

REFERENCE TITLE: youthful sex offenders; probation; supervision

State of Arizona
House of Representatives
Forty-eighth Legislature
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2007

HB 2778

Introduced by
Representative Murphy: Senator Johnson

AN ACT

AMENDING SECTIONS 8-246, 8-341 AND 41-1750, ARIZONA REVISED STATUTES;
RELATING TO JUVENILE OFFENDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-246, Arizona Revised Statutes, is amended to
3 read:

4 8-246. Jurisdiction; length of commitment; placement;
5 assessment

6 A. When jurisdiction of a juvenile has been acquired by the juvenile
7 court, the juvenile shall continue under the jurisdiction of the juvenile
8 court until the juvenile attains eighteen years of age, unless sooner
9 discharged pursuant to law. From the time of commitment to the department of
10 juvenile corrections, a juvenile shall be subject to the control of the
11 department of juvenile corrections until the juvenile's absolute discharge or
12 until expiration of the commitment on the juvenile's eighteenth birthday.

13 B. Except pursuant to section 8-341, subsection N ~~OR O~~ and section
14 8-344, the awarding of a juvenile shall not extend beyond the juvenile's
15 eighteenth birthday, and commitment to the department of juvenile corrections
16 shall be until the juvenile attains eighteen years of age unless sooner
17 discharged by the department of juvenile corrections.

18 C. The supreme court in cooperation with the department of juvenile
19 corrections and other state agencies shall develop a common risk needs
20 assessment instrument to be used for each juvenile who is referred to the
21 juvenile court. The juvenile court shall update the risk needs assessment on
22 each subsequent referral of the juvenile to the juvenile court, and the court
23 shall use the risk needs assessment to determine the appropriate disposition
24 of the juvenile. The supreme court in cooperation with the department of
25 juvenile corrections shall develop guidelines to be used by juvenile court
26 judges in determining those juveniles who should be committed to the
27 department of juvenile corrections.

28 Sec. 2. Section 8-341, Arizona Revised Statutes, is amended to read:

29 8-341. Disposition and commitment; definitions

30 A. After receiving and considering the evidence on the proper
31 disposition of the case, the court may enter judgment as follows:

32 1. It may award a delinquent juvenile:

33 (a) To the care of the juvenile's parents, subject to supervision of a
34 probation department.

35 (b) To a probation department, subject to any conditions the court may
36 impose, including a period of incarceration in a juvenile detention center of
37 not more than one year.

38 (c) To a reputable citizen of good moral character, subject to the
39 supervision of a probation department.

40 (d) To a private agency or institution, subject to the supervision of
41 a probation officer.

42 (e) To the department of juvenile corrections.

43 (f) To maternal or paternal relatives, subject to the supervision of a
44 probation department.

1 (g) To an appropriate official of a foreign country of which the
2 juvenile is a foreign national who is unaccompanied by a parent or guardian
3 in this state to remain on unsupervised probation for at least one year on
4 the condition that the juvenile cooperate with that official.

5 2. It may award an incorrigible child:

6 (a) To the care of the child's parents, subject to the supervision of
7 a probation department.

8 (b) To the protective supervision of a probation department, subject
9 to any conditions the court may impose.

10 (c) To a reputable citizen of good moral character, subject to the
11 supervision of a probation department.

12 (d) To a public or private agency, subject to the supervision of a
13 probation department.

14 (e) To maternal or paternal relatives, subject to the supervision of a
15 probation department.

16 B. If a juvenile is placed on probation pursuant to this section, the
17 period of probation may continue until the juvenile's eighteenth birthday,
18 except that the term of probation shall not exceed one year if all of the
19 following apply:

20 1. The juvenile is not charged with a subsequent offense.

21 2. The juvenile has not been found in violation of a condition of
22 probation.

23 3. The court has not made a determination that it is in the best
24 interests of the juvenile or the public to require continued supervision.
25 The court shall state by minute entry or written order its reasons for
26 finding that continued supervision is required.

27 4. The offense for which the juvenile is placed on probation does not
28 involve the discharge, use or threatening exhibition of a deadly weapon or
29 dangerous instrument or the intentional or knowing infliction of serious
30 physical injury on another.

31 5. The offense for which the juvenile is placed on probation does not
32 involve a violation of title 13, chapter 14 or 35.1.

33 6. Restitution ordered pursuant to section 8-344 has been made.

34 C. If a juvenile is adjudicated as a first time felony juvenile
35 offender, the court shall provide the following written notice to the
36 juvenile:

37 You have been adjudicated a first time felony juvenile
38 offender. You are now on notice that if you are adjudicated of
39 another offense that would be a felony offense if committed by
40 an adult and if you commit the other offense when you are
41 fourteen years of age or older, you will be placed on juvenile
42 intensive probation, which may include home arrest and
43 electronic monitoring, or you may be placed on juvenile
44 intensive probation and may be incarcerated for a period of time
45 in a juvenile detention center, or you may be committed to the

1 department of juvenile corrections or you may be prosecuted as
2 an adult. If you are convicted as an adult of a felony offense
3 and you commit any other offense, you will be prosecuted as an
4 adult.

