

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 217

HOUSE BILL 2268

AN ACT

REPEALING SECTION 13-3601, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 32, SECTION 7, CHAPTER 42, SECTION 1 AND CHAPTER 361, SECTION 3; AMENDING SECTION 13-3601, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 370, SECTION 1; AMENDING LAWS 2000, CHAPTER 122, SECTIONS 1 AND 3; RELATING TO FAMILY OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 13-3601, Arizona Revised Statutes, as amended by Laws 2000,
4 chapter 32, section 7, chapter 42, section 1 and chapter 361, section 3, is
5 repealed.

6 Sec. 2. Section 13-3601, Arizona Revised Statutes, as amended by Laws
7 2000, chapter 370, section 1, is amended to read:

8 13-3601. Domestic violence; definition; classification;
9 sentencing option; arrest and procedure for
10 violation; weapon seizure; notice; report; diversion

11 A. "Domestic violence" means any act which is a dangerous crime
12 against children as defined in section 13-604.01 or an offense defined in
13 section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through
14 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph
15 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923,
16 13-3019, 13-3601.02 or 13-3623, if any of the following apply-APPLIES:

17 1. The relationship between the victim and the defendant is one of
18 marriage or former marriage or of persons residing or having resided in the
19 same household.

20 2. The victim and the defendant have a child in common.

21 3. The victim or the defendant is pregnant by the other party.

22 4. The victim is related to the defendant or the defendant's spouse
23 by blood OR COURT ORDER as a parent, grandparent, child, grandchild, brother
24 or sister or by marriage as a parent-in-law, grandparent-in-law, STEPPARENT,
25 STEP-GRANDPARENT, stepchild, step-grandchild, brother-in-law or
26 sister-in-law.

27 5. The victim is a child who resides or has resided in the same
28 household as the defendant and is related by blood to a former spouse of the
29 defendant or to a person who resides or who has resided in the same household
30 as the defendant.

31 B. A peace officer may, with or without a warrant, arrest a person if
32 the officer has probable cause to believe that domestic violence has been
33 committed and the officer has probable cause to believe that the person to
34 be arrested has committed the offense, whether such offense is a felony or
35 a misdemeanor and whether such offense was committed within or without the
36 presence of the peace officer. In cases of domestic violence involving the
37 infliction of physical injury or involving the discharge, use or threatening
38 exhibition of a deadly weapon or dangerous instrument, the peace officer
39 shall arrest a person, with or without a warrant, if the officer has probable
40 cause to believe that the offense has been committed and the officer has
41 probable cause to believe that the person to be arrested has committed the
42 offense, whether such offense was committed within or without the presence
43 of the peace officer, unless the officer has reasonable grounds to believe
44 that the circumstances at the time are such that the victim will be protected
45 from further injury. Failure to make an arrest does not give rise to civil

1 liability except pursuant to section 12-820.02. In order to arrest both
2 parties, the peace officer shall have probable cause to believe that both
3 parties independently have committed an act of domestic violence. An act of
4 self-defense that is justified under chapter 4 of this title is not deemed
5 to be an act of domestic violence. The release procedures available under
6 section 13-3883, subsection A, paragraph 4 and section 13-3903 are not
7 applicable to arrests made pursuant to this subsection.

8 C. A peace officer may question the persons who are present to
9 determine if a firearm is present on the premises. On learning or observing
10 that a firearm is present on the premises, the peace officer may temporarily
11 seize the firearm if the firearm is in plain view or was found pursuant to
12 a consent to search and if the officer reasonably believes that the firearm
13 would expose the victim or another person in the household to a risk of
14 serious bodily injury or death. A firearm owned or possessed by the victim
15 shall not be seized unless there is probable cause to believe that both
16 parties independently have committed an act of domestic violence.

17 D. If a firearm is seized pursuant to subsection C of this section,
18 the peace officer shall give the owner or possessor of the firearm a receipt
19 for each seized firearm. The receipt shall indicate the identification or
20 serial number or other identifying characteristic of each seized firearm.
21 Each seized firearm shall be held for at least seventy-two hours by the law
22 enforcement agency that seized the firearm.

23 E. If a firearm is seized pursuant to subsection C of this section,
24 the victim shall be notified by a peace officer before the firearm is
25 released from temporary custody.

