

REFERENCE TITLE: **earned release; good time credits.**

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

# **HB 2753**

Introduced by  
Representatives Rodriguez: Andrade, Blanc, Bolding, Cano, DeGrazia, Engel,  
Epstein, Fernandez, Friese, Jermaine, Meza, Peten, Salman, Terán

## AN ACT

REPEALING SECTION 31-229.02, ARIZONA REVISED STATUTES; AMENDING SECTIONS 31-281 AND 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. Repeal

3 Section 31-229.02, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 31-281, Arizona Revised Statutes, is amended to  
5 read:

6 31-281. Transition program; report; definition

7 A. The department shall establish a transition program that  
8 provides eligible inmates with transition services in the community for up  
9 to ninety days. The department shall administer the transition program  
10 and contract with private or nonprofit entities to provide eligible  
11 inmates with transition services and shall procure transition services  
12 pursuant to title 41, chapter 23.

13 B. The director shall adopt rules to implement this article. The  
14 rules shall include:

15 1. Eligibility criteria for receiving a contracted entity's  
16 transition services. To be eligible, at a minimum, an inmate shall:

17 (a) Not have been convicted of a sexual offense pursuant to title  
18 13, chapter 14 or a violation of title 13, chapter 17.

19 (b) Be classified by the state department of corrections as a low  
20 violence risk to the community.

21 (c) Not have been convicted of a violent crime as defined in  
22 section 13-901.03 or a domestic violence offense pursuant to section  
23 13-3601.

24 (d) Not have any felony detainers.

25 (e) Agree in writing to provide specific information after the  
26 inmate is released. The department shall use the information to prepare  
27 the report prescribed by subsection D, paragraph 3 of this section.

28 (f) Have made satisfactory progress by complying with all  
29 programming on the inmate's individualized corrections plan as determined  
30 by the department.

31 (g) Be classified by the department as minimum or medium custody as  
32 determined by an objective risk assessment.

33 (h) Not have been found in violation of any major violent rule  
34 during the inmate's current period of incarceration or in violation of any  
35 other major rule within the previous six months. For the purposes of this  
36 subdivision, an accumulation of minor rule violations does not equal a  
37 major rule violation.

38 2. A requirement that each contracted entity train mentors or  
39 certify that mentors are trained.

40 3. A requirement that the services offered to an inmate include  
41 psychoeducational counseling and case management services as determined by  
42 the department. The counseling and services may include substance abuse  
43 treatment, anger management, cognitive behavioral therapy, parenting  
44 skills and family reunification training, further education and job  
45 placement.

1       4. A requirement that an inmate may be released pursuant to this  
2 article only after the victim has been provided notice and an opportunity  
3 to be heard. The department shall provide notice to a victim who has  
4 provided a current address or other contact information. The notice shall  
5 inform the victim of the opportunity to be heard on the early  
6 release. Any objection to the inmate's early release must be made within  
7 twenty days after the department has mailed the notice to the victim.

8       C. In awarding contracts under this section the department shall  
9 comply with section 41-3751.

10      D. The department shall:

11       1. Conduct an annual study to determine the recidivism rate of  
12 inmates who receive a contracted entity's services pursuant to this  
13 article. The study shall include the recidivism rate of inmates who have  
14 been released from incarceration for a minimum of three years after  
15 release.

16       2. Evaluate the inmate and provide the information to the  
17 contracted entity.

18       3. Submit a written report to the governor, the president of the  
19 senate and the speaker of the house of representatives on or before  
20 July 31 of each year and provide a copy of this report to the secretary of  
21 state. The report may be submitted electronically. The report shall  
22 contain the following information:

23       (a) The recidivism rate of inmates who receive services pursuant to  
24 this article, including the recidivism rate of inmates who have been  
25 released from incarceration for a minimum of three years after release.

26       (b) The number of inmates who received services pursuant to this  
27 article.

28       (c) The number of inmates who were not provided services pursuant  
29 to this article and who were on a list waiting to receive services.