5 D. If a juvenile is fourteen years of age or older and is adjudicated
6 as a repeat felony juvenile offender, the juvenile court shall place the
7 juvenile on juvenile intensive probation, which may include home arrest and
8 electronic monitoring, may place the juvenile on juvenile intensive
9 probation, which may include incarceration for a period of time in a juvenile
10 detention center, or may commit the juvenile to the department of juvenile
11 corrections pursuant to subsection A, paragraph 1, subdivision (e) of this
12 section for a significant period of time.

13 E. If the juvenile is adjudicated as a repeat felony juvenile
14 offender, the court shall provide the following written notice to the
15 juvenile:

16 You have been adjudicated a repeat felony juvenile
17 offender. You are now on notice that if you are arrested for
18 another offense that would be a felony offense if committed by
19 an adult and if you commit the other offense when you are
20 fifteen years of age or older, you will be tried as an adult in
21 the criminal division of the superior court. If you commit the
22 other offense when you are fourteen years of age or older, you
23 may be tried as an adult in the criminal division of the
24 superior court. If you are convicted as an adult, you will be
25 sentenced to a term of incarceration. If you are convicted as
26 an adult of a felony offense and you commit any other offense,
27 you will be prosecuted as an adult.

28 F. The failure or inability of the court to provide the notices
29 required under subsections C and E of this section does not preclude the use
30 of the prior adjudications for any purpose otherwise permitted.

31 G. After considering the nature of the offense and the age, physical
32 and mental condition and earning capacity of the juvenile, the court shall
33 order the juvenile to pay a reasonable monetary assessment if the court
34 determines that an assessment is in aid of rehabilitation. If the director
35 of the department of juvenile corrections determines that enforcement of an
36 order for monetary assessment as a term and condition of conditional liberty
37 is not cost-effective, the director may require the youth to perform an
38 equivalent amount of community restitution in lieu of the payment ordered as
39 a condition of conditional liberty.

40 H. If a child is adjudicated incorrigible, the court may impose a
41 monetary assessment on the child of not more than one hundred fifty dollars.

42 I. A juvenile who is charged with unlawful purchase, possession or
43 consumption of spirituous liquor is subject to section 8-323. The monetary
44 assessment for a conviction of unlawful purchase, possession or consumption
45 of spirituous liquor by a juvenile shall not exceed five hundred dollars.

1 The court of competent jurisdiction may order a monetary assessment or
2 equivalent community restitution.

3 J. The court shall require the monetary assessment imposed under
4 subsection G or H of this section on a juvenile who is not committed to the
5 department of juvenile corrections to be satisfied in one or both of the
6 following forms:

7 1. Monetary reimbursement by the juvenile in a lump sum or installment
8 payments through the clerk of the superior court for appropriate
9 distribution.

10 2. A program of work, not in conflict with regular schooling, to
11 repair damage to the victim's property, to provide community restitution or
12 to provide the juvenile with a job for wages. The court order for
13 restitution or monetary assessment shall specify, according to the
14 dispositional program, the amount of reimbursement and the portion of wages
15 of either existing or provided work that is to be credited toward
16 satisfaction of the restitution or assessment, or the nature of the work to
17 be performed and the number of hours to be spent working. The number of
18 hours to be spent working shall be set by the court based on the severity of
19 the offense but shall not be less than sixteen hours.

20 K. If a juvenile is committed to the department of juvenile
21 corrections the court shall specify the amount of the MONETARY assessment
22 imposed pursuant to subsection G or H of this section.

23 L. After considering the length of stay guidelines developed pursuant
24 to section 41-2816, subsection C, the court may set forth in the order of
25 commitment the minimum period during which the juvenile shall remain in
26 secure care while in the custody of the department of juvenile corrections.
27 When the court awards a juvenile to the department of juvenile corrections or
28 an institution or agency, it shall transmit with the order of commitment
29 copies of a diagnostic psychological evaluation and educational assessment if
30 one has been administered, copies of the case report, all other psychological
31 and medical reports, restitution orders, any request for postadjudication
32 notice that has been submitted by a victim and any other documents or records
33 pertaining to the case requested by the department of juvenile corrections or
34 an institution or agency. The department shall not release a juvenile from
35 secure care before the juvenile completes the length of stay determined by
36 the court in the commitment order unless the county attorney in the county
37 from which the juvenile was committed requests the committing court to reduce
38 the length of stay. The department may release the juvenile from secure care
39 without a further court order after the juvenile completes the length of stay
40 determined by the court or may retain the juvenile in secure care for any
41 period subsequent to the completion of the length of stay in accordance with
42 the law.

