

REFERENCE TITLE: pretrial diversion program; primary caregiver

State of Arizona  
Senate  
Fifty-fifth Legislature  
Second Regular Session  
2022

# **SB 1448**

Introduced by  
Senator Quezada

AN ACT

AMENDING TITLE 13, CHAPTER 38, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 15; RELATING TO PRETRIAL DIVERSION PROGRAMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 38, Arizona Revised Statutes, is  
3 amended by adding article 15, to read:

4 ARTICLE 15. PRETRIAL DIVERSION PROGRAMS

5 13-4005. Primary caregiver pretrial diversion program;  
6 requirements; sealed records

7 A. THE PRESIDING JUDGE OF THE SUPERIOR COURT, OR A JUDGE DESIGNATED  
8 BY THE PRESIDING JUDGE, IN CONSULTATION WITH THE PRESIDING JUVENILE COURT  
9 JUDGE AND CRIMINAL COURT JUDGES, AND TOGETHER WITH THE PROSECUTING  
10 ATTORNEY AND THE PUBLIC DEFENDER OR THE CONTRACTED CRIMINAL DEFENSE OFFICE  
11 THAT PROVIDES THE SERVICES OF A PUBLIC DEFENDER, MAY AGREE IN WRITING TO  
12 ESTABLISH AND CONDUCT A PRETRIAL DIVERSION PROGRAM FOR PRIMARY CAREGIVERS.  
13 WHILE A DEFENDANT IS IN THE PRIMARY CAREGIVER DIVERSION PROGRAM CRIMINAL  
14 PROCEEDINGS ARE SUSPENDED WITHOUT A PLEA OF GUILTY FOR A PERIOD OF NOT  
15 LESS THAN SIX MONTHS AND NOT MORE THAN TWENTY-FOUR MONTHS. THE JUVENILE  
16 AND CRIMINAL COURTS MAY NOT DUPLICATE EFFORTS IF THE DEFENDANT IS ALSO  
17 PARTICIPATING IN JUVENILE COURT PROCEEDINGS.

18 B. THE PRIMARY CAREGIVER DIVERSION PROGRAM MAY INCLUDE ALL OF THE  
19 FOLLOWING COMPONENTS:

- 20 1. PARENTING CLASSES.
- 21 2. FAMILY AND INDIVIDUAL COUNSELING.
- 22 3. MENTAL HEALTH SCREENING, EDUCATION AND TREATMENT.
- 23 4. FAMILY CASE MANAGEMENT SERVICES.
- 24 5. DRUG AND ALCOHOL TREATMENT.
- 25 6. DOMESTIC VIOLENCE EDUCATION AND PREVENTION.
- 26 7. PHYSICAL AND SEXUAL ABUSE COUNSELING.
- 27 8. ANGER MANAGEMENT.
- 28 9. VOCATIONAL AND EDUCATIONAL SERVICES.
- 29 10. JOB TRAINING AND PLACEMENT.
- 30 11. AFFORDABLE AND SAFE HOUSING ASSISTANCE.
- 31 12. FINANCIAL LITERACY COURSES.

32 C. THE DEFENDANT MAY BE REFERRED TO SUPPORTIVE SERVICES AND CLASSES  
33 IN ALREADY EXISTING DIVERSION PROGRAMS. BEFORE APPROVING A PROPOSED  
34 TREATMENT PROGRAM, THE COURT SHALL CONSIDER THE REQUEST OF THE DEFENSE,  
35 THE REQUEST OF THE PROSECUTION, THE NEEDS OF THE DEFENDANT AND THE  
36 DEPENDENT CHILD OR CHILDREN AND THE INTERESTS OF THE COMMUNITY. THE  
37 PROGRAMMING MAY BE PROCURED USING PUBLIC OR PRIVATE MONIES. A REFERRAL  
38 MAY BE MADE TO A COUNTY AGENCY OR ASSISTED OUTPATIENT TREATMENT OR  
39 SERVICES, IF THE ENTITY AGREES TO PROVIDE THE REQUIRED PROGRAMMING.