30       (d) The types of services provided.

31       (e) The number of inmates who received each type of service  
32 provided.

33       4. Provide information about the transition program to all inmates  
34 who are not serving a life sentence on admission to prison and to any  
35 inmate who is potentially eligible for the transition program six months  
36 before the inmate's eligibility date. The information must include all of  
37 the admission requirements to the transition program, including the  
38 disqualifying factors under this section.

39       E. Notwithstanding subsection B, paragraph 1 of this section, if an  
40 inmate ~~agrees to comply with any condition that is established and~~  
41 ~~required by section 41-1604.07, subsection F,~~ has been convicted of the  
42 possession or use of marijuana pursuant to section 13-3405, subsection A,  
43 paragraph 1, possession or use of a dangerous drug pursuant to section  
44 13-3407, subsection A, paragraph 1, possession or use of a narcotic drug  
45 pursuant to section 13-3408, subsection A, paragraph 1 or possession or

1 use of drug paraphernalia pursuant to section 13-3415, subsection A and is  
2 not concurrently serving another sentence for an offense that is not  
3 listed in this subsection, the inmate is eligible for and shall be  
4 released to enter the transition program. The director may not exclude an  
5 inmate who is eligible for the transition program pursuant to this  
6 subsection because the inmate does not have a place to reside before being  
7 released, except that the director shall exclude an inmate who has any of  
8 the following:

9 1. Previously been convicted of a violent crime as defined in  
10 section 13-901.03 or an offense listed in title 13, chapter 14 or 35.1.

11 2. A felony detainer.

12 3. Been found to be in violation of a major violent rule during the  
13 inmate's current period of incarceration or to be in violation of any  
14 other major rule within the previous six months. For the purposes of this  
15 paragraph, an accumulation of minor rule violations does not equal a major  
16 rule violation.

17 4. Previously been released pursuant to this section and violated a  
18 term of the inmate's release.

19 ~~5. Failed to achieve functional literacy as required by section  
20 41-1604.07, subsection E, unless the inmate is enrolled in a program that  
21 prepares the inmate to achieve functional literacy.~~

22 ~~6.~~ 5. Been classified by the department as close or maximum  
23 custody as determined by a current and objective risk assessment.

24 ~~7.~~ 6. Refused enrollment in or been removed for poor behavior from  
25 a major self-improvement program within the previous eighteen months  
26 unless the inmate has subsequently enrolled in and completed the major  
27 self-improvement program.

28 F. For the purposes of this section, "recidivism" means  
29 reincarceration in the department for any reason.

30 Sec. 3. Section 41-1604.07, Arizona Revised Statutes, is amended to  
31 read:

32 41-1604.07. Earned release credits; forfeiture; restoration;  
33 report; released prisoner health care

34 A. Pursuant to rules adopted by the director, each prisoner who is  
35 in the eligible earned release credit class shall be allowed an earned  
36 release credit as set forth in subsection B of this section, including  
37 time served in county jails, except for those prisoners who are sentenced  
38 to serve the full term of imprisonment imposed by the court.

39 B. The earned release credit is:

40 1. Three days for every seven days served if the prisoner:

41 (a) Was sentenced to a term of imprisonment for the possession or  
42 use of marijuana pursuant to section 13-3405, subsection A, paragraph 1,  
43 the possession or use of a dangerous drug pursuant to section 13-3407,  
44 subsection A, paragraph 1, the possession or use of a narcotic drug

1 pursuant to section 13-3408, subsection A, paragraph 1 or the possession  
2 of drug paraphernalia pursuant to section 13-3415.

3 (b) Has successfully completed a drug treatment program or other  
4 major self-improvement program provided by the department during the  
5 prisoner's term of imprisonment.

6 (c) Has not previously been convicted of a violent or aggravated  
7 felony as defined in section 13-706.

