

REFERENCE TITLE: probation; felony violation; rearrest

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

SB 1646

Introduced by
Senator Kern

AN ACT

AMENDING SECTIONS 13-901, 13-903, 13-917 AND 13-924, ARIZONA REVISED
STATUTES; RELATING TO PROBATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-901, Arizona Revised Statutes, is amended to
3 read:

4 13-901. Probation

5 A. If a person who has been convicted of an offense is eligible for
6 probation, the court may suspend the imposition or execution of sentence
7 and, if so, shall without delay place the person on intensive probation
8 supervision pursuant to section 13-913 or supervised or unsupervised
9 probation on such terms and conditions as the law requires and the court
10 deems appropriate, including participation in any programs authorized in
11 title 12, chapter 2, article 11. If a person is not eligible for
12 probation, imposition or execution of sentence shall not be suspended or
13 delayed. If the court imposes probation, it may also impose a fine as
14 authorized by chapter 8 of this title. If probation is granted the court
15 shall impose a condition that the person waive extradition for any
16 probation revocation procedures and it shall order restitution pursuant to
17 section 13-603, subsection C where there is a victim who has suffered
18 economic loss. When granting probation to an adult the court, as a
19 condition of probation, shall assess a monthly fee of not less than \$65
20 unless, after determining the inability of the probationer to pay the fee,
21 the court assesses a lesser fee. This fee is not subject to any
22 surcharge. In justice and municipal courts the fee shall only be assessed
23 when the person is placed on supervised probation. For persons placed on
24 probation in the superior court, the fee shall be paid to the clerk of the
25 superior court and the clerk of the court shall pay all monies collected
26 from this fee to the county treasurer for deposit in the adult probation
27 services fund established by section 12-267. For persons placed on
28 supervised probation in the justice court, the fee shall be paid to the
29 justice court and the justice court shall transmit all of the monies to
30 the county treasurer for deposit in the adult probation services fund
31 established by section 12-267. For persons placed on supervised probation
32 in the municipal court, the fee shall be paid to the municipal court. The
33 municipal court shall transmit all of the monies to the city treasurer who
34 shall transmit the monies to the county treasurer for deposit in the adult
35 probation services fund established by section 12-267. Any amount
36 assessed pursuant to this subsection shall be used to supplement monies
37 used for the salaries of adult probation and surveillance officers and for
38 support of programs and services of the superior court adult probation
39 departments.

40 B. The period of probation shall be determined according to section
41 13-902, except that if a person is released pursuant to section 31-233,
42 subsection B and community supervision is waived pursuant to section
43 13-603, subsection K, the court shall extend the period of probation by
44 the amount of time the director of the state department of corrections
45 approves for the inmate's temporary release.

1 C. AT ANY TIME DURING THE PROBATIONARY TERM OF THE PERSON RELEASED
2 ON PROBATION, the court:

3 1. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, in its
4 discretion, may issue a warrant for the rearrest of the defendant. ~~and~~

5 2. May modify or add to the conditions ~~or~~, OF PROBATION.

6 3. If the defendant commits an additional offense or violates a
7 condition OF PROBATION, may revoke probation in accordance with the
8 ARIZONA rules of criminal procedure ~~at any time before the expiration or~~
9 ~~termination of the period of probation.~~

10 D. AT THE REQUEST OF THE STATE OR THE PROBATION DEPARTMENT, THE
11 COURT SHALL ISSUE A WARRANT WITHOUT DELAY FOR THE REARREST OF A DEFENDANT
12 WHO IS CHARGED BY INDICTMENT OR INFORMATION WITH A FELONY OFFENSE THAT WAS
13 COMMITTED WHILE THE DEFENDANT IS ON PROBATION, UNLESS THE DEFENDANT IS
14 ELIGIBLE FOR PROBATION PURSUANT TO SECTION 13-901.01 OR THE COURT HAS
15 PREVIOUSLY CONSIDERED THE FELONY OFFENSE AT A PRIOR REVOCATION HEARING. A
16 DEFENDANT WHO IS ARRESTED PURSUANT TO THIS SUBSECTION IS NOT ELIGIBLE FOR
17 RELEASE WHILE PROBATION REVOCATION PROCEEDINGS ARE PENDING.