1 M. Written notice of the release of any juvenile pursuant to
2 subsection L of this section shall be made to any victim requesting notice,
3 the juvenile court that committed the juvenile and the county attorney of the
4 county from which the juvenile was committed.

5 N. Notwithstanding any law to the contrary, if a person is under the
6 supervision of the court as an adjudicated delinquent juvenile at the time
7 the person reaches eighteen years of age, treatment services may be provided
8 until the person reaches twenty-one years of age if the court, the person and
9 the state agree to the provision of the treatment and a motion to transfer
10 the person pursuant to section 8-327 has not been filed or has been
11 withdrawn. The court may terminate the provision of treatment services after
12 the person reaches eighteen years of age if the court determines that any of
13 the following applies:

- 14 1. The person is not progressing toward treatment goals.
- 15 2. The person terminates treatment.
- 16 3. The person commits a new offense after reaching eighteen years of
17 age.
- 18 4. Continued treatment is not required or is not in the best interests
19 of the state or the person.

20 O. NOTWITHSTANDING ANY LAW TO THE CONTRARY, IF A PERSON IS A YOUTHFUL
21 SEX OFFENDER AND IS UNDER THE SUPERVISION OF A JUVENILE PROBATION DEPARTMENT
22 AT THE TIME THE PERSON REACHES EIGHTEEN YEARS OF AGE, THE JUVENILE PROBATION
23 DEPARTMENT MAY CONTINUE TO SUPERVISE THE PERSON UNTIL THE PERSON REACHES
24 TWENTY-FIVE YEARS OF AGE. IF AFTER THE PERSON REACHES EIGHTEEN YEARS OF AGE
25 THE PERSON VIOLATES A TERM OF PROBATION AND PROBATION IS REVOKED, THE COURT
26 SHALL SENTENCE THE PERSON TO THE STATE DEPARTMENT OF CORRECTIONS.

27 ~~0.~~ P. On the request of a victim of an act that may have involved
28 significant exposure as defined in section 13-1415 or that if committed by an
29 adult would be a sexual offense, the prosecuting attorney shall petition the
30 adjudicating court to require that the juvenile be tested for the presence of
31 the human immunodeficiency virus. If the victim is a minor the prosecuting
32 attorney shall file this petition at the request of the victim's parent or
33 guardian. If the act committed against a victim is an act that if committed
34 by an adult would be a sexual offense or the court determines that sufficient
35 evidence exists to indicate that significant exposure occurred, it shall
36 order the department of juvenile corrections or the department of health
37 services to test the juvenile pursuant to section 13-1415. Notwithstanding
38 any law to the contrary, the department of juvenile corrections and the
39 department of health services shall release the test results only to the
40 victim, the delinquent juvenile, the delinquent juvenile's parent or guardian
41 and a minor victim's parent or guardian and shall counsel them regarding the
42 meaning and health implications of the results.

43 ~~P.~~ Q. If a juvenile has been adjudicated delinquent for an offense
44 that if committed by an adult would be a felony, the court shall provide the
45 department of public safety Arizona automated fingerprint identification

1 system established in section 41-2411 with the juvenile's fingerprints,
2 personal identification data and other pertinent information. If a juvenile
3 has been committed to the department of juvenile corrections the department
4 shall provide the fingerprints and information required by this subsection to
5 the Arizona automated fingerprint identification system. If the juvenile's
6 fingerprints and information have been previously submitted to the Arizona
7 automated fingerprint identification system the information is not required
8 to be resubmitted.

9 ~~R.~~ R. Access to fingerprint records submitted pursuant to subsection
10 ~~P- Q~~ of this section shall be limited to the administration of criminal
11 justice as defined in section 41-1750. Dissemination of fingerprint
12 information shall be limited to the name of the juvenile, juvenile case
13 number, date of adjudication and court of adjudication.

14 ~~R.~~ S. If a juvenile is adjudicated delinquent for an offense that if
15 committed by an adult would be a misdemeanor, the court may prohibit the
16 juvenile from carrying or possessing a firearm while the juvenile is under
17 the jurisdiction of the department of juvenile corrections or the juvenile
18 court.

19 ~~S.~~ T. For the purposes of this section:

20 1. "First time felony juvenile offender" means a juvenile who is
21 adjudicated delinquent for an offense that would be a felony offense if
22 committed by an adult.

23 2. "Repeat felony juvenile offender" means a juvenile to whom both of
24 the following apply:

25 (a) Is adjudicated delinquent for an offense that would be a felony
26 offense if committed by an adult.

27 (b) Previously has been adjudicated a first time felony juvenile
28 offender.

29 3. "Sexual offense" means oral sexual contact, sexual contact or
30 sexual intercourse as defined in section 13-1401.

