

FILED

State of Arizona
House of Representatives
Forty-second Legislature
Second Regular Session
1996

**Jane Dee Hull
Secretary of State**

CHAPTER 87

HOUSE BILL 2562

AN ACT

AMENDING SECTIONS 13-3601, 13-3602 AND 41-2401, ARIZONA REVISED STATUTES;
RELATING TO DOMESTIC VIOLENCE.

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

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

13-3601. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice; report; diversion

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

B. A peace officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening

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

16 C. A PEACE OFFICER MAY QUESTION THE PERSONS WHO ARE PRESENT TO
17 DETERMINE IF A FIREARM IS PRESENT ON THE PREMISES. ON LEARNING OR OBSERVING
18 THAT A FIREARM IS PRESENT ON THE PREMISES, THE PEACE OFFICER MAY TEMPORARILY
19 SEIZE THE FIREARM IF THE FIREARM IS IN PLAIN VIEW OR WAS FOUND PURSUANT TO
20 A CONSENT TO SEARCH AND IF THE OFFICER REASONABLY BELIEVES THAT THE FIREARM
21 WOULD EXPOSE THE VICTIM OR ANOTHER PERSON IN THE HOUSEHOLD TO A RISK OF
22 SERIOUS BODILY INJURY OR DEATH. A FIREARM OWNED OR POSSESSED BY THE VICTIM
23 SHALL NOT BE SEIZED UNLESS THERE IS PROBABLE CAUSE TO BELIEVE THAT BOTH
24 PARTIES INDEPENDENTLY HAVE COMMITTED AN ACT OF DOMESTIC VIOLENCE.

25 D. IF A FIREARM IS SEIZED PURSUANT TO SUBSECTION C OF THIS SECTION,
26 THE PEACE OFFICER SHALL GIVE THE OWNER OR POSSESSOR OF THE FIREARM A RECEIPT
27 FOR EACH SEIZED FIREARM. THE RECEIPT SHALL INDICATE THE IDENTIFICATION OR
28 SERIAL NUMBER OR OTHER IDENTIFYING CHARACTERISTIC OF EACH SEIZED FIREARM.
29 EACH SEIZED FIREARM SHALL BE HELD FOR AT LEAST SEVENTY-TWO HOURS BY THE LAW
30 ENFORCEMENT AGENCY THAT SEIZED THE FIREARM.

31 E. IF A FIREARM IS SEIZED PURSUANT TO SUBSECTION C OF THIS SECTION,
32 THE VICTIM SHALL BE NOTIFIED BY A PEACE OFFICER BEFORE THE FIREARM IS
33 RELEASED FROM TEMPORARY CUSTODY.

34 F. IF THERE IS REASONABLE CAUSE TO BELIEVE THAT RETURNING A FIREARM
35 TO THE OWNER OR POSSESSOR MAY ENDANGER THE VICTIM, THE PERSON WHO REPORTED
36 THE ASSAULT OR THREAT OR ANOTHER PERSON IN THE HOUSEHOLD, THE PROSECUTOR
37 SHALL FILE A NOTICE OF INTENT TO RETAIN THE FIREARM IN THE APPROPRIATE
38 SUPERIOR, JUSTICE OR MUNICIPAL COURT. THE PROSECUTOR SHALL SERVE NOTICE ON
39 THE OWNER OR POSSESSOR OF THE FIREARM BY CERTIFIED MAIL. THE NOTICE SHALL
40 STATE THAT THE FIREARM WILL BE RETAINED FOR NOT MORE THAN SIX MONTHS
41 FOLLOWING THE DATE OF SEIZURE. ON RECEIPT OF THE NOTICE, THE OWNER OR
42 POSSESSOR MAY REQUEST A HEARING FOR THE RETURN OF THE FIREARM, TO DISPUTE THE
43 GROUNDS FOR SEIZURE OR TO REQUEST AN EARLIER RETURN DATE. THE COURT SHALL
44 HOLD THE HEARING WITHIN TEN DAYS AFTER RECEIVING THE OWNER'S OR POSSESSOR'S

1 REQUEST FOR A HEARING. AT THE HEARING, UNLESS THE COURT DETERMINES THAT THE
2 RETURN OF THE FIREARM MAY ENDANGER THE VICTIM, THE PERSON WHO REPORTED THE
3 ASSAULT OR THREAT OR ANOTHER PERSON IN THE HOUSEHOLD, THE COURT SHALL ORDER
4 THE RETURN OF THE FIREARM TO THE OWNER OR POSSESSOR.

