

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 298
SENATE BILL 1037

AN ACT

AMENDING SECTION 41-1604.09, ARIZONA REVISED STATUTES; RELATING TO PAROLE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1604.09, Arizona Revised Statutes, is amended
3 to read:

4 41-1604.09. Parole eligibility certification;
5 classifications; appeal; recertification;
6 applicability; definition

7 A. The director shall develop and maintain a parole eligibility
8 classification system. Within the system, the director shall establish
9 two classes of parole eligibility, class one and class two, to be given
10 effect as provided for in this section, one class of parole noneligibility
11 for dangerous psychiatric offenders and as many other classes of
12 noneligibility as ~~he~~ THE DIRECTOR deems necessary or desirable. Each
13 person committed to the state department of corrections shall be
14 classified pursuant to the parole eligibility system established by the
15 director.

16 B. The director shall establish rules pursuant to chapter 6 of this
17 title for the classification and certification of prisoners for purposes
18 of parole. Reclassification and certification shall be based on factors
19 related to a prisoner's record while in the custody of the department,
20 including work performance, compliance with all rules of the department,
21 progress in any appropriate training or treatment programs and the
22 performance of any assignments of confidence or trust. The director shall
23 also establish rules governing the procedures and performance standards by
24 which prisoners, reclassified to noneligibility classifications, may earn
25 eligibility classification. Prisoners may be reclassified only pursuant
26 to the rules of the department. The director shall distribute a copy of
27 all the rules to each person committed to the department.

28 C. The director shall maintain two classes for parole eligibility,
29 class one and class two. Inclusion of an inmate in class one shall be
30 determined by adherence to the rules of the department and continual
31 willingness to volunteer for or successful participation in a work,
32 educational, treatment or training program established by the department,
33 except that a person sentenced pursuant to a statute that requires that a
34 person serve a mandatory minimum term shall not be placed in class one
35 until one-quarter of the mandatory minimum portion of the term is served
36 and shall not be released until the mandatory minimum portion of the term
37 is served. Inclusion of an inmate in class two shall be determined by
38 adherence to the rules of the department.

39 D. The director shall certify as eligible for parole any prisoner
40 classified within an eligible classification five months immediately
41 before the prisoner's earliest parole eligibility. The inmate shall be
42 required to remain in a parole eligible classification from the date of
43 certification until the date of release on parole. If the inmate does not
44 remain in a parole eligible classification until the date of release on
45 parole, the entire parole process shall be rescinded. For the purposes of

1 this subsection, the prisoner's earliest parole eligibility occurs when
2 the prisoner has served one-half of the sentence imposed unless the
3 prisoner is sentenced according to any provisions of law that prohibit the
4 release on any basis until serving not less than two-thirds of the
5 sentence imposed by the court, the sentence imposed by the court or any
6 other mandatory minimum term, in which case the prisoner must have served
7 the sentence required by law.

8 E. Every prisoner shall be entitled to a hearing before
9 reclassification of the prisoner to a lower class. The hearing shall be
10 before a person or persons designated by the director to hold the
11 hearings. Reasonable notice and a written statement of the alleged
12 violation of the rules shall be distributed to the prisoner at least five
13 days before the hearing. A prisoner may request a review of a decision to
14 reclassify the prisoner by delivering a written request to the director.

15 F. Notwithstanding subsection D OF THIS SECTION, placement of a
16 prisoner in a noneligible parole class except placement in the noneligible
17 parole class for dangerous psychiatric offenders shall result in an
18 increase in the period of time the prisoner must serve before reaching the
19 prisoner's earliest parole eligibility date. The increase shall equal the
20 number of days occurring after placement in a noneligible parole class and
21 before the prisoner is reclassified to a parole eligible class.

