

REFERENCE TITLE: probationers; prisoners; search; seizure authority

State of Arizona
House of Representatives
Fifty-sixth Legislature
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2023

HB 2296

Introduced by
Representative Carter

AN ACT

AMENDING SECTIONS 13-901 AND 41-1604.07, ARIZONA REVISED STATUTES;
RELATING TO SEARCH AND SEIZURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-901, Arizona Revised Statutes, is amended to
3 read:

4 13-901. Probation

5 A. If a person who has been convicted of an offense is eligible for
6 probation, the court may suspend the imposition or execution of sentence
7 and, if so, shall without delay place the person on intensive probation
8 supervision pursuant to section 13-913 or supervised or unsupervised
9 probation on such terms and conditions as the law requires and the court
10 deems appropriate, including participation in any programs authorized in
11 title 12, chapter 2, article 11. If a person is not eligible for
12 probation, imposition or execution of sentence shall not be suspended or
13 delayed. If the court imposes probation, it may also impose a fine as
14 authorized by chapter 8 of this title. If probation is granted the court
15 shall impose a condition that the person waive extradition for any
16 probation revocation procedures and it shall order restitution pursuant to
17 section 13-603, subsection C where there is a victim who has suffered
18 economic loss. When granting probation to an adult the court, as a
19 condition of probation, shall assess a monthly fee of not less than \$65
20 unless, after determining the inability of the probationer to pay the fee,
21 the court assesses a lesser fee. This fee is not subject to any
22 surcharge. In justice and municipal courts the fee shall only be assessed
23 when the person is placed on supervised probation. For persons placed on
24 probation in the superior court, the fee shall be paid to the clerk of the
25 superior court and the clerk of the court shall pay all monies collected
26 from this fee to the county treasurer for deposit in the adult probation
27 services fund established by section 12-267. For persons placed on
28 supervised probation in the justice court, the fee shall be paid to the
29 justice court and the justice court shall transmit all of the monies to
30 the county treasurer for deposit in the adult probation services fund
31 established by section 12-267. For persons placed on supervised probation
32 in the municipal court, the fee shall be paid to the municipal court. The
33 municipal court shall transmit all of the monies to the city treasurer who
34 shall transmit the monies to the county treasurer for deposit in the adult
35 probation services fund established by section 12-267. Any amount
36 assessed pursuant to this subsection shall be used to supplement monies
37 used for the salaries of adult probation and surveillance officers and for
38 support of programs and services of the superior court adult probation
39 departments.

40 B. The period of probation shall be determined according to section
41 13-902, except that if a person is released pursuant to section 31-233,
42 subsection B and community supervision is waived pursuant to section
43 13-603, subsection K, the court shall extend the period of probation by
44 the amount of time the director of the state department of corrections
45 approves for the inmate's temporary release.

1 C. The court, in its discretion, may issue a warrant for the
2 rearrest of the defendant and may modify or add to the conditions or, if
3 the defendant commits an additional offense or violates a condition, may
4 revoke probation in accordance with the rules of criminal procedure at any
5 time before the expiration or termination of the period of probation. If
6 the court revokes the defendant's probation and the defendant is serving
7 more than one probationary term concurrently, the court may sentence the
8 person to terms of imprisonment to be served consecutively.

9 D. At any time during the probationary term of the person released
10 on probation, any probation officer, without warrant or other process and
11 at any time until the final disposition of the case, may rearrest any
12 person and bring the person before the court.

13 E. The court, on its own initiative or on application of the
14 probationer, after notice and an opportunity to be heard for the
15 prosecuting attorney and, on request, the victim, may terminate the period
16 of probation or intensive probation and discharge the defendant at a time
17 earlier than that originally imposed if in the court's opinion the ends of
18 justice will be served and if the conduct of the defendant on probation
19 warrants it.

20 F. When granting probation the court may require that the defendant
21 be imprisoned in the county jail at whatever time or intervals,
22 consecutive or nonconsecutive, the court shall determine, within the
23 period of probation, as long as the period actually spent in confinement
24 does not exceed one year or the maximum period of imprisonment ~~permitted~~
25 ~~ALLOWED~~ under chapter 7 of this title, whichever is the shorter.

