

REFERENCE TITLE: **community supervision; earned release credits**

State of Arizona
House of Representatives
Fiftieth Legislature
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HB 2521

Introduced by
Representatives Ash, Chabin, Meyer, Patterson, Saldate, Wheeler: Alston,
Arredondo, Farley, Gonzales, Hale, Jones, McLain, Miranda C

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 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.