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Jane Dee Hull
Secretary of State

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CHAPTER 51

HOUSE BILL 2461

AN ACT

AMENDING SECTIONS 31-402, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF EXECUTIVE CLEMENCY.

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

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

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

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

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

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

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

2. After a hearing for which the victim, ~~prosecutor~~ COUNTY ATTORNEY and ~~sentencing~~ PRESIDING judge are given notice and an opportunity to be heard, ~~shall~~ MAY make recommendations to the governor for commutation of sentence after finding by clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender and that there is a substantial probability that when released the offender will conform the offender's conduct to the requirements of the law.

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

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

5. SHALL receive petitions from the STATE department of corrections alleging that an offender has violated the offender's terms and conditions of community supervision and has lapsed or is probably about to lapse into criminal ways or company. *If the board determines that an offender on* community supervision has violated the terms and conditions of community supervision the board may either:

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

(b) 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.

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.

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

F. The executive director may employ case analysts as deemed necessary within the limits of legislative appropriation. The analyst shall aid the board in making investigations, in securing information and in performing necessary administrative functions to assist the board in passing upon applications for parole and commutation.

G. The executive director may employ hearing officers as deemed necessary within the limits of legislative appropriation. The hearing officers shall conduct ~~parole and absolute discharge~~ PROBABLE CAUSE hearings ~~and shall make recommendations to the board. Hearing officers shall not conduct hearings for commutation of sentence, pardons, reprieves or parole revocations~~ ON PAROLE, WORK FURLOUGH AND HOME ARREST REVOCATIONS OR RESCISSIONS. HEARING OFFICERS SHALL ASSIST THE BOARD IN MAKING INVESTIGATIONS, SECURING INFORMATION AND PERFORMING NECESSARY ADMINISTRATIVE FUNCTIONS.

Sec. 2. Section 31-412, Arizona Revised Statutes, is amended to read:

31-412. Criteria for release on parole; release; custody of parolee; definition

A. If a prisoner is certified as eligible for parole pursuant to the provisions of section 41-1604.09 the board of executive clemency shall authorize the release of the applicant upon parole if the applicant has reached ~~his~~ THE APPLICANT'S earliest parole eligibility date pursuant to section 41-1604.09, subsection D, and it appears to the board, in its sole discretion, that there is a substantial probability that the applicant will remain at liberty without violating the law and that the release is in the best interests of the state. The applicant shall thereupon be allowed to go upon parole in the legal custody and under control of the state department of corrections, until the board revokes the parole or grants an absolute discharge from parole or until the prisoner reaches ~~his~~ THE PRISONER'S individual earned release credit date pursuant to section 41-1604.10. When the prisoner reaches ~~his~~ THE PRISONER'S individual earned release credit date ~~his~~ THE PRISONER'S parole shall be terminated and ~~he~~ THE PRISONER shall no longer be under the authority of the board but shall be subject to revocation under section 41-1604.10.

B. Notwithstanding the provisions of subsection A of this section, the director of the state department of corrections may certify as eligible for parole any prisoner, regardless of the classification of such prisoner, who has reached ~~his~~ THE PRISONER'S parole eligibility date pursuant to section 41-1604.09, subsection D, unless an increased term has been imposed pursuant to section 41-1604.09, subsection F, for the SOLE purpose of parole to the custody of any other jurisdiction to serve a term of imprisonment imposed by the other jurisdiction or to stand trial on criminal charges in the other jurisdiction or for the SOLE purpose of parole to the custody of the state department of corrections to serve any consecutive term imposed on such prisoner. Upon review of an application for parole pursuant to the provisions of this subsection the board may authorize such parole if, in its discretion, such parole appears to be in the best interests of the state.

C. An inmate who is otherwise eligible for parole, WHO IS NOT ON HOME ARREST OR WORK FURLOUGH and WHO is CURRENTLY serving a sentence for a conviction of a serious offense ~~as defined in section 13-604, subsection T,~~

~~paragraph 2, subdivision (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k)~~ OR CONSPIRACY TO COMMIT OR ATTEMPT TO COMMIT A SERIOUS OFFENSE shall not be granted parole or absolute discharge from imprisonment except by one of the following votes:

1. A majority affirmative vote if four or more members consider the action.

2. A unanimous affirmative vote if three members consider the action.

3. A unanimous affirmative vote if two members consider the action pursuant to section 31-401, subsection I, paragraph 2 and the chairman concurs after reviewing the information considered by the two members.