8 2. One day for every six days served if the prisoner was sentenced  
9 to a term of imprisonment for ~~an offense not listed in paragraph 1 of this~~  
10 ~~subsection~~ A DANGEROUS CRIME AGAINST CHILDREN PURSUANT TO SECTION 13-705.

11 3. THREE DAYS FOR EVERY SEVEN DAYS SERVED IF THE DEFENDANT WAS  
12 SENTENCED TO A TERM OF IMPRISONMENT FOR A DANGEROUS OFFENSE PURSUANT TO  
13 SECTION 13-704.

14 4. ONE DAY FOR EVERY THREE DAYS SERVED IF THE DEFENDANT IS  
15 SENTENCED TO A TERM OF IMPRISONMENT FOR AN OFFENSE NOT LISTED IN PARAGRAPH  
16 1, 2 OR 3 OF THIS SUBSECTION OR ON REVOCATION OF PROBATION OR IS SERVING  
17 THE REMAINDER OF A TERM OF IMPRISONMENT IN CUSTODY ON REVOCATION OF THE  
18 DEFENDANT'S COMMUNITY SUPERVISION.

19 C. PURSUANT TO RULES ADOPTED BY THE DIRECTOR, EVERY PRISONER WHO IS  
20 NOT SERVING A SENTENCE FOR A DANGEROUS CRIME AGAINST CHILDREN PURSUANT TO  
21 SECTION 13-705, WHO HAS NOT HAD A SERIOUS INFRACTION OF THE DEPARTMENT'S  
22 REGULATIONS OR POLICIES, WHO HAS NOT VIOLATED ANY LAW OF THIS STATE WHILE  
23 INCARCERATED AND WHO HAS PERFORMED ANY DUTIES ASSIGNED TO THE PRISONER  
24 SHALL BE ALLOWED A GOOD TIME CREDIT AS FOLLOWS, INCLUDING TIME SERVED IN  
25 COUNTY JAILS, EXCEPT FOR THOSE PRISONERS WHO ARE SENTENCED TO SERVE THE  
26 FULL TERM OF IMPRISONMENT IMPOSED BY THE COURT:

27 1. FIVE DAYS FOR EVERY TWENTY DAYS SERVED IF THE PRISONER WAS  
28 SENTENCED TO A TERM OF IMPRISONMENT FOR A DANGEROUS OFFENSE PURSUANT TO  
29 SECTION 13-704.

30 2. THIRTEEN DAYS FOR EVERY TWENTY DAYS SERVED IF THE PRISONER WAS  
31 SENTENCED TO A TERM OF IMPRISONMENT FOR THE POSSESSION OR USE OF MARIJUANA  
32 PURSUANT TO SECTION 13-3405, SUBSECTION A, PARAGRAPH 1, THE POSSESSION OR  
33 USE OF A DANGEROUS DRUG PURSUANT TO SECTION 13-3407, SUBSECTION A,  
34 PARAGRAPH 1, THE POSSESSION OR USE OF A NARCOTIC DRUG PURSUANT TO SECTION  
35 13-3408, SUBSECTION A, PARAGRAPH 1 OR THE POSSESSION OF DRUG PARAPHERNALIA  
36 PURSUANT TO SECTION 13-3415.

37 3. TEN DAYS FOR EVERY TWENTY DAYS IF THE PRISONER WAS SENTENCED FOR  
38 AN OFFENSE NOT INCLUDED IN PARAGRAPH 1 OR 2 OF THIS SUBSECTION.

39 ~~C.~~ D. Release credits earned by a prisoner pursuant to subsections  
40 A, ~~and~~ B AND C of this section shall not reduce the ~~term of imprisonment~~  
41 SENTENCE imposed by the court on the prisoner.

