

REFERENCE TITLE: probation; community supervision; violations; revocation

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2297

Introduced by
Representative Smith D

AN ACT

AMENDING SECTIONS 13-901, 31-402 AND 31-411.01, ARIZONA REVISED STATUTES;
RELATING TO CRIMES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-901, Arizona Revised Statutes, is amended to
3 read:

4 13-901. Probation

5 A. If a person who has been convicted of an offense is eligible for
6 probation, the court may suspend the imposition or execution of sentence and,
7 if so, shall without delay place the person on intensive probation
8 supervision pursuant to section 13-913 or supervised or unsupervised
9 probation on such terms and conditions as the law requires and the court
10 deems appropriate, including participation in any programs authorized in
11 title 12, chapter 2, article 11. If a person is not eligible for probation,
12 imposition or execution of sentence shall not be suspended or delayed. If
13 the court imposes probation, it may also impose a fine as authorized by
14 chapter 8 of this title. If probation is granted the court shall impose a
15 condition that the person waive extradition for any probation revocation
16 procedures and it shall order restitution pursuant to section 13-603,
17 subsection C where there is a victim who has suffered economic loss. When
18 granting probation to an adult the court, as a condition of probation, shall
19 assess a monthly fee of not less than sixty-five dollars unless, after
20 determining the inability of the probationer to pay the fee, the court
21 assesses a lesser fee. This fee is not subject to any surcharge. In justice
22 and municipal courts the fee shall only be assessed when the person is placed
23 on supervised probation. For persons placed on probation in the superior
24 court, the fee shall be paid to the clerk of the superior court and the clerk
25 of the court shall pay all monies collected from this fee to the county
26 treasurer for deposit in the adult probation services fund established by
27 section 12-267. For persons placed on supervised probation in the justice
28 court, the fee shall be paid to the justice court and the justice court shall
29 transmit all of the monies to the county treasurer for deposit in the adult
30 probation services fund established by section 12-267. For persons placed on
31 supervised probation in the municipal court, the fee shall be paid to the
32 municipal court. The municipal court shall transmit all of the monies to the
33 city treasurer who shall transmit the monies to the county treasurer for
34 deposit in the adult probation services fund established by section 12-267.
35 Any amount assessed pursuant to this subsection shall be used to supplement
36 monies used for the salaries of adult probation and surveillance officers and
37 for support of programs and services of the superior court adult probation
38 departments.

39 B. The period of probation shall be determined according to section
40 13-902, except that if a person is released pursuant to section 31-233,
41 subsection B and community supervision is waived pursuant to section 13-603,
42 subsection K, the court shall extend the period of probation by the amount of
43 time the director of the state department of corrections approves for the
44 inmate's temporary release.

1 C. The court, in its discretion, may issue a warrant for the rearrest
2 of the defendant and may modify or add to the conditions or, if the defendant
3 commits ~~an~~ TWO OR MORE additional ~~offense~~ OFFENSES or violates a condition
4 TWO OR MORE TIMES, may revoke probation in accordance with the rules of
5 criminal procedure at any time before the expiration or termination of the
6 period of probation. If the court revokes the defendant's probation and the
7 defendant is serving more than one probationary term concurrently, the court
8 may sentence the person to terms of imprisonment to be served consecutively.

9 D. At any time during the probationary term of the person released on
10 probation, any probation officer, without warrant or other process and at any
11 time until the final disposition of the case, may rearrest any person and
12 bring the person before the court.

13 E. The court, on its own initiative or on application of the
14 probationer, after notice and an opportunity to be heard for the prosecuting
15 attorney and, on request, the victim, may terminate the period of probation
16 or intensive probation and discharge the defendant at a time earlier than
17 that originally imposed if in the court's opinion the ends of justice will be
18 served and if the conduct of the defendant on probation warrants it.

19 F. When granting probation the court may require that the defendant be
20 imprisoned in the county jail at whatever time or intervals, consecutive or
21 nonconsecutive, the court shall determine, within the period of probation, as
22 long as the period actually spent in confinement does not exceed one year or
23 the maximum period of imprisonment permitted under chapter 7 of this title,
24 whichever is the shorter.

