

Senate Engrossed House Bill

~~civil penalties, traffic, mitigation, restitution~~
now: civil penalties; mitigation; restitution

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 288
HOUSE BILL 2110

AN ACT

AMENDING SECTIONS 8-341, 13-824 AND 28-1603, ARIZONA REVISED STATUTES;
AMENDING TITLE 28, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY
ADDING SECTION 28-1604; RELATING TO TRAFFIC VIOLATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-341, Arizona Revised Statutes, is amended to
3 read:

4 **8-341. Disposition and commitment; definitions**

5 A. After receiving and considering the evidence on the proper
6 disposition of the case, the court may enter judgment as follows:

7 1. It may award a delinquent juvenile:

8 (a) To the care of the juvenile's parents, subject to the
9 supervision of a probation department.

10 (b) To a probation department, subject to any conditions the court
11 may impose, including a period of incarceration in a juvenile detention
12 center of not more than one year.

13 (c) To a reputable citizen of good moral character, subject to the
14 supervision of a probation department.

15 (d) To a private agency or institution, subject to the supervision
16 of a probation officer.

17 (e) To the department of juvenile corrections.

18 (f) To maternal or paternal relatives, subject to the supervision
19 of a probation department.

20 (g) To an appropriate official of a foreign country of which the
21 juvenile is a foreign national who is unaccompanied by a parent or
22 guardian in this state to remain on unsupervised probation for at least
23 one year on the condition that the juvenile cooperate with that official.

24 2. It may award an incorrigible child:

25 (a) To the care of the child's parents, subject to the supervision
26 of a probation department.

27 (b) To the protective supervision of a probation department,
28 subject to any conditions the court may impose.

29 (c) To a reputable citizen of good moral character, subject to the
30 supervision of a probation department.

31 (d) To a public or private agency, subject to the supervision of a
32 probation department.

33 (e) To maternal or paternal relatives, subject to the supervision
34 of a probation department.

35 B. If a juvenile is placed on probation pursuant to this section,
36 the period of probation may continue until the juvenile's eighteenth
37 birthday or until the juvenile's nineteenth birthday if jurisdiction is
38 retained pursuant to section 8-202, subsection H, except that the term of
39 probation shall not exceed one year if all of the following apply:

40 1. The juvenile is not charged with a subsequent offense.

41 2. The juvenile has not been found in violation of a condition of
42 probation.

1 3. The court has not made a determination that it is in the best
2 interests of the juvenile or the public to require continued supervision.
3 The court shall state by minute entry or written order its reasons for
4 finding that continued supervision is required.

5 4. The offense for which the juvenile is placed on probation does
6 not involve a dangerous offense as defined in section 13-105.

7 5. The offense for which the juvenile is placed on probation does
8 not involve a violation of title 13, chapter 14 or 35.1.

9 6. Restitution ordered pursuant to section 8-344 has been made.

10 7. The juvenile's parents have not requested that the court
11 continue the juvenile's probation for more than one year.

12 C. If a juvenile is adjudicated as a first time felony juvenile
13 offender, the court shall provide the following written notice to the
14 juvenile:

15 You have been adjudicated a first time felony juvenile
16 offender. You are now on notice that if you are adjudicated
17 of another offense that would be a felony offense if committed
18 by an adult and if you commit the other offense when you are
19 fourteen years of age or older, you will be placed on juvenile
20 intensive probation, which may include home arrest and
21 electronic monitoring, or you may be placed on juvenile
22 intensive probation and may be incarcerated for a period of
23 time in a juvenile detention center, or you may be committed
24 to the department of juvenile corrections or you may be
25 prosecuted as an adult. If you are convicted as an adult of a
26 felony offense and you commit any other offense, you will be
27 prosecuted as an adult.

28 D. If a juvenile is fourteen years of age or older and is
29 adjudicated as a repeat felony juvenile offender, the juvenile court shall
30 place the juvenile on juvenile intensive probation, which may include home
31 arrest and electronic monitoring, may place the juvenile on juvenile
32 intensive probation, which may include incarceration for a period of time
33 in a juvenile detention center, or may commit the juvenile to the
34 department of juvenile corrections pursuant to subsection A, paragraph 1,
35 subdivision (e) of this section for a significant period of time.

