House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
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CHAPTER 176

SENATE BILL 1628

AN ACT

AMENDING TITLE 8, CHAPTER 3, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-350.01; AMENDING TITLE 13, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-501.01; AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-923; AMENDING SECTION 13-3821, ARIZONA REVISED STATUTES; RELATING TO SEX OFFENDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 8, chapter 3, article 3, Arizona Revised Statutes, is amended by adding section 8-350.01, to read:

8-350.01. Youth sex offenders; treatment; definition

A. IF THE COURT OR THE ADULT OR JUVENILE PROBATION DEPARTMENT PLACES A SEX OFFENDER IN A SEX OFFENDER TREATMENT PROGRAM, THE TREATMENT PROVIDER OR, IF THE TREATMENT IS PROVIDED BY THE STATE DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF JUVENILE CORRECTIONS, THE STATE DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF JUVENILE CORRECTIONS SHALL PLACE THE OFFENDER IN A TREATMENT PROGRAM WITH SIMILAR OFFENDERS OF A SIMILAR AGE AND DEVELOPMENTAL MATURITY LEVEL, IF GROUP TREATMENT IS PRESCRIBED BY THE TREATMENT PROVIDER.

B. A MENTAL HEALTH TREATMENT PROGRAM THAT A SEX OFFENDER IS REQUIRED TO PARTICIPATE IN BY A COURT, AN ADULT OR JUVENILE PROBATION DEPARTMENT, THE STATE DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF JUVENILE CORRECTIONS:

1. SHALL COMPLY WITH THE PROFESSIONAL CODE OF ETHICS FROM THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS.

2. SHALL NOT INCLUDE THE USE OF IMAGES THAT ARE IN VIOLATION OF TITLE 13, CHAPTERS 35 AND 35.1.

C. FOR THE PURPOSES OF THIS SECTION, "SEX OFFENDER" MEANS A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR YOUNGER WHO IS ADJUDICATED DELINQUENT FOR OR CONVICTED OF AN OFFENSE THAT INVOLVES A VIOLATION OF TITLE 13, CHAPTER 14 OR 35.1 AND THAT DOES NOT INVOLVE THE DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT.

Sec. 2. Title 13, chapter 5, Arizona Revised Statutes, is amended by adding section 13-501.01, to read:

13-501.01. Persons under eighteen years of age; juvenile transfer

A. ON MOTION OF A JUVENILE OR ON THE COURT'S OWN MOTION, THE COURT, IF A JUVENILE IS BEING PROSECUTED IN THE SAME MANNER AS AN ADULT PURSUANT TO SECTION 13-501, SUBSECTION B FOR A VIOLATION OF TITLE 13, CHAPTER 14 OR 35.1, SHALL HOLD A HEARING TO DETERMINE IF JURISDICTION OF THE CRIMINAL PROSECUTION SHOULD BE TRANSFERRED TO THE JUVENILE COURT.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, THE COURT SHALL HOLD A HEARING IF A JUVENILE IS PROSECUTED IN THE SAME MANNER AS AN ADULT PURSUANT TO SECTION 13-501, SUBSECTION B FOR A VIOLATION OF TITLE 13, CHAPTER 14 OR 35.1 THAT WAS COMMITTED MORE THAN TWELVE MONTHS BEFORE THE DATE OF THE FILING OF THE CRIMINAL CHARGE.

C. IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT PUBLIC SAFETY AND THE REHABILITATION OF THE JUVENILE, IF ADJUDICATED DELINQUENT, WOULD BE BEST SERVED BY TRANSFERRING THE PROSECUTION TO THE JUVENILE COURT, THE JUDGE SHALL ORDER THE JUVENILE TRANSFERRED TO THE JUVENILE COURT. ON TRANSFER, THE COURT SHALL ORDER THAT THE JUVENILE BE TAKEN TO A PLACE OF DETENTION DESIGNATED BY THE JUVENILE COURT OR TO THAT COURT OR SHALL RELEASE THE JUVENILE TO THE CUSTODY OF THE JUVENILE'S PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE JUVENILE. IF THE JUVENILE IS RELEASED TO

THE JUVENILE'S PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE JUVENILE, THE COURT SHALL REQUIRE THAT THE PARENT, GUARDIAN OR OTHER PERSON BRING THE JUVENILE TO APPEAR BEFORE THE JUVENILE COURT AT A DESIGNATED TIME. THE JUVENILE COURT SHALL THEN PROCEED WITH ALL FURTHER PROCEEDINGS AS IF A PETITION ALLEGING DELINQUENCY HAD BEEN FILED WITH THE JUVENILE COURT UNDER SECTION 8-301.