18 E. If the court revokes the defendant's probation and the defendant
19 is serving more than one probationary term concurrently, the court may
20 sentence the person to terms of imprisonment to be served consecutively.

21 ~~D.~~ F. At any time during the probationary term of the person
22 released on probation, any probation officer, without warrant or other
23 process and at any time until the final disposition of the case, may
24 rearrest any person and bring the person before the court.

25 ~~E.~~ G. The court, on its own initiative or on application of the
26 probationer, after notice and an opportunity to be heard for the
27 prosecuting attorney and, on request, the victim, may terminate the period
28 of probation or intensive probation and discharge the defendant at a time
29 earlier than that originally imposed if in the court's opinion the ends of
30 justice will be served and if the conduct of the defendant on probation
31 warrants it.

32 ~~F.~~ H. When granting probation the court may require that the
33 defendant be imprisoned in the county jail at whatever time or intervals,
34 consecutive or nonconsecutive, the court shall determine, within the
35 period of probation, as long as the period actually spent in confinement
36 does not exceed one year or the maximum period of imprisonment allowed
37 under chapter 7 of this title, whichever is the shorter.

38 ~~G.~~ I. If the defendant is placed on lifetime probation and has
39 served one year in the county jail as a term of probation, the court may
40 require that the defendant be additionally imprisoned in the county jail
41 at whatever time or intervals, consecutive or nonconsecutive, the court
42 shall determine, within the period of probation if the defendant's
43 probation is revoked by the court and the defendant is subsequently
44 reinstated on probation. The period actually spent in confinement as a
45 term of being reinstated on probation shall not exceed one year or, when

1 including the initial one-year period of incarceration imposed as a term
2 of probation, the maximum period of imprisonment allowed under chapter 7
3 of this title, whichever is shorter.

4 ~~H.~~ J. If restitution is made a condition of probation, the court
5 shall fix the amount of restitution and the manner of performance pursuant
6 to chapter 8 of this title.

7 ~~I.~~ K. When granting probation, the court shall set forth at the
8 time of sentencing and on the record the factual and legal reasons in
9 support of each sentence.

10 ~~J.~~ L. If the defendant meets the criteria set forth in section
11 13-901.01 or 13-3422, the court may place the defendant on probation
12 pursuant to either section. If a defendant is placed on probation
13 pursuant to section 13-901.01 or 13-3422, the court may impose any term of
14 probation that is authorized pursuant to this section and that is not in
15 violation of section 13-901.01.

16 ~~K.~~ M. If the court imposes a term of probation, the court may
17 require the defendant to report to a probation officer. The court or the
18 defendant's probation officer may allow the defendant to fulfill a
19 reporting requirement through remote reporting. The probation officer
20 shall take into consideration and make accommodations for the
21 probationer's work schedule, family caregiver obligations, substance abuse
22 treatment or recovery program, mental health treatment, transportation
23 availability and medical care requirements before setting the reporting
24 time and location requirements for the probationer.

25 Sec. 2. Section 13-903, Arizona Revised Statutes, is amended to
26 read:

27 13-903. Calculation of periods of probation

28 A. A period of probation commences on the day it is imposed or as
29 designated by the court, and an extended period of probation commences on
30 the day the original period lapses.

31 B. If a court determines that the defendant violated a condition of
32 the defendant's probation but reinstates probation, the period between the
33 date of the violation and the date of restoration of probation is not
34 computed as part of the period of probation. If it is determined that the
35 defendant is not a violator, there is no interruption of the period **OF**
36 **PROBATION**.

37 C. The running of the period of probation shall cease during the
38 unauthorized absence of the defendant from the jurisdiction or from any
39 required supervision and shall resume only ~~upon~~ **ON** the defendant's
40 voluntary or involuntary return to the probation service.

41 D. The running of the period of probation shall cease during the
42 period from the filing of the petition to revoke probation to the
43 termination of revocation of probation proceedings, except that if a court
44 determines that the defendant is not a violator, there is no interruption
45 of the period of probation.

