

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 208

HOUSE BILL 2442

AN ACT

AMENDING SECTIONS 31-411, 31-418, 31-467.06 AND 41-1604.13, ARIZONA REVISED STATUTES; RELATING TO PRISONERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 31-411, Arizona Revised Statutes, is amended to
3 read:

4 31-411. Parole or discharge; conditions of parole; release
5 under supervision of state department of corrections;
6 notice of hearing; exceptions; drug testing costs

7 A. Any prisoner who has been certified as eligible for parole or
8 absolute discharge from imprisonment pursuant to section 31-412, subsection B
9 or section 41-1604.09 shall be given an opportunity to apply for release ~~upon~~
10 ON parole or for an absolute discharge from imprisonment. The board of
11 executive clemency shall not entertain any other form of application or
12 petition for the release ~~upon~~ ON parole or absolute discharge from
13 imprisonment of any prisoner.

14 B. A prisoner who is eligible for parole or absolute discharge from
15 imprisonment shall be given an opportunity to be heard either before a
16 hearing officer designated by the board or the board itself, at the
17 discretion of the board.

18 C. If the hearing is heard by a hearing officer, the hearing officer
19 shall make a recommendation on application for parole or absolute discharge
20 from imprisonment to the board within thirty days after the hearing date.
21 Within thirty days after the date of the hearing officer's recommendations,
22 the board shall review these recommendations and either approve, with or
23 without conditions, or reject the prisoner's application for parole or
24 absolute discharge from imprisonment. A prisoner who is eligible for parole
25 or absolute discharge from imprisonment shall not be denied parole or
26 absolute discharge from imprisonment without an opportunity to be heard
27 before the board unless another form of release has been granted.

28 D. If parole is granted, the prisoner shall remain on parole unless
29 the board revokes the parole or grants an absolute discharge from parole or
30 until the prisoner reaches the individual earned release credit date pursuant
31 to section 41-1604.10. If the prisoner violates a condition of parole but
32 has not committed an additional offense, the board may place the prisoner on
33 electronic monitoring and order the defendant to participate in a community
34 accountability PILOT program pursuant to section 41-1609.05. If the prisoner
35 is still on parole on reaching the individual earned release credit date
36 pursuant to section 41-1604.10, the prisoner shall be terminated from parole
37 but shall be subject to revocation under section 41-1604.10. When the
38 prisoner reaches the individual earned release credit date the prisoner's
39 parole shall be terminated and the prisoner shall no longer be under the
40 authority of the board.

41 E. During the period of time that the prisoner remains on supervised
42 parole under subsection D of this section, the board shall require as a
43 condition of parole that the prisoner pay a monthly supervision fee of not
44 less than sixty-five dollars unless, after determining the inability of the
45 prisoner to pay the fee, the board requires payment of a lesser amount. The

1 supervising parole officer shall monitor the collection of the fee. The
2 board may also impose any conditions of parole it deems appropriate in order
3 to ensure that the best interests of the prisoner and the citizens of this
4 state are served. These conditions may include:

- 5 1. Participation in a rehabilitation program or counseling.
- 6 2. Performance of community restitution work.

7 F. Seventy per cent of the monies collected pursuant to subsection E
8 of this section shall be deposited, pursuant to sections 35-146 and 35-147,
9 in the victim compensation and assistance fund established by section 41-2407
10 and thirty per cent shall be deposited in the community corrections
11 enhancement fund established by section 31-418.

12 G. When parole or absolute discharge from imprisonment is denied, the
13 board, within ten days, shall prepare and deliver to the director of the
14 state department of corrections a written statement specifying the
15 individualized reasons for the denial of parole or absolute discharge from
16 imprisonment unless another form of release has been granted. The prisoner
17 may view the written statement prepared by the board. Every prisoner, having
18 served not less than one year, may be temporarily released according to the
19 rules of the department one hundred eighty days before the expiration of the
20 sentence or the earned release credit date, whichever first occurs, if the
21 director finds that the release is in the best interest of the state. The
22 releasee shall remain under the control of the state department of
23 corrections until expiration of the term specified in the sentence. If the
24 releasee violates any condition of release, the releasee may be returned to
25 custody without further process.

