

REFERENCE TITLE: prisoners; earned release; credits.

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

SB 1743

Introduced by
Senators Navarrete: Alston, Bowie, Contreras, Engel, Mendez, Otondo,
Peshlakai, Rios

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3 Section 31-229.02, Arizona Revised Statutes, is repealed.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~~ ELEVEN days for every ~~seven~~ FOUR days served if the
41 prisoner:

42 (a) Was sentenced to a term of imprisonment for the possession or
43 use of marijuana pursuant to section 13-3405, subsection A, paragraph 1,
44 the possession or use of a dangerous drug pursuant to section 13-3407,
45 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. ONE DAY FOR EVERY ONE DAY SERVED IF THE DEFENDANT WAS SENTENCED
12 TO A TERM OF IMPRISONMENT FOR A DANGEROUS OFFENSE PURSUANT TO SECTION
13 13-704.

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

19 C. Release credits earned by a prisoner pursuant to subsections A
20 and B of this section shall not reduce the ~~term of imprisonment~~ SENTENCE
21 imposed by the court on the prisoner.

22 D. On reclassification of a prisoner resulting from the prisoner's
23 failure to adhere to the rules of the department or failure to demonstrate
24 a continual willingness to volunteer for or successfully participate in a
25 work, educational, treatment or training program, the director, IN THE
26 DIRECTOR'S DISCRETION, may declare all OR A PORTION OF release credits
27 earned by the prisoner forfeited. In the discretion of the director,
28 forfeited release credits may subsequently be restored. The director
29 shall maintain an account of release credits earned by each prisoner. ON
30 OR BEFORE JULY 31 OF EACH YEAR, THE DIRECTOR SHALL PREPARE AND SUBMIT A
31 REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE
32 HOUSE OF REPRESENTATIVES THAT INCLUDES THE NUMBER OF EARNED RELEASE
33 CREDITS EARNED AND FORFEITED BY EACH PRISONER FOR THE PREVIOUS YEAR AND
34 THE REASON WHY ANY EARNED RELEASE CREDITS WERE FORFEITED BY THE
35 PRISONER. THE DIRECTOR SHALL PROVIDE A COPY OF THIS REPORT TO THE
36 SECRETARY OF STATE.

37 E. A prisoner who has reached the prisoner's earned release date or
38 sentence expiration date shall be released to begin the prisoner's term of
39 community supervision imposed by the court or term of probation if the
40 court waived community supervision pursuant to section 13-603, except that
41 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 department.
4 If the court waives community supervision, the director shall issue the
5 prisoner an absolute discharge on the prisoner's earned release credit
6 date. A prisoner who is released on the earned release credit date to
7 serve a term of probation is not under the control of the state department
8 of corrections when community supervision has been waived and the state
9 department of corrections is not required to provide parole services.

10 ~~F. Notwithstanding subsection E of this section, a prisoner who~~
11 ~~fails to achieve functional literacy at an eighth grade literacy level~~
12 ~~shall not be released to begin the prisoner's term of community~~
13 ~~supervision until either the prisoner achieves an eighth grade functional~~
14 ~~literacy level as measured by standardized assessment testing, the~~
15 ~~prisoner is released to enter the transition program established by~~
16 ~~section 31-281 and is enrolled in a program that prepares the prisoner to~~
17 ~~achieve functional literacy or the prisoner serves the full term of~~
18 ~~imprisonment imposed by the court, whichever first occurs. This~~
19 ~~subsection does not apply to inmates who either:~~

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

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

24 ~~3. Are foreign nationals.~~

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

27 ~~5. Are released pursuant to subsection B, paragraph 1 of this~~
28 ~~section.~~

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

33 1. May order a released prisoner to participate in an appropriate
34 drug treatment or education program that is administered by a qualified
35 agency, organization or individual approved by the department of health
36 services and that provides treatment or education to persons who abuse
37 controlled substances. ~~Each person who is enrolled in a drug treatment or~~
38 ~~education program shall pay for the cost of participation in the program~~
39 ~~to the extent of the person's financial ability.~~

40 2. May order additional conditions, including participation in a
41 rehabilitation program or counseling and performance of community
42 restitution work.

43 3. ~~Unless the prisoner is released pursuant to subsection B,~~
44 ~~paragraph 1 of this section,~~ May order a prisoner to apply for health care
45 benefits through the Arizona health care cost containment system before

1 being released. The state department of corrections shall enter into an
2 enrollment suspense agreement with the Arizona health care cost
3 containment system to reinstate benefits for prisoners who were sentenced
4 to twelve months or less and who were previously enrolled in the Arizona
5 health care cost containment system immediately before incarceration. For
6 all other prisoners, the state department of corrections shall submit a
7 prerelease application to the Arizona health care cost containment system
8 at least thirty days before the prisoner's release date. The state
9 department of corrections may coordinate with community-based
10 organizations or the department of economic security to assist prisoners
11 in applying for enrollment in the Arizona health care cost containment
12 system.

