

REFERENCE TITLE: **sentencing; monetary obligations; fine mitigation**

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

HB 2313

Introduced by
Representatives Farnsworth E: Boyer

AN ACT

AMENDING SECTIONS 12-114.01, 12-116.01 AND 12-116.02, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-116.08; AMENDING SECTIONS 13-805, 13-810, 13-812 AND 13-824, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-825; AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-915; AMENDING SECTION 13-924, ARIZONA REVISED STATUTES; AMENDING TITLE 31, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 31-404; AMENDING SECTIONS 41-191.08, 41-1730 AND 41-2401, ARIZONA REVISED STATUTES; AMENDING SECTION 41-2407, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2017, CHAPTER 125, SECTION 1 AND CHAPTER 229, SECTION 18; REPEALING SECTION 41-2407, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2017, CHAPTER 303, SECTION 12; 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 12-114.01, Arizona Revised Statutes, is amended
3 to read:

4 12-114.01. Probation assessment; deposit

5 A. Except as provided in section 12-269, in addition to any other
6 penalty, fine, fee, surcharge or assessment authorized by law, a person
7 shall pay an assessment of twenty dollars on conviction for a criminal
8 offense or a finding of responsibility for a civil traffic violation, for
9 a violation of any local ordinance relating to the stopping, standing or
10 operation of a vehicle, except parking violations, or for a violation of
11 the game and fish statutes in title 17.

12 B. The monies collected pursuant to this section shall be
13 deposited, pursuant to sections 35-146 and 35-147, in the judicial
14 collection enhancement fund established by section 12-113 to be used to
15 supplement monies currently used for the salaries of adult and juvenile
16 probation and surveillance officers and for support of programs and
17 services of the superior court adult and juvenile probation departments.

18 C. The court may ~~waive~~ MITIGATE all or part of the assessment in
19 the same manner and subject to the same limitations ~~provided for~~ INCLUDED
20 IN the ~~waiver of surcharges~~ MITIGATION OF A FINE in section ~~12-116.01,~~
21 ~~subsection F and section 12-116.02, subsection D~~ 13-825, SUBSECTION B.

22 Sec. 2. Section 12-116.01, Arizona Revised Statutes, is amended to
23 read:

24 12-116.01. Surcharges; remittance reports; fund deposits

25 A. In addition to any penalty provided by law, a surcharge shall be
26 levied in an amount of ~~forty-seven~~ FORTY-TWO percent on every fine,
27 penalty and forfeiture imposed and collected by the courts for criminal
28 offenses and any civil penalty imposed and collected for a civil traffic
29 violation and fine, penalty or forfeiture for a violation of the motor
30 vehicle statutes, for any local ordinance relating to the stopping,
31 standing or operation of a vehicle or for a violation of the game and fish
32 statutes in title 17.

33 B. In addition to any penalty provided by law, a surcharge shall be
34 levied in an amount of seven percent on every fine, penalty and forfeiture
35 imposed and collected by the courts for criminal offenses and any civil
36 penalty imposed and collected for a civil traffic violation and fine,
37 penalty or forfeiture for a violation of the motor vehicle statutes, for
38 any local ordinance relating to the stopping, standing or operation of a
39 vehicle or for a violation of the game and fish statutes in title 17.

40 C. In addition to any penalty provided by law, a surcharge shall be
41 levied ~~through December 31, 2011 in an amount of seven percent, and~~
42 ~~beginning January 1, 2012~~ in an amount of six percent, on every fine,
43 penalty and forfeiture imposed and collected by the courts for criminal
44 offenses and any civil penalty imposed and collected for a civil traffic
45 violation and fine, penalty or forfeiture for a violation of the motor

1 vehicle statutes, for any local ordinance relating to the stopping,
2 standing or operation of a vehicle or for a violation of the game and fish
3 statutes in title 17.

4 D. If any deposit of bail or bond or deposit for an alleged civil
5 traffic violation is to be made for a violation, the court shall require a
6 sufficient amount to include the surcharge prescribed in this section for
7 forfeited bail, bond or deposit. If bail, bond or deposit is forfeited,
8 the court shall transmit the amount of the surcharge pursuant to
9 subsection ~~H~~ G of this section. If bail, bond or deposit is returned,
10 the surcharge made pursuant to this article shall also be returned.

11 E. After addition of the surcharge, the courts may round the total
12 amount due to the nearest one-quarter dollar.

13 ~~F. The judge may waive all or part of the civil penalty, fine,~~
14 ~~forfeiture and surcharge, except for mandatory civil penalties and fines,~~
15 ~~the payment of which would work a hardship on the persons convicted or~~
16 ~~adjudicated or on their immediate families. If a fine or civil penalty is~~
17 ~~mandatory, the judge may waive only all or part of the surcharges~~
18 ~~prescribed by subsections A, B and C of this section and section~~
19 ~~12-116.02. If a fine or civil penalty is not mandatory and if a portion~~
20 ~~of the civil penalty, fine, forfeiture and surcharge is waived or~~
21 ~~suspended, the amount assessed must be divided according to the proportion~~
22 ~~that the civil penalty, fine, bail or bond and the surcharge represent of~~
23 ~~the total amount due.~~

24 ~~G.~~ F. The surcharge imposed by this section shall be applied to
25 the base fine, civil penalty or forfeiture and not to any other surcharge
26 imposed.

