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REFERENCE TITLE: **community accountability pilot program**

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

HB 2646

Introduced by

Representatives Konopnicki, Barnes, Bradley, Burns J, Carruthers, Downing, Flake, Hubbs, Jayne, Lored, Miranda B, Reagan, Thompson: Aguirre A, Allen J, Alvarez, Arnold, Boone, Bustamante, Clark, Farnsworth, Gallardo, Gullett, Landrum Taylor, Laughter, Lopes, Lopez L, McClure, Nichols, Quelland, Straughn, Stump, Yarbrough, Senators Anderson, Arzberger, Cannell R, Mead, Soltero V

AN ACT

AMENDING SECTIONS 31-402, 31-411 AND 41-1604.07, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 11, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1609.05; RELATING TO THE STATE DEPARTMENT OF CORRECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 31-402, Arizona Revised Statutes, is amended to
3 read:
4 31-402. Powers of board; powers and duties of governor; powers
5 and duties of executive director
6 A. For all persons who committed felony offenses before January 1,
7 1994, the board of executive clemency shall have exclusive power to pass upon
8 and recommend reprieves, commutations, paroles and pardons. No reprieve,
9 commutation or pardon may be granted by the governor unless it has first been
10 recommended by the board.
11 B. For all persons who committed felony offenses before January 1,
12 1994, all applications for reprieves, commutations and pardons made to the
13 governor shall be at once transmitted to the chairman of the board, and the
14 board shall return the applications with its recommendation to the governor.
15 All applications for reprieves, commutations and pardons made to the governor
16 shall include documentation that the victim or the victim's family was
17 notified pursuant to section 31-411, subsection H.
18 C. For all persons who committed felony offenses on or after January
19 1, 1994, in addition to the powers and duties prescribed in subsection A of
20 this section, the board of executive clemency:
21 1. Is vested with the powers and duties of the board of pardons and
22 paroles as they existed before January 1, 1994 to carry out the provisions of
23 articles 3 through 7 of this chapter.
24 2. After a hearing for which the victim, county attorney and presiding
25 judge are given notice and an opportunity to be heard, may make
26 recommendations to the governor for commutation of sentence after finding by
27 clear and convincing evidence that the sentence imposed is clearly excessive
28 given the nature of the offense and the record of the offender and that there
29 is a substantial probability that when released the offender will conform the
30 offender's conduct to the requirements of the law.
31 3. Shall receive petitions from individuals for whom the court has
32 entered a special order allowing the person to petition the board pursuant to
33 section 13-603, subsection L and may make recommendations to the governor.
34 4. Shall receive petitions from individuals, organizations or the
35 department for review and commutation of sentences and pardoning of offenders
36 in extraordinary cases and may make recommendations to the governor.
37 5. Shall receive petitions from the state department of corrections
38 alleging that an offender has violated the offender's terms and conditions of
39 community supervision and has lapsed or is probably about to lapse into
40 criminal ways or company. If the board determines that an offender on
41 community supervision has violated the terms and conditions of community
42 supervision the board may ~~either~~ DO ANY OF THE FOLLOWING:
43 (a) IF THE OFFENDER HAS NOT COMMITTED AN ADDITIONAL OFFENSE, PLACE THE
44 OFFENDER ON ELECTRONIC MONITORING AND ORDER THE OFFENDER TO PARTICIPATE IN A
45 COMMUNITY ACCOUNTABILITY PROGRAM PURSUANT TO SECTION 41-1609.05.

1 ~~(a)~~ (b) Revoke community supervision and return the offender to
2 prison for the remainder of the offender's community supervision.

3 ~~(b)~~ (c) Impose additional terms and conditions on the offender while
4 keeping the offender on community supervision. If there is reasonable cause
5 to believe that an offender who has been kept on community supervision has
6 violated any term or condition of community supervision, any member of the
7 board may petition the board to revoke community supervision. After a
8 petition to revoke has been submitted, the chairman may issue a summons
9 directing the offender to appear on a specified date for a revocation hearing
10 or may issue a warrant for the offender's arrest. Nothing in this subsection
11 limits the state department of corrections' authority with respect to
12 submitting revocation petitions or issuing revocation warrants.

