

1 Honorable Jennifer Green
2 Criminal Presiding Judge
3 Superior Court of Arizona in Maricopa County
4 175 W. Madison Street
5 Phoenix, Arizona 85003

6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7
8 In the Matter of:

} Supreme Court No. R-22-0039

9
10 PETITION TO AMEND RULE 26.11
11 OF RULES OF CRIMINAL
12 PROCEDURE AND RULES 1, 3, 4,
13 AND 42 OF THE RULES OF
14 PROTECTIVE ORDER
15 PROCEDURES AND ADOPT RULE
16 43 OF THE RULES OF
17 PROTECTIVE ORDER
18 PROCEDURE

} COMMENT TO PROPOSED RULE
ADOPTIONS AND AMENDMENTS

19 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Criminal
20 Presiding Judge of the Superior Court in Maricopa County submits the following
21 comment regarding amendments and adoption of new rules to the Arizona Rules
22 of Criminal Procedure and the Rules of Protective Order Procedures. The
23 proposed rules are to implement procedures pursuant to the newly enacted
24 A.R.S. § 13-719: lifetime injunctions that prohibit a defendant from contacting a
victim if the defendant has been convicted of certain crimes and the victim
requests the injunction.

25 The proposed rules address two different procedures under the new
26 statute: (1) the process for ordering a lifetime injunction at the time of
27 sentencing for sentences imposed after September 24, 2022 (the date the statute
28 went into effect); and (2) the process for ordering a lifetime injunction for

1 eligible offenses where the sentencing took place prior to September 24, 2022.
2 The proposed Rule of Criminal Procedure 26.11 governs post-September 24,
3 2022 lifetime injunctions that are ordered at the time of sentencing. Under the
4 proposed rule, the lifetime no-contact injunction must be issued and served on
5 the defendant at sentencing. In order to do so, either the prosecutor or the victim
6 must submit a “Confidential Victim Information Sheet” to the court. Once the
7 order is issued and served on the defendant, both the order and the Confidential
8 Victim Information Sheet are forwarded by the Clerk of Court to the Department
9 of Public Safety. An issue that the proposed Rule 26.11 does not address are
10 circumstances in which a victim indicates (to the prosecutor or to the court) a
11 desire for a lifetime injunction for an eligible offense, but at the time of
12 sentencing the Confidential Victim Information Sheet is not yet available. This
13 may be because the victim is not present in the courtroom at the time of
14 sentencing. The proposed rule requires the court to serve the defendant at the
15 sentencing hearing and does not have an alternate process for serving the
16 defendant post-sentencing—even though the court may not have adequate
17 information to issue the order until after sentencing has occurred.

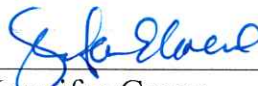
18 In addition, I have the following suggestions to amend the proposed
19 Arizona Rules of Protective Order Procedure Rule 43 (the proposed amendments
20 are attached at Appendix A and in red). First, Rule 43(b) should read “A
21 qualifying conviction for a lifetime no-contact injunction issued pursuant to this
22 rule is a conviction of any of the following offenses, whether completed or
23 preparatory, if the conviction has not been dismissed, expunged or overturned
24 **OR** the defendant has not been pardoned.” (The proposed rule currently reads
25 “**AND** the defendant has not been pardoned.”)

26 Second, Rule 43(c) currently says “the victim or victim representative”
27 may file a petition requesting the lifetime injunction. Rule 43(h)(2) also says that
28 either the “victim or victim representative” may initiate service of the lifetime

1 no-contact injunction by delivering a copy to law enforcement. The phrase
2 “victim representative” is very broad and it seems like it would apply to anyone
3 who asserts themselves as a “victim representative.” I would suggest amending
4 the language in Rule 43(c) to limit who may file a petition for a lifetime
5 injunction to “the victim, the victim’s attorney, the victim’s legal guardian, or a
6 prosecutor.” Additionally, I would limit who can initiate service of the
7 injunction to “the victim, the victim’s attorney, or the victim’s legal guardian.”

