

COMMITTEE ON JUDICIARY
SENATE AMENDMENTS TO H.B. 2102
(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 8-238, Arizona Revised Statutes, is amended to
3 read:

4 8-238. Advisory hearing; DNA

5 A. If a juvenile is **ARRESTED FOR OR** charged with a violation of any
6 of the following offenses and is summoned to appear at an advisory hearing,
7 the judicial officer shall order the juvenile to report within five days to
8 the law enforcement agency that investigated the juvenile or to the
9 agency's designee and submit a sufficient sample of buccal cells or other
10 bodily substances for deoxyribonucleic acid testing and extraction:

11 ~~1. An offense listed in title 13, chapter 11.~~

12 1. A **FELONY OFFENSE**.

13 2. A violation of section 13-1402, **OR** 13-1403, ~~13-1404, 13-1405,~~
14 ~~13-1406, 13-1410, 13-1411 or 13-1417.~~

15 ~~3. A violation of section 13-1507 or 13-1508.~~

16 ~~4. A violation of any serious offense as defined in section 13-706~~
17 ~~that is a dangerous offense as defined in section 13-105.~~

18 B. If a juvenile does not comply with an order issued pursuant to
19 subsection A of this section, the court shall revoke the juvenile's
20 release.

21 C. The investigating law enforcement agency or its designee shall
22 transmit the sample to the department of public safety.

23 D. Section 13-610, subsections H, I, J, K, M and N, ~~are applicable~~
24 **APPLY** to samples collected pursuant to this section.

1 Sec. 2. Section 13-610, Arizona Revised Statutes, is amended to
2 read:

3 13-610. DNA testing

4 A. Within thirty days after a person is sentenced to the state
5 department of corrections or a person who is accepted under the interstate
6 compact for the supervision of parolees and probationers arrives in this
7 state, the state department of corrections shall secure a sufficient sample
8 of blood or other bodily substances for deoxyribonucleic acid testing and
9 extraction from the person if the person was convicted of an offense listed
10 in this section and was sentenced to a term of imprisonment or was
11 convicted of any offense that was committed in another jurisdiction that if
12 committed in this state would be a violation of any offense listed in this
13 section and the person is under the supervision of the state department of
14 corrections. The state department of corrections shall transmit the sample
15 to the department of public safety.

16 B. Within thirty days after a person is placed on probation and
17 sentenced to a term of incarceration in a county jail detention facility or
18 is detained in a county juvenile detention facility, the county detention
19 facility shall secure a sufficient sample of blood or other bodily
20 substances for deoxyribonucleic acid testing and extraction from the person
21 if the person was convicted of or adjudicated delinquent for an offense
22 listed in this section. The county detention facility shall transmit the
23 sample to the department of public safety.

24 C. Within thirty days after a person is convicted and placed on
25 probation without a term of incarceration or adjudicated delinquent and
26 placed on probation, the county probation department shall secure a
27 sufficient sample of blood or other bodily substances for deoxyribonucleic
28 acid testing and extraction from the person if the person was convicted of
29 or adjudicated delinquent for an offense listed in this section. The
30 county probation department shall transmit the sample to the department of
31 public safety.

1 D. Within thirty days after the arrival of a person who is accepted
2 under the interstate compact for the supervision of parolees and
3 probationers and who is under the supervision of a county probation
4 department, the county probation department shall secure a sufficient
5 sample of blood or other bodily substances for deoxyribonucleic acid
6 testing and extraction from the person if the person was convicted of an
7 offense that was committed in another jurisdiction that if committed in
8 this state would be a violation of any offense listed in this section and
9 was sentenced to a term of probation. The county probation department shall
10 transmit the sample to the department of public safety.

11 E. Within thirty days after a juvenile is committed to the
12 department of juvenile corrections, the department of juvenile corrections
13 shall secure a sufficient sample of blood or other bodily substances for
14 deoxyribonucleic acid testing and extraction from the youth if the youth
15 was adjudicated delinquent for an offense listed in this section and was
16 committed to a secure care facility. The department of juvenile
17 corrections shall transmit the sample to the department of public safety.

