

REFERENCE TITLE: community supervision; earned release credits

State of Arizona  
House of Representatives  
Fifty-first Legislature  
Second Regular Session  
2014

## **HB 2368**

Introduced by  
Representatives Gonzales: Saldate

AN ACT

AMENDING SECTIONS 13-603, 13-901 AND 41-1604.07, ARIZONA REVISED STATUTES;  
RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-603, Arizona Revised Statutes, is amended to  
3 read:

4 13-603. Authorized disposition of offenders

5 A. Every person convicted of any offense defined in this title or  
6 defined outside this title shall be sentenced in accordance with this chapter  
7 and chapters 7, 8 and 9 of this title unless otherwise provided by law.

8 B. If a person is convicted of an offense, the court, if authorized by  
9 chapter 9 of this title, may suspend the imposition or execution of sentence  
10 and grant such person a period of probation except as otherwise provided by  
11 law. The sentence is tentative to the extent that it may be altered or  
12 revoked in accordance with chapter 9 of this title, but for all other  
13 purposes it is a final judgment of conviction.

14 C. If a person is convicted of an offense, the court shall require the  
15 convicted person to make restitution to the person who is the victim of the  
16 crime or to the immediate family of the victim if the victim has died, in the  
17 full amount of the economic loss as determined by the court and in the manner  
18 as determined by the court or the court's designee pursuant to chapter 8 of  
19 this title. Restitution ordered pursuant to this subsection shall be paid to  
20 the clerk of the court for disbursement to the victim and is a criminal  
21 penalty for the purposes of a federal bankruptcy involving the person  
22 convicted of an offense.

23 D. If the court imposes probation it may also impose a fine as  
24 authorized by chapter 8 of this title.

25 E. If a person is convicted of an offense and not granted a period of  
26 probation, or when probation is revoked, any of the following sentences may  
27 be imposed:

28 1. A term of imprisonment authorized by this chapter or chapter 7 of  
29 this title.

30 2. A fine authorized by chapter 8 of this title. The sentence is  
31 tentative to the extent it may be modified or revoked in accordance with  
32 chapter 8 of this title, but for all other purposes it is a final judgment of  
33 conviction. If the conviction is of a class 2, 3 or 4 felony, the sentence  
34 cannot consist solely of a fine.

35 3. Both imprisonment and a fine.

36 4. Intensive probation, subject to the provisions of chapter 9 of this  
37 title.

38 5. Intensive probation, subject to the provisions of chapter 9 of this  
39 title, and a fine.

40 6. A new term of probation or intensive probation.

41 F. If an enterprise is convicted of any offense, a fine may be imposed  
42 as authorized by chapter 8 of this title.

43 G. If a person or an enterprise is convicted of any felony, the court  
44 ~~may~~, in addition to any other sentence authorized by law, **MAY** order the  
45 forfeiture, suspension or revocation of any charter, license, permit or prior

1 approval granted to the person or enterprise by any department or agency of  
2 the state or of any political subdivision.

3 H. A court authorized to pass sentence ~~upon~~ ON a person convicted of  
4 any offense defined within or without this title shall have a duty to  
5 determine and impose the punishment prescribed for such offense.

6 I. If a person is convicted of a felony offense and the court  
7 sentences the person to a term of imprisonment, the court at the time of  
8 sentencing shall impose on the convicted person a term of community  
9 supervision. The term of community supervision shall be served consecutively  
10 to the actual period of imprisonment if the person signs and agrees to abide  
11 by conditions of supervision established by the state department of  
12 corrections. Except pursuant to subsection J OF THIS SECTION, the term of  
13 community supervision imposed by the court shall be for a period equal to:

14 1. One day for every seven days of the sentence or sentences imposed  
15 IF THE DEFENDANT IS SENTENCED TO A TERM OF IMPRISONMENT FOR A SERIOUS OFFENSE  
16 OR VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706.

17 2. ONE DAY FOR EVERY THREE DAYS OF THE SENTENCE OR SENTENCES IMPOSED  
18 IF THE DEFENDANT IS SENTENCED TO A TERM OF IMPRISONMENT FOR AN OFFENSE NOT  
19 LISTED IN PARAGRAPH 1 OF THIS SUBSECTION.

20 J. In calculating the term of community supervision, all fractions  
21 shall be decreased to the nearest month, except for a class 5 or 6 felony  
22 which shall not be less than one month.

