Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 204

HOUSE BILL 2646

AN ACT

AMENDING SECTIONS 31-402 AND 31-411, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 11, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1609.05; RELATING TO THE STATE DEPARTMENT OF CORRECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 31-402, Arizona Revised Statutes, is amended to read:

31-402. Powers of board; powers and duties of governor; powers and duties of executive director

A. For all persons who committed felony offenses before January 1, 1994, the board of executive clemency shall have exclusive power to pass upon and recommend reprieves, commutations, paroles and pardons. No reprieve, commutation or pardon may be granted by the governor unless it has first been recommended by the board.

B. For all persons who committed felony offenses before January 1, 1994, all applications for reprieves, commutations and pardons made to the governor shall be at once transmitted to the chairman of the board, and the board shall return the applications with its recommendation to the governor. All applications for reprieves, commutations and pardons made to the governor shall include documentation that the victim or the victim's family was notified pursuant to section 31-411, subsection H.

C. For all persons who committed felony offenses on or after January 1, 1994, in addition to the powers and duties prescribed in subsection A of this section, the board of executive clemency:

1. Is vested with the powers and duties of the board of pardons and paroles as they existed before January 1, 1994 to carry out the provisions of articles 3 through 7 of this chapter.

2. After a hearing for which the victim, county attorney and presiding judge are given notice and an opportunity to be heard, may make recommendations to the governor for commutation of sentence after finding by clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender and that there is a substantial probability that when released the offender will conform the offender's conduct to the requirements of the law.

3. Shall receive petitions from individuals for whom the court has entered a special order allowing the person to petition the board pursuant to section 13-603, subsection L and may make recommendations to the governor.

4. Shall receive petitions from individuals, organizations or the department for review and commutation of sentences and pardoning of offenders in extraordinary cases and may make recommendations to the governor.

5. Shall receive petitions from the state department of corrections alleging that an offender has violated the offender's terms and conditions of community supervision and has lapsed or is probably about to lapse into criminal ways or company. If the board determines that an offender on community supervision has violated the terms and conditions of community supervision the board may ~~either~~ DO ANY OF THE FOLLOWING:

(a) IF THE OFFENDER HAS NOT COMMITTED AN ADDITIONAL OFFENSE, PLACE THE OFFENDER ON ELECTRONIC MONITORING AND ORDER THE OFFENDER TO PARTICIPATE IN A COMMUNITY ACCOUNTABILITY PROGRAM PURSUANT TO SECTION 41-1609.05.

~~(a)~~ (b) Revoke community supervision and return the offender to prison for the remainder of the offender's community supervision.

~~(b)~~ (c) Impose additional terms and conditions on the offender while keeping the offender on community supervision. If there is reasonable cause to believe that an offender who has been kept on community supervision has violated any term or condition of community supervision, any member of the board may petition the board to revoke community supervision. After a petition to revoke has been submitted, the chairman may issue a summons directing the offender to appear on a specified date for a revocation hearing or may issue a warrant for the offender's arrest. Nothing in this subsection limits the state department of corrections' authority with respect to submitting revocation petitions or issuing revocation warrants.

D. Any recommendation for commutation that is made unanimously by the members present and voting and that is not acted on by the governor within ninety days after the board submits its recommendation to the governor automatically becomes effective.

E. The executive director shall perform all administrative, operational and financial functions for the board.

F. The executive director may employ case analysts as deemed necessary within the limits of legislative appropriation. The analyst shall aid the board in making investigations, in securing information and in performing necessary administrative functions to assist the board in passing upon applications for parole and commutation.

G. The executive director may employ hearing officers as deemed necessary within the limits of legislative appropriation. The hearing officers shall conduct probable cause hearings on parole, work furlough and home arrest revocations or rescissions. Hearing officers shall assist the board in making investigations, securing information and performing necessary administrative functions.