D. THE COURT SHALL CONSIDER THE FOLLOWING FACTORS IN DETERMINING WHETHER THE PUBLIC SAFETY AND THE JUVENILE'S REHABILITATION, IF ADJUDICATED DELINQUENT, WOULD BE SERVED BY THE TRANSFER:

1. THE SERIOUSNESS OF THE OFFENSE INVOLVED.

2. THE RECORD AND PREVIOUS HISTORY OF THE JUVENILE, INCLUDING PREVIOUS CONTACTS WITH THE COURT AND LAW ENFORCEMENT, PREVIOUS PERIODS OF ANY COURT ORDERED PROBATION AND THE RESULTS OF THAT PROBATION.

3. ANY PREVIOUS COMMITMENTS OF THE JUVENILE TO JUVENILE RESIDENTIAL PLACEMENTS OR OTHER SECURE INSTITUTIONS.

4. WHETHER THE JUVENILE WAS PREVIOUSLY COMMITTED TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR A FELONY OFFENSE.

5. WHETHER THE JUVENILE COMMITTED ANOTHER FELONY OFFENSE WHILE THE JUVENILE WAS A WARD OF THE DEPARTMENT OF JUVENILE CORRECTIONS.

6. WHETHER THE JUVENILE COMMITTED THE ALLEGED OFFENSE WHILE PARTICIPATING IN, ASSISTING, PROMOTING OR FURTHERING THE INTERESTS OF A CRIMINAL STREET GANG, A CRIMINAL SYNDICATE OR A RACKETEERING ENTERPRISE.

7. THE VIEWS OF THE VICTIM OF THE OFFENSE.

8. THE DEGREE OF THE JUVENILE'S PARTICIPATION IN THE OFFENSE WAS RELATIVELY MINOR BUT NOT SO MINOR AS TO CONSTITUTE A DEFENSE TO PROSECUTION.

9. THE JUVENILE'S MENTAL AND EMOTIONAL CONDITION.

10. THE LIKELIHOOD OF THE JUVENILE'S REASONABLE REHABILITATION THROUGH THE USE OF SERVICES AND FACILITIES THAT ARE CURRENTLY AVAILABLE TO THE JUVENILE COURT.

E. AT THE CONCLUSION OF THE TRANSFER HEARING, THE COURT SHALL MAKE A WRITTEN DETERMINATION WHETHER THE JUVENILE SHOULD BE TRANSFERRED TO JUVENILE COURT. THE COURT SHALL NOT DEFER THE DECISION AS TO THE TRANSFER.

Sec. 3. Title 13, chapter 9, Arizona Revised Statutes, is amended by adding section 13-923, to read:

13-923. <u>Persons convicted of sexual offenses; annual probation review hearing; report; notification</u>

A. IF REQUESTED BY THE PROBATIONER, THE COURT SHALL CONDUCT A PROBATION HEARING AT LEAST ONCE A YEAR FOR A PROBATIONER WHO IS UNDER TWENTY-TWO YEARS OF AGE AND WHO WAS CONVICTED OF AN OFFENSE THAT OCCURRED WHEN THE PERSON WAS UNDER EIGHTEEN YEARS OF AGE AND THAT REQUIRES THE PROBATIONER TO REGISTER PURSUANT TO SECTION 13-3821.

B. THIS SECTION DOES NOT PRECLUDE THE COURT FROM CONDUCTING MORE THAN ONE PROBATION REVIEW HEARING EACH YEAR.

C. THE PROBATION DEPARTMENT THAT IS SUPERVISING THE PROBATIONER SHALL PREPARE A PROBATION REPORT AND SUBMIT THE REPORT TO THE COURT PRIOR TO THE HEARING.

D. THE FOLLOWING INDIVIDUALS SHALL BE NOTIFIED OF THE HEARING:

1. A PROSECUTOR.

2. AN ATTORNEY FOR THE PROBATIONER.

3. ANY VICTIM OR VICTIM'S ATTORNEY WHO HAS A RIGHT TO BE PRESENT AND HEARD PURSUANT TO THE VICTIMS' BILL OF RIGHTS, ARTICLE II, SECTION 2.1 OF THE CONSTITUTION OF THIS STATE, TITLE 13, CHAPTER 40 OR COURT RULE.