5 G. A PEACE OFFICER IS NOT LIABLE FOR ANY ACT OR OMISSION IN THE GOOD
6 FAITH EXERCISE OF THE OFFICER'S DUTIES UNDER SUBSECTIONS C, D, E AND F OF
7 THIS SECTION.

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

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

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

25 1. An order of protection pursuant to section 13-3602 and an
26 injunction pursuant to section 25-315.

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

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

29 ~~F~~ K. A peace officer is not civilly liable for noncompliance with
30 subsection ~~E~~ J of this section.

31 ~~G~~ L. An offense included in domestic violence carries the
32 classification prescribed in the section of this title in which the offense
33 is classified.

34 ~~H~~ M. If the defendant is found guilty of an offense included in
35 domestic violence and if probation is otherwise available for such offense,
36 the court may, without entering a judgment of guilt and with the concurrence
37 of the prosecutor and consent of the defendant, defer further proceedings and
38 place the defendant on probation as provided in this subsection. The terms
39 and conditions of probation shall include those necessary to provide for the
40 protection of the alleged victim and other specifically designated persons
41 and additional conditions and requirements which the court deems appropriate,
42 including imposition of a fine, incarceration of the defendant in a county
43 jail, payment of restitution and any counseling or diversionary programs
44 available to the defendant. On violation of a term or condition of

1 probation, the court may enter an adjudication of guilt and proceed as
2 otherwise provided for revocation of probation. On fulfillment of the terms
3 and conditions of probation, the court shall discharge the defendant and
4 dismiss the proceedings against the defendant. This subsection does not
5 apply in any case in which the defendant has previously been found guilty
6 under this section, or in which charges under this section have previously
7 been dismissed in accordance with this subsection.

8 Sec. 2. Section 13-3602, Arizona Revised Statutes, is amended to read:
9 13-3602. Order of protection; procedure; contents; arrest for
10 violation; penalty

11 A. A person may file a verified petition, as in civil actions, with
12 a magistrate, justice of the peace or superior court judge for an order of
13 protection for the purpose of restraining a person from committing an act
14 included in domestic violence. If a person is either temporarily or
15 permanently unable to request an order, a third party may request an order
16 of protection on behalf of the plaintiff. After the request, the judicial
17 officer shall determine if the third party is an appropriate requesting party
18 for the plaintiff. For the purposes of this section, notwithstanding the
19 location of the plaintiff or defendant, any court in this state may issue or
20 enforce an order of protection.

21 B. The petition shall state the:

22 1. Name of the plaintiff. The plaintiff's address shall be disclosed
23 to the court for purposes of service, but, on request of the plaintiff, the
24 address shall not be listed on the petition in order to protect the
25 plaintiff. The address shall not be protected if during the previous five
26 years it was the common residence of the plaintiff and defendant. The
27 protected address shall be maintained in a separate document or automated
28 data base and is not subject to release or disclosure by the court or any
29 form of public access except as ordered by the court.

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

31 3. Specific statement, including dates, of the domestic violence
32 alleged.

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

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

38 6. Desired relief.

39 C. The amount and payment of filing fees for a petition filed under
40 this section are established pursuant to section 12-284. Filing fees and
41 fees for service of process may be deferred or waived under any rule, statute
42 or other law applicable to civil actions. A law enforcement agency or
43 constable shall not require the advance payment of fees for service of
44 process of orders of protection. If fees have not been waived, the serving