27 ~~H.~~ G. After a determination by the court of the amount due, the
28 court shall transmit, on the last day of each month, the surcharges
29 collected pursuant to subsections A, B, C and D of this section and a
30 remittance report of the fines, civil penalties, assessments and
31 surcharges collected pursuant to subsections A, B, C and D of this section
32 to the county treasurer, except that municipal courts shall transmit the
33 surcharges and the remittance report of the fines, civil penalties,
34 assessments and surcharges to the city treasurer.

35 ~~I.~~ H. The appropriate authorities specified in subsection ~~H~~ G of
36 this section shall transmit the forty-seven percent surcharge prescribed
37 in subsection A of this section and the remittance report as required in
38 subsection ~~H~~ G of this section to the state treasurer on or before the
39 fifteenth day of each month for deposit in the criminal justice
40 enhancement fund established by section 41-2401.

41 ~~J.~~ I. The appropriate authorities specified in subsection ~~H~~ G of
42 this section shall transmit the seven percent surcharge prescribed in
43 subsection B of this section and the remittance report as required in
44 subsection ~~H~~ G of this section to the state treasurer on or before the

1 fifteenth day of each month for allocation pursuant to section 41-2421,
2 subsection J.

3 ~~K.~~ J. The appropriate authorities specified in subsection ~~H~~ G of
4 this section shall transmit the surcharge prescribed in subsection C of
5 this section and the remittance report as required in subsection ~~H~~ G of
6 this section to the state treasurer on or before the fifteenth day of each
7 month for deposit in the department of public safety forensics fund
8 established by section 41-1730.

9 ~~L.~~ K. Partial payments of the amount due shall be transmitted as
10 prescribed in subsections G, H, I, ~~AND~~ J ~~and~~ ~~K~~ of this section and shall
11 be divided according to the proportion that the civil penalty, fine, bail
12 or bond and the surcharge represent of the total amount due.

13 Sec. 3. Section 12-116.02, Arizona Revised Statutes, is amended to
14 read:

15 12-116.02. Additional surcharges: fund deposits

16 A. In addition to any penalty provided by law, ~~there shall be~~
17 ~~levied~~ a surcharge **SHALL BE LEVIED** in an amount of thirteen ~~per cent~~
18 **PERCENT** on every fine, penalty and forfeiture imposed and collected by the
19 courts for criminal offenses and civil penalties imposed and collected for
20 a civil traffic violation and fine, penalty or forfeiture for a violation
21 of the motor vehicle statutes, for a violation of any local ordinance
22 relating to the stopping, standing or operation of a vehicle or for a
23 violation of the game and fish statutes in title 17.

24 B. If any deposit of bail or bond or deposit for an alleged civil
25 traffic violation is to be made for a violation, the court shall require a
26 sufficient amount to include the surcharge prescribed in this section for
27 forfeited bail, bond or deposit. If bail, bond or deposit is forfeited,
28 the **COURT SHALL TRANSMIT THE** amount of ~~such~~ **THE** surcharge ~~shall be~~
29 ~~transmitted by the court~~ pursuant to subsection ~~F~~ E of this section. If
30 bail, bond or deposit is returned, the surcharge made pursuant to this
31 article shall also be returned.

32 C. After addition of the surcharge, the courts may round the total
33 amount due to the nearest one-quarter dollar.

34 ~~D. The judge may waive all or part of the civil penalty, fine,~~
35 ~~forfeiture and surcharge, except for civil penalties and fines that are~~
36 ~~mandatory, the payment of which would work a hardship on the persons~~
37 ~~convicted or adjudicated or on their immediate families. If a fine or~~
38 ~~civil penalty is mandatory, the judge may waive only all or part of the~~
39 ~~surcharge prescribed by subsection A of this section and section~~
40 ~~12-116.01. If a fine or civil penalty is not mandatory and if a portion~~
41 ~~of the civil penalty, fine, forfeiture and surcharge is waived or~~
42 ~~suspended, the amount assessed must be divided according to the proportion~~
43 ~~that the civil penalty, fine, bail or bond and the surcharge represent of~~
44 ~~the total amount due.~~

~~E.~~ D. The surcharge imposed by this section shall be applied to the base fine, civil penalty or forfeiture and not to any other surcharge imposed.

~~F.~~ E. After a determination by the court of the amount due, the court shall transmit, on the last day of each month, the surcharges collected pursuant to subsections A and B of this section and a remittance report of the fines, civil penalties, assessments and surcharges collected pursuant to subsections A and B of this section to the county treasurer, except that municipal courts shall transmit the surcharges and the remittance report of the fines, civil penalties, assessments and surcharges to the city treasurer.

~~G.~~ F. The APPROPRIATE AUTHORITIES PRESCRIBED IN SUBSECTION E OF THIS SECTION SHALL TRANSMIT THE thirteen ~~per cent~~ PERCENT surcharge as required in subsection A of this section ~~shall be transmitted by the appropriate authorities prescribed in subsection F of this section~~ to the state treasurer on or before the fifteenth day of each month for deposit in the medical services enhancement fund established by section 36-2219.01.

~~H.~~ G. Partial payments of the amount due shall be transmitted as required in subsections E AND F ~~and G~~ of this section and shall be divided according to the proportion that the civil penalty, fine, bail or bond and the surcharge represent of the total amount due.

