House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 125

SENATE BILL 1011

AN ACT

AMENDING SECTIONS 13-901 AND 13-902, ARIZONA REVISED STATUTES; RELATING TO PROBATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-901, Arizona Revised Statutes, is amended to read:

13-901. Probation

A. If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and, if so, shall without delay place the person on intensive probation supervision pursuant to section 13-913 or supervised or unsupervised probation on such terms and conditions as the law requires and the court deems appropriate, including participation in any programs authorized in title 12, chapter 2, article 11. If a person is not eligible for probation, imposition or execution of sentence shall not be suspended or delayed. If the court imposes probation, it may also impose a fine as authorized by chapter 8 of this title. If probation is granted the court shall impose a condition that the person waive extradition for any probation revocation procedures and it shall order restitution pursuant to section 13-603, subsection C where there is a victim who has suffered economic loss. When granting probation to an adult the court, as a condition of probation, shall assess a monthly fee of not less than fifty dollars unless, after determining the inability of the probationer to pay the fee, the court assesses a lesser fee. THIS FEE IS NOT SUBJECT TO ANY SURCHARGE. In justice and municipal courts the fee shall only be assessed when the person is placed on supervised probation. For persons placed on probation in the superior court, the fee shall be paid to the clerk of the superior court and the clerk of the court shall pay all monies collected from this fee to the county treasurer for deposit in the adult probation services fund established by section 12-267. For persons placed on supervised probation in the justice court, the fee shall be paid to the justice court and the justice court shall transmit all of the monies to the county treasurer for deposit in the adult probation services fund established by section 12-267. For persons placed on supervised probation in the municipal court, the fee shall be paid to the municipal court. The municipal court shall transmit all of the monies to the city treasurer who shall transmit the monies to the county treasurer for deposit in the adult probation services fund established by section 12-267. Any amount greater than forty dollars of the fee assessed pursuant to this subsection shall only be used to supplement monies currently used for the salaries of adult probation and surveillance officers and for support of programs and services of the superior court adult probation departments.

B. The period of probation shall be determined according to section 13-902, except that if a person is released pursuant to section 31-233, subsection B and community supervision is waived pursuant to section 13-603, subsection K, the court shall extend the period of probation by the amount of time the director of the state department of corrections approves for the inmate's temporary release.

C. The court, in its discretion, may issue a warrant for the rearrest of the defendant and may modify or add to the conditions or, if the defendant commits an additional offense or violates a condition, may revoke probation in accordance with the rules of criminal procedure at any time before the expiration or termination of the period of probation. If the court revokes the defendant's probation and the defendant is serving more than one probationary term concurrently, the court may sentence the person to terms of imprisonment to be served consecutively.

D. At any time during the probationary term of the person released on probation, any probation officer, without warrant or other process and at any time until the final disposition of the case, may rearrest any person and bring the person before the court.

E. The court, on its own initiative or on application of the probationer, after notice and an opportunity to be heard for the prosecuting attorney and, on request, the victim, may terminate the period of probation or intensive probation and discharge the defendant at a time earlier than that originally imposed if in the court's opinion the ends of justice will be served and if the conduct of the defendant on probation warrants it.

F. When granting probation the court may require that the defendant be imprisoned in the county jail at whatever time or intervals, consecutive or nonconsecutive, the court shall determine, within the period of probation, as long as the period actually spent in confinement does not exceed one year or the maximum period of imprisonment permitted under chapter 7 of this title, whichever is the shorter.

G. If restitution is made a condition of probation, the court shall fix the amount of restitution and the manner of performance pursuant to chapter 8 of this title.

H. When granting probation, the court shall set forth at the time of sentencing and on the record the factual and legal reasons in support of each sentence.

I. If the defendant meets the criteria set forth in section 13-901.01 or 13-3422, the court may place the defendant on probation pursuant to either section. If a defendant is placed on probation pursuant to section 13-901.01 or 13-3422, the court may impose any term of probation that is authorized pursuant to this section and that is not in violation of section 13-901.01.

Sec. 2. Section 13-902, Arizona Revised Statutes, is amended to read:

13-902. <u>Periods of probation; monitoring; fees</u>

A. Unless terminated sooner, probation may continue for the following periods:

1. For a class 2 felony, seven years.
2. For a class 3 felony, five years.
3. For a class 4 felony, four years.
4. For a class 5 or 6 felony, three years.
5. For a class 1 misdemeanor, three years.
6. For a class 2 misdemeanor, two years.

7. For a class 3 misdemeanor, one year.

B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:

1. For a violation of section 28-1381 or 28-1382, five years.

2. For a violation of section 28-1383, ten years.

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than five years.

