

REFERENCE TITLE: prisoners; community supervision; health emergency

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1477

Introduced by
Senators Engel: Bowie, Contreras, Gonzales, Peshlakai; Representative
Rodriguez

AN ACT

AMENDING TITLE 31, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 31-232; AMENDING SECTION 31-402, 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. Title 31, chapter 2, article 2, Arizona Revised
3 Statutes, is amended by adding section 31-232, to read:

4 31-232. Public health emergency; order to place prisoner on
5 community supervision; guidelines; reduced term of
6 imprisonment

7 A. NOTWITHSTANDING ANY OTHER LAW, IF A PUBLIC HEALTH EMERGENCY IS
8 DECLARED BY THE GOVERNOR PURSUANT TO SECTION 26-303 OR BY A LOCAL
9 AUTHORITY PURSUANT TO SECTION 26-311, THE DIRECTOR OF THE STATE DEPARTMENT
10 OF CORRECTIONS, A PRISONER OR THE PRISONER'S ATTORNEY OR A COUNTY ATTORNEY
11 MAY FILE A MOTION IN SUPERIOR COURT REQUESTING A RELEASE ORDER TO TRANSFER
12 THE PRISONER TO COMMUNITY SUPERVISION. A SUPERIOR COURT JUDGE, BY A
13 WRITTEN ORDER, MAY PLACE THE PRISONER ON COMMUNITY SUPERVISION FOR A
14 PERIOD OF TIME THAT DOES NOT EXCEED THE PRISONER'S REMAINING TERM OF
15 IMPRISONMENT. THE ORDER SHALL BE FILED IN THE OFFICE OF THE CLERK OF THE
16 SUPERIOR COURT, AND THE DIRECTOR OF THE STATE DEPARTMENT OF CORRECTIONS
17 SHALL PLACE THE PRISONER ON COMMUNITY SUPERVISION.

18 B. NOTWITHSTANDING ANY OTHER LAW, IF A PUBLIC HEALTH EMERGENCY IS
19 DECLARED BY THE GOVERNOR PURSUANT TO SECTION 26-303 OR BY A LOCAL
20 AUTHORITY PURSUANT TO SECTION 26-311, THE DIRECTOR OF THE STATE DEPARTMENT
21 OF CORRECTIONS MAY AUTHORIZE THE TRANSFER OF THE PRISONER TO COMMUNITY
22 SUPERVISION.

23 C. NOTWITHSTANDING ANY OTHER LAW, IF A PUBLIC HEALTH EMERGENCY IS
24 DECLARED BY THE GOVERNOR PURSUANT TO SECTION 26-303 OR BY A LOCAL
25 AUTHORITY PURSUANT TO SECTION 26-311, THE GOVERNOR, BY EXECUTIVE ORDER OR
26 ON A CASE-BY-CASE BASIS, MAY ORDER THAT A PRISONER OR GROUP OF PRISONERS
27 BE PLACED ON COMMUNITY SUPERVISION FOR A PERIOD OF TIME THAT DOES NOT
28 EXCEED EACH PRISONER'S REMAINING TERM OF IMPRISONMENT.

29 D. WHEN DETERMINING WHETHER TO PLACE A PRISONER ON COMMUNITY
30 SUPERVISION PURSUANT TO SUBSECTION A, B OR C OF THIS SECTION, THE COURT,
31 DIRECTOR AND GOVERNOR SHALL CONSIDER THE FOLLOWING FACTORS:

32 1. THE PRISONER'S AGE.

33 2. THE PRISONER'S HEALTH, INCLUDING ANY CURRENT, PRE-EXISTING OR
34 RECURRING MEDICAL CONDITIONS THAT MAKE THE PRISONER MORE SUSCEPTIBLE TO
35 DEATH OR SERIOUS HEALTH COMPLICATIONS IF THE PRISONER REMAINS INCARCERATED
36 IN A PRISON FACILITY DURING THE DURATION OF THE PUBLIC HEALTH EMERGENCY.

37 3. WHETHER THE PRISONER POSES AN UNREASONABLE PUBLIC SAFETY RISK IF
38 RELEASED TO COMMUNITY SUPERVISION.

39 4. WHETHER THE PRISONER POSSESSES A REASONABLY STABLE LIVING
40 SITUATION ON RELEASE.

41 E. NOTWITHSTANDING ANY OTHER LAW, THE DIRECTOR OF THE STATE
42 DEPARTMENT OF CORRECTIONS SHALL REDUCE THE TERM OF IMPRISONMENT FOR EACH
43 PRISONER WHO IS PLACED ON COMMUNITY SUPERVISION PURSUANT TO THIS SECTION
44 BY ONE DAY FOR EACH DAY THAT THE PRISONER SERVES ON COMMUNITY SUPERVISION.

1 Sec. 2. Section 31-402, Arizona Revised Statutes, is amended to
2 read:

3 31-402. Powers of board; powers and duties of governor;
4 powers and duties of executive director

5 A. For all persons who committed felony offenses before January 1,
6 1994, the board of executive clemency shall have exclusive power to pass
7 on and recommend reprieves, commutations, paroles and pardons. No
8 reprieve, commutation or pardon may be granted by the governor unless it
9 has first been recommended by the board.

10 B. For all persons who committed felony offenses before January 1,
11 1994, all applications for reprieves, commutations and pardons made to the
12 governor shall be at once transmitted to the chairman of the board, and
13 the board shall return the applications with its recommendation to the
14 governor. All applications for reprieves, commutations and pardons made to
15 the governor shall include documentation that the victim or the victim's
16 family was notified pursuant to section 31-411, subsection H.

