House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 290

SENATE BILL 1286

AN ACT

AMENDING SECTIONS 12-253, 13-810, 13-812, 13-902, 13-3602, 13-4409, 13-4411, 13-4430, 13-4434, 13-4435 AND 39-127, ARIZONA REVISED STATUTES; REPEALING LAWS 2005, CHAPTER 260, SECTION 15; RELATING TO VICTIMS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 12-253, Arizona Revised Statutes, is amended to read:

12-253. Powers and duties

The adult probation officer shall:

1. Make and file a complete record of persons placed under suspended sentence by the court, and of all reports made to the officer in writing or in person, in accordance with the conditions imposed by the court.

2. Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court.

3. Serve warrants, make arrests and bring persons before the court who are under suspended sentences. The officer has the authority of a peace officer in the performance of the officer's duties.

4. Investigate cases referred to the officer for investigation by the court in which the officer is serving and report to the court. In an investigation for a presentence report, the adult probation officer shall promptly inquire into the circumstances of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, including the ability to contribute to reimbursement for the costs of the person's legal defense pursuant to section 11-584, education and personal habits. The presentence report shall contain a recommendation by the officer regarding contribution by the convicted person toward the costs of legal defense pursuant to section 11-584. The officer shall also promptly inquire into the physical, emotional and financial impact of the offense on the victim and the emotional and financial impact of the offense on the immediate family of the victim and shall notify the victim or the immediate family of the victim of the right to appear personally or by counsel at any aggravation or mitigation proceeding.

5. Secure and keep a complete identification record of every person released under a suspended sentence and a written statement of the conditions of the suspension.

6. Obtain and assemble information concerning the conduct of persons placed under suspended sentence and report the information to the court.

7. Bring defaulting probationers into court when in ~~his~~ THE PROBATION OFFICER'S judgment the conduct of the probationer justifies the court to revoke suspension of the sentence.

8. MONITOR THE PAYMENT OF RESTITUTION.

Sec. 2. Section 13-810, Arizona Revised Statutes, is amended to read:

13-810. Consequences of nonpayment of fines, fees, restitution or incarceration costs

A. IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, INCLUDING A WRIT OF EXECUTION OR OTHER CIVIL ENFORCEMENT, if a defendant WHO IS sentenced to pay a fine, A fee~~, restitution~~ or incarceration costs defaults in the payment of ~~such~~ THE fine, fee~~, restitution~~ or incarceration costs or of any installment AS ORDERED, the clerk of the court imposing the fine, fee~~,~~

~~restitution~~ or incarceration costs shall notify the prosecutor~~,~~ AND the sentencing court ~~and any person entitled to restitution pursuant to a court order~~. The court, on motion of the prosecuting attorney~~, on petition of any person entitled to restitution pursuant to a court order~~ or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance.

B. IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, INCLUDING A WRIT OF EXECUTION OR OTHER CIVIL ENFORCEMENT, IF A DEFENDANT WHO IS ORDERED TO PAY RESTITUTION DEFAULTS IN THE PAYMENT OF THE RESTITUTION OR OF ANY INSTALLMENT AS ORDERED, THE CLERK OF THE COURT THAT IMPOSED THE RESTITUTION SHALL NOTIFY THE PROSECUTOR AND THE SENTENCING COURT ON A MONTHLY BASIS. THE COURT, ON MOTION OF THE PROSECUTING ATTORNEY, ON PETITION OF ANY PERSON ENTITLED TO RESTITUTION PURSUANT TO A COURT ORDER OR ON ITS OWN MOTION, SHALL REQUIRE THE DEFENDANT TO SHOW CAUSE WHY THE DEFENDANT'S DEFAULT SHOULD NOT BE TREATED AS CONTEMPT AND MAY ISSUE A SUMMONS OR A WARRANT OF ARREST FOR THE DEFENDANT'S APPEARANCE.

~~B.~~ C. At any hearing on the order to show cause the court, the prosecuting attorney or a person entitled to restitution may examine the defendant under oath concerning the defendant's financial condition, employment and assets or on any other matter relating to the defendant's ability to pay restitution.