26 H. When a commutation, absolute discharge from imprisonment or parole
27 is to be considered, the board, on request and before holding a hearing on
28 the commutation, absolute discharge from imprisonment or parole, shall notify
29 the attorney general, the presiding judge of the superior court, the county
30 attorney in the county in which the prisoner requesting a commutation,
31 absolute discharge from imprisonment or parole was sentenced, and the victim
32 of the offense for which the prisoner is incarcerated. The notice to the
33 victim shall be mailed to the last known address. The notice shall state the
34 name of the prisoner requesting the commutation, absolute discharge from
35 imprisonment or parole and shall set the month of hearing on the application.
36 The notice to the victim shall also inform the victim of the victim's right
37 to be present and to submit a written report to the board expressing the
38 victim's opinion concerning the release of the prisoner. No hearing
39 concerning commutations, absolute discharge from imprisonment or parole shall
40 be held until fifteen days after the date of giving the notice. On mailing
41 the notice, the board shall file a hard copy of the notice as evidence that
42 notification was sent.

43 I. The provisions of this section requiring notice to the officials
44 named in subsection H of this section shall not apply:

1 payment of a lesser amount. The supervising parole, community supervision or
2 probation officer shall monitor the collection of the fee.

3 B. Seventy per cent of the monies collected pursuant to SUBSECTION A
4 OF this section shall be deposited, pursuant to sections 35-146 and 35-147,
5 in the victim compensation and assistance fund established by section 41-2407
6 and thirty per cent shall be deposited in the adult probation services fund
7 established by section 12-267 or, if the person is supervised by the state
8 department of corrections, in the community corrections enhancement fund
9 established by section 31-418.

10 C. IN ADDITION TO ANY OTHER FEES, A PERSON WHO IS BEING SUPERVISED IN
11 THIS STATE PURSUANT TO THIS ARTICLE MAY BE REQUIRED TO PAY AS A CONDITION OF
12 PAROLE OR COMMUNITY SUPERVISION THE REASONABLE COSTS ASSOCIATED WITH THE
13 PERSON'S PARTICIPATION IN A DRUG TESTING PROGRAM. THE PERSON'S COSTS SHALL
14 NOT EXCEED THE STATE DEPARTMENT OF CORRECTIONS' COST FOR THE PROGRAM. THE
15 MONIES COLLECTED PURSUANT TO THIS SUBSECTION BY THE DEPARTMENT MAY ONLY BE
16 USED TO OFFSET THE COSTS OF THE DRUG TESTING PROGRAM.

17 Sec. 4. Section 41-1604.13, Arizona Revised Statutes, is amended to
18 read:

19 41-1604.13. Home arrest; eligibility; victim notification;
20 conditions; applicability; definitions

21 A. An inmate who has served not less than six months of the sentence
22 imposed by the court is eligible for the home arrest program if the inmate:

23 1. Meets the following criteria:

24 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
25 a dangerous offense.

26 (b) Was not convicted of a sexual offense.

27 (c) Has not previously been convicted of any felony.

28 2. Violated parole by the commission of a technical violation that was
29 not chargeable or indictable as a criminal offense.

30 3. Is eligible for work furlough.

31 4. Is eligible for parole pursuant to section 31-412, subsection A.

32 B. The board of executive clemency shall determine which inmates are
33 released to the home arrest program based on the criteria in subsection A of
34 this section and based on a determination that there is a substantial
35 probability that the inmate will remain at liberty without violating the law
36 and that the release is in the best interests of the state after considering
37 the offense for which the inmate is presently incarcerated, the prior record
38 of the inmate, the conduct of the inmate while incarcerated and any other
39 information concerning the inmate that is in the possession of the state
40 department of corrections, including any presentence report. The board
41 maintains the responsibility of revocation as applicable to all parolees.

42 C. An inmate who is otherwise eligible for home arrest, who is not on
43 work furlough and who is currently serving a sentence for a conviction of a
44 serious offense or conspiracy to commit or attempt to commit a serious

1 offense shall not be granted home arrest except by one of the following
2 votes:

3 1. A majority affirmative vote if four or more members of the board of
4 executive clemency consider the action.

5 2. A unanimous affirmative vote if three members of the board of
6 executive clemency consider the action.

7 3. A unanimous affirmative vote if two members of the board of
8 executive clemency consider the action pursuant to section 31-401, subsection
9 I and the chairman of the board concurs after reviewing the information
10 considered by the two members.

11 D. Home arrest is conditioned on the following:

12 1. Active electronic monitoring surveillance for a minimum term of one
13 year or until eligible for general parole.

14 2. Participation in gainful employment or other beneficial activities.

15 3. Submission to alcohol and drug tests as mandated.

16 4. Payment of the electronic monitoring fee in an amount determined by
17 the board of not less than one dollar per day and not more than the total
18 cost of the electronic monitoring unless, after determining the inability of
19 the inmate to pay the fee, the board requires payment of a lesser amount.
20 The fees collected shall be returned to the department's home arrest program
21 to offset operational costs of the program.

22 5. Remaining at the inmate's place of residence at all times except
23 for movement out of the residence according to mandated conditions.

