

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1123

AN ACT

AMENDING SECTIONS 31-411, 31-418, 31-466, 31-467.06, 41-1604.08 AND
41-1604.13, ARIZONA REVISED STATUTES; RELATING TO PRISONERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 31-411, Arizona Revised Statutes, is amended to
3 read:

4 31-411. Parole or discharge; conditions of parole; release
5 under supervision of state department of corrections;
6 notice of hearing; exceptions

7 A. Any prisoner who has been certified as eligible for parole or
8 absolute discharge from imprisonment pursuant to section 31-412, subsection B
9 or section 41-1604.09 shall be given an opportunity to apply for release upon
10 parole or for an absolute discharge from imprisonment. The board of
11 executive clemency shall not entertain any other form of application or
12 petition for the release upon parole or absolute discharge from imprisonment
13 of any prisoner.

14 B. A prisoner who is eligible for parole or absolute discharge from
15 imprisonment shall be given an opportunity to be heard either before a
16 hearing officer designated by the board or the board itself, at the
17 discretion of the board.

18 C. If the hearing is heard by a hearing officer, the hearing officer
19 shall make a recommendation on application for parole or absolute discharge
20 from imprisonment to the board within thirty days after the hearing
21 date. Within thirty days after the date of the hearing officer's
22 recommendations, the board shall review these recommendations and either
23 approve, with or without conditions, or reject the prisoner's application for
24 parole or absolute discharge from imprisonment. A prisoner who is eligible
25 for parole or absolute discharge from imprisonment shall not be denied parole
26 or absolute discharge from imprisonment without an opportunity to be heard
27 before the board unless another form of release has been granted.

28 D. If parole is granted, the prisoner shall remain on parole unless
29 the board revokes the parole or grants an absolute discharge from parole or
30 until the prisoner reaches the individual earned release credit date pursuant
31 to section 41-1604.10. If the prisoner violates a condition of parole but
32 has not committed an additional offense, the board may place the prisoner on
33 electronic monitoring and order the defendant to participate in a community
34 accountability program pursuant to section 41-1609.05. If the prisoner is
35 still on parole on reaching the individual earned release credit date
36 pursuant to section 41-1604.10, the prisoner shall be terminated from parole
37 but shall be subject to revocation under section 41-1604.10. When the
38 prisoner reaches the individual earned release credit date the prisoner's
39 parole shall be terminated and the prisoner shall no longer be under the
40 authority of the board.

41 E. During the period of time that the prisoner remains on supervised
42 parole under subsection D of this section, the board shall require as a
43 condition of parole that the prisoner pay a monthly supervision fee of not
44 less than ~~thirty~~ SIXTY-FIVE dollars unless, after determining the inability
45 of the prisoner to pay the fee, the board requires payment of a lesser
46 amount. The supervising parole officer shall monitor the collection of the

1 fee. The board may also impose any conditions of parole it deems appropriate
2 in order to ensure that the best interests of the prisoner and the citizens
3 of this state are served. These conditions may include:

- 4 1. Participation in a rehabilitation program or counseling.
- 5 2. Performance of community restitution work.

6 F. SEVENTY PER CENT OF THE monies collected pursuant to subsection E
7 of this section shall be deposited, pursuant to sections 35-146 and 35-147,
8 in the victim compensation and assistance fund established by section 41-2407
9 AND THIRTY PER CENT SHALL BE DEPOSITED IN THE COMMUNITY CORRECTIONS
10 ENHANCEMENT FUND ESTABLISHED BY SECTION 31-418.

11 G. When parole or absolute discharge from imprisonment is denied, the
12 board, within ten days, shall prepare and deliver to the director of the
13 state department of corrections a written statement specifying the
14 individualized reasons for the denial of parole or absolute discharge from
15 imprisonment unless another form of release has been granted. The prisoner
16 may view the written statement prepared by the board. Every prisoner, having
17 served not less than one year, may be temporarily released according to the
18 rules of the department one hundred eighty days before the expiration of the
19 sentence or the earned release credit date, whichever first occurs, if the
20 director finds that the release is in the best interest of the state. The
21 releasee shall remain under the control of the state department of
22 corrections until expiration of the term specified in the sentence. If the
23 releasee violates any condition of release, the releasee may be returned to
24 custody without further process.

