

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1265

AN ACT

AMENDING SECTIONS 13-3906 AND 13-3961, ARIZONA REVISED STATUTES; RELATING TO BAIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-3906, Arizona Revised Statutes, is amended to
3 read:

4 13-3906. Processing arrestees: citizenship determination:
5 notice: random audits

6 A. **WITHIN TWENTY-FOUR HOURS** after a person is brought to a law
7 enforcement agency for incarceration, the law enforcement agency shall
8 **INQUIRE OF THE PERSON AND** determine that person's country of citizenship. If
9 the person is not a United States citizen, the law enforcement agency shall:

10 1. Notify the person's country of citizenship of the person's
11 detention if the person does not waive notification or if the person's
12 country of citizenship requires notification regardless of the person's
13 waiver of notification.

14 2. ~~The law enforcement agency shall~~ Document the notification to the
15 person's country of citizenship and any waiver of notification.

16 3. **TRANSMIT ANY INFORMATION OBTAINED PURSUANT TO THIS SECTION TO THE**
17 **COURT AND THE PROSECUTING AGENCY FOR THE PURPOSE OF MAKING A DETERMINATION**
18 **PURSUANT TO SECTION 13-3961, SUBSECTION A, PARAGRAPH 5 OR SECTION 13-3967,**
19 **SUBSECTION B, PARAGRAPH 11 OR FOR ANY OTHER LAWFUL PURPOSE.**

20 B. The failure or inability of a law enforcement agency to provide the
21 notice required by this section does not:

22 1. Affect the admissibility of any statements, the voluntariness of a
23 guilty plea or the validity of a conviction.

24 2. Afford a defendant any rights in any proceeding related to
25 deportation, exclusion or denial of naturalization.

26 Sec. 2. Section 13-3961, Arizona Revised Statutes, is amended to read:

27 13-3961. Offenses not bailable: purpose: preconviction:
28 exceptions

29 A. A person who is in custody shall not be admitted to bail if the
30 proof is evident or the presumption great that the person is guilty of the
31 offense **CHARGED** and the offense charged is ~~either~~ **ONE OF THE FOLLOWING:**

32 1. A capital offense.

33 2. Sexual assault.

34 3. Sexual conduct with a minor who is under fifteen years of age.

35 4. Molestation of a child who is under fifteen years of age.

36 5. A serious felony offense if **THERE IS PROBABLE CAUSE TO BELIEVE THAT**
37 the person has entered or remained in the United States illegally. For the
38 purposes of this paragraph: ~~—~~

39 **(a) THE COURT SHALL CONSIDER ALL OF THE FOLLOWING IN MAKING A**
40 **DETERMINATION THAT A PERSON HAS ENTERED OR REMAINED IN THE UNITED STATES**
41 **ILLEGALLY:**

42 **(i) WHETHER A HOLD HAS BEEN PLACED ON THE ARRESTED PERSON BY THE**
43 **UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT.**

44 **(ii) ANY INDICATION BY A LAW ENFORCEMENT AGENCY THAT THE PERSON IS IN**
45 **THE UNITED STATES ILLEGALLY.**

1 (iii) WHETHER AN ADMISSION BY THE ARRESTED PERSON HAS BEEN OBTAINED BY
2 THE COURT OR A LAW ENFORCEMENT AGENCY THAT THE PERSON HAS ENTERED OR REMAINED
3 IN THE UNITED STATES ILLEGALLY.

4 (iv) ANY INFORMATION RECEIVED FROM A LAW ENFORCEMENT AGENCY PURSUANT
5 TO SECTION 13-3906.

6 (v) ANY EVIDENCE THAT THE PERSON HAS RECENTLY ENTERED OR REMAINED IN
7 THE UNITED STATES ILLEGALLY.

8 (vi) ANY OTHER RELEVANT INFORMATION THAT IS OBTAINED BY THE COURT OR
9 THAT IS PRESENTED TO THE COURT BY A PARTY OR ANY OTHER PERSON.

10 (b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or
11 any violation of section 28-1383.

12 B. The purposes of bail and any conditions of release that are set by
13 a judicial officer include:

- 14 1. Assuring the appearance of the accused.
- 15 2. Protecting against the intimidation of witnesses.
- 16 3. Protecting the safety of the victim, any other person or the
17 community.

18 C. THE INITIAL DETERMINATION OF WHETHER AN OFFENSE IS BAILABLE
19 PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE MADE BY THE MAGISTRATE OR
20 JUDICIAL OFFICER AT THE TIME OF THE PERSON'S INITIAL APPEARANCE.

21 ~~C~~ D. EXCEPT AS PROVIDED IN SUBSECTION A OF THIS SECTION, a person
22 who is in custody shall not be admitted to bail if the person is charged with
23 a felony offense and the state certifies by motion and the court finds after
24 a hearing on the matter that there is clear and convincing evidence that the
25 person charged poses a substantial danger to another person or the community
26 or engaged in conduct constituting a violent offense, that no condition or
27 combination of conditions of release may be imposed that will reasonably
28 assure the safety of the other person or the community and that the proof is
29 evident or the presumption great that the person committed the offense for
30 which the person is charged. For the purposes of this subsection, "violent
31 offense" means either of the following:

- 32 1. A dangerous crime against children.
- 33 2. Terrorism.

34 ~~D~~ E. On oral motion of the state, the court shall order the hearing
35 required by subsection ~~C~~ D OF THIS SECTION at or within twenty-four hours of
36 the initial appearance unless the person who is subject to detention or the
37 state moves for a continuance. A continuance that is granted on the motion
38 of the person shall not exceed five calendar days unless there are
39 extenuating circumstances. A continuance on the motion of the state shall be
40 granted on good cause shown and shall not exceed twenty-four hours. THE
41 PROSECUTOR SHALL PROVIDE REASONABLE NOTICE AND AN OPPORTUNITY FOR VICTIMS AND
42 WITNESSES TO BE PRESENT AND HEARD AT ANY HEARING. The person may be detained
43 pending the hearing. The person is entitled to representation by counsel and
44 is entitled to present information by proffer or otherwise, to testify and to
45 present witnesses in the person's own behalf. Testimony of the person

1 charged that is given during the hearing shall not be admissible on the issue
2 of guilt in any subsequent judicial proceeding, except as it might relate to
3 the compliance with or violation of any condition of release subsequently
4 imposed or the imposition of appropriate sentence or in perjury proceedings,
5 or for the purposes of impeachment. The case of the person shall be placed
6 on an expedited calendar and, consistent with the sound administration of
7 justice, the person's trial shall be given priority. The person may be
8 admitted to bail in accordance with the Arizona rules of criminal procedure
9 whenever a judicial officer finds that a subsequent event has eliminated the
10 basis for detention.

11 ~~E.~~ F. The finding of an indictment or the filing of an information
12 does not add to the strength of the proof or the presumption to be drawn.

13 Sec. 3. Emergency

14 This act is an emergency measure that is necessary to preserve the
15 public peace, health or safety and is operative immediately as provided by
16 law.