House Engrossed Senate Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 158

SENATE BILL 1298

AN ACT

AMENDING SECTIONS 8-341, 8-352, 8-355, 13-914 AND 13-916, 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 8-341, Arizona Revised Statutes, is amended to read:

8-341. Disposition and commitment; definitions

A. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

1. It may award a delinquent juvenile:

(a) To the care of the juvenile's parents, subject to the supervision of a probation department.

(b) To a probation department, subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a private agency or institution, subject to the supervision of a probation officer.

(e) To the department of juvenile corrections.

(f) To maternal or paternal relatives, subject to the supervision of a probation department.

(g) To an appropriate official of a foreign country of which the juvenile is a foreign national who is unaccompanied by a parent or guardian in this state to remain on unsupervised probation for at least one year on the condition that the juvenile cooperate with that official.

2. It may award an incorrigible child:

(a) To the care of the child's parents, subject to the supervision of a probation department.

(b) To the protective supervision of a probation department, subject to any conditions the court may impose.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a public or private agency, subject to the supervision of a probation department.

(e) To maternal or paternal relatives, subject to the supervision of a probation department.

B. If a juvenile is placed on probation pursuant to this section, the period of probation may continue until the juvenile's eighteenth birthday, except that the term of probation shall not exceed one year if all of the following apply:

1. The juvenile is not charged with a subsequent offense.

2. The juvenile has not been found in violation of a condition of probation.

3. The court has not made a determination that it is in the best interests of the juvenile or the public to require continued supervision. The court shall state by minute entry or written order its reasons for finding that continued supervision is required.

4. The offense for which the juvenile is placed on probation does not involve a dangerous offense as defined in section 13-105.

5. The offense for which the juvenile is placed on probation does not involve a violation of title 13, chapter 14 or 35.1.

6. Restitution ordered pursuant to section 8-344 has been made.

7. The juvenile's parents have not requested that the court continue the juvenile's probation for more than one year.

C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile:

> You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

D. If a juvenile is fourteen years of age or older and is adjudicated as a repeat felony juvenile offender, the juvenile court shall place the juvenile on juvenile intensive probation, which may include home arrest and electronic monitoring, may place the juvenile on juvenile intensive probation, which may include incarceration for a period of time in a juvenile detention center, or may commit the juvenile to the department of juvenile corrections pursuant to subsection A, paragraph 1, subdivision (e) of this section for a significant period of time.

E. If the juvenile is adjudicated as a repeat felony juvenile offender, the court shall provide the following written notice to the juvenile:

> You have been adjudicated a repeat felony juvenile offender. You are now on notice that if you are arrested for another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fifteen years of age or older, you will be tried as an adult in the criminal division of the superior court. If you commit the other offense when you are fourteen years of age or older, you may be tried as an adult in the criminal division of the superior court. If you are convicted as an adult, you will be sentenced to a term of incarceration. If you are convicted as

