Senate Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 22

SENATE BILL 1041

AN ACT

AMENDING SECTIONS 8-341 AND 41-2804, ARIZONA REVISED STATUTES; RELATING TO JUVENILE CORRECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-341, Arizona Revised Statutes, is amended to read:

8-341. Disposition and commitment; definitions

A. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

1. It may award a delinquent juvenile:

(a) To the care of the juvenile's parents, subject to THE supervision of a probation department.

(b) To a probation department, subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a private agency or institution, subject to the supervision of a probation officer.

(e) To the department of juvenile corrections.

(f) To maternal or paternal relatives, subject to the supervision of a probation department.

(g) To an appropriate official of a foreign country of which the juvenile is a foreign national who is unaccompanied by a parent or guardian in this state to remain on unsupervised probation for at least one year on the condition that the juvenile cooperate with that official.

2. It may award an incorrigible child:

(a) To the care of the child's parents, subject to the supervision of a probation department.

(b) To the protective supervision of a probation department, subject to any conditions the court may impose.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a public or private agency, subject to the supervision of a probation department.

(e) To maternal or paternal relatives, subject to the supervision of a probation department.

B. If a juvenile is placed on probation pursuant to this section, the period of probation may continue until the juvenile's eighteenth birthday, except that the term of probation shall not exceed one year if all of the following apply:

1. The juvenile is not charged with a subsequent offense.

2. The juvenile has not been found in violation of a condition of probation.

3. The court has not made a determination that it is in the best interests of the juvenile or the public to require continued supervision. The court shall state by minute entry or written order its reasons for finding that continued supervision is required.

4. The offense for which the juvenile is placed on probation does not involve the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another.

5. The offense for which the juvenile is placed on probation does not involve a violation of title 13, chapter 14 or 35.1.

6. Restitution ordered pursuant to section 8-344 has been made.

C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile:

> You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

D. If a juvenile is fourteen years of age or older and is adjudicated as a repeat felony juvenile offender, the juvenile court shall place the juvenile on juvenile intensive probation, which may include home arrest and electronic monitoring, may place the juvenile on juvenile intensive probation, which may include incarceration for a period of time in a juvenile detention center, or may commit the juvenile to the department of juvenile corrections pursuant to subsection A, paragraph 1, subdivision (e) of this section for a significant period of time.

E. If the juvenile is adjudicated as a repeat felony juvenile offender, the court shall provide the following written notice to the juvenile:

> You have been adjudicated a repeat felony juvenile offender. You are now on notice that if you are arrested for another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fifteen years of age or older, you will be tried as an adult in the criminal division of the superior court. If you commit the other offense when you are fourteen years of age or older, you may be tried as an adult in the criminal division of the superior court. If you are convicted as an adult, you will be sentenced to a term of incarceration. If you are convicted as

1 an adult of a felony offense and you commit any other offense,
2 you will be prosecuted as an adult.
3 F. The failure or inability of the court to provide the notices
4 required under subsections C and E of this section does not preclude the use
5 of the prior adjudications for any purpose otherwise permitted.
6 G. After considering the nature of the offense and the age, physical
7 and mental condition and earning capacity of the juvenile, the court shall
8 order the juvenile to pay a reasonable monetary assessment if the court
9 determines that an assessment is in aid of rehabilitation. If the director
10 of the department of juvenile corrections determines that enforcement of an
11 order for monetary assessment as a term and condition of conditional liberty
12 is not cost-effective, the director may require the youth to perform an
13 equivalent amount of community restitution in lieu of the payment ordered as
14 a condition of conditional liberty.
15 H. If a child is adjudicated incorrigible, the court may impose a
16 monetary assessment on the child of not more than one hundred fifty dollars.
17 I. A juvenile who is charged with unlawful purchase, possession or
18 consumption of spirituous liquor is subject to section 8-323. The monetary
19 assessment for a conviction of unlawful purchase, possession or consumption
20 of spirituous liquor by a juvenile shall not exceed five hundred
21 dollars. The court of competent jurisdiction may order a monetary assessment
22 or equivalent community restitution.
23 J. The court shall require the monetary assessment imposed under
24 subsection G or H of this section on a juvenile who is not committed to the
25 department of juvenile corrections to be satisfied in one or both of the
26 following forms:
27 1. Monetary reimbursement by the juvenile in a lump sum or installment
28 payments through the clerk of the superior court for appropriate
29 distribution.
30 2. A program of work, not in conflict with regular schooling, to
31 repair damage to the victim's property, to provide community restitution or
32 to provide the juvenile with a job for wages. The court order for
33 restitution or monetary assessment shall specify, according to the
34 dispositional program, the amount of reimbursement and the portion of wages
35 of either existing or provided work that is to be credited toward
36 satisfaction of the restitution or assessment, or the nature of the work to
37 be performed and the number of hours to be spent working. The number of
38 hours to be spent working shall be set by the court based on the severity of
39 the offense but shall not be less than sixteen hours.
40 K. If a juvenile is committed to the department of juvenile
41 corrections the court shall specify the amount of the MONETARY assessment
42 imposed pursuant to subsection G or H of this section.