1 E. If probation is imposed on one who at the time is serving a
2 sentence of imprisonment imposed on a different conviction, service of the
3 sentence of imprisonment shall not satisfy the probation.

4 F. Time spent in custody under section 13-901, subsection ~~F~~ H
5 shall be credited to any sentence of imprisonment imposed ~~upon~~ ON
6 revocation of probation.

7 Sec. 3. Section 13-917, Arizona Revised Statutes, is amended to
8 read:

9 13-917. Modification of supervision

10 A. The adult probation officer shall periodically examine the risk
11 and needs of each person granted intensive probation and the risks of
12 modifying the level of supervision of the person. The court or the adult
13 probation officer may at any time modify the level of intensive probation
14 supervision of a person granted intensive probation. The court may
15 transfer the person to standard probation or terminate the period of
16 intensive probation pursuant to section 13-901, subsection ~~F~~ G.

17 B. If a petition to revoke the grant of intensive probation is
18 filed and the court finds that the person has committed an additional
19 felony offense that posed a serious threat or danger to the community, the
20 court shall revoke the grant of intensive probation and impose a term of
21 imprisonment as authorized by law. If the court finds that the person has
22 committed a violation of a condition of intensive probation that posed a
23 serious threat or danger to the community, the court shall revoke the
24 grant of intensive probation and impose a term of imprisonment as
25 authorized by law. If the court finds that the person has violated any
26 other condition of intensive probation, the court may modify the
27 conditions of intensive probation or may revoke the grant of intensive
28 probation and impose a term of imprisonment as authorized by law.

29 C. The court shall notify the parties, and the victim on request,
30 of any proposed modification of the terms of a person's intensive
31 probation if that modification will substantially affect the person's
32 contact with or safety of the victim or if the modification involves
33 restitution or incarceration status.

34 Sec. 4. Section 13-924, Arizona Revised Statutes, is amended to
35 read:

36 13-924. Probation; earned time credit; work time credit;
37 applicability; definitions

38 A. The court may adjust the period of a probationer's supervised
39 probation on the recommendation of an adult probation officer for earned
40 time credit or work time credit.

41 B. Earned time credit equals twenty days for every thirty days that
42 a probationer does all of the following:

43 1. Exhibits positive progression toward the goals and treatment of
44 the probationer's case plan.

- 1 2. Is current on payments for ~~court-ordered~~ COURT-ORDERED
2 restitution and is in compliance with all other nonmonetary obligations.
- 3 3. Is current in completing community restitution.
- 4 C. Work time credit equals thirty days for every thirty days that a
5 probationer does all of the following:
- 6 1. Is engaged in eligible employment. A probationer must provide
7 supporting documentation to the supervising probation officer within five
8 business days after completing thirty days of eligible employment. The
9 supervising probation officer must verify the probationer's employment
10 through the supporting documentation that is provided by the probationer
11 and by any other means that the court determines is necessary to verify
12 the work, including site visits and telephonic verification. The
13 probation officer must document any request for work time credit that is
14 denied.
- 15 2. Exhibits positive progression toward the goals and treatment of
16 the probationer's case plan.
- 17 3. Is current on payments for court-ordered restitution and is in
18 compliance with all other nonmonetary obligations.
- 19 4. Is current in completing community restitution.
- 20 D. Any earned time credit and work time credit awarded pursuant to
21 this section shall be revoked if a probationer is found in violation of a
22 condition of probation.
- 23 E. This section does not apply to a probationer who is currently:
- 24 1. On lifetime probation.
- 25 2. On probation for any class 2 or 3 felony.
- 26 3. On probation exclusively for a misdemeanor offense.
- 27 4. Required to register pursuant to section 13-3821.
- 28 F. This section has no effect on the ability of the court to
29 terminate the period of probation or intensive probation pursuant to
30 section 13-901, subsection ~~F~~ G at a time earlier than originally imposed.
- 31 G. For the purposes of this section:
- 32 1. "Eligible employment" means any occupation or combination of
33 occupations for which a person can provide supporting documentation
34 verifying at least one hundred thirty wage-earning hours in any thirty-day
35 period.
- 36 2. "Supporting documentation" means an employment record, pay stub,
37 employment letter, contract or other reliable means of verifying
38 employment.