2. For a misdemeanor, not more than two years.

D. Notwithstanding any other provision of law, justice courts and municipal courts may impose the probation periods specified in subsection A, paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

E. After conviction of a felony offense or an attempt to commit any offense that is included in chapter 14 or 35.1 of this title or section 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may continue for a term of not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

F. After conviction of a violation of section 13-3824, subsection A, if a term of probation is imposed and the offense for which the person was required to register was a felony, probation may continue for a term of not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

G. After conviction of a dangerous crime against children as defined in section 13-705, if a term of probation is imposed, THE PERSON IS REQUIRED TO REGISTER PURSUANT TO SECTION 13-3821 AND THE PERSON IS CLASSIFIED AS A LEVEL THREE OFFENDER PURSUANT TO SECTIONS 13-3825 AND 13-3826, the court shall require global position system OR ELECTRONIC monitoring for the duration of the term of probation. The court may impose a fee on the probationer to offset the cost of the monitoring device required by this subsection. The fee shall be deposited in the adult probation services fund pursuant to section 12-267, subsection A, paragraph 3. THIS SUBSECTION DOES NOT PRECLUDE GLOBAL POSITION SYSTEM OR ELECTRONIC MONITORING OF ANY OTHER PERSON WHO IS SERVING A TERM OF PROBATION.

Sec. 3. <u>Federal sex offender registration notification act study committee; membership; duties; report</u>

A. The federal sex offender registration notification act study committee is established consisting of the following members:

1. The governor or the governor's designee.

2. Two members of the house of representatives who are appointed by the speaker of the house of representatives and who are members of different

political parties. The speaker of the house of representatives shall designate one of these members to serve as cochairperson of the committee.

3. Two members of the senate who are appointed by the president of the senate and who are members of different political parties. The president of the senate shall designate one of these members to serve as cochairperson of the committee.

4. The director of the department of public safety or the director's designee.

5. The director of the state department of corrections or the director's designee.

6. The chief justice of the supreme court or the chief justice's designee.

7. A sheriff or the sheriff's designee who is appointed by the president of the Arizona county attorneys and sheriffs association and who represents a county with a population of more than four hundred thousand persons according to the most recent United States decennial census.

8. Two county attorneys or their designees who are appointed by the chairman of the Arizona prosecuting attorneys' advisory council, one of whom represents a county with a population of more than four hundred thousand persons according to the most recent United States decennial census and one of whom represents a county with a population of four hundred thousand persons or less according to the most recent United States decennial census.

9. A chief of police or the chief's designee who is appointed by the president of the Arizona association of chiefs of police and who represents a city or town in a county with a population of four hundred thousand persons or less according to the most recent United States decennial census.

10. Two public defenders or their designees who are appointed by the president of the Arizona public defender's association, one of whom represents a county with a population of more than four hundred thousand persons according to the most recent United States decennial census and one of whom represents a county with a population of four hundred thousand persons or less according to the most recent United States decennial census.

11. Two chief probation officers or their designees who are appointed by the chief justice of the supreme court, one of whom is assigned to an adult probation department and one of whom is assigned to a juvenile probation department of the superior court.

12. One representative of the administrative office of the courts who has expertise with the provision of probation services and who is appointed by the chief justice of the supreme court.

13. A licensed psychologist who works with adults and who is appointed by the speaker of the house of representatives.

14. A licensed psychologist who works with juveniles and who is appointed by the president of the senate.

15. Two directors of civic organizations concerned with sexual offender issues or children's issues or their designees, one of whom is appointed by

1 the speaker of the house of representatives and one of whom is appointed by
2 the president of the senate.
3 16. A researcher from the University of Arizona, Arizona State
4 University or Northern Arizona University who has expertise in the area of
5 sex offender research and who is appointed by the governor.
6 B. The study committee shall examine:
7 1. The effectiveness of the current sex offender laws in this state to
8 prevent recidivism and protect the community from further sexual offenses.
9 2. The standards set forth by the Adam Walsh Child Protection and
10 Safety Act of 2006 and specifically, Title 1, the Sex Offender Registration
11 Notification Act.
12 3. The impact on this state of adopting the federal standards of the
13 Adam Walsh Child Protection and Safety Act of 2006 and specifically, Title 1,
14 the Sex Offender Registration Notification Act.
15 C. On or before December 31, 2009, the study committee shall submit a
16 report regarding its findings to the governor, the speaker of the house of
17 representatives and the president of the senate and shall provide a copy of
18 the report to the secretary of state and the director of the Arizona state
19 library, archives and public records.
20 D. Members of the study committee are not eligible to receive
21 compensation but public members are eligible for reimbursement of expenses
22 pursuant to title 38, chapter 4, article 2, Arizona Revised Statutes.
23 Sec. 4. Delayed repeal
24 Section 3 of this act, relating to Federal sex offender registration
25 notification act study committee; membership; duties; report, is repealed
26 from and after December 31, 2010.
27 Sec. 5. Emergency
28 This act is an emergency measure that is necessary to preserve the
29 public peace, health or safety and is operative immediately as provided by
30 law.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House July 1, 20 09,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

with emergency

Speaker of the House

Chief Clerk of the House

Passed the Senate June 15, 20 09,

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

with Emergency

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13 day of July, 20 09,

at 11:14 o'clock A. M.

_____
Secretary of State

S.B. 1011

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate July 1, 20 09

by the following vote: 21 Ayes,

0 Nays, 3 Not Voting with Emergency

Robert L. Burns
President of the Senate

Susan Crowe
Assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

15t day of July, 20 09

at 10:15 o'clock A. M.

Susan K. Myers
Secretary to the Governor

Approved this 13th day of

July 2009

at 8:51 o'clock A M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13th day of July, 20 09

S.B. 1011

at 11:14 o'clock A. M.

Ken Bennett
Secretary of State