~~C.~~ D. If the court finds that the defendant has wilfully failed to pay a fine, A fee, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may do one of the following:

1. Order the defendant incarcerated in the county jail until the fine, fee, restitution or incarceration costs, or a specified part of the fine, fee, restitution or incarceration costs, is paid.

2. Revoke the defendant's probation, parole or community supervision and sentence the defendant to prison pursuant to law.

3. Enter an order pursuant to section 13-812. The levy or execution for the collection of a fine, A fee, restitution or incarceration costs does not discharge a defendant who is incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee, restitution or incarceration costs is collected.

~~D.~~ E. If the court finds that the default is not wilful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including:

1. Modify the manner in which the restitution, fine, fee or incarceration costs are to be paid.

2. Enter any reasonable order ~~which~~ THAT would assure compliance with the order to pay.

3. Enter an order pursuant to section 13-812. The levy or execution for the collection of a fine, A fee, restitution or incarceration costs does not discharge a defendant incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee, restitution or incarceration costs is collected.

~~E.~~ F. If a fine, A fee, restitution or incarceration costs are imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay them from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A OR B of this section.

Sec. 3. Section 13-812, Arizona Revised Statutes, is amended to read:

13-812. Garnishment for nonpayment of fines, fees, restitution or incarceration costs

A. After a hearing on an order to show cause pursuant to section 13-810, subsection A or B OR after a hearing on a petition to revoke probation pursuant to section 13-804, subsection E or the rules of criminal procedure, the court may issue a writ of criminal garnishment for any fine, fee, restitution or incarceration costs.

B. The court may order garnishment for monies that are owed to a victim or the court, the clerk of the court or the prosecuting attorney pursuant to a court order to pay any fine, fee, restitution or incarceration costs. A writ of criminal garnishment applies to any of the following:

1. The defendant's earnings as defined in section 12-1598.

2. Indebtedness that is owed to a defendant by a garnishee for amounts that are not earnings.

3. Monies that are held by a garnishee on behalf of a defendant.

4. The defendant's personal property that is in the possession of a garnishee.

5. If the garnishee is a corporation, shares or securities of a corporation or a proprietary interest in a corporation that belongs to a defendant.

6. The defendant's earnings or monies that are held by the state department of corrections while the defendant is in the custody of the department.

Sec. 4. Section 13-902, Arizona Revised Statutes, is amended to read:

13-902. Periods of probation

A. Unless terminated sooner, probation may continue for the following periods:

1. For a class 2 felony, seven years.

2. For a class 3 felony, five years.

3. For a class 4 felony, four years.

4. For a class 5 or 6 felony, three years.

5. For a class 1 misdemeanor, three years.

6. For a class 2 misdemeanor, two years.

7. For a class 3 misdemeanor, one year.

B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:

1. For a violation of section 28-1381 or 28-1382, five years.

2. For a violation of section 28-1383, ten years.

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than ~~three~~ FIVE years.

2. For a misdemeanor, not more than ~~one year~~ TWO YEARS.

D. Notwithstanding any other provision of law, justice courts and municipal courts may impose the probation periods specified in subsection A, paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

E. After conviction of a felony offense or an attempt to commit any offense that is included in chapter 14 or 35.1 of this title or section 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may continue for a term of not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

F. After conviction of a violation of section 13-3824, subsection A, if a term of probation is imposed and the offense for which the person was required to register was a felony, probation may continue for a term of not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

G. Beginning November 1, 2006, after conviction of a dangerous crime against children as defined in section 13-604.01, if a term of probation is imposed, the court shall require global position system monitoring for the duration of the term of probation.

Sec. 5. Section 13-3602, Arizona Revised Statutes, is amended to read:

13-3602. <u>Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction</u>

A. A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence. If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff and the minor is a specifically designated person for the purposes of subsection G of this section. If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is

an appropriate requesting party for the plaintiff. For the purposes of this section, notwithstanding the location of the plaintiff or defendant, any court in this state may issue or enforce an order of protection.