Sec. 4. Title 12, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 12-116.08, to read:

12-116.08. Penalty assessment; victims' rights; fund deposits

A. IN ADDITION TO ANY OTHER PENALTY ASSESSMENT PROVIDED BY LAW, A PENALTY ASSESSMENT SHALL BE LEVIED IN AN AMOUNT OF NINE DOLLARS ON EVERY FINE, PENALTY AND FORFEITURE IMPOSED AND COLLECTED BY THE COURTS FOR CRIMINAL OFFENSES AND ANY CIVIL PENALTY IMPOSED AND COLLECTED FOR A CIVIL TRAFFIC VIOLATION AND FINE, PENALTY OR FORFEITURE FOR A VIOLATION OF THE MOTOR VEHICLE STATUTES, FOR ANY LOCAL ORDINANCE RELATING TO THE STOPPING, STANDING OR OPERATION OF A VEHICLE OR FOR A VIOLATION OF THE GAME AND FISH STATUTES IN TITLE 17.

B. THE COURT SHALL TRANSMIT THE ASSESSMENTS COLLECTED PURSUANT TO THIS SECTION AND A REMITTANCE REPORT OF THE FINES, CIVIL PENALTIES AND ASSESSMENTS COLLECTED TO THE COUNTY TREASURER, EXCEPT THAT MUNICIPAL COURTS SHALL TRANSMIT THE ASSESSMENTS AND THE REMITTANCE REPORT OF THE FINES, CIVIL PENALTIES AND ASSESSMENTS TO THE CITY OR TOWN TREASURER.

C. THE CITY, TOWN OR COUNTY TREASURER SHALL TRANSMIT THE ASSESSMENTS AND THE REMITTANCE REPORT TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT 62.4 PERCENT OF THE ASSESSMENTS IN THE VICTIMS' RIGHTS FUND ESTABLISHED BY SECTION 41-191.08 AND THE REMAINING 37.6 PERCENT OF THE ASSESSMENTS IN THE VICTIM COMPENSATION AND ASSISTANCE FUND ESTABLISHED BY SECTION 41-2407.

1 Sec. 5. Section 13-805, Arizona Revised Statutes, is amended to
2 read:

3 13-805. Jurisdiction

4 A. The trial court shall retain jurisdiction of the case as
5 follows:

6 1. Subject to paragraph 2 of this subsection, for purposes of
7 ordering, modifying and enforcing the manner in which court-ordered
8 payments are made until paid in full or until the defendant's sentence
9 expires.

10 2. For all restitution orders in favor of a victim, including liens
11 and criminal restitution orders, for purposes of ordering, modifying and
12 enforcing the manner in which payments are made until paid in full.

13 B. At the time the defendant is ordered to pay restitution by the
14 court, the court may enter a criminal restitution order in favor of each
15 person who is entitled to restitution for the unpaid balance of any
16 restitution order. A criminal restitution order does not affect any other
17 monetary obligation imposed on the defendant pursuant to law.

18 C. At the time the defendant completes the defendant's period of
19 probation or the defendant's sentence or the defendant absconds from
20 probation or the defendant's sentence, the court shall enter both:

21 1. A criminal restitution order in favor of the state for the
22 unpaid balance, if any, of any fines, costs, incarceration costs, fees,
23 surcharges or assessments imposed.

24 2. A criminal restitution order in favor of each person entitled to
25 restitution for the unpaid balance of any restitution ordered, if a
26 criminal restitution order is not issued pursuant to subsection B of this
27 section.

28 D. The clerk of the court shall notify each person who is entitled
29 to restitution of the criminal restitution order.

30 E. A criminal restitution order may be recorded and is enforceable
31 as any civil judgment, except that a criminal restitution order does not
32 require renewal pursuant to section 12-1611 or 12-1612. Enforcement of a
33 criminal restitution order by any person **OR BY THE STATE ON BEHALF OF ANY**
34 **PERSON** who is entitled to restitution ~~or by the state~~ includes the
35 collection of interest that accrues at a rate of ten percent ~~per annum~~ **A**
36 **YEAR. ENFORCEMENT OF A CRIMINAL RESTITUTION ORDER BY THE STATE INCLUDES**
37 **THE COLLECTION OF INTEREST THAT ACCRUES AT A RATE OF FOUR PERCENT A YEAR.**
38 A criminal restitution order does not expire until paid in full. A filing
39 fee, **A** recording fee or any other charge is not required for recording a
40 criminal restitution order.

41 F. All monies paid pursuant to a criminal restitution order entered
42 by the court shall be paid to the clerk of the court.

1 G. Monies received as a result of a criminal restitution order
2 entered pursuant to this section shall be distributed in the following
3 order of priority:

4 1. Restitution ordered that is reduced to a criminal restitution
5 order.

6 2. Associated interest.

7 H. The interest accrued pursuant to subsection E of this section
8 does not apply to fees imposed for collection of the court ordered
9 payments.

10 I. A criminal restitution order is a criminal penalty for the
11 purposes of a federal bankruptcy involving the defendant.