42 ~~D.~~ E. On reclassification of a prisoner resulting from the  
43 prisoner's failure to adhere to the rules of the department or failure to  
44 demonstrate a continual willingness to volunteer for or successfully  
45 participate in a work, educational, treatment or training program, the

1 director, IN THE DIRECTOR'S DISCRETION, may declare all OR A PORTION OF  
2 release credits earned by the prisoner forfeited. In the discretion of  
3 the director, forfeited release credits may subsequently be restored. The  
4 director shall maintain an account of release credits earned by each  
5 prisoner. ON OR BEFORE JULY 31 OF EACH YEAR, THE DIRECTOR SHALL PREPARE  
6 AND SUBMIT A REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE  
7 SPEAKER OF THE HOUSE OF REPRESENTATIVES THAT INCLUDES THE NUMBER OF EARNED  
8 RELEASE CREDITS EARNED AND FORFEITED BY EACH PRISONER FOR THE PREVIOUS  
9 YEAR AND THE REASON WHY ANY EARNED RELEASE CREDITS WERE FORFEITED BY THE  
10 PRISONER. THE DIRECTOR SHALL PROVIDE A COPY OF THIS REPORT TO THE  
11 SECRETARY OF STATE.

12 ~~E.~~ F. A prisoner who has reached the prisoner's earned release  
13 date or sentence expiration date shall be released to begin the prisoner's  
14 term of community supervision imposed by the court or term of probation if  
15 the court waived community supervision pursuant to section 13-603, except  
16 that the director may deny or delay the prisoner's release to community  
17 supervision or probation if the director believes the prisoner may be a  
18 sexually violent person as defined in section 36-3701 until the screening  
19 process is complete and the director determines that the prisoner will not  
20 be referred to the county attorney pursuant to section 36-3702. If the  
21 term of community supervision is waived, the state department of  
22 corrections shall provide reasonable notice to the probation department of  
23 the scheduled release of the prisoner from confinement by the department.  
24 If the court waives community supervision, the director shall issue the  
25 prisoner an absolute discharge on the prisoner's earned release credit  
26 date. A prisoner who is released on the earned release credit date to  
27 serve a term of probation is not under the control of the state department  
28 of corrections when community supervision has been waived and the state  
29 department of corrections is not required to provide parole services.

30 ~~F. Notwithstanding subsection E of this section, a prisoner who~~  
31 ~~fails to achieve functional literacy at an eighth grade literacy level~~  
32 ~~shall not be released to begin the prisoner's term of community~~  
33 ~~supervision until either the prisoner achieves an eighth grade functional~~  
34 ~~literacy level as measured by standardized assessment testing, the~~  
35 ~~prisoner is released to enter the transition program established by~~  
36 ~~section 31-281 and is enrolled in a program that prepares the prisoner to~~  
37 ~~achieve functional literacy or the prisoner serves the full term of~~  
38 ~~imprisonment imposed by the court, whichever first occurs. This~~  
39 ~~subsection does not apply to inmates who either:~~

40 ~~1. Are unable to meet the functional literacy standard required by~~  
41 ~~section 31-229.02, subsection A due to a medical, developmental or~~  
42 ~~learning disability as described in section 31-229, subsection C.~~

43 ~~2. Are classified as level five offenders.~~

44 ~~3. Are foreign nationals.~~

1       4. ~~Have less than six months of incarceration to serve on~~  
2 ~~commitment to the department.~~

3       5. ~~Are released pursuant to subsection B, paragraph 1 of this~~  
4 ~~section.~~

5       G. The department shall establish conditions of community  
6 supervision it deems appropriate in order to ensure that the best  
7 interests of the prisoner and the citizens of this state are served. As a  
8 condition of community supervision, the director:

9       1. May order a released prisoner to participate in an appropriate  
10 drug treatment or education program that is administered by a qualified  
11 agency, organization or individual approved by the department of health  
12 services and that provides treatment or education to persons who abuse  
13 controlled substances. ~~Each person who is enrolled in a drug treatment or~~  
14 ~~education program shall pay for the cost of participation in the program~~  
15 ~~to the extent of the person's financial ability.~~

16       2. May order additional conditions, including participation in a  
17 rehabilitation program or counseling and performance of community  
18 restitution work.

