

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 380

HOUSE BILL 2580

AN ACT

AMENDING SECTION 13-2319, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 38, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3906; AMENDING SECTIONS 13-3961 AND 13-3967, ARIZONA REVISED STATUTES; RELATING TO ILLEGAL ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-2319, Arizona Revised Statutes, is amended to
3 read:
4 13-2319. Smuggling; classification; definitions
5 A. It is unlawful for a person to intentionally engage in the
6 smuggling of human beings for profit or commercial purpose.
7 B. A violation of this statute SECTION is a class 4 felony.
8 C. NOTWITHSTANDING SUBSECTION B, A VIOLATION OF THIS SECTION IS A
9 CLASS 2 FELONY IF THE HUMAN BEING SMUGGLED IS UNDER EIGHTEEN YEARS OF AGE AND
10 NOT ACCOMPANIED BY A FAMILY MEMBER OVER THE AGE OF EIGHTEEN. CHAPTER 10 OF
11 THIS TITLE DOES NOT APPLY TO A VIOLATION OF THIS SUBSECTION.
12 ~~C.~~ D. For the purposes of this section:
13 1. "FAMILY MEMBER" MEANS THE PERSON'S PARENT, GRANDPARENT, SIBLING OR
14 ANY OTHER PERSON RELATED TO THE PERSON BY CONSANGUINITY OR AFFINITY TO THE
15 SECOND DEGREE.
16 2. "Smuggling of human beings" means the transportation or procurement
17 of transportation by a person or an entity that knows or has reason to know
18 that the person or persons transported or to be transported are not United
19 States citizens, permanent resident aliens or persons otherwise lawfully in
20 this state.
21 Sec. 2. Title 13, chapter 38, article 7, Arizona Revised Statutes, is
22 amended by adding section 13-3906, to read:
23 13-3906. Processing arrestees; citizenship determination;
24 notice
25 A. AFTER A PERSON IS BROUGHT TO A LAW ENFORCEMENT AGENCY FOR
26 INCARCERATION, THE LAW ENFORCEMENT AGENCY SHALL DETERMINE THAT PERSON'S
27 COUNTRY OF CITIZENSHIP. IF THE PERSON IS NOT A UNITED STATES CITIZEN, THE
28 LAW ENFORCEMENT AGENCY SHALL NOTIFY THE PERSON'S COUNTRY OF CITIZENSHIP OF
29 THE PERSON'S DETENTION IF THE PERSON DOES NOT WAIVE NOTIFICATION OR IF THE
30 PERSON'S COUNTRY OF CITIZENSHIP REQUIRES NOTIFICATION REGARDLESS OF THE
31 PERSON'S WAIVER OF NOTIFICATION. THE LAW ENFORCEMENT AGENCY SHALL DOCUMENT
32 THE NOTIFICATION TO THE PERSON'S COUNTRY OF CITIZENSHIP AND ANY WAIVER OF
33 NOTIFICATION.
34 B. THE FAILURE OR INABILITY OF A LAW ENFORCEMENT AGENCY TO PROVIDE THE
35 NOTICE REQUIRED BY THIS SECTION DOES NOT:
36 1. AFFECT THE ADMISSIBILITY OF ANY STATEMENTS, THE VOLUNTARINESS OF A
37 GUILTY PLEA OR THE VALIDITY OF A CONVICTION.
38 2. AFFORD A DEFENDANT ANY RIGHTS IN ANY PROCEEDING RELATED TO
39 DEPORTATION, EXCLUSION OR DENIAL OF NATURALIZATION.
40 Sec. 3. Section 13-3961, Arizona Revised Statutes, is amended to read:
41 13-3961. Offenses not bailable; purpose; preconviction;
42 exceptions
43 A. A person who is in custody shall not be admitted to bail if the
44 proof is evident or the presumption great that the person is guilty of the
45 offense and the offense charged is either:

- 1 1. A capital offense.
- 2 2. Sexual assault.
- 3 3. Sexual conduct with a minor who is under fifteen years of age.
- 4 4. Molestation of a child who is under fifteen years of age.
- 5 5. A SERIOUS FELONY OFFENSE IF THE PERSON HAS ENTERED OR REMAINED IN
- 6 THE UNITED STATES ILLEGALLY. FOR THE PURPOSES OF THIS PARAGRAPH, "SERIOUS
- 7 FELONY OFFENSE" MEANS ANY CLASS 1, 2, 3 OR 4 FELONY OR ANY VIOLATION OF
- 8 SECTION 28-1383.

