

REFERENCE TITLE: drug paraphernalia; repeal

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1428

Introduced by

Senators Hernandez: Alston, Fernandez, Gabaldón, Mendez, Miranda,
Sundareshan; Representatives Hernandez M, Ortiz, Seaman, Villegas

AN ACT

REPEALING SECTION 13-3415, ARIZONA REVISED STATUTES; AMENDING SECTIONS
13-3422, 31-281 AND 41-1604.07, ARIZONA REVISED STATUTES; RELATING TO DRUG
OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 13-3415, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 13-3422, Arizona Revised Statutes, is amended to
5 read:

6 13-3422. Drug court program; establishment; participation

7 A. The presiding judge of the superior court in each county may
8 establish a drug court program as defined in section 13-3401.

9 B. Cases assigned to the drug court program may consist of
10 defendants who are drug dependent persons and who are charged with a
11 probation eligible offense under this chapter, including preparatory
12 offenses.

13 C. A defendant may be admitted into the drug court program ~~prior to~~
14 **BEFORE** a guilty plea or a trial only on the agreement of the court and the
15 prosecutor.

16 D. A defendant is not eligible for entry into the drug court
17 program pursuant to subsections F and H of this section if any of the
18 following applies:

19 1. The defendant has been convicted of a serious offense as defined
20 in section 13-706.

21 2. The defendant has been convicted of an offense under chapter 14
22 of this title.

23 3. The defendant has been convicted of a dangerous offense.

24 4. The defendant has completed or previously been terminated from a
25 drug court program other than a juvenile drug court program.

26 5. The defendant has completed or previously been terminated from a
27 drug diversion program other than a juvenile drug diversion program for an
28 offense in violation of this chapter.

29 E. For the purposes of subsection D of this section, the age of the
30 conviction does not matter.

31 F. Notwithstanding any law to the contrary, if a defendant who is
32 assigned to the drug court program is subsequently found guilty of the
33 offense and probation is otherwise available, the court, without entering
34 a judgment of guilt and with the concurrence of the defendant, may defer
35 further proceedings and place the defendant on probation. The terms and
36 conditions of probation shall provide for the treatment of the drug
37 dependent person and shall include any other conditions and requirements
38 that the court deems appropriate, including the imposition of a fine,
39 payment of fees and any other terms and conditions as provided by law
40 which are not in violation of section 13-901.01.

41 G. If the defendant is placed on probation pursuant to subsection F
42 of this section and the defendant violates a term or condition of
43 probation, the court may terminate the defendant's participation in the
44 drug court program, enter an adjudication of guilt and revoke the
45 defendant's probation.

1 H. If the defendant is convicted of an offense listed in subsection
2 I of this section and is placed on probation pursuant to subsection F of
3 this section, on fulfillment of the terms and conditions of probation, the
4 court may discharge the defendant and dismiss the proceedings against the
5 defendant or may dispose of the case as provided by law.

6 I. A defendant is eligible for dismissal of proceedings as provided
7 in subsection H of this section if the defendant is convicted of any of
8 the following offenses:

9 1. Possession or use of marijuana in violation of section 13-3405,
10 subsection A, paragraph 1.

11 2. Possession or use of a prescription-only drug in violation of
12 section 13-3406, subsection A, paragraph 1.

13 3. Possession or use of a dangerous drug in violation of section
14 13-3407, subsection A, paragraph 1.

15 4. Possession or use of a narcotic drug in violation of section
16 13-3408, subsection A, paragraph 1.

17 ~~5. Possession or use of drug paraphernalia in violation of section~~
18 ~~13-3415, subsection A.~~

19 ~~6.~~ 5. Any preparatory offense, as prescribed in chapter 10 of this
20 title, to an offense listed in this subsection.

21 J. If the defendant is placed on probation pursuant to subsection F
22 of this section and the defendant fails to fulfill the terms and
23 conditions of probation, the court shall enter an adjudication of guilt
24 and sentence the defendant as provided by law.

25 K. If a defendant chooses not to participate in the drug court
26 program, the defendant shall be prosecuted as provided by law.

27 L. This section does not prohibit the presiding judge of the
28 superior court from establishing a drug court program other than as
29 defined in section 13-3401 with other terms and conditions, including
30 requiring a defendant to participate in a drug court program subsequent to
31 the entry of judgment of guilt and sentencing.