18 F. Within thirty days after the arrival in this state of a juvenile
19 who is accepted by the department of juvenile corrections pursuant to the
20 interstate compact on juveniles and who was adjudicated for an offense that
21 was committed in another jurisdiction that if committed in this state would
22 be a violation of any offense listed in this section, the compact
23 administrator shall request that the sending state impose as a condition of
24 supervision that the juvenile submit a sufficient sample of blood or other
25 bodily substances for deoxyribonucleic acid testing. If the sending state
26 does not impose that condition, the department of juvenile corrections
27 shall request a sufficient sample of blood or other bodily substances for
28 deoxyribonucleic acid testing within thirty days after the juvenile's
29 arrival in this state. The department of juvenile corrections shall
30 transmit the sample to the department of public safety.

31 G. Notwithstanding subsections A through F, K, L and O of this
32 section, the agency that is responsible for securing a sample pursuant to

1 this section shall not secure the sample if the scientific criminal
2 analysis section of the department of public safety has previously received
3 and is maintaining a sample sufficient for deoxyribonucleic acid testing.

4 H. The department of public safety shall do all of the following:

5 1. Conduct or oversee through mutual agreement an analysis of the
6 samples that it receives pursuant to subsections K, L and O of this
7 section.

8 2. Make and maintain a report of the results of each
9 deoxyribonucleic acid analysis.

10 3. Maintain samples of blood and other bodily substances for at
11 least thirty-five years.

12 I. Any sample and the result of any test that is obtained pursuant
13 to this section or section 8-238 may be used only as follows:

14 1. For law enforcement identification purposes.

15 2. In a proceeding in a criminal prosecution or juvenile
16 adjudication.

17 3. In a proceeding under title 36, chapter 37.

18 J. If the conviction or adjudication of a person who is subject to
19 this section or section 8-238 is overturned on appeal or postconviction
20 relief and a final mandate has been issued, on petition of the person to
21 the superior court in the county in which the conviction occurred, the
22 court shall order that the person's deoxyribonucleic acid profile resulting
23 from that conviction or adjudication be expunged from the Arizona
24 deoxyribonucleic acid identification system established by section 41-2418
25 unless the person has been convicted or adjudicated delinquent of another
26 offense that would require the person to submit to deoxyribonucleic acid
27 testing pursuant to this section.

28 K. If a person is arrested for **A FELONY OFFENSE OR** any offense
29 listed in subsection O, paragraph 3 of this section and is transferred by
30 the arresting authority to a state, county or local law enforcement agency
31 or jail, the arresting authority or its designee shall secure a sufficient
32 sample of buccal cells or other bodily substances for deoxyribonucleic acid

1 testing and extraction from the person for the purpose of determining
2 identification characteristics. The arresting authority or its designee
3 shall transmit the sample to the department of public safety.

4 L. A person who is charged with a felony or A misdemeanor offense
5 listed in subsection 0, paragraph 3 of this section and who is summoned to
6 appear in court for an initial appearance shall report within five days of
7 release on bail or on the person's own recognizance to the law enforcement
8 agency that investigated the person or its designee and submit a sufficient
9 sample of buccal cells or other bodily substances for deoxyribonucleic acid
10 testing and extraction. The arresting authority or its designee shall
11 transmit the sample to the department of public safety.

12 M. A person who is subject to subsection K or L of this section or
13 section 8-238 may petition the superior court in the county in which the
14 arrest occurred or the criminal charge was filed to order that the person's
15 deoxyribonucleic acid profile and sample be expunged from the Arizona
16 deoxyribonucleic acid identification system, unless the person has been
17 arrested, charged with or convicted of or adjudicated delinquent ~~or~~ FOR
18 another offense that would require the person to submit to deoxyribonucleic
19 acid testing pursuant to this section, if any of the following applies:

- 20 1. The criminal charges are not filed within the applicable period
21 prescribed by section 13-107.
- 22 2. The criminal charges are dismissed.
- 23 3. The person is acquitted at trial.

