

House Engrossed
FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 194

HOUSE BILL 2435

AN ACT

AMENDING SECTIONS 12-114.01, 13-703, 13-902 AND 13-3405, ARIZONA REVISED STATUTES; AMENDING SECTION 13-901, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, FIRST SPECIAL SESSION, CHAPTER 5, SECTION 2; REPEALING SECTION 13-901, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, FIRST REGULAR SESSION, CHAPTER 125, SECTION 1; BLENDING MULTIPLE ENACTMENTS; RELATING TO CRIMES AND PROBATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-114.01, Arizona Revised Statutes, is amended to
3 read:

4 12-114.01. Probation assessment; deposit

5 A. Except as provided in section 12-269, in addition to any other
6 penalty, FINE, FEE, SURCHARGE OR assessment ~~provided~~ AUTHORIZED by law, a
7 PERSON SHALL PAY AN ASSESSMENT ~~probation surcharge~~ of twenty dollars ~~shall be~~
8 ~~levied on every fine, penalty and forfeiture imposed and collected by the~~
9 ~~superior, justice and municipal courts for criminal offenses and any civil~~
10 ~~penalty imposed and collected~~ ON CONVICTION FOR A CRIMINAL OFFENSE OR A
11 FINDING OF RESPONSIBILITY for a civil traffic violation ~~and fine, penalty or~~
12 ~~forfeiture for a violation of the motor vehicle statutes~~, for a violation of
13 any local ordinance relating to the stopping, standing or operation of a
14 vehicle, except parking violations, or for a violation of the game and fish
15 statutes in title 17.

16 B. The monies collected pursuant to this section shall be deposited,
17 pursuant to sections 35-146 and 35-147, in the judicial collection
18 enhancement fund established by section 12-113 to be used to supplement
19 monies currently used for the salaries of adult and juvenile probation and
20 surveillance officers and for support of programs and services of the
21 superior court adult and juvenile probation departments.

22 C. The court may waive all or part of a ~~probation surcharge~~ THE
23 ASSESSMENT in the same manner and subject to the same limitations provided
24 for the waiver of penalty assessments in section 12-116.01, subsection F and
25 section 12-116.02, subsection D.

26 Sec. 2. Section 13-703, Arizona Revised Statutes, is amended to read:
27 13-703. Repetitive offenders; sentencing

28 A. A person shall be sentenced as a category one repetitive offender
29 if the person is convicted of two felony offenses that were not committed on
30 the same occasion but that either are consolidated for trial purposes or are
31 not historical prior felony convictions.

32 B. A person shall be sentenced as a category two repetitive offender
33 if the person either:

34 1. Is convicted of three or more felony offenses that were not
35 committed on the same occasion but that either are consolidated for trial
36 purposes or are not historical prior felony convictions.

37 2. Except as provided in section 13-704 or 13-705, is at least
38 eighteen years of age or has been tried as an adult and stands convicted of a
39 felony and has one historical prior felony conviction.

40 C. Except as provided in section 13-704 or 13-705, a person shall be
41 sentenced as a category three repetitive offender if the person is at least
42 eighteen years of age or has been tried as an adult and stands convicted of a
43 felony and has two or more historical prior felony convictions.

1 D. The presumptive term set by this section may be aggravated or
 2 mitigated within the range under this section pursuant to section 13-701,
 3 subsections C, D and E.

4 E. If a person is sentenced as a category one repetitive offender
 5 pursuant to subsection A of this section and if at least two aggravating
 6 circumstances listed in section 13-701, subsection D apply or at least two
 7 mitigating circumstances listed in section 13-701, subsection E apply, the
 8 court may impose a mitigated or aggravated sentence pursuant to subsection H
 9 of this section.

10 F. If a person is sentenced as a category two repetitive offender
 11 pursuant to subsection B, paragraph 2 of this section and if at least two
 12 aggravating circumstances listed in section 13-701, subsection D apply or at
 13 least two mitigating circumstances listed in section 13-701, subsection E
 14 apply, the court may impose a mitigated or aggravated sentence pursuant to
 15 subsection I of this section.

16 G. If a person is sentenced as a category three repetitive offender
 17 pursuant to subsection C of this section and at least two aggravating
 18 circumstances listed in section 13-701, subsection D or at least two
 19 mitigating circumstances listed in section 13-701, subsection E apply, the
 20 court may impose a mitigated or aggravated sentence pursuant to subsection J
 21 of this section.