B. An order of protection shall not be granted:

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

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

3. Against more than one defendant.

C. The petition shall state the:

1. Name of the plaintiff. The plaintiff's address shall be disclosed to the court for purposes of service. If the address of the plaintiff is unknown to the defendant, the plaintiff may request that the address be protected. On the plaintiff's request, the address shall not be listed on the petition. Whether the court issues an order of protection, the protected address shall be maintained in a separate document or automated database and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.

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

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

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

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

6. Desired relief.

D. A fee shall not be charged for filing a petition under this section or for service of process. On request of the plaintiff, each order of protection that is issued by a municipal court shall be served by the police agency for that city if the defendant can be served within the city. If the defendant cannot be served within the city, the police agency in the city in which the defendant can be served shall serve the order. If the order cannot be served within a city, the sheriff shall serve the order. On request of the plaintiff, each order of protection that is issued by a justice of the peace shall be served by the constable or sheriff for that jurisdiction if the defendant can be served within the jurisdiction. If the defendant cannot be served within that jurisdiction, the constable or sheriff in the jurisdiction in which the defendant can be served shall serve the order. On request of the plaintiff, each order of protection that is issued by a superior court judge or commissioner shall be served by the sheriff of the county. If the defendant cannot be served within that jurisdiction, the sheriff in the jurisdiction in which the defendant can be served shall serve the order. Each court shall provide, without charge, forms for purposes of

this section for assisting parties without counsel. The court shall make reasonable efforts to provide to both parties an appropriate information sheet on emergency and counseling services that are available in the local area.

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

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

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

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

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

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

2. Grant one party the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result. If the other party is accompanied by a law enforcement officer, the other party may return to the residence on one occasion to retrieve belongings. A law enforcement officer is not liable for any act or omission in the good faith exercise of the officer's duties under this paragraph.

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

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

5. If the order was issued after notice and a hearing at which the defendant had an opportunity to participate, require the defendant to

complete a domestic violence offender treatment program that is provided by a facility approved by the department of health services or a probation department or any other program deemed appropriate by the court.

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

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

I. At any time during the period during which the order is in effect, a party WHO IS under an order of protection or WHO IS restrained from contacting the other party is entitled to one hearing on written request. No fee may be charged for requesting a hearing. A hearing that is requested by a party who is under an order of protection or who is restrained from contacting the other party shall be held within ten days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing shall be held within five days from the date requested. The hearing shall be held at the earliest possible time. An ex parte order that is issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, quash or continue the order.

J. THROUGH DECEMBER 31, 2007, the order shall include the following statement:

Warning

This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

K. BEGINNING JANUARY 1, 2008, THE ORDER SHALL INCLUDE THE FOLLOWING STATEMENT:

WARNING

THIS IS AN OFFICIAL COURT ORDER. IF YOU DISOBEY THIS ORDER, YOU WILL BE SUBJECT TO ARREST AND PROSECUTION FOR THE CRIME OF INTERFERING WITH JUDICIAL PROCEEDINGS AND ANY OTHER CRIME YOU MAY HAVE COMMITTED IN DISOBEYING THIS ORDER.

~~K.~~ L. A copy of the petition and the order shall be served on the defendant within one year from the date the order is signed. An order of protection that is not served on the defendant within one year expires. An order is effective on the defendant on service of a copy of the order and petition. An order expires one year after service on the defendant. A

modified order is effective ~~upon~~ ON service and expires one year after service of the initial order and petition.

~~L.~~ M. Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the issuing court. This filing shall be completed in person, shall be made by fax or shall be postmarked, if sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty-four hours after the affidavit, acceptance or return of service has been filed, excluding weekends and holidays, the court from which the order or any modified order was issued shall forward to the sheriff of the county in which the court is located a copy of the order of protection and a copy of the affidavit or certificate of service of process or acceptance of service. On receiving these copies, the sheriff shall register the order. Registration of an order means that a copy of the order of protection and a copy of the affidavit or acceptance of service have been received by the sheriff's office. The sheriff shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its registration, and for enforcement purposes pursuant to section 13-2810, a copy of an order of the court, whether or not registered, is presumed to be a valid existing order of the court for a period of one year from the date of service of the order on the defendant.