23 K. Notwithstanding subsection I OF THIS SECTION, if the court  
24 sentences a person to serve a consecutive term of probation immediately after  
25 the person serves a term of imprisonment, the court may waive community  
26 supervision and order that the person begin serving the term of probation  
27 ~~upon~~ ON the person's release from confinement. The court may retroactively  
28 waive the term of community supervision or that part remaining to be served  
29 if the community supervision was imposed before July 21, 1997. If the court  
30 waives community supervision, the term of probation imposed shall be equal to  
31 or greater than the term of community supervision that would have been  
32 imposed. If the court does not waive community supervision, the person shall  
33 begin serving the term of probation after the person serves the term of  
34 community supervision. The state department of corrections shall provide  
35 reasonable notice to the probation department of the scheduled release of the  
36 inmate from confinement by the department.

37 L. If at the time of sentencing the court is of the opinion that a  
38 sentence that the law requires the court to impose is clearly excessive, the  
39 court may enter a special order allowing the person sentenced to petition the  
40 board of executive clemency for a commutation of sentence within ninety days  
41 after the person is committed to the custody of the state department of  
42 corrections. If the court enters a special order regarding commutation, the  
43 court shall set forth in writing its specific reasons for concluding that the  
44 sentence is clearly excessive. The court shall allow both the state and the  
45 victim to submit a written statement on the matter. The court's order, and

1 reasons for its order, and the statements of the state and the victim shall  
2 be sent to the board of executive clemency.

3 Sec. 2. Section 13-901, Arizona Revised Statutes, is amended to 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 additional offense or violates a condition, may revoke probation  
4 in accordance with the rules of criminal procedure at any time before the  
5 expiration or termination of the period of probation. If the court revokes  
6 the defendant's probation and the defendant is serving more than one  
7 probationary term concurrently, the court may sentence the person to terms of  
8 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. 3. Section 41-1604.07, Arizona Revised Statutes, is amended to  
4 read:

5 41-1604.07. Earned release credits; forfeiture; restoration

6 A. Pursuant to rules adopted by the director, each prisoner who is in  
7 the eligible earned release credit class shall be allowed an earned release  
8 credit ~~of one day for every six days served~~ AS SET FORTH IN SUBSECTION B OF  
9 THIS SECTION, including time served in county jails, except for those  
10 prisoners who are sentenced to serve the full term of imprisonment imposed by  
11 the court.

12 B. THE EARNED RELEASE CREDIT IS:

13 1. ONE DAY FOR EVERY SIX DAYS SERVED IF THE DEFENDANT IS SENTENCED TO  
14 A TERM OF IMPRISONMENT FOR A SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED FELONY  
15 AS DEFINED IN SECTION 13-706.

16 2. ONE DAY FOR EVERY THREE DAYS SERVED IF THE DEFENDANT IS SENTENCED  
17 TO A TERM OF IMPRISONMENT FOR AN OFFENSE NOT LISTED IN PARAGRAPH 1 OF THIS  
18 SUBSECTION.

19 ~~B.~~ C. Release credits earned by a prisoner pursuant to subsection A  
20 of this section shall not reduce the term of imprisonment imposed by the  
21 court on the prisoner.

22 ~~C.~~ D. On reclassification of a prisoner resulting from the prisoner's  
23 failure to adhere to the rules of the department or failure to demonstrate a  
24 continual willingness to volunteer for or successfully participate in a work,  
25 educational, treatment or training program, the director may declare all  
26 release credits earned by the prisoner forfeited. In the discretion of the  
27 director forfeited release credits may subsequently be restored. The  
28 director shall maintain an account of release credits earned by each  
29 prisoner.

30 ~~D.~~ E. A prisoner who has reached the prisoner's earned release date  
31 or sentence expiration date shall be released to begin the prisoner's term of  
32 community supervision imposed by the court or term of probation if the court  
33 waived community supervision pursuant to section 13-603, except that the  
34 director may deny or delay the prisoner's release to community supervision or  
35 probation if the director believes the prisoner may be a sexually violent  
36 person as defined in section 36-3701 until the screening process is complete  
37 and the director determines that the prisoner will not be referred to the  
38 county attorney pursuant to section 36-3702. If the term of community  
39 supervision is waived, the state department of corrections shall provide  
40 reasonable notice to the probation department of the scheduled release of the  
41 prisoner from confinement by the department. If the court waives community  
42 supervision, the director shall issue the prisoner an absolute discharge on  
43 the prisoner's earned release credit date. A prisoner who is released on the  
44 earned release credit date to serve a term of probation is not under the  
45 control of the state department of corrections when community supervision has

1 been waived and the state department of corrections is not required to  
2 provide parole services.

