

REFERENCE TITLE: prisoners; eligibility

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

HB 2165

Introduced by
Representative Blackman

AN ACT

AMENDING SECTIONS 13-4414 AND 31-418, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 11, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1604.21; 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 13-4414, Arizona Revised Statutes, is amended to
3 read:

4 13-4414. Notice of postconviction release; right to be heard;
5 hearing; final decision; free electronic recording

6 A. The victim has the right to be present and be heard at any
7 proceeding in which postconviction release from confinement is being
8 considered pursuant to section 31-233, 31-411, ~~or~~ 41-1604.13 ~~OR~~
9 41-1604.21.

10 B. If the victim has made a request for postconviction notice, the
11 board of executive clemency shall, at least fifteen days before the
12 hearing, give to the victim written notice of the hearing and of the
13 victim's right to be present and be heard at the hearing.

14 C. If the victim has made a request for postconviction notice, the
15 board of executive clemency shall give to the victim notice of the
16 decision reached by the board. The notice shall be mailed within fifteen
17 days after the board reaches its decision.

18 D. Any electronic recordings that are made during a postconviction
19 release hearing shall be provided, on request, to the victim free of
20 charge.

21 Sec. 2. Section 31-418, Arizona Revised Statutes, is amended to
22 read:

23 31-418. Community supervision fee; deposit; community
24 corrections enhancement fund; drug testing costs

25 A. During the period of time that the prisoner remains on community
26 supervision, the state department of corrections shall require as a
27 condition of community supervision that the prisoner pay a monthly
28 supervision fee of at least ~~sixty-five dollars~~ \$65 unless, after
29 determining the inability of the prisoner to pay the fee, the department
30 requires payment of a lesser amount. The supervising community supervision
31 officer shall monitor the collection of the fee.

32 B. Seventy ~~per cent~~ PERCENT of the monies collected pursuant to
33 subsection A of this section shall be deposited, pursuant to sections
34 35-146 and 35-147, in the victim compensation and assistance fund
35 established by section 41-2407 and thirty ~~per cent~~ PERCENT shall be
36 deposited in the community corrections enhancement fund established by
37 this section.

38 C. The community corrections enhancement fund is established
39 consisting of monies received pursuant to subsection B of this section,
40 sections 31-411, 31-467.06 and 41-1604.08, ~~and~~ section 41-1604.13,
41 subsection D, paragraph 8 ~~AND SECTION 41-1604.21, SUBSECTION C,~~
42 ~~PARAGRAPH 8.~~ The department shall administer the fund and use fund monies
43 to pay for costs related to community corrections.

1 D. In addition to any other fees, the department may require as a
2 condition of community supervision that the prisoner pay the reasonable
3 costs associated with the prisoner's participation in a drug testing
4 program. The prisoner's costs shall not exceed the department's cost for
5 the program. The monies collected pursuant to this subsection by the
6 department may only be used to offset the costs of the drug testing
7 program.

8 Sec. 3. Title 41, chapter 11, article 1, Arizona Revised Statutes,
9 is amended by adding section 41-1604.21, to read:

10 41-1604.21. Home arrest for nonviolent offenders:
11 eligibility; notification; requirements;
12 definition

13 A. AN INMATE WHO IS SENTENCED TO AT LEAST TWO YEARS OF IMPRISONMENT
14 AND WHO HAS SERVED NOT LESS THAN ONE YEAR OF THE SENTENCE IMPOSED BY THE
15 COURT IS ELIGIBLE FOR THE HOME ARREST PROGRAM IF THE INMATE MEETS THE
16 FOLLOWING CRITERIA:

17 1. WAS CONVICTED OF COMMITTING A FELONY THAT WAS NOT A SERIOUS
18 OFFENSE.

19 2. IS WITHIN FOUR YEARS OF BEGINNING ANY FORM OF RELEASE FROM
20 INCARCERATION IN THE DEPARTMENT.

21 3. HAS NOT PREVIOUSLY BEEN CONVICTED OF A DANGEROUS CRIME AGAINST
22 CHILDREN AS DEFINED IN SECTION 13-705 OR A SEXUAL OFFENSE.