32 Sec. 3. Section 31-281, Arizona Revised Statutes, is amended to
33 read:

34 31-281. Transition program; report; definition

35 A. The department shall establish a transition program that
36 provides eligible inmates with transition services in the community for up
37 to ninety days. The department shall administer the transition program
38 and contract with private or nonprofit entities to provide eligible
39 inmates with transition services and shall procure transition services
40 pursuant to title 41, chapter 23.

41 B. The director shall adopt rules to implement this article. The
42 rules shall include:

43 1. Eligibility criteria for receiving a contracted entity's
44 transition services. To be eligible, at a minimum, an inmate shall:

1 (a) Not have been convicted of a sexual offense pursuant to title
2 13, chapter 14 or a violation of title 13, chapter 17.

3 (b) Not have been convicted of a violent crime as defined in
4 section 13-901.03, unless the inmate was convicted of assault, aggravated
5 assault or robbery.

6 (c) Not have any felony detainers.

7 (d) Agree in writing to provide specific information after the
8 inmate is released. The department shall use the information to prepare
9 the report prescribed by subsection D, paragraph 3 of this section.

10 (e) Have made satisfactory progress by complying with all
11 programming on the inmate's individualized corrections plan as determined
12 by the department.

13 (f) Be classified by the department as minimum or medium custody as
14 determined by an objective risk assessment.

15 (g) Not have been found in violation of any major violent rule
16 during the inmate's current period of incarceration or in violation of any
17 other major rule within the previous six months. For the purposes of this
18 subdivision, an accumulation of minor rule violations does not equal a
19 major rule violation.

20 2. A requirement that each contracted entity train mentors or
21 certify that mentors are trained.

22 3. A requirement that the services offered to an inmate include
23 psychoeducational counseling and case management services as determined by
24 the department. The counseling and services may include substance abuse
25 treatment, anger management, cognitive behavioral therapy, parenting
26 skills and family reunification training, further education and job
27 placement.

28 4. A requirement that an inmate may be released pursuant to this
29 article only after the victim has been provided notice and an opportunity
30 to be heard. The department shall provide notice to a victim who has
31 provided a current address or other contact information. The notice shall
32 inform the victim of the opportunity to be heard on the early release.
33 Any objection to the inmate's early release must be made within twenty
34 days after the department has mailed the notice to the victim.

35 C. In awarding contracts under this section the department shall
36 comply with section 41-3751.

37 D. The department shall:

38 1. Conduct an annual study to determine the recidivism rate of
39 inmates who receive a contracted entity's services pursuant to this
40 article. The study shall include the recidivism rate of inmates who have
41 been released from incarceration for a minimum of three years after
42 release.

43 2. Evaluate the inmate and provide the information to the
44 contracted entity.

1 3. Submit a written report to the governor, the president of the
2 senate and the speaker of the house of representatives on or before
3 July 31 of each year and provide a copy of this report to the secretary of
4 state. The report may be submitted electronically. The report shall
5 contain the following information:

6 (a) The recidivism rate of inmates who receive services pursuant to
7 this article, including the recidivism rate of inmates who have been
8 released from incarceration for a minimum of three years after release.

9 (b) The number of inmates who received services pursuant to this
10 article.

11 (c) The number of inmates who were not provided services pursuant
12 to this article and who were on a list waiting to receive services.

13 (d) The types of services provided.

14 (e) The number of inmates who received each type of service
15 provided.

16 4. Provide information about the transition program to all inmates
17 who are not serving a life sentence on admission to prison and to any
18 inmate who is potentially eligible for the transition program six months
19 before the inmate's eligibility date. The information must include all of
20 the admission requirements to the transition program, including the
21 disqualifying factors under this section.

22 E. Notwithstanding subsection B, paragraph 1 of this section, if an
23 inmate agrees to comply with any condition that is established and
24 required by section 41-1604.07, subsection F, has been convicted of the
25 possession or use of marijuana pursuant to section 13-3405, subsection A,
26 paragraph 1, possession or use of a dangerous drug pursuant to section
27 13-3407, subsection A, paragraph 1, ~~OR possession or use of a narcotic~~
28 ~~drug pursuant to section 13-3408, subsection A, paragraph 1~~ ~~or possession~~
29 ~~or use of drug paraphernalia pursuant to section 13-3415, subsection A~~ and
30 is not concurrently serving another sentence for an offense that is not
31 listed in this subsection, the inmate is eligible for and shall be
32 released to enter the transition program. The director may not exclude an
33 inmate who is eligible for the transition program pursuant to this
34 subsection because the inmate does not have a place to reside before being
35 released, except that the director shall exclude an inmate who has any of
36 the following:

37 1. Previously been convicted of a violent crime as defined in
38 section 13-901.03 or an offense listed in title 13, chapter 14 or 35.1.