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

~~N.~~ O. A person who is arrested pursuant to subsection ~~M.~~ N of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for any other

additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant. THE AGENCY WITH CUSTODY OF THE DEFENDANT SHALL MAKE REASONABLE EFFORTS TO CONTACT THE VICTIM AND OTHER SPECIFICALLY DESIGNATED PERSONS IN THE ORDER OF PROTECTION, IF KNOWN TO THE CUSTODIAL AGENCY, WHO REQUESTED NOTIFICATION IMMEDIATELY ON RELEASE OF THE ARRESTED PERSON FROM CUSTODY.

~~O.~~ P. The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The superior court shall have exclusive jurisdiction to issue orders of protection in all cases if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. A municipal court or justice court shall not issue an order of protection if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. After issuance of an order of protection, if the municipal court or justice court determines that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties, the municipal court or justice court shall stop further proceedings in the action and forward all papers, together with a certified copy of docket entries or any other record in the action, to the superior court where they shall be docketed in the pending superior court action and shall proceed as though the petition for an order of protection had been originally brought in the superior court. Notwithstanding any other law and unless prohibited by an order of the superior court, a municipal court or justice court may hold a hearing on all matters relating to its ex parte order of protection if the hearing was requested before receiving written notice of the pending superior court action. No order of protection shall be invalid or determined to be ineffective merely because it was issued by a lower court at a time when an action for maternity or paternity, annulment, legal separation or dissolution of marriage was pending in a higher court. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. An order that is entered by a justice court or municipal court after a hearing pursuant to this section may be appealed to the superior court as provided in title 22, chapter 2, article 4, section 22-425, subsection B and the superior court rules of civil appellate procedure without regard to an amount in controversy. No fee may be charged to either party for filing an appeal. For the purposes of this subsection, "pending" means, with respect to an action for annulment, legal separation or dissolution of marriage or for maternity or paternity, either that:

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

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

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

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

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

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

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

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

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

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

4. A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another state, a United States territory or an Indian tribe if the order was given to the officer by any source. A

peace officer may also rely on the statement of any person who is protected by the order that the order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

Sec. 6. Section 13-4409, Arizona Revised Statutes, is amended to read:

13-4409. Notice of criminal proceedings

A. Except as provided in subsection B, the court shall provide notice of criminal proceedings, for criminal offenses filed by information, complaint or indictment, except initial appearances and arraignments, to the prosecutor's office at least five days before a scheduled proceeding to allow the prosecutor's office to provide notice to the victim.

B. If the court finds that it is not reasonable to provide the five days' notice to the prosecutor's office under subsection A, the court shall state in the record why it was not reasonable to provide five days' notice.

C. On receiving the notice from the court, the prosecutor's office shall, on request, give notice to the victim in a timely manner of scheduled proceedings and any changes in that schedule, INCLUDING ANY CONTINUANCES.

Sec. 7. Section 13-4411, Arizona Revised Statutes, is amended to read:

13-4411. Notice of post-conviction review and appellate proceedings

A. Within fifteen days after sentencing the prosecutor's office shall, on request, notify the victim of the sentence imposed on the defendant.

B. The prosecutor's office shall provide the victim with a form that allows the victim to request post-conviction notice of all post-conviction review and appellate proceedings, all post-conviction release proceedings, all probation modification proceedings that impact the victim, all probation revocation or termination proceedings, any decisions that arise out of these proceedings, all releases and all escapes.

C. The prosecutor's office shall advise the victim on how the completed request form may be filed with the appropriate agencies and departments.

D. On request of the victim, the prosecutor's office that is responsible for handling any post-conviction or appellate proceedings IMMEDIATELY shall notify the victim of the proceedings and any decisions that arise out of the proceedings.

E. BEGINNING DECEMBER 1, 2007, THE SUPREME COURT OR COURT OF APPEALS SHALL SEND A VICTIM WHO REQUESTS NOTICE PURSUANT TO THIS SECTION A COPY OF THE MEMORANDUM DECISION OR OPINION FROM THE ISSUING COURT CONCURRENTLY WITH THE PARTIES. IF THE VICTIM IS REPRESENTED BY COUNSEL, THE NOTICE SHALL BE PROVIDED TO THE VICTIM'S COUNSEL.