22 H. A category one repetitive offender shall be sentenced within the
 23 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	3 years	4 years	5 years	10 years	12.5 years
Class 3	1.8 years	2.5 years	3.5 years	7 years	8.75 years
Class 4	1.1 years	1.5 years	2.5 years	3 years	3.75 years
Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
Class 6	.3 years	.5 years	1 year	1.5 years	1.8 years

30 I. A category two repetitive offender shall be sentenced within the
 31 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	4.5 years	6 years	9.25 years	18.5 years	23.1 years
Class 3	3.3 years	4.5 years	6.5 years	13 years	16.25 years
Class 4	2.25 years	3 years	4.5 years	6 years	7.5 years
Class 5	1 year	1.5 years	2.25 years	3 years	3.75 years
Class 6	.75 years	1 year	1.75 years	2.25 years	2.75 years

38 J. A category three repetitive offender shall be sentenced within the
 39 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	10.5 years	14 years	15.75 years	28 years	35 years
Class 3	7.5 years	10 years	11.25 years	20 years	25 years
Class 4	6 years	8 years	10 years	12 years	15 years
Class 5	3 years	4 years	5 years	6 years	7.5 years
Class 6	2.25 years	3 years	3.75 years	4.5 years	5.75 years

1 K. The aggravated or mitigated term imposed pursuant to subsection H,
2 I or J of this section may be imposed only if at least two of the aggravating
3 circumstances are found beyond a reasonable doubt to be true by the trier of
4 fact or are admitted by the defendant, except that an aggravating
5 circumstance under section 13-701, subsection D, paragraph 11 shall be found
6 to be true by the court, or in mitigation of the crime are found to be true
7 by the court, on any evidence or information introduced or submitted to the
8 court or the trier of fact before sentencing or any evidence presented at
9 trial, and factual findings and reasons in support of these findings are set
10 forth on the record at the time of sentencing.

11 L. Convictions for two or more offenses committed on the same occasion
12 shall be counted as only one conviction for the purposes of subsection B,
13 paragraph 2 and subsection C of this section.

14 M. FOR THE PURPOSES OF SUBSECTION B, PARAGRAPH 2 AND SUBSECTION C OF
15 THIS SECTION, a person who has been convicted in any court outside the
16 jurisdiction of this state of an offense that if committed in this state
17 would be punishable as a felony is subject to this section. A person who has
18 been convicted as an adult of an offense punishable as a felony under the
19 provisions of any prior code in this state is subject to this section.

20 N. The penalties prescribed by this section shall be substituted for
21 the penalties otherwise authorized by law if an allegation of prior
22 conviction is charged in the indictment or information and admitted or found
23 by the court. The release provisions prescribed by this section shall not be
24 substituted for any penalties required by the substantive offense or a
25 provision of law that specifies a later release or completion of the sentence
26 imposed before release. The court shall allow the allegation of a prior
27 conviction at any time before the date the case is actually tried unless the
28 allegation is filed fewer than twenty days before the case is actually tried
29 and the court finds on the record that the person was in fact prejudiced by
30 the untimely filing and states the reasons for these findings. If the
31 allegation of a prior conviction is filed, the state must make available to
32 the person a copy of any material or information obtained concerning the
33 prior conviction. The charge of previous conviction shall not be read to the
34 jury. For the purposes of this subsection, "substantive offense" means the
35 felony offense that the trier of fact found beyond a reasonable doubt the
36 person committed. Substantive offense does not include allegations that, if
37 proven, would enhance the sentence of imprisonment or fine to which the
38 person otherwise would be subject.

39 O. A person who is sentenced pursuant to this section is not eligible
40 for suspension of sentence, probation, pardon or release from confinement on
41 any basis, except as specifically authorized by section 31-233, subsection A
42 or B, until the sentence imposed by the court has been served, the person is
43 eligible for release pursuant to section 41-1604.07 or the sentence is
44 commuted.

1 P. The court shall inform all of the parties before sentencing occurs
2 of its intent to impose an aggravated or mitigated sentence pursuant to
3 subsection H, I or J of this section. If the court fails to inform the
4 parties, a party waives its right to be informed unless the party timely
5 objects at the time of sentencing.

