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Jane Dee Hull
Secretary of State

CHAPTER 313

SENATE BILL 1069

AN ACT

AMENDING SECTIONS 8-232, 8-233 AND 15-802, ARIZONA REVISED STATUTES; REPEALING SECTION 8-249, ARIZONA REVISED STATUTES; AMENDING SECTIONS 28-445 AND 28-452, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 4, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-445.01; RELATING TO JUVENILES.

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

Section 1. Section 8-232, Arizona Revised Statutes, is amended to read:

8-232. <u>Juvenile hearing officer; appointment; term; compensation; hearings</u>

A. The judge of the juvenile court, or in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court, may appoint one or more persons, of suitable experience, who may be magistrates or justices of the peace, to serve as juvenile hearing officers on a full-time or part-time basis. The board of supervisors shall approve the appointment of justices of the peace as juvenile hearing officers or the local governing body shall approve the appointment of municipal judges as juvenile hearing officers. The juvenile hearing officer shall serve at the pleasure of the judge. The judge shall determine, with the approval of the board of supervisors, whether any compensation shall be paid to a juvenile hearing officer not otherwise employed by a public agency or holding another public office, and shall establish the amounts and rates thereof.

B. Subject to the orders of the juvenile court a juvenile hearing officer may hear and determine juvenile pretrial detention hearings and may process, adjudicate and dispose of all cases, WHICH ARE NOT CLASSIFIED AS FELONIES, in which a child under the age of eighteen years on the date of the alleged offense is charged with violating ~~any provision of title 28 not declared to be a felony, any city, town or political subdivision ordinance or~~ any law relating to the following:

1. ANY PROVISION OF TITLE 28.

~~1.~~ 2. The purchase, possession or consumption of spirituous liquor by a juvenile.

~~2.~~ 3. Boating or game and fish.

~~3.~~ 4. Curfew.

~~4.~~ 5. Truancy.

~~5. The possession of firearms by a juvenile.~~

6. The damage or disfigurement of property by graffiti or the purchase or possession of materials used for graffiti.

7. The purchase or possession of tobacco.

8. ANY CITY, TOWN OR POLITICAL SUBDIVISION ORDINANCE.

9. INTERFERENCE WITH JUDICIAL PROCEEDINGS INVOLVING DISOBEYING OR RESISTING THE LAWFUL ORDER, PROCESS OR OTHER MANDATE OF A JUVENILE HEARING OFFICER OR FAILURE TO APPEAR RELATED TO ANY OFFENSE IN THIS SECTION.

C. A hearing before the juvenile hearing officer or a hearing before a commissioner or a judge of the juvenile court ~~wherein such child~~ IN WHICH THE JUVENILE is charged with any offense set forth in this section may be conducted upon an exact legible copy of a written notice to appear, including a traffic ticket and complaint form, that states, at a minimum, the name and address of the juvenile, the offense charged and the time and place the juvenile shall appear in court.

D. The juvenile hearing officer, COMMISSIONER OR JUDGE OF THE SUPERIOR COURT shall not dispose of a PETITION OR citation for any offense under this section unless the parent, guardian or custodian of the juvenile appears in court with the juvenile at the time of disposition of the charge. The court may waive the requirement that the parent, guardian or custodian appear for good cause. If the appearance is waived, the court shall send written notice to the parent, guardian or custodian, if known, of the charge and the disposition of the charge. If the juvenile fails to appear pursuant to a citation properly issued under this section, the juvenile hearing officer may refer the matter to the juvenile court for appropriate action.

E. Except as otherwise provided by law, upon an admission by the ~~child~~ JUVENILE of a violation charged pursuant to this section, or after a hearing, upon the finding that the ~~child~~ JUVENILE did commit such violation, the juvenile hearing officer, COMMISSIONER OR JUDGE OF THE SUPERIOR COURT may do any one or more of the following:

~~1. Reprimand the child and take no further action.~~

~~2. Direct the filing of a petition as provided for in this chapter.~~

1. PLACE THE JUVENILE ON PROBATION, EXCEPT THAT A CITY MAGISTRATE OR JUSTICE OF THE PEACE MAY ONLY PLACE THE JUVENILE ON UNSUPERVISED PROBATION.

2. TRANSFER THE CITATION TO THE JUVENILE COURT FOR ALL FURTHER PROCEEDINGS.

3. Suspend the driving privileges of the ~~child~~ JUVENILE, or restrict such driving privileges for a period of not to exceed one hundred eighty days.