23 4. DOES NOT HAVE ANY VIOLENT DISCIPLINARY INFRACTIONS DURING THE
24 INMATE'S CURRENT TERM OF IMPRISONMENT.

25 B. THE BOARD OF EXECUTIVE CLEMENCY SHALL DETERMINE WHICH INMATES
26 ARE RELEASED TO THE HOME ARREST PROGRAM BASED ON THE CRITERIA IN
27 SUBSECTION A OF THIS SECTION AND BASED ON A DETERMINATION THAT THERE IS A
28 SUBSTANTIAL PROBABILITY THAT THE INMATE WILL REMAIN AT LIBERTY WITHOUT
29 VIOLATING THE LAW AND THAT THE RELEASE IS IN THE BEST INTERESTS OF THE
30 STATE AFTER CONSIDERING THE OFFENSE FOR WHICH THE INMATE IS PRESENTLY
31 INCARCERATED, THE PRIOR RECORD OF THE INMATE, THE CONDUCT OF THE INMATE
32 WHILE INCARCERATED AND ANY OTHER INFORMATION CONCERNING THE INMATE THAT IS
33 IN THE POSSESSION OF THE DEPARTMENT, INCLUDING ANY PRESENTENCE REPORT.

34 C. HOME ARREST IS CONDITIONED ON THE FOLLOWING:

35 1. ACTIVE ELECTRONIC MONITORING SURVEILLANCE FOR A MINIMUM TERM OF
36 ONE YEAR OR UNTIL ELIGIBLE FOR PROBATION OR COMMUNITY SUPERVISION.

37 2. PARTICIPATING IN GAINFUL EMPLOYMENT OR OTHER BENEFICIAL
38 ACTIVITIES.

39 3. SUBMITTING TO ALCOHOL AND DRUG TESTS AS MANDATED.

40 4. PAYING THE ELECTRONIC MONITORING FEE IN AN AMOUNT DETERMINED BY
41 THE BOARD OF NOT LESS THAN \$1 PER DAY AND NOT MORE THAN THE TOTAL COST OF
42 THE ELECTRONIC MONITORING UNLESS, AFTER DETERMINING THE INABILITY OF THE
43 INMATE TO PAY THE FEE, THE BOARD REQUIRES PAYMENT OF A LESSER AMOUNT. THE
44 FEES COLLECTED SHALL BE RETURNED TO THE DEPARTMENT'S HOME ARREST PROGRAM
45 TO OFFSET OPERATIONAL COSTS OF THE PROGRAM.

1 5. REMAINING AT THE INMATE'S PLACE OF RESIDENCE AT ALL TIMES EXCEPT
2 FOR MOVEMENT OUT OF THE RESIDENCE ACCORDING TO MANDATED CONDITIONS. THE
3 BOARD AND SUPERVISING CORRECTIONAL OFFICER SHALL DETERMINE THE INMATE'S
4 MONITORING CUSTODY LEVEL.

5 6. ADHERING TO ANY OTHER CONDITIONS IMPOSED BY THE COURT, BOARD OR
6 SUPERVISING CORRECTIONS OFFICERS.

7 7. COMPLYING WITH ALL OTHER CONDITIONS OF SUPERVISION.

8 8. PAYING A MONTHLY HOME ARREST SUPERVISION FEE OF AT LEAST \$65
9 UNLESS, AFTER DETERMINING THE INABILITY OF THE INMATE TO PAY THE FEE, THE
10 DEPARTMENT REQUIRES PAYMENT OF A LESSER AMOUNT. THE SUPERVISING
11 CORRECTIONS OFFICER SHALL MONITOR THE COLLECTION OF THE FEE. MONIES
12 COLLECTED SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN
13 THE COMMUNITY CORRECTIONS ENHANCEMENT FUND ESTABLISHED BY SECTION 31-418.