36 E. If the juvenile is adjudicated as a repeat felony juvenile
37 offender, the court shall provide the following written notice to the
38 juvenile:

39 You have been adjudicated a repeat felony juvenile
40 offender. You are now on notice that if you are arrested for
41 another offense that would be a felony offense if committed by
42 an adult and if you commit the other offense when you are
43 fifteen years of age or older, you will be tried as an adult
44 in the criminal division of the superior court. If you commit
45 the other offense when you are fourteen years of age or older,

1 you may be tried as an adult in the criminal division of the
2 superior court. If you are convicted as an adult, you will be
3 sentenced to a term of incarceration. If you are convicted as
4 an adult of a felony offense and you commit any other offense,
5 you will be prosecuted as an adult.

6 F. The failure or inability of the court to provide the notices
7 required under subsections C and E of this section does not preclude the
8 use of the prior adjudications for any purpose otherwise ~~permitted~~
9 ALLOWED.

10 G. Except as provided in subsection S of this section, after
11 considering the nature of the offense and the age, physical and mental
12 condition and earning capacity of the juvenile, the court shall order the
13 juvenile to pay a reasonable monetary assessment if the court determines
14 that an assessment is in aid of rehabilitation. If the director of the
15 department of juvenile corrections determines that enforcement of an order
16 for monetary assessment as a term and condition of conditional liberty is
17 not cost-effective, the director may require the youth to perform an
18 equivalent amount of community restitution in lieu of the payment ordered
19 as a condition of conditional liberty.

20 H. If a child is adjudicated incorrigible, the court may impose a
21 monetary assessment on the child of not more than ~~one hundred fifty~~
22 ~~dollars~~ \$150.

23 I. A juvenile who is charged with unlawful purchase, possession or
24 consumption of spirituous liquor is subject to section 8-323. The
25 monetary assessment for a conviction of unlawful purchase, possession or
26 consumption of spirituous liquor by a juvenile shall not exceed ~~five~~
27 ~~hundred dollars~~ \$500. The court of competent jurisdiction may order a
28 monetary assessment or equivalent community restitution.

29 J. The court shall require the monetary assessment imposed under
30 subsection G or H of this section on a juvenile who is not committed to
31 the department of juvenile corrections to be satisfied in one or both of
32 the following forms:

33 1. Monetary reimbursement by the juvenile in a lump sum or
34 installment payments through the clerk of the superior court for
35 appropriate distribution.

36 2. A program of work, not in conflict with regular schooling, to
37 repair damage to the victim's property, to provide community restitution
38 or to provide the juvenile with a job for wages. The court order for
39 restitution or monetary assessment shall specify, according to the
40 dispositional program, the amount of reimbursement and the portion of
41 wages of either existing or provided work that is to be credited toward
42 satisfaction of the restitution or assessment, or the nature of the work
43 to be performed and the number of hours to be spent working. The number
44 of hours to be spent working shall be set by the court based on the
45 severity of the offense but shall not be less than sixteen hours.

1 K. If a juvenile is committed to the department of juvenile
2 corrections, the court shall specify the amount of the monetary assessment
3 imposed pursuant to subsection G or H of this section.

4 L. After considering the length of stay guidelines developed
5 pursuant to section 41-2816, subsection C, the court may set forth in the
6 order of commitment the minimum period during which the juvenile shall
7 remain in secure care while in the custody of the department of juvenile
8 corrections. When the court awards a juvenile to the department of
9 juvenile corrections or an institution or agency, it shall transmit with
10 the order of commitment copies of a diagnostic psychological evaluation
11 and educational assessment if one has been administered, copies of the
12 case report, all other psychological and medical reports, restitution
13 orders, any request for postadjudication notice that has been submitted by
14 a victim and any other documents or records pertaining to the case
15 requested by the department of juvenile corrections or an institution or
16 agency. The department shall not release a juvenile from secure care
17 before the juvenile completes the length of stay determined by the court
18 in the commitment order unless the county attorney in the county from
19 which the juvenile was committed requests the committing court to reduce
20 the length of stay. The department may temporarily escort the juvenile
21 from secure care pursuant to section 41-2804, may release the juvenile
22 from secure care without a further court order after the juvenile
23 completes the length of stay determined by the court or may retain the
24 juvenile in secure care for any period subsequent to the completion of the
25 length of stay in accordance with the law.

26 M. Written notice of the release of any juvenile pursuant to
27 subsection L of this section shall be made to any victim requesting
28 notice, the juvenile court that committed the juvenile and the county
29 attorney of the county from which the juvenile was committed.