39 2. A felony detainer.

40 3. Been found to be in violation of a major violent rule during the
41 inmate's current period of incarceration or to be in violation of any
42 other major rule within the previous six months. For the purposes of this
43 paragraph, an accumulation of minor rule violations does not equal a major
44 rule violation.

1 4. Previously been released pursuant to this section and violated a
2 term of the inmate's release.

3 5. Failed to achieve functional literacy as required by section
4 41-1604.07, subsection F, unless the inmate is enrolled in a program that
5 prepares the inmate to achieve functional literacy.

6 6. Been classified by the department as close or maximum custody as
7 determined by a current and objective risk assessment.

8 7. Refused enrollment in or been removed for poor behavior from a
9 major self-improvement program within the previous eighteen months unless
10 the inmate has subsequently enrolled in and completed the major
11 self-improvement program.

12 F. For the purposes of this section, "recidivism" means
13 reincarceration in the department for any reason.

14 Sec. 4. Section 41-1604.07, Arizona Revised Statutes, is amended to
15 read:

16 41-1604.07. Earned release credits; forfeiture; restoration;
17 released prisoner health care; annual report

18 A. Pursuant to rules adopted by the director, each prisoner who is
19 in the eligible earned release credit class shall be allowed an earned
20 release credit as set forth in subsection B of this section, including
21 time served in county jails, except for those prisoners who are sentenced
22 to serve the full term of imprisonment imposed by the court.

23 B. The earned release credit is:

24 1. Three days for every seven days served if the prisoner:

25 (a) Was sentenced to a term of imprisonment for the possession or
26 use of marijuana pursuant to section 13-3405, subsection A, paragraph 1,
27 the possession or use of a dangerous drug pursuant to section 13-3407,
28 subsection A, paragraph 1, ~~OR~~ OR the possession or use of a narcotic drug
29 pursuant to section 13-3408, subsection A, paragraph 1 ~~or the possession~~
30 ~~of drug paraphernalia pursuant to section 13-3415.~~

31 (b) Has successfully completed a drug treatment program or other
32 major self-improvement program provided by the department during the
33 prisoner's term of imprisonment.

34 (c) Has not previously been convicted of a violent or aggravated
35 felony as defined in section 13-706.

36 2. One day for every six days served if the prisoner was sentenced
37 to a term of imprisonment for an offense not listed in paragraph 1 of this
38 subsection.

39 C. Release credits earned by a prisoner pursuant to subsections A
40 and B of this section shall not reduce the term of imprisonment imposed by
41 the court on the prisoner.

42 D. On reclassification of a prisoner resulting from the prisoner's
43 failure to adhere to the rules of the department or failure to demonstrate
44 a continual willingness to volunteer for or successfully participate in a
45 work, educational, treatment or training program, the director may declare

1 all release credits earned by the prisoner forfeited. In the discretion
2 of the director, forfeited release credits may subsequently be restored.
3 The director shall maintain an account of release credits earned by each
4 prisoner.

5 E. A prisoner who has reached the prisoner's earned release date or
6 sentence expiration date shall be released to begin the prisoner's term of
7 community supervision imposed by the court or term of probation if the
8 court waived community supervision pursuant to section 13-603, except that
9 the director may deny or delay the prisoner's release to community
10 supervision or probation if the director believes the prisoner may be a
11 sexually violent person as defined in section 36-3701 until the screening
12 process is complete and the director determines that the prisoner will not
13 be referred to the county attorney pursuant to section 36-3702. If the
14 term of community supervision is waived, the state department of
15 corrections shall provide reasonable notice to the probation department of
16 the scheduled release of the prisoner from confinement by the department.
17 If the court waives community supervision, the director shall issue the
18 prisoner an absolute discharge on the prisoner's earned release credit
19 date. A prisoner who is released on the earned release credit date to
20 serve a term of probation is not under the control of the state department
21 of corrections when community supervision has been waived and the state
22 department of corrections is not required to provide parole services.

23 F. Notwithstanding subsection E of this section, a prisoner who
24 fails to achieve functional literacy at an eighth grade literacy level
25 shall not be released to begin the prisoner's term of community
26 supervision until either the prisoner achieves an eighth grade functional
27 literacy level as measured by standardized assessment testing, the
28 prisoner is released to enter the transition program established ~~by~~
29 PURSUANT TO section 31-281 and is enrolled in a program that prepares the
30 prisoner to achieve functional literacy or the prisoner serves the full
31 term of imprisonment imposed by the court, whichever first occurs. This
32 subsection does not apply to inmates who either:

33 1. Are unable to meet the functional literacy standard required by
34 section 31-229.02, subsection A due to a medical, developmental or
35 learning disability as described in section 31-229, subsection C.