40 D. AFTER CONSIDERING THE POSITIONS OF THE DEFENSE AND PROSECUTION  
41 THE COURT MAY GRANT PRETRIAL DIVERSION TO A DEFENDANT WHO IS CHARGED WITH  
42 A MISDEMEANOR OR FELONY OFFENSE IF ALL OF THE FOLLOWING APPLY:

- 43 1. THE DEFENDANT IS A CUSTODIAL PARENT OR LEGAL GUARDIAN OF A MINOR  
44 CHILD, PRESENTLY RESIDES IN THE SAME HOUSEHOLD AS THAT MINOR CHILD AND  
45 PRESENTLY PROVIDES CARE OR FINANCIAL SUPPORT FOR THAT MINOR CHILD EITHER

1 ALONE OR WITH THE ASSISTANCE OF OTHER HOUSEHOLD MEMBERS, AND THE  
2 DEFENDANT'S ABSENCE IN THE MINOR CHILD'S LIFE WOULD BE DETRIMENTAL TO THE  
3 MINOR CHILD.

4 2. THE DEFENDANT IS ADVISED OF AND WAIVES THE RIGHT TO A SPEEDY  
5 TRIAL AND A SPEEDY PRELIMINARY HEARING.

6 3. THE DEFENDANT IS INFORMED OF AND AGREES TO COMPLY WITH THE  
7 PROGRAM REQUIREMENTS.

8 4. THE COURT IS SATISFIED THAT THE DEFENDANT DOES NOT POSE AN  
9 UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY OR TO THE MINOR CHILD IN THE  
10 DEFENDANT'S CUSTODY IF ALLOWED TO REMAIN IN THE COMMUNITY. THE COURT MAY  
11 CONSIDER THE POSITIONS OF THE PROSECUTING ATTORNEY AND DEFENSE COUNSEL,  
12 THE DEFENDANT'S VIOLENCE AND CRIMINAL HISTORY, THE RECENCY OF THE  
13 DEFENDANT'S CRIMINAL HISTORY, THE DEFENDANT'S HISTORY OF BEHAVIOR TOWARDS  
14 MINORS, THE RISK OF THE DEPENDENT MINOR'S EXPOSURE TO OR INVOLVEMENT IN  
15 CRIMINAL ACTIVITY, THE CURRENT CHARGED OFFENSE, CHILD WELFARE HISTORY  
16 INVOLVING THE DEFENDANT AND ANY OTHER FACTORS THAT THE COURT DEEMS  
17 APPROPRIATE.

18 5. THE DEFENDANT IS NOT CHARGED WITH A SERIOUS OFFENSE OR A VIOLENT  
19 OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706.

20 6. THE DEFENDANT IS NOT CHARGED WITH A CRIME THAT IS ALLEGED TO  
21 HAVE BEEN COMMITTED AGAINST A PERSON FOR WHOM THE DEFENDANT IS THE PRIMARY  
22 CAREGIVER.

23 E. IF IT APPEARS TO THE PROSECUTING ATTORNEY, THE COURT, PRETRIAL  
24 SERVICES OR THE PROBATION DEPARTMENT THAT THE DEFENDANT IS PERFORMING  
25 UNSATISFACTORILY IN THE ASSIGNED PROGRAM OR IF AFTER ENTERING THE PROGRAM  
26 THE DEFENDANT IS CONVICTED OF A FELONY OR ANY OFFENSE THAT REFLECTS A  
27 PROPENSITY FOR VIOLENCE, THE PROSECUTING ATTORNEY OR THE PROBATION  
28 DEPARTMENT MAY FILE A MOTION TO REINSTATE CRIMINAL PROCEEDINGS. THE COURT  
29 MAY ALSO REINSTATE CRIMINAL PROCEEDINGS ON ITS OWN MOTION. IF A MOTION TO  
30 REINSTATE CRIMINAL PROCEEDINGS IS FILED, AFTER THE DEFENDANT IS NOTIFIED,  
31 THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER TO REINSTATE CRIMINAL  
32 PROCEEDINGS. IF THE COURT FINDS THAT THE DEFENDANT IS NOT PERFORMING  
33 SATISFACTORILY IN THE ASSIGNED PROGRAM OR THE COURT FINDS THAT THE  
34 DEFENDANT HAS BEEN CONVICTED OF A CRIME, THE COURT MAY TERMINATE THE  
35 DIVERSION PROGRAM AND ORDER CRIMINAL PROCEEDINGS TO RESUME.

