Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 168

SENATE BILL 1559

AN ACT

AMENDING SECTIONS 8-241, 8-243 AND 8-321, ARIZONA REVISED STATUTES; RELATING TO JUVENILE OFFENDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-241, Arizona Revised Statutes, is amended to read:

8-241. Fees on disposition

A. Notwithstanding section 8-243, the juvenile court shall order the parent of a juvenile to pay a fee of not less than fifty dollars a month for the supervision of the juvenile unless, after determining the inability of the parent to pay the fee, the court orders payment of a lesser amount.

B. If:

1. The department of economic security is the supervising agency, all monies assessed pursuant to this section shall be ordered to be paid and used as provided in section 8-243.01.

2. The juvenile probation office is the supervising agency, all monies assessed pursuant to this section shall be ordered to be paid to the clerk of the superior court. The clerk of the superior court shall pay all monies collected from this fee to the county treasurer for deposit in the juvenile probation fund to be used as provided in section 12-268. Any amount greater than forty dollars of the fee assessed pursuant to this ~~subsection~~ SECTION shall only be used to supplement monies currently used for the salaries of juvenile probation and surveillance officers and for support of programs and services of the superior court juvenile probation departments.

3. The department of juvenile corrections is the supervising agency, all monies assessed pursuant to this section shall be ordered to be paid to the department of juvenile corrections and shall be used to fund work restitution programs for juveniles.

4. A person or another state agency or state institution is responsible for supervision, all monies assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. IF THE JUVENILE WAS ADOPTED OR PLACED IN PERMANENT GUARDIANSHIP AFTER THE JUVENILE WAS DETERMINED BY THE COURT TO BE A DEPENDENT CHILD, THE JUVENILE COURT SHALL CONSIDER THE TOTALITY OF THE CHILD'S CIRCUMSTANCES AND THE NATURE OF THE DEPENDENCY. THE JUVENILE COURT MAY WAIVE ALL OR PART OF THE FEE PRESCRIBED BY SUBSECTION A OF THIS SECTION IF THE JUVENILE COURT DETERMINES EXTENUATING CIRCUMSTANCES EXIST.

Sec. 2. Section 8-243, Arizona Revised Statutes, is amended to read:

8-243. Liability of parents to bear expense; exception

A. The supreme court shall administer the activities, including providing the cost of services, for children who are referred to the juvenile court as incorrigible or delinquent and who are placed in foster care other than in a state institution or who require shelter care or treatment. If the juvenile court places a referred child in foster care or orders a referred child to participate in treatment or an education program or if a probation officer requires a child to comply with a program pursuant to section 8-321, subsection F, the juvenile court shall inquire into the ability of the child

or the child's parent to bear the charge or expense of the foster care, treatment, education program or program required pursuant to section 8-321, subsection F. If the court is satisfied that the child or the child's parent can bear the charge or expense or any portion of the charge or expense, the juvenile court may fix the amount of the payment and shall direct the child or parent to pay the amount monthly to the clerk of the court until the child is discharged from foster care, treatment, an education program or a program required pursuant to section 8-321, subsection F. The clerk of the court shall transmit monies collected monthly to the supreme court for deposit in the juvenile probation services fund to reimburse the cost of services incurred under sections 8-321 and 8-322. Monies collected for this purpose are exempt from section 41-2421, subsection C.

B. If the juvenile court awards or commits a child to the department of juvenile corrections or other state department or institution, the juvenile court shall inquire into the ability of the child, the child's estate, parent or guardian or the person who has custody of the child to bear the charge, expense and maintenance including the medical, dental and mental health care of the child while the child is committed to the custody of the department of juvenile corrections or other public or private institution or agency, or private person or persons. If the court is satisfied that the child, the child's estate, parent or guardian or the person who has custody of the child can bear the charges, expense and maintenance or any portion of them, the juvenile court shall fix the amount thereof and direct that the child, the child's estate, parent or guardian or the person who has custody of the child pay the amount monthly to the department of juvenile corrections or other public or private institution or agency, or private person or persons to which the child is awarded or committed. The department of juvenile corrections or other public or private institution or agency or private person or persons shall acknowledge the receipt of the monies. The department of juvenile corrections shall retain and utilize the money it receives to fund work restitution programs for juveniles. Except as provided in section 8-243.01, other state institutions or agencies shall deposit, pursuant to sections 35-146 and 35-147, the money in the state general fund. The juvenile court shall transmit a copy of its orders concerning payment along with its order of commitment.