13 D. Any recommendation for commutation that is made unanimously by the
14 members present and voting and that is not acted on by the governor within
15 ninety days after the board submits its recommendation to the governor
16 automatically becomes effective.

17 E. The executive director shall perform all administrative,
18 operational and financial functions for the board.

19 F. The executive director may employ case analysts as deemed necessary
20 within the limits of legislative appropriation. The analyst shall aid the
21 board in making investigations, in securing information and in performing
22 necessary administrative functions to assist the board in passing upon
23 applications for parole and commutation.

24 G. The executive director may employ hearing officers as deemed
25 necessary within the limits of legislative appropriation. The hearing
26 officers shall conduct probable cause hearings on parole, work furlough and
27 home arrest revocations or rescissions. Hearing officers shall assist the
28 board in making investigations, securing information and performing necessary
29 administrative functions.

30 Sec. 2. Section 31-411, Arizona Revised Statutes, is amended to read:

31 31-411. Parole or discharge; conditions of parole; release
32 under supervision of state department of corrections;
33 notice of hearing; exceptions

34 A. Any prisoner who has been certified as eligible for parole or
35 absolute discharge from imprisonment pursuant to section 31-412, subsection B
36 or section 41-1604.09 shall be given an opportunity to apply for release upon
37 parole or for an absolute discharge from imprisonment. The board of
38 executive clemency shall not entertain any other form of application or
39 petition for the release upon parole or absolute discharge from imprisonment
40 of any prisoner.

41 B. A prisoner eligible for parole or absolute discharge from
42 imprisonment shall be given an opportunity to be heard either before a
43 hearing officer designated by the board or the board itself, at the
44 discretion of the board.

1 C. If the hearing is heard by a hearing officer, the hearing officer
 2 shall make a recommendation on application for parole or absolute discharge
 3 from imprisonment to the board within thirty days after the hearing date.
 4 Within thirty days after the date of the hearing officer's recommendations,
 5 the board shall review these recommendations and either approve, with or
 6 without conditions, or reject the prisoner's application for parole or
 7 absolute discharge from imprisonment. A prisoner eligible for parole or
 8 absolute discharge from imprisonment shall not be denied parole or absolute
 9 discharge from imprisonment without an opportunity to be heard before the
 10 board unless another form of release has been granted.

11 D. If parole is granted, the prisoner shall remain on parole unless
 12 the board revokes the parole or grants an absolute discharge from parole or
 13 until the prisoner reaches ~~his~~ THE individual earned release credit date
 14 pursuant to section 41-1604.10. IF THE PRISONER VIOLATES A CONDITION OF
 15 PAROLE BUT HAS NOT COMMITTED AN ADDITIONAL OFFENSE, THE BOARD MAY PLACE THE
 16 PRISONER ON ELECTRONIC MONITORING AND ORDER THE DEFENDANT TO PARTICIPATE IN A
 17 COMMUNITY ACCOUNTABILITY PROGRAM PURSUANT TO SECTION 41-1609.05. If the
 18 prisoner is still on parole ~~when he reaches his~~ ON REACHING THE individual
 19 earned release credit date pursuant to section 41-1604.10, ~~he~~ THE PRISONER
 20 shall be terminated from parole but shall be subject to revocation under
 21 section 41-1604.10. When the prisoner reaches ~~his~~ THE individual earned
 22 release credit date ~~his~~ THE PRISONER'S parole shall be terminated and ~~he~~ THE
 23 PRISONER shall no longer be under the authority of the board.

24 E. During the period of time that the prisoner remains on supervised
 25 parole under subsection D of this section, the board shall require as a
 26 condition of parole that the prisoner pay a monthly supervision fee of not
 27 less than thirty dollars unless, after determining the inability of the
 28 prisoner to pay the fee, the board requires payment of a lesser amount. The
 29 supervising parole officer shall monitor the collection of the fee. The
 30 board may also impose any conditions of parole it deems appropriate in order
 31 to ensure that the best interests of the prisoner and the citizens of this
 32 state are served. These conditions may include:

- 33 1. Participation in a rehabilitation program or counseling.
- 34 2. Performance of community service work.

