



Arizona State Senate Issue Brief

August 18, 2010

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

TRUTH IN SENTENCING

HISTORY

Earned release credits were added to the Arizona Revised Statutes by Laws 1978, Chapter 164, with inmates earning one day of release credit for every two or three days served, and establishing that release credits earned were deducted from and reduced the term of imprisonment. Laws 1986, Chapter 200, provided that earned release credits do not reduce the length of the sentence imposed, but that the Director of the Arizona Department of Corrections (ADC) may authorize the early release of a prisoner based on the earned release credits.

The Sentencing Reform Act of 1984 introduced “truth-in-sentencing” to the federal justice system. The United States Sentencing Commission sentencing guidelines take into account the gravity of the crime and the offender’s criminal record and, under the guidelines, offenders convicted of federal offenses are expected to serve a minimum of 85 percent of the court-imposed sentence. The Sentencing Reform Act of 1984 allowed states to establish unique sentencing guidelines, but the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Program was established by the Violent Crime Control and Law Enforcement Act of 1994 to encourage states to implement truth-in-sentencing.

In 2004, the United States Supreme Court held that a judge enhancing a sentence based on a fact that was not determined by the jury or admitted by the defendant is a violation of the jury trial requirements of the Sixth Amendment. *Blakely v. Washington*, 542 U.S. 296 (2004). One year later, the United States Supreme Court held that *Blakely* applied to the federal sentencing guidelines and severed the mandatory provisions, thereby making the guidelines advisory. *United States v. Booker*, 543 U.S. 220 (2005). According to the U.S. Sentencing Commission, the Court upheld the constitutionality of the Commission, which continues to monitor and amend the guidelines.

ARIZONA’S TRUTH IN SENTENCING

The Arizona Legislature passed truth-in-sentencing laws in 1993. Laws 1993, Chapter 255, altered earned release mechanisms and abolished parole for offenses committed on or after January 1, 1994. This legislation also mandated that an inmate serve his or her

entire court-imposed sentence, except that a person may be eligible for earned release credits for up to a 15 percent reduction of his or her sentence for good behavior.

In response to the *Booker* decision, Arizona modified its aggravated sentencing laws. Laws 2005, Chapter 20, modified Arizona's procedures for determining an aggravated sentence by requiring the trier of fact to determine and the court to consider aggravating circumstances. Laws 2006, Chapter 148, requires the court, instead of the trier of fact, to determine the aggravating circumstance of whether a person has been previously convicted of a felony and permits an aggravated term of imprisonment to be imposed if the defendant admits one or more aggravating circumstances.

During a five-year period, ADC received a total of \$57,923,000 in VOI/TIS grants, which are nonappropriated, for the development of additional medium and maximum security prisoner bed space. The VOI/TIS program was suspended by the federal government and ADC utilized all of the VOI/TIS grant monies by the end of FY 2005-2006, but the Arizona Legislature provided general appropriations for FY 2006-2007 to ADC to backfill the VOI/TIS grant monies.

In 2008, Arizona's criminal sentencing code was restructured. Laws 2008, Chapter 301, reorganized existing sentencing statutes by shifting their location in the criminal code. These technical revisions did not significantly change the criminal sentencing laws.

Earned Release Credits

Pursuant to Arizona's truth-in-sentencing laws, if incarcerated for an offense committed on or after January 1, 1994, inmates may earn release credits of one day for every six days served, including time served in county jails. If incarcerated for an offense committed between October 1, 1978, and December 31, 1993, inmates may earn release credits of one day for every two days served or release credits of one day for every three days served, depending on the offense. The earned release credits shorten the prison sentence.

Eligibility to earn release credits is based upon an inmate's earned release classification, from Class I to Class IX, with Class I inmates earning release credits. Upon commitment to ADC, each inmate is initially placed in Class II. ADC administrative policy requires an Initial Classification Committee (ICC) to place all eligible inmates in Class I within 20 days of sentencing. To earn reclassification to and remain in Class I, an inmate must begin and continue to participate in recommended work, training, education and treatment programs, and receive satisfactory performance evaluations. If an inmate does not receive satisfactory evaluations, ICC reviews the inmate's case to determine if the inmate should remain in Class I or be reclassified to Class II. If the inmate is placed in Class II, a time period for the classification must be specified and the ICC must meet with the inmate at the conclusion of the specified period to determine if the inmate should be placed in Class I, remain in Class II or be placed in another class. Classes III – IX are reserved for inmates who have committed offenses prior to October 1, 1978, who are ineligible for release credits, who are considered dangerous or who are under disciplinary sanctions.

Community Supervision

Arizona's truth-in-sentencing also created "community supervision" for inmates who commit offenses on or after January 1, 1994. Once an inmate has reached his or her earned release date or sentence expiration date, the inmate is released to begin his or her term of community supervision or a term of probation if the court waived community supervision.

Community supervision is a portion of a felony sentence and is served consecutive to the inmate's period of imprisonment. The term of community supervision is a period equal to one day for every seven days of the sentence and is imposed on the convicted person by the court at the time of sentencing. The inmate is supervised by ADC and must sign and agree to abide by ADC's conditions of supervision.

Probation

If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of the sentence and place the person on probation. Generally, probation is an alternative to imprisonment allowing a person found guilty of an offense to stay in the community, under certain conditions and usually under the supervision of the courts through a probation officer. A violation of probation can lead to its revocation and to imprisonment. There are some cases in which a person may be convicted of multiple counts, some of which the court may impose a prison sentence for and some of which the court may impose probation upon the person after he or she has served the prison sentence. For some crimes, primarily the sexual offenses, if probation is available, probation may continue for a life term.

Parole

Pursuant to Laws 1993, Chapter 255, inmates who committed offenses before January 1, 1994, are still eligible for parole. Parole is a period of conditional supervised release outside of prison before an entire prison term is completed and is granted by the Arizona Board of Executive Clemency after the inmate has served a portion of the inmate's sentence and has applied for release on parole. Persons on parole are supervised by ADC. Parole eligibility dates are calculated in accordance with the provisions of the committing offense and the laws in effect at the time the offense was committed. Inmates who committed an offense prior to January 1, 1994, are parole eligible after serving one-half to two-thirds of the imposed sentence while some inmates who committed crimes prior to 1978 are parole eligible after serving one-third of the imposed sentence.

ADDITIONAL RESOURCES

- Arizona Department of Corrections
1601 W. Jefferson St.
Phoenix, AZ 85007
602-542-3568
<http://www.azcorrections.gov>
- Arizona Supreme Court
Administrative Office of the Courts
1501 W. Washington St., Suite 411
Phoenix, AZ 85007-3231
602-542-9300
<http://www.supreme.state.az.us>
- U.S. Department of Justice
Bureau of Justice Statistics
Truth in Sentencing in State Prisons
<http://www.ojp.usdoj.gov/bjs/abstract/tssp.htm>
- U.S. Department of Justice
Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Program
www.ojp.usdoj.gov/BJA/grant/voitis.html
- State Department of Corrections Statutes:
Arizona Revised Statutes, Title 41, Chapter 11, Article 1
- United States Sentencing Commission
www.ussc.gov
- The Law and Policy of Sentencing and Corrections in a Nutshell, 8th Edition (West)