12 Sec. 6. Section 13-810, Arizona Revised Statutes, is amended to
13 read:

14 13-810. Consequences of nonpayment of fines, surcharges,
15 fees, assessments, restitution or incarceration
16 costs

17 A. In addition to any other remedy provided by law, including a
18 writ of execution or other civil enforcement, if a defendant who is
19 sentenced to pay a fine, A SURCHARGE, a fee, AN ASSESSMENT or
20 incarceration costs defaults in the payment of the fine, SURCHARGE, fee,
21 ASSESSMENT or incarceration costs or of any installment as ordered, the
22 court, on motion of the prosecuting attorney or on its own motion, shall
23 require the defendant to show cause why the defendant's default should not
24 be treated as contempt and may issue a summons or a warrant of arrest for
25 the defendant's appearance.

26 B. In addition to any other remedy provided by law, including a
27 writ of execution or other civil enforcement, if a defendant who is
28 ordered to pay restitution defaults in the payment of the restitution or
29 of any installment as ordered, the court, on motion of the prosecuting
30 attorney, on petition of any person entitled to restitution pursuant to a
31 court order or on its own motion, shall require the defendant to show
32 cause why the defendant's default should not be treated as contempt and
33 may issue a summons or a warrant of arrest for the defendant's appearance.

34 C. In addition to any other remedy provided by law, including a
35 writ of execution or other civil enforcement, the court, on receipt of a
36 petition and issuance of an order to show cause, has jurisdiction to
37 preserve rights over all restitution liens entered pursuant to section
38 13-806, subsection B, and perfected pursuant to section 13-806,
39 subsection E.

40 D. At any hearing on the order to show cause the court, the
41 prosecuting attorney or a person entitled to restitution may examine the
42 defendant under oath concerning the defendant's financial condition,
43 employment and assets or on any other matter relating to the defendant's
44 ability to pay restitution.

E. If the court finds that the defendant has wilfully failed to pay a fine, A SURCHARGE, a fee, AN ASSESSMENT, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may do ~~one~~ ANY of the following:

1. Order the defendant incarcerated in the county jail until the fine, SURCHARGE, fee, ASSESSMENT, restitution or incarceration costs, or a specified part of the fine, SURCHARGE, fee, ASSESSMENT, restitution or incarceration costs, is paid.

2. ~~Revoke the defendant's~~ REFER THE DEFENDANT FOR REVOCATION OF probation, parole or community supervision ~~and sentence the defendant to prison pursuant to~~ AS AUTHORIZED BY law.

3. Enter an order pursuant to section 13-812. The levy or execution for the collection of a fine, A SURCHARGE, a fee, AN ASSESSMENT, restitution or incarceration costs does not discharge a defendant who is incarcerated for nonpayment of the fine, SURCHARGE, fee, ASSESSMENT, restitution or incarceration costs until the amount of the fine, SURCHARGE, fee, ASSESSMENT, restitution or incarceration costs is collected.

4. Order the defendant to perform community restitution.

F. If the court finds that the default is not wilful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including:

1. Modify the manner in which the restitution, fine, SURCHARGE, fee, ASSESSMENT or incarceration costs are to be paid.

2. Enter any reasonable order that would assure compliance with the order to pay.

3. Enter an order pursuant to section 13-812. The levy or execution for the collection of a fine, A SURCHARGE, a fee, AN ASSESSMENT, restitution or incarceration costs does not discharge a defendant incarcerated for nonpayment of the fine, SURCHARGE, fee, ASSESSMENT, restitution or incarceration costs until the amount of the fine, SURCHARGE, fee, ASSESSMENT, restitution or incarceration costs is collected.

G. If a fine, A SURCHARGE, a fee, AN ASSESSMENT, restitution or incarceration costs are imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay them from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A or B of this section.

H. If a defendant is sentenced to pay a fine, **A SURCHARGE**, a fee, **AN ASSESSMENT**, restitution or incarceration costs, the clerk of the sentencing court, on request, shall make the defendant's payment history available to the prosecutor, victim, victim's attorney, probation department and court without cost.

Sec. 7. Section 13-812, Arizona Revised Statutes, is amended to read:

13-812. Garnishment for nonpayment of fines, surcharges, fees, assessments, restitution or incarceration costs

A. After a hearing on an order to show cause pursuant to section 13-810, subsection A or B or after a hearing on a petition to revoke probation ~~pursuant to section 13-804, subsection E or the rules of criminal procedure~~, the court may issue a writ of criminal garnishment for any fine, **SURCHARGE**, fee, **ASSESSMENT**, restitution or incarceration costs.

B. The court may order garnishment for monies that are owed to a victim or the court, the clerk of the court or the prosecuting attorney pursuant to a court order to pay any fine, **SURCHARGE**, fee, **ASSESSMENT**, restitution or incarceration costs. A writ of criminal garnishment applies to any of the following:

1. The defendant's earnings as defined in section 12-1598.

2. Indebtedness that is owed to a defendant by a garnishee for amounts that are not earnings.

3. Monies that are held by a garnishee on behalf of a defendant.

4. The defendant's personal property that is in the possession of a garnishee.

5. If the garnishee is a corporation, shares or securities of a corporation or a proprietary interest in a corporation that belongs to a defendant.

6. The defendant's earnings or monies that are held by the state department of corrections while the defendant is in the custody of the department.