24 N. If any sample that is submitted to the department of public
25 safety under this section or section 8-238 is found to be unacceptable for
26 analysis and use or cannot be used by the department, the department shall
27 require that another sample of blood or other bodily substances be secured
28 pursuant to this section.

- 29 0. This section applies to persons who are:
- 30 1. Convicted of any felony offense.
- 31 2. Adjudicated delinquent for any of the following offenses:

1 (a) A violation or an attempt to violate any offense in chapter 11
2 of this title, any felony offense in chapter 14 or 35.1 of this title or
3 section 13-1507, 13-1508 or 13-3608.

4 (b) Any offense for which a person is required to register pursuant
5 to section 13-3821.

6 (c) A violation of any felony offense in chapter 34 of this title
7 that may be prosecuted pursuant to section 13-501, subsection B, paragraph
8 2.

9 (d) A violation of any felony offense that is listed in section
10 13-501.

11 3. Arrested for a violation of ~~any offense in chapter 11 of this~~
12 ~~title, a violation of~~ section 13-1402, 13-1403, ~~13-1404, 13-1405, 13-1406,~~
13 ~~13-1410, 13-1411, 13-1417, 13-1507, 13-1508, 13-3208,~~ OR 13-3555
14 ~~or 13-3608 or a violation of any serious offense as defined in section~~
15 ~~13-706 that is a dangerous offense.~~

16 4. ARRESTED FOR ANY FELONY OFFENSE.

17 P. THE AGENCY THAT IS RESPONSIBLE FOR SECURING A DEOXYRIBONUCLEIC
18 ACID SAMPLE PURSUANT TO THIS SECTION MUST DO BOTH OF THE FOLLOWING:

19 1. PROVIDE TO EACH PERSON WHO SUBMITS A SAMPLE BOTH ORAL AND WRITTEN
20 NOTICE THAT EXPLAINS THE EXPUNGEMENT PROCESS AND THAT INCLUDES INSTRUCTIONS
21 ON HOW TO REQUEST AN EXPUNGEMENT PURSUANT TO THIS SECTION.

22 2. POST ON THE AGENCY'S WEBSITE THE ELIGIBILITY CRITERIA FOR
23 EXPUNGEMENT AND THE INSTRUCTIONS ON HOW TO REQUEST AN EXPUNGEMENT PURSUANT
24 TO THIS SECTION.

25 Sec. 3. Section 13-3967, Arizona Revised Statutes, is amended to
26 read:

27 13-3967. Release on bailable offenses before trial; definition

28 A. At his appearance before a judicial officer, any person who is
29 charged with a public offense that is bailable as a matter of right shall
30 be ordered released pending trial on his own recognizance or on the
31 execution of bail in an amount specified by the judicial officer.

1 B. In determining the method of release or the amount of bail, the
2 judicial officer, on the basis of available information, shall take into
3 account all of the following:

4 1. The views of the victim.

5 2. The nature and circumstances of the offense charged.

6 3. Whether the accused has a prior arrest or conviction for a
7 serious offense or violent or aggravated felony as defined in section
8 13-706 or an offense in another state that would be a serious offense or
9 violent or aggravated felony as defined in section 13-706 if committed in
10 this state.

11 4. Evidence that the accused poses a danger to others in the
12 community.

13 5. The results of a risk or lethality assessment in a domestic
14 violence charge that is presented to the court.

15 6. The weight of evidence against the accused.

16 7. The accused's family ties, employment, financial resources,
17 character and mental condition.

18 8. The results of any drug test submitted to the court.

19 9. Whether the accused is using any substance if its possession or
20 use is illegal pursuant to chapter 34 of this title.

21 10. Whether the accused violated section 13-3407, subsection A,
22 paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.

23 11. The length of residence in the community.

24 12. The accused's record of arrests and convictions.

25 13. The accused's record of appearance at court proceedings or of
26 flight to avoid prosecution or failure to appear at court proceedings.

27 14. Whether the accused has entered or remained in the United States
28 illegally.