24 6. Adherence to any other conditions imposed by the court, board of
25 executive clemency or supervising corrections officers.

26 7. Compliance with all other conditions of supervision.

27 8. Payment of a monthly home arrest supervision fee of at least
28 sixty-five dollars unless, after determining the inability of the inmate to
29 pay the fee, the department requires payment of a lesser amount. The
30 supervising corrections officer shall monitor the collection of the fee.
31 Monies collected shall be deposited, pursuant to sections 35-146 and 35-147,
32 in the community corrections enhancement fund established by section 31-418.

33 9. PAYMENT OF A DRUG TESTING FEE IN AN AMOUNT TO BE DETERMINED BY THE
34 BOARD AND NOT TO EXCEED THE COSTS OF THE DRUG TESTING PROGRAM. THE FEES
35 COLLECTED PURSUANT TO THIS PARAGRAPH BY THE DEPARTMENT MAY ONLY BE USED TO
36 OFFSET THE COSTS OF THE DRUG TESTING PROGRAM.

37 E. Before holding a hearing on home arrest, the board on request shall
38 notify and afford an opportunity to be heard to the presiding judge of the
39 superior court in the county in which the inmate requesting home arrest was
40 sentenced, the prosecuting attorney and the director of the arresting law
41 enforcement agency. The board shall notify the victim of the offense for
42 which the inmate is incarcerated. The notice shall state the name of the
43 inmate requesting home arrest, the offense for which the inmate was
44 sentenced, the length of the sentence and the date of admission to the
45 custody of the state department of corrections. The notice to the victim

1 shall also inform the victim of the victim's right to be present and to
2 submit a written report to the board expressing the victim's opinion
3 concerning the inmate's release. No hearing concerning home arrest may be
4 held until fifteen days after the date of giving the notice. On mailing the
5 notice, the board shall file a hard copy of the notice as evidence that
6 notification was sent.

7 F. An inmate who is placed on home arrest is on inmate status, is
8 subject to all the limitations of rights and movement and is entitled only to
9 due process rights of return.

10 G. If an inmate violates a condition of home arrest that poses any
11 threat or danger to the community, or commits an additional felony offense,
12 the board shall revoke the home arrest and return the inmate to the custody
13 of the state department of corrections to complete the term of imprisonment
14 as authorized by law.

15 H. The ratio of supervising corrections officers to supervisees in the
16 home arrest program shall be no greater than one officer for every
17 twenty-five supervisees.

18 I. The board shall determine when the supervisee is eligible for
19 transfer to the regular parole program pursuant to section 31-411.

20 J. This section applies only to persons who commit felony offenses
21 before January 1, 1994.

22 K. For the purposes of this section:

23 1. "Dangerous offense" has the same meaning prescribed in section
24 13-105.

25 2. "Serious offense" includes any of the following:

26 (a) A serious offense as defined in section 13-706, subsection F,
27 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

28 (b) A dangerous crime against children as defined in section 13-705.
29 The citation of section 13-705 is not a necessary element for a serious
30 offense designation.

31 (c) A conviction under a prior criminal code for any offense that
32 possesses reasonably equivalent offense elements as the offense elements that
33 are listed under section 13-705, subsection P, paragraph 1 or section 13-706,
34 subsection F, paragraph 1.

~~APPROVED BY THE GOVERNOR APRIL 5, 2012.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2012.~~

Passed the House February 7, 2012

Passed the Senate March 28, 2012

by the following vote: 40 Ayes,

by the following vote: 30 Ayes,

16 Nays, 3 Not Voting
1 vacant

0 Nays, 0 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
_____ day of _____, 20____
at _____ o'clock _____ M.

Secretary to the Governor~~

Approved this _____ day of _____

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

~~This Bill received by the Secretary of State
this _____ day of _____, 20____
at _____ o'clock _____ M.

Secretary of State~~

H.B. 2442

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 3, 2012,

by the following vote: 39 Ayes,

19 Nays, 2 Not Voting



Speaker of the House



Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

3 day of April, 2012,

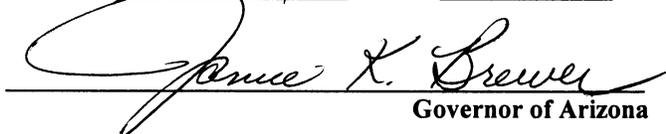
at 12:50 o'clock P M.


Secretary to the Governor

Approved this 5th day of

April, 2012;

at 10:34 o'clock A. M.


Governor of Arizona

H.B. 2442

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 5th day of April, 2012,

at 4:20 o'clock P M.


acting Secretary of State