31 4. "YOUTHFUL SEX OFFENDER" MEANS A PERSON WHO IS ADJUDICATED
32 DELINQUENT FOR OR CONVICTED OF A FIRST OFFENSE THAT INVOLVES A VIOLATION OF
33 TITLE 13, CHAPTER 14 OR 35.1 AND THAT DOES NOT INVOLVE THE USE OR THREATENED
34 USE OF FORCE AGAINST ANOTHER PERSON.

35 Sec. 3. Section 41-1750, Arizona Revised Statutes, is amended to read:

36 41-1750. Central state repository; department of public safety;
37 duties; funds; accounts; definitions

38 A. Notwithstanding section 41-2205, the department is responsible for
39 the effective operation of the central state repository in order to collect,
40 store and disseminate complete and accurate Arizona criminal history records
41 and related criminal justice information. The department shall:

42 1. Procure from all criminal justice agencies in this state accurate
43 and complete personal identification data, fingerprints, charges, process
44 control numbers and dispositions and such other information as may be
45 pertinent to all persons who have been charged with, arrested for, convicted

- 1 of or summoned to court as a criminal defendant for a felony offense or an
2 offense involving domestic violence as defined in section 13-3601 or a
3 violation of title 13, chapter 14 or title 28, chapter 4.
- 4 2. Collect information concerning the number and nature of offenses
5 known to have been committed in this state and of the legal steps taken in
6 connection with these offenses, such other information that is useful in the
7 study of crime and in the administration of criminal justice and all other
8 information deemed necessary to operate the statewide uniform crime reporting
9 program and to cooperate with the federal government uniform crime reporting
10 program.
- 11 3. Collect information concerning criminal offenses that manifest
12 evidence of prejudice based on race, color, religion, national origin, sexual
13 orientation, gender or disability.
- 14 4. Cooperate with the central state repositories in other states and
15 with the appropriate agency of the federal government in the exchange of
16 information pertinent to violators of the law.
- 17 5. Ensure the rapid exchange of information concerning the commission
18 of crime and the detection of violators of the law among the criminal justice
19 agencies of other states and of the federal government.
- 20 6. Furnish assistance to peace officers throughout this state in crime
21 scene investigation for the detection of latent fingerprints and in the
22 comparison of latent fingerprints.
- 23 7. Conduct periodic operational audits of the central state repository
24 and of a representative sample of other agencies that contribute records to
25 or receive criminal justice information from the central state repository or
26 through the Arizona criminal justice information system.
- 27 8. Establish and enforce the necessary physical and system safeguards
28 to ensure that the criminal justice information maintained and disseminated
29 by the central state repository or through the Arizona criminal justice
30 information system is appropriately protected from unauthorized inquiry,
31 modification, destruction or dissemination as required by this section.
- 32 9. Aid and encourage coordination and cooperation among criminal
33 justice agencies through the statewide and interstate exchange of criminal
34 justice information.
- 35 10. Provide training and proficiency testing on the use of criminal
36 justice information to agencies receiving information from the central state
37 repository or through the Arizona criminal justice information system.
- 38 11. Operate and maintain the Arizona automated fingerprint
39 identification system established pursuant to section 41-2411.
- 40 12. Provide criminal history record information to the fingerprinting
41 division for the purpose of screening applicants for fingerprint clearance
42 cards.

1 B. The director may establish guidelines for the submission and
2 retention of criminal justice information as deemed useful for the study or
3 prevention of crime and for the administration of criminal justice.

4 C. The chief officers of criminal justice agencies of this state or
5 its political subdivisions shall provide to the central state repository
6 fingerprints and information concerning personal identification data,
7 descriptions, crimes for which persons are arrested, process control numbers
8 and dispositions and such other information as may be pertinent to all
9 persons who have been charged with, arrested for, convicted of or summoned to
10 court as criminal defendants for felony offenses or offenses involving
11 domestic violence as defined in section 13-3601 or violations of title 13,
12 chapter 14 or title 28, chapter 4 that have occurred in this state.

13 D. The chief officers of law enforcement agencies of this state or its
14 political subdivisions shall provide to the department such information as
15 necessary to operate the statewide uniform crime reporting program and to
16 cooperate with the federal government uniform crime reporting program.

17 E. The chief officers of criminal justice agencies of this state or
18 its political subdivisions shall comply with the training and proficiency
19 testing guidelines as required by the department to comply with the federal
20 national crime information center mandates.

21 F. The chief officers of criminal justice agencies of this state or
22 its political subdivisions also shall provide to the department information
23 concerning crimes that manifest evidence of prejudice based on race, color,
24 religion, national origin, sexual orientation, gender or disability.