26 G. If the defendant is placed on lifetime probation and has served
27 one year in the county jail as a term of probation, the court may require
28 that the defendant be additionally imprisoned in the county jail at
29 whatever time or intervals, consecutive or nonconsecutive, the court shall
30 determine, within the period of probation if the defendant's probation is
31 revoked by the court and the defendant is subsequently reinstated on
32 probation. The period actually spent in confinement as a term of being
33 reinstated on probation shall not exceed one year or, when including the
34 initial ~~one-year~~ ~~ONE-YEAR~~ period of incarceration imposed as a term of
35 probation, the maximum period of imprisonment ~~permitted~~ ~~ALLOWED~~ under
36 chapter 7 of this title, whichever is shorter.

37 H. If restitution is made a condition of probation, the court shall
38 fix the amount of restitution and the manner of performance pursuant to
39 chapter 8 of this title.

40 I. When granting probation, the court shall set forth at the time
41 of sentencing and on the record the factual and legal reasons in support
42 of each sentence.

43 J. If the defendant meets the criteria set forth in section
44 13-901.01 or 13-3422, the court may place the defendant on probation
45 pursuant to either section. If a defendant is placed on probation

1 pursuant to section 13-901.01 or 13-3422, the court may impose any term of
2 probation that is authorized pursuant to this section and that is not in
3 violation of section 13-901.01.

4 K. THE COURT MAY NOT PLACE A DEFENDANT WHO IS CONVICTED OF A FELONY
5 OFFENSE ON PROBATION UNLESS THE DEFENDANT AGREES IN WRITING AS A STANDARD
6 CONDITION OF PROBATION TO DO BOTH OF THE FOLLOWING IF STOPPED BY A PEACE
7 OFFICER FOR A CIVIL TRAFFIC OR CRIMINAL VIOLATION:

8 1. ON THE INITIAL CONTACT BY THE PEACE OFFICER, INFORM THE PEACE
9 OFFICER THAT THE PERSON IS CURRENTLY ON PROBATION.

10 2. ALLOW THE PEACE OFFICER, WITH OR WITHOUT A WARRANT, TO CONDUCT A
11 SEARCH OR SEIZURE OF THE PERSON.

12 Sec. 2. Section 41-1604.07, Arizona Revised Statutes, is amended to
13 read:

14 41-1604.07. Earned release credits; forfeiture; restoration;
15 released prisoner health care; annual report

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

21 B. The earned release credit is:

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

23 (a) Was sentenced to a term of imprisonment for the possession or
24 use of marijuana pursuant to section 13-3405, subsection A, paragraph 1,
25 the possession or use of a dangerous drug pursuant to section 13-3407,
26 subsection A, paragraph 1, the possession or use of a narcotic drug
27 pursuant to section 13-3408, subsection A, paragraph 1 or the possession
28 of drug paraphernalia pursuant to section 13-3415.

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

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

34 2. One day for every six days served if the prisoner was sentenced
35 to a term of imprisonment for an offense not listed in paragraph 1 of this
36 subsection.

37 C. Release credits earned by a prisoner pursuant to subsections A
38 and B of this section shall not reduce the term of imprisonment imposed by
39 the court on the prisoner.

40 D. On reclassification of a prisoner resulting from the prisoner's
41 failure to adhere to the rules of the department or failure to demonstrate
42 a continual willingness to volunteer for or successfully participate in a
43 work, educational, treatment or training program, the director may declare
44 all release credits earned by the prisoner forfeited. In the discretion
45 of the director, forfeited release credits may subsequently be

1 restored. The director shall maintain an account of release credits
2 earned by each prisoner.