35 F. Monies collected pursuant to subsection E of this section shall be
 36 deposited, pursuant to sections 35-146 and 35-147, in the victim compensation
 37 and assistance fund established by section 41-2407.

38 G. When parole or absolute discharge from imprisonment is denied, the
 39 board, ~~shall~~ within ten days, SHALL prepare and deliver to the director of
 40 the state department of corrections a written statement specifying the
 41 individualized reasons for the denial of parole or absolute discharge from
 42 imprisonment unless another form of release has been granted. The prisoner
 43 may view the written statement prepared by the board. Every prisoner, having
 44 served not less than one year, may be temporarily released according to the
 45 rules of the department one hundred eighty days prior to the expiration of

1 the sentence or the earned release credit date, whichever first occurs, if
2 the director finds that such release is in the best interest of the state.
3 The releasee shall remain under control of the state department of
4 corrections until expiration of the term specified in the sentence. If the
5 releasee violates any condition of release, the releasee may be returned to
6 custody without further process.

7 H. ~~The board,~~ When a commutation, absolute discharge from imprisonment
8 or parole is to be considered, ~~shall~~ THE BOARD, on request and before holding
9 a hearing on the commutation, absolute discharge from imprisonment or parole,
10 SHALL notify the attorney general, the presiding judge of the superior court,
11 the county attorney in the county in which the prisoner requesting a
12 commutation, absolute discharge from imprisonment or parole was sentenced,
13 and the victim of the offense for which the prisoner is incarcerated. The
14 notice to the victim shall be mailed to the last known address. The notice
15 shall state the name of the prisoner requesting the commutation, absolute
16 discharge from imprisonment or parole and shall set the month of hearing on
17 the application. The notice to the victim shall also inform the victim of the
18 victim's right to be present and to submit a written report to the board
19 expressing the victim's opinion concerning the release of the prisoner. No
20 hearing concerning commutations, absolute discharge from imprisonment or
21 parole shall be held until fifteen days after the date of giving the notice.
22 On mailing the notice, the board shall file a hard copy of the notice as
23 evidence that notification was sent.

24 I. The provisions of this section requiring notice to the officials
25 named in subsection H of this section shall not apply:

26 1. When there is imminent danger of the death of the person convicted
27 or imprisoned.

28 2. When the term of imprisonment of the applicant is within two
29 hundred ten days of expiration.

30 Sec. 3. Section 41-1604.07, Arizona Revised Statutes, is amended to
31 read:

32 41-1604.07. Earned release credits; forfeiture; restoration

33 A. Pursuant to rules adopted by the director, each prisoner in the
34 eligible earned release credit class shall be allowed an earned release
35 credit of one day for every six days served, including time served in county
36 jails, except for those prisoners who are sentenced to serve the full term of
37 imprisonment imposed by the court.

38 B. Release credits earned by a prisoner pursuant to subsection A of
39 this section shall not reduce the term of imprisonment imposed by the court
40 on the prisoner.

41 C. On reclassification of a prisoner resulting from the prisoner's
42 failure to adhere to the rules of the department or failure to demonstrate a
43 continual willingness to volunteer for or successfully participate in a work,
44 educational, treatment or training program, the director may declare all
45 release credits earned by the prisoner forfeited. In the discretion of the

1 director forfeited release credits may subsequently be restored. The
2 director shall maintain an account of release credits earned by each
3 prisoner.

4 D. A prisoner who has reached the prisoner's earned release date or
5 sentence expiration date shall be released to begin the prisoner's term of
6 community supervision imposed by the court or term of probation if the court
7 waived community supervision pursuant to section 13-603, except that the
8 director may deny or delay the prisoner's release to community supervision or
9 probation if the director believes the prisoner may be a sexually violent
10 person as defined in section 36-3701 until the screening process is complete
11 and the director determines that the prisoner will not be referred to the
12 county attorney pursuant to section 36-3702. If the term of community
13 supervision is waived, the state department of corrections shall provide
14 reasonable notice to the probation department of the scheduled release of the
15 prisoner from confinement by the department. If the court waives community
16 supervision, the director shall issue the prisoner an absolute discharge on
17 the prisoner's earned release credit date. A prisoner who is released on the
18 earned release credit date to serve a term of probation is not under the
19 control of the state department of corrections when community supervision has
20 been waived and the state department of corrections is not required to
21 provide parole services.