26 F. If there is reasonable cause to believe that returning a firearm
27 to the owner or possessor may endanger the victim, the person who reported
28 the assault or threat or another person in the household, the prosecutor
29 shall file a notice of intent to retain the firearm in the appropriate
30 superior, justice or municipal court. The prosecutor shall serve notice on
31 the owner or possessor of the firearm by certified mail. The notice shall
32 state that the firearm will be retained for not more than six months
33 following the date of seizure. On receipt of the notice, the owner or
34 possessor may request a hearing for the return of the firearm, to dispute the
35 grounds for seizure or to request an earlier return date. The court shall
36 hold the hearing within ten days after receiving the owner's or possessor's
37 request for a hearing. At the hearing, unless the court determines that the
38 return of the firearm may endanger the victim, the person who reported the
39 assault or threat or another person in the household, the court shall order
40 the return of the firearm to the owner or possessor.

1 G. A peace officer is not liable for any act or omission in the good
2 faith exercise of the officer's duties under subsections C, D, E and F of
3 this section.

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

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

17 J. When a peace officer responds to a call alleging that domestic
18 violence has been or may be committed, the officer shall inform in writing
19 any alleged or potential victim of the procedures and resources available for
20 the protection of such victim including:

21 1. An order of protection pursuant to section 13-3602, an injunction
22 pursuant to section 25-315 and an injunction against harassment pursuant to
23 section 12-1809.

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

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

26 K. A peace officer is not civilly liable for noncompliance with
27 subsection J of this section.

28 L. An offense included in domestic violence carries the
29 classification prescribed in the section of this title in which the offense
30 is classified. IF THE DEFENDANT COMMITTED A FELONY OFFENSE LISTED IN
31 SUBSECTION A OF THIS SECTION AGAINST A PREGNANT VICTIM AND KNEW THAT THE
32 VICTIM WAS PREGNANT OR IF THE DEFENDANT COMMITTED A FELONY OFFENSE CAUSING
33 PHYSICAL INJURY TO A PREGNANT VICTIM AND KNEW THAT THE VICTIM WAS PREGNANT,
34 THE MAXIMUM SENTENCE OTHERWISE AUTHORIZED SHALL BE INCREASED BY UP TO TWO
35 YEARS.

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

1 completion of a domestic violence offender treatment program that is provided
2 by a facility approved by the department of health services or a probation
3 department or any other counseling or diversionary programs that do not
4 involve domestic violence and that are available to the defendant. On
5 violation of a term or condition of probation or intensive probation, the
6 court may enter an adjudication of guilt and proceed as otherwise provided
7 for revocation of probation. On fulfillment of the terms and conditions of
8 probation or intensive probation, the court shall discharge the defendant and
9 dismiss the proceedings against the defendant. This subsection does not
10 apply in any case in which the defendant has previously been found guilty
11 under this section, or in which charges under this section have previously
12 been dismissed in accordance with this subsection.

13 N. If a defendant is diverted pursuant to this section, the court
14 shall provide the following written notice to the defendant:

15 You have been diverted from prosecution for an offense
16 included in domestic violence. You are now on notice that:

17 1. If you successfully complete the terms and conditions
18 of diversion, the court will discharge you and dismiss the
19 proceedings against you.

20 2. If you fail to successfully complete the terms and
21 conditions of diversion, the court may enter an adjudication of
22 guilt and proceed as provided by law.

23 O. If the defendant is found guilty of a first offense included in
24 domestic violence, the court shall provide the following written notice to
25 the defendant:

26 You have been convicted of an offense included in domestic
27 violence. You are now on notice that:

28 1. If you are convicted of a second offense included in
29 domestic violence, you may be placed on supervised probation and
30 may be incarcerated as a condition of probation.

31 ~~2. If you are convicted of a third or subsequent offense~~
32 ~~included in domestic violence, you will be sentenced to A THIRD~~
33 ~~OR SUBSEQUENT CHARGE MAY BE FILED AS A FELONY AND A CONVICTION~~
34 ~~FOR THAT OFFENSE SHALL RESULT IN a term of incarceration.~~

35 P. The failure or inability of the court to provide the notice
36 required under subsections N and O of this section does not preclude the use
37 of the prior convictions for any purpose otherwise permitted.

38 Sec. 3. Laws 2000, chapter 122, section 1 is amended to read:

39 Section 1. Domestic violence and sexual assault state plan task
40 force

41 A. A domestic violence and sexual assault state plan task force is
42 established consisting of the following members or their designees who have
43 knowledge of domestic violence and sexual assault issues:

1 1. Two members of the senate from different political parties. The
2 president of the senate shall appoint the members and designate one of the
3 members as the cochairperson.

4 2. Two members of the house of representatives from different
5 political parties. The speaker of the house of representatives shall appoint
6 the members and designate one of the members as the cochairperson.

7 3. The director of the office for domestic violence prevention.