Sec. 2. Section 31-411, Arizona Revised Statutes, is amended to read:

31-411. <u>Parole or discharge; conditions of parole; release under supervision of state department of corrections; notice of hearing; exceptions</u>

A. Any prisoner who has been certified as eligible for parole or absolute discharge from imprisonment pursuant to section 31-412, subsection B or section 41-1604.09 shall be given an opportunity to apply for release upon parole or for an absolute discharge from imprisonment. The board of executive clemency shall not entertain any other form of application or petition for the release upon parole or absolute discharge from imprisonment of any prisoner.

B. A prisoner eligible for parole or absolute discharge from imprisonment shall be given an opportunity to be heard either before a hearing officer designated by the board or the board itself, at the discretion of the board.

C. If the hearing is heard by a hearing officer, the hearing officer shall make a recommendation on application for parole or absolute discharge from imprisonment to the board within thirty days after the hearing date. Within thirty days after the date of the hearing officer's recommendations, the board shall review these recommendations and either approve, with or without conditions, or reject the prisoner's application for parole or absolute discharge from imprisonment. A prisoner eligible for parole or absolute discharge from imprisonment shall not be denied parole or absolute discharge from imprisonment without an opportunity to be heard before the board unless another form of release has been granted.

D. If parole is granted, the prisoner shall remain on parole unless the board revokes the parole or grants an absolute discharge from parole or until the prisoner reaches ~~his~~ THE individual earned release credit date pursuant to section 41-1604.10. IF THE PRISONER VIOLATES A CONDITION OF PAROLE BUT HAS NOT COMMITTED AN ADDITIONAL OFFENSE, THE BOARD MAY PLACE THE PRISONER ON ELECTRONIC MONITORING AND ORDER THE DEFENDANT TO PARTICIPATE IN A COMMUNITY ACCOUNTABILITY PROGRAM PURSUANT TO SECTION 41-1609.05. If the prisoner is still on parole ~~when he reaches his~~ ON REACHING THE individual earned release credit date pursuant to section 41-1604.10, ~~he~~ THE PRISONER shall be terminated from parole but shall be subject to revocation under section 41-1604.10. When the prisoner reaches ~~his~~ THE individual earned release credit date ~~his~~ THE PRISONER'S parole shall be terminated and ~~he~~ THE PRISONER shall no longer be under the authority of the board.

E. During the period of time that the prisoner remains on supervised parole under subsection D of this section, the board shall require as a condition of parole that the prisoner pay a monthly supervision fee of not less than thirty dollars unless, after determining the inability of the prisoner to pay the fee, the board requires payment of a lesser amount. The supervising parole officer shall monitor the collection of the fee. The board may also impose any conditions of parole it deems appropriate in order to ensure that the best interests of the prisoner and the citizens of this state are served. These conditions may include:

1. Participation in a rehabilitation program or counseling.
2. Performance of community service work.

F. Monies collected pursuant to subsection E of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the victim compensation and assistance fund established by section 41-2407.

G. When parole or absolute discharge from imprisonment is denied, the board, ~~shall~~ within ten days, SHALL prepare and deliver to the director of the state department of corrections a written statement specifying the individualized reasons for the denial of parole or absolute discharge from imprisonment unless another form of release has been granted. The prisoner may view the written statement prepared by the board. Every prisoner, having served not less than one year, may be temporarily released according to the rules of the department one hundred eighty days prior to the expiration of

the sentence or the earned release credit date, whichever first occurs, if the director finds that such release is in the best interest of the state. The releasee shall remain under control of the state department of corrections until expiration of the term specified in the sentence. If the releasee violates any condition of release, the releasee may be returned to custody without further process.