Sec. 8. Section 13-824, Arizona Revised Statutes, is amended to read:

13-824. Community restitution in lieu of monetary obligation: definition

A. Notwithstanding any other law, ~~in a municipal or justice court,~~ if a **MONETARY OBLIGATION IS IMPOSED ON A** defendant ~~is sentenced to pay a fine, a fee, assessment or incarceration costs~~ **AT SENTENCING** and the court finds the defendant is unable to pay all or part of the ~~fine, fee, assessment or incarceration costs~~ **MONETARY OBLIGATION**, the court may order the defendant to perform community restitution in lieu of the payment for all or part of the ~~fine, fee, assessment or incarceration costs~~ **MONETARY OBLIGATION**. The amount of community restitution shall be equivalent to

the amount of the ~~fine, fee or incarceration costs~~ MONETARY OBLIGATION by crediting any service performed at a rate of ten dollars per hour.

B. THIS SECTION DOES NOT APPLY TO THE SURCHARGE IMPOSED AND COLLECTED PURSUANT TO SECTION 16-954, SUBSECTION A.

C. FOR THE PURPOSES OF THIS SECTION, "MONETARY OBLIGATION" MEANS A FINE, A CIVIL PENALTY, A SURCHARGE, AN ASSESSMENT, A FEE OR INCARCERATION COSTS.

Sec. 9. Title 13, chapter 8, Arizona Revised Statutes, is amended by adding section 13-825, to read:

13-825. Mitigation of fines: community restitution waiver or mitigation

A. A JUDGE MAY MITIGATE A FINE IF THE DEFENDANT WHO IS ORDERED TO PAY THE FINE DEMONSTRATES THAT THE PAYMENT WOULD WORK A HARDSHIP ON THE DEFENDANT OR ON THE DEFENDANT'S IMMEDIATE FAMILY.

B. IN DETERMINING WHETHER TO MITIGATE A FINE, THE COURT MAY CONSIDER ANY RELEVANT EVIDENCE, INCLUDING:

1. THE IMPACT OF THE FINE ON THE ABILITY OF THE DEFENDANT TO PAY THE RESTITUTION.

2. THE EXTENT OF THE FINANCIAL HARDSHIP ON THE DEFENDANT OR ON THE DEFENDANT'S IMMEDIATE FAMILY.

3. WHETHER THE DEFENDANT IS RECEIVING BENEFITS PURSUANT TO ANY OF THE FOLLOWING:

(a) THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM ESTABLISHED BY SECTION 403 OF TITLE IV OF THE SOCIAL SECURITY ACT.

(b) THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (7 UNITED STATES CODE SECTIONS 2011 THROUGH 2036c).

(c) THE SUPPLEMENTAL SECURITY INCOME PROGRAM (42 UNITED STATES CODE SECTIONS 1381 THROUGH 1383f).

4. WHETHER THE DEFENDANT IS SEEKING, OBTAINING OR MAINTAINING EMPLOYMENT IF LEGALLY PERMITTED TO DO SO OR IS ATTENDING SCHOOL.

C. A JUDGE MAY WAIVE OR MITIGATE MANDATORY COMMUNITY RESTITUTION DUE TO A DEFENDANT'S MEDICAL CONDITION. THIS SUBSECTION DOES NOT APPLY TO COMMUNITY RESTITUTION THAT IS ORDERED PURSUANT TO SECTION 13-824.

Sec. 10. Title 13, chapter 9, Arizona Revised Statutes, is amended by adding section 13-915, to read:

13-915. Wilful failure to pay; revocation of probation

IF THE COURT FINDS THAT A DEFENDANT HAS WILFULLY FAILED TO PAY A FINE, A SURCHARGE, A FEE, AN ASSESSMENT, RESTITUTION OR INCARCERATION COSTS OR FINDS THAT A DEFENDANT HAS INTENTIONALLY REFUSED TO MAKE A GOOD FAITH EFFORT TO OBTAIN THE MONIES REQUIRED FOR THE PAYMENT, THE COURT MAY REVOKE THE DEFENDANT'S PROBATION AND SENTENCE THE DEFENDANT TO PRISON PURSUANT TO LAW.

1 Sec. 11. Section 13-924, Arizona Revised Statutes, is amended to
2 read:

3 13-924. Probation; earned time credit; applicability

4 A. The court may adjust the period of a probationer's supervised
5 probation on the recommendation of an adult probation officer for earned
6 time credit.

7 B. Earned time credit equals twenty days for every thirty days that
8 a probationer does all of the following:

9 1. Exhibits positive progression toward the goals and treatment of
10 the probationer's case plan.

11 2. Is current on payments for court ordered restitution and **IS IN**
12 **COMPLIANCE WITH ALL** other **NONMONETARY** obligations.

13 3. Is current in completing community restitution.

14 C. Any earned time credit awarded pursuant to this section shall be
15 revoked if a probationer is found in violation of a condition of
16 probation.

17 D. This section does not apply to a probationer who is currently:

18 1. On lifetime probation.

19 2. On probation for any class 2 or 3 felony.

20 3. On probation exclusively for a misdemeanor offense.

21 4. Required to register pursuant to section 13-3821.

22 E. This section has no effect on the ability of the court to
23 terminate the period of probation or intensive probation pursuant to
24 section 13-901, subsection E at a time earlier than originally imposed.