9 B. The purposes of bail and any conditions of release that are set by
10 a judicial officer include:

- 11 1. Assuring the appearance of the accused.
- 12 2. Protecting against the intimidation of witnesses.
- 13 3. Protecting the safety of the victim, any other person or the
- 14 community.

15 C. A person who is in custody shall not be admitted to bail if the
16 person is charged with a felony offense and the state certifies by motion and
17 the court finds after a hearing on the matter that there is clear and
18 convincing evidence that the person charged poses a substantial danger to
19 another person or the community or engaged in conduct constituting a violent
20 offense, that no condition or combination of conditions of release may be
21 imposed that will reasonably assure the safety of the other person or the
22 community and that the proof is evident or the presumption great that the
23 person committed the offense for which the person is charged. For the
24 purposes of this subsection, "violent offense" means either of the following:

- 25 1. A dangerous crime against children.
- 26 2. Terrorism.

27 D. On oral motion of the state, the court shall order the hearing
28 required by subsection C at or within twenty-four hours of the initial
29 appearance unless the person who is subject to detention or the state moves
30 for a continuance. A continuance that is granted on the motion of the person
31 shall not exceed five calendar days unless there are extenuating
32 circumstances. A continuance on the motion of the state shall be granted on
33 good cause shown and shall not exceed twenty-four hours. The person may be
34 detained pending the hearing. The person is entitled to representation by
35 counsel and is entitled to present information by proffer or otherwise, to
36 testify and to present witnesses in the person's own behalf. Testimony of the
37 person charged that is given during the hearing shall not be admissible on
38 the issue of guilt in any subsequent judicial proceeding, except as it might
39 relate to the compliance with or violation of any condition of release
40 subsequently imposed or the imposition of appropriate sentence or in perjury
41 proceedings, or for the purposes of impeachment. The case of ~~such~~ THE person
42 shall be placed on an expedited calendar and, consistent with the sound
43 administration of justice, the person's trial shall be given priority. ~~Such~~
44 THE person may be admitted to bail in accordance with the Arizona rules of

1 criminal procedure whenever a judicial officer finds that a subsequent event
2 has eliminated the basis for detention.

3 E. The finding of an indictment or the filing of an information does
4 not add to the strength of the proof or the presumption to be drawn.

5 Sec. 4. Section 13-3967, Arizona Revised Statutes, is amended to read:
6 13-3967. Release on bailable offenses before trial; definition

7 A. At his appearance before a judicial officer, any person who is
8 charged with a public offense that is bailable as a matter of right shall be
9 ordered released pending trial on his own recognizance or on the execution of
10 bail in an amount specified by the judicial officer.

11 B. In determining the method of release or the amount of bail, the
12 judicial officer, on the basis of available information, shall take into
13 account all of the following:

- 14 1. The views of the victim.
- 15 2. The nature and circumstances of the offense charged.
- 16 3. The weight of evidence against the accused.
- 17 4. The accused's family ties, employment, financial resources,
18 character and mental condition.
- 19 5. The results of any drug test submitted to the court.
- 20 6. Whether the accused is using any substance if its possession or use
21 is illegal pursuant to chapter 34 of this title.
- 22 7. Whether the accused violated section 13-3407, subsection A,
23 paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
- 24 8. The length of residence in the community.
- 25 9. The accused's record of arrests and convictions.
- 26 10. The accused's record of appearance at court proceedings or of
27 flight to avoid prosecution or failure to appear at court proceedings.
- 28 11. WHETHER THE ACCUSED HAS ENTERED OR REMAINED IN THE UNITED STATES
29 ILLEGALLY.
- 30 12. WHETHER THE ACCUSED'S RESIDENCE IS IN THIS STATE, IN ANOTHER STATE
31 OR OUTSIDE THE UNITED STATES.