19       3. ~~Unless the prisoner is released pursuant to subsection B,~~  
20 ~~paragraph 1 of this section,~~ May order a prisoner to apply for health care  
21 benefits through the Arizona health care cost containment system before  
22 being released. The state department of corrections shall enter into an  
23 enrollment suspense agreement with the Arizona health care cost  
24 containment system to reinstate benefits for prisoners who were sentenced  
25 to twelve months or less and who were previously enrolled in the Arizona  
26 health care cost containment system immediately before incarceration. For  
27 all other prisoners, the state department of corrections shall submit a  
28 prerelease application to the Arizona health care cost containment system  
29 at least thirty days before the prisoner's release date. The state  
30 department of corrections may coordinate with community-based  
31 organizations or the department of economic security to assist prisoners  
32 in applying for enrollment in the Arizona health care cost containment  
33 system.

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

40       H. The director may exchange a prisoner's health care information  
41 with the regional behavioral health authority or Arizona health care cost  
42 containment system justice system contact to facilitate the transition to  
43 care for released prisoners to access the full array of behavioral and  
44 physical health care services, including medication, counseling, case  
45 management, substance abuse treatment, and parenting skills and family

1       reunification training. The director shall adopt policies and procedures  
2       that establish a care team to convene and discuss the services and  
3       resources, including housing and employment supports, that may be needed  
4       for the released prisoner to safely transition into the community. The  
5       care team shall be managed by the regional behavioral health authority or  
6       Arizona health care cost containment system contractor and may include the  
7       health care provider that is identified by and has a contract with the  
8       regional behavioral health authority or Arizona health care cost  
9       containment system contractor. The care team may also include  
10      representatives of nonprofit organizations that specialize in assisting  
11      prisoners who are transitioning back into the community and other  
12      organizations that link prisoners to additional services, including  
13      housing and employment.

14      I. If a prisoner who reaches the prisoner's earned release credit  
15      date refuses to sign and agree to abide by the conditions of supervision  
16      before release on community supervision, the prisoner shall not be  
17      released. When the prisoner reaches the sentence expiration date, the  
18      prisoner shall be released to begin the term of community supervision. If  
19      the prisoner refuses to sign and agree to abide by the conditions of  
20      release, the prisoner shall not be released on the sentence expiration  
21      date and shall serve the term of community supervision in prison. The  
22      department is required to supervise any prisoner on community supervision  
23      until the period of community supervision expires. The department may  
24      bring a prisoner who is in violation of the prisoner's terms and  
25      conditions before the board of executive clemency.

26      J. The director, pursuant to rules adopted by the department, shall  
27      authorize the release of any prisoner on the prisoner's earned release  
28      credit date to serve any consecutive term imposed on the prisoner. The  
29      release shall be for the sentence completed only. The prisoner shall  
30      remain under the custody and control of the department. The director may  
31      authorize the rescission of the release to any consecutive term if the  
32      prisoner fails to adhere to the rules of the department.

33      K. If a prisoner absconds from community supervision, any time  
34      spent before the prisoner is returned to custody is excluded in  
35      calculating the remaining period of community supervision.

36      L. A prisoner shall forfeit five days of the prisoner's earned  
37      release credits:

38       1. If the court finds ~~or a disciplinary hearing held after a review~~  
39       ~~by and recommendations from the attorney general's office determines~~ that  
40       the prisoner does any of the following:  
41           (a) Brings a claim without substantial justification.  
42           (b) Unreasonably expands or delays a proceeding.  
43           (c) Testifies falsely or otherwise presents false information or  
44           material to the court.

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

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

5       M. If the prisoner does not have five days of earned release  
6 credits, the prisoner shall forfeit the prisoner's existing earned release  
7 credits and shall be ineligible from accruing earned release credits until  
8 the number of earned release credits the prisoner would have otherwise  
9 accrued equals the difference between five days and the number of existing  
10 earned release credit days the prisoner forfeits pursuant to this section.