14 9. PAYING A DRUG TESTING FEE IN AN AMOUNT TO BE DETERMINED BY THE
15 BOARD AND NOT TO EXCEED THE COSTS OF THE DRUG TESTING PROGRAM. THE FEES
16 COLLECTED PURSUANT TO THIS PARAGRAPH BY THE DEPARTMENT MAY ONLY BE USED TO
17 OFFSET THE COSTS OF THE DRUG TESTING PROGRAM.

18 D. BEFORE HOLDING A HEARING ON HOME ARREST, THE BOARD ON REQUEST
19 SHALL NOTIFY AND AFFORD AN OPPORTUNITY TO BE HEARD TO THE PRESIDING JUDGE
20 OF THE SUPERIOR COURT IN THE COUNTY IN WHICH THE INMATE REQUESTING HOME
21 ARREST WAS SENTENCED, THE PROSECUTING ATTORNEY AND THE DIRECTOR OF THE
22 ARRESTING LAW ENFORCEMENT AGENCY. THE BOARD SHALL NOTIFY THE VICTIM OF
23 THE OFFENSE FOR WHICH THE INMATE IS INCARCERATED. THE NOTICE SHALL STATE
24 THE NAME OF THE INMATE REQUESTING HOME ARREST, THE OFFENSE FOR WHICH THE
25 INMATE WAS SENTENCED, THE LENGTH OF THE SENTENCE AND THE DATE OF ADMISSION
26 TO THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS. THE NOTICE TO THE
27 VICTIM SHALL ALSO INFORM THE VICTIM OF THE VICTIM'S RIGHT TO BE PRESENT
28 AND TO SUBMIT A WRITTEN REPORT TO THE BOARD EXPRESSING THE VICTIM'S
29 OPINION CONCERNING THE INMATE'S RELEASE. A HEARING CONCERNING HOME ARREST
30 MAY NOT BE HELD UNTIL FIFTEEN DAYS AFTER THE DATE OF GIVING THE NOTICE.
31 ON MAILING THE NOTICE, THE BOARD SHALL FILE A HARD COPY OF THE NOTICE AS
32 EVIDENCE THAT NOTIFICATION WAS SENT.

33 E. AN INMATE WHO IS PLACED ON HOME ARREST IS ON INMATE STATUS, IS
34 SUBJECT TO ALL THE LIMITATIONS OF RIGHTS AND MOVEMENT AND IS ENTITLED ONLY
35 TO DUE PROCESS RIGHTS OF RETURN.

36 F. IF AN INMATE VIOLATES A CONDITION OF HOME ARREST OR COMMITS AN
37 ADDITIONAL FELONY OFFENSE, THE BOARD SHALL REVOKE THE HOME ARREST AND
38 RETURN THE INMATE TO THE CUSTODY OF THE DEPARTMENT TO COMPLETE THE TERM OF
39 IMPRISONMENT AS AUTHORIZED BY LAW.

40 G. THE RATIO OF SUPERVISING CORRECTIONS OFFICERS TO SUPERVISEES IN
41 THE HOME ARREST PROGRAM MAY NOT BE GREATER THAN ONE OFFICER FOR EVERY
42 TWENTY-FIVE SUPERVISEES.

43 H. FOR THE PURPOSES OF THIS SECTION, "SERIOUS OFFENSE" INCLUDES ANY
44 OF THE FOLLOWING:

- 1 1. A SERIOUS OFFENSE AS DEFINED IN SECTION 13-706, SUBSECTION F,
2 PARAGRAPH 1, SUBDIVISION (a), (b), (c), (d), (e), (g), (h), (i), (j)
3 OR (k).
- 4 2. A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION
5 13-705. THE CITATION OF SECTION 13-705 IS NOT A NECESSARY ELEMENT FOR A
6 SERIOUS OFFENSE DESIGNATION.
- 7 3. A CONVICTION UNDER A PRIOR CRIMINAL CODE FOR ANY OFFENSE THAT
8 POSSESSES REASONABLY EQUIVALENT OFFENSE ELEMENTS AS THE OFFENSE ELEMENTS
9 THAT ARE LISTED UNDER SECTION 13-705, SUBSECTION Q, PARAGRAPH 1 OR SECTION
10 13-706, SUBSECTION F, PARAGRAPH 1.