

Rule 27: Probation: The length of the probationary term is determined by statute.
.....Revised 3/2010

The length of the defendant’s probationary period is determined according to A.R.S. § 13-902. Under A.R.S. § 13-902(A), probation for a class 2 felony may continue for seven years; for a class 3 felony, five years; for a class 4 felony, four years; for a class 5 or 6 felony or class one misdemeanor, three years; for a class 2 misdemeanor, two years; and for a class 3 misdemeanor, one year.

However, under A.R.S. § 13-902(B), the Legislature has authorized longer probationary terms for some specified offenses. For a DUI in violation of A.R.S. § 28-1381 or an extreme DUI in violation of § 28-1382, probation may continue for five years, and for an aggravated DUI in violation of A.R.S. § 28-1383, probation may continue for ten years. Also, under A.R.S. § 13-901(E), if the defendant has been convicted of a sex offense in violation of A.R.S. Title 13, Chapter 14¹, stalking in violation of A.R.S. § 13-2923, or abuse of a child or a vulnerable adult in violation of § 13-3623, if the trial court imposes probation, the defendant’s probationary term must be at least the length of time specified in § 13-902(A) and may continue for any term “up to and including life.” A.R.S. § 13-902(E).

The defendant’s probationary term may be extended in certain circumstances. If the court has ordered the defendant to pay restitution and the defendant fails to do so, the court “at any time prior to the termination or expiration of probation” may extend the

¹ Such sexual offenses include: A.R.S. § 13-1402, indecent exposure; § 13-1403, public sexual indecency; § 13-1404, sexual abuse; § 13-1405, sexual conduct with a minor; § 13-1406, sexual assault; § 13-1406.01, sexual assault of a spouse; and § 13-1410, child molestation.

probationary term for a felony for up to five years and for a misdemeanor for up to two years. A.R.S. § 13-901(B). In addition, the court may issue a warrant for the rearrest of the defendant and modify or add to the conditions of probation. § 13-901(C).

The court may also terminate a defendant's probation period early, either on the probationer's motion or on the court's own initiative, "if in the court's opinion the ends of justice will be served and if the conduct of the defendant on probation warrants it." § 13-901(E). Note that Rule 27.4, Ariz. R. Crim. P., provides that at any time during the probation term, either on the probation officer's motion or on the court's own motion, the sentencing court "may terminate probation and discharge the probationer absolutely." However, that rule does not grant the sentencing court unfettered discretion to terminate a defendant's probation before his probationary term expires. As the Court of Appeals has stated, "The statute [A.R.S. § 13-901(E)] clearly implies that the only way that probation can be terminated [early] is if the defendant's conduct is such as to indicate rehabilitation. Rehabilitation is the purpose of probation." *State v. Moore*, 149 Ariz. 176, 177, 717 P.2d 480, 481 (App. 1986). Thus, the trial court may only terminate the defendant's probation early if the defendant's good behavior while on probation indicates that the defendant has been rehabilitated. The trial court has no authority to terminate a period of probation as unsuccessfully completed. *State v. Hensley*, 201 Ariz. 74, 79 ¶ 21, 31 P.3d 848, 853 (App. 2001); *State v. Findler*, 152 Ariz. 385, 386, 732 P.2d 1123, 1124 (App. 1987).