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

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

38 ~~I.~~ H. If a prisoner who reaches the prisoner's earned release
39 credit date refuses to sign and agree to abide by the conditions of
40 supervision before release on community supervision, the prisoner shall
41 not be released. When the prisoner reaches the sentence expiration date,
42 the prisoner shall be released to begin the term of community
43 supervision. If the prisoner refuses to sign and agree to abide by the
44 conditions of release, the prisoner shall not be released on the sentence
45 expiration date and shall serve the term of community supervision in

1 prison. The department is required to supervise any prisoner on community
2 supervision until the period of community supervision expires. The
3 department may bring a prisoner who is in violation of the prisoner's
4 terms and conditions before the board of executive clemency.

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

13 ~~J.~~ J. If a prisoner absconds from community supervision, any time
14 spent before the prisoner is returned to custody is excluded in
15 calculating the remaining period of community supervision.

16 ~~K.~~ K. A prisoner shall forfeit five days of the prisoner's earned
17 release credits:

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

21 (a) Brings a claim without substantial justification.

22 (b) Unreasonably expands or delays a proceeding.

23 (c) Testifies falsely or otherwise presents false information or
24 material to the court.

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

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

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

35 ~~M.~~ M. The director may authorize temporary release on inmate status
36 of eligible inmates pursuant to rules adopted by the director within
37 ninety days of any other authorized release date. The release
38 authorization applies to any inmate who has been convicted of a drug
39 offense, who has been determined to be eligible for participation in the
40 transition program pursuant to section 31-281 and who has agreed to
41 participate in the transition program. **THE DIRECTOR SHALL POST THE RULES**
42 **ON THE DEPARTMENT'S WEBSITE.**

43 ~~O. On admission, the department shall provide notice to any~~
44 ~~prisoner who is potentially eligible for earned release credit pursuant to~~

1 ~~subsection B, paragraph 1 of this section. The notice must include all of~~
2 ~~the eligibility requirements under this section.~~

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

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

7 ~~2. Report the following information at the end of each fiscal~~
8 ~~quarter:~~

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

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

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

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

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

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

24 ~~(d) The number of prisoners who are eligible for release into the~~
25 ~~transition program established pursuant to section 31-281 in each month of~~
26 ~~the reporting period and the percentage of the total prison population~~
27 ~~that is eligible for release into the transition program. For eligible~~
28 ~~prisoners, the report shall include the following information:~~

29 ~~(i) The most serious crime for which each prisoner is serving a~~
30 ~~sentence.~~

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

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

33 ~~(e) The number of prisoners who are enrolled in the transition~~
34 ~~program in each month of the reporting period, including the percentage of~~
35 ~~the total prison population that is enrolled in the transition program.~~
36 ~~For enrolled prisoners, the report shall include the following~~
37 ~~information:~~

38 ~~(i) The most serious crime for which each prisoner is serving a~~
39 ~~sentence.~~

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

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

42 ~~(f) The number of prisoners who are released into the transition~~
43 ~~program in each month of the reporting period, including the percentage of~~
44 ~~the total prison population that is released into the transition program.~~

1 ~~For released prisoners, the report shall include the following~~
2 ~~information:~~
3 ~~(i) The most serious crime for which each prisoner is serving a~~
4 ~~sentence.~~
5 ~~(ii) The mean and median length of the prison sentences.~~
6 ~~(iii) The mean and median length of time that the prisoners served.~~
7 ~~(g) The six-month success, return to custody and new conviction~~
8 ~~rates for prisoners who are released to a transition program.~~
9 ~~(h) The one-year success, return to custody and new conviction~~
10 ~~rates for prisoners who are released to a transition program.~~
11 ~~(i) The two-year success, return to custody and new conviction~~
12 ~~rates for prisoners who are released to a transition program.~~
13 ~~(j) The three-year success, return to custody and new conviction~~
14 ~~rates for prisoners who are released to a transition program.~~
15 ~~(k) The number of prisoners who received treatment for substance~~
16 ~~abuse during the first half of the prisoner's total sentence and the~~
17 ~~percentage of the total prison population that received treatment for~~
18 ~~substance abuse during the first half of the prisoners' total sentence.~~
19 ~~For prisoners who received treatment for substance abuse according to this~~
20 ~~subdivision, report shall include the following information:~~
21 ~~(i) The most serious crime committed by each prisoner.~~
22 ~~(ii) The mean and median length of the prison sentences.~~
23 ~~(iii) Whether the prisoners received treatment for substance abuse~~
24 ~~each month of the reporting period.~~