

REFERENCE TITLE: probation; community supervision; search; seizure

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

HB 2460

Introduced by
Representative Farnsworth E

AN ACT

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

(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 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 K. THE COURT MAY NOT PLACE A DEFENDANT WHO IS CONVICTED OF A FELONY
4 OFFENSE ON PROBATION UNLESS THE DEFENDANT AGREES IN WRITING AS A STANDARD
5 CONDITION OF PROBATION TO ALLOW A CERTIFIED PEACE OFFICER, WITH OR WITHOUT A
6 WARRANT, TO CONDUCT A SEARCH OR SEIZURE OF THE PERSON BASED ON REASONABLE
7 SUSPICION AT ANY TIME OF THE DAY OR NIGHT. THIS SUBSECTION DOES NOT
8 AUTHORIZE A PEACE OFFICER TO CONDUCT A SEARCH OR SEIZURE FOR THE SOLE PURPOSE
9 OF HARASSMENT.

10 Sec. 2. Section 41-1604.07, Arizona Revised Statutes, is amended to
11 read:

12 41-1604.07. Earned release credits; forfeiture; restoration

13 A. Pursuant to rules adopted by the director, each prisoner who is in
14 the eligible earned release credit class shall be allowed an earned release
15 credit of one day for every six days served, including time served in county
16 jails, except for those prisoners who are sentenced to serve the full term of
17 imprisonment imposed by the court.

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

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

29 D. A prisoner who has reached the prisoner's earned release date or
30 sentence expiration date shall be released to begin the prisoner's term of
31 community supervision imposed by the court or term of probation if the court
32 waived community supervision pursuant to section 13-603, except that the
33 director may deny or delay the prisoner's release to community supervision or
34 probation if the director believes the prisoner may be a sexually violent
35 person as defined in section 36-3701 until the screening process is complete
36 and the director determines that the prisoner will not be referred to the
37 county attorney pursuant to section 36-3702. If the term of community
38 supervision is waived, the state department of corrections shall provide
39 reasonable notice to the probation department of the scheduled release of the
40 prisoner from confinement by the department. If the court waives community
41 supervision, the director shall issue the prisoner an absolute discharge on
42 the prisoner's earned release credit date. A prisoner who is released on the
43 earned release credit date to serve a term of probation is not under the
44 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. Notwithstanding subsection D of this section, a prisoner who fails
4 to achieve functional literacy at an eighth grade literacy level shall not be
5 released to begin the prisoner's term of community supervision until either
6 the prisoner achieves an eighth grade functional literacy level as measured
7 by standardized assessment testing or the prisoner serves the full term of
8 imprisonment imposed by the court, whichever first occurs. This subsection
9 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. The department shall establish conditions of community supervision
18 it deems appropriate in order to ensure that the best interests of the
19 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. 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. If a prisoner absconds from community supervision, any time spent
9 before the prisoner is returned to custody is excluded in calculating the
10 remaining period of community supervision.

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

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

36 L. BEFORE A PRISONER IS RELEASED TO BEGIN THE PRISONER'S TERM OF
37 COMMUNITY SUPERVISION, THE DIRECTOR SHALL REQUIRE THE PRISONER TO AGREE IN
38 WRITING AS A CONDITION OF COMMUNITY SUPERVISION TO ALLOW A CERTIFIED PEACE
39 OFFICER, WITH OR WITHOUT A WARRANT, TO CONDUCT A SEARCH OR SEIZURE OF THE
40 PERSON BASED ON REASONABLE SUSPICION AT ANY TIME OF THE DAY OR NIGHT. THIS
41 SUBSECTION DOES NOT AUTHORIZE A PEACE OFFICER TO CONDUCT A SEARCH OR SEIZURE
42 FOR THE SOLE PURPOSE OF HARASSMENT.