8 4. A representative from a coalition of domestic violence service
9 providers appointed by the governor.

10 5. A representative from a provider of domestic violence shelter
11 services appointed by the president of the senate.

12 6. A representative from a provider of sexual assault services
13 appointed by the speaker of the house of representatives.

14 7. A REPRESENTATIVE OF THE SEXUAL ASSAULT MEDICAL COMMUNITY APPOINTED
15 BY THE GOVERNOR.

16 ~~7.~~ 8. A representative from the governor's commission on violence
17 against women.

18 ~~8.~~ 9. A representative from the law enforcement community appointed
19 by the president of the senate.

20 ~~9.~~ 10. Two county attorneys, one from a county with a population of
21 fewer than one million two hundred thousand persons appointed by the speaker
22 of the house of representatives and one from a county with a population of
23 one million two hundred thousand or more persons appointed by the president
24 of the senate.

25 11. TWO CITY PROSECUTORS, ONE FROM A CITY OR TOWN WITH A POPULATION OF
26 FEWER THAN ONE MILLION TWO HUNDRED THOUSAND PERSONS APPOINTED BY THE SPEAKER
27 OF THE HOUSE OF REPRESENTATIVES AND ONE FROM A CITY OR TOWN WITH A POPULATION
28 OF ONE MILLION TWO HUNDRED THOUSAND OR MORE PERSONS APPOINTED BY THE
29 PRESIDENT OF THE SENATE.

30 ~~10.~~ 12. A representative from a victim's rights organization appointed
31 by the speaker of the house of representatives.

32 ~~11.~~ 13. The director of the department of economic security.

33 ~~12.~~ 14. The director of the administrative offices of the court.

34 ~~13.~~ 15. The director of the department of commerce.

35 ~~14.~~ 16. The director of the department of health services.

36 ~~15.~~ 17. The attorney general.

37 ~~16.~~ 18. The director of the department of public safety.

38 ~~17.~~ 19. The director of the Arizona criminal justice commission.

39 B. The task force shall develop a consolidated state plan to ensure
40 coordinated and efficient use of resources to address domestic violence and
41 sexual assault prevention, prosecution and supportive services to victims.
42 THE TASK FORCE ALSO SHALL DEVELOP A CONSOLIDATED STATE PLAN TO ENSURE
43 COORDINATED AND EFFICIENT USE OF RESOURCES TO ADDRESS SEXUAL ASSAULT
44 PREVENTION, PROSECUTION AND SUPPORTIVE SERVICES TO VICTIMS. The EACH plan
45 shall include:

- 1 1. Outcome goals.
- 2 2. Identification and prioritization of needs.
- 3 3. Identification of resources available.
- 4 4. Gaps in services and resources.
- 5 5. Methods to ensure coordination and collaboration among state
- 6 agencies and between state agencies and community based organizations.
- 7 6. Efficiency and effectiveness indicators.
- 8 7. A performance based evaluation process for current and potential
- 9 services.
- 10 8. Review of the funding allocation methodology developed by the
- 11 department of economic security for the domestic violence shelter program.
- 12 C. IN ADDITION TO THE REQUIREMENTS OF SUBSECTION B, EACH PLAN SHALL
- 13 INCLUDE:
- 14 1. A STATEWIDE POLICY ON THE SUBJECT OF THE PLAN.
- 15 2. A PROCESS TO EVALUATE THE SYSTEMIC RESPONSE SYSTEM. THE SYSTEMIC
- 16 RESPONSE SYSTEM INCLUDES LAW ENFORCEMENT, PROSECUTION, COURTS, CIVIL LEGAL
- 17 SERVICES, HOSPITALS, PHYSICIANS, EMERGENCY MEDICAL SERVICES, DOMESTIC
- 18 VIOLENCE SHELTERS AND PROGRAMS RELATING TO THE SUBJECT OF THE PLAN.
- 19 3. AN ANALYSIS OF IMPACTS ON TRIBAL NATIONS, RURAL ARIZONA AND MEMBERS
- 20 OF TRADITIONALLY UNSERVED AND UNDERSERVED POPULATIONS. FOR PURPOSES OF THIS
- 21 PARAGRAPH, "UNDERSERVED POPULATIONS" INCLUDES POPULATIONS UNDERSERVED BECAUSE
- 22 OF GEOGRAPHIC LOCATION OR SPECIAL NEEDS SUCH AS LANGUAGE BARRIERS OR PHYSICAL
- 23 DISABILITIES AND UNDERSERVED RACIAL OR ETHNIC POPULATIONS.
- 24 4. A MECHANISM TO FACILITATE AN EVALUATION OF THE POLICY, SYSTEMS AND
- 25 SERVICES RELATED TO THE SUBJECT OF THE PLAN.
- 26 D. THE CONSOLIDATED STATE PLAN ADDRESSING DOMESTIC VIOLENCE SHALL
- 27 INCLUDE RECOMMENDATIONS REGARDING MAKING MISDEMEANOR DOMESTIC VIOLENCE
- 28 OFFENSES NON-BAILABLE IN CERTAIN CASES.
- 29 E. EACH PLANNING PROCESS SHALL INCLUDE THE FOLLOWING:
- 30 1. STATEWIDE PUBLIC HEARINGS.
- 31 2. FACILITATION OF FOCUS GROUPS, INCLUDING VICTIMS AND MEMBERS OF THE
- 32 SYSTEMIC RESPONSE SYSTEM. THE FOCUS GROUPS SHALL BE CONDUCTED IN RURAL,
- 33 URBAN AND TRIBAL AREAS.
- 34 3. COMPREHENSIVE RESEARCH REGARDING BEST PRACTICES, SYSTEM EVALUATION
- 35 AND FUNDING METHODS.
- 36 4. THE REVIEW AND INCORPORATION OF EXISTING PLANS.
- 37 5. RECOMMENDATIONS FOR A STANDARDIZED METHOD OF COLLECTION OF
- 38 STATISTICAL DATA FROM THE SYSTEMIC RESPONSE SYSTEM.
- 39 ~~F.~~ F. The task force shall submit ~~the state plan~~ ITS PLANS and a
- 40 report of ITS findings and recommendations to the president of the senate,
- 41 the speaker of the house of representatives and the governor on or before
- 42 ~~December 1, 2000~~ DECEMBER 31, 2002. The task force shall provide a copy of
- 43 ~~the state plan~~ ITS PLANS and ITS report to the secretary of state and the
- 44 director of the ~~department of~~ ARIZONA STATE library, archives and public
- 45 records.