H. ~~The board,~~ When a commutation, absolute discharge from imprisonment or parole is to be considered, ~~shall~~ THE BOARD, on request and before holding a hearing on the commutation, absolute discharge from imprisonment or parole, SHALL notify the attorney general, the presiding judge of the superior court, the county attorney in the county in which the prisoner requesting a commutation, absolute discharge from imprisonment or parole was sentenced, and the victim of the offense for which the prisoner is incarcerated. The notice to the victim shall be mailed to the last known address. The notice shall state the name of the prisoner requesting the commutation, absolute discharge from imprisonment or parole and shall set the month of hearing on the application. The notice to the victim shall also inform the victim of the victim's right to be present and to submit a written report to the board expressing the victim's opinion concerning the release of the prisoner. No hearing concerning commutations, absolute discharge from imprisonment or parole shall be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

I. The provisions of this section requiring notice to the officials named in subsection H of this section shall not apply:

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within two hundred ten days of expiration.

Sec. 3. Title 41, chapter 11, article 1, Arizona Revised Statutes, is amended by adding section 41-1609.05, to read:

41-1609.05. <u>Community accountability pilot program; fund; program termination; definition</u>

A. THE DEPARTMENT SHALL CONTRACT WITH AN EXPERIENCED PRIVATE OR NONPROFIT ENTITY TO OPERATE A COMMUNITY ACCOUNTABILITY PILOT PROGRAM TO PROVIDE ELIGIBLE INMATES WITH SUPERVISION AND TREATMENT SERVICES. THE DEPARTMENT SHALL PROCURE COMMUNITY ACCOUNTABILITY SERVICES PURSUANT TO CHAPTER 23 OF THIS TITLE.

B. THE PILOT PROGRAM SHALL INITIALLY PROVIDE SERVICES TO NOT MORE THAN ONE THOUSAND ELIGIBLE INMATES. AT THE END OF THE SECOND YEAR OF THE PILOT PROGRAM, THE PROGRAM SHALL PROVIDE SERVICES TO NOT MORE THAN TWO THOUSAND ELIGIBLE INMATES. THE PROGRAM SHALL PROVIDE SERVICES THAT ARE DESIGNED TO LOWER RECIDIVISM RATES BY PROVIDING INTENSIVE MONITORING AND SPECIFIC TREATMENT. INMATES SHALL ENROLL IN THE PROGRAM FOR AT LEAST NINETY DAYS UNLESS REMOVED BY THE DIRECTOR PURSUANT TO SUBSECTION E OF THIS SECTION.

C. THE GOALS OF THE COMMUNITY ACCOUNTABILITY PILOT PROGRAM INCLUDE:
1. REDUCING RECIDIVISM.
2. PROVIDING TREATMENT AND REHABILITATION SERVICES.
3. PROVIDING SUPERVISION THROUGH ELECTRONIC MONITORING.
4. PREPARING ELIGIBLE INMATES FOR INDEPENDENT LIVING FOLLOWING COMMUNITY SUPERVISION.
5. ENHANCING PUBLIC SAFETY.

D. THE COMMUNITY ACCOUNTABILITY PILOT PROGRAM MAY PROVIDE THE FOLLOWING SERVICES TO ELIGIBLE INMATES:
1. SUBSTANCE ABUSE EDUCATION AND TREATMENT.
2. RANDOM MANDATORY DRUG TESTING.
3. ELECTRONIC MONITORING, REMOTE ALCOHOL TESTING, GLOBAL POSITIONING SYSTEM TRACKING AND VOICE IDENTIFICATION COMMUNITY TRACKING.
4. LIFE SKILLS PROGRAMMING.
5. EMPLOYMENT PREPARATION.
6. ANGER MANAGEMENT.
7. PARENTING SKILLS AND FAMILY ORIENTATION.
8. COGNITIVE SKILLS TRAINING.
9. GENERAL EQUIVALENCY DIPLOMAS AND ADULT BASIC EDUCATION.
10. HOUSING ASSISTANCE.
11. HEALTH CARE AND STRESS MANAGEMENT.
12. TRANSPORTATION PLANNING.
13. GROUP AND INDIVIDUAL COUNSELING.