25 H. When a commutation, absolute discharge from imprisonment or parole
26 is to be considered, the board, on request and before holding a hearing on
27 the commutation, absolute discharge from imprisonment or parole, shall notify
28 the attorney general, the presiding judge of the superior court, the county
29 attorney in the county in which the prisoner requesting a commutation,
30 absolute discharge from imprisonment or parole was sentenced, and the victim
31 of the offense for which the prisoner is incarcerated. The notice to the
32 victim shall be mailed to the last known address. The notice shall state the
33 name of the prisoner requesting the commutation, absolute discharge from
34 imprisonment or parole and shall set the month of hearing on the
35 application. The notice to the victim shall also inform the victim of the
36 victim's right to be present and to submit a written report to the board
37 expressing the victim's opinion concerning the release of the prisoner. No
38 hearing concerning commutations, absolute discharge from imprisonment or
39 parole shall be held until fifteen days after the date of giving the
40 notice. On mailing the notice, the board shall file a hard copy of the
41 notice as evidence that notification was sent.

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

- 44 1. When there is imminent danger of the death of the person convicted
45 or imprisoned.

1 ~~parole and~~ not less than sixty-five dollars if the person is on ~~standard~~
2 probation, **PAROLE OR COMMUNITY SUPERVISION** or not less than seventy-five
3 dollars if the person is on intensive probation, unless, after determining
4 the inability of the person to pay the fee, the supervising agency requires
5 payment of a lesser amount. The supervising parole, **COMMUNITY SUPERVISION** or
6 probation officer shall monitor the collection of the fee.

7 B. Seventy per cent of the monies collected pursuant to this section
8 shall be deposited, pursuant to sections 35-146 and 35-147, in the victim
9 compensation and assistance fund established by section 41-2407 and thirty
10 per cent shall be deposited in the adult probation services fund established
11 by section 12-267 **OR, IF THE PERSON IS SUPERVISED BY THE STATE DEPARTMENT OF**
12 **CORRECTIONS, IN THE COMMUNITY CORRECTIONS ENHANCEMENT FUND ESTABLISHED BY**
13 **SECTION 31-418.**

14 Sec. 5. Section 41-1604.08, Arizona Revised Statutes, is amended to
15 read:

16 **41-1604.08. Global position system monitoring: daily fee;**
17 **deposit**

18 A. The department shall assign any person who is in the custody of the
19 department and who was convicted of a violation of section 13-705 to a global
20 position monitoring system on the person's release on parole, community
21 supervision, work release or other conditional or temporary release.

22 B. The department may enter into a contract for the provision of
23 global position monitoring services.

24 **C. THE DEPARTMENT MAY CHARGE A PERSON WHO IS ASSIGNED TO A GLOBAL**
25 **POSITION MONITORING SYSTEM A DAILY FEE NOT TO EXCEED THE DEPARTMENT'S**
26 **EXPENSES FOR THE SYSTEM.**

27 **D. MONIES COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED,**
28 **PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE COMMUNITY CORRECTIONS**
29 **ENHANCEMENT FUND ESTABLISHED BY SECTION 31-418.**

30 Sec. 6. Section 41-1604.13, Arizona Revised Statutes, is amended to
31 read:

32 **41-1604.13. Home arrest; eligibility; victim notification;**
33 **conditions; applicability; definition**

34 A. An inmate who has served not less than six months of the sentence
35 imposed by the court is eligible for the home arrest program if the inmate:

36 1. Meets the following criteria:

37 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
38 the intentional or knowing infliction of serious physical injury or the use
39 or exhibition of a deadly weapon or dangerous instrument.

40 (b) Was not convicted of a sexual offense.

41 (c) Has not previously been convicted of any felony.

42 2. Violated parole by the commission of a technical violation that was
43 not chargeable or indictable as a criminal offense.

44 3. Is eligible for work furlough.

45 4. Is eligible for parole pursuant to section 31-412, subsection A.

1 B. The board of executive clemency shall determine which inmates are
2 released to the home arrest program based on the criteria in subsection A of
3 this section and based on a determination that there is a substantial
4 probability that the inmate will remain at liberty without violating the law
5 and that the release is in the best interests of the state after considering
6 the offense for which the inmate is presently incarcerated, the prior record
7 of the inmate, the conduct of the inmate while incarcerated and any other
8 information concerning the inmate that is in the possession of the state
9 department of corrections, including any presentence report. The board
10 maintains the responsibility of revocation as applicable to all parolees.