1 agency may assess the actual fees against the plaintiff. On request of the
2 plaintiff, each order of protection issued by a municipal court shall be
3 served by the police agency for that city if the defendant can be served
4 within the city. If the defendant cannot be served within the city, the
5 police agency in the city in which the defendant can be served shall serve
6 the order. If the order cannot be served within a city, the sheriff shall
7 serve the order. On request of the plaintiff, each order of protection
8 issued by a justice of the peace shall be served by the constable for that
9 jurisdiction if the defendant can be served within the jurisdiction. If the
10 defendant cannot be served within that jurisdiction, the constable in the
11 jurisdiction in which the defendant can be served shall serve the order. On
12 request of the plaintiff, each order of protection issued by a superior court
13 judge shall be served by the sheriff of the county. If the defendant cannot
14 be served within that jurisdiction, the sheriff in the jurisdiction in which
15 the defendant can be served shall serve the order. Each court shall provide,
16 without charge, forms for purposes of this section for assisting parties
17 without counsel. THE COURT SHALL MAKE REASONABLE EFFORTS TO PROVIDE TO BOTH
18 PARTIES AN APPROPRIATE INFORMATION SHEET ON EMERGENCY AND COUNSELING SERVICES
19 THAT ARE AVAILABLE IN THE LOCAL AREA.

20 D. The court shall review the petition, any other pleadings on file
21 and any evidence offered by the plaintiff to determine whether the orders
22 requested should issue without further hearing. The court shall issue an
23 order of protection under subsection F of this section if the court
24 determines that there is reasonable cause to believe any of the following:

- 25 1. The defendant may commit an act of domestic violence.
- 26 2. The defendant has committed an act of domestic violence within the
27 past year.
- 28 3. Good cause exists to issue the order.

29 E. For purposes of determining the one year period under subsection
30 D, paragraph 2 of this section, any time that the defendant has been
31 incarcerated or out of this state shall not be counted. The one year period
32 does not affect a court's authority to renew any order.

33 If the court denies the requested relief, it may schedule a further hearing
34 within ten days, with reasonable notice to the defendant.

35 F. An order of protection issued by a court may include any of the
36 following:

- 37 1. The defendant may be enjoined from committing a violation of one
38 or more of the offenses included in domestic violence.
- 39 2. One party may be granted the use and exclusive possession of the
40 parties' residence on a showing that there is reasonable cause to believe
41 that physical harm may otherwise result.
- 42 3. The defendant may be restrained from coming near the residence,
43 place of employment or school of the plaintiff or other specifically

1 designated locations or persons on a showing that there is reasonable cause
2 to believe that physical harm may otherwise result.

3 4. IF THE COURT FINDS THAT THE DEFENDANT MAY INFLICT BODILY INJURY OR
4 DEATH ON THE PLAINTIFF, THE DEFENDANT MAY BE PROHIBITED FROM POSSESSING OR
5 PURCHASING A FIREARM FOR THE DURATION OF THE ORDER AND MAY BE ORDERED TO
6 TRANSFER A FIREARM TO THE APPROPRIATE LAW ENFORCEMENT AGENCY FOR THE DURATION
7 OF THE ORDER.

8 5. THE DEFENDANT MAY BE REQUIRED TO PARTICIPATE IN DOMESTIC VIOLENCE
9 COUNSELING OR OTHER PROGRAM DEEMED APPROPRIATE BY THE COURT.

10 ~~4~~ 6. Relief necessary for the protection of the alleged victim and
11 other specifically designated persons proper under the circumstances.

12 G. A mutual order of protection shall not be granted automatically.
13 No order may be granted unless the party who requests the order files a
14 verified petition for an order.

15 H. At any time during the period during which the order is in effect,
16 a party under an order of protection or restrained from contacting the other
17 party is entitled to one hearing on written request. A hearing requested by
18 a party under an order of protection or restrained from contacting the other
19 party shall be held within ten days from the date requested unless the court
20 finds good cause to continue the hearing. If exclusive use of the home is
21 awarded, the hearing shall be held within five days from the date requested.
22 The hearing shall be held at the earliest possible time. An ex parte order
23 issued under this section shall state on its face that the defendant is
24 entitled to a hearing on written request and shall include the name and
25 address of the judicial office where the request may be filed. After the
26 hearing, the court may modify, revoke or continue the order.

27 I. The order shall include the following statement:

28 Warning

29 This is an official court order. If you disobey this
30 order the court may find you in contempt of court. You may also
31 be arrested and prosecuted for the crime of interfering with
32 judicial proceedings and any other crime you may have committed
33 in disobeying this order.