32 C. If a judicial officer orders the release of a defendant who is
33 charged with a felony either on his own recognizance or on bail, the judicial
34 officer shall condition the defendant's release on the defendant's good
35 behavior while so released. On a showing of probable cause that the
36 defendant committed any offense during the period of release, a judicial
37 officer may revoke the defendant's release pursuant to section 13-3968.

38 D. After providing notice to the victim pursuant to section 13-4406, a
39 judicial officer may impose any of the following conditions on a person who
40 is released on his own recognizance or on bail:

- 41 1. Place the person in the custody of a designated person or
42 organization agreeing to supervise him.
- 43 2. Place restrictions on the person's travel, associates or place of
44 abode during the period of release.

1 3. Require the deposit with the clerk of the court of cash or other
2 security, such deposit to be returned on the performance of the conditions of
3 release.

4 4. Prohibit the person from possessing any dangerous weapon or
5 engaging in certain described activities or indulging in intoxicating liquors
6 or certain drugs.

7 5. Require the person to report regularly to and remain under the
8 supervision of an officer of the court.

9 6. Impose any other conditions deemed reasonably necessary to assure
10 appearance as required including a condition requiring that the person return
11 to custody after specified hours.

12 E. In addition to any of the conditions a judicial officer may impose
13 pursuant to subsection D of this section, the judicial officer shall impose
14 both of the following conditions on a person who is charged with a felony
15 violation of chapter 14 or 35.1 of this title and who is released on his own
16 recognizance or on bail:

17 1. Electronic monitoring where available.

18 2. A condition prohibiting the person from having any contact with the
19 victim.

20 F. The judicial officer who authorizes the release of the person
21 charged on his own recognizance or on bail shall do all of the following:

22 1. Issue an appropriate order containing statements of the conditions
23 imposed.

24 2. Inform the person of the penalties that apply to any violation of
25 the conditions of release.

26 3. Advise the person that a warrant for his arrest may be issued
27 immediately on any violation of the conditions of release.

28 G. At any time after providing notice to the victim pursuant to
29 section 13-4406, the judicial officer who orders the release of a person on
30 any condition specified in this section or the court in which a prosecution
31 is pending may amend the order to employ additional or different conditions
32 of release, including either an increase or reduction in the amount of
33 bail. On application, the defendant shall be entitled to have the conditions
34 of release reviewed by the judicial officer who imposed them or by the court
35 in which the prosecution is pending. Reasonable notice of the application
36 shall be given to the county attorney and the victim.

37 H. Any information that is stated or offered in connection with any
38 order pursuant to this section need not conform to the rules pertaining to
39 admissibility of evidence in a court of law.

40 I. This section does not prevent the disposition of any case or class
41 of cases by forfeiture of bail or collateral security if such disposition is
42 authorized by the court.

43 J. A judicial officer who orders the release of a juvenile who has
44 been transferred to the criminal division of the superior court pursuant to
45 section 8-327 or who has been charged as an adult pursuant to section 13-501

1 shall notify the appropriate school district on the release of the juvenile
2 from custody.

3 K. For the purposes of this section and section 13-3968, "judicial
4 officer" means any person or court authorized pursuant to the constitution or
5 laws of this state to bail or otherwise release a person before trial or
6 sentencing or pending appeal.

7 Sec. 5. Severability

8 If a provision of this act or its application to any person or
9 circumstance is held invalid, the invalidity does not affect other provisions
10 or applications of the act that can be given effect without the invalid
11 provision or application, and to this end the provisions of this act are
12 severable.

13 Sec. 6. Conditional enactment

14 Section 13-3961, Arizona Revised Statutes, as amended by this act, does
15 not become effective unless article II, section 22, Constitution of Arizona,
16 is amended by vote of the people at the next general election to provide that
17 a serious felony offense is not bailable if the person charged has entered or
18 remained in the United States illegally.

APPROVED BY THE GOVERNOR JUNE 28, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 28, 2006.