

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

# HOUSE BILL 2442

AN ACT

AMENDING SECTIONS 31-411, 31-418, 31-467.06 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; drug testing costs

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 **ON** 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~~ **ON** parole or absolute discharge from  
13 imprisonment 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 date.  
21 Within thirty days after the date of the hearing officer's recommendations,  
22 the board shall review these recommendations and either approve, with or  
23 without conditions, or reject the prisoner's application for parole or  
24 absolute discharge from imprisonment. A prisoner who is eligible for parole  
25 or absolute discharge from imprisonment shall not be denied parole or  
26 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 **PILOT** program pursuant to section 41-1609.05. If the prisoner  
35 is 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 sixty-five dollars unless, after determining the inability of the  
45 prisoner to pay the fee, the board requires payment of a lesser amount. The

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

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

7 F. Seventy per cent of the monies collected pursuant to subsection E  
8 of this section shall be deposited, pursuant to sections 35-146 and 35-147,  
9 in the victim compensation and assistance fund established by section 41-2407  
10 and thirty per cent shall be deposited in the community corrections  
11 enhancement fund established by section 31-418.

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

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

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

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

3           2. When the term of imprisonment of the applicant is within two  
4 hundred ten days of expiration.

5           J. IN ADDITION TO ANY OTHER FEES, THE BOARD MAY REQUIRE AS A CONDITION  
6 OF PAROLE THAT THE PRISONER PAY THE REASONABLE COSTS ASSOCIATED WITH THE  
7 PRISONER'S PARTICIPATION IN A DRUG TESTING PROGRAM. THE PRISONER'S COSTS  
8 SHALL NOT EXCEED THE DEPARTMENT'S COST FOR THE PROGRAM. THE MONIES COLLECTED  
9 PURSUANT TO THIS SUBSECTION BY THE DEPARTMENT MAY ONLY BE USED TO OFFSET THE  
10 COSTS OF THE DRUG TESTING PROGRAM.

11           Sec. 2. Section 31-418, Arizona Revised Statutes, is amended to read:

12           31-418. Community supervision fee; deposit; community  
13                 corrections enhancement fund; drug testing costs

14           A. During the period of time that the prisoner remains on community  
15 supervision, the state department of corrections shall require as a condition  
16 of community supervision that the prisoner pay a monthly supervision fee of  
17 at least sixty-five dollars unless, after determining the inability of the  
18 prisoner to pay the fee, the department requires payment of a lesser amount.  
19 The supervising community supervision officer shall monitor the collection of  
20 the fee.

21           B. Seventy per cent of the monies collected pursuant to subsection A  
22 of this section shall be deposited, pursuant to sections 35-146 and 35-147,  
23 in the victim compensation and assistance fund established by section 41-2407  
24 and thirty per cent shall be deposited in the community corrections  
25 enhancement fund established by this section.

26           C. The community corrections enhancement fund is established  
27 consisting of monies received pursuant to subsection B of this section,  
28 sections 31-411, 31-467.06 and 41-1604.08 and section 41-1604.13, subsection  
29 D, paragraph 8. The department shall administer the fund and use fund monies  
30 to pay for costs related to community corrections.

31           D. IN ADDITION TO ANY OTHER FEES, THE DEPARTMENT MAY REQUIRE AS A  
32 CONDITION OF COMMUNITY SUPERVISION THAT THE PRISONER PAY THE REASONABLE COSTS  
33 ASSOCIATED WITH THE PRISONER'S PARTICIPATION IN A DRUG TESTING PROGRAM. THE  
34 PRISONER'S COSTS SHALL NOT EXCEED THE DEPARTMENT'S COST FOR THE PROGRAM. THE  
35 MONIES COLLECTED PURSUANT TO THIS SUBSECTION BY THE DEPARTMENT MAY ONLY BE  
36 USED TO OFFSET THE COSTS OF THE DRUG TESTING PROGRAM.

37           Sec. 3. Section 31-467.06, Arizona Revised Statutes, is amended to  
38 read:

39           31-467.06. Supervision fee; deposit; drug testing costs

40           A. A person being supervised in this state pursuant to this article  
41 shall pay, as a condition of probation, community supervision or parole, a  
42 monthly supervision fee of not less than sixty-five dollars if the person is  
43 on probation, parole or community supervision or not less than seventy-five  
44 dollars if the person is on intensive probation, unless, after determining  
45 the inability of the person to pay the fee, the supervising agency requires

1 payment of a lesser amount. The supervising parole, community supervision or  
2 probation officer shall monitor the collection of the fee.

3 B. Seventy per cent of the monies collected pursuant to **SUBSECTION A**  
4 **OF** this section shall be deposited, pursuant to sections 35-146 and 35-147,  
5 in the victim compensation and assistance fund established by section 41-2407  
6 and thirty per cent shall be deposited in the adult probation services fund  
7 established by section 12-267 or, if the person is supervised by the state  
8 department of corrections, in the community corrections enhancement fund  
9 established by section 31-418.