6 Q. The court in imposing a sentence shall consider the evidence and
7 opinions presented by the victim or the victim's immediate family at any
8 aggravation or mitigation proceeding or in the presentence report.

9 Sec. 3. Section 13-901, Arizona Revised Statutes, as amended by Laws
10 2009, first special session, chapter 5, section 2, is amended to read:

11 13-901. Probation

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

1 B. The period of probation shall be determined according to section
2 13-902, except that if a person is released pursuant to section 31-233,
3 subsection B and community supervision is waived pursuant to section 13-603,
4 subsection K, the court shall extend the period of probation by the amount of
5 time the director of the state department of corrections approves for the
6 inmate's temporary release.

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

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

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

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

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

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

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

42 Sec. 4. Repeal

43 Section 13-901, Arizona Revised Statutes, as amended by Laws 2009,
44 first regular session, chapter 125, section 1, is repealed.

1 Sec. 5. Section 13-902, Arizona Revised Statutes, is amended to read:
2 13-902. Periods of probation; monitoring; fees

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

- 5 1. For a class 2 felony, seven years.
- 6 2. For a class 3 felony, five years.
- 7 3. For a class 4 felony, four years.
- 8 4. For a class 5 or 6 felony, three years.
- 9 5. For a class 1 misdemeanor, three years.
- 10 6. For a class 2 misdemeanor, two years.
- 11 7. For a class 3 misdemeanor, one year.

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

- 14 1. For a violation of section 28-1381 or 28-1382, five years.
- 15 2. For a violation of section 28-1383, ten years.

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

- 21 1. For a felony, not more than five years.
- 22 2. For a misdemeanor, not more than two years.

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

26 E. After conviction of a felony offense or an attempt to commit any
27 offense that is included in chapter 14 or 35.1 of this title or section
28 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may
29 continue for a term of not less than the term that is specified in subsection
30 A of this section up to and including life and that the court believes is
31 appropriate for the ends of justice.

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

38 G. ~~After conviction~~ IF A PERSON IS CONVICTED ON OR AFTER NOVEMBER 1,
39 2006 of a dangerous crime against children as defined in section 13-705, ~~if~~ a
40 term of probation is imposed, the person is required to register pursuant to
41 section 13-3821 and the person is classified as a level three offender
42 pursuant to sections 13-3825 and 13-3826, the court shall require global
43 position system or electronic monitoring for the duration of the term of
44 probation. The court may impose a fee on the probationer to offset the cost
45 of the monitoring device required by this subsection. The fee shall be

1 deposited in the adult probation services fund pursuant to section 12-267,
2 subsection A, paragraph 3. This subsection does not preclude global position
3 system or electronic monitoring of any other person who is serving a term of
4 probation.

5 Sec. 6. Section 13-3405, Arizona Revised Statutes, is amended to read:
6 13-3405. Possession, use, production, sale or transportation of
7 marijuana; classification

8 A. A person shall not knowingly:

9 1. Possess or use marijuana.

10 2. Possess marijuana for sale.

11 3. Produce marijuana.

12 4. Transport for sale, import into this state or offer to transport
13 for sale or import into this state, sell, transfer or offer to sell or
14 transfer marijuana.

15 B. A person who violates:

16 1. Subsection A, paragraph 1 of this section involving an amount of
17 marijuana not possessed for sale having a weight of less than two pounds is
18 guilty of a class 6 felony.

19 2. Subsection A, paragraph 1 of this section involving an amount of
20 marijuana not possessed for sale having a weight of at least two pounds but
21 less than four pounds is guilty of a class 5 felony.

22 3. Subsection A, paragraph 1 of this section involving an amount of
23 marijuana not possessed for sale having a weight of four pounds or more is
24 guilty of a class 4 felony.

25 4. Subsection A, paragraph 2 of this section involving an amount of
26 marijuana having a weight of less than two pounds is guilty of a class 4
27 felony.

28 5. Subsection A, paragraph 2 of this section involving an amount of
29 marijuana having a weight of at least two pounds but not more than four
30 pounds is guilty of a class 3 felony.

31 6. Subsection A, paragraph 2 of this section involving an amount of
32 marijuana having a weight of more than four pounds is guilty of a class 2
33 felony.

34 7. Subsection A, paragraph 3 of this section involving an amount of
35 marijuana having a weight of less than two pounds is guilty of a class 5
36 felony.

