. Failure to make an arrest does not give rise to civil  
31          liability except pursuant to section 12-820.02. In order to arrest both  
32          parties, the peace officer shall have probable cause to believe that both  
33          parties independently have committed an act of domestic violence. An act of  
34          self-defense that is justified under chapter 4 of this title is not deemed  
35          to be an act of domestic violence. The release procedures available under  
36          section 13-3883, paragraph 4 and section 13-3903 are not applicable to  
37          arrests made pursuant to this subsection.

38          C. Each indictment, information, complaint, summons or warrant that  
39          is issued and that involves domestic violence shall state that the offense  
40          involved domestic violence and shall be designated by the letters DV. A  
41          domestic violence charge shall not be dismissed or a domestic violence  
42          conviction shall not be set aside for failure to comply with this subsection.

43          D. A person arrested pursuant to subsection B of this section may be  
44          released from custody in accordance with the rules of criminal procedure or

1 other applicable statute. Any order for release, with or without an  
2 appearance bond, shall include pretrial release conditions necessary to  
3 provide for the protection of the alleged victim and other specifically  
4 designated persons and may provide for additional conditions which the court  
5 deems appropriate, including participation in any counseling programs  
6 available to the defendant.

7 E. When a peace officer responds to a call alleging that domestic  
8 violence has been or may be committed, the officer shall inform in writing  
9 any alleged or potential victim of the procedures and resources available for  
10 the protection of such victim including:

11 1. An order of protection pursuant to section 13-3602, ~~and~~ an  
12 injunction pursuant to section 25-315 AND AN INJUNCTION AGAINST HARASSMENT  
13 PURSUANT TO SECTION 12-1809.

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

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

16 F. A peace officer is not civilly liable for noncompliance with  
17 subsection E of this section.

18 G. An offense included in domestic violence carries the classification  
19 prescribed in the section of this title in which the offense is classified.

20 H. If the defendant is found guilty of an offense included in domestic  
21 violence and if probation is otherwise available for such offense, the court  
22 may, without entering a judgment of guilt and with the concurrence of the  
23 prosecutor and consent of the defendant, defer further proceedings and place  
24 the defendant on probation as provided in this subsection. The terms and  
25 conditions of probation shall include those necessary to provide for the  
26 protection of the alleged victim and other specifically designated persons  
27 and additional conditions and requirements which the court deems appropriate,  
28 including imposition of a fine, incarceration of the defendant in a county  
29 jail, payment of restitution and any counseling or diversionary programs  
30 available to the defendant. On violation of a term or condition of  
31 probation, the court may enter an adjudication of guilt and proceed as  
32 otherwise provided for revocation of probation. On fulfillment of the terms  
33 and conditions of probation, the court shall discharge the defendant and  
34 dismiss the proceedings against the defendant. This subsection does not  
35 apply in any case in which the defendant has previously been found guilty  
36 under this section, or in which charges under this section have previously  
37 been dismissed in accordance with this subsection.

38 Sec. 3. Section 13-3602, Arizona Revised Statutes, is amended to read:

39 13-3602. Order of protection; procedure; contents; arrest for  
40 violation; penalty

41 A. A person may file a verified petition, as in civil actions, with  
42 a magistrate, justice of the peace or superior court judge for an order of  
43 protection for the purpose of restraining a person from committing an act  
44 included in domestic violence. If a person is either temporarily or

1 permanently unable to request an order, a third party may request an order  
2 of protection on behalf of the plaintiff. After the request, the judicial  
3 officer shall determine if the third party is an appropriate requesting party  
4 for the plaintiff. For the purposes of this section, notwithstanding the  
5 location of the plaintiff or defendant, any court in this state may issue or  
6 enforce an order of protection.

7 B. AN ORDER OF PROTECTION SHALL NOT BE GRANTED UNLESS THE PARTY WHO  
8 REQUESTS THE ORDER FILES A WRITTEN VERIFIED PETITION FOR AN ORDER.