1 an adult of a felony offense and you commit any other offense,
2 you will be prosecuted as an adult.
3 F. The failure or inability of the court to provide the notices
4 required under subsections C and E of this section does not preclude the use
5 of the prior adjudications for any purpose otherwise permitted.
6 G. Except as provided in subsection S of this section, after
7 considering the nature of the offense and the age, physical and mental
8 condition and earning capacity of the juvenile, the court shall order the
9 juvenile to pay a reasonable monetary assessment if the court determines that
10 an assessment is in aid of rehabilitation. If the director of the department
11 of juvenile corrections determines that enforcement of an order for monetary
12 assessment as a term and condition of conditional liberty is not
13 cost-effective, the director may require the youth to perform an equivalent
14 amount of community restitution in lieu of the payment ordered as a condition
15 of conditional liberty.
16 H. If a child is adjudicated incorrigible, the court may impose a
17 monetary assessment on the child of not more than one hundred fifty dollars.
18 I. A juvenile who is charged with unlawful purchase, possession or
19 consumption of spirituous liquor is subject to section 8-323. The monetary
20 assessment for a conviction of unlawful purchase, possession or consumption
21 of spirituous liquor by a juvenile shall not exceed five hundred dollars.
22 The court of competent jurisdiction may order a monetary assessment or
23 equivalent community restitution.
24 J. The court shall require the monetary assessment imposed under
25 subsection G or H of this section on a juvenile who is not committed to the
26 department of juvenile corrections to be satisfied in one or both of the
27 following forms:
28 1. Monetary reimbursement by the juvenile in a lump sum or installment
29 payments through the clerk of the superior court for appropriate
30 distribution.
31 2. A program of work, not in conflict with regular schooling, to
32 repair damage to the victim's property, to provide community restitution or
33 to provide the juvenile with a job for wages. The court order for
34 restitution or monetary assessment shall specify, according to the
35 dispositional program, the amount of reimbursement and the portion of wages
36 of either existing or provided work that is to be credited toward
37 satisfaction of the restitution or assessment, or the nature of the work to
38 be performed and the number of hours to be spent working. The number of
39 hours to be spent working shall be set by the court based on the severity of
40 the offense but shall not be less than sixteen hours.
41 K. If a juvenile is committed to the department of juvenile
42 corrections, the court shall specify the amount of the monetary assessment
43 imposed pursuant to subsection G or H of this section.

L. After considering the length of stay guidelines developed pursuant to section 41-2816, subsection C, the court may set forth in the order of commitment the minimum period during which the juvenile shall remain in secure care while in the custody of the department of juvenile corrections. When the court awards a juvenile to the department of juvenile corrections or an institution or agency, it shall transmit with the order of commitment copies of a diagnostic psychological evaluation and educational assessment if one has been administered, copies of the case report, all other psychological and medical reports, restitution orders, any request for postadjudication notice that has been submitted by a victim and any other documents or records pertaining to the case requested by the department of juvenile corrections or an institution or agency. The department shall not release a juvenile from secure care before the juvenile completes the length of stay determined by the court in the commitment order unless the county attorney in the county from which the juvenile was committed requests the committing court to reduce the length of stay. The department may temporarily escort the juvenile from secure care pursuant to section 41-2804, may release the juvenile from secure care without a further court order after the juvenile completes the length of stay determined by the court or may retain the juvenile in secure care for any period subsequent to the completion of the length of stay in accordance with the law.

M. Written notice of the release of any juvenile pursuant to subsection L of this section shall be made to any victim requesting notice, the juvenile court that committed the juvenile and the county attorney of the county from which the juvenile was committed.

N. Notwithstanding any law to the contrary, if a person is under the supervision of the court as an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment services may be provided until the person reaches twenty-one years of age if the court, the person and the state agree to the provision of the treatment and a motion to transfer the person pursuant to section 8-327 has not been filed or has been withdrawn. The court may terminate the provision of treatment services after the person reaches eighteen years of age if the court determines that any of the following applies:

1. The person is not progressing toward treatment goals.

2. The person terminates treatment.

3. The person commits a new offense after reaching eighteen years of age.

4. Continued treatment is not required or is not in the best interests of the state or the person.

O. On the request of a victim of an act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus. If the victim is a minor the prosecuting

attorney shall file this petition at the request of the victim's parent or guardian. If the act committed against a victim is an act that if committed by an adult would be a sexual offense or the court determines that sufficient evidence exists to indicate that significant exposure occurred, it shall order the department of juvenile corrections or the department of health services to test the juvenile pursuant to section 13-1415. Notwithstanding any law to the contrary, the department of juvenile corrections and the department of health services shall release the test results only to the victim, the delinquent juvenile, the delinquent juvenile's parent or guardian and a minor victim's parent or guardian and shall counsel them regarding the meaning and health implications of the results.

P. If a juvenile has been adjudicated delinquent for an offense that if committed by an adult would be ~~a felony~~ AN OFFENSE LISTED IN SECTION 41-1750, SUBSECTION C, the court shall provide the department of public safety Arizona automated fingerprint identification system established in section 41-2411 with the juvenile's TEN-PRINT fingerprints, personal identification data and other pertinent information. If a juvenile has been committed to the department of juvenile corrections the department shall provide the fingerprints and information required by this subsection to the Arizona automated fingerprint identification system. If the juvenile's fingerprints and information have been previously submitted to the Arizona automated fingerprint identification system the information is not required to be resubmitted.