4. Order the ~~child~~ JUVENILE to attend a traffic school or a counseling or education program approved by the presiding judge of the juvenile court or the supreme court ~~for a period of not to exceed sixty days~~.

5. Order the ~~child~~ JUVENILE to pay the monetary assessment or penalty that is applicable to the offense. The monetary assessment or penalty shall not exceed five hundred dollars plus lawful surcharges and assessments payable to the public agency processing the violation. If no monetary assessment or penalty is specified for the offense, the juvenile hearing officer, COMMISSIONER OR JUDGE OF THE SUPERIOR COURT may order the ~~child~~ JUVENILE to pay not more than one hundred fifty dollars plus lawful surcharges and assessments payable to the public agency processing the violation.

6. In lieu of or in addition to a monetary assessment or penalty, order the juvenile to perform a program of work, which does not conflict with the juvenile's regular schooling and employment, to repair the victim's property or to provide community service.

7. If the juvenile hearing officer, COMMISSIONER OR JUDGE OF THE SUPERIOR COURT determines that the person charged is eighteen or more years of age, transfer the matter to an adult court having jurisdiction.

8. If the ~~child~~ JUVENILE violated any truancy laws, require the ~~child~~ JUVENILE and the ~~child's~~ JUVENILE'S parents or guardians to participate in a specialized program consisting of counseling, supervision and education under the terms and conditions the juvenile hearing officer, COMMISSIONER OR JUDGE OF THE SUPERIOR COURT orders.

9. Order the ~~child or~~ JUVENILE AND ONE OR BOTH OF the ~~child's~~ JUVENILE'S CUSTODIAL parents or guardians to pay restitution to any person who suffered an economic loss as the result of the ~~child's~~ JUVENILE'S conduct. THE JUVENILE HEARING OFFICER, COMMISSIONER OR JUDGE OF THE SUPERIOR COURT SHALL NOT CONSIDER THE ABILITY OF THE JUVENILE'S PARENTS OR GUARDIANS TO PAY RESTITUTION BEFORE MAKING A RESTITUTION ORDER. IF THE JUVENILE HEARING OFFICER, COMMISSIONER OR JUDGE OF THE SUPERIOR COURT ORDERS ONE OR BOTH OF THE JUVENILE'S CUSTODIAL PARENTS OR GUARDIANS TO PAY RESTITUTION, THE AMOUNT OF THE ORDER SHALL NOT EXCEED THE LIABILITY LIMIT ESTABLISHED PURSUANT TO SECTION 12-661.

10. REPRIMAND THE JUVENILE AND TAKE NO FURTHER ACTION.

~~F. The juvenile hearing officer, on admission of the child or on a finding that the child committed a second or subsequent violation of subsection B, paragraph 6 of this section, shall revoke the child's driver's license or privilege or shall direct the department of transportation to refuse to issue, renew or restore the child's driver's license or privilege to drive until the child reaches eighteen years of age.~~

~~G.~~ F. A record of the proceedings before a juvenile hearing officer may be made by a court reporter, videotape or audiotape or any other method approved by the supreme court that accurately reproduces what occurred at the proceeding.

~~H.~~ G. The juvenile hearing officer shall retain jurisdiction of the case until all orders made under this section have been fully complied with. The juvenile hearing officer shall immediately transmit a copy of the citation with the findings and disposition of the court noted on the copy to the juvenile court for record keeping purposes. If appropriate, the juvenile hearing officer shall transmit a copy of the citation to the department of transportation. If on disposition the juvenile fails to comply with any court order, the juvenile hearing officer, IN THE MANNER PROVIDED BY SUBSECTION D OF THIS SECTION, may IMPOSE ANY OF THE SANCTIONS PRESCRIBED IN SUBSECTION E OF THIS SECTION OR THE JUVENILE HEARING OFFICER MAY refer the matter to the county attorney for appropriate action to enforce the court orders and for any other petition or process the county attorney deems appropriate.

~~I.~~ H. Subject to an appeal pursuant to section 8-232.02 all orders of the juvenile hearing officer shall be effective immediately.

Sec. 2. Section 8-233, Arizona Revised Statutes, is amended to read:

8-233. <u>County attorney</u>

A. The county attorney shall:

1. Direct ~~such~~ THE investigation ~~he~~ THE COUNTY ATTORNEY deems necessary of acts of alleged delinquent behavior~~;~~.

2. Cause petitions alleging delinquent behavior to be drafted and filed with the juvenile court as ~~he~~ THE COUNTY ATTORNEY deems necessary in the public interest~~; and~~.