25 G. The director shall authorize the exchange of criminal justice
26 information between the central state repository, or through the Arizona
27 criminal justice information system, whether directly or through any
28 intermediary, only as follows:

29 1. With criminal justice agencies of the federal government, Indian
30 tribes, this state or its political subdivisions and other states, on request
31 by the chief officers of such agencies or their designated representatives,
32 specifically for the purposes of the administration of criminal justice and
33 for evaluating the fitness of current and prospective criminal justice
34 employees.

35 2. With any noncriminal justice agency pursuant to a statute,
36 ordinance or executive order that specifically authorizes the noncriminal
37 justice agency to receive criminal history record information for the purpose
38 of evaluating the fitness of current or prospective licensees, employees,
39 contract employees or volunteers, on submission of the subject's fingerprints
40 and the prescribed fee. Each statute, ordinance, or executive order that
41 authorizes noncriminal justice agencies to receive criminal history record
42 information for these purposes shall identify the specific categories of
43 licensees, employees, contract employees or volunteers, and shall require
44 that fingerprints of the specified individuals be submitted in conjunction
45 with such requests for criminal history record information.

- 1 3. With the board of fingerprinting for the purpose of conducting good
2 cause exceptions pursuant to section 41-619.55.
- 3 4. With any individual for any lawful purpose on submission of the
4 subject of record's fingerprints and the prescribed fee.
- 5 5. With the governor, if the governor elects to become actively
6 involved in the investigation of criminal activity or the administration of
7 criminal justice in accordance with the governor's constitutional duty to
8 ensure that the laws are faithfully executed or as needed to carry out the
9 other responsibilities of the governor's office.
- 10 6. With regional computer centers that maintain authorized
11 computer-to-computer interfaces with the department, that are criminal
12 justice agencies or under the management control of a criminal justice agency
13 and that are established by a statute, ordinance or executive order to
14 provide automated data processing services to criminal justice agencies
15 specifically for the purposes of the administration of criminal justice or
16 evaluating the fitness of regional computer center employees who have access
17 to the Arizona criminal justice information system and the national crime
18 information center system.
- 19 7. With an individual who asserts a belief that criminal history
20 record information relating to the individual is maintained by an agency or
21 in an information system in this state that is subject to this section. On
22 submission of fingerprints, the individual may review this information for
23 the purpose of determining its accuracy and completeness by making
24 application to the agency operating the system. Rules adopted under this
25 section shall include provisions for administrative review and necessary
26 correction of any inaccurate or incomplete information. The review and
27 challenge process authorized by this paragraph is limited to criminal history
28 record information.
- 29 8. With individuals and agencies pursuant to a specific agreement with
30 a criminal justice agency to provide services required for the administration
31 of criminal justice pursuant to that agreement if the agreement specifically
32 authorizes access to data, limits the use of data to purposes for which given
33 and ensures the security and confidentiality of the data consistent with this
34 section.
- 35 9. With individuals and agencies for the express purpose of research,
36 evaluative or statistical activities pursuant to an agreement with a criminal
37 justice agency if the agreement specifically authorizes access to data,
38 limits the use of data to research, evaluative or statistical purposes and
39 ensures the confidentiality and security of the data consistent with this
40 section.
- 41 10. With the auditor general for audit purposes.
- 42 11. With central state repositories of other states for noncriminal
43 justice purposes for dissemination in accordance with the laws of those
44 states.

1 12. On submission of the fingerprint card, with the department of
2 economic security to provide criminal history record information on
3 prospective adoptive parents for the purpose of conducting the preadoption
4 certification investigation under title 8, chapter 1, article 1 if the
5 department of economic security is conducting the investigation, or with an
6 agency or a person appointed by the court, if the agency or person is
7 conducting the investigation. Information received under this paragraph
8 shall only be used for the purposes of the preadoption certification
9 investigation.

10 13. With the department of economic security and the superior court for
11 the purpose of evaluating the fitness of custodians or prospective custodians
12 of juveniles, including parents, relatives and prospective guardians.
13 Information received under this paragraph shall only be used for the purposes
14 of that evaluation. The information shall be provided on submission of
15 either:

- 16 (a) The fingerprint card.
- 17 (b) The name, date of birth and social security number of the person.

18 14. On submission of a fingerprint card, provide criminal history
19 record information to the superior court for the purpose of evaluating the
20 fitness of investigators appointed under section 14-5303 or 14-5407, or
21 guardians appointed under section 14-5206.

22 15. With the supreme court to provide criminal history record
23 information on prospective fiduciaries pursuant to section 14-5651.

24 16. With the department of juvenile corrections to provide criminal
25 history record information pursuant to section 41-2814.

26 17. On submission of the fingerprint card, provide criminal history
27 record information to the Arizona peace officer standards and training board
28 or a board certified law enforcement academy to evaluate the fitness of
29 prospective cadets.

30 18. With the internet sex offender web site database established
31 pursuant to section 13-3827.