8 Finally, Rule 43(e) sets forth the supporting documentation that must be
9 filed with a petition. Rule 43(e)(1)(d) currently states that the petition must
10 include “whether the victim and the defendant have an existing parenting time
11 plan in place.” The purpose of this is to let the court know that there may be
12 other court orders in place that might be impacted by the lifetime injunction. I
13 would suggest expanding this to include other orders with the following
14 language: Rule 43(e)(1)(d): “whether the victim and the defendant have existing
15 orders under Title 25 regarding parenting time or decision-making or an existing
16 order under Title 8.” This will alert the court to other types of orders that might
17 be impacted in addition to parenting time orders.

18
19 Respectfully submitted this 31st day of October, 2022.

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21 

22 Hon. Jennifer Green
23 Criminal Department Presiding Judge
24 Superior Court of Arizona in Maricopa
25 County

26 Electronic copy filed with
27 the Clerk of the Arizona Supreme Court
28 this 31st day of October, 2022.

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APPENDIX A

(deletions shown with ~~strikethrough~~, new language is underlined)
[Proposed changes to the Rule in red]

Arizona Rules of Protective Order Procedure

PART XI. LIFETIME NO-CONTACT INJUNCTIONS UNDER A.R.S. § 13-719(D)

Rule 43. Lifetime No-Contact Injunctions

(a) Applicability. This rule governs petitions that are filed pursuant to A.R.S. § 13-719(D) for the issuance of a lifetime no-contact injunction against a defendant sentenced before September 24, 2022 for a conviction of an offense listed in A.R.S. § 13-719(A).

(b) Qualifying Convictions. A qualifying conviction for a lifetime no-contact injunction issued pursuant to this rule is a conviction of any of the following offenses, whether completed or preparatory, if the conviction has not been dismissed, expunged, or overturned; or ~~and~~ the defendant has not been pardoned:

- (1) A dangerous offense as defined in A.R.S. § 13-105 that is also a felony;
- (2) A serious offense or violent or aggravated felony as defined in A.R.S. § 13-706; or
- (3) A felony offense included in Title 13, Chapter 14 or 35.1.

(c) Who May File. The victim, the victim's attorney, the victim's legal guardian, or the prosecutor ~~or victim representative~~ may file the petition, except that if the victim requesting the lifetime no-contact injunction is a minor, then the parent, legal guardian, or person who has statutorily defined legal custody of the minor victim must file the petition unless the court determines otherwise. "Victim" as used in this rule and in Rule 4(e) has the same meaning as set forth in A.R.S. § 13-4401.

(d) Place of Filing. The petition must be filed in the court where the defendant was sentenced.

(e) Petition; Supporting Documentation.

(1) Required Information. The petition must include:

- (a) whether the filer is the victim or a victim representative;

- 1 (b) the defendant's name and date of birth;
2 (c) the eligible conviction that forms the basis of the request;
3 (d) whether the victim and the defendant have existing orders under
4 Title 25 regarding parenting time or decision making or an existing
5 order under Title 8; and an existing parenting time plan in place and
6 (e) the criminal case number for the conviction.

7 (2) *Other Information, if Available.* The petition should also include, if
8 available:

- 9 (a) the defendant's address, telephone number, and email address;
10 (b) the defendant's whereabouts or information regarding the best
11 location for service;
12 (c) the defendant's name at the time of arrest if different than the
13 defendant's current name; and
14 (d) a copy of the sentencing order.

15 (3) *Declaration Under Penalty of Perjury.* The filer must sign the petition
16 with the following declaration: "I declare under penalty of perjury that the
17 information I have provided in this petition and any attachments is true and
18 correct to the best of my knowledge."

19 (4) *Confidential Victim Information Sheet.* The filer must attach a
20 completed Confidential Victim Information Sheet to the petition.

21 (5) *Supporting Documentation.* The court may request supporting
22 documentation for purposes of verifying that the offense for which the
23 defendant was convicted is a qualifying offense.