36 F. IF THE DEFENDANT HAS PERFORMED SATISFACTORILY THE COURT SHALL  
37 DISMISS THE DEFENDANT'S CRIMINAL CHARGES AT THE END OF THE DIVERSION. A  
38 COURT MAY CONCLUDE THAT THE DEFENDANT HAS PERFORMED SATISFACTORILY IF THE  
39 DEFENDANT HAS SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF DIVERSION  
40 AND HAS AVOIDED SIGNIFICANT NEW VIOLATIONS OF LAW. IF THE COURT DISMISSES  
41 THE CHARGES, THE CLERK OF THE COURT SHALL NOTIFY THE DEPARTMENT OF PUBLIC  
42 SAFETY OF THE DISMISSAL, THE ARREST THAT THE DIVERSION WAS BASED ON SHALL  
43 BE DEEMED NEVER TO HAVE OCCURRED AND THE COURT SHALL ORDER ACCESS TO THE  
44 RECORD OF THE ARREST RESTRICTED. A DEFENDANT WHO SUCCESSFULLY COMPLETES  
45 DIVERSION MAY INDICATE IN RESPONSE TO ANY QUESTION CONCERNING THE

1 DEFENDANT'S PRIOR CRIMINAL RECORD THAT THE PERSON WAS NOT ARRESTED OR  
2 DIVERTED FOR THE OFFENSE, EXCEPT THE DEFENDANT SHALL BE ADVISED THAT,  
3 REGARDLESS OF THE DEFENDANT'S COMPLETION OF DIVERSION, BOTH OF THE  
4 FOLLOWING APPLY:

5 1. THE DEPARTMENT OF PUBLIC SAFETY MAY DISCLOSE THE ARREST THAT THE  
6 DIVERSION WAS BASED ON TO ANY PEACE OFFICER APPLICATION REQUEST AND THAT  
7 THE DEFENDANT IS NOT RELIEVED OF THE OBLIGATION TO DISCLOSE THE ARREST IN  
8 RESPONSE TO ANY DIRECT QUESTION THAT IS CONTAINED IN ANY QUESTIONNAIRE OR  
9 APPLICATION FOR A POSITION AS A PEACE OFFICER.

10 2. AN ORDER TO SEAL RECORDS PERTAINING TO AN ARREST THAT IS  
11 DISMISSED PURSUANT TO THIS SECTION DOES NOT AFFECT A CRIMINAL JUSTICE  
12 AGENCY'S ABILITY TO ACCESS AND USE THOSE SEALED RECORDS AND INFORMATION  
13 REGARDING SEALED ARRESTS.

14 G. A RECORD PERTAINING TO AN ARREST THAT RESULTED IN THE  
15 DEFENDANT'S SUCCESSFUL COMPLETION OF DIVERSION OR ANY RECORD GENERATED AS  
16 A RESULT OF THE DEFENDANT'S APPLICATION FOR OR PARTICIPATION IN DIVERSION  
17 MAY NOT BE USED IN ANY WAY, WITHOUT THE DEFENDANT'S CONSENT, THAT COULD  
18 RESULT IN THE DENIAL OF ANY EMPLOYMENT, BENEFIT, LICENSE OR CERTIFICATE.