1 D. G. Members of the task force are not eligible to receive
2 compensation, but public members are eligible for reimbursement of expenses
3 pursuant to title 38, chapter 4, article 2, Arizona Revised Statutes.
4 Sec. 4. Laws 2000, chapter 122, section 3 is amended to read:
5 Sec. 3. Delayed repeal
6 This act is repealed from and after ~~June 30, 2001~~ JULY 31, 2003.

APPROVED BY THE GOVERNOR APRIL 24, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2001.



Passed the House March 19, 2001,

Passed the Senate April 12, 2001,

by the following vote: 43 Ayes,
12 Nays, 5 Not Voting

by the following vote: 29 Ayes,
0 Nays, 1 Not Voting

Jake Flake
Speaker, of the House
Pro Tempore
Norman L. Moore
Chief Clerk of the House

Randall Hunt
President of the Senate
Chermin Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
_____ day of _____, 20____,
at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of _____,
_____, 20____,
at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20____,
at _____ o'clock _____ M.

Secretary of State

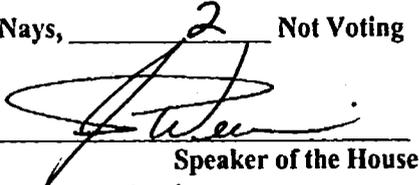
H.B. 2268

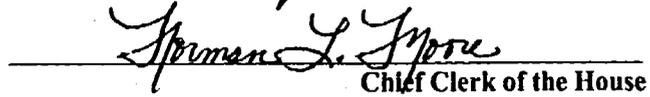
HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 18, 2001,

by the following vote: 50 Ayes,

8 Nays, 2 Not Voting


Speaker of the House


Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
18 day of April, 2001,

at 11:34 o'clock A M.


Secretary to the Governor

Approved this 24 day of

April, 2001,

at 3:57 o'clock P M.

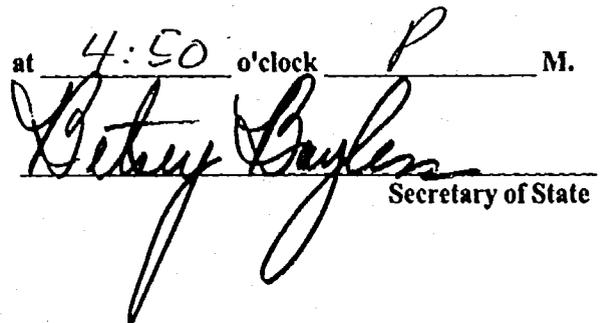

Governor of Arizona

H.B. 2268

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 24 day of April, 2001,

at 4:50 o'clock P M.


Secretary of State