22 G. The classification of each prisoner shall be reviewed by the
23 director not less than once every six months. Any prisoner who was
24 certified as eligible for parole and denied parole and remains eligible
25 for parole pursuant to subsection D OF THIS SECTION shall be recertified
26 by the director not less than one nor more than four months after the
27 hearing at which the prisoner was denied parole, except that the board of
28 executive clemency in denying parole may prescribe that the prisoner shall
29 not be recertified for a period of up to one year after the hearing. THE
30 BOARD OF EXECUTIVE CLEMENCY MAY ADOPT RULES FOR THE RECERTIFICATION
31 PROCESS AND MAY APPLY SPECIFIC RULES FOR THE RECERTIFICATION PROCESS THAT
32 APPLIES TO A PRISONER WHO IS SERVING A SENTENCE FOR ANY OF THE FOLLOWING:

- 33 1. DEATH IN VIOLATION OF SECTION 13-1104 OR 13-1105.
- 34 2. SERIOUS PHYSICAL INJURY IF THE PERSON WAS SENTENCED PURSUANT TO
35 SECTION 13-704.
- 36 3. A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705.
- 37 4. A FELONY OFFENSE IN VIOLATION OF TITLE 13, CHAPTER 14 OR 35.1.

38 H. Immediately after the adoption of the rules required pursuant to
39 this section, the director shall forward a certified copy of the rules to
40 the legislature. The legislature may review and, by concurrent
41 resolution, approve, disapprove or modify the rules, except that they
42 shall be given full force and effect pending legislative review. If no
43 concurrent resolution is passed by the legislature with respect to the
44 rules within one year following receipt of a certified copy of the rules,
45 they shall be deemed to have been approved by the legislature. If the

1 legislature disapproves the rules or a section of them, the director shall
2 immediately discontinue the use of any procedure, action or proceeding
3 authorized or required by the rules or section of the rules.

4 I. This section applies to either of the following:

5 1. A person who commits a felony offense before January 1, 1994.

6 2. A person who is sentenced to life imprisonment and who is
7 eligible for parole pursuant to section 13-716 or 13-718.

8 J. Pursuant to rules adopted by the director, on commitment to the
9 department, each prisoner shall be placed in parole class one beginning on
10 the prisoner's sentence begin date.

11 K. For the purposes of this section, "dangerous psychiatric
12 offender" means an inmate who has been placed in a psychiatric unit for
13 psychiatric evaluation and treatment and who has been determined to
14 present a high risk of potential violence.

15 Sec. 2. Board of executive clemency; extended date for parole
16 recertification hearing; rules

17 On or before January 1, 2020, the board of executive clemency, with
18 stakeholder input, shall draft proposed rules that allow the board to
19 extend the length of time after an eligible inmate is denied parole until
20 the eligible inmate's next parole recertification hearing to more than one
21 year. The rules must include all of the following:

22 1. The specific factors that the board must consider before
23 extending the length of time for an eligible inmate's parole
24 recertification hearing to more than one year, including when the board
25 may extend the length of time before a recertification hearing for more
26 than one year and how the board will determine what a reasonable length of
27 time is.

28 2. A requirement that when the board extends a parole
29 recertification hearing date for a length of time that is longer than one
30 year, the board must include the board's findings of fact in the record.

31 3. A process for the board to accept a written request from an
32 eligible inmate to reconsider the board's previous decision to extend the
33 inmate's parole recertification hearing date for a length of time that is
34 more than one year if new information becomes available or the inmate's
35 circumstances change, as determined by the board.

36 4. A list of specific factors that the board must consider when the
37 board determines whether to grant a request to reconsider or modify an
38 eligible inmate's extended parole recertification hearing date. The
39 decision to reconsider or modify a previous decision by the board is in
40 the board's sole discretion and is not subject to further review.

41 5. A requirement that the procedures used by the board to extend a
42 parole recertification hearing date to more than one year or to reconsider
43 or modify the length of time for a previously determined parole
44 recertification hearing date be consistent with due process and victims'
45 rights for crime victims.

APPROVED BY THE GOVERNOR JUNE 7, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 7, 2019.