Conference Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 276

SENATE BILL 1332

AN ACT

AMENDING TITLE 8, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-238; AMENDING SECTIONS 13-610 AND 13-3967, ARIZONA REVISED STATUTES; RELATING TO DEOXYRIBONUCLEIC ACID TESTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 8, chapter 2, article 3, Arizona Revised Statutes, is amended by adding section 8-238, to read:

8-238. Advisory hearing; DNA

A. IF A JUVENILE IS ARRESTED FOR A VIOLATION OF ANY OF THE FOLLOWING OFFENSES AND IS SUMMONED TO APPEAR AT AN ADVISORY HEARING, THE JUDICIAL OFFICER SHALL ORDER THE JUVENILE TO REPORT WITHIN FIVE DAYS TO THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE PERSON OR TO THE AGENCY'S DESIGNEE AND SUBMIT A SUFFICIENT SAMPLE OF BUCCAL CELLS OR OTHER BODILY SUBSTANCES FOR DEOXYRIBONUCLEIC ACID TESTING AND EXTRACTION:

1. AN OFFENSE LISTED IN TITLE 13, CHAPTER 11.

2. A VIOLATION OF SECTION 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411 OR 13-1417.

3. A VIOLATION OF SECTION 13-1507 OR 13-1508.

4. A VIOLATION OF ANY SERIOUS OFFENSE PURSUANT TO SECTION 13-604 INVOLVING THE DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR THE INTENTIONAL OR KNOWING INFLICTION OF SERIOUS PHYSICAL INJURY.

B. IF A PERSON DOES NOT COMPLY WITH AN ORDER ISSUED PURSUANT TO SUBSECTION A OF THIS SECTION, THE COURT SHALL REVOKE THE PERSON'S RELEASE.

Sec. 2. Section 13-610, Arizona Revised Statutes, is amended to read:

13-610. DNA testing

A. Within thirty days after a person is sentenced to the state department of corrections or a person who is accepted under the interstate compact for the supervision of parolees and probationers arrives in this state, the state department of corrections shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense listed in this section and was sentenced to a term of imprisonment or was convicted of any offense that was committed in another jurisdiction that if committed in this state would be a violation of any offense listed in this section and the person is under the supervision of the state department of corrections. The state department of corrections shall transmit the sample to the department of public safety.

B. Within thirty days after a person is placed on probation and sentenced to a term of incarceration in a county jail detention facility or is detained in a county juvenile detention facility, the county detention facility shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county detention facility shall transmit the sample to the department of public safety.

C. Within thirty days after a person is convicted and placed on probation without a term of incarceration or adjudicated delinquent and placed on probation, the county probation department shall secure a

1 sufficient sample of blood or other bodily substances for deoxyribonucleic
2 acid testing and extraction from the person if the person was convicted of or
3 adjudicated delinquent for an offense listed in this section. The county
4 probation department shall transmit the sample to the department of public
5 safety.
6 D. Within thirty days after the arrival of a person who is accepted
7 under the interstate compact for the supervision of parolees and probationers
8 and who is under the supervision of a county probation department, the county
9 probation department shall secure a sufficient sample of blood or other
10 bodily substances for deoxyribonucleic acid testing and extraction from the
11 person if the person was convicted of an offense that was committed in
12 another jurisdiction that if committed in this state would be a violation of
13 any offense listed in this section and was sentenced to a term of probation.
14 The county probation department shall transmit the sample to the department
15 of public safety.
16 E. Within thirty days after a juvenile is committed to the department
17 of juvenile corrections, the department of juvenile corrections shall secure
18 a sufficient sample of blood or other bodily substances for deoxyribonucleic
19 acid testing and extraction from the youth if the youth was adjudicated
20 delinquent for an offense listed in this section and was committed to a
21 secure care facility. The department of juvenile corrections shall transmit
22 the sample to the department of public safety.
23 F. Within thirty days after the arrival in this state of a juvenile
24 who is accepted by the department of juvenile corrections pursuant to the
25 interstate compact on juveniles and who was adjudicated for an offense that
26 was committed in another jurisdiction that if committed in this state would
27 be a violation of any offense listed in this section, the compact
28 administrator shall request that the sending state impose as a condition of
29 supervision that the juvenile submit a sufficient sample of blood or other
30 bodily substances for deoxyribonucleic acid testing. If the sending state
31 does not impose that condition, the department of juvenile corrections shall
32 request a sufficient sample of blood or other bodily substances for
33 deoxyribonucleic acid testing within thirty days after the juvenile's arrival
34 in this state. The department of juvenile corrections shall transmit the
35 sample to the department of public safety.
36 G. Notwithstanding subsections A through F, K, L AND O of this
37 section, the agency that is responsible for securing a sample pursuant to
38 this section shall not secure the sample if the scientific criminal analysis
39 section of the department of public safety has previously received and
40 ~~maintains~~ IS MAINTAINING a sample sufficient for deoxyribonucleic acid
41 testing.
42 H. The department of public safety shall do all of the following:
43 1. Conduct or oversee through mutual agreement an analysis of the
44 samples that it receives pursuant to subsections K, L and O of this section.