C. If the juvenile court awards or commits a child to a juvenile detention facility, the juvenile court shall inquire into the ability of the child, the child's estate, parent or guardian or the person who has custody of the child to bear the charge, expense and maintenance including food, clothing, shelter and supervision of the child while the child is detained in a juvenile detention facility. If the juvenile court is satisfied that the child, the child's estate, parent or guardian or the person who has custody of the child can bear the charges, expense and maintenance or any portion of them, the juvenile court may fix the amount of the payment and direct that the child, the child's estate, parent or guardian or the person who has

custody of the child pay the amount monthly to the juvenile court. The assessment is collectible as a civil judgment. The juvenile court shall acknowledge the receipt of the monies and shall transmit the monies monthly to the county treasurer for deposit in the county general fund. The juvenile court shall transmit a copy of its orders concerning payment along with its order of commitment.

D. Subsection C of this section does not apply to foster parents and group homes.

E. IF THE JUVENILE WAS ADOPTED OR PLACED IN PERMANENT GUARDIANSHIP AFTER THE JUVENILE WAS DETERMINED BY THE COURT TO BE A DEPENDENT CHILD, THE JUVENILE COURT SHALL CONSIDER THE TOTALITY OF THE CHILD'S CIRCUMSTANCES AND THE NATURE OF THE DEPENDENCY. THE JUVENILE COURT MAY WAIVE ALL OR PART OF THE CHARGES, EXPENSE AND MAINTENANCE PRESCRIBED BY THIS SECTION IF THE JUVENILE COURT DETERMINES EXTENUATING CIRCUMSTANCES EXIST.

Sec. 3. Section 8-321, Arizona Revised Statutes, is amended to read:

8-321. Referrals; diversions; conditions; community based alternative programs

A. Except as provided in subsection B of this section, before a petition is filed or an admission or adjudication hearing is held, the county attorney may divert the prosecution of a juvenile who is accused of committing a delinquent act or a child who is accused of committing an incorrigible act to a community based alternative program or to a diversion program administered by the juvenile court.

B. A juvenile is not eligible for diversion if any of the following applies:

1. The juvenile committed a dangerous offense as defined in section 13-105.

2. The juvenile is a chronic felony offender as defined in section 13-501.

3. The juvenile committed an offense that is listed in section 13-501.

4. The juvenile is alleged to have committed a violation of section 28-1381, 28-1382 or 28-1383.

5. The juvenile is alleged to have committed an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34 and the juvenile has previously participated in a community based alternative program or a diversion program administered by the juvenile court at least two times within twenty-four months before the date of the commission of the alleged offense.

C. Except as provided in section 8-323, the county attorney has sole discretion to decide whether to divert or defer prosecution of a juvenile offender. The county attorney may designate the offenses that shall be retained by the juvenile court for diversion or that shall be referred directly to a community based alternative program that is authorized by the county attorney.

D. The county attorney or the juvenile court in cooperation with the county attorney may establish community based alternative programs.

E. Except for offenses that the county attorney designates as eligible for diversion or referral to a community based alternative program, on receipt of a referral alleging the commission of an offense, the juvenile probation officer shall submit the referral to the county attorney to determine if a petition should be filed.

F. If the county attorney diverts the prosecution of a juvenile to the juvenile court, the juvenile probation officer shall conduct a personal interview with the alleged juvenile offender. At least one of the juvenile's parents or guardians shall attend the interview. The probation officer may waive the requirement for the attendance of the parent or guardian for good cause. If the juvenile acknowledges responsibility for the delinquent or incorrigible act, the juvenile probation officer shall require that the juvenile comply with one or more of the following conditions:

1. Participation in unpaid community restitution work.

2. Participation in a counseling program that is approved by the court and that is designed to strengthen family relationships and to prevent repetitive juvenile delinquency.

3. Participation in an education program that is approved by the court and that has as its goal the prevention of further delinquent behavior.

4. Participation in an education program that is approved by the court and that is designed to deal with ancillary problems experienced by the juvenile, such as alcohol or drug abuse.

5. Participation in a nonresidential program of rehabilitation or supervision that is offered by the court or offered by a community youth serving agency and approved by the court.

6. Payment of restitution to the victim of the delinquent act.

7. Payment of a monetary assessment.

G. If the juvenile successfully complies with the conditions set forth by the probation officer, the county attorney shall not file a petition in juvenile court and the program's resolution shall not be used against the juvenile in any further proceeding and is not an adjudication of incorrigibility or delinquency. The resolution of the program is not a conviction of crime, does not impose any civil disabilities ordinarily resulting from a conviction and does not disqualify the juvenile in any civil service application or appointment.

H. In order to participate in a community based alternative program the juvenile who is referred to a program shall admit responsibility for the essential elements of the accusation and shall cooperate with the program in all of its proceedings.