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

21 F. Notwithstanding subsection E of this section, a prisoner who
22 fails to achieve functional literacy at an eighth grade literacy level
23 shall not be released to begin the prisoner's term of community
24 supervision until either the prisoner achieves an eighth grade functional
25 literacy level as measured by standardized assessment testing, the
26 prisoner is released to enter the transition program established ~~by~~
27 **PURSUANT TO** section 31-281 and is enrolled in a program that prepares the
28 prisoner to achieve functional literacy or the prisoner serves the full
29 term of imprisonment imposed by the court, whichever first occurs. This
30 subsection does not apply to inmates who either:

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

34 2. Are classified as level five offenders.

35 3. Are foreign nationals.

36 4. Have less than six months of incarceration to serve on
37 commitment to the department.

38 5. Are released pursuant to subsection B, paragraph 1 of this
39 section.

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

44 1. May order a released prisoner to participate in an appropriate
45 drug treatment or education program that is administered by a qualified

1 agency, organization or individual approved by the department of health
2 services and that provides treatment or education to persons who abuse
3 controlled substances. Each person who is enrolled in a drug treatment or
4 education program shall pay for the cost of participation in the program
5 to the extent of the person's financial ability.

6 2. May order additional conditions, including participation in a
7 rehabilitation program or counseling and performance of community
8 restitution work.

9 3. Unless the prisoner is released pursuant to subsection B,
10 paragraph 1 of this section, may order a prisoner to apply for health care
11 benefits through the Arizona health care cost containment system before
12 being released. The state department of corrections shall enter into an
13 enrollment suspense agreement with the Arizona health care cost
14 containment system to reinstate benefits for prisoners who were sentenced
15 to twelve months or less and who were previously enrolled in the Arizona
16 health care cost containment system immediately before incarceration. For
17 all other prisoners, the state department of corrections shall submit a
18 prerelease application to the Arizona health care cost containment system
19 at least thirty days before the prisoner's release date. The state
20 department of corrections may coordinate with community-based
21 organizations or the department of economic security to assist prisoners
22 in applying for enrollment in the Arizona health care cost containment
23 system.

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

30 5. BEFORE A PRISONER IS RELEASED ON COMMUNITY SUPERVISION, SHALL
31 REQUIRE THE PRISONER TO AGREE IN WRITING AS A CONDITION OF COMMUNITY
32 SUPERVISION TO DO BOTH OF THE FOLLOWING IF STOPPED BY A PEACE OFFICER FOR
33 A CIVIL TRAFFIC OR CRIMINAL VIOLATION:

34 (a) ON THE INITIAL CONTACT BY THE PEACE OFFICER, INFORM THE PEACE
35 OFFICER THAT THE PERSON IS CURRENTLY ON COMMUNITY SUPERVISION.

36 (b) ALLOW THE PEACE OFFICER, WITH OR WITHOUT A WARRANT, TO CONDUCT
37 A SEARCH OR SEIZURE OF THE PERSON.

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

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

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

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

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

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

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

- 39 (a) Brings a claim without substantial justification.
- 40 (b) Unreasonably expands or delays a proceeding.
- 41 (c) Testifies falsely or otherwise presents false information or
42 material to the court.
- 43 (d) Submits a claim that is intended solely to harass the party it
44 is filed against.

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

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

9 N. The director may authorize temporary release on inmate status of
10 eligible inmates pursuant to rules adopted by the director within ninety
11 days of any other authorized release date. The release authorization
12 applies to any inmate who has been convicted of a drug offense, who has
13 been determined to be eligible for participation in the transition program
14 pursuant to section 31-281 and who has agreed to participate in the
15 transition program.

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

20 P. The department shall do all of the following:

21 1. Annually report the recidivism rate of prisoners released
22 pursuant to subsection B, paragraph 1 of this section for a minimum of
23 three years after release.

24 2. Report the following information at the end of each fiscal
25 quarter:

26 (a) The number of prisoners who received earned release credits for
27 each month of the reporting period and the percentage of the total prison
28 population that received earned release credits.

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

32 (i) The most serious crime for which each prisoner is receiving
33 earned release credit.

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

35 (iii) Whether the prisoner received earned release credits each
36 month of the reporting period.

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

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

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