D. The board shall as a condition of parole order a prisoner to make any court-ordered restitution.

E. Payment of restitution by the prisoner in accordance with the provisions of subsection D of this section shall be made through the clerk of the superior court in the county in which the prisoner was sentenced for the offense for which ~~he~~ THE PRISONER has been imprisoned in the same manner as restitution is paid as a condition of probation. The clerk of the superior court shall report to the board monthly whether or not restitution has been paid for that month by the prisoner.

F. The board shall not disclose the address of the victim or the victim's immediate family to any party without the written consent of the victim or the victim's family.

G. FOR THE PURPOSES OF THIS SECTION, "SERIOUS OFFENSE" INCLUDES ANY OF THE FOLLOWING:

1. A SERIOUS OFFENSE AS DEFINED IN SECTION 13-604, SUBSECTION U, PARAGRAPH 2, SUBDIVISION (a), (b), (c), (d), (e), (g), (h), (i), (j) OR (k).

2. A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-604.01. THE CITATION OF SECTION 13-604.01 IS NOT A NECESSARY ELEMENT FOR SERIOUS OFFENSE DESIGNATION.

3. A CONVICTION UNDER A PRIOR CRIMINAL CODE FOR ANY OFFENSE THAT POSSESSES REASONABLY EQUIVALENT OFFENSE ELEMENTS AS THE OFFENSE ELEMENTS UNDER SECTION 13-604, SUBSECTION U, PARAGRAPH 2 AND SECTION 13-604.01, SUBSECTION J, PARAGRAPH 1.

Sec. 3. Section 41-1604.11, Arizona Revised Statutes, is amended to read:

41-1604.11. <u>Order for removal; purposes; duration; work furlough; notice; failure to return; classification; applicability; definition</u>

A. The director of the state department of corrections may authorize the temporary removal under custody from prison or any other institution for the detention of adults under the jurisdiction of the state department of corrections of any inmate for the purpose of employing such person in any work directly connected with the administration, management or maintenance of the prison or institution in which the inmate is confined, for purposes

of cooperating voluntarily in medical research which cannot be performed at the prison or institution, or for participating in community action activities directed toward delinquency prevention and community betterment programs. The removal shall not be for a period longer than one day.

B. Under specific rules established by the director for the selection of inmates, the director may also authorize furlough, temporary removal or temporary release of any inmate for compassionate leave, for the purpose of furnishing to the inmate medical treatment not available at the prison or institution, for purposes preparatory to a return to the community within ninety days of the inmate's release date or for disaster aid, including local mutual aid and state emergencies. When an inmate is temporarily removed or temporarily released for a purpose preparatory to return to the community or for compassionate leave, the director may require the inmate to reimburse the state, in whole or part, for expenses incurred by the state in connection therewith.

C. The board of executive clemency, under specific rules established for the selection of inmates, if it appears to the board, in its sole discretion, that there is a substantial probability that the inmate will *remain at liberty without violating the law and that the release is in the* best interests of the state, may authorize the release of an inmate on work furlough if the inmate has served not less than six months of the sentence imposed by the court, is within twelve months of the inmate's parole eligibility date and has not been convicted of a sexual offense. The director shall provide information as the board requests concerning any inmate eligible for release on work furlough. The inmate shall not be released on work furlough unless the release is approved by the board.

D. An inmate who is otherwise eligible for work furlough pursuant to subsection C of this section, WHO IS NOT ON HOME ARREST and WHO is CURRENTLY serving a sentence for a conviction of a serious offense ~~as defined in section 13-604, subsection T, paragraph 2~~ OR CONSPIRACY TO COMMIT OR ATTEMPT TO COMMIT A SERIOUS OFFENSE shall not be granted work furlough except by one of the following votes:

1. A majority affirmative vote if four or more members of the board of executive clemency consider the action.

2. A unanimous affirmative vote if three members of the board of executive clemency consider the action.

3. A unanimous affirmative vote if two members of the board of executive clemency consider the action pursuant to section 31-401, subsection *I, paragraph 2 and the chairman of the board concurs after reviewing the* information considered by the two members.

