

REFERENCE TITLE: **ailable offenses; requirements; release**

State of Arizona
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HB 2398

Introduced by
Representatives Hernandez A: Cano, Cook, Hernandez C, Longdon, Seaman,
Wilmeth

AN ACT

AMENDING SECTIONS 13-3961 AND 13-3967, ARIZONA REVISED STATUTES; RELATING
TO BAIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3961, Arizona Revised Statutes, is amended to
3 read:
4 13-3961. Offenses not bailable; purpose; preconviction;
5 exceptions
6 A. A person who is in custody shall not be admitted to bail if the
7 proof is evident or the presumption great that the person is guilty of the
8 offense charged and the offense charged is one of the following:
9 1. A capital offense.
10 2. Sexual assault.
11 3. Sexual conduct with a minor under either of the following
12 circumstances:
13 (a) At the time of the offense, the person was at least eighteen
14 years of age and the victim was under thirteen years of age.
15 (b) At the time of the offense, the victim was thirteen or fourteen
16 years of age and the person was at least ten years older than the victim.
17 4. Molestation of a child under either of the following
18 circumstances:
19 (a) At the time of the offense, the person was at least eighteen
20 years of age and the victim was under thirteen years of age.
21 (b) At the time of the offense, the victim was thirteen or fourteen
22 years of age and the person was at least ten years older than the victim.
23 5. A serious felony offense if there is probable cause to believe
24 that the person has entered or remained in the United States
25 illegally. For the purposes of this paragraph:
26 (a) The court shall consider all of the following in making a
27 determination that a person has entered or remained in the United States
28 illegally:
29 (i) Whether a hold has been placed on the arrested person by the
30 United States immigration and customs enforcement.
31 (ii) Any ~~indication~~ EVIDENCE PRESENTED by a law enforcement agency
32 that the person is in the United States illegally.
33 (iii) Whether an admission by the arrested person has been obtained
34 by the court or a law enforcement agency that the person has entered or
35 remained in the United States illegally.
36 (iv) Any information received from a law enforcement agency
37 pursuant to section 13-3906.
38 (v) Any evidence that the person has recently entered or remained
39 in the United States illegally.
40 (vi) Any other relevant information that is obtained by the court
41 or that is presented to the court by a party or any other person.
42 (b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or
43 any violation of section 28-1383.
44 B. The purposes of bail and any conditions of release that are set
45 by a judicial officer include:

- 1 1. Assuring the appearance of the accused.
- 2 2. Protecting against the intimidation of witnesses.
- 3 3. Protecting the safety of the victim, any other person or the
- 4 community.

5 C. The initial determination of whether an offense is bailable
6 pursuant to subsection A of this section shall be made by the magistrate
7 or judicial officer at the time of the person's initial appearance.

8 D. Except as provided in subsection A of this section, a person who
9 is in custody shall not be admitted to bail if the person is charged with
10 a felony offense and the state certifies by motion and the court finds
11 after a hearing on the matter that there is clear and convincing evidence
12 that the person charged poses a substantial danger to another person or
13 the community or engaged in conduct constituting a **DANGEROUS OFFENSE OR A**
14 violent offense, that no condition or combination of conditions of release
15 may be imposed that will reasonably assure the safety of the other person
16 or the community and that the proof is evident or the presumption great
17 that the person committed the offense for which the person is charged.
18 For the purposes of this subsection, "violent offense" means either of the
19 following:

- 20 1. A dangerous crime against children.
- 21 2. Terrorism.

22 E. On oral motion of the state, the court shall order the hearing
23 required by subsection D of this section at or within twenty-four hours of
24 the initial appearance unless the person who is subject to detention or
25 the state moves for a continuance. A continuance that is granted on the
26 motion of the person shall not exceed five calendar days unless there are
27 extenuating circumstances. A continuance on the motion of the state shall
28 be granted on good cause shown and shall not exceed twenty-four hours.
29 The prosecutor shall provide reasonable notice and an opportunity for
30 victims and witnesses to be present and heard at any hearing. The person
31 may be detained pending the hearing. The person is entitled to
32 representation by counsel and is entitled to present information by
33 proffer or otherwise, to testify and to present witnesses in the person's
34 own behalf. Testimony of the person charged that is given during the
35 hearing shall not be admissible on the issue of guilt in any subsequent
36 judicial proceeding, except as it might relate to the compliance with or
37 violation of any condition of release subsequently imposed or the
38 imposition of appropriate sentence or in perjury proceedings, or for the
39 purposes of impeachment. The case of the person shall be placed on an
40 expedited calendar and, consistent with the sound administration of
41 justice, the person's trial shall be given priority. The person may be
42 admitted to bail in accordance with the Arizona rules of criminal
43 procedure whenever a judicial officer finds that a subsequent event has
44 eliminated the basis for detention.

1 F. The finding of an indictment or the filing of an information
2 does not add to the strength of the proof or the presumption to be drawn.

3 G. In a hearing pursuant to subsection D of this section, proof
4 that the person is a criminal street gang member may give rise to the
5 inference that the person poses a substantial danger to another person or
6 the community and that no condition or combination of conditions of
7 release may be imposed that will reasonably assure the safety of the other
8 person or the community.

