

REFERENCE TITLE: earned release credits; drug offenses

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

SB 1310

Introduced by
Senator Farnsworth E

AN ACT

AMENDING SECTION 41-1604.07, ARIZONA REVISED STATUTES; RELATING TO PRISONERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1604.07, Arizona Revised Statutes, is amended
3 to read:

4 41-1604.07. Earned release credits; forfeiture; restoration;
5 released prisoner health care

6 A. Pursuant to rules adopted by the director, each prisoner who is
7 in the eligible earned release credit class shall be allowed an earned
8 release credit ~~of one day for every six days served~~ AS SET FORTH IN
9 SUBSECTION B OF THIS SECTION, including time served in county jails,
10 except for those prisoners who are sentenced to serve the full term of
11 imprisonment imposed by the court.

12 B. THE EARNED RELEASE CREDIT IS:

13 1. THREE DAYS FOR EVERY SEVEN DAYS SERVED IF THE PRISONER:

14 (a) WAS SENTENCED TO A TERM OF IMPRISONMENT FOR THE POSSESSION OR
15 USE OF MARIJUANA PURSUANT TO SECTION 13-3405, SUBSECTION A, PARAGRAPH 1,
16 THE POSSESSION OR USE OF A DANGEROUS DRUG PURSUANT TO SECTION 13-3407,
17 SUBSECTION A, PARAGRAPH 1 OR THE POSSESSION OR USE OF A NARCOTIC DRUG
18 PURSUANT TO SECTION 13-3408, SUBSECTION A, PARAGRAPH 1.

19 (b) HAS SUCCESSFULLY COMPLETED A DRUG TREATMENT PROGRAM PROVIDED BY
20 THE DEPARTMENT DURING THE PRISONER'S TERM OF IMPRISONMENT.

21 (c) HAS NOT PREVIOUSLY BEEN CONVICTED OF A VIOLENT OR AGGRAVATED
22 FELONY AS DEFINED IN SECTION 13-706.

23 2. ONE DAY FOR EVERY SIX DAYS SERVED IF THE PRISONER WAS SENTENCED
24 TO A TERM OF IMPRISONMENT FOR AN OFFENSE NOT LISTED IN PARAGRAPH 1 OF THIS
25 SUBSECTION.

26 ~~B.~~ C. Release credits earned by a prisoner pursuant to ~~subsection~~
27 SUBSECTIONS A AND B of this section shall not reduce the term of
28 imprisonment imposed by the court on the prisoner.

29 ~~C.~~ D. On reclassification of a prisoner resulting from the
30 prisoner's failure to adhere to the rules of the department or failure to
31 demonstrate a continual willingness to volunteer for or successfully
32 participate in a work, educational, treatment or training program, the
33 director may declare all release credits earned by the prisoner forfeited.
34 In the discretion of the director, forfeited release credits may
35 subsequently be restored. The director shall maintain an account of
36 release credits earned by each prisoner.

37 ~~D.~~ E. A prisoner who has reached the prisoner's earned release
38 date or sentence expiration date shall be released to begin the prisoner's
39 term of community supervision imposed by the court or term of probation if
40 the court waived community supervision pursuant to section 13-603, except
41 that the director may deny or delay the prisoner's release to community
42 supervision or probation if the director believes the prisoner may be a
43 sexually violent person as defined in section 36-3701 until the screening
44 process is complete and the director determines that the prisoner will not
45 be referred to the county attorney pursuant to section 36-3702. If the

1 term of community supervision is waived, the state department of
 2 corrections shall provide reasonable notice to the probation department of
 3 the scheduled release of the prisoner from confinement by the
 4 department. If the court waives community supervision, the director shall
 5 issue the prisoner an absolute discharge on the prisoner's earned release
 6 credit date. A prisoner who is released on the earned release credit date
 7 to serve a term of probation is not under the control of the state
 8 department of corrections when community supervision has been waived and
 9 the state department of corrections is not required to provide parole
 10 services.

11 ~~E.~~ F. Notwithstanding subsection ~~D~~ E of this section, a prisoner
 12 who fails to achieve functional literacy at an eighth grade literacy level
 13 shall not be released to begin the prisoner's term of community
 14 supervision until either the prisoner achieves an eighth grade functional
 15 literacy level as measured by standardized assessment testing or the
 16 prisoner serves the full term of imprisonment imposed by the court,
 17 whichever first occurs. This subsection does not apply to inmates who
 18 either:

- 19 1. Are unable to meet the functional literacy standard required by
- 20 section 31-229.02, subsection A due to a medical, developmental or
- 21 learning disability as described in section 31-229, subsection C.
- 22 2. Are classified as level five offenders.
- 23 3. Are foreign nationals.
- 24 4. Have less than six months of incarceration to serve on
- 25 commitment to the department.

