ARIZONA STATE SENATE

Fifty-Third Legislature, First Regular Session

AMENDED

FACT SHEET FOR S.B. 1158

sentencing; court debts; fine mitigation

Purpose

Effective January 1, 2018, modifies requirements related to court-ordered monetary obligations, expands the court's authority regarding sentencing misdemeanor offenders, and alters how the amount of time a defendant spends in custody is credited for purposes of imprisonment.

Background

In 2016, the Chief Justice of the Arizona Supreme Court established the Task Force on Fair Justice for All. The Task Force's purpose was to study and make recommendations related to court-ordered fines, penalties, fees and pretrial release policies. S.B. 1158 implements a portion of the recommendations.

If a person is convicted of an offense and either not granted a period of probation or probation is revoked, statute allows the court to impose a term of imprisonment, a fine, both imprisonment and a fine, or a term of intensive probation or intensive probation and a fine (A.R.S. § 13-603). S.B. 1158 allows the court to order a term of community restitution, education or treatment in these circumstances if the conviction was for a misdemeanor offense.

At the time a defendant completes probation or a sentence, statute requires the court to enter a criminal restitution order: 1) in favor of the state for any unpaid balance of fines, costs, incarceration costs, fees, surcharges and assessments; and 2) in favor of each person entitled to restitution for any unpaid balance. Both accrue interest at a rate of 10 percent per year (A.R.S. § 13-805). This legislation decreases the interest on the restitution owed the state to four percent.

When a defendant has willfully failed to pay a fine, fee, restitution or incarceration costs or has intentionally refused to make a good faith effort to obtain the monies required for payment, statute allows the court to incarcerate the defendant until payment is made, order the defendant to perform community restitution or to garnish his wages. Statute also allows the court to revoke the defendant's probation, parole or community supervision and sentence the defendant to prison (A.R.S. § 13-810). S.B. 1158 removes the last option.

If a municipal or justice court finds that a defendant is unable to pay any fines, fees, assessments or incarceration costs, the court may order the defendant to perform community restitution in lieu of payment (A.R.S. § 13-824). S.B. 1158 expands that ability to include the superior court and civil penalties and surcharges.

Although this legislation allows the court to mitigate civil penalties and fines, it preserves requirements that the court must first find that the penalties or fines will be a hardship to the person or the person's family. S.B. 1158 also allows the court to remove debts from the accounting system if certain requirements are met and reduces the interest on criminal restitution orders in favor of the state.

Provisions

Fine Mitigation and Restitution

1. Modifies the court's ability to *waive* civil penalties, forfeitures and fines, instead allowing the court to *mitigate* them. Maintains requirements related to hardship and division of the amount assessed.

2. Stipulates that the court cannot mitigate the Clean Elections surcharge.

3. Allows the court to mitigate mandatory fines and civil penalties. They are not currently allowed to be waived.

4. Permits the court to waive or mitigate mandatory community restitution due to a defendant's medical condition. Specifies this ability does not apply to community restitution in lieu of a monetary obligation.

5. Allows the court to mitigate a fine imposed on conviction for a drug offense.

6. Eliminates the requirement that a probationer be current on the payment of monetary obligations to receive earned time credit. Maintains the requirement that the probationer be current on court-ordered restitution.

7. Expands the ability of the court to order a defendant to perform community restitution in lieu of paying all or part of a monetary obligation if the court finds the defendant is unable to pay.

8. Specifies that community restitution in lieu of a monetary obligation does not apply to the Clean Elections surcharge.

9. Reduces the interest that accrues on a criminal restitution order in favor of the state from 10 percent to 4 percent per year.

10. Allows the court to waive all or part of the interest on a criminal restitution order in favor of any person entitled to restitution on agreement of the prosecutor and victim.

Removal of Debt

11. Allows the superior court, a justice of the peace or a municipal court to order all or part of a debt due to the court be removed from the accounting system if:
    a) 20 years or more have elapsed from the date of the initial fine or other monetary obligation in a criminal or civil traffic case that resulted in the debt;

b) the court notifies the prosecutor, defendant and victim, if the defendant's and victim's addresses are known, that the court may remove all or part of the debt and that any party or the victim may file an objection to the removal within 30 days after notification;
c) the court makes reasonable attempts to collect the debt, including billing the debtor on at least four different dates;
d) the court submits the debt for collection to a licensed collection agency and does not order the removal for at least a year while the agency attempts collection;
e) the court notifies the Department of Revenue of the debt pursuant to statute; and
f) the court notifies the county or city treasurer, as appropriate.

12. Requires the court to consider any objection in determining whether to remove the debt.

Sentences of Community Restitution or Education or Treatment

13. Permits the court to impose a term of community restitution or education or treatment if a conviction is for a misdemeanor and the person is not granted a period of probation or probation is revoked, in addition to any sentence authorized by law.

14. Requires the court to determine and fix the sentence for a definite period of time if the court imposes a sentence to perform community restitution for a misdemeanor conviction.

15. Requires the court or probation officer to determine the program of education or treatment.

16. Prohibits the term of education or treatment the court imposes from exceeding the term of probation for such convictions.

Miscellaneous

17. Relieves court clerks of their duty to automatically report unpaid fines, fees, incarceration costs or restitution and instead requires clerks to make the person's payment history available for free only on request by:
    a) the prosecutor;
    b) the victim;
    c) the victim's attorney;
    d) the probation department; and
    e) the court.

18. Eliminates the ability of the court to revoke a defendant's probation, parole or community supervision and to sentence the defendant to prison if the court finds the defendant:
    a) has willfully failed to pay a fine, fee, assessment, restitution or incarceration costs; or
    b) has intentionally refused to make a good faith effort to obtain the monies required for payment.

19. Allows time spent in actual custody to be credited in each sentence against the term of imprisonment if the defendant is released from custody pending trial on at least one charge, but remains in actual custody because of not being released pending trial on any other charge.

20. Modifies how a person on intensive probation is paid. Instead of the chief adult probation officer administering the defendant's account and making payments on behalf of the defendant, the defendant's probation officer will monitor the defendant's wages to ensure the collection of restitution, fees, fines and other payments.

21. Adds assessments to requirements related to consequences and garnishment for nonpayment.

22. Makes technical and conforming changes.

23. Becomes effective on January 1, 2018.

Amendments Adopted by Committee of the Whole

1. Specifies that the ability of the court to impose community restitution in lieu of a monetary obligation and to mitigate a fine does not apply to the Clean Elections surcharge.

2. Stipulates that a judge's ability to waive or mitigate mandatory community restitution does not apply to restitution imposed in lieu of a monetary obligation.

3. Removes the court's ability to mitigate DUI fines.

4. Clarifies that another sentence may be imposed for a misdemeanor offense, in addition to community restitution, education or treatment.

5. Updates the reporting duties of court clerks to reflect current business practices, eliminating a technical conflict with S.B. 1066.

Senate Action

JUD	2/2/17	DP	6-1-0

Prepared by Senate Research
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AW/rr