Sec. 8. Section 13-4430, Arizona Revised Statutes, is amended to read:

13-4430. Consultation between crime victim advocate and victim; privileged information; exception

A. A crime victim advocate shall not disclose as a witness or otherwise any communication except compensation or restitution information

between himself and the victim unless the victim consents in writing to the disclosure.

B. Unless the victim consents in writing to the disclosure, a crime victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda, except compensation or restitution information, that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on the communication between the victim and the advocate.

C. The communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory ~~material~~ EVIDENCE.

D. A defendant may make a motion for disclosure of privileged information. If the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in camera. Material that the court finds is exculpatory shall be disclosed to the defendant.

E. If, with the consent of the victim, the crime victim advocate discloses to the prosecutor or a law enforcement agency any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports or memoranda, the prosecutor or law enforcement agent shall disclose such material to the defendant's attorney only if such information is otherwise discoverable.

F. Notwithstanding ~~the provisions of~~ subsections A and B, ~~if a crime victim advocate is employed or authorized by a prosecutor's office, the advocate may disclose information to the prosecutor with the oral consent of the victim~~ IF A CRIME VICTIM CONSENTS EITHER VERBALLY OR IN WRITING, A CRIME VICTIM ADVOCATE MAY DISCLOSE INFORMATION TO OTHER PROFESSIONALS AND ADMINISTRATIVE SUPPORT PERSONS THAT THE ADVOCATE WORKS WITH FOR THE PURPOSE OF ASSISTING THE ADVOCATE IN PROVIDING SERVICES TO THE VICTIM.

Sec. 9. Section 13-4434, Arizona Revised Statutes, is amended to read:

13-4434. Victim's right to privacy; exception

A. ~~Beginning January 1, 1992~~ The victim has the right at any court proceeding not to testify regarding the victim's addresses, telephone numbers, ~~place~~ PLACES of employment or other locating information unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.

B. A VICTIM'S CONTACT AND IDENTIFYING INFORMATION THAT IS OBTAINED, COMPILED OR REPORTED BY A LAW ENFORCEMENT AGENCY SHALL BE REDACTED BY THE ORIGINATING AGENCY IN PUBLICLY ACCESSIBLE RECORDS PERTAINING TO THE CRIMINAL CASE INVOLVING THE VICTIM.

C. SUBSECTION B DOES NOT APPLY TO:

1. THE VICTIM'S NAME.

2. ANY RECORDS THAT ARE TRANSMITTED BETWEEN LAW ENFORCEMENT AND PROSECUTION AGENCIES OR A COURT.

3. ANY RECORDS IF THE VICTIM HAS CONSENTED TO THE RELEASE OF THE INFORMATION.

4. THE ADDRESS OR LOCATION AT WHICH THE REPORTED CRIME OCCURRED.

Sec. 10. Section 13-4435, Arizona Revised Statutes, is amended to read:

13-4435. Speedy trial; continuance; notice

A. In any criminal proceeding, the court, prosecutor and law enforcement officials shall take appropriate action to ensure a speedy trial for the victim.

B. THE PROSECUTOR SHALL MAKE REASONABLE EFFORTS TO NOTIFY A VICTIM OF ANY REQUEST FOR A CONTINUANCE, EXCEPT THAT IF THE VICTIM IS REPRESENTED BY COUNSEL WHO HAS FILED A NOTICE OF APPEARANCE, THE COURT, IF THE REQUEST FOR A CONTINUANCE IS IN WRITING, SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE VICTIM'S COUNSEL IN THE SAME MANNER IN WHICH A PARTY IS NOTIFIED.

C. A MOTION TO CONTINUE SHALL BE IN WRITING UNLESS THE COURT MAKES A FINDING ON THE RECORD THAT EXIGENT CIRCUMSTANCES EXIST TO PERMIT AN ORAL MOTION.