17 C. For all persons who committed felony offenses on or after
18 January 1, 1994, in addition to the powers and duties prescribed in
19 subsection A of this section, the board of executive clemency:

20 1. Is vested with the powers and duties of the board of pardons and
21 paroles as they existed before January 1, 1994 to carry out the provisions
22 of articles 3, 4.1, 5, 6 and 7 of this chapter.

23 2. After a hearing for which the victim, county attorney and
24 presiding judge are given notice and an opportunity to be heard, may make
25 recommendations to the governor for commutation of sentence after finding
26 by clear and convincing evidence that the sentence imposed is clearly
27 excessive given the nature of the offense and the record of the offender
28 and that there is a substantial probability that when released the
29 offender will conform the offender's conduct to the requirements of the
30 law.

31 3. Shall receive petitions from individuals for whom the court has
32 entered a special order allowing the person to petition the board pursuant
33 to section 13-603, subsection L and may make recommendations to the
34 governor.

35 4. Shall receive petitions from individuals, organizations or the
36 department for review and commutation of sentences and pardoning of
37 offenders in extraordinary cases and may make recommendations to the
38 governor.

39 5. Shall receive petitions from the state department of corrections
40 alleging that an offender has violated the offender's terms and conditions
41 of community supervision and has lapsed or is probably about to lapse into
42 criminal ways or company. If the board determines that an offender on
43 community supervision has violated the terms and conditions of community
44 supervision the board may do any of the following:

(a) If the offender has not committed an additional offense, place the offender on electronic monitoring and order the offender to participate in a community accountability program pursuant to section 41-1609.05.

(b) Revoke community supervision and return the offender to prison for the remainder of the offender's community supervision.

(c) Impose additional terms and conditions on the offender while keeping the offender on community supervision. If there is reasonable cause to believe that an offender who has been kept on community supervision has violated any term or condition of community supervision, any member of the board may petition the board to revoke community supervision. After a petition to revoke has been submitted, the chairman may issue a summons directing the offender to appear on a specified date for a revocation hearing or may issue a warrant for the offender's arrest. Nothing in this subsection limits the state department of corrections' authority with respect to submitting revocation petitions or issuing revocation warrants.

6. WITHIN NINETY DAYS AFTER THE TERMINATION OF THE PUBLIC HEALTH EMERGENCY DECLARED BY THE GOVERNOR PURSUANT TO SECTION 26-303 OR BY A LOCAL AUTHORITY PURSUANT TO SECTION 26-311, SHALL DETERMINE WHETHER A PRISONER WHO WAS PLACED ON COMMUNITY SUPERVISION PURSUANT TO SECTION 31-232 AND HAS A REMAINING TERM OF IMPRISONMENT SHALL BE RETURNED TO SERVE THE REMAINDER OF THE TERM OF IMPRISONMENT OR WHETHER THE PRISONER'S BEHAVIOR DURING COMMUNITY SUPERVISION WARRANTS REDUCING OR ELIMINATING ANY REMAINING TERM OF IMPRISONMENT. THE PRISONER SHALL REMAIN ON COMMUNITY SUPERVISION UNTIL THE TIME THAT THE BOARD MAKES A DETERMINATION PURSUANT TO THIS PARAGRAPH. IF THE PRISONER COMPLIED WITH ALL CONDITIONS OF COMMUNITY SUPERVISION DURING THE DURATION OF THE PUBLIC HEALTH EMERGENCY, IT IS PRESUMED THAT THE PRISONER SHALL NOT BE INCARCERATED TO SERVE THE REMAINDER OF THE PRISONER'S TERM OF IMPRISONMENT. THE BOARD SHALL HOLD A HEARING TO MAKE A DETERMINATION UNDER THIS PARAGRAPH AND SHALL PROVIDE THE PRISONER WITH WRITTEN NOTICE OF THE TIME AND PLACE OF THE HEARING NOT LATER THAN THIRTY DAYS BEFORE THE DATE OF THE HEARING. AT THE HEARING, THE PRISONER HAS THE RIGHT TO APPEAR IN PERSON BEFORE THE BOARD, PRESENT EVIDENCE AND WITNESSES AND HAVE THE ASSISTANCE OF COUNSEL. THE BOARD SHALL ISSUE A DETERMINATION IN WRITING PURSUANT TO THIS PARAGRAPH NOT LATER THAN THIRTY DAYS AFTER THE HEARING, AND COPIES OF THE DETERMINATION SHALL BE PROVIDED TO THE PRISONER AND THE PRISONER'S COUNSEL, IF ANY. THE BOARD'S DETERMINATION IS EFFECTIVE FIFTEEN DAYS AFTER THE DATE THAT THE BOARD ISSUES A DETERMINATION IN WRITING.

D. Any recommendation for commutation that is made unanimously by the members present and voting and that is not acted on by the governor within ninety days after the board submits its recommendation to the governor automatically becomes effective.

1 E. The executive director shall perform all administrative,
2 operational and financial functions for the board.

3 F. The executive director may employ case analysts as deemed
4 necessary within the limits of legislative appropriation and subject to
5 title 41, chapter 4, article 4. The analysts shall aid the board in
6 making investigations, in securing information and in performing necessary
7 administrative functions to assist the board in passing on applications
8 for parole and commutation.

9 G. The executive director may employ hearing officers as deemed
10 necessary within the limits of legislative appropriation and subject to
11 title 41, chapter 4, article 4. The hearing officers shall conduct
12 probable cause hearings on parole, work furlough, community supervision
13 and home arrest revocations or rescissions. Hearing officers shall assist
14 the board in making investigations, securing information and performing
15 necessary administrative functions.