Q. Access to fingerprint records submitted pursuant to subsection P of this section shall be limited to the administration of criminal justice as defined in section 41-1750. Dissemination of fingerprint information shall be limited to the name of the juvenile, juvenile case number, date of adjudication and court of adjudication.

R. If a juvenile is adjudicated delinquent for an offense that if committed by an adult would be a misdemeanor, the court may prohibit the juvenile from carrying or possessing a firearm while the juvenile is under the jurisdiction of the department of juvenile corrections or the juvenile court.

S. If a juvenile is adjudicated delinquent for a violation of section 13-1602, subsection A, paragraph 5, the court shall order the juvenile to pay a fine of at least three hundred dollars but not more than one thousand dollars. Any restitution ordered shall be paid in accordance with section 13-809, subsection A. The court may order the juvenile to perform community restitution in lieu of the payment for all or part of the fine if it is in the best interests of the juvenile. The amount of community restitution shall be equivalent to the amount of the fine by crediting any service performed at a rate of ten dollars per hour. If the juvenile is convicted of a second or subsequent violation of section 13-1602, subsection A, paragraph 5 and is ordered to perform community restitution, the court may order the

parent or guardian of the juvenile to assist the juvenile in the performance of the community restitution if both of the following apply:

1. The parent or guardian had knowledge that the juvenile intended to engage in or was engaging in the conduct that gave rise to the violation.

2. The parent or guardian knowingly provided the juvenile with the means to engage in the conduct that gave rise to the violation.

T. If a juvenile is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34 and is placed on juvenile probation, the court may order the juvenile to submit to random drug and alcohol testing at least two times per week as a condition of probation.

U. A juvenile who is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34, who is placed on juvenile probation and who is found to have consumed any spirituous liquor or to have used any drug listed in section 13-3401 while on probation is in violation of the juvenile's probation. IF a juvenile ~~who~~ commits a third or subsequent violation of a condition of probation as prescribed by this subsection, THE JUVENILE shall be brought before the juvenile court and, if the allegations are proven, the court shall either revoke probation and hold a disposition hearing pursuant to this section or select additional conditions of probation as it deems necessary, including detention, global position system monitoring, additional alcohol or drug treatment, community restitution, additional drug or alcohol testing or a monetary assessment.

V. For the purposes of this section:

1. "First time felony juvenile offender" means a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

2. "Repeat felony juvenile offender" means a juvenile to whom both of the following apply:

(a) Is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

(b) Previously has been adjudicated a first time felony juvenile offender.

3. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

Sec. 2. Section 8-352, Arizona Revised Statutes, is amended to read:

8-352. <u>Intensive probation; evaluation; criteria; limit; conditions</u>

A. A juvenile probation officer shall prepare a disposition summary report for every juvenile who has been adjudicated of a delinquent act or of a technical violation of probation.

B. The juvenile probation officer shall evaluate the needs of the juvenile and the juvenile's risk to the community, including the nature of the offense, the delinquent history of the juvenile, the juvenile's history

of referrals and adjustments and the recommendation of the juvenile's parents. The juvenile probation officer shall include the recommendation of the juvenile's parents in the disposition summary report. If the nature of the offense and the prior delinquent history of the juvenile indicate that the juvenile should be included in an intensive probation program pursuant to supreme court guidelines for juvenile intensive probation, the juvenile probation officer may recommend to the court that the juvenile be granted intensive probation.

C. After reviewing the juvenile's prior record, the facts and circumstances of the current delinquent act or technical violation of probation and the disposition summary report, the court may grant the juvenile a period of intensive probation.

D. When granting intensive probation the court shall set forth on the record the factual reasons for using the disposition.

E. Intensive probation shall be conditioned on the juvenile:

1. Participating in one or more of the following ~~throughout the term of intensive probation~~, IF APPROVED BY THE COURT OR PROBATION OFFICER, for not less than thirty-two hours each week THROUGHOUT THE TERM OF PROBATION:

(a) School.

