

REFERENCE TITLE: diversion; juveniles; conditions

State of Arizona
House of Representatives
Fifty-sixth Legislature
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HB 2511

Introduced by
Representatives Martinez: Biasiucci, Diaz, Gillette, Gress, Heap, Kolodin,
Marshall, Nguyen, Willoughby, Wilmeth

AN ACT

AMENDING SECTION 8-321, ARIZONA REVISED STATUTES; RELATING TO JUVENILE
OFFENDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-321, Arizona Revised Statutes, is amended to
3 read:

4 8-321. Referrals; diversions; conditions; community based
5 alternative programs

6 A. Except as provided in subsection B of this section, before a
7 petition is filed or an admission or adjudication hearing is held, the
8 county attorney may divert the prosecution of a juvenile who is accused of
9 committing a delinquent act or a child who is accused of committing an
10 incorrigible act to a community based alternative program or to a
11 diversion program administered by the juvenile court.

12 B. A juvenile is not eligible for diversion if any of the following
13 applies:

14 1. The juvenile committed a dangerous offense as defined in section
15 13-105.

16 2. The juvenile is a chronic felony offender as defined in section
17 13-501.

18 3. The juvenile committed an offense that is listed in section
19 13-501.

20 4. The juvenile is alleged to have committed a violation of section
21 28-1381, 28-1382 or 28-1383.

22 5. The juvenile is alleged to have committed an offense involving
23 the purchase, possession or consumption of spirituous liquor or a
24 violation of title 13, chapter 34 and the juvenile has previously
25 participated in a community based alternative program or a diversion
26 program administered by the juvenile court at least two times within
27 twenty-four months before the date of the commission of the alleged
28 offense.

29 C. Except as provided in section 8-323, the county attorney has
30 sole discretion to decide whether to divert or defer prosecution of a
31 juvenile offender. The county attorney may designate the offenses that
32 shall be retained by the juvenile court for diversion or that shall be
33 referred directly to a community based alternative program that is
34 authorized by the county attorney.

35 D. The county attorney or the juvenile court in cooperation with
36 the county attorney may establish community based alternative programs.

37 E. Except for offenses that the county attorney designates as
38 eligible for diversion or referral to a community based alternative
39 program, on receipt of a referral alleging the commission of an offense,
40 the juvenile probation officer shall submit the referral to the county
41 attorney to determine if a petition should be filed.

42 F. If the county attorney diverts the prosecution of a juvenile to
43 the juvenile court, the juvenile probation officer shall conduct a
44 personal interview with the alleged juvenile offender. At least one of
45 the juvenile's parents or guardians shall attend the interview. The

1 probation officer may waive the requirement for the attendance of the
2 parent or guardian for good cause. If the juvenile acknowledges
3 responsibility for the delinquent or incorrigible act, the juvenile
4 probation officer shall require that the juvenile comply with one or more
5 of the following conditions:

6 1. Participation in unpaid community restitution work.

7 2. Participation in a counseling program that is approved by the
8 court and that is designed to strengthen family relationships and to
9 prevent repetitive juvenile delinquency.

10 3. Participation in an education program that is approved by the
11 court and that has as its goal the prevention of further delinquent
12 behavior.

13 4. Participation in an education program that is approved by the
14 court and that is designed to deal with ancillary problems experienced by
15 the juvenile, such as alcohol or drug abuse.

16 5. Participation in a nonresidential program of rehabilitation or
17 supervision that is offered by the court or offered by a community youth
18 serving agency and THAT IS approved by the court.

19 6. AT THE JUVENILE'S OPTION, PARTICIPATION IN A RELIGIOUS PROGRAM
20 THAT IS APPROVED BY THE COURT IN CONJUNCTION WITH THE RELIGIOUS SERVICES
21 ADVISORY COMMITTEE ESTABLISHED PURSUANT TO SECTION 41-2804.01. THIS
22 OPTION MAY BE SUBSTITUTED FOR ONE OF THE OTHER CONDITIONS OUTLINED IN THIS
23 SUBSECTION. THE JUVENILE'S PARTICIPATION IN A RELIGIOUS PROGRAM MUST BE
24 VOLUNTARY, AND THE PURPOSE OF THE PROGRAM MAY NOT INCLUDE ANY EFFORT TO
25 COERCE THE JUVENILE TO ADOPT OR CHANGE ANY RELIGIOUS AFFILIATION OR
26 BELIEFS.