25 G. If the defendant is placed on lifetime probation and has served one
26 year in the county jail as a term of probation, the court may require that
27 the defendant be additionally imprisoned in the county jail at whatever time
28 or intervals, consecutive or nonconsecutive, the court shall determine,
29 within the period of probation if the defendant's probation is revoked by the
30 court and the defendant is subsequently reinstated on probation. The period
31 actually spent in confinement as a term of being reinstated on probation
32 shall not exceed one year or, when including the initial one year period of
33 incarceration imposed as a term of probation, the maximum period of
34 imprisonment permitted under chapter 7 of this title, whichever is ~~the~~
35 shorter.

36 H. If restitution is made a condition of probation, the court shall
37 fix the amount of restitution and the manner of performance pursuant to
38 chapter 8 of this title.

39 I. When granting probation, the court shall set forth at the time of
40 sentencing and on the record the factual and legal reasons in support of each
41 sentence.

42 J. If the defendant meets the criteria set forth in section 13-901.01
43 or 13-3422, the court may place the defendant on probation pursuant to either
44 section. If a defendant is placed on probation pursuant to section 13-901.01

1 or 13-3422, the court may impose any term of probation that is authorized
2 pursuant to this section and that is not in violation of section 13-901.01.

3 Sec. 2. Section 31-402, Arizona Revised Statutes, is amended to 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
19 January 1, 1994, in addition to the powers and duties prescribed in
20 subsection A of 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~~ 4.1, 5, 6 AND 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 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 PILOT program pursuant to section 41-1609.05.

1 (b) IF THE OFFENDER HAS COMMITTED TWO OR MORE ADDITIONAL OFFENSES OR
2 HAS VIOLATED TWO OR MORE OF THE TERMS AND CONDITIONS OF COMMUNITY
3 SUPERVISION, revoke community supervision and return the offender to prison
4 for the remainder of the offender's community supervision.

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

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

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

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

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

33 Sec. 3. Section 31-411.01, Arizona Revised Statutes, is amended to
34 read:

35 31-411.01. Parole or community supervision for persons
36 previously convicted of possession or use of
37 marijuana, a dangerous drug or a narcotic drug;
38 treatment; prevention; education; termination of
39 parole or community supervision

40 A. Notwithstanding any law to the contrary, every prisoner who is
41 eligible for parole or community supervision pursuant to section 41-1604.16
42 shall be released ~~upon~~ ON parole or community supervision if in its sole
43 discretion the board of executive clemency determines that there is a
44 substantial probability that the prisoner will remain at liberty without
45 violating the law and the release is in the best interests of the people of

1 this state. If a prisoner is denied release on parole or community
2 supervision, the prisoner is not entitled to a rehearing under this section.

3 B. If a prisoner is released ~~upon~~ ON parole or community supervision
4 pursuant to this section, the board of executive clemency shall order that as
5 a condition of parole or community supervision the person be required to
6 participate in an appropriate drug treatment or education program that is
7 administered by a qualified agency, organization or individual approved by
8 the department of health services and that provides the treatment or
9 education to persons who abuse controlled substances. Each person who is
10 enrolled in a drug treatment or education program shall pay for the costs of
11 participation in the program to the extent of the person's financial ability.

12 C. A prisoner who is released ~~upon~~ ON parole or community supervision
13 pursuant to this section shall remain on parole or community supervision
14 until the prisoner reaches the earned release credit date pursuant to section
15 41-1604.10 or the community supervision expiration date pursuant to section
16 41-1604.07. A prisoner who is on earned release credit release pursuant to
17 section 41-1604.10 is not under the control of the state department of
18 corrections and the department is not required to provide parole services or
19 to otherwise supervise any prisoner released except that the department may
20 revoke the release of the prisoner until the final expiration of the
21 prisoner's sentence if the department believes that the released prisoner has
22 engaged in criminal conduct during the term of the prisoner's release.

23 D. The board of executive clemency may revoke the prisoner's release
24 if the prisoner violates AT LEAST TWO OF the conditions of supervision that
25 are imposed by the board or the state department of corrections.