(b) A ~~court ordered~~ treatment program.

(c) Employment.

(d) Supervised community restitution work.

(e) AN ACTIVITY THAT IMPROVES THE JUVENILE'S PROSOCIAL SKILL DEVELOPMENT, INCLUDING ENHANCING THE JUVENILE'S RELATIONSHIP WITH THE JUVENILE'S FAMILY.

2. Paying restitution and probation fees except that the inability to pay probation fees or restitution does not prohibit participation in the intensive probation program.

3. Remaining at a place of residence at all times except to attend school, work or treatment, to perform community restitution or to participate in some activity, as specifically allowed in each instance by the supervising juvenile probation officer, or if in the direct company of a parent, guardian or custodian, as approved by the juvenile probation officer.

4. Allowing administration of drug and alcohol tests as directed by a juvenile probation officer.

5. Meeting any other conditions imposed by the court, including electronic monitoring, to meet the needs of the juvenile or to limit the risks to the community.

F. Probation fees shall be deposited in the juvenile probation fund established pursuant to section 12-268.

Sec. 3. Section 8-355, Arizona Revised Statutes, is amended to read:

8-355. School; employment; community restitution programs

The juvenile intensive probation team shall ensure that each juvenile under its supervision is ~~either employed, attending school, participating in a community restitution program or attending a court ordered treatment~~

~~program or any combination thereof as ordered by the court~~ PARTICIPATING IN ONE OR MORE OF THE FOLLOWING, IF APPROVED BY THE COURT OR PROBATION OFFICER, for not less than thirty-two hours each week~~.~~ THROUGHOUT THE TERM OF INTENSIVE PROBATION:

1. SCHOOL.
2. A TREATMENT PROGRAM.
3. EMPLOYMENT.
4. A COMMUNITY RESTITUTION PROGRAM.
5. AN ACTIVITY THAT IMPROVES THE JUVENILE'S PROSOCIAL SKILL DEVELOPMENT, INCLUDING ENHANCING THE JUVENILE'S RELATIONSHIP WITH THE JUVENILE'S FAMILY.

Sec. 4. Section 13-914, Arizona Revised Statutes, is amended to read:

13-914. Intensive probation; evaluation; sentence; criteria; limit; conditions

A. An adult probation officer shall prepare a presentence report for every offender who has either:

1. Been convicted of a felony and for whom the granting of probation is not prohibited by law.
2. Violated probation by commission of a technical violation that was not chargeable or indictable as a criminal offense.

B. The adult probation officer shall evaluate the needs of the offender and the offender's risk to the community, including the nature of the offense and criminal history of the offender. If the nature of the offense and the prior criminal history of the offender indicate that the offender should be included in an intensive probation program pursuant to supreme court guidelines for intensive probation, the adult probation officer may recommend to the court that the offender be granted intensive probation.

C. The court may suspend the imposition or execution of the sentence and grant the offender a period of intensive probation in accordance with this chapter. Except for sentences that are imposed pursuant to section 13-3601, the sentence is tentative to the extent that it may be altered or revoked pursuant to this chapter, but for all other purposes it is a final judgment of conviction. This subsection does not preclude the court from imposing a term of intensive probation pursuant to section 13-3601.

D. When granting intensive probation the court shall set forth on the record the factual and legal reasons in support of the sentence.

E. Intensive probation shall be conditioned on the offender:

1. Maintaining employment or ~~maintaining~~ full-time student status at a school subject to title 15 or title 32, chapter 30, OR A COMBINATION OF EMPLOYMENT AND STUDENT STATUS, and making progress deemed satisfactory to the probation officer, ~~or both,~~ or being involved in supervised job searches and community restitution work at least six days a week throughout the offender's term of intensive probation.

2. Paying restitution and probation fees of not less than seventy-five dollars unless, after determining the inability of the offender to pay the fee, the court assesses a lesser fee. Probation fees shall be deposited in the adult probation services fund established by section 12-267. Any amount assessed pursuant to this paragraph shall be used to supplement monies used for the salaries of adult probation and surveillance officers and for support of programs and services of the superior court adult probation departments.