22 E. Notwithstanding subsection D of this section, a prisoner who fails
23 to achieve functional literacy at an eighth grade literacy level shall not be
24 released to begin the prisoner's term of community supervision until either
25 the prisoner achieves an eighth grade functional literacy level as measured
26 by standardized assessment testing or the prisoner serves the full term of
27 imprisonment imposed by the court, whichever first occurs. This subsection
28 does not apply to inmates who are any of the following:

29 1. Unable to meet the functional literacy standard required by section
30 31-229.02, subsection A, due to a medical, developmental or learning
31 disability as described in section 31-229, subsection C.

32 2. Classified as level five offenders.

33 3. Foreign nationals.

34 4. Inmates who have less than six months incarceration to serve on
35 commitment to the department.

36 F. The department shall establish conditions of community supervision
37 it deems appropriate in order to ensure that the best interests of the
38 prisoner and the citizens of this state are served. These conditions may
39 include participation in a rehabilitation program or counseling and
40 performance of community service work, except that if the prisoner was
41 convicted of a violation of sexual conduct with a minor under fifteen years
42 of age or molestation of a child under fifteen years of age, the department
43 shall impose as a condition of community supervision a prohibition on
44 residing within four hundred forty feet of a school or its accompanying
45 grounds. If a prisoner who reaches the prisoner's earned release credit date

1 refuses to sign and agree to abide by the conditions of supervision before
2 release on community supervision, the prisoner shall not be released. When
3 the prisoner reaches the sentence expiration date, the prisoner shall be
4 released to begin the term of community supervision. If the prisoner refuses
5 to sign and agree to abide by the conditions of release, the prisoner shall
6 not be released on the sentence expiration date and shall serve the term of
7 community supervision in prison. The department is required to supervise any
8 offender on community supervision until the period of community supervision
9 expires. The department may bring an offender in violation of the offender's
10 terms and conditions before the board of executive clemency. For the
11 purposes of this subsection, "school" means any public, charter or private
12 school where children attend classes.

13 G. The director pursuant to rules adopted by the department shall
14 authorize the release of any prisoner on the prisoner's earned release credit
15 date to serve any consecutive term imposed on the prisoner. The release
16 shall be for the sentence completed only. The prisoner shall remain under
17 the custody and control of the department. The director may authorize the
18 rescission of the release to any consecutive term if the prisoner fails to
19 adhere to the rules of the department.

20 H. If a prisoner absconds from community supervision, any time spent
21 before the prisoner is returned to custody is excluded in calculating the
22 remaining period of community supervision.

23 I. A prisoner shall forfeit five days of the prisoner's earned release
24 credits:

25 1. If the court finds or a disciplinary hearing held after a review by
26 and recommendations from the attorney general's office determines that the
27 prisoner does any of the following:

28 (a) Brings a claim without substantial justification.

29 (b) Unreasonably expands or delays a proceeding.

30 (c) Testifies falsely or otherwise presents false information or
31 material to the court.

32 (d) Submits a claim that is intended solely to harass the party it is
33 filed against.

34 2. For each time the prisoner tests positive for any prohibited drugs
35 during the period of time the prisoner is incarcerated.

36 J. If the prisoner does not have five days of earned release credits,
37 the prisoner shall forfeit the prisoner's existing earned release credits and
38 shall be ineligible from accruing earned release credits until the number of
39 earned release credits the prisoner would have otherwise accrued equals the
40 difference between five days and the number of existing earned release credit
41 days the prisoner forfeits pursuant to this section.

42 K. The director may authorize temporary release on inmate status of
43 eligible inmates pursuant to rules adopted by the director within ninety days
44 of any other authorized release date. The release authorization applies to
45 any inmate who has been convicted of a drug offense, who has been determined

1 to be eligible for participation in the transition program pursuant to
2 section 31-281 and who has agreed to participate in the transition program.