32 19. With licensees of the United States nuclear regulatory commission
33 for the purpose of determining whether an individual should be granted
34 unescorted access to the protected area of a commercial nuclear generating
35 station on submission of the subject of record's fingerprints and the
36 prescribed fee.

37 20. With the state board of education for the purpose of evaluating the
38 fitness of a certificated teacher or administrator or an applicant for a
39 teaching or an administrative certificate provided that the state board of
40 education or its employees or agents have reasonable suspicion that the
41 certificated person engaged in conduct that would be a criminal violation of
42 the laws of this state or was involved in immoral or unprofessional conduct
43 or that the applicant engaged in conduct that would warrant disciplinary
44 action if the applicant were certificated at the time of the alleged conduct.
45 The information shall be provided on the submission of either:

- 1 (a) The fingerprint card.
- 2 (b) The name, date of birth and social security number of the person.
- 3 H. The director shall adopt rules necessary to execute this section.
- 4 I. The director, in the manner prescribed by law, shall remove and
5 destroy records that the director determines are no longer of value in the
6 detection or prevention of crime.
- 7 J. The director shall establish a fee in an amount necessary to cover
8 the cost of federal noncriminal justice fingerprint processing for criminal
9 history record information checks that are authorized by law for noncriminal
10 justice employment, licensing or other lawful purposes. An additional fee
11 may be charged by the department for state noncriminal justice fingerprint
12 processing. Fees submitted to the department for state noncriminal justice
13 fingerprint processing are not refundable.
- 14 K. The director shall establish a fee in an amount necessary to cover
15 the cost of processing copies of department reports, eight by ten inch black
16 and white photographs or eight by ten inch color photographs of traffic
17 accident scenes.
- 18 L. Except as provided in subsection 0 of this section, each agency
19 authorized by this section may charge a fee, in addition to any other fees
20 prescribed by law, in an amount necessary to cover the cost of state and
21 federal noncriminal justice fingerprint processing for criminal history
22 record information checks that are authorized by law for noncriminal justice
23 employment, licensing or other lawful purposes.
- 24 M. A fingerprint account within the records processing fund is
25 established for the purpose of separately accounting for the collection and
26 payment of fees for noncriminal justice fingerprint processing by the
27 department. Monies collected for this purpose shall be credited to the
28 account, and payments by the department to the United States for federal
29 noncriminal justice fingerprint processing shall be charged against the
30 account. Monies in the account not required for payment to the United States
31 shall be used by the department in support of the department's noncriminal
32 justice fingerprint processing duties. At the end of each fiscal year, any
33 balance in the account not required for payment to the United States or to
34 support the department's noncriminal justice fingerprint processing duties
35 reverts to the state general fund.
- 36 N. A records processing fund is established for the purpose of
37 separately accounting for the collection and payment of fees for department
38 reports and photographs of traffic accident scenes processed by the
39 department. Monies collected for this purpose shall be credited to the fund
40 and shall be used by the department in support of functions related to
41 providing copies of department reports and photographs. At the end of each
42 fiscal year, any balance in the fund not required for support of the
43 functions related to providing copies of department reports and photographs
44 reverts to the state general fund.

1 0. The department of economic security may pay from appropriated
2 monies the cost of federal fingerprint processing or federal criminal history
3 record information checks that are authorized by law for employees and
4 volunteers of the department, guardians pursuant to section 46-134,
5 subsection A, paragraph 15, the licensing of foster parents or the
6 certification of adoptive parents.

7 P. The director shall adopt rules that provide for:

8 1. The collection and disposition of fees pursuant to this section.

9 2. The refusal of service to those agencies that are delinquent in
10 paying these fees.

11 Q. The director shall ensure that the following limitations are
12 observed regarding dissemination of criminal justice information obtained
13 from the central state repository or through the Arizona criminal justice
14 information system:

15 1. Any criminal justice agency that obtains criminal justice
16 information from the central state repository or through the Arizona criminal
17 justice information system assumes responsibility for the security of the
18 information and shall not secondarily disseminate this information to any
19 individual or agency not authorized to receive this information directly from
20 the central state repository or originating agency.

21 2. Dissemination to an authorized agency or individual may be
22 accomplished by a criminal justice agency only if the dissemination is for
23 criminal justice purposes in connection with the prescribed duties of the
24 agency and not in violation of this section.

25 3. Criminal history record information disseminated to noncriminal
26 justice agencies or to individuals shall be used only for the purposes for
27 which it was given. Secondary dissemination is prohibited unless otherwise
28 authorized by law.

29 4. The existence or nonexistence of criminal history record
30 information shall not be confirmed to any individual or agency not authorized
31 to receive the information itself.

32 5. Criminal history record information to be released for noncriminal
33 justice purposes to agencies of other states shall only be released to the
34 central state repositories of those states for dissemination in accordance
35 with the laws of those states.