L. After considering the length of stay guidelines developed pursuant to section 41-2816, subsection C, the court may set forth in the order of commitment the minimum period during which the juvenile shall remain in secure care while in the custody of the department of juvenile corrections. When the court awards a juvenile to the department of juvenile corrections or an institution or agency, it shall transmit with the order of commitment copies of a diagnostic psychological evaluation and educational assessment if one has been administered, copies of the case report, all other psychological and medical reports, restitution orders, any request for postadjudication notice that has been submitted by a victim and any other documents or records pertaining to the case requested by the department of juvenile corrections or an institution or agency. The department shall not release a juvenile from secure care before the juvenile completes the length of stay determined by the court in the commitment order unless the county attorney in the county from which the juvenile was committed requests the committing court to reduce the length of stay. The department may TEMPORARILY ESCORT THE JUVENILE FROM SECURE CARE PURSUANT TO SECTION 41-2804, MAY release the juvenile from secure care without a further court order after the juvenile completes the length of stay determined by the court or may retain the juvenile in secure care for any period subsequent to the completion of the length of stay in accordance with the law.

M. Written notice of the release of any juvenile pursuant to subsection L of this section shall be made to any victim requesting notice, the juvenile court that committed the juvenile and the county attorney of the county from which the juvenile was committed.

N. Notwithstanding any law to the contrary, if a person is under the supervision of the court as an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment services may be provided until the person reaches twenty-one years of age if the court, the person and the state agree to the provision of the treatment and a motion to transfer the person pursuant to section 8-327 has not been filed or has been withdrawn. The court may terminate the provision of treatment services after the person reaches eighteen years of age if the court determines that any of the following applies:

1. The person is not progressing toward treatment goals.

2. The person terminates treatment.

3. The person commits a new offense after reaching eighteen years of age.

4. Continued treatment is not required or is not in the best interests of the state or the person.

O. On the request of a victim of an act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus. If the victim is a minor the prosecuting

1 attorney shall file this petition at the request of the victim's parent or
2 guardian. If the act committed against a victim is an act that if committed
3 by an adult would be a sexual offense or the court determines that sufficient
4 evidence exists to indicate that significant exposure occurred, it shall
5 order the department of juvenile corrections or the department of health
6 services to test the juvenile pursuant to section 13-1415. Notwithstanding
7 any law to the contrary, the department of juvenile corrections and the
8 department of health services shall release the test results only to the
9 victim, the delinquent juvenile, the delinquent juvenile's parent or guardian
10 and a minor victim's parent or guardian and shall counsel them regarding the
11 meaning and health implications of the results.
12 P. If a juvenile has been adjudicated delinquent for an offense that
13 if committed by an adult would be a felony, the court shall provide the
14 department of public safety Arizona automated fingerprint identification
15 system established in section 41-2411 with the juvenile's fingerprints,
16 personal identification data and other pertinent information. If a juvenile
17 has been committed to the department of juvenile corrections the department
18 shall provide the fingerprints and information required by this subsection to
19 the Arizona automated fingerprint identification system. If the juvenile's
20 fingerprints and information have been previously submitted to the Arizona
21 automated fingerprint identification system the information is not required
22 to be resubmitted.
23 Q. Access to fingerprint records submitted pursuant to subsection P of
24 this section shall be limited to the administration of criminal justice as
25 defined in section 41-1750. Dissemination of fingerprint information shall
26 be limited to the name of the juvenile, juvenile case number, date of
27 adjudication and court of adjudication.
28 R. If a juvenile is adjudicated delinquent for an offense that if
29 committed by an adult would be a misdemeanor, the court may prohibit the
30 juvenile from carrying or possessing a firearm while the juvenile is under
31 the jurisdiction of the department of juvenile corrections or the juvenile
32 court.
33 S. For the purposes of this section:
34 1. "First time felony juvenile offender" means a juvenile who is
35 adjudicated delinquent for an offense that would be a felony offense if
36 committed by an adult.
37 2. "Repeat felony juvenile offender" means a juvenile to whom both of
38 the following apply:
39 (a) Is adjudicated delinquent for an offense that would be a felony
40 offense if committed by an adult.
41 (b) Previously has been adjudicated a first time felony juvenile
42 offender.
43 3. "Sexual offense" means oral sexual contact, sexual contact or
44 sexual intercourse as defined in section 13-1401.