36 2. Are classified as level five offenders.

37 3. Are foreign nationals.

38 4. Have less than six months of incarceration to serve on
39 commitment to the department.

40 5. Are released pursuant to subsection B, paragraph 1 of this
41 section.

42 G. The department shall establish conditions of community
43 supervision it deems appropriate in order to ensure that the best
44 interests of the prisoner and the citizens of this state are served. As a
45 condition of community supervision, the director:

1 1. May order a released prisoner to participate in an appropriate
2 drug treatment or education program that is administered by a qualified
3 agency, organization or individual approved by the department of health
4 services and that provides treatment or education to persons who abuse
5 controlled substances. Each person who is enrolled in a drug treatment or
6 education program shall pay for the cost of participation in the program
7 to the extent of the person's financial ability.

8 2. May order additional conditions, including participation in a
9 rehabilitation program or counseling and performance of community
10 restitution work.

11 3. Unless the prisoner is released pursuant to subsection B,
12 paragraph 1 of this section, may order a prisoner to apply for health care
13 benefits through the Arizona health care cost containment system before
14 being released. The state department of corrections shall enter into an
15 enrollment suspense agreement with the Arizona health care cost
16 containment system to reinstate benefits for prisoners who were sentenced
17 to twelve months or less and who were previously enrolled in the Arizona
18 health care cost containment system immediately before incarceration. For
19 all other prisoners, the state department of corrections shall submit a
20 prerelease application to the Arizona health care cost containment system
21 at least thirty days before the prisoner's release date. The state
22 department of corrections may coordinate with community-based
23 organizations or the department of economic security to assist prisoners
24 in applying for enrollment in the Arizona health care cost containment
25 system.

26 4. Shall impose, if the prisoner was convicted of a violation of
27 sexual conduct with a minor under fifteen years of age or molestation of a
28 child under fifteen years of age, a prohibition on residing within four
29 hundred forty feet of a school or its accompanying grounds. For the
30 purposes of this paragraph, "school" means any public, charter or private
31 school where children attend classes.

32 H. The director may exchange a prisoner's health care information
33 with the regional behavioral health authority or Arizona health care cost
34 containment system justice system contact to facilitate the transition to
35 care for released prisoners to access the full array of behavioral and
36 physical health care services, including medication, counseling, case
37 management, substance abuse treatment, and parenting skills and family
38 reunification training. The director shall adopt policies and procedures
39 that establish a care team to convene and discuss the services and
40 resources, including housing and employment supports, that may be needed
41 for the released prisoner to safely transition into the community. The
42 care team shall be managed by the regional behavioral health authority or
43 Arizona health care cost containment system contractor and may include the
44 health care provider that is identified by and has a contract with the
45 regional behavioral health authority or Arizona health care cost

1 containment system contractor. The care team may also include
2 representatives of nonprofit organizations that specialize in assisting
3 prisoners who are transitioning back into the community and other
4 organizations that link prisoners to additional services, including
5 housing and employment.

6 I. If a prisoner who reaches the prisoner's earned release credit
7 date refuses to sign and agree to abide by the conditions of supervision
8 before release on community supervision, the prisoner shall not be
9 released. When the prisoner reaches the sentence expiration date, the
10 prisoner shall be released to begin the term of community supervision. If
11 the prisoner refuses to sign and agree to abide by the conditions of
12 release, the prisoner shall not be released on the sentence expiration
13 date and shall serve the term of community supervision in prison. The
14 department is required to supervise any prisoner on community supervision
15 until the period of community supervision expires. The department may
16 bring a prisoner who is in violation of the prisoner's terms and
17 conditions before the board of executive clemency.

18 J. The director, pursuant to rules adopted by the department, shall
19 authorize the release of any prisoner on the prisoner's earned release
20 credit date to serve any consecutive term imposed on the prisoner. The
21 release shall be for the sentence completed only. The prisoner shall
22 remain under the custody and control of the department. The director may
23 authorize the rescission of the release to any consecutive term if the
24 prisoner fails to adhere to the rules of the department.

25 K. If a prisoner absconds from community supervision, any time
26 spent before the prisoner is returned to custody is excluded in
27 calculating the remaining period of community supervision.