2. Make and maintain a report of the results of each deoxyribonucleic acid analysis.

3. Maintain samples of blood and other bodily substances for at least thirty-five years.

I. Any sample and the result of any test that is obtained pursuant to this section may be used only as follows:

1. For law enforcement identification purposes.

2. In a proceeding in a criminal prosecution or juvenile adjudication.

3. In a proceeding under title 36, chapter 37.

J. If the conviction of a person who is subject to this section is overturned on appeal or postconviction relief and a final mandate has been issued, on petition of the person to the superior court in the county in which the conviction occurred, the court shall order that the person's deoxyribonucleic acid profile resulting from that conviction be expunged from the Arizona deoxyribonucleic acid identification system established by section 41-2418 unless the person has been convicted of another offense that would require the person to submit to deoxyribonucleic acid testing pursuant to this section.

K. If a person is arrested for any offense listed in subsection O, paragraph 3 of this section and is transferred by the arresting authority to a state, county or local law enforcement agency or jail, the arresting authority or its designee shall secure a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction from the person for the purpose of determining identification characteristics. The arresting authority or its designee shall transmit the sample to the department of public safety.

L. ~~If a judicial officer as defined in section 13-3967 releases a person on the person's own recognizance or on bail, the judicial officer~~ A PERSON WHO IS CHARGED WITH A FELONY OR MISDEMEANOR OFFENSE LISTED IN SUBSECTION O, PARAGRAPH 3 OF THIS SECTION AND WHO IS SUMMONED TO APPEAR IN COURT FOR AN INITIAL APPEARANCE shall ~~order the person to~~ report~~,~~ within five days~~, if the person is charged with a felony or misdemeanor offense listed in subsection O, paragraph 3 of this section~~ OF RELEASE ON BAIL OR ON THE PERSON'S OWN RECOGNIZANCE to the law enforcement agency that arrested the person or its designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction. The arresting authority or its designee shall transmit the sample to the department of public safety. ~~If a person does not comply with an order made pursuant to this subsection, the court shall revoke the person's release.~~

M. A person who is subject to subsection K or L of this section may petition the superior court in the county in which the arrest occurred or the criminal charge was filed to order that the person's deoxyribonucleic acid profile and sample be expunged from the Arizona deoxyribonucleic acid identification system, unless the person has been arrested or charged with or convicted of another offense that would require the person to submit to

deoxyribonucleic acid testing pursuant to this section, if any of the following applies:

1. The criminal charges are not filed within the applicable period prescribed by section 13-107.

2. The criminal charges are dismissed.

3. The person is acquitted at trial.

N. If any sample that is submitted to the department of public safety under this section is found to be unacceptable for analysis and use or cannot be used by the department, the department shall require that another sample of blood or other bodily substances be secured pursuant to this section.

O. This section applies to persons who are:

1. Convicted of any felony offense.

2. Adjudicated delinquent for any of the following offenses:

(a) A violation or an attempt to violate any offense in chapter 11 of this title, any felony offense in chapter 14 or 35.1 of this title or section 13-1507, 13-1508 or 13-3608.

(b) Any offense for which a person is required to register pursuant to section 13-3821.

(c) A violation of any felony offense in chapter 34 of this title that may be prosecuted pursuant to section 13-501, subsection B, paragraph 2.

(d) A violation of any felony offense that is listed in section 13-501.

3. ~~Beginning January 1, 2008,~~ Arrested for a violation of any offense in chapter 11 of this title, a violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1417, 13-1507, 13-1508, 13-3208, 13-3214, 13-3555 or 13-3608 or a violation of any serious offense pursuant to section 13-604 involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury.

Sec. 3. Section 13-3967, Arizona Revised Statutes, is amended to read:

13-3967. Release on bailable offenses before trial; definition

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

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

1. The views of the victim.

2. The nature and circumstances of the offense charged.

3. The weight of evidence against the accused.

4. The accused's family ties, employment, financial resources, character and mental condition.

5. The results of any drug test submitted to the court.

6. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.

7. Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.

8. The length of residence in the community.

9. The accused's record of arrests and convictions.

10. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

11. Whether the accused has entered or remained in the United States illegally.

12. Whether the accused's residence is in this state, in another state or outside the United States.

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

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

1. Place the person in the custody of a designated person or organization agreeing to supervise him.

2. Place restrictions on the person's travel, associates or place of abode during the period of release.

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

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

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

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

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

1. Electronic monitoring where available.

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

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

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

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

3. Advise the person that a warrant for his arrest may be issued immediately on any violation of the conditions of release, including the failure to submit to deoxyribonucleic acid testing ordered pursuant to paragraph 4 of this subsection.

4. If the person is charged with a felony or misdemeanor offense listed in section 13-610, subsection O, paragraph 3 AND IS SUMMONED TO APPEAR, order the person to report within five days to the law enforcement agency that arrested the person or to the agency's designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction. IF A PERSON DOES NOT COMPLY WITH AN ORDER ISSUED PURSUANT TO THIS SUBSECTION, THE COURT SHALL REVOKE THE PERSON'S RELEASE.

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

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

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

J. A judicial officer who orders the release of a juvenile who has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged as an adult pursuant to section 13-501 shall notify the appropriate school district on the release of the juvenile from custody.

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

APPROVED BY THE GOVERNOR JUNE 19, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 19, 2008.