E. Before holding a hearing on the work furlough under consideration, the board shall, on request, notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting a work furlough was sentenced, the prosecuting attorney, the

director of the arresting law enforcement agency and the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting the work furlough, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of the victim's right to be present and submit a written report to the board expressing the victim's opinion concerning the inmate's release. No hearing concerning work furlough shall be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

F. The board shall require that every inmate released on work furlough comply with the terms and conditions of release as the board may impose, including that the inmate be gainfully employed while on work furlough and that the inmate make restitution to the victim of the offense for which the inmate was incarcerated.

G. If the board finds that an inmate has failed to comply with the terms and conditions of release or that the best interests of this state would be served by revocation of an inmate's work furlough, the board may issue a warrant for retaking the inmate before the expiration of the inmate's maximum sentence. After return of the inmate, the board may revoke the inmate's work furlough after the inmate has been given an opportunity to be heard.

H. If the board denies the release of an inmate on work furlough or home arrest, it may prescribe that the inmate not be recommended again for release on work furlough or home arrest for a period of up to one year.

I. The director shall transmit a monthly report containing the name, date of birth, offense for which the inmate was sentenced, length of the sentence and date of admission to the state department of corrections of each person on work furlough or home arrest to the chairperson of the house of representatives judiciary committee or its successor committee and the chairperson of the senate judiciary committee or its successor committee. The director shall also submit a report containing this information for any person released on work furlough or home arrest within a jurisdiction to the county attorney, sheriff and chief of police for the jurisdiction in which the inmate is released on work furlough or home arrest.

J. Any inmate who knowingly fails to return from furlough, home arrest, work furlough or temporary removal or temporary release granted under the provisions of this section is guilty of a class 5 felony.

K. At any given time if the director declares there is a shortage of beds available for inmates within the state department of corrections, the parole eligibility as set forth in sections 31-411 and 41-1604.09 may be suspended for any inmate who has served not less than six months of the sentence imposed by the court, who has not been previously convicted of a

felony and who has been sentenced for a class 4, 5 or 6 felony, not involving a sexual offense, the use or exhibition of a deadly weapon or dangerous instrument or the infliction of serious physical injury pursuant to section 13-604, and the inmate shall be continuously eligible for parole, home arrest or work furlough.

L. Prisoners who have served at least one calendar year and are serving a sentence for conviction of a crime committed on or after October 1, 1978, under the provisions of section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02 or 36-1002.03, and who are sentenced to the custody of the state department of corrections, may be temporarily released, according to the rules of the department, at the discretion of the director, one hundred eighty calendar days prior to expiration of the term imposed and shall remain under the control of the state department of corrections until expiration of the maximum sentence specified. If an offender released under this section or pursuant to section 31-411, subsection B violates the rules, the offender may be returned to custody and shall be classified to a parole class as provided by the rules of the department.

M. This section applies only to persons who commit felony offenses before January 1, 1994.

N. FOR THE PURPOSES OF THIS SECTION, "SERIOUS OFFENSE" MEANS ANY OF THE FOLLOWING:

1. A SERIOUS OFFENSE AS DEFINED IN SECTION 13-604, SUBSECTION U, PARAGRAPH 2, SUBDIVISION (a), (b), (c), (d), (e), (g), (h), (i), (j) OR (k).

2. A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-604.01. THE CITATION OF SECTION 13-604.01 IS NOT A NECESSARY ELEMENT FOR A SERIOUS OFFENSE DESIGNATION.

3. A CONVICTION UNDER A PRIOR CRIMINAL CODE FOR ANY OFFENSE THAT POSSESSES REASONABLY EQUIVALENT OFFENSE ELEMENTS AS THE OFFENSE ELEMENTS THAT ARE LISTED UNDER SECTION 13-604, SUBSECTION U, PARAGRAPH 2 OR SECTION 13-604.01, SUBSECTION J, PARAGRAPH 1.

Sec. 4. Section 41-1604.13, Arizona Revised Statutes, is amended to read:

41-1604.13. <u>Home arrest; eligibility; victim notification; conditions; applicability; definition</u>

A. A prisoner who has served not less than six months of the sentence imposed by the court is eligible for the home arrest program if ~~he~~ THE PRISONER:

1. Meets the following criteria:

(a) Was convicted of committing a class 4, 5 or 6 felony not involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument.

(b) Was not convicted of a sexual offense.

(c) Has not previously been convicted of any felony.

2. Violated parole by the commission of a technical violation that was not chargeable or indictable as a criminal offense.