27 ~~6.~~ 7. Payment of restitution to the victim of the delinquent act.

28 ~~7.~~ 8. Payment of a monetary assessment that may be satisfied
29 through community restitution. The court shall credit any community
30 restitution performed at a rate that is equal to the minimum wage
31 prescribed by section 23-363, subsections A and B, rounded up to the
32 nearest dollar.

33 G. If the juvenile successfully complies with the conditions set
34 forth by the probation officer, the county attorney shall not file a
35 petition in juvenile court and the program's resolution shall not be used
36 against the juvenile in any further proceeding and is not an adjudication
37 of incorrigibility or delinquency. The resolution of the program is not a
38 conviction of crime, does not impose any civil disabilities ordinarily
39 resulting from a conviction and does not disqualify the juvenile in any
40 civil service application or appointment.

41 H. In order to participate in a community based alternative program
42 the juvenile who is referred to a program shall admit responsibility for
43 the essential elements of the accusation and shall cooperate with the
44 program in all of its proceedings.

1 I. All of the following apply to each community based alternative
2 program that is established pursuant to this section:

3 1. The juvenile's participation is voluntary.

4 2. The victim's participation is voluntary.

5 3. The community based alternative program shall ensure that the
6 victim, the juvenile's parent or guardian and any other persons who are
7 directly affected by an offense have the right to participate.

8 4. The participants shall agree to the consequences imposed on the
9 juvenile or the juvenile's parent or guardian.

10 5. The meetings and records shall be open to the public.

11 J. After holding a meeting the participants in the community based
12 alternative program may agree on any legally reasonable consequences that
13 the participants determine are necessary to fully and fairly resolve the
14 matter except confinement or monetary sanctions or fines that exceed \$250.

15 K. The participants shall determine consequences within thirty days
16 after referral to the community based alternative program, and the
17 juvenile shall complete the consequences within ninety days after the
18 matter is referred to the community based alternative program. The county
19 attorney or the juvenile probation officer may extend the time in which to
20 complete the consequences for good cause. If the community based
21 alternative program involves a school, the deadlines for determination and
22 completion of consequences shall be thirty and ninety school days,
23 respectively.

24 L. The community based alternative program, the juvenile, the
25 juvenile's parent or guardian and the victim may sign a written contract
26 in which the parties agree to the program's resolution of the matter and
27 in which the juvenile's parent or guardian agrees to ensure that the
28 juvenile complies with the contract.

29 M. If the juvenile successfully completes the consequences, the
30 county attorney shall not file a petition in juvenile court and the
31 program's resolution shall not be used against the juvenile in any further
32 proceeding and is not an adjudication of incorrigibility or delinquency.
33 The resolution of the program is not a conviction of crime, does not
34 impose any civil disabilities ordinarily resulting from a conviction and
35 does not disqualify the juvenile in any civil service application or
36 appointment.

37 N. The county attorney or juvenile court may not assess or require
38 the juvenile or the juvenile's parent or guardian to pay a fee or the cost
39 for a community based alternative program or diversion program that is
40 authorized by this section.

41 O. The supreme court shall annually establish an average cost per
42 juvenile for providing diversion services in each county, based on the
43 monies appropriated for diversion pursuant to section 8-322, excluding the
44 cost of juvenile intake services provided by the juvenile court, and the
45 number of juveniles diverted the previous year. On the county attorney's

1 certification to the supreme court of the number of juveniles diverted to
2 a county attorney community based alternative program each quarter, the
3 annual average cost per juvenile for each juvenile diverted shall be
4 reimbursed to the county attorney juvenile diversion fund established by
5 section 11-537 out of monies appropriated to the supreme court for
6 diversion programs.

7 P. If the juvenile does not acknowledge responsibility for the
8 offense, or fails to comply with the consequences set by the community
9 based alternative program, the case shall be submitted to the county
10 attorney for review. The payment of a monetary assessment may not be used
11 as a condition for the juvenile to comply with the consequences set by the
12 community based alternative program.

13 Q. After reviewing a referral, if the county attorney declines
14 prosecution, the county attorney may return the case to the juvenile
15 probation department for further action as provided in subsection F of
16 this section.

17 R. This section does not prevent a health insurer that is subject
18 to title 20 or an Arizona health care cost containment system contractor
19 from covering an expense that is related to the juvenile's treatment or
20 care.