34 J. An order shall be served on the defendant within one year from the
35 date the order is signed. An order of protection that is not served on the
36 defendant within one year expires. An order is effective on the defendant
37 on service of a copy of the order. An order expires, unless renewed, six
38 months after service on the defendant. A modified injunction is effective
39 upon service and expires six months after service of the original order.

40 K. Within twenty-four hours after the affidavit or acceptance of
41 service has been returned, excluding weekends and holidays, the court from
42 which the order was issued shall register a certified copy of the order of
43 protection and a copy of the affidavit of service of process or acceptance
44 of service with the sheriff's office in the county in which the plaintiff

1 resides. Registration of an order means that a certified copy of the order
2 of protection and a copy of the affidavit or acceptance of service have been
3 received by the sheriff's office. The sheriff shall maintain a central
4 repository for orders of protection so that the existence and validity of the
5 orders can be easily verified. The effectiveness of an order does not depend
6 on its registration, and for enforcement purposes pursuant to section
7 13-2810, a certified copy of an order of the court, whether or not
8 registered, is presumed to be a valid existing order of the court for a
9 period of six months from the date of service of the order on the defendant.
10 Any changes or modifications of the order are effective upon entry of an
11 order of the court and shall be registered with the sheriff within
12 twenty-four hours of the entry of the order, excluding weekends and holidays.

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

28 M. A person arrested pursuant to subsection L of this section may be
29 released from custody in accordance with the rules of criminal procedure or
30 other applicable statute. An order for release, with or without an
31 appearance bond, shall include pretrial release conditions necessary to
32 provide for the protection of the alleged victim and other specifically
33 designated persons and may provide for additional conditions which the court
34 deems appropriate, including participation in any counseling programs
35 available to the defendant.

36 N. The remedies provided in this section for enforcement of the orders
37 of the court are in addition to any other civil and criminal remedies
38 available. The police court and the justice court may hear and decide all
39 matters arising pursuant to this section. No police court or justice court
40 shall issue an order of protection where it appears from the petition that
41 an action for annulment, legal separation or dissolution of marriage is
42 pending between the parties. After issuance of an order of protection, if
43 the police court or justice court is notified in writing by either party or
44 by order of the superior court that an action for annulment, legal separation

1 or dissolution of marriage is pending between the parties, the police court
2 or justice court shall stop further proceedings in the action and forward all
3 papers, together with a certified copy of docket entries or any other record
4 in the action, to the superior court where they shall be docketed in the
5 pending superior court action and shall proceed as though the petition for
6 an order of protection had been originally brought in the superior court.
7 No order of protection shall be invalid or determined to be ineffective
8 merely because it was issued by a lower court at a time when an action for
9 annulment, legal separation or dissolution of marriage was pending in a
10 higher court. After a hearing with notice to the affected party, the court
11 may enter an order requiring any party to pay the costs of the action,
12 including reasonable attorney fees, if any. An order entered by a justice
13 court or police court after a hearing pursuant to this section may be
14 appealed to the superior court as provided in title 22, chapter 2, article
15 4, section 22-425, subsection B and the superior court rules of civil
16 appellate procedure without regard to an amount in controversy.

17 O. A peace officer making an arrest pursuant to this section or
18 section 13-3601 is not civilly or criminally liable for such arrest if the
19 officer acts upon probable cause and without malice.

20 P. In addition to persons authorized to serve process pursuant to rule
21 4(c) of the Arizona rules of civil procedure, a peace officer may serve an
22 order of protection issued pursuant to this section. Service of the order of
23 protection has priority over other service of process that does not involve
24 an immediate threat to the safety of a person.

25 Sec. 3. Section 41-2401, Arizona Revised Statutes, is amended to read:
26 41-2401. Criminal justice enhancement fund

27 A. A criminal justice enhancement fund is established in the state
28 treasury consisting of monies collected pursuant to section 12-116.01 and
29 monies available from any other source. The state treasurer shall administer
30 the fund.

