House Engrossed

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JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 52

HOUSE BILL 2208

AN ACT

AMENDING SECTIONS 13-2921.01 AND 13-3601, ARIZONA REVISED STATUTES; RELATING TO DOMESTIC VIOLENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-2921.01, Arizona Revised Statutes, is amended to read:

13-2921.01. Aggravated harassment; classification; definition

A. A person commits aggravated harassment if the person commits harassment as provided in section 13-2921 and any of the following applies:

1. A court has issued an order of protection or an injunction against harassment against the person and in favor of the victim of harassment and the order or injunction has been served and is still valid.

2. The person has previously been convicted of an offense included in section 13-3601.

B. The victim of any previous offense shall be the same as in the present offense.

C. A person who violates subsection A, paragraph 1 of this section is guilty of a class 6 felony. A person who commits a second or subsequent violation of subsection A, paragraph 1 of this section is guilty of a class 5 felony. A person who violates subsection A, paragraph 2 of this section is guilty of a class 5 felony.

D. For the purposes of this section, "convicted" means a person who was convicted of an offense included in section 13-3601~~, who had judgment deferred pursuant to section 13-3601, subsection M~~ or who was adjudicated delinquent for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult for an offense included in section 13-3601.

Sec. 2. 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

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 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

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

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

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

4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.

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

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

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

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

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

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

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

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

I. A person WHO IS arrested pursuant to subsection B of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. Any 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 additional conditions ~~which~~ THAT the court deems appropriate, including participation in any counseling programs available to the defendant.

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

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

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

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

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

L. An offense THAT IS included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified. If the defendant committed a felony offense listed in

subsection A of this section against a pregnant victim and knew that the victim was pregnant or if the defendant committed a felony offense causing physical injury to a pregnant victim and knew that the victim was pregnant, the maximum sentence otherwise authorized shall be increased by up to two years.

~~M. If the defendant is found guilty of an offense included in domestic violence and if probation is otherwise available for that offense, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation or intensive probation, as provided in this subsection. The terms and conditions of probation or intensive probation shall include those necessary to provide for the protection of the alleged victim and other specifically designated persons and additional conditions and requirements which the court deems appropriate, including imposition of a fine, incarceration of the defendant in a county jail, payment of restitution, completion of 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 counseling or diversionary programs that do not involve domestic violence and that are available to the defendant. On violation of a term or condition of probation or intensive probation, the court may enter an adjudication of guilt and proceed as otherwise provided for revocation of probation. On fulfillment of the terms and conditions of probation or intensive probation, the court shall discharge the defendant and dismiss the proceedings against the defendant. This subsection does not apply in any case in which the defendant has previously been found guilty under this section, or in which charges under this section have previously been dismissed in accordance with this subsection.~~

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

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

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

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

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

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

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

2. A third or subsequent charge may be filed as a felony and a conviction for that offense shall result in a term of incarceration.

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

APPROVED BY THE GOVERNOR APRIL 7, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2004.