25 Sec. 12. Title 31, chapter 3, article 1, Arizona Revised Statutes,
26 is amended by adding section 31-404, to read:

27 31-404. Wilful failure to pay; revocation of parole or
28 community supervision

29 **IF THE BOARD OF EXECUTIVE CLEMENCY FINDS THAT A DEFENDANT HAS**
30 **WILFULLY FAILED TO PAY A FINE, A SURCHARGE, A FEE, AN ASSESSMENT,**
31 **RESTITUTION OR INCARCERATION COSTS OR FINDS THAT A DEFENDANT HAS**
32 **INTENTIONALLY REFUSED TO MAKE A GOOD FAITH EFFORT TO OBTAIN THE MONIES**
33 **REQUIRED FOR THE PAYMENT, THE BOARD MAY REVOKE THE DEFENDANT'S PAROLE OR**
34 **COMMUNITY SUPERVISION AND RETURN THE DEFENDANT TO PRISON PURSUANT TO LAW.**

35 Sec. 13. Section 41-191.08, Arizona Revised Statutes, is amended to
36 read:

37 41-191.08. Victims' rights fund; use; reporting requirements;
38 exemption from lapsing

39 A. The victims' rights fund is established consisting of monies
40 deposited pursuant to sections 8-418 and ~~41-2401, subsection D, paragraph~~
41 ~~12~~ **12-116.08** and legislative appropriations. Monies in the fund are
42 subject to legislative appropriation. Monies from state general fund
43 appropriations shall be deposited in the victims' rights fund and are not
44 subject to further appropriation. Monies from state general fund
45 appropriations are available for use on deposit in the victims' rights

1 fund. The attorney general shall administer the fund. The attorney
2 general shall use fund monies for the purpose of operating, improving,
3 maintaining and enhancing the victims' rights program established pursuant
4 to section 41-191.06.

5 B. Each fiscal year the attorney general may spend twelve percent
6 of the total victims' rights fund appropriation and state general fund
7 deposits for the purpose of performing duties mandated by title 13,
8 chapter 40, including the costs of administering the victims' rights
9 program under section 41-191.06.

10 C. Except as provided in subsections D, G and H of this section,
11 each fiscal year the attorney general shall disburse eighty-eight percent
12 of the total victims' rights fund appropriation and state general fund
13 deposits to state and local entities that have previously qualified under
14 this subsection or have demonstrated a history of need and performance
15 according to criteria established by the attorney general. Each entity
16 that qualifies to receive monies pursuant to this subsection shall receive
17 monies in a percentage that is proportional to that entity's percentage of
18 the total fund monies disbursed to all qualifying entities in the prior
19 fiscal year. The attorney general is not a qualifying entity under this
20 subsection.

21 D. Except as provided in subsections G and H of this section, each
22 fiscal year the attorney general may disburse victims' rights fund monies
23 to entities that do not qualify under subsection C of this section, that
24 are financially impacted by title 8, chapter 3, article 7 or title 13,
25 chapter 40 and that submit an implementation plan and funding request to
26 the attorney general pursuant to guidelines adopted by the attorney
27 general. The attorney general shall establish procedures to assess the
28 financial impact on and the need of these entities. The attorney general
29 shall disburse monies based on the information that is derived from the
30 assessment. On an annual basis, as new or additional entities receive
31 monies pursuant to this subsection, the attorney general shall
32 proportionally adjust the percentage share disbursed to each entity
33 pursuant to subsection C of this section.

34 E. Monies in the victims' rights fund shall be used to supplement,
35 not supplant, monies that would otherwise be made available to state and
36 local entities for funding victims' rights services and assistance.

37 F. Each entity that receives funding pursuant to this section shall
38 submit an annual report to the attorney general that identifies all
39 sources and amounts of monies that are spent for the purposes of
40 implementing and complying with victims' rights. The report shall detail:

41 1. The expenditure of the monies that are awarded under the
42 victims' rights program pursuant to section 41-191.06.

43 2. The number of instances in which the entity performed mandated
44 victims' rights duties or services.

45 3. The level of victim satisfaction with the services.

G. Each fiscal year the attorney general shall review and evaluate the entities that receive funding pursuant to this section. The attorney general may adjust funding levels, redistribute monies or deny continued funding to an entity that fails to effectively implement or comply with victims' rights mandates.

H. Supplemental fund monies appropriated to the attorney general to expand victims' rights training and to expand the reporting of victims' feedback on services provided shall be expended according to a plan and procedures adopted by the attorney general. The attorney general shall spend the monies appropriated for costs to develop, provide, sponsor or support programs that expand the delivery and improve the quality of mandated services to victims of crime by law enforcement, prosecutorial and correctional agencies and courts.

I. The attorney general shall submit an annual report to the governor, the president of the senate and the speaker of the house of representatives that details the status of the victims' rights program under section 41-191.06, the attorney general's compliance with the program, including the level of service, and the expenditure of all monies that are appropriated for the purpose of victims' rights.

J. Monies in the victims' rights fund are exempt from the lapsing provisions of section 35-190.

Sec. 14. Section 41-1730, Arizona Revised Statutes, is amended to read:

41-1730. Department of public safety forensics fund: purposes; distributions; annual adjustment

A. The department of public safety forensics fund is established. The department shall administer the fund. Monies in the fund are subject to legislative appropriation. The department of public safety forensics fund consists of the following:

1. Monies deposited pursuant to section 12-116.01, subsection ~~K~~ J.
2. Monies deposited pursuant to section 41-2401, subsection D, paragraphs 1 and 11.