9 ~~B.~~ C. The petition shall state the:

10 1. Name of the plaintiff. The plaintiff's address shall be disclosed  
11 to the court for purposes of service, but, on request of the plaintiff, the  
12 address shall not be listed on the petition in order to protect the  
13 plaintiff. The address shall not be protected if during the previous five  
14 years it was the common residence of the plaintiff and defendant. The  
15 protected address shall be maintained in a separate document or automated  
16 data base and is not subject to release or disclosure by the court or any  
17 form of public access except as ordered by the court.

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

19 3. Specific statement, including dates, of the domestic violence  
20 alleged.

21 4. Relationship between the parties pursuant to section 13-3601,  
22 subsection A and whether there is pending between the parties an action for  
23 annulment, legal separation or dissolution of marriage.

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

26 6. Desired relief.

27 ~~C.~~ D. The amount and payment of filing fees for a petition filed  
28 under this section are established pursuant to section 12-284. Filing fees  
29 and fees for service of process may be deferred or waived under any rule,  
30 statute or other law applicable to civil actions. THE COURT SHALL NOT  
31 REQUIRE THE PETITIONER TO PERFORM COMMUNITY SERVICE AS A CONDITION OF THE  
32 WAIVER OR DEFERRAL OF FILING FEES AND FEES FOR SERVICE OF PROCESS. A law  
33 enforcement agency or constable shall not require the advance payment of fees  
34 for service of process of orders of protection. If fees have not been  
35 waived, the serving agency may assess the actual fees against the plaintiff.  
36 On request of the plaintiff, each order of protection issued by a municipal  
37 court shall be served by the police agency for that city if the defendant can  
38 be served within the city. If the defendant cannot be served within the  
39 city, the police agency in the city in which the defendant can be served  
40 shall serve the order. If the order cannot be served within a city, the  
41 sheriff shall serve the order. On request of the plaintiff, each order of  
42 protection issued by a justice of the peace shall be served by the constable  
43 for that jurisdiction if the defendant can be served within the jurisdiction.  
44 If the defendant cannot be served within that jurisdiction, the constable in

1 the jurisdiction in which the defendant can be served shall serve the order.  
2 On request of the plaintiff, each order of protection issued by a superior  
3 court judge shall be served by the sheriff of the county. If the defendant  
4 cannot be served within that jurisdiction, the sheriff in the jurisdiction  
5 in which the defendant can be served shall serve the order. Each court shall  
6 provide, without charge, forms for purposes of this section for assisting  
7 parties without counsel.

8 ~~Ø~~ E. The court shall review the petition, any other pleadings on  
9 file and any evidence offered by the plaintiff to determine whether the  
10 orders requested should issue without further hearing. The court shall  
11 issue an order of protection under subsection ~~F~~ G of this section if the  
12 court determines that there is reasonable cause to believe any of the  
13 following:

- 14 1. The defendant may commit an act of domestic violence.
- 15 2. The defendant has committed an act of domestic violence within the  
16 past year.
- 17 3. Good cause exists to issue the order.

18 ~~E~~ F. For purposes of determining the one year period under  
19 subsection ~~Ø~~ E, paragraph 2 of this section, any time that the defendant has  
20 been incarcerated or out of this state shall not be counted. The one year  
21 period does not affect a court's authority to renew any order. If the court  
22 denies the requested relief, it may schedule a further hearing within ten  
23 days, with reasonable notice to the defendant.

24 ~~F~~ G. An order of protection issued by a court may include any of the  
25 following:

- 26 1. The defendant may be enjoined from committing a violation of one  
27 or more of the offenses included in domestic violence.
- 28 2. One party may be granted the use and exclusive possession of the  
29 parties' residence on a showing that there is reasonable cause to believe  
30 that physical harm may otherwise result.
- 31 3. The defendant may be restrained from coming near the residence,  
32 place of employment or school of the plaintiff or other specifically  
33 designated locations or persons on a showing that there is reasonable cause  
34 to believe that physical harm may otherwise result.
- 35 4. Relief necessary for the protection of the alleged victim and other  
36 specifically designated persons proper under the circumstances.

37 ~~G~~ H. A mutual order of protection shall not be granted  
38 automatically. ~~No order may be granted unless the party who requests the~~  
39 ~~order files a verified petition for an order.~~ HOWEVER, IF OPPOSING PARTIES  
40 SEPARATELY FILE VERIFIED PETITIONS FOR AN ORDER OF PROTECTION, COURTS MAY,  
41 AFTER CONSULTATION BETWEEN THE JUDGES INVOLVED, CONSOLIDATE FOR HEARING THE  
42 PETITIONS OF OPPOSING PARTIES. THIS DOES NOT PROHIBIT A COURT FROM ISSUING  
43 CROSS ORDERS OF PROTECTION.