3 ~~E.~~ F. Notwithstanding subsection ~~D~~ E of this section, a prisoner who  
4 fails to achieve functional literacy at an eighth grade literacy level shall  
5 not be released to begin the prisoner's term of community supervision until  
6 either the prisoner achieves an eighth grade functional literacy level as  
7 measured by standardized assessment testing or the prisoner serves the full  
8 term of imprisonment imposed by the court, whichever first occurs. This  
9 subsection does not apply to inmates who either:

10 1. Are unable to meet the functional literacy standard required by  
11 section 31-229.02, subsection A, due to a medical, developmental or learning  
12 disability as described in section 31-229, subsection C.

13 2. Are classified as level five offenders.

14 3. Are foreign nationals.

15 4. Have less than six months incarceration to serve on commitment to  
16 the department.

17 ~~F.~~ G. The department shall establish conditions of community  
18 supervision it deems appropriate in order to ensure that the best interests  
19 of the prisoner and the citizens of this state are served. As a condition of  
20 community supervision the director may order a released prisoner to  
21 participate in an appropriate drug treatment or education program that is  
22 administered by a qualified agency, organization or individual approved by  
23 the department of health services and that provides treatment or education to  
24 persons who abuse controlled substances. Each person who is enrolled in a  
25 drug treatment or education program shall pay for the cost of participation  
26 in the program to the extent of the person's financial ability. Additional  
27 conditions may include participation in a rehabilitation program or  
28 counseling and performance of community restitution work, except that if the  
29 prisoner was convicted of a violation of sexual conduct with a minor under  
30 fifteen years of age or molestation of a child under fifteen years of age,  
31 the department shall impose as a condition of community supervision a  
32 prohibition on residing within four hundred forty feet of a school or its  
33 accompanying grounds. If a prisoner who reaches the prisoner's earned  
34 release credit date refuses to sign and agree to abide by the conditions of  
35 supervision before release on community supervision, the prisoner shall not  
36 be released. When the prisoner reaches the sentence expiration date, the  
37 prisoner shall be released to begin the term of community supervision. If  
38 the prisoner refuses to sign and agree to abide by the conditions of release,  
39 the prisoner shall not be released on the sentence expiration date and shall  
40 serve the term of community supervision in prison. The department is  
41 required to supervise any prisoner on community supervision until the period  
42 of community supervision expires. The department may bring a prisoner who is  
43 in violation of the prisoner's terms and conditions before the board of  
44 executive clemency. For the purposes of this subsection, "school" means any  
45 public, charter or private school where children attend classes.

1           ~~G~~ H. The director pursuant to rules adopted by the department shall  
2 authorize the release of any prisoner on the prisoner's earned release credit  
3 date to serve any consecutive term imposed on the prisoner. The release  
4 shall be for the sentence completed only. The prisoner shall remain under  
5 the custody and control of the department. The director may authorize the  
6 rescission of the release to any consecutive term if the prisoner fails to  
7 adhere to the rules of the department.

8           ~~H~~ I. If a prisoner absconds from community supervision, any time  
9 spent before the prisoner is returned to custody is excluded in calculating  
10 the remaining period of community supervision.

11           ~~I~~ J. A prisoner shall forfeit five days of the prisoner's earned  
12 release credits:

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

16           (a) Brings a claim without substantial justification.

17           (b) Unreasonably expands or delays a proceeding.

18           (c) Testifies falsely or otherwise presents false information or  
19 material to the court.

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

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

24           ~~J~~ K. If the prisoner does not have five days of earned release  
25 credits, the prisoner shall forfeit the prisoner's existing earned release  
26 credits and shall be ineligible from accruing earned release credits until  
27 the number of earned release credits the prisoner would have otherwise  
28 accrued equals the difference between five days and the number of existing  
29 earned release credit days the prisoner forfeits pursuant to this section.

30           ~~K~~ L. The director may authorize temporary release on inmate status  
31 of eligible inmates pursuant to rules adopted by the director within ninety  
32 days of any other authorized release date. The release authorization applies  
33 to any inmate who has been convicted of a drug offense, who has been  
34 determined to be eligible for participation in the transition program  
35 pursuant to section 31-281 and who has agreed to participate in the  
36 transition program.