3. Attend the juvenile court within ~~his~~ THE COUNTY ATTORNEY'S county and conduct on behalf of the state all contested hearings involving allegations of delinquent acts or incorrigibility.

B. In a juvenile court hearing where the ~~child~~ JUVENILE who is the subject of the petition not alleging a delinquent act or incorrigibility is represented by counsel in a contested matter, the county attorney shall, when requested by the juvenile court judge, appear and participate in the hearing to assist in the ascertaining and presenting of evidence.

C. THE COUNTY ATTORNEY MAY APPOINT A CITY OR TOWN ATTORNEY OR PROSECUTOR TO ACT ON BEHALF OF THE STATE IN MATTERS HEARD IN A MUNICIPAL COURT BY A JUVENILE HEARING OFFICER PURSUANT TO SECTION 8-232. THE LOCAL

GOVERNING BODY SHALL APPROVE THE APPOINTMENT OF THE CITY OR TOWN ATTORNEY OR PROSECUTOR TO ACT ON BEHALF OF THE STATE.

Sec. 3. Repeal

Section 8-249, Arizona Revised Statutes, is repealed.

Sec. 4. Section 15-802, Arizona Revised Statutes, is amended to read:

15-802. School instruction; exceptions; violations; classification; definitions

A. Every child between the ages of six and sixteen years shall be provided instruction in at least the subjects of reading, grammar, mathematics, social studies and science. The person who has custody of the child shall choose a public, private or home school to provide instruction.

B. The parent or person who has custody shall do the following:

1. If the child will attend a public or private school, enroll the child in and ensure that the child attends a public or private school for the full time school is in session. If a child attends a school which is operated on a year-round basis the child shall regularly attend during school sessions that total not less than one hundred seventy-five school days, or the equivalent as approved by the superintendent of public instruction.

2. If the child will attend a private school or home school, file an affidavit of intent with the county school superintendent stating that the child is attending a regularly organized private school or is being provided with instruction in a home school. The affidavit of intent shall include:

(a) The child's name.

(b) The child's date of birth.

(c) The current address of the school the child is attending.

(d) The names, telephone numbers and addresses of the persons who currently have custody of the child.

C. An affidavit of intent shall be filed within thirty days from the time the child begins to attend a private school or home school and is not required thereafter unless the private school or the home school instruction is terminated and then resumed. The person who has custody of the child shall notify the county school superintendent within thirty days of the termination that the child is no longer being instructed at a private school or a home school. If the private school or home school instruction is resumed, the person who has custody of the child shall file another affidavit of intent with the county school superintendent within thirty days.

D. A person is excused from the duties prescribed by subsection A or B of this section if it is shown to the satisfaction of the county school superintendent that:

1. The child is in such physical or mental condition that instruction is inexpedient or impracticable.

2. The child has completed the high school courses necessary for completion of grade ten as prescribed by the state board of education.

3. The child has presented reasons for nonattendance at a public school which are satisfactory to a board consisting of the president of the local governing board, the teacher of the child and the probation officer of the superior court in the county.

4. The child is over fourteen years of age and is, with the consent of the person who has custody of him, employed at some lawful wage earning occupation.

5. The child is enrolled in a work training, career education, vocational or manual training program which meets the educational standards established and approved by the department of education.

6. The child was suspended or expelled from a public school as provided in article 3 of this chapter.

7. The child is enrolled in an education program provided by a state educational or other institution.

8. The child has not reached eight years of age by September 1 of the school year and the county school superintendent is notified in writing by the person who has custody of the child that that person does not desire to have the child attend school.

E. Unless otherwise exempted in this section or section 15-803, a parent of a child between six and sixteen years of age or a person who has custody of a child, who does not provide instruction in a home school and who fails to enroll or fails to ensure that the child attends a public or private school pursuant to this section is guilty of a class 3 misdemeanor. A parent who fails to comply with the duty to file an affidavit of intent to provide instruction in a home school is guilty of a petty offense. ~~A violation of this section shall be charged, heard and disposed of pursuant to section 8-232.~~

F. For the purposes of this section:

1. "Home school" means a school conducted primarily by the parent, guardian or other person who has custody of the child or instruction provided in the child's home.

2. "Private school" means a nonpublic institution, other than the child's home, where academic instruction is provided for at least the same number of days and hours each year as a public school.