36 6. Criminal history record information shall be released to
37 noncriminal justice agencies of the federal government pursuant to the terms
38 of the federal security clearance information act (P.L. 99-169).

39 R. This section and the rules adopted under this section apply to all
40 agencies and individuals collecting, storing or disseminating criminal
41 justice information processed by manual or automated operations if the
42 collection, storage or dissemination is funded in whole or in part with
43 monies made available by the law enforcement assistance administration after
44 July 1, 1973, pursuant to title I of the crime control act of 1973, and to
45 all agencies that interact with or receive criminal justice information from

1 or through the central state repository and through the Arizona criminal
2 justice information system.

3 S. This section does not apply to criminal history record information
4 contained in:

5 1. Posters, arrest warrants, announcements or lists for identifying or
6 apprehending fugitives or wanted persons.

7 2. Original records of entry such as police blotters maintained by
8 criminal justice agencies, compiled chronologically and required by law or
9 long-standing custom to be made public if these records are organized on a
10 chronological basis.

11 3. Transcripts or records of judicial proceedings if released by a
12 court or legislative or administrative proceedings.

13 4. Announcements of executive clemency or pardon.

14 5. Computer databases, other than the Arizona criminal justice
15 information system, that are specifically designed for community notification
16 of an offender's presence in the community pursuant to section 13-3825 or for
17 public informational purposes authorized by section 13-3827.

18 T. Nothing in this section prevents a criminal justice agency from
19 disclosing to the public criminal history record information that is
20 reasonably contemporaneous to the event for which an individual is currently
21 within the criminal justice system, including information noted on traffic
22 accident reports concerning citations, blood alcohol tests, intoxilyzer tests
23 or arrests made in connection with the traffic accident being investigated.

24 U. In order to ensure that complete and accurate criminal history
25 record information is maintained and disseminated by the central state
26 repository:

27 1. The arresting authority shall take legible fingerprints of all
28 persons arrested for offenses specified in subsection C of this section and,
29 within ten days of the arrest, the arresting authority shall forward the
30 fingerprints to the department in the manner or form required by the
31 department. On the issuance and service of a summons for a defendant who is
32 charged with a felony offense, a violation of title 13, chapter 14 or title
33 28, chapter 4 or a domestic violence offense as defined in section 13-3601,
34 the court shall order that the defendant be fingerprinted by the appropriate
35 law enforcement agency and that the defendant appear at a designated time and
36 place for fingerprinting. At the initial appearance or on the arraignment of
37 a summoned defendant who is charged with a felony offense, a violation of
38 title 13, chapter 14 or title 28, chapter 4 or a domestic violence offense as
39 defined in section 13-3601, the court shall order that the defendant be
40 fingerprinted at a designated time and place by the appropriate law
41 enforcement agency if the court has reasonable cause to believe that the
42 defendant was not previously fingerprinted.

43 2. In every criminal case in which the defendant is incarcerated or
44 fingerprinted as a result of the charge, an originating law enforcement
45 agency or prosecutor, within forty days of the disposition, shall advise the

1 central state repository of all dispositions concerning the termination of
2 criminal proceedings against an individual arrested for an offense specified
3 in subsection C of this section. This information shall be submitted on a
4 form or in a manner required by the department.

5 3. Dispositions resulting from formal proceedings in a court having
6 jurisdiction in a criminal action against an individual who is arrested for
7 an offense specified in subsection C of this section or section 8-341,
8 subsection ~~S~~ T shall be reported to the central state repository within forty
9 days of the date of the disposition. This information shall be submitted on
10 a form or in a manner specified by rules approved by the supreme court.

11 4. The state department of corrections or the department of juvenile
12 corrections, within forty days, shall advise the central state repository
13 that it has assumed supervision of a person convicted of an offense specified
14 in subsection C of this section or section 8-341, subsection ~~S~~ T. The state
15 department of corrections or the department of juvenile corrections shall
16 also report dispositions that occur thereafter to the central state
17 repository within forty days of the date of the dispositions. This
18 information shall be submitted on a form or in a manner required by the
19 department of public safety.

20 5. Each criminal justice agency shall query the central state
21 repository before dissemination of any criminal history record information to
22 ensure the completeness of the information. Inquiries shall be made before
23 any dissemination except in those cases in which time is of the essence and
24 the repository is technically incapable of responding within the necessary
25 time period. If time is of the essence, the inquiry shall still be made and
26 the response shall be provided as soon as possible.

27 V. The director shall adopt rules specifying that any agency that
28 collects, stores or disseminates criminal justice information that is subject
29 to this section shall establish effective security measures to protect the
30 information from unauthorized access, disclosure, modification or
31 dissemination. The rules shall include reasonable safeguards to protect the
32 affected information systems from fire, flood, wind, theft, sabotage or other
33 natural or man-made hazards or disasters.

