



Sheriffs – Probationer/Parolee Searches
Prepared by the Arizona Association of Counties
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Issue: Require probationers and those sentenced to community supervision to agree as a condition of probation or release to searches by a law enforcement officer based upon reasonable suspicion with or without a search warrant.

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

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

13-901. Probation

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

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

C. The court, in its discretion, may issue a warrant for the rearrest of the defendant and may modify or add to the conditions or, if the defendant commits an additional offense or violates a condition, may revoke probation in accordance with the rules of criminal procedure at any time before the expiration or termination of the period of probation. If the court revokes the defendant's probation and the defendant is serving more than one probationary term concurrently, the court may sentence the person to terms of imprisonment to be served consecutively.

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

E. ANY PERSON CONVICTED OF A FELONY AND WHOSE SENTENCE INCLUDES PROBATION PURSUANT TO THIS CHAPTER SHALL AGREE IN WRITING AS A STANDARD CONDITION OF PROBATION TO SEARCH OR SEIZURE BASED UPON REASONABLE SUSPICION BY A CERTIFIED PEACE OFFICER AT ANY TIME OF THE DAY OR NIGHT WITH OR WITHOUT A SEARCH WARRANT.

1. IT IS NOT THE INTENT OF THE LEGISLATURE TO AUTHORIZE PEACE OFFICERS TO CONDUCT SEARCHES FOR THE SOLE PURPOSE OF HARRASSMENT.

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

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

~~G. H.~~ If the defendant is placed on lifetime probation and has served one year in the county jail as a term of probation, the court may require that the defendant be additionally imprisoned in the county jail at whatever time or intervals, consecutive or nonconsecutive, the court shall determine, within the period of probation if the defendant's probation is revoked by the court and the defendant is subsequently reinstated on probation. The period actually spent in confinement as a term of being reinstated on probation shall not exceed one year or when including the initial one year period of incarceration imposed as a term of probation, the maximum period of imprisonment permitted under chapter 7 of this title, whichever is the shorter.

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

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

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

Section 2. Section 41-1604.07, Arizona Revised Statutes, is amended to read:

41-1604.07. Earned release credits; forfeiture; restoration

A. Pursuant to rules adopted by the director, each prisoner who is in the eligible earned release credit class shall be allowed an earned release credit of one day for every six days served, including time served in county jails, except for those prisoners who are sentenced to serve the full term of imprisonment imposed by the court.

B. Release credits earned by a prisoner pursuant to subsection A of this section shall not reduce the term of imprisonment imposed by the court on the prisoner.

C. On reclassification of a prisoner resulting from the prisoner's failure to adhere to the rules of the department or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program, the director may declare all release credits earned by the prisoner forfeited. In the discretion of the director forfeited release credits may subsequently be restored. The director shall maintain an account of release credits earned by each prisoner.

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

E. Notwithstanding subsection D of this section, a prisoner who fails to achieve functional literacy at an eighth grade literacy level shall not be released to begin the prisoner's term of community supervision until either the prisoner achieves an eighth grade functional literacy level as measured by standardized assessment testing or the prisoner serves the full term of imprisonment imposed by the court, whichever first occurs. This subsection does not apply to inmates who either:

1. Are unable to meet the functional literacy standard required by section 31-229.02, subsection A, due to a medical, developmental or learning disability as described in section 31-229, subsection C.
2. Are classified as level five offenders.
3. Are foreign nationals.
4. Have less than six months incarceration to serve on commitment to the department.

F. The department shall establish conditions of community supervision it deems appropriate in order to ensure that the best interests of the prisoner and the citizens of this state are served. As a condition of community supervision the director may order a released prisoner to participate in an appropriate drug treatment or education program that is administered by a qualified agency, organization or individual approved by the department of health services and that provides treatment or education to persons who abuse controlled substances. Each person who is enrolled in a drug treatment or education program shall pay for the cost of participation in the program to the extent of the person's financial ability. Additional conditions may include participation in a rehabilitation program or counseling and performance of community restitution work, except that if the prisoner was convicted of a violation of sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age, the department shall impose as a condition of community supervision a prohibition on residing within four hundred forty feet of a school or its accompanying grounds. If a prisoner who reaches the prisoner's earned release credit date refuses to sign and agree to abide by the conditions of supervision before release on community supervision, the prisoner shall not be released. When the prisoner reaches the sentence expiration date, the prisoner shall be released to begin the term of community supervision. If the prisoner refuses to sign and agree to abide by the conditions of release, the prisoner shall not be released on the sentence expiration date and shall serve the term of community supervision in prison. The department is required to supervise any prisoner on community supervision until the period of community supervision expires. The department may bring a prisoner who is in violation of the prisoner's terms and conditions before the board of executive clemency. For the purposes of this subsection, "school" means any public, charter or private school where children attend classes.

1. A PRISONER WHOSE SENTENCE DERIVES FROM A FELONY CONVICTION AND INCLUDES COMMUNITY SUPERVISION PURSUANT TO THIS SECTION SHALL AGREE IN WRITING AS A CONDITION OF RELEASE TO SEARCH OR SEIZURE BASED UPON REASONABLE SUSPICION BY A CERTIFIED PEACE OFFICER AT ANY TIME OF THE DAY OR NIGHT WITH OR WITHOUT A SEARCH WARRANT.

2. IT IS NOT THE INTENT OF THE LEGISLATURE TO AUTHORIZE PEACE OFFICERS TO CONDUCT SEARCHES FOR THE SOLE PURPOSE OF HARRASSMENT.

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

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

I. A prisoner shall forfeit five days of the prisoner's earned release credits:

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

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

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

J. If the prisoner does not have five days of earned release credits, the prisoner shall forfeit the prisoner's existing earned release credits and shall be ineligible from accruing earned release credits until the number of earned release credits the prisoner would have otherwise accrued equals the difference between five days and the number of existing earned release credit days the prisoner forfeits pursuant to this section.

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