1           ~~L~~ M. A peace officer may, with or without a warrant, arrest a person  
2 if the peace officer has probable cause to believe that the person has  
3 violated section 13-2810 by disobeying or resisting an order issued in any  
4 jurisdiction in this state pursuant to this section, whether or not such  
5 violation occurred in the presence of the officer. Criminal violations of  
6 an order issued pursuant to this section shall be referred to an appropriate  
7 law enforcement agency. The law enforcement agency shall request that a  
8 prosecutorial agency file the appropriate charges. A violation of an order  
9 of protection shall not be adjudicated by a municipal or justice court unless  
10 a complaint has been filed or other legal process has been requested by the  
11 prosecuting agency. The provisions for release under section 13-3883,  
12 paragraph 4 and section 13-3903 do not apply to an arrest made pursuant to  
13 this section. For purposes of this section, any court in this state has  
14 jurisdiction to enforce a valid order of protection that is issued in this  
15 state and that has been violated in any jurisdiction in this state.

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

24           ~~N~~ O. The remedies provided in this section for enforcement of the  
25 orders of the court are in addition to any other civil and criminal remedies  
26 available. The ~~police~~ MUNICIPAL court and the justice court may hear and  
27 decide all matters arising pursuant to this section. ~~No police~~ A MUNICIPAL  
28 court or justice court shall NOT issue an order of protection where it  
29 appears from the petition that an action for annulment, legal separation or  
30 dissolution of marriage is pending between the parties. After issuance of  
31 an order of protection, if the ~~police~~ MUNICIPAL court or justice court is  
32 notified in writing by either party or by order of the superior court that  
33 an action for annulment, legal separation or dissolution of marriage is  
34 pending between the parties, the ~~police~~ MUNICIPAL court or justice court  
35 shall stop further proceedings in the action and forward all papers, together  
36 with a certified copy of docket entries or any other record in the action,  
37 to the superior court where they shall be docketed in the pending superior  
38 court action and shall proceed as though the petition for an order of  
39 protection had been originally brought in the superior court.  
40 NOTWITHSTANDING ANY OTHER LAW AND UNLESS PROHIBITED BY AN ORDER OF THE  
41 SUPERIOR COURT, A MUNICIPAL COURT OR JUSTICE COURT MAY HOLD A HEARING ON ITS  
42 EX PARTE ORDER OF PROTECTION INVOLVING THE EXCLUSIVE USE OF THE PARTIES'  
43 RESIDENCE IF THE HEARING WAS REQUESTED BEFORE RECEIVING WRITTEN NOTICE OF THE  
44 PENDING SUPERIOR COURT ACTION. No order of protection shall be invalid or

1 determined to be ineffective merely because it was issued by a lower court  
2 at a time when an action for annulment, legal separation or dissolution of  
3 marriage was pending in a higher court. After a hearing with notice to the  
4 affected party, the court may enter an order requiring any party to pay the  
5 costs of the action, including reasonable attorney fees, if any. An order  
6 entered by a justice court or ~~police~~ MUNICIPAL court after a hearing pursuant  
7 to this section may be appealed to the superior court as provided in title  
8 22, chapter 2, article 4, section 22-425, subsection B and the superior court  
9 rules of civil appellate procedure without regard to an amount in  
10 controversy.

11 ~~Ø.~~ P. A peace officer making an arrest pursuant to this section or  
12 section 13-3601 is not civilly or criminally liable for such arrest if the  
13 officer acts upon probable cause and without malice.

14 ~~P.~~ Q. In addition to persons authorized to serve process pursuant to  
15 rule 4(c) of the Arizona rules of civil procedure, a peace officer may serve  
16 an order of protection issued pursuant to this section. Service of the order  
17 of protection has priority over other service of process that does not  
18 involve an immediate threat to the safety of a person.

APPROVED BY THE GOVERNOR MARCH 25, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 25, 1996