3. Establishing a residence at a place approved by the intensive probation team and not changing the offender's residence without the team's prior approval.

4. Remaining at the offender's place of residence at all times except to go to work, to attend school, to perform community restitution and as specifically allowed in each instance by the adult probation officer.

5. Allowing administration of drug and alcohol tests if requested by a member of the intensive probation team.

6. Performing not less than forty hours of community restitution each month. OFFENDERS WHO ARE full-time students, EMPLOYED OR IN A TREATMENT PROGRAM APPROVED BY THE COURT OR THE PROBATION DEPARTMENT may be exempted or required to perform fewer hours of community restitution. For good cause, the court may reduce the number of community restitution hours performed to not less than twenty hours each month.

7. Meeting any other conditions imposed by the court to meet the needs of the offender and limit the risks to the community, including participation in a program of community punishment authorized in title 12, chapter 2, article 11.

Sec. 5. Section 13-916, Arizona Revised Statutes, is amended to read:

13-916. <u>Intensive probation teams; adult probation officer qualifications; duties; case load limit</u>

A. The chief adult probation officer in each county, with approval of the presiding judge of the superior court, shall appoint intensive probation teams consisting of one adult probation officer and one surveillance officer, two adult probation officers or one adult probation officer and two surveillance officers.

B. A two person intensive probation team shall supervise no more than twenty-five persons at one time, and a three person intensive probation team shall supervise no more than forty persons at one time.

C. The adult probation officers shall meet the bonding requirements and experience and education standards established pursuant to section 12-251.

D. The intensive probation team may serve warrants on, make arrests of and bring before the court persons who have violated the terms of intensive probation.

E. The adult probation and surveillance officers both have the authority of a peace officer in the performance of their duties but are not eligible to participate in the public safety personnel retirement system.

F. The intensive probation team shall:

1. Secure and keep a complete identification record of each person supervised by the team and a written statement of the conditions of the probation.

2. Exercise close supervision and observation over persons sentenced to intensive probation including both of the following:

(a) Visual contact with each probationer at least four times per week.

(b) Weekly ~~contact with the employer of the probationer~~ VERIFICATION OF THE PROBATIONER'S EMPLOYMENT.

3. Obtain and assemble information concerning the conduct of persons sentenced to intensive probation, including weekly arrest records, and report the information to the court.

4. Report to the court if the probationer engages in conduct constituting an offense.

5. Bring a defaulting probationer into court if, in the judgment of the adult probation officer, the probationer's conduct justifies revoking the intensive probation.

6. Monitor the payment of restitution and probation fees and bring into court any probationer who fails to pay restitution or fees.

7. Perform any other responsibilities required by the terms and conditions imposed by the court.

Sec. 6. Global position system and electronic monitoring; petition to lift requirement

Any person who on the effective date of this act is on global position system or electronic monitoring prescribed by section 13-902, subsection G, Arizona Revised Statutes, who was convicted or found guilty except insane before July 13, 2009 of a dangerous crime against children as defined in section 13-705, Arizona Revised Statutes, and who at the time of conviction or finding of guilty except insane was not required to register pursuant to section 13-3821, Arizona Revised Statutes, and is not classified as a level three offender may petition the court to order that the global position system or electronic monitoring prescribed by section 13-902, subsection G, Arizona Revised Statutes, be lifted. In determining whether to lift the requirement the court shall consider the safety of the public and the conduct of the defendant while on probation.

APPROVED BY THE GOVERNOR MAY 11, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2016.

Passed the House March 30, 2016,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Acting Speaker of the House
Pro Tempore

Chief Clerk of the House

Passed the Senate February 18, 2016,

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

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 _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1298

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 4, 2016

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

4th day of May, 2016

at 4:26 o'clock P. M.

Secretary to the Governor

Approved this 11th day of

May

at 10:17 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 12 day of May, 2016

at 8:45 o'clock A M.

Michele Reagan

Secretary of State

S.B. 1298