26 ~~F.~~ G. The department shall establish conditions of community
 27 supervision it deems appropriate in order to ensure that the best
 28 interests of the prisoner and the citizens of this state are served. As a
 29 condition of community supervision, the director:

- 30 1. May order a released prisoner to participate in an appropriate
- 31 drug treatment or education program that is administered by a qualified
- 32 agency, organization or individual approved by the department of health
- 33 services and that provides treatment or education to persons who abuse
- 34 controlled substances. Each person who is enrolled in a drug treatment or
- 35 education program shall pay for the cost of participation in the program
- 36 to the extent of the person's financial ability.
- 37 2. May order additional conditions, including participation in a
- 38 rehabilitation program or counseling and performance of community
- 39 restitution work.
- 40 3. May order a prisoner to apply for health care benefits through
- 41 the Arizona health care cost containment system before being released.
- 42 The state department of corrections shall enter into an enrollment
- 43 suspense agreement with the Arizona health care cost containment system to
- 44 reinstate benefits for prisoners who were sentenced to twelve months or
- 45 less and who were previously enrolled in the Arizona health care cost

1 containment system immediately before incarceration. For all other
2 prisoners, the state department of corrections shall submit a prerelease
3 application to the Arizona health care cost containment system at least
4 thirty days before the prisoner's release date. The state department of
5 corrections may coordinate with community-based organizations or the
6 department of economic security to assist prisoners in applying for
7 enrollment in the Arizona health care cost containment system.

8 4. Shall impose, if the prisoner was convicted of a violation of
9 sexual conduct with a minor under fifteen years of age or molestation of a
10 child under fifteen years of age, a prohibition on residing within four
11 hundred forty feet of a school or its accompanying grounds. For the
12 purposes of this paragraph, "school" means any public, charter or private
13 school where children attend classes.

14 ~~H.~~ H. The director may exchange a prisoner's health care
15 information with the regional behavioral health authority or Arizona
16 health care cost containment system justice system contact to facilitate
17 the transition to care for released prisoners to access the full array of
18 behavioral and physical health care services, including medication,
19 counseling, case management, substance abuse treatment, and parenting
20 skills and family reunification training. The director shall adopt
21 policies and procedures that establish a care team to convene and discuss
22 the services and resources, including housing and employment supports,
23 that may be needed for the released prisoner to safely transition into the
24 community. The care team shall be managed by the regional behavioral
25 health authority or Arizona health care cost containment system contractor
26 and may include the health care provider that is identified by and has a
27 contract with the regional behavioral health authority or Arizona health
28 care cost containment system contractor. The care team may also include
29 representatives of nonprofit organizations that specialize in assisting
30 prisoners who are transitioning back into the community and other
31 organizations that link prisoners to additional services, including
32 housing and employment.

33 ~~H.~~ I. If a prisoner who reaches the prisoner's earned release
34 credit date refuses to sign and agree to abide by the conditions of
35 supervision before release on community supervision, the prisoner shall
36 not be released. When the prisoner reaches the sentence expiration date,
37 the prisoner shall be released to begin the term of community
38 supervision. If the prisoner refuses to sign and agree to abide by the
39 conditions of release, the prisoner shall not be released on the sentence
40 expiration date and shall serve the term of community supervision in
41 prison. The department is required to supervise any prisoner on community
42 supervision until the period of community supervision expires. The
43 department may bring a prisoner who is in violation of the prisoner's
44 terms and conditions before the board of executive clemency.

1 ~~J.~~ J. The director, pursuant to rules adopted by the department,
2 shall authorize the release of any prisoner on the prisoner's earned
3 release credit date to serve any consecutive term imposed on the
4 prisoner. The release shall be for the sentence completed only. The
5 prisoner shall remain under the custody and control of the department.
6 The director may authorize the rescission of the release to any
7 consecutive term if the prisoner fails to adhere to the rules of the
8 department.

9 ~~K.~~ K. If a prisoner absconds from community supervision, any time
10 spent before the prisoner is returned to custody is excluded in
11 calculating the remaining period of community supervision.

12 ~~L.~~ L. A prisoner shall forfeit five days of the prisoner's earned
13 release credits:

14 1. If the court finds or a disciplinary hearing held after a review
15 by and recommendations from the attorney general's office determines that
16 the prisoner does any of the following:

17 (a) Brings a claim without substantial justification.

18 (b) Unreasonably expands or delays a proceeding.

19 (c) Testifies falsely or otherwise presents false information or
20 material to the court.

21 (d) Submits a claim that is intended solely to harass the party it
22 is filed against.

23 2. For each time the prisoner tests positive for any prohibited
24 drugs during the period of time the prisoner is incarcerated.

25 ~~M.~~ M. If the prisoner does not have five days of earned release
26 credits, the prisoner shall forfeit the prisoner's existing earned release
27 credits and shall be ineligible from accruing earned release credits until
28 the number of earned release credits the prisoner would have otherwise
29 accrued equals the difference between five days and the number of existing
30 earned release credit days the prisoner forfeits pursuant to this section.

31 ~~N.~~ N. The director may authorize temporary release on inmate
32 status of eligible inmates pursuant to rules adopted by the director
33 within ninety days of any other authorized release date. The release
34 authorization applies to any inmate who has been convicted of a drug
35 offense, who has been determined to be eligible for participation in the
36 transition program pursuant to section 31-281 and who has agreed to
37 participate in the transition program.