31 B. On or before November 1 of each year, each department, agency or
32 office that receives monies pursuant to this section shall provide to the
33 Arizona criminal justice commission a report for the preceding fiscal year.
34 The report shall be in a form prescribed by the Arizona criminal justice
35 commission and reviewed by the director of the joint legislative budget
36 committee. The report shall set forth the sources of all monies and all
37 expenditures. The report shall not include any identifying information about
38 specific investigations.

39 C. On or before December 1 of each year, the Arizona criminal justice
40 commission shall compile all reports into a single comprehensive report and
41 submit a copy of the comprehensive report to the governor, the president of
42 the senate, the speaker of the house of representatives and the director of
43 the joint legislative budget committee.

1 D. On the first day of each month, the state treasurer shall
2 distribute or deposit:

3 1. Six and six-tenths per cent in the Arizona automated fingerprint
4 identification system fund established pursuant to section 41-2414.

5 2. One and sixty-five hundredths per cent to the department of
6 juvenile corrections for the treatment and rehabilitation of youth who have
7 committed drug-related offenses.

8 3. Seventeen per cent in the peace officers' training fund established
9 pursuant to section 41-1825.

10 4. Three and one-tenth per cent in the prosecuting attorneys' advisory
11 council training fund established pursuant to section 41-1830.03.

12 5. Nine and fifty-five hundredths per cent to the supreme court for
13 the purpose of reducing juvenile crime.

14 6. Eight and three-quarters per cent to the department of public
15 safety. Fifteen per cent of the monies shall be allocated for deposit in the
16 Arizona deoxyribonucleic acid identification system fund established pursuant
17 to section 41-2419. Eighty-five per cent of the monies shall be allocated
18 to state and local law enforcement authorities for the following purposes:

19 (a) To enhance projects that are designed to prevent residential and
20 commercial burglaries, to control street crime, including the activities of
21 criminal street gangs, and to locate missing children.

22 (b) To provide support to the Arizona automated fingerprint
23 identification system.

24 (c) Operational costs of the criminal justice information system.

25 7. Nine and fifty-five hundredths per cent to the department of law
26 for allocation to county attorneys for the purpose of enhancing prosecutorial
27 efforts.

28 8. Six and fifteen-hundredths per cent to the supreme court for the
29 purpose of enhancing the ability of the courts to process criminal and
30 delinquency cases, ORDERS OF PROTECTION, INJUNCTIONS AGAINST HARASSMENT AND
31 ANY PROCEEDING RELATING TO DOMESTIC VIOLENCE MATTERS. Notwithstanding
32 section 12-143, subsection A, the salary of superior court judges pro tempore
33 who are appointed for the purposes provided in this paragraph shall, and the
34 salary of other superior court judges pro tempore who are appointed pursuant
35 to section 12-141 for the purposes provided in this paragraph may, be paid
36 in full by the monies received pursuant to this paragraph.

37 9. Eleven and ninety-five hundredths per cent to the state department
38 of corrections for allocation to county sheriffs for the purpose of enhancing
39 county jail facilities and operations, including county jails under the
40 jurisdiction of county jail districts.

41 10. One and six-tenths per cent to the Arizona criminal justice
42 commission.

1 11. Nine and two-tenths per cent to the state general fund.

2 12. Two and thirty-five hundredths per cent in the crime laboratory
3 assessment fund established pursuant to section 41-2415.

4 13. Seven and eighty-five hundredths per cent in the victims' rights
5 implementation revolving fund established pursuant to section 41-191.06.

6 14. Four and seven-tenths per cent in the victim compensation fund
7 established pursuant to section 41-2407.

8 E. Monies distributed pursuant to subsection D, paragraphs 3 through
9 9, 11, 12 and 14 of this section constitute a continuing appropriation.
10 Monies distributed pursuant to subsection D, paragraphs 1, 2, 10 and 13 of
11 this section are subject to legislative appropriation.

12 F. Beginning January 1, 1994, the allocation of monies pursuant to
13 subsection D, paragraphs 6, 7, 8 and 9 of this section shall be made in
14 accordance with rules adopted by the Arizona criminal justice commission
15 pursuant to section 41-2405.

APPROVED BY THE GOVERNOR APRIL 3, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 3, 1996