9 Sec. 2. Section 13-3967, Arizona Revised Statutes, is amended to
10 read:

11 13-3967. Release on bailable offenses before trial;
12 definition

13 A. At ~~his~~ A PERSON'S appearance before a judicial officer, any
14 person who is charged with a public offense that is bailable as a matter
15 of right shall be ordered released pending trial on ~~his~~ THE PERSON'S own
16 recognizance or, IF THE PERSON IS CHARGED WITH A FELONY, on the execution
17 of bail in an amount specified by the judicial officer.

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

21 1. The views of the victim.

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

23 3. Whether the accused has a prior arrest or conviction for a
24 serious offense or violent or aggravated felony as defined in section
25 13-706 or an offense in another state that would be a serious offense or
26 violent or aggravated felony as defined in section 13-706 if committed in
27 this state.

28 4. Evidence that the accused poses a danger to others in the
29 community.

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

32 6. The weight of evidence against the accused.

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

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

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

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

40 11. The length of residence in the community.

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

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

44 14. Whether the accused has entered or remained in the United
45 States illegally.

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

3 16. WHETHER THE ACCUSED HAS THE FINANCIAL ABILITY TO PAY BAIL.

4 17. WHETHER THE RACE OR ETHNICITY OF THE ACCUSED IS ONE THAT
5 HISTORICALLY HAS BEEN AND CURRENTLY CONTINUES TO BE DISPROPORTIONATELY
6 REPRESENTED IN THE JAIL POPULATION RELATIVE TO THE COUNTY POPULATION AND
7 WHETHER RESISTING IMPLICIT BIAS AGAINST THAT RACE OR ETHNICITY IS
8 NECESSARY TO AVOID DISPARATE TREATMENT OR DISCRIMINATION.

9 C. If a judicial officer orders the release of a defendant who is
10 charged with a felony either on ~~his~~ THE DEFENDANT'S own recognizance or on
11 bail, the judicial officer shall condition the defendant's release on the
12 defendant's good behavior while so released. On a showing of probable
13 cause that the defendant committed any offense during the period of
14 release, a judicial officer may revoke the defendant's release pursuant to
15 section 13-3968.

16 D. After providing notice to the victim pursuant to section
17 13-4406, a judicial officer may impose any of the following conditions on
18 a person who is released on ~~his~~ THE PERSON'S own recognizance or on bail:

19 1. Place the person in the custody of a designated person or
20 organization agreeing to supervise ~~him~~ THE PERSON.

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

23 3. Require the deposit with the clerk of the court of cash or other
24 security, such deposit to be returned on the performance of the conditions
25 of release.

26 4. Prohibit the person from possessing any deadly weapon or
27 engaging in certain described activities or indulging in intoxicating
28 liquors or certain drugs.

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

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

34 E. In addition to any of the conditions a judicial officer may
35 impose pursuant to subsection D of this section, the judicial officer
36 shall impose both of the following conditions on a person who is charged
37 with a felony violation of chapter 14 or 35.1 of this title and who is
38 released on ~~his~~ THE PERSON'S own recognizance or on bail:

39 1. Electronic monitoring where available AND AT NO CHARGE TO THE
40 PERSON.

41 2. A condition prohibiting the person from having any contact with
42 the victim.

43 F. The judicial officer who authorizes the release of the person
44 charged on ~~his~~ THE PERSON'S own recognizance or on bail shall do all of
45 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
4 of the conditions of release.
- 5 3. Advise the person that a warrant for ~~his~~ THE PERSON'S arrest may
6 be issued immediately on any violation of the conditions of release,
7 including the failure to submit to deoxyribonucleic acid testing ordered
8 pursuant to paragraph 4 of this subsection.
- 9 4. If the person is charged with a felony or misdemeanor offense
10 listed in section 13-610, subsection 0, paragraph 3 and is summoned to
11 appear, order the person to report within five days to the law enforcement
12 agency that arrested the person or to the agency's designee and submit a
13 sufficient sample of buccal cells or other bodily substances for
14 deoxyribonucleic acid testing and extraction. If a person does not comply
15 with an order issued pursuant to this paragraph, the court shall revoke
16 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
19 on any condition specified in this section or the court in which a
20 prosecution is pending may amend the order to employ additional or
21 different conditions of release, including either an increase or reduction
22 in the amount of bail. On application, the defendant shall be entitled to
23 have the conditions of release reviewed by the judicial officer who
24 imposed them or by the court in which the prosecution is pending.
25 Reasonable notice of the application shall be given to the county attorney
26 and the victim.
- 27 H. Any information that is stated or offered in connection with any
28 order pursuant to this section need not conform to the rules pertaining to
29 admissibility of evidence in a court of law.
- 30 I. This section does not prevent the disposition of any case or
31 class of cases by forfeiture of bail or collateral security if such
32 disposition is authorized by the court.
- 33 J. A judicial officer who orders the release of a juvenile who is
34 enrolled in a school and who has been transferred to the criminal division
35 of the superior court pursuant to section 8-327 or who has been charged as
36 an adult pursuant to section 13-501 shall notify the appropriate school on
37 the release of the juvenile from custody.
- 38 K. For the purposes of this section and section 13-3968, "judicial
39 officer" means any person or court authorized pursuant to the constitution
40 or laws of this state to bail or otherwise release a person before trial
41 or sentencing or pending appeal.