30 N. Notwithstanding any law to the contrary, if a person is under
31 the supervision of the court as an adjudicated delinquent juvenile at the
32 time the person reaches eighteen years of age, treatment services may be
33 provided until the person reaches twenty-one years of age if the court,
34 the person and the state agree to the provision of the treatment and a
35 motion to transfer the person pursuant to section 8-327 has not been filed
36 or has been withdrawn. The court may terminate the provision of treatment
37 services after the person reaches eighteen years of age if the court
38 determines that any of the following applies:

- 39 1. The person is not progressing toward treatment goals.
- 40 2. The person terminates treatment.
- 41 3. The person commits a new offense after reaching eighteen years
42 of age.
- 43 4. Continued treatment is not required or is not in the best
44 interests of the state or the person.

1 0. On the request of a victim of an act that may have involved
2 significant exposure as defined in section 13-1415 or that if committed by
3 an adult would be a sexual offense, the prosecuting attorney shall
4 petition the adjudicating court to require that the juvenile be tested for
5 the presence of the human immunodeficiency virus. If the victim is a
6 minor the prosecuting attorney shall file this petition at the request of
7 the victim's parent or guardian. If the act committed against a victim is
8 an act that if committed by an adult would be a sexual offense or the
9 court determines that sufficient evidence exists to indicate that
10 significant exposure occurred, it shall order the department of juvenile
11 corrections or the department of health services to test the juvenile
12 pursuant to section 13-1415. Notwithstanding any law to the contrary, the
13 department of juvenile corrections and the department of health services
14 shall release the test results only to the victim, the delinquent
15 juvenile, the delinquent juvenile's parent or guardian and a minor
16 victim's parent or guardian and shall counsel them regarding the meaning
17 and health implications of the results.

18 P. If a juvenile has been adjudicated delinquent for an offense
19 that if committed by an adult would be an offense listed in section
20 41-1750, subsection C, the court shall provide the department of public
21 safety Arizona automated fingerprint identification system established in
22 section 41-2411 with the juvenile's ten-print fingerprints, personal
23 identification data and other pertinent information. If a juvenile has
24 been committed to the department of juvenile corrections the department
25 shall provide the fingerprints and information required by this subsection
26 to the Arizona automated fingerprint identification system. If the
27 juvenile's fingerprints and information have been previously submitted to
28 the Arizona automated fingerprint identification system the information is
29 not required to be resubmitted.

30 Q. Access to fingerprint records submitted pursuant to subsection P
31 of this section shall be limited to the administration of criminal justice
32 as defined in section 41-1750. Dissemination of fingerprint information
33 shall be limited to the name of the juvenile, juvenile case number, date
34 of adjudication and court of adjudication.

35 R. If a juvenile is adjudicated delinquent for an offense that if
36 committed by an adult would be a misdemeanor, the court may prohibit the
37 juvenile from carrying or possessing a firearm while the juvenile is under
38 the jurisdiction of the department of juvenile corrections or the juvenile
39 court.

40 S. If a juvenile is adjudicated delinquent for a violation of
41 section 13-1602, subsection A, paragraph 5, the court shall order the
42 juvenile to pay a fine of at least ~~three hundred dollars~~ \$300 but not more
43 than ~~one thousand dollars~~ \$1,000. Any restitution ordered shall be paid
44 in accordance with section 13-809, subsection A. The court may order the
45 juvenile to perform community restitution in lieu of the payment for all

1 or part of the fine if it is in the best interests of the juvenile. ~~The
2 amount of community restitution shall be equivalent to the amount of the
3 fine by crediting any service performed at a rate of ten dollars per hour.~~

4 THE COURT SHALL CREDIT COMMUNITY RESTITUTION PERFORMED AT A RATE THAT IS
5 EQUAL TO THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND
6 B, ROUNDED UP TO THE NEAREST DOLLAR. If the juvenile is convicted of a
7 second or subsequent violation of section 13-1602, subsection A, paragraph
8 5 and is ordered to perform community restitution, the court may order the
9 parent or guardian of the juvenile to assist the juvenile in the
10 performance of the community restitution if both of the following apply:

11 1. The parent or guardian had knowledge that the juvenile intended
12 to engage in or was engaging in the conduct that gave rise to the
13 violation.

14 2. The parent or guardian knowingly provided the juvenile with the
15 means to engage in the conduct that gave rise to the violation.

16 T. If a juvenile is adjudicated delinquent for an offense involving
17 the purchase, possession or consumption of spirituous liquor or a
18 violation of title 13, chapter 34 and is placed on juvenile probation, the
19 court may order the juvenile to submit to random drug and alcohol testing
20 at least two times per week as a condition of probation.