29 15. Whether the accused's residence is in this state, in another
30 state or outside the United States.

31 C. If a judicial officer orders the release of a defendant who is
32 charged with a felony either on his own recognizance or on bail, the

1 judicial officer shall condition the defendant's release on the defendant's
2 good behavior while so released. On a showing of probable cause that the
3 defendant committed any offense during the period of release, a judicial
4 officer may revoke the defendant's release pursuant to section 13-3968.

5 D. After providing notice to the victim pursuant to section 13-4406,
6 a judicial officer may impose any of the following conditions on a person
7 who is released on his own recognizance or on bail:

8 1. Place the person in the custody of a designated person or
9 organization agreeing to supervise him.

10 2. Place restrictions on the person's travel, associates or place of
11 abode during the period of release.

12 3. Require the deposit with the clerk of the court of cash or other
13 security, such deposit to be returned on the performance of the conditions
14 of release.

15 4. Prohibit the person from possessing any deadly weapon or engaging
16 in certain described activities or indulging in intoxicating liquors or
17 certain drugs.

18 5. Require the person to report regularly to and remain under the
19 supervision of an officer of the court.

20 6. Impose any other conditions deemed reasonably necessary to assure
21 appearance as required including a condition requiring that the person
22 return to custody after specified hours.

23 E. In addition to any of the conditions a judicial officer may
24 impose pursuant to subsection D of this section, the judicial officer shall
25 impose both of the following conditions on a person who is charged with a
26 felony violation of chapter 14 or 35.1 of this title and who is released on
27 his own recognizance or on bail:

28 1. Electronic monitoring where available.

29 2. A condition prohibiting the person from having any contact with
30 the victim.

31 F. The judicial officer who authorizes the release of the person
32 charged on his own recognizance or on bail shall do all of the following:

1 1. Issue an appropriate order containing statements of the
2 conditions imposed.

3 2. Inform the person of the penalties that apply to any violation of
4 the conditions of release.

5 3. Advise the person that a warrant for his arrest may be issued
6 immediately on any violation of the conditions of release, including the
7 failure to submit to deoxyribonucleic acid testing ordered pursuant to
8 paragraph 4 of this subsection.

9 4. If the person is **ARRESTED FOR OR** charged with a felony or **A**
10 misdemeanor offense listed in section 13-610, subsection 0, paragraph 3 and
11 is summoned to appear, order the person to report within five days to the
12 law enforcement agency that arrested the person or to the agency's designee
13 and submit a sufficient sample of buccal cells or other bodily substances
14 for deoxyribonucleic acid testing and extraction. If a person does not
15 comply with an order issued pursuant to this paragraph, the court shall
16 revoke the person's release.

17 G. At any time after providing notice to the victim pursuant to
18 section 13-4406, the judicial officer who orders the release of a person on
19 any condition specified in this section or the court in which a prosecution
20 is pending may amend the order to employ additional or different conditions
21 of release, including either an increase or reduction in the amount of
22 bail. On application, the defendant shall be entitled to have the
23 conditions of release reviewed by the judicial officer who imposed them or
24 by the court in which the prosecution is pending. Reasonable notice of the
25 application shall be given to the county attorney and the victim.

26 H. Any information that is stated or offered in connection with any
27 order pursuant to this section need not conform to the rules pertaining to
28 admissibility of evidence in a court of law.

29 I. This section does not prevent the disposition of any case or
30 class of cases by forfeiture of bail or collateral security if such
31 disposition is authorized by the court.

1 J. A judicial officer who orders the release of a juvenile who has
2 been transferred to the criminal division of the superior court pursuant to
3 section 8-327 or who has been charged as an adult pursuant to section
4 13-501 shall notify the appropriate school district on the release of the
5 juvenile from custody.

6 K. For the purposes of this section and section 13-3968, "judicial
7 officer" means any person or court authorized pursuant to the constitution
8 or laws of this state to bail or otherwise release a person before trial or
9 sentencing or pending appeal."

10 Amend title to conform

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