Sec. 5. Section 28-445, Arizona Revised Statutes, is amended to read:

28-445. <u>Mandatory revocation or suspension of license by department; notice</u>

A. The department shall, in addition to the grounds for mandatory revocation provided for in the uniform act regulating traffic on highways, immediately revoke the license of a driver upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

1. Any homicide or aggravated assault resulting from the operation of a motor vehicle.

2. Driving a motor vehicle while under the influence of any drug defined in section 13-3401 or in violation of section 28-692, subsection A, paragraph 3.

3. Any felony in the commission of which a motor vehicle is used.

4. Drive by shooting pursuant to section 13-1209.

5. Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.

6. Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles.

7. Conviction, or forfeiture of bail not vacated, upon a second or subsequent charge of reckless driving, racing on highways, or any combination of a violation of section 28-692 and reckless driving or of a violation of section 28-692 and racing on highways or of reckless driving and racing on highways not arising out of the same event, committed within a period of sixty months.

8. Conviction, or forfeiture of bail not vacated, upon a second charge of violating section 28-692, within a period of sixty months.

9. Conviction, or forfeiture of bail not vacated, upon a third or subsequent charge of violating section 28-692, within a period of sixty months.

~~B. For a person who is under the age of eighteen, in addition to the grounds for mandatory revocation provided for in the uniform act regulating traffic on highways, the department shall immediately revoke the driver license or privilege to drive of a person upon receiving a record of the person's conviction of a second or subsequent violation of criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or adjudication of delinquency for a second or subsequent violation of an act that would constitute criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1, if committed by an adult.~~

~~C.~~ B. Compliance with the mailing provisions of section 28-453 constitutes notice of the revocation for purposes of prosecution under section 28-473 or 28-697. The state is not required to prove actual receipt of the notice or actual knowledge of the revocation.

Sec. 6. Title 28, chapter 4, article 3, Arizona Revised Statutes, is amended by adding section 28-445.01, to read:

28-445.01. <u>Suspension of license for persons under eighteen years of age; notice; definition</u>

A. IN ADDITION TO THE GROUNDS FOR MANDATORY REVOCATION PROVIDED FOR IN THE UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS, THE DEPARTMENT SHALL IMMEDIATELY SUSPEND THE DRIVER LICENSE OR PRIVILEGE TO DRIVE OR REFUSE TO ISSUE A DRIVER LICENSE OR PRIVILEGE TO DRIVE OF A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE AS FOLLOWS:

1. FOR A PERIOD OF TWO YEARS ON RECEIVING THE RECORD OF THE PERSON'S CONVICTION FOR A VIOLATION OF SECTION 4-244, PARAGRAPH 34, SECTION 28-692 OR SECTION 28-697.

2. UNTIL THE PERSON'S EIGHTEENTH BIRTHDAY ON RECEIVING THE RECORD OF THE PERSON'S CONVICTION FOR A VIOLATION OF SECTION 13-1602, SUBSECTION A, PARAGRAPH 1 INVOLVING THE DAMAGE OR DISFIGUREMENT OF PROPERTY BY GRAFFITI.

3. UNTIL THE PERSON'S EIGHTEENTH BIRTHDAY ON RECEIVING THE RECORD OF THE PERSON'S CONVICTION FOR A VIOLATION OF ANY STATUTE OR ORDINANCE INVOLVING THE PURCHASE OR POSSESSION OF MATERIALS USED FOR GRAFFITI.

4. UNTIL THE PERSON'S EIGHTEENTH BIRTHDAY ON RECEIVING THE RECORD OF THE PERSON'S CONVICTION FOR A VIOLATION OF ANY PROVISION OF TITLE 13, CHAPTER 34.

5. UNTIL THE PERSON'S EIGHTEENTH BIRTHDAY OR FOR A PERIOD OF TWO YEARS UPON RECEIVING THE RECORD OF THE PERSON'S CONVICTION FOR A SECOND OR SUBSEQUENT VIOLATION OF SECTION 4-244, PARAGRAPH 9, IF ORDERED BY THE COURT.

B. IF ORDERED BY THE COURT, THE DEPARTMENT SHALL RESTRICT THE PERSON'S PRIVILEGE TO DRIVE BETWEEN THE PERSON'S HOME, SCHOOL AND PLACE OF EMPLOYMENT DURING SPECIFIED PERIODS OF TIME ACCORDING TO THE PERSON'S SCHOOL AND EMPLOYMENT SCHEDULE.

C. COMPLIANCE WITH THE MAILING PROVISIONS OF SECTION 28-453 CONSTITUTES NOTICE OF SUSPENSION OR RESTRICTION FOR THE PURPOSES OF SUSPENSION UNDER THIS SECTION. THE STATE IS NOT REQUIRED TO PROVE ACTUAL RECEIPT OF THE NOTICE OR ACTUAL KNOWLEDGE OF THE SUSPENSION.