28 L. A prisoner shall forfeit five days of the prisoner's earned
29 release credits:

30 1. If the court finds or a disciplinary hearing held after a review
31 by and recommendations from the attorney general's office determines that
32 the prisoner does any of the following:

- 33 (a) Brings a claim without substantial justification.
- 34 (b) Unreasonably expands or delays a proceeding.
- 35 (c) Testifies falsely or otherwise presents false information or
36 material to the court.
- 37 (d) Submits a claim that is intended solely to harass the party it
38 is filed against.

39 2. For each time the prisoner tests positive for any prohibited
40 drugs during the period of time the prisoner is incarcerated.

41 M. If the prisoner does not have five days of earned release
42 credits, the prisoner shall forfeit the prisoner's existing earned release
43 credits and shall be ineligible from accruing earned release credits until
44 the number of earned release credits the prisoner would have otherwise

1 accrued equals the difference between five days and the number of existing
2 earned release credit days the prisoner forfeits pursuant to this section.

3 N. The director may authorize temporary release on inmate status of
4 eligible inmates pursuant to rules adopted by the director within ninety
5 days of any other authorized release date. The release authorization
6 applies to any inmate who has been convicted of a drug offense, who has
7 been determined to be eligible for participation in the transition program
8 pursuant to section 31-281 and who has agreed to participate in the
9 transition program.

10 O. On admission, the department shall provide notice to any
11 prisoner who is potentially eligible for earned release credit pursuant to
12 subsection B, paragraph 1 of this section. The notice must include all of
13 the eligibility requirements under this section.

14 P. The department shall do all of the following:

15 1. Annually report the recidivism rate of prisoners released
16 pursuant to subsection B, paragraph 1 of this section for a minimum of
17 three years after release.

18 2. Report the following information at the end of each fiscal
19 quarter:

20 (a) The number of prisoners who received earned release credits for
21 each month of the reporting period and the percentage of the total prison
22 population that received earned release credits.

23 (b) The number of prisoners who were eligible for earned release
24 credit pursuant to subsection B, paragraph 1 of this section and for each
25 of these prisoners, the following information:

26 (i) The most serious crime for which each prisoner is receiving
27 earned release credit.

28 (ii) The mean and median length of the prison sentences.

29 (iii) Whether the prisoner received earned release credits each
30 month of the reporting period.

31 (c) The number of prisoners who participated in a program that is
32 described in subsection B, paragraph 1, subdivision (b) of this section in
33 each month of the reporting period, including the percentage of the total
34 prison population that has participated in those programs.

35 (d) The number of prisoners who are eligible for release into the
36 transition program established pursuant to section 31-281 in each month of
37 the reporting period and the percentage of the total prison population
38 that is eligible for release into the transition program. For eligible
39 prisoners, the report shall include the following information:

40 (i) The most serious crime for which each prisoner is serving a
41 sentence.

42 (ii) The mean and median length of the prison sentences.

43 (iii) The mean and median length of time served by the prisoners.

44 (e) The number of prisoners who are enrolled in the transition
45 program in each month of the reporting period, including the percentage of

1 the total prison population that is enrolled in the transition program.
2 For enrolled prisoners, the report shall include the following
3 information:

4 (i) The most serious crime for which each prisoner is serving a
5 sentence.

6 (ii) The mean and median length of the prison sentences.

7 (iii) The mean and median length of time served by the prisoners.

8 (f) The number of prisoners who are released into the transition
9 program in each month of the reporting period, including the percentage of
10 the total prison population that is released into the transition program.
11 For released prisoners, the report shall include the following
12 information:

13 (i) The most serious crime for which each prisoner is serving a
14 sentence.

15 (ii) The mean and median length of the prison sentences.

16 (iii) The mean and median length of time that the prisoners served.

17 (g) The six-month success, return to custody and new conviction
18 rates for prisoners who are released to a transition program.

19 (h) The one-year success, return to custody and new conviction
20 rates for prisoners who are released to a transition program.

21 (i) The two-year success, return to custody and new conviction
22 rates for prisoners who are released to a transition program.

23 (j) The three-year success, return to custody and new conviction
24 rates for prisoners who are released to a transition program.

25 (k) The number of prisoners who received treatment for substance
26 abuse during the first half of the prisoner's total sentence and the
27 percentage of the total prison population that received treatment for
28 substance abuse during the first half of the prisoners' total sentence.

29 For prisoners who received treatment for substance abuse according to this
30 subdivision, THE report shall include the following information:

31 (i) The most serious crime committed by each prisoner.

32 (ii) The mean and median length of the prison sentences.

33 (iii) Whether the prisoners received treatment for substance abuse
34 each month of the reporting period.