3. Surcharge monies deposited pursuant to section 28-3396.

4. Monies contributed to the fund from any other source.

B. Monies in the department of public safety forensics fund shall be used for the following purposes:

1. Purchasing and installing fingerprint identification equipment.
2. Operating, maintaining and administering the Arizona automated fingerprint identification system and the system's remote terminals.
3. Crime laboratory operations and enhanced services.
4. Educating and training forensic scientists who are regularly employed in a crime laboratory.
5. Purchasing and maintaining scientific equipment for crime laboratory use.

1 6. Implementing, operating and maintaining deoxyribonucleic acid
2 testing and administering the Arizona deoxyribonucleic acid identification
3 system.

4 C. On a quarterly basis, the department of public safety shall
5 allocate and distribute the monies in the department of public safety
6 forensics fund that are collected pursuant to section 12-116.01 and
7 deposited pursuant to section 41-2401, subsection D, paragraph 11. The
8 department may use fifty-five percent of the monies for the purposes
9 prescribed in subsection B of this section and shall distribute the
10 remaining monies to political subdivisions that operate a crime laboratory
11 as follows:

12 1. Twenty-two percent to the Phoenix police department.

13 2. Twelve percent to the Tucson police department.

14 3. Seven percent to the Mesa police department.

15 4. Four percent to the Scottsdale police department.

16 D. The distribution of monies pursuant to subsection C of this
17 section may be adjusted annually, if appropriate, based on the crime
18 laboratory services provided and the percentage of the state population
19 served by each crime laboratory. The crime laboratory directors of the
20 political subdivisions providing crime laboratory services in this state
21 must agree on the distribution formula and allocation. The minimum
22 allocation for a political subdivision that provides crime laboratory
23 services is four percent.

24 E. For the purposes of subsections C and D of this section, "crime
25 laboratory" means a laboratory that meets all of the following:

26 1. Is operated by a political subdivision.

27 2. Has at least one regularly employed forensic scientist who holds
28 a minimum of a bachelor's degree in a physical or natural science.

29 3. Is registered as an analytical laboratory with the drug
30 enforcement administration of the United States department of justice for
31 the possession of all scheduled controlled substances.

32 Sec. 15. Section 41-2401, Arizona Revised Statutes, is amended to
33 read:

34 41-2401. Criminal justice enhancement fund

35 A. The criminal justice enhancement fund is established consisting
36 of monies collected pursuant to section 12-116.01 and monies available
37 from any other source. The state treasurer shall administer the fund.

38 B. On or before November 1 of each year, each department, agency or
39 office that receives monies pursuant to this section shall provide to the
40 Arizona criminal justice commission a report for the preceding fiscal
41 year. The report shall be in a form prescribed by the Arizona criminal
42 justice commission. The report shall set forth the sources of all monies
43 and all expenditures. The report shall not include any identifying
44 information about specific investigations.

C. On or before December 1 of each year, the Arizona criminal justice commission shall compile all reports into a single comprehensive report and shall submit a copy of the comprehensive report to the governor, the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee.

D. On the first day of each month, the state treasurer shall distribute or deposit:

1. ~~16.74~~ 19.09 percent in the department of public safety forensics fund established by section 41-1730.

2. ~~1.61~~ 1.84 percent to the department of juvenile corrections for the treatment and rehabilitation of youth who have committed drug-related offenses.

3. ~~16.64~~ 18.97 percent in the peace officers' training fund established by section 41-1825.

4. ~~3.03~~ 3.45 percent in the prosecuting attorneys' advisory council training fund established by section 41-1830.03.

5. ~~9.35~~ 10.66 percent to the supreme court for the purpose of reducing juvenile crime.

6. ~~7.27~~ 8.29 percent to the department of public safety for allocation to state and local law enforcement authorities for the following purposes:

(a) To enhance projects that are designed to prevent residential and commercial burglaries, to control street crime, including the activities of criminal street gangs, and to locate missing children.

(b) To provide support to the Arizona automated fingerprint identification system.

(c) Operational costs of the criminal justice information system.

7. ~~9.35~~ 10.66 percent to the department of law for allocation to county attorneys for the purpose of enhancing prosecutorial efforts.

8. ~~6.02~~ 6.86 percent to the supreme court for the purpose of enhancing the ability of the courts to process criminal and delinquency cases, orders of protection, injunctions against harassment and any proceeding relating to domestic violence matters, for auditing and investigating persons or entities licensed or certified by the supreme court and for processing judicial discipline cases. Notwithstanding section 12-143, subsection A, the salary of superior court judges pro tempore who are appointed for the purposes provided in this paragraph shall, and the salary of other superior court judges pro tempore who are appointed pursuant to section 12-141 for the purposes provided in this paragraph may, be paid in full by the monies received pursuant to this paragraph.

9. ~~11.70~~ 13.34 percent to the county sheriffs for the purpose of enhancing county jail facilities and operations, including county jails under the jurisdiction of county jail districts.