D. FOR THE PURPOSES OF THIS SECTION, "CONVICTION" MEANS A FINAL CONVICTION OR JUDGMENT, INCLUDING AN ORDER OF THE JUVENILE COURT FINDING THAT A JUVENILE VIOLATED ANY PROVISION OF THIS TITLE OR COMMITTED A DELINQUENT ACT THAT IF COMMITTED BY AN ADULT WOULD CONSTITUTE A CRIMINAL OFFENSE.

Sec. 7. Section 28-452, Arizona Revised Statutes, is amended to read:

28-452. <u>Suspension of driver's or identification license for improper use of license by persons under legal drinking age; hearing</u>

A. The department shall promptly suspend any driver's and identification license or privilege issued to any person who is under the legal drinking age and who is convicted of using any such license, whether lawfully issued or false, of this state or any other jurisdiction, in violation of section 4-241, subsection C or E for a period of not less than:

1. Six months for a first conviction.

2. Twelve months for a second or subsequent conviction.

B. The department shall promptly suspend the right of any otherwise qualified person to apply for a driver's and identification license if the person does not have a valid driver's or identification license and the person is convicted of using a driver's or identification license of another in violation of section 4-241, subsection C or E for a period of not less than:

1. Six months for a first conviction.
2. Twelve months for a second or subsequent conviction.

~~C. The department shall promptly suspend the driver's license of a child on receiving an order from the court pursuant to section 8-249.~~

~~D.~~ C. A peace officer who has arrested a person for the commission of an offense for which, on conviction, suspension of any license or privilege to operate a motor vehicle is required by subsection A or B of this section shall file an affidavit with the department. The affidavit shall be made on a form furnished or in a manner prescribed by the department and shall include the name, date of birth, social security number and address of the person arrested, the number, if any, of the person's driver's and identification license, the nature of the offense and the date of the offense and shall state the officer's reasonable grounds to believe the person had committed the offense. If made, the officer shall file the affidavit with the department within fifteen days after the date the offense was committed.

~~E.~~ D. The department, on the receipt of an affidavit, certified and subject to the penalty for perjury as prescribed by section 28-1062, that there are reasonable grounds to believe the arrested person has committed an offense for which, on conviction, suspension of the driver's or identification license and privilege to operate a motor vehicle or privilege to obtain such a license is required by subsection A or B of this section, shall suspend any driver's and identification license issued to the person, the privilege to obtain such documents and the privilege to operate a motor vehicle on any highway of this state. The suspension period shall not be less than:

1. Six months for a first offense.
2. Twelve months for a second or subsequent offense.

~~F.~~ E. The suspension prescribed in subsection ~~E~~ D of this section is effective fifteen days after giving written notice sent by mail to the address provided to the department by the licensee or to the address provided on the affidavit, except as provided in subsection ~~H~~ G of this section. The notice shall indicate the action taken pursuant to this subsection and shall also state that the department will provide an opportunity for a hearing if the person requests a hearing in writing which is received by the department within fifteen days after the notice is sent.

~~G.~~ F. Periods of suspension required pursuant to subsection A, B or ~~E~~ D of this section arising from the same offense shall run concurrently, commencing on the date the original suspension is effective.

~~H.~~ G. The department on receiving a written request shall afford an opportunity for a hearing as early as is practical, within thirty days after the request, in the county where the person named in the affidavit resides unless the law enforcement agency issuing the affidavit requests at the time of filing the affidavit that the hearing be held in the county where the offense occurred. At the hearing the department or its duly authorized agent

may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the person named in the affidavit. This request shall also operate to stay the suspension by the department until a hearing is held. If the department determines at the hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective fifteen days after giving written notice of the suspension, except as provided in subsection ~~G~~ F of this section.

~~I.~~ H. If the suspension or determination that there should be a denial of issuance is sustained after the hearing, the person whose driver's license, identification license or permit to drive or nonresident operating privilege has been suspended, or to whom a driver's license, identification license or permit is denied, under the provisions of subsection ~~E~~ D of this section, may file a petition in the superior court to review the final order of suspension or denial by the department in the same manner and under the same conditions as are provided in section 28-451 in the cases of discretionary suspensions and denials.

~~J.~~ I. If the suspension or determination that there should be a denial of issuance is not sustained, the ruling is not admissible in and does not have an effect on any civil or criminal court proceeding.

APPROVED BY THE GOVERNOR MAY 1, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1,1996