11       N. The director may authorize temporary release on inmate status of  
12 eligible inmates pursuant to rules adopted by the director within ninety  
13 days of any other authorized release date. The release authorization  
14 applies to any inmate who has been convicted of a drug offense, who has  
15 been determined to be eligible for participation in the transition program  
16 pursuant to section 31-281 and who has agreed to participate in the  
17 transition program. **THE DIRECTOR SHALL POST THE RULES ON THE DEPARTMENT'S  
WEBSITE.**

19       ~~0. On admission, the department shall provide notice to any  
20 prisoner who is potentially eligible for earned release credit pursuant to  
21 subsection B, paragraph 1 of this section. The notice must include all of  
22 the eligibility requirements under this section.~~

23       ~~P. The department shall do all of the following:~~

24       ~~1. Annually report the recidivism rate of prisoners released  
25 pursuant to subsection B, paragraph 1 of this section for a minimum of  
26 three years after release.~~

27       ~~2. Report the following information at the end of each fiscal  
28 quarter:~~

29       ~~(a) The number of prisoners who received earned release credits for  
30 each month of the reporting period and the percentage of the total prison  
31 population that received earned release credits.~~

32       ~~(b) The number of prisoners who were eligible for earned release  
33 credit pursuant to subsection B, paragraph 1 of this section and for each  
34 of these prisoners, the following information:~~

35       ~~(i) The most serious crime for which each prisoner is receiving  
36 earned release credit.~~

37       ~~(ii) The mean and median length of the prison sentences.~~

38       ~~(iii) Whether the prisoner received earned release credits each  
39 month of the reporting period.~~

40       ~~(c) The number of prisoners who participated in a program that is  
41 described in subsection B, paragraph 1, subdivision (b) of this section in  
42 each month of the reporting period, including the percentage of the total  
43 prison population that has participated in those programs.~~

44       ~~(d) The number of prisoners who are eligible for release into the  
45 transition program established pursuant to section 31-281 in each month of~~

1 the reporting period and the percentage of the total prison population  
2 that is eligible for release into the transition program. For eligible  
3 prisoners, the report shall include the following information:

4 (i) The most serious crime for which each prisoner is serving a  
5 sentence.

6 (iii) The mean and median length of the prison sentences.

7 (iii) The mean and median length of time served by the prisoners.

8 (e) The number of prisoners who are enrolled in the transition  
9 program in each month of the reporting period, including the percentage of  
10 the total prison population that is enrolled in the transition program.  
11 For enrolled prisoners, the report shall include the following  
12 information:

13 (i) The most serious crime for which each prisoner is serving a  
14 sentence.

15 (iii) The mean and median length of the prison sentences.

16 (iii) The mean and median length of time served by the prisoners.

17 (f) The number of prisoners who are released into the transition  
18 program in each month of the reporting period, including the percentage of  
19 the total prison population that is released into the transition program.  
20 For released prisoners, the report shall include the following  
21 information:

22 (i) The most serious crime for which each prisoner is serving a  
23 sentence.

24 (iii) The mean and median length of the prison sentences.

25 (iii) The mean and median length of time that the prisoners served.

26 (g) The six-month success, return to custody and new conviction  
27 rates for prisoners who are released to a transition program.

28 (h) The one-year success, return to custody and new conviction  
29 rates for prisoners who are released to a transition program.

30 (i) The two-year success, return to custody and new conviction  
31 rates for prisoners who are released to a transition program.

32 (j) The three-year success, return to custody and new conviction  
33 rates for prisoners who are released to a transition program.

34 (k) The number of prisoners who received treatment for substance  
35 abuse during the first half of the prisoner's total sentence and the  
36 percentage of the total prison population that received treatment for  
37 substance abuse during the first half of the prisoners' total sentence.  
38 For prisoners who received treatment for substance abuse according to this  
39 subdivision, report shall include the following information:

40 (i) The most serious crime committed by each prisoner.

41 (iii) The mean and median length of the prison sentences.

42 (iii) Whether the prisoners received treatment for substance abuse  
43 each month of the reporting period.