10 C. **IN ADDITION TO ANY OTHER FEES, A PERSON WHO IS BEING SUPERVISED IN**  
11 **THIS STATE PURSUANT TO THIS ARTICLE MAY BE REQUIRED TO PAY AS A CONDITION OF**  
12 **PAROLE OR COMMUNITY SUPERVISION THE REASONABLE COSTS ASSOCIATED WITH THE**  
13 **PERSON'S PARTICIPATION IN A DRUG TESTING PROGRAM. THE PERSON'S COSTS SHALL**  
14 **NOT EXCEED THE STATE DEPARTMENT OF CORRECTIONS' COST FOR THE PROGRAM. THE**  
15 **MONIES COLLECTED PURSUANT TO THIS SUBSECTION BY THE DEPARTMENT MAY ONLY BE**  
16 **USED TO OFFSET THE COSTS OF THE DRUG TESTING PROGRAM.**

17 Sec. 4. Section 41-1604.13, Arizona Revised Statutes, is amended to  
18 read:

19 **41-1604.13. Home arrest; eligibility; victim notification;**  
20 **conditions; applicability; definitions**

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

23 1. Meets the following criteria:

24 (a) Was convicted of committing a class 4, 5 or 6 felony not involving  
25 a dangerous offense.

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

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

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

30 3. Is eligible for work furlough.

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

32 B. The board of executive clemency shall determine which inmates are  
33 released to the home arrest program based on the criteria in subsection A of  
34 this section and based on a determination that there is a substantial  
35 probability that the inmate will remain at liberty without violating the law  
36 and that the release is in the best interests of the state after considering  
37 the offense for which the inmate is presently incarcerated, the prior record  
38 of the inmate, the conduct of the inmate while incarcerated and any other  
39 information concerning the inmate that is in the possession of the state  
40 department of corrections, including any presentence report. The board  
41 maintains the responsibility of revocation as applicable to all parolees.

42 C. An inmate who is otherwise eligible for home arrest, who is not on  
43 work furlough and who is currently serving a sentence for a conviction of a  
44 serious offense or conspiracy to commit or attempt to commit a serious

1 offense shall not be granted home arrest except by one of the following  
2 votes:

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

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

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

11 D. Home arrest is conditioned on the following:

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

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

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

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

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

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

26 7. Compliance with all other conditions of supervision.

27 8. Payment of a monthly home arrest supervision fee of at least  
28 sixty-five dollars unless, after determining the inability of the inmate to  
29 pay the fee, the department requires payment of a lesser amount. The  
30 supervising corrections officer shall monitor the collection of the fee.  
31 Monies collected shall be deposited, pursuant to sections 35-146 and 35-147,  
32 in the community corrections enhancement fund established by section 31-418.

33 9. PAYMENT OF A DRUG TESTING FEE IN AN AMOUNT TO BE DETERMINED BY THE  
34 BOARD AND NOT TO EXCEED THE COSTS OF THE DRUG TESTING PROGRAM. THE FEES  
35 COLLECTED PURSUANT TO THIS PARAGRAPH BY THE DEPARTMENT MAY ONLY BE USED TO  
36 OFFSET THE COSTS OF THE DRUG TESTING PROGRAM.

37 E. Before holding a hearing on home arrest, the board on request shall  
38 notify and afford an opportunity to be heard to the presiding judge of the  
39 superior court in the county in which the inmate requesting home arrest was  
40 sentenced, the prosecuting attorney and the director of the arresting law  
41 enforcement agency. The board shall notify the victim of the offense for  
42 which the inmate is incarcerated. The notice shall state the name of the  
43 inmate requesting home arrest, the offense for which the inmate was  
44 sentenced, the length of the sentence and the date of admission to the  
45 custody of the state department of corrections. The notice to the victim

1 shall also inform the victim of the victim's right to be present and to  
2 submit a written report to the board expressing the victim's opinion  
3 concerning the inmate's release. No hearing concerning home arrest may be  
4 held until fifteen days after the date of giving the notice. On mailing the  
5 notice, the board shall file a hard copy of the notice as evidence that  
6 notification was sent.

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

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

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

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

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

22 K. For the purposes of this section:

23 1. "Dangerous offense" has the same meaning prescribed in section  
24 13-105.

25 2. "Serious offense" includes any of the following:

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

28 (b) A dangerous crime against children as defined in section 13-705.  
29 The citation of section 13-705 is not a necessary element for a serious  
30 offense designation.

31 (c) A conviction under a prior criminal code for any offense that  
32 possesses reasonably equivalent offense elements as the offense elements that  
33 are listed under section 13-705, subsection P, paragraph 1 or section 13-706,  
34 subsection F, paragraph 1.