D. THE COURT SHALL GRANT A CONTINUANCE ONLY IF EXTRAORDINARY CIRCUMSTANCES EXIST AND THE DELAY IS INDISPENSABLE TO THE INTERESTS OF JUSTICE. A CONTINUANCE MAY BE GRANTED ONLY FOR THE TIME NECESSARY TO SERVE THE INTERESTS OF JUSTICE.

E. SUBSECTIONS B, C AND D DO NOT APPLY TO JUSTICE OF THE PEACE AND MUNICIPAL COURTS.

~~B.~~ F. ~~In any criminal proceeding in which a continuance is requested~~ BEFORE RULING ON A MOTION FOR A CONTINUANCE, the court shall consider the victim's views and the victim's right to a speedy trial. If a continuance is granted, the court shall state on the record the SPECIFIC reason for the continuance.

Sec. 11. Section 39-127, Arizona Revised Statutes, is amended to read:

39-127. Free copies of police reports and transcripts for crime victims; definitions

A. A victim of a criminal offense that is a part I crime under the statewide uniform crime reporting program or an immediate family member of the victim if the victim is killed or incapacitated has the right to receive one copy of the police report from the investigating law enforcement agency at no charge AND, ON REQUEST OF THE VICTIM, THE COURT OR THE CLERK OF THE COURT SHALL PROVIDE, AT NO CHARGE, THE MINUTE ENTRY OR PORTION OF THE RECORD OF ANY PROCEEDING IN THE CASE THAT ARISES OUT OF THE OFFENSE COMMITTED AGAINST THE VICTIM AND THAT IS REASONABLY NECESSARY FOR THE PURPOSE OF PURSUING A CLAIMED VICTIM'S RIGHT.

B. For the purposes of this section, "criminal offense", "immediate family" and "victim" have the same meanings prescribed in section 13-4401.

Sec. 12. Repeal

Laws 2005, chapter 260, section 15 is repealed.

Sec. 13. Purpose

A. The people of the state of Arizona overwhelmingly passed the Arizona victims' bill of rights in 1990.

B. Before passage of the victims' bill of rights, victims had no assertable right to a speedy and prompt resolution or to a prompt and final conclusion of a case after the conviction and sentence.

C. Among the rights guaranteed to crime victims by the Arizona victims' bill of rights are:

1. The right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse, throughout the criminal justice process.

2. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.

3. To be heard at any proceeding when any postconviction release from confinement is being considered.

4. The right to a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

5. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.

D. The victims' bill of rights gave the legislature the power to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to crime victims by the victims' bill of rights.

E. The purpose of the legislature in passing this bill is to protect and preserve the rights guaranteed to crime victims by the victims' bill of rights by ensuring that victims are paid restitution, are given due notice throughout criminal cases and have their privacy protected.

Sec. 14. Intent

It is the intent of the legislature to give effect to the victims' bill of rights and, if necessary, enact future legislation addressing the timelines for filing notice for postconviction relief in noncapital and capital cases, postconviction relief discovery procedures, speedy trial requirements and case transfer procedures that are currently being addressed by both the capital case task force established by the chief justice of the supreme court on February 12, 2007, and the superior court of Maricopa County.

APPROVED BY THE GOVERNOR JULY 2, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 2, 2007.

Passed the House June 11, 20 07,

by the following vote: 51 Ayes,

0 Nays, 9 Not Voting

Speaker of the House

Pro Tempore

Norman L. Moore

Chief Clerk of the House

Passed the Senate March 5, 20 07,

by the following vote: 23 Ayes,

4 Nays, 3 Not Voting

Timothy S. Bee

President of the Senate

Chauncia 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

S.B. 1286

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate June 19, 20 07

by the following vote: 27 **Ayes,**

0 **Nays,** 3 **Not Voting**

Timothy S Bee
President of the Senate

Cheryl Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

19th **day of** June, 20 07

at 4:55 **o'clock** p. **M.**

Jennifer Ybarra
Secretary to the Governor

Approved this 2 **day of**

July

at 11:00 **o'clock** A **M.**

Jan Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 2 **day of** July, 20 07

S.B. 1286

at 2:43 **o'clock** P. **M.**

Janice K. Brewer
Secretary of State