37 8. Subsection A, paragraph 3 of this section involving an amount of
38 marijuana having a weight of at least two pounds but not more than four
39 pounds is guilty of a class 4 felony.

40 9. Subsection A, paragraph 3 of this section involving an amount of
41 marijuana having a weight of MORE THAN four pounds ~~or more~~ is guilty of a
42 class 3 felony.

43 10. Subsection A, paragraph 4 of this section involving an amount of
44 marijuana having a weight of less than two pounds is guilty of a class 3
45 felony.

1 11. Subsection A, paragraph 4 of this section involving an amount of
2 marijuana having a weight of two pounds or more is guilty of a class 2
3 felony.

4 C. If the aggregate amount of marijuana involved in one offense or all
5 of the offenses that are consolidated for trial equals or exceeds the
6 statutory threshold amount, a person who is sentenced pursuant to subsection
7 B, paragraph 5, 6, 8, 9 or 11 of this section is not eligible for suspension
8 of sentence, probation, pardon or release from confinement on any basis until
9 the person has served the sentence imposed by the court, the person is
10 eligible for release pursuant to section 41-1604.07 or the sentence is
11 commuted.

12 D. In addition to any other penalty prescribed by this title, the
13 court shall order a person who is convicted of a violation of any provision
14 of this section to pay a fine of not less than seven hundred fifty dollars or
15 three times the value as determined by the court of the marijuana involved in
16 or giving rise to the charge, whichever is greater, and not more than the
17 maximum authorized by chapter 8 of this title. A judge shall not suspend any
18 part or all of the imposition of any fine required by this subsection.

19 E. A person who is convicted of a felony violation of any provision of
20 this section for which probation or release before the expiration of the
21 sentence imposed by the court is authorized is prohibited from using any
22 marijuana, dangerous drug or narcotic drug except as lawfully administered by
23 a practitioner and as a condition of any probation or release shall be
24 required to submit to drug testing administered under the supervision of the
25 probation department of the county or the state department of corrections as
26 appropriate during the duration of the term of probation or before the
27 expiration of the sentence imposed.

28 F. If the aggregate amount of marijuana involved in one offense or all
29 of the offenses that are consolidated for trial is less than the statutory
30 threshold amount, a person who is sentenced pursuant to subsection B,
31 paragraph 4, 7 or 10 and who is granted probation by the court shall be
32 ordered by the court that as a condition of probation the person perform not
33 less than two hundred forty hours of community restitution with an agency or
34 organization providing counseling, rehabilitation or treatment for alcohol or
35 drug abuse, an agency or organization that provides medical treatment to
36 persons who abuse controlled substances, an agency or organization that
37 serves persons who are victims of crime or any other appropriate agency or
38 organization.

39 G. If a person who is sentenced pursuant to subsection B, paragraph 1,
40 2 or 3 of this section is granted probation for a felony violation of this
41 section, the court shall order that as a condition of probation the person
42 perform not less than twenty-four hours of community restitution with an
43 agency or organization providing counseling, rehabilitation or treatment for
44 alcohol or drug abuse, an agency or organization that provides medical
45 treatment to persons who abuse controlled substances, an agency or

1 organization that serves persons who are victims of crimes CRIME or any other
2 appropriate agency or organization.

3 H. If a person is granted probation for a misdemeanor violation of
4 this section, the court shall order as a condition of probation that the
5 person attend eight hours of instruction on the nature and harmful effects of
6 narcotic drugs, marijuana and other dangerous drugs on the human system, and
7 on the laws related to the control of these substances, or perform
8 twenty-four hours of community restitution.

9 Sec. 7. Retroactivity

10 Section 13-901, Arizona Revised Statutes, as amended by Laws 2009,
11 first special session, chapter 5, section 2 and this act, applies
12 retroactively to July 13, 2009.

APPROVED BY THE GOVERNOR APRIL 28, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2010.

Passed the House February 24, 2010

Passed the Senate April 21, 2010

by the following vote: 57 Ayes,

by the following vote: 29 Ayes.

0 Nays, 3 Not Voting

0 Nays, 1 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

22 day of April, 20 10

at 10:00 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 28th day of

[Signature]

at 7:14 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 28th day of April, 20 10

at 4:29 o'clock P. M.

[Signature]
Secretary of State

H.B. 2435