1 10. ~~1.57~~ 1.79 percent to the Arizona criminal justice commission.
2 11. ~~2.30~~ 2.62 percent in the department of public safety forensics
3 fund established by section 41-1730.
4 ~~12. 7.68 percent in the victims' rights fund established by section~~
5 ~~41-191.08.~~
6 ~~13. 4.60 percent in the victim compensation and assistance fund~~
7 ~~established by section 41-2407.~~
8 ~~14.~~ 12. ~~2.13~~ 2.43 percent to the supreme court for the purpose of
9 providing drug treatment services to adult probationers through the
10 community punishment program established in title 12, chapter 2,
11 article 11.
12 E. Monies distributed pursuant to subsection D, paragraphs 3, 4, 7,
13 ~~9, AND 11, 12 and 13~~ of this section constitute a continuing
14 appropriation. Monies distributed pursuant to subsection D, paragraphs 1,
15 2, 5, 8, 10 and ~~14~~ 12 of this section are subject to legislative
16 appropriation.
17 F. The portion of the monies for direct operating expenses of the
18 department of public safety in subsection D, paragraph 6 of this section
19 is subject to legislative appropriation. The remainder of the monies in
20 subsection D, paragraph 6 of this section, including the portion for local
21 law enforcement, is continuously appropriated.
22 G. The allocation of monies pursuant to subsection D, paragraphs 6,
23 7, 8 and 9 of this section shall be made in accordance with rules adopted
24 by the Arizona criminal justice commission pursuant to section 41-2405.
25 Sec. 16. Section 41-2407, Arizona Revised Statutes, as amended by
26 Laws 2017, chapter 125, section 1 and chapter 229, section 18, is amended
27 to read:
28 41-2407. Victim compensation and assistance fund;
29 subrogation; prohibited debt collection activity;
30 definition
31 A. The victim compensation and assistance fund is established. The
32 Arizona criminal justice commission shall administer the fund. The victim
33 compensation and assistance fund shall consist of monies collected
34 pursuant to section ~~12-116.01 and distributed pursuant to section 41-2401,~~
35 ~~subsection D, paragraph 14, monies collected pursuant to section~~ 31-411,
36 subsection E and sections 12-116.08, 13-4311, 31-418, 31-467.06 and
37 41-1674, unclaimed victim restitution monies pursuant to sections 22-116
38 and 44-313 and monies available from any other source.
39 B. Subject to legislative appropriation, the Arizona criminal
40 justice commission shall allocate monies in the victim compensation and
41 assistance fund to public and private agencies for the purpose of
42 establishing, maintaining and supporting programs that compensate and
43 assist victims of crime.

1 C. The allocation of monies pursuant to this section shall be made
2 in accordance with rules adopted by the Arizona criminal justice
3 commission pursuant to section 41-2405, subsection A, paragraph 8. The
4 rules shall provide that persons who suffered personal injury or death
5 that resulted from an attempt to aid a public safety officer in the
6 prevention of a crime or the apprehension of a criminal may be eligible
7 for compensation.

8 D. This state and the applicable operational unit or qualified
9 program, as defined in the victim compensation program rules, are
10 subrogated to the rights of an individual who receives monies from the
11 victim compensation and assistance fund to recover or receive monies or
12 benefits from a third party, to the extent of the amount of monies the
13 individual receives from the fund.

14 E. A licensed health care provider who agrees to the victim
15 compensation program rules may receive program monies for providing health
16 and medical services to a victim or claimant. A licensed health care
17 provider who accepts the full allowable payment for those services from a
18 victim compensation program funded pursuant to this section is deemed to
19 have accepted the payment as the full payment for those services. The
20 licensed health care provider may not collect or attempt to collect any
21 payment for the same health and medical services from the victim or
22 claimant, except that if a victim compensation program funded pursuant to
23 this section is unable to pay the full allowable payment to a licensed
24 health care provider because of a lack of available monies or for any
25 other reason, the licensed health care provider may collect the unpaid
26 balance for the services from the victim or claimant or from a third-party
27 payor, and the total amount billed or requested by the licensed health
28 care provider may not exceed the full allowable payment that the licensed
29 health care provider agreed to accept from the victim compensation program
30 for the services.

31 F. If a licensed health care provider receives notice that a person
32 has filed a claim with a victim compensation program funded by this
33 section, the licensed health care provider is prohibited from any debt
34 collection activity for any monies owed by the person that are included in
35 the filed claim until an award is made on the claim or until a
36 determination is made that the claim is noncompensable. For the purposes
37 of this subsection, "debt collection activity" includes repeatedly
38 telephoning or writing to the claimant and threatening to either turn the
39 matter over to a debt collection agency or to an attorney for collection,
40 enforcement or filing of any other debt collection process. Debt
41 collection activity does not include routine billing or inquiries about
42 the status of the claim.

1 G. For the purposes of this section, "licensed health care
2 provider" means a person or institution that is licensed or certified by
3 this state to provide health care services, medical services, nursing
4 services, emergency medical services and ambulance services that are
5 regulated pursuant to title 36, chapter 21.1, article 2 or other
6 health-related services.

7 Sec. 17. Repeal

8 Section 41-2407, Arizona Revised Statutes, as amended by Laws 2017,
9 chapter 303, section 12, is repealed.

10 Sec. 18. Effective date

11 This act is effective from and after December 31, 2018.