24 **(f) Continuing Duty to Provide Current Address.** The victim has a continuing
25 duty to provide the clerk of the court with a current and correct phone number and
26 mailing address where the victim can be notified.

27 **(g) Processing the Petition.** If the court determines that the conviction is a
28 qualifying offense, the court must issue the lifetime no-contact injunction and
provide a copy to the victim. If the court determines that the conviction is not a
qualifying conviction, the court must issue a written order stating the reason for
denial and provide a copy of the order to the victim.

(h) Service. If the court issues a lifetime no-contact injunction, a copy of the order
must be personally served on the defendant. There is no requirement that the copy
of the order served on the defendant be certified.

(1) *Who Can Serve.* A lifetime no-contact injunction issued pursuant to
A.R.S. § 13-719(D) must be served by the sheriff or other law enforcement
officer, or a process server.

1 (2) Service by Sheriff or Other Law Enforcement Officer. The victim, the
2 victim's attorney, or the victim's legal guardian or victim representative
3 may initiate service by the sheriff or other law enforcement officer by
4 delivering a copy of the order for the lifetime no-contact injunction to the
5 sheriff of the issuing county or other appropriate law enforcement agency.
6 A fee may not be charged for service by the sheriff or other law
7 enforcement agency.

8 (3) Proof of Service. Proof of service must be promptly filed with the clerk
9 of the issuing court as soon as practicable after service but no later than 72
10 hours, excluding weekends and holidays. Proof of service may be submitted
11 by facsimile, electronically, or in person.

12 (4) Notifying the Department of Public Safety (DPS). Upon receiving proof
13 of service, the clerk or other court staff must forward a copy of the returned
14 proof of service, order for the lifetime no-contact injunction, and
15 Confidential Victim Information Sheet to DPS to register the lifetime no-
16 contact injunction with the National Crime Information Center.

17 **(i) Validity; Dismissal.** A lifetime no-contact injunction issued pursuant to A.R.S.
18 § 13-719(D) is effective on service and is valid for the defendant's natural lifetime
19 unless it is dismissed.

20 (1) Dismissal on Request of the Victim. The victim may make a request to
21 the court to dismiss the lifetime no-contact injunction at any time by filing a
22 written motion to dismiss. Court personnel must verify the victim's identity
23 when the motion is filed. The court may schedule a hearing to make a
24 determination on the victim's request for dismissal. If the court grants the
25 victim's request, it must issue a written order and provide a copy to the
26 victim and the defendant.

27 (2) Dismissal on Request of the Defendant. The defendant, by filing a
28 written motion, may request dismissal of a lifetime no-contact injunction
only if:

(a) the victim has died;

(b) the conviction on which the lifetime no-contact injunction is
based has been dismissed, expunged or overturned, or the defendant
has been pardoned; or

(c) the conviction on which the lifetime no-contact injunction is
based is not a qualifying conviction.

(3) Notification; Response. Before granting a defendant's request to dismiss
a lifetime no-contact injunction based on 2(b) or (c), the court must notify
the victim of the request and give the victim an opportunity to file a written
response.

1 **(j) Public Access to Petition or Injunction Information.**

2 (1) The court must not make publicly available any information regarding
3 the filing for, contents of a petition for, or issuance of a lifetime no-contact
4 injunction issued under this rule until proof of service of the injunction has
5 been filed with the court. The court may share information about the
6 lifetime no-contact injunction with the victim or victim representative and
7 prosecutors or law enforcement when necessary to carry out their official
8 responsibilities.

9 (2) The Confidential Victim Information Sheet filed under (e)(4) may be
10 provided to DPS under (g)(4) but cannot otherwise be made available to the
11 public or the defendant to inspect, obtain copies of, or otherwise have
12 access to.

13 **(k) Forms.** Courts must provide, without charge, lifetime no-contact injunction
14 forms. For purposes of assisting law enforcement with recognizing orders for
15 lifetime no-contact injunctions so that law enforcement can prioritize these orders
16 and not assess a fee for service, courts and parties must use only the forms
17 approved by the Director of the Administrative Office of the Courts. Courts may
18 make margin and caption changes.