3. Is eligible for work furlough.

4. Is eligible for parole pursuant to section 31-412, subsection A.

B. The board of executive clemency shall determine which prisoners are released to the home arrest program based on the criteria in subsection A of this section and based on a determination that there is a substantial probability that the inmate will remain at liberty without violating the law and that the release is in the best interests of the state after considering the offense for which the inmate is presently incarcerated, the prior record of the inmate, the conduct of the inmate while incarcerated and any other information concerning the inmate which is in the possession of the state department of corrections, including any presentence report. The board maintains the responsibility of revocation as applicable to all parolees.

C. An inmate who is otherwise eligible for home arrest, WHO IS NOT ON WORK FURLOUGH and WHO is CURRENTLY serving a sentence for a conviction of a serious offense ~~as defined in section 13-604, subsection T, paragraph 2, subdivision (a), (b), (c), (d), (f), (g), (h), (i) or (j)~~ OR CONSPIRACY TO COMMIT OR ATTEMPT TO COMMIT A SERIOUS OFFENSE shall not be granted home arrest except by one of the following votes:

1. A majority affirmative vote if four or more members of the board of executive clemency consider the action.

2. A unanimous affirmative vote if three members of the board of executive clemency consider the action.

3. A unanimous affirmative vote if two members of the board of executive clemency consider the action pursuant to section 31-401, subsection I, paragraph 2 and the chairman of the board concurs after reviewing the information considered by the two members.

D. Home arrest is conditioned on the following:

1. Active electronic monitoring surveillance for a minimum term of one year or until eligible for general parole.

2. Participation in gainful employment or other beneficial activities.

3. Submission to alcohol and drug tests as mandated.

4. Payment of the electronic monitoring fee in an amount determined by the board of not less than one dollar per day and not more than the total cost of the electronic monitoring unless, after determining the inability of the prisoner to pay the fee, the board requires payment of a lesser amount. The fees collected shall be returned to the department's home arrest program to offset operational costs of the program.

5. Remaining at ~~his~~ THE PRISONER'S place of residence at all times except for movement out of the residence according to mandated conditions.

6. Adherence to any other conditions imposed by the court, board of executive clemency or supervising corrections officers.

7. Compliance with all other conditions of supervision.

E. Before holding a hearing on home arrest, the board on request shall notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting home arrest was sentenced, the prosecuting attorney and the director of the arresting law enforcement agency. The board shall notify the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting home arrest, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of ~~his~~ THE VICTIM'S right to be present and to submit a written report to the board expressing ~~his~~ THE VICTIM'S opinion concerning the inmate's release. No hearing concerning home arrest may be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

F. A prisoner placed on home arrest is on inmate status, is subject to all the limitations of rights and movement and is entitled only to due process rights of return.

G. If the person violates a condition of home arrest which poses any threat or danger to the community, or commits an additional felony offense, the board shall revoke the home arrest and return the person to the custody of the state department of corrections to complete the term of imprisonment as authorized by law.

H. The ratio of supervising corrections officers to supervisees in the home arrest program shall be no greater than one officer for every twenty-five supervisees.

I. The board shall determine when the supervisee is eligible for transfer to the regular parole program pursuant to section 31-411.

J. This section applies only to persons who commit felony offenses before January 1, 1994.

K. FOR THE PURPOSES OF THIS SECTION, "SERIOUS OFFENSE" INCLUDES ANY OF THE FOLLOWING:

1. A SERIOUS OFFENSE AS DEFINED IN SECTION 13-604, SUBSECTION U, PARAGRAPH 2, SUBDIVISION (a), (b), (c), (d), (e), (g), (h), (i), (j) OR (k).

2. A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-604.01. THE CITATION OF SECTION 13-604.01 IS NOT A NECESSARY ELEMENT FOR A SERIOUS OFFENSE DESIGNATION.

3. A CONVICTION UNDER A PRIOR CRIMINAL CODE FOR ANY OFFENSE THAT POSSESSES REASONABLY EQUIVALENT OFFENSE ELEMENTS AS THE OFFENSE ELEMENTS LISTED UNDER SECTION 13-604, SUBSECTION U, PARAGRAPH 2 AND SECTION 13-604.01, SUBSECTION J, PARAGRAPH 1.

APPROVED BY THE GOVERNOR MARCH 29, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 29, 1996