4. THE PROBATION OFFICER SUPERVISING THE PROBATIONER.

E. AT THE HEARING THE COURT, AFTER HEARING FROM THOSE PRESENT PURSUANT TO SUBSECTION D OF THIS SECTION, SHALL CONSIDER THE FOLLOWING:

1. WHETHER TO CONTINUE, MODIFY OR TERMINATE PROBATION.

2. WHETHER TO CONTINUE TO REQUIRE, TO SUSPEND OR TO TERMINATE THE PROBATIONER'S REGISTRATION PURSUANT TO SECTION 13-3821.

3. WHETHER TO CONTINUE, DEFER OR TERMINATE COMMUNITY NOTIFICATION PURSUANT TO SECTION 13-3825.

F. THE COURT MAY HOLD A PRE-HEARING INVOLVING THE PERSONS LISTED IN SUBSECTION D OF THIS SECTION TO DISCUSS AND ADVISE THE COURT CONCERNING THE ISSUES LISTED IN SUBSECTION E OF THIS SECTION.

Sec. 4. Section 13-3821, Arizona Revised Statutes, is amended to read:

13-3821. <u>Persons required to register; procedure; identification card; definitions</u>

A. A person who has been convicted of a violation or attempted violation of any of the following offenses or who has been convicted of an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the following offenses or an offense that was in effect before September 1, 1978 and that, if committed on or after September 1, 1978, has the same elements of an offense listed in this section or who is required to register by the convicting jurisdiction, within ten days after the conviction or within ten days after entering and remaining in any county of this state, shall register with the sheriff of that county:

1. Unlawful imprisonment pursuant to section 13-1303 if the victim is under eighteen years of age and the unlawful imprisonment was not committed by the child's parent.

2. Kidnapping pursuant to section 13-1304 if the victim is under eighteen years of age and the kidnapping was not committed by the child's parent.

3. Sexual abuse pursuant to section 13-1404 if the victim is under eighteen years of age.

4. Sexual conduct with a minor pursuant to section 13-1405.

5. Sexual assault pursuant to section 13-1406.

6. Sexual assault of a spouse if the offense was committed before August 12, 2005.

7. Molestation of a child pursuant to section 13-1410.
8. Continuous sexual abuse of a child pursuant to section 13-1417.
9. Taking a child for the purpose of prostitution pursuant to section 13-3206.
10. Child prostitution pursuant to section 13-3212.
11. Commercial sexual exploitation of a minor pursuant to section 13-3552.
12. Sexual exploitation of a minor pursuant to section 13-3553.
13. Luring a minor for sexual exploitation pursuant to section 13-3554.
14. Sex trafficking of a minor pursuant to section 13-1307.
15. A second or subsequent violation of indecent exposure to a person under fifteen years of age pursuant to section 13-1402.
16. A second or subsequent violation of public sexual indecency to a minor under the age of fifteen years pursuant to section 13-1403, subsection B.
17. A third or subsequent violation of indecent exposure pursuant to section 13-1402.
18. A third or subsequent violation of public sexual indecency pursuant to section 13-1403.
19. A violation of section 13-3822 or 13-3824.

B. Before the person is released from confinement the state department of corrections in conjunction with the department of public safety and each county sheriff shall complete the registration of any person who was convicted of a violation of any offense listed under subsection A of this section. Within three days after the person's release from confinement, the state department of corrections shall forward the registered person's records to the department of public safety and to the sheriff of the county in which the registered person intends to reside. Registration pursuant to this subsection shall be consistent with subsection E of this section.

C. Notwithstanding subsection A of this section, the judge who sentences a defendant for any violation of chapter 14 or 35.1 of this title or for an offense for which there was a finding of sexual motivation pursuant to section 13-118 may require the person who committed the offense to register pursuant to this section.

D. The court may require a person who has been adjudicated delinquent for an act that would constitute an offense specified in subsection A or C of this section to register pursuant to this section. Any duty to register under this subsection shall terminate when the person reaches twenty-five years of age.

E. A person who has been convicted of or adjudicated delinquent and who is required to register in the convicting state for an act that would constitute an offense specified in subsection A or C of this section and who is not a resident of this state shall be required to register pursuant to this section if the person is either:

1. Employed full-time or part-time in this state, with or without compensation, for more than fourteen consecutive days or for an aggregate period of more than thirty days in a calendar year.