E. THE DIRECTOR SHALL IDENTIFY INMATES WHO ARE ELIGIBLE FOR THE COMMUNITY ACCOUNTABILITY PILOT PROGRAM AND SHALL DETERMINE ALL SUPERVISION, ADMISSION AND TERMINATION REQUIREMENTS. THE DIRECTOR MAY REMOVE AN INMATE FROM THE PROGRAM. THE DIRECTOR MAY ORDER AN ELIGIBLE INMATE TO PARTICIPATE IN THE PROGRAM IN LIEU OF PAROLE OR COMMUNITY SUPERVISION REVOCATION.

F. THE CONTRACTING ENTITY SHALL OPERATE THE PROGRAM, INCLUDING THE MANAGEMENT OF ANY FACILITY AND ITS STAFF, THE DESIGN OF THE PROGRAM AND THE INSTALLATION AND MAINTENANCE OF ALL EQUIPMENT NECESSARY FOR OPERATION OF ANY FACILITY. THE CONTRACTING ENTITY SHALL USE EXISTING RISK ASSESSMENT SCORES UTILIZED BY THE DEPARTMENT TO ESTABLISH THREE LEVELS OF BEHAVIOR MODIFICATION AND TREATMENT SERVICES. ON INITIAL ENTRANCE INTO THE PROGRAM, AN ELIGIBLE INMATE SHALL BE PLACED IN LEVEL ONE. CASE MANAGERS SHALL PROVIDE MONTHLY REPORTS TO THE ELIGIBLE INMATE'S SUPERVISING OFFICER, EXCEPT THAT A VIOLATION SHALL BE REPORTED WITHIN TWENTY-FOUR HOURS.

G. AFTER AN ELIGIBLE INMATE HAS BEEN IN THE PROGRAM FOR SIXTY DAYS OR MORE, THE DEPARTMENT MAY REQUIRE AS A CONDITION OF PROGRAM PARTICIPATION THAT THE ELIGIBLE INMATE PAY A SUPERVISION FEE, UNLESS THE INMATE IS DETERMINED TO BE INDIGENT. THE CASE MANAGER SHALL MONITOR THE COLLECTION OF THE FEE. MONIES COLLECTED PURSUANT TO THIS SUBSECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE COMMUNITY ACCOUNTABILITY FUND ESTABLISHED PURSUANT TO SUBSECTION H OF THIS SECTION.

1 H. THE COMMUNITY ACCOUNTABILITY FUND IS ESTABLISHED CONSISTING OF FEES
2 COLLECTED PURSUANT TO SUBSECTION G OF THIS SECTION. THE DIRECTOR SHALL
3 ADMINISTER THE FUND FOR THE PURPOSES OF THIS SECTION. MONIES IN THIS FUND
4 ARE CONTINUOUSLY APPROPRIATED.
5 I. DURING THE FIRST YEAR OF OPERATION OF THE PILOT PROGRAM, THE
6 CONTRACTING ENTITY SHALL PROVIDE MONTHLY REPORTS TO THE DEPARTMENT AND THE
7 JOINT LEGISLATIVE BUDGET COMMITTEE. BEGINNING IN THE SECOND YEAR OF THE
8 PILOT PROGRAM, THE CONTRACTING ENTITY SHALL REPORT AT LEAST ANNUALLY TO THE
9 DEPARTMENT AND THE JOINT LEGISLATIVE BUDGET COMMITTEE.
10 J. THE PILOT PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2009
11 PURSUANT TO SECTION 41-3102.
12 K. FOR THE PURPOSES OF THIS SECTION, "ELIGIBLE INMATE" MEANS AN INMATE
13 WHO IS ON COMMUNITY SUPERVISION OR WHO IS ELIGIBLE FOR COMMUNITY SUPERVISION
14 AND WHO HAS NOT BEEN CONVICTED OF A VIOLENT OFFENSE AS DEFINED IN SECTION
15 13-604.04, A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-604.01
16 OR A SEXUAL OFFENSE PURSUANT TO TITLE 13, CHAPTER 14 OR 35.

APPROVED BY THE GOVERNOR MAY 6, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 6, 2004.