11 C. An inmate who is otherwise eligible for home arrest, who is not on
12 work furlough and who is currently serving a sentence for a conviction of a
13 serious offense or conspiracy to commit or attempt to commit a serious
14 offense shall not be granted home arrest except by one of the following
15 votes:

16 1. A majority affirmative vote if four or more members of the board of
17 executive clemency consider the action.

18 2. A unanimous affirmative vote if three members of the board of
19 executive clemency consider the action.

20 3. A unanimous affirmative vote if two members of the board of
21 executive clemency consider the action pursuant to section 31-401, subsection
22 I and the chairman of the board concurs after reviewing the information
23 considered by the two members.

24 D. Home arrest is conditioned on the following:

25 1. Active electronic monitoring surveillance for a minimum term of one
26 year or until eligible for general parole.

27 2. Participation in gainful employment or other beneficial activities.

28 3. Submission to alcohol and drug tests as mandated.

29 4. Payment of the electronic monitoring fee in an amount determined by
30 the board of not less than one dollar per day and not more than the total
31 cost of the electronic monitoring unless, after determining the inability of
32 the inmate to pay the fee, the board requires payment of a lesser amount.
33 The fees collected shall be returned to the department's home arrest program
34 to offset operational costs of the program.

35 5. Remaining at the inmate's place of residence at all times except
36 for movement out of the residence according to mandated conditions.

37 6. Adherence to any other conditions imposed by the court, board of
38 executive clemency or supervising corrections officers.

39 7. Compliance with all other conditions of supervision.

40 8. PAYMENT OF A MONTHLY HOME ARREST SUPERVISION FEE OF AT LEAST
41 SIXTY-FIVE DOLLARS UNLESS, AFTER DETERMINING THE INABILITY OF THE INMATE TO
42 PAY THE FEE, THE DEPARTMENT REQUIRES PAYMENT OF A LESSER AMOUNT. THE
43 SUPERVISING CORRECTIONS OFFICER SHALL MONITOR THE COLLECTION OF THE FEE.
44 MONIES COLLECTED SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147,
45 IN THE COMMUNITY CORRECTIONS ENHANCEMENT FUND ESTABLISHED BY SECTION 31-418.

1 E. Before holding a hearing on home arrest, the board on request shall
2 notify and afford an opportunity to be heard to the presiding judge of the
3 superior court in the county in which the inmate requesting home arrest was
4 sentenced, the prosecuting attorney and the director of the arresting law
5 enforcement agency. The board shall notify the victim of the offense for
6 which the inmate is incarcerated. The notice shall state the name of the
7 inmate requesting home arrest, the offense for which the inmate was
8 sentenced, the length of the sentence and the date of admission to the
9 custody of the state department of corrections. The notice to the victim
10 shall also inform the victim of the victim's right to be present and to
11 submit a written report to the board expressing the victim's opinion
12 concerning the inmate's release. No hearing concerning home arrest may be
13 held until fifteen days after the date of giving the notice. On mailing the
14 notice, the board shall file a hard copy of the notice as evidence that
15 notification was sent.

16 F. An inmate who is placed on home arrest is on inmate status, is
17 subject to all the limitations of rights and movement and is entitled only to
18 due process rights of return.

19 G. If an inmate violates a condition of home arrest that poses any
20 threat or danger to the community, or commits an additional felony offense,
21 the board shall revoke the home arrest and return the inmate to the custody
22 of the state department of corrections to complete the term of imprisonment
23 as authorized by law.

24 H. The ratio of supervising corrections officers to supervisees in the
25 home arrest program shall be no greater than one officer for every
26 twenty-five supervisees.

27 I. The board shall determine when the supervisee is eligible for
28 transfer to the regular parole program pursuant to section 31-411.

29 J. This section applies only to persons who commit felony offenses
30 before January 1, 1994.

31 K. For the purposes of this section, "serious offense" includes any of
32 the following:

33 1. A serious offense as defined in section 13-706, subsection F,
34 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

35 2. A dangerous crime against children as defined in section 13-705.
36 The citation of section 13-705 is not a necessary element for a serious
37 offense designation.

38 3. A conviction under a prior criminal code for any offense that
39 possesses reasonably equivalent offense elements as the offense elements that
40 are listed under section 13-705, subsection P, paragraph 1 or section 13-706,
41 subsection F, paragraph 1.