2. Enrolled as a full-time or part-time student in any school in this state for more than fourteen consecutive days or for an aggregate period of more than thirty days in a calendar year. For the purposes of this paragraph, "school" means an educational institution of any description, public or private, wherever located in this state.

F. Any duty to register under subsection D or E of this section for a juvenile adjudication terminates when the person reaches twenty-five years of age.

G. The court may order the termination of any duty to register under this section on successful completion of probation if the person was under eighteen years of age when the offense for which the person was convicted was committed.

H. THE COURT MAY ORDER THE SUSPENSION OR TERMINATION OF ANY DUTY TO REGISTER UNDER THIS SECTION AFTER A HEARING HELD PURSUANT TO SECTION 13-923.

I. At the time of registering, the person shall sign or affix an electronic fingerprint to a statement giving such information as required by the director of the department of public safety, including all names by which the person is known. The sheriff shall fingerprint and photograph the person and within three days thereafter shall send copies of the statement, fingerprints and photographs to the department of public safety and the chief of police, if any, of the place where the person resides. The information that is required by this subsection shall include the physical location of the person's residence and the person's address. If the person has a place of residence that is different from the person's address, the person shall provide the person's address, the physical location of the person's residence and the name of the owner of the residence if the residence is privately owned and not offered for rent or lease. If the person receives mail at a post office box, the person shall provide the location and number of the post office box. If the person does not have an address or a permanent place of residence, the person shall provide a description and physical location of any temporary residence and shall register as a transient not less than every ninety days with the sheriff in whose jurisdiction the transient is physically present.

~~I.~~ J. On the person's initial registration and every year after the person's initial registration, the person shall obtain a new nonoperating identification license or a driver license from the motor vehicle division in the department of transportation and shall carry a valid nonoperating identification license or a driver license. Notwithstanding sections 28-3165 and 28-3171, the license is valid for one year from the date of issuance, and the person shall submit to the department of transportation proof of the person's address and place of residence. The motor vehicle division shall annually update the person's address and photograph and shall make a copy of

the photograph available to the department of public safety or to any law enforcement agency. The motor vehicle division shall provide to the department of public safety daily address updates for persons required to register pursuant to this section.

~~J.~~ K. Except as provided in subsection E or K of this section, the clerk of the superior court in the county in which a person has been convicted of a violation of any offense listed under subsection A of this section or has been ordered to register pursuant to subsection C or D of this section shall notify the sheriff in that county of the conviction within ten days after entry of the judgment.

~~K.~~ L. Within ten days after entry of judgment, a court not of record shall notify the arresting law enforcement agency of an offender's conviction of a violation of section 13-1402. Within ten days after receiving this information, the law enforcement agency shall determine if the offender is required to register pursuant to this section. If the law enforcement agency determines that the offender is required to register, the law enforcement agency shall provide the information required by section 13-3825 to the department of public safety and shall make community notification as required by law.

~~L.~~ M. A person who is required to register pursuant to this section because of a conviction for the unlawful imprisonment of a minor or the kidnapping of a minor is required to register, absent additional or subsequent convictions, for a period of ten years from the date that the person is released from prison, jail, probation, community supervision or parole and the person has fulfilled all restitution obligations. Notwithstanding this subsection, a person who has a prior conviction for an offense for which registration is required pursuant to this section is required to register for life.

~~M.~~ N. A person who is required to register pursuant to this section and who is a student at a public or private institution of postsecondary education or who is employed, with or without compensation, at a public or private institution of postsecondary education or who carries on a vocation at a public or private institution of postsecondary education shall notify the county sheriff having jurisdiction of the institution of postsecondary education. The person required to register pursuant to this section shall also notify the sheriff of each change in enrollment or employment status at the institution.

~~N.~~ O. At the time of registering, the sheriff shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from a person who has been convicted of an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the offenses listed in subsection A of this section or an offense that was in effect before September 1, 1978 and that, if committed on or after September 1, 1978, has the same elements of an offense listed in subsection A of this section or who

1 is required to register by the convicting jurisdiction. The sheriff shall
2 transmit the sample to the department of public safety.
3 ~~O.~~ P. For the purposes of this section:
4 1. "Address" means the location at which the person receives mail.
5 2. "Residence" means the person's dwelling place, whether permanent or
6 temporary.

APPROVED BY THE GOVERNOR MAY 1, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2007.