21 U. A juvenile who is adjudicated delinquent for an offense
22 involving the purchase, possession or consumption of spirituous liquor or
23 a violation of title 13, chapter 34, who is placed on juvenile probation
24 and who is found to have consumed any spirituous liquor or to have used
25 any drug listed in section 13-3401 while on probation is in violation of
26 the juvenile's probation. If a juvenile commits a third or subsequent
27 violation of a condition of probation as prescribed by this subsection,
28 the juvenile shall be brought before the juvenile court and, if the
29 allegations are proven, the court shall either revoke probation and hold a
30 disposition hearing pursuant to this section or select additional
31 conditions of probation as it deems necessary, including detention, global
32 position system monitoring, additional alcohol or drug treatment,
33 community restitution, additional drug or alcohol testing or a monetary
34 assessment.

35 V. If jurisdiction of the juvenile court is retained pursuant to
36 section 8-202, subsection H, the court shall order continued probation
37 supervision and treatment services until a child who has been adjudicated
38 a delinquent juvenile reaches nineteen years of age or until otherwise
39 terminated by the court. The court may terminate continued probation
40 supervision or treatment services before the child's nineteenth birthday
41 if the court determines that continued probation supervision or treatment
42 is not required or is not in the best interests of the juvenile or the
43 state or the juvenile commits a criminal offense after reaching eighteen
44 years of age.

w. For the purposes of this section:

1. "First time felony juvenile offender" means a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

2. "Repeat felony juvenile offender" means a juvenile to whom both of the following apply:

(a) Is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

(b) Previously has been adjudicated a first time felony juvenile offender.

3. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

Sec. 2. 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, if a monetary obligation is imposed on a defendant at sentencing and the court finds the defendant is unable to pay all or part of the monetary obligation, **ON THE DEFENDANT'S REQUEST** the court may order the defendant to perform community restitution in lieu of the payment for all or part of the monetary obligation. **The amount of community restitution shall be equivalent to the amount of the monetary obligation by crediting any service performed at a rate of ten dollars per hour.** THE COURT SHALL CREDIT COMMUNITY RESTITUTION PERFORMED AT A RATE THAT IS EQUAL TO THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR.

B. This section does not apply to the assessment imposed pursuant to sections 12-116.05, 12-116.06, 12-116.07, 12-116.08 and 12-116.09 and 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. 3. Section 28-1603, Arizona Revised Statutes, is amended to read:

28-1603. Civil penalty mitigation

A. Notwithstanding any other law, a judge may mitigate any civil penalty that is required under chapters 3, 5, 7, 8 and 9 of this title if the person who is ordered to pay the penalty demonstrates that the payment would be a hardship on the person or on the person's immediate family.

B. In determining whether to mitigate a civil penalty, the court may consider any relevant information, including any of the following:

1. The civil penalty's impact on the person's ability to pay restitution.

1 2. Whether the civil penalty would constitute a financial hardship
2 to the person or the person's immediate family.

3 3. Whether the person receives temporary assistance for needy
4 families pursuant to 42 United States Code section 603 or supplemental
5 nutrition assistance pursuant to 7 United States Code sections 2011
6 through 2036c.

7 4. Whether the person receives benefits pursuant to the
8 supplemental security income program (42 United States Code sections 1381
9 through ~~1385~~ 1383f).

10 5. Whether the person is legally authorized to be employed and is
11 seeking, obtaining or maintaining employment or is attending school.

12 C. This section does not apply to the surcharge imposed and
13 collected pursuant to section 16-954, subsection A.

14 Sec. 4. Title 28, chapter 5, article 4, Arizona Revised Statutes,
15 is amended by adding section 28-1604, to read:

16 28-1604. Community restitution in lieu of monetary
17 obligation; definition

18 A. NOTWITHSTANDING ANY OTHER LAW, IF A MONETARY OBLIGATION IS
19 IMPOSED ON A PERSON AT SENTENCING, ON THE PERSON'S REQUEST THE COURT MAY
20 ORDER THE PERSON TO PERFORM COMMUNITY RESTITUTION IN LIEU OF THE PAYMENT
21 OF THE MONETARY OBLIGATION. THE COURT SHALL DETERMINE THE LOCATION WHERE
22 THE COMMUNITY RESTITUTION IS PERFORMED. THE COURT SHALL CREDIT ANY
23 COMMUNITY RESTITUTION PERFORMED AT A RATE THAT IS EQUAL TO THE MINIMUM
24 WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE
25 NEAREST DOLLAR.

26 B. FOR THE PURPOSES OF THIS SECTION, "MONETARY OBLIGATION" MEANS A
27 CIVIL PENALTY, A SURCHARGE, AN ASSESSMENT OR A FEE EXCEPT FOR A FEE
28 IMPOSED PURSUANT TO SECTION 12-116.

APPROVED BY THE GOVERNOR APRIL 28, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2021.