3 L. THE DIRECTOR MAY AUTHORIZE TEMPORARY RELEASE ON INMATE STATUS OF
4 ELIGIBLE INMATES PURSUANT TO RULES ADOPTED BY THE DIRECTOR WITHIN ONE HUNDRED
5 EIGHTY DAYS OF ANY OTHER AUTHORIZED RELEASE DATE. THE RELEASE AUTHORIZATION
6 APPLIES TO ANY INMATE WHOM THE DIRECTOR HAS DETERMINED IS ELIGIBLE FOR
7 PARTICIPATION IN A COMMUNITY ACCOUNTABILITY PROGRAM, WHO HAS AGREED TO
8 PARTICIPATE IN THE COMMUNITY ACCOUNTABILITY PROGRAM PURSUANT TO SECTION
9 41-1609.05 AND WHO WAS NOT CONVICTED OF A VIOLENT OFFENSE.

10 Sec. 4. Title 41, chapter 11, article 1, Arizona Revised Statutes, is
11 amended by adding section 41-1609.05, to read:

12 41-1609.05. Community accountability pilot program; program
13 termination; definition

14 A. THE DEPARTMENT SHALL CONTRACT WITH AN EXPERIENCED PRIVATE OR
15 NONPROFIT ENTITY TO OPERATE A COMMUNITY ACCOUNTABILITY PILOT PROGRAM TO
16 PROVIDE ELIGIBLE INMATES WITH SUPERVISION AND TREATMENT SERVICES. THE
17 DEPARTMENT SHALL PROCURE COMMUNITY ACCOUNTABILITY SERVICES PURSUANT TO
18 CHAPTER 23 OF THIS TITLE.

19 B. THE PILOT PROGRAM SHALL INITIALLY PROVIDE SERVICES TO ONE THOUSAND
20 ELIGIBLE INMATES. AT THE END OF THE SECOND YEAR OF THE PILOT PROGRAM, THE
21 PROGRAM SHALL PROVIDE SERVICES TO TWO THOUSAND ELIGIBLE INMATES. THE PROGRAM
22 SHALL PROVIDE SERVICES THAT ARE DESIGNED TO LOWER RECIDIVISM RATES BY
23 PROVIDING INTENSIVE MONITORING AND SPECIFIC TREATMENT.

24 C. THE GOALS OF THE COMMUNITY ACCOUNTABILITY PILOT PROGRAM INCLUDE:

- 25 1. REDUCING RECIDIVISM.
- 26 2. PROVIDING TREATMENT AND REHABILITATION SERVICES.
- 27 3. PROVIDING SUPERVISION THROUGH ELECTRONIC MONITORING.
- 28 4. PREPARING ELIGIBLE INMATES FOR INDEPENDENT LIVING FOLLOWING
29 COMMUNITY SUPERVISION.
- 30 5. ENHANCING PUBLIC SAFETY.

31 D. THE COMMUNITY ACCOUNTABILITY PILOT PROGRAM SHALL PROVIDE THE
32 FOLLOWING SERVICES TO ELIGIBLE INMATES:

- 33 1. SUBSTANCE ABUSE EDUCATION AND TREATMENT.
- 34 2. ELECTRONIC MONITORING, REMOTE ALCOHOL TESTING, GLOBAL POSITIONING
35 SYSTEM TRACKING AND VOICE IDENTIFICATION COMMUNITY TRACKING.
- 36 3. LIFE SKILLS PROGRAMMING.
- 37 4. EMPLOYMENT PREPARATION.
- 38 5. ANGER MANAGEMENT.
- 39 6. PARENTING SKILLS AND FAMILY ORIENTATION.
- 40 7. COGNITIVE SKILLS TRAINING.
- 41 8. GENERAL EQUIVALENCY DIPLOMAS AND ADULT BASIC EDUCATION.
- 42 9. HOUSING ASSISTANCE.
- 43 10. HEALTH CARE AND STRESS MANAGEMENT.
- 44 11. TRANSPORTATION PLANNING.
- 45 12. GROUP AND INDIVIDUAL COUNSELING.