I. All of the following apply to each community based alternative program that is established pursuant to this section:

1. The juvenile's participation is voluntary.

2. The victim's participation is voluntary.

3. The community based alternative program shall ensure that the victim, the juvenile's parent or guardian and any other persons who are directly affected by an offense have the right to participate.

4. The participants shall agree to the consequences imposed on the juvenile or the juvenile's parent or guardian.

5. The meetings and records shall be open to the public.

J. After holding a meeting the participants in the community based alternative program may agree on any legally reasonable consequences that the participants determine are necessary to fully and fairly resolve the matter except confinement.

K. The participants shall determine consequences within thirty days after referral to the community based alternative program, and the juvenile shall complete the consequences within ninety days after the matter is referred to the community based alternative program. The county attorney or the juvenile probation officer may extend the time in which to complete the consequences for good cause. If the community based alternative program involves a school, the deadlines for determination and completion of consequences shall be thirty and ninety school days, respectively.

L. The community based alternative program, the juvenile, the juvenile's parent or guardian and the victim may sign a written contract in which the parties agree to the program's resolution of the matter and in which the juvenile's parent or guardian agrees to ensure that the juvenile complies with the contract. The contract may provide that the parent or guardian shall post a bond payable to this state to secure the performance of any consequence imposed on the juvenile pursuant to subsection J of this section.

M. If the juvenile successfully completes the consequences, the county attorney shall not file a petition in juvenile court and the program's resolution shall not be used against the juvenile in any further proceeding and is not an adjudication of incorrigibility or delinquency. The resolution of the program is not a conviction of crime, does not impose any civil disabilities ordinarily resulting from a conviction and does not disqualify the juvenile in any civil service application or appointment.

N. The county attorney or juvenile court shall assess the parent of a juvenile who is diverted pursuant to subsection A of this section a fee of fifty dollars unless, after determining the inability of the parent to pay the fee, the county attorney or juvenile court assesses a lesser amount. IF THE JUVENILE WAS ADOPTED OR PLACED IN PERMANENT GUARDIANSHIP AFTER THE JUVENILE WAS DETERMINED BY THE COURT TO BE A DEPENDENT CHILD, THE COUNTY ATTORNEY OR JUVENILE COURT SHALL CONSIDER THE TOTALITY OF THE CHILD'S CIRCUMSTANCES AND THE NATURE OF THE DEPENDENCY. THE COUNTY ATTORNEY OR JUVENILE COURT MAY WAIVE ALL OR PART OF THE FEE PRESCRIBED BY THIS SUBSECTION IF THE COUNTY ATTORNEY OR JUVENILE COURT DETERMINES EXTENUATING CIRCUMSTANCES EXIST. All monies assessed pursuant to this subsection shall be used for the administration and support of community based alternative programs or

juvenile court diversion programs. 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 juvenile probation and surveillance officers and for support of programs and services of the superior court juvenile probation departments. The clerk of the superior court shall pay all monies collected from this assessment to the county treasurer for deposit in the juvenile probation fund, to be utilized as provided in section 12-268, and the county attorney shall pay all monies collected from this assessment into the county attorney juvenile diversion fund established by section 11-537.

O. The supreme court shall annually establish an average cost per juvenile for providing diversion services in each county, based on the monies appropriated for diversion pursuant to section 8-322, excluding the cost of juvenile intake services provided by the juvenile court, and the number of juveniles diverted the previous year. On the county attorney's certification to the supreme court of the number of juveniles diverted to a county attorney community based alternative program each quarter, the annual average cost per juvenile for each juvenile diverted shall be reimbursed to the county attorney juvenile diversion fund established by section 11-537 out of monies appropriated to the supreme court for diversion programs.

P. If the juvenile does not acknowledge responsibility for the offense, or fails to comply with the consequences set by the community based alternative program, the case shall be submitted to the county attorney for review.

Q. After reviewing a referral, if the county attorney declines prosecution, the county attorney may return the case to the juvenile probation department for further action as provided in subsection F of this section.

APPROVED BY THE GOVERNOR APRIL 18, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2011.

Passed the House April 11, 2011, by the following vote: 58 Ayes, 0 Nays, 2 Not Voting

Speaker of the House / Pro Tempore

Cheryl Laube
Chief Clerk of the House

Passed the Senate March 8, 2011, by the following vote: 30 Ayes, 0 Nays, 0 Not Voting

President of the Senate

Susan Acedo
Assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this 12 day of April, 2011, at 1:50 o'clock P. M.

Nicole Bendle
Secretary to the Governor

Approved this 18th day of April, 2011, at 2:47 o'clock P. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State this 18th day of April, 2011, at 5:04 o'clock P M.

Ken Bennett
Secretary of State

S.B. 1559