Sec. 2. Section 41-2804, Arizona Revised Statutes, is amended to read:

41-2804. Duties and powers of director

A. The director shall:

1. Be responsible for the overall operations and policies of the department.

2. Maintain and administer all secure care facilities and programs within the department required and established for the custody, control, treatment, education and rehabilitation of all ~~youth~~ YOUTHS committed to the department.

3. Be responsible for the administration and execution of all conditional liberty services for ~~youth~~ YOUTHS released pursuant to rules adopted by the director in accordance with law.

4. Be responsible for the development of policies and programs which shall be recommended to the governor and the legislature for the purpose of improving the youth rehabilitative and treatment programs of this state.

5. Develop and establish a uniform statewide method of reporting statistics as related to this chapter.

6. Employ deputy directors and other key personnel based on qualifications prescribed by the director which require education and practical experience.

B. The director may:

1. Adopt rules to implement the purposes of the department and the duties and powers of the director.

2. Take any administrative action to improve the efficiency of the department, including the following:

(a) Create new divisions or units or consolidate divisions or units.

(b) Transfer employees between the various divisions and units of the department.

(c) Shift duties between divisions or units.

(d) Delegate authority to appoint, hire, terminate and discipline all personnel of the department, including specialists and consultants.

(e) Transfer committed ~~youth~~ YOUTHS between secure care facilities.

(f) Transfer ~~youth~~ YOUTHS who have been committed to the department or to any facility under its jurisdiction between the various secure care facilities for youths, foster homes and public and private agencies on notification to the committing court.

(g) Appoint certain employees of the department to peace officer status for purposes of guarding, transporting or pursuing persons under the jurisdiction of the department and appoint certain employees of the department to peace officer status for purposes of investigating or arresting persons who commit or attempt to commit offenses directly relating to the operations of the department.

3. Contract with other agencies or institutions in furtherance of any department program.

4. AUTHORIZE THE TEMPORARY ESCORT OF A YOUTH FOR COMPASSIONATE LEAVE OR FOR THE PURPOSES OF TREATMENT, EDUCATION OR REHABILITATION. THE DIRECTOR SHALL CONSIDER THE PUBLIC SAFETY AND ANY OTHER RELEVANT FACTORS BEFORE APPROVING THE TEMPORARY ESCORT OF A YOUTH. DEPARTMENT STAFF SHALL ESCORT AND MAINTAIN CUSTODY OF A YOUTH AUTHORIZED FOR TEMPORARY ESCORT.

C. Peace officers of the department shall not preempt the authority and jurisdiction of established agencies of this state and political subdivisions of this state. Such officers shall notify agencies of this state and political subdivisions of this state before conducting an investigation within the jurisdiction of the agency and before making an arrest within the jurisdiction of the agency and shall ask, except in an emergency, if the agency wishes to participate, perform the investigation or arrest the person to be arrested before proceeding. Personnel appointed as peace officers by the director shall have the minimum qualifications established for peace officers pursuant to section 41-1822. Personnel appointed by the director pursuant to subsection B, paragraph 2, subdivision (g) of this section are not eligible to participate in funding provided by the peace officers' training fund established by section 41-1825 or in the public safety personnel retirement system except as otherwise provided in title 38, chapter 5, article 4.

APPROVED BY THE GOVERNOR APRIL 10, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2007.

Passed the House April 2, 20 07,

by the following vote: 52 Ayes,

3 Nays, 5 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 1, 20 07,

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

4th day of April, 20 07

at 1:43 o'clock P. M.

Secretary to the Governor

Approved this 10 day of

April, 20 07,

at 4:5 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 11 day of April, 2007,

at 9:04 o'clock A. M.

Secretary of State

S.B. 1041