1 E. THE DIRECTOR SHALL IDENTIFY INMATES WHO ARE ELIGIBLE FOR THE
2 COMMUNITY ACCOUNTABILITY PILOT PROGRAM AND SHALL DETERMINE ALL SUPERVISION,
3 ADMISSION AND TERMINATION REQUIREMENTS. THE DIRECTOR MAY REMOVE AN INMATE
4 FROM THE PROGRAM. THE DIRECTOR MAY ORDER AN ELIGIBLE INMATE TO PARTICIPATE IN
5 THE PROGRAM IN LIEU OF PAROLE OR COMMUNITY SUPERVISION REVOCATION.

6 F. THE CONTRACTING ENTITY SHALL OPERATE THE PROGRAM, INCLUDING THE
7 MANAGEMENT OF ANY FACILITY AND ITS STAFF, THE DESIGN OF THE PROGRAM AND THE
8 INSTALLATION AND MAINTENANCE OF ALL EQUIPMENT NECESSARY FOR OPERATION OF ANY
9 FACILITY. THE CONTRACTING ENTITY SHALL ESTABLISH THREE LEVELS OF BEHAVIOR
10 MODIFICATION AND TREATMENT SERVICES. ON INITIAL ENTRANCE INTO THE PROGRAM,
11 AN ELIGIBLE INMATE SHALL BE PLACED IN LEVEL ONE. CASE MANAGERS SHALL PROVIDE
12 MONTHLY REPORTS TO THE ELIGIBLE INMATE'S SUPERVISING OFFICER, EXCEPT THAT A
13 VIOLATION SHALL BE REPORTED WITHIN TWENTY-FOUR HOURS.

14 G. AFTER AN ELIGIBLE INMATE HAS BEEN IN THE PROGRAM FOR SIXTY DAYS OR
15 MORE, THE DEPARTMENT MAY REQUIRE AS A CONDITION OF PROGRAM PARTICIPATION THAT
16 THE ELIGIBLE INMATE PAY A SUPERVISION FEE. THE CASE MANAGER SHALL MONITOR
17 THE COLLECTION OF THE FEE. MONIES COLLECTED PURSUANT TO THIS SUBSECTION
18 SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE _____
19 FUND.

20 H. DURING THE FIRST YEAR OF OPERATION OF THE PILOT PROGRAM, THE
21 CONTRACTING ENTITY SHALL PROVIDE MONTHLY REPORTS TO THE JOINT LEGISLATIVE
22 BUDGET COMMITTEE. BEGINNING IN THE SECOND YEAR OF THE PILOT PROGRAM, THE
23 CONTRACTING ENTITY SHALL ANNUALLY REPORT TO THE JOINT LEGISLATIVE BUDGET
24 COMMITTEE.

25 I. THE PILOT PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2009
26 PURSUANT TO SECTION 41-3102.

27 J. FOR THE PURPOSES OF THIS SECTION, "ELIGIBLE INMATE" MEANS ANY OF
28 THE FOLLOWING:

29 1. AN INMATE WHO IS ON COMMUNITY SUPERVISION AND WHO VIOLATES A TERM
30 OF COMMUNITY SUPERVISION BUT WHO HAS NOT COMMITTED AN ADDITIONAL OFFENSE.

31 2. AN INMATE WHO WAS NOT CONVICTED OF A VIOLENT OFFENSE, WHO IS
32 CLASSIFIED AS A LEVEL TWO OR LESS OFFENDER, WHO IS ON COMMUNITY SUPERVISION
33 AND WHO VIOLATES A TERM OF COMMUNITY SUPERVISION BUT WHO HAS NOT COMMITTED AN
34 ADDITIONAL OFFENSE.

35 3. AN INMATE WHO HAS SERVED AT LEAST SIXTY PER CENT OF THE INMATE'S
36 SENTENCE AND WHOM THE DIRECTOR DESIGNATES AS ELIGIBLE FOR EARLY RELEASE
37 PURSUANT TO SECTION 41-1604.07, SUBSECTION L.