

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 115
HOUSE BILL 2245

AN ACT

AMENDING SECTION 13-3961, ARIZONA REVISED STATUTES; RELATING TO BAIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-3961, Arizona Revised Statutes, is amended to
3 read:

4 13-3961. Offenses not bailable; purpose; preconviction;
5 exceptions

6 A. A person who is in custody shall not be admitted to bail if the
7 proof is evident or the presumption great that the person is guilty of the
8 offense charged and the offense charged is one of the following:

9 1. A capital offense.

10 2. Sexual assault.

11 3. Sexual conduct with a minor ~~who is under fifteen years of age~~
12 UNDER EITHER OF THE FOLLOWING CIRCUMSTANCES:

13 (a) AT THE TIME OF THE OFFENSE, THE PERSON WAS AT LEAST EIGHTEEN
14 YEARS OF AGE AND THE VICTIM WAS UNDER THIRTEEN YEARS OF AGE.

15 (b) AT THE TIME OF THE OFFENSE, THE VICTIM WAS THIRTEEN OR FOURTEEN
16 YEARS OF AGE AND THE PERSON WAS AT LEAST TEN YEARS OLDER THAN THE VICTIM.

17 4. Molestation of a child ~~who is under fifteen years of age~~ UNDER
18 EITHER OF THE FOLLOWING CIRCUMSTANCES:

19 (a) AT THE TIME OF THE OFFENSE, THE PERSON WAS AT LEAST EIGHTEEN
20 YEARS OF AGE AND THE VICTIM WAS UNDER THIRTEEN YEARS OF AGE.

21 (b) AT THE TIME OF THE OFFENSE, THE VICTIM WAS THIRTEEN OR FOURTEEN
22 YEARS OF AGE AND THE PERSON WAS AT LEAST TEN YEARS OLDER THAN THE VICTIM.

23 5. A serious felony offense if there is probable cause to believe
24 that the person has entered or remained in the United States
25 illegally. For the purposes of this paragraph:

26 (a) The court shall consider all of the following in making a
27 determination that a person has entered or remained in the United States
28 illegally:

29 (i) Whether a hold has been placed on the arrested person by the
30 United States immigration and customs enforcement.

31 (ii) Any indication by a law enforcement agency that the person is
32 in the United States illegally.

33 (iii) Whether an admission by the arrested person has been obtained
34 by the court or a law enforcement agency that the person has entered or
35 remained in the United States illegally.

36 (iv) Any information received from a law enforcement agency
37 pursuant to section 13-3906.

38 (v) Any evidence that the person has recently entered or remained
39 in the United States illegally.

40 (vi) Any other relevant information that is obtained by the court
41 or that is presented to the court by a party or any other person.

42 (b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or
43 any violation of section 28-1383.

44 B. The purposes of bail and any conditions of release that are set
45 by a judicial officer include:

- 1 1. Assuring the appearance of the accused.
- 2 2. Protecting against the intimidation of witnesses.
- 3 3. Protecting the safety of the victim, any other person or the
- 4 community.

5 C. The initial determination of whether an offense is bailable
6 pursuant to subsection A of this section shall be made by the magistrate
7 or judicial officer at the time of the person's initial appearance.

8 D. Except as provided in subsection A of this section, a person who
9 is in custody shall not be admitted to bail if the person is charged with
10 a felony offense and the state certifies by motion and the court finds
11 after a hearing on the matter that there is clear and convincing evidence
12 that the person charged poses a substantial danger to another person or
13 the community or engaged in conduct constituting a violent offense, that
14 no condition or combination of conditions of release may be imposed that
15 will reasonably assure the safety of the other person or the community and
16 that the proof is evident or the presumption great that the person
17 committed the offense for which the person is charged. For the purposes
18 of this subsection, "violent offense" means either of the following:

- 19 1. A dangerous crime against children.
- 20 2. Terrorism.

21 E. On oral motion of the state, the court shall order the hearing
22 required by subsection D of this section at or within twenty-four hours of
23 the initial appearance unless the person who is subject to detention or
24 the state moves for a continuance. A continuance that is granted on the
25 motion of the person shall not exceed five calendar days unless there are
26 extenuating circumstances. A continuance on the motion of the state shall
27 be granted on good cause shown and shall not exceed twenty-four hours.
28 The prosecutor shall provide reasonable notice and an opportunity for
29 victims and witnesses to be present and heard at any hearing. The person
30 may be detained pending the hearing. The person is entitled to
31 representation by counsel and is entitled to present information by
32 proffer or otherwise, to testify and to present witnesses in the person's
33 own behalf. Testimony of the person charged that is given during the
34 hearing shall not be admissible on the issue of guilt in any subsequent
35 judicial proceeding, except as it might relate to the compliance with or
36 violation of any condition of release subsequently imposed or the
37 imposition of appropriate sentence or in perjury proceedings, or for the
38 purposes of impeachment. The case of the person shall be placed on an
39 expedited calendar and, consistent with the sound administration of
40 justice, the person's trial shall be given priority. The person may be
41 admitted to bail in accordance with the Arizona rules of criminal
42 procedure whenever a judicial officer finds that a subsequent event has
43 eliminated the basis for detention.

44 F. The finding of an indictment or the filing of an information
45 does not add to the strength of the proof or the presumption to be drawn.

1 G. In a hearing pursuant to subsection D of this section, proof
2 that the person is a criminal street gang member may give rise to the
3 inference that the person poses a substantial danger to another person or
4 the community and that no condition or combination of conditions of
5 release may be imposed that will reasonably assure the safety of the other
6 person or the community.

APPROVED BY THE GOVERNOR APRIL 3, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 3, 2018.