34 W. The department shall make available to agencies that contribute to,
35 or receive criminal justice information from, the central state repository or
36 through the Arizona criminal justice information system a continuing training
37 program in the proper methods for collecting, storing and disseminating
38 information in compliance with this section.

39 X. Nothing in this section creates a cause of action or a right to
40 bring an action including an action based on discrimination due to sexual
41 orientation.

42 Y. For the purposes of this section:

43 1. "Administration of criminal justice" means performance of the
44 detection, apprehension, detention, pretrial release, posttrial release,
45 prosecution, adjudication, correctional supervision or rehabilitation of

1 criminal offenders. Administration of criminal justice includes enforcement
2 of criminal traffic offenses and civil traffic violations, including parking
3 violations, when performed by a criminal justice agency. Administration of
4 criminal justice also includes criminal identification activities and the
5 collection, storage and dissemination of criminal history record information.

6 2. "Administrative records" means records that contain adequate and
7 proper documentation of the organization, functions, policies, decisions,
8 procedures and essential transactions of the agency and that are designed to
9 furnish information to protect the rights of this state and of persons
10 directly affected by the agency's activities.

11 3. "Arizona criminal justice information system" or "system" means the
12 statewide information system managed by the director for the collection,
13 processing, preservation, dissemination and exchange of criminal justice
14 information and includes the electronic equipment, facilities, procedures and
15 agreements necessary to exchange this information.

16 4. "Central state repository" means the central location within the
17 department for the collection, storage and dissemination of Arizona criminal
18 history records and related criminal justice information.

19 5. "Criminal history record information" and "criminal history record"
20 means information that is collected by criminal justice agencies on
21 individuals and that consists of identifiable descriptions and notations of
22 arrests, detentions, indictments and other formal criminal charges, and any
23 disposition arising from those actions, sentencing, formal correctional
24 supervisory action and release. Criminal history record information and
25 criminal history record do not include identification information to the
26 extent that the information does not indicate involvement of the individual
27 in the criminal justice system or information relating to juveniles unless
28 they have been adjudicated as adults.

29 6. "Criminal justice agency" means either:

30 (a) A court at any governmental level with criminal or equivalent
31 jurisdiction, including courts of any foreign sovereignty duly recognized by
32 the federal government.

33 (b) A government agency or subunit of a government agency that is
34 specifically authorized to perform as its principal function the
35 administration of criminal justice pursuant to a statute, ordinance or
36 executive order and that allocates more than fifty per cent of its annual
37 budget to the administration of criminal justice. This subdivision includes
38 agencies of any foreign sovereignty duly recognized by the federal
39 government.

40 7. "Criminal justice information" means information that is collected
41 by criminal justice agencies and that is needed for the performance of their
42 legally authorized and required functions, such as criminal history record
43 information, citation information, stolen property information, traffic
44 accident reports, wanted persons information and system network log searches.

1 Criminal justice information does not include the administrative records of a
2 criminal justice agency.

3 8. "Disposition" means information disclosing that a decision has been
4 made not to bring criminal charges or that criminal proceedings have been
5 concluded or information relating to sentencing, correctional supervision,
6 release from correctional supervision, the outcome of an appellate review of
7 criminal proceedings or executive clemency.

8 9. "Dissemination" means the written, oral or electronic communication
9 or transfer of criminal justice information to individuals and agencies other
10 than the criminal justice agency that maintains the information.
11 Dissemination includes the act of confirming the existence or nonexistence of
12 criminal justice information.

13 10. "Management control":

14 (a) Means the authority to set and enforce:

15 (i) Priorities regarding development and operation of criminal justice
16 information systems and programs.

17 (ii) Standards for the selection, supervision and termination of
18 personnel involved in the development of criminal justice information systems
19 and programs and in the collection, maintenance, analysis and dissemination
20 of criminal justice information.

21 (iii) Policies governing the operation of computers, circuits and
22 telecommunications terminals used to process criminal justice information to
23 the extent that the equipment is used to process, store or transmit criminal
24 justice information.

25 (b) Includes the supervision of equipment, systems design, programming
26 and operating procedures necessary for the development and implementation of
27 automated criminal justice information systems.

28 11. "Process control number" means the Arizona automated fingerprint
29 identification system number that attaches to each arrest event at the time
30 of fingerprinting and that is assigned to the arrest fingerprint card,
31 disposition form and other pertinent documents.

32 12. "Secondary dissemination" means the dissemination of criminal
33 justice information from an individual or agency that originally obtained the
34 information from the central state repository or through the Arizona criminal
35 justice information system to another individual or agency.

36 13. "Sexual orientation" means consensual homosexuality or
37 heterosexuality.

38 14. "Subject of record" means the person who is the primary subject of
39 a criminal justice record.