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FILED

**Jane Dee Hull
 Secretary of State**

CHAPTER 34

HOUSE BILL 2045

AN ACT

AMENDING SECTION 13-604, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-604.03; RELATING TO DISPOSITION OF OFFENDERS.

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

2 Section 1. Section 13-604, Arizona Revised Statutes, is amended to
 3 read:

4 13-604. Dangerous and repetitive offenders; definitions

5 A. Except as provided in subsection F, G or H of this section or
 6 section 13-604.01, a person who is at least eighteen years of age or who has
 7 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,
 8 whether a completed or preparatory offense, and who has a historical prior
 9 felony conviction shall be sentenced to imprisonment as prescribed in this
 10 subsection and shall not be eligible for suspension of sentence, probation,
 11 pardon or release from confinement on any basis except as specifically
 12 authorized by section 31-233, subsection A or B until the sentence imposed
 13 by the court has been served, the person is eligible for release pursuant to
 14 section 41-1604.07 or the sentence is commuted. The presumptive term may
 15 be mitigated or aggravated within the range prescribed under this subsection
 16 pursuant to the terms of section 13-702, subsections B, C and D. The terms
 17 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
18 Class 4	3 years	4.5 years	6 years
19 Class 5	1.5 years	2.25 years	3 years
20 Class 6	1 year	1.75 years	2.25 years

1 B. Except as provided in subsection I, J or K of this section or
 2 section 13-604.01, a person who is at least eighteen years of age or who has
 3 been tried as an adult and who stands convicted of a class 2 or 3 felony,
 4 whether a completed or preparatory offense, and who has a historical prior
 5 felony conviction shall be sentenced to imprisonment as prescribed in this
 6 subsection and shall not be eligible for suspension of sentence, probation,
 7 pardon or release from confinement on any basis except as specifically
 8 authorized by section 31-233, subsection A or B until the sentence imposed
 9 by the court has been served, the person is eligible for release pursuant to
 10 section 41-1604.07 or the sentence is commuted. The presumptive term may
 11 be mitigated or aggravated within the range prescribed under this subsection
 12 pursuant to the terms of section 13-702, subsections B, C and D. The terms
 13 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years

17 C. Except as provided in subsection F, G, H or S of this section or
 18 section 13-604.01, a person who is at least eighteen years of age or who has
 19 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,
 20 whether a completed or preparatory offense, and who has two or more
 21 historical prior felony convictions shall be sentenced to imprisonment as
 22 prescribed in this subsection and shall not be eligible for suspension of
 23 sentence, probation, pardon or release from confinement on any basis except
 24 as specifically authorized by section 31-233, subsection A or B until the
 25 sentence imposed by the court has been served, the person is eligible for
 26 release pursuant to section 41-1604.07 or the sentence is commuted. The
 27 presumptive term may be mitigated or aggravated within the range prescribed
 28 under this subsection pursuant to the terms of section 13-702, subsections
 29 B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	8 years	10 years	12 years
Class 5	4 years	5 years	6 years
Class 6	3 years	3.75 years	4.5 years

34 D. Except as provided in subsection I, J, K or S of this section or
 35 section 13-604.01, a person who is at least eighteen years of age or who has
 36 been tried as an adult and who stands convicted of a class 2 or 3 felony, and
 37 who has two or more historical prior felony convictions, shall be sentenced
 38 to imprisonment as prescribed in this subsection and shall not be eligible
 39 for suspension of sentence, probation, pardon or release from confinement on
 40 any basis except as specifically authorized by section 31-233, subsection A
 41 or B until the sentence imposed by the court has been served, the person is
 42 eligible for release pursuant to section 41-1604.07 or the sentence is
 43 commuted. The presumptive term may be mitigated or aggravated within the

1 range prescribed under this subsection pursuant to the terms of section
 2 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
3 Class 2	14 years	15.75 years	28 years
4 Class 3	10 years	11.25 years	20 years

5
 6 E. A person who is at least eighteen years of age or who has been
 7 tried as an adult and who stands convicted of any misdemeanor or petty
 8 offense, other than a traffic offense, and has been convicted of one or more
 9 of the same misdemeanors or petty offenses within two years next preceding
 10 the date of the present offense shall be sentenced for the next higher class
 11 of offense than that for which such person currently stands convicted.

12 F. Except as provided in section 13-604.01, a person who is at least
 13 eighteen years of age or who has been tried as an adult and who stands
 14 convicted of a class 4, 5 or 6 felony involving the intentional or knowing
 15 infliction of serious physical injury or the discharge, use or threatening
 16 exhibition of a deadly weapon or dangerous instrument without having
 17 previously been convicted of any felony shall be sentenced to imprisonment
 18 as prescribed in this subsection and shall not be eligible for suspension of
 19 sentence, probation, pardon or release from confinement on any basis except
 20 as specifically authorized by section 31-233, subsection A or B until the
 21 sentence imposed by the court has been served, the person is eligible for
 22 release pursuant to section 41-1604.07 or the sentence is commuted. The
 23 presumptive term may be mitigated or aggravated within the range prescribed
 24 under this subsection pursuant to the terms of section 13-702, subsections
 25 B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
26 Class 4	4 years	6 years	8 years
27 Class 5	2 years	3 years	4 years
28 Class 6	1.5 years	2.25 years	3 years

29
 30 G. Except as provided in section 13-604.01, upon conviction of a class
 31 4, 5 or 6 felony involving the intentional or knowing infliction of serious
 32 physical injury or the discharge, use or threatening exhibition of a deadly
 33 weapon or dangerous instrument a person who has a historical prior felony
 34 conviction involving the intentional or knowing infliction of serious
 35 physical injury or the use or exhibition of a deadly weapon or dangerous
 36 instrument shall be sentenced to imprisonment as prescribed in this
 37 subsection and shall not be eligible for suspension of sentence, probation,
 38 pardon or release from confinement on any basis except as specifically
 39 authorized by section 31-233, subsection A or B until the sentence imposed
 40 by the court has been served, the person is eligible for release pursuant to
 41 section 41-1604.07 or the sentence is commuted. The presumptive term may be
 42 mitigated or aggravated within the range prescribed under this subsection
 43 pursuant to the terms of section 13-702, subsections B, C and D. The terms
 44 are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
1				
2	Class 4	8 years	10 years	12 years
3	Class 5	4 years	5 years	6 years
4	Class 6	3 years	3.75 years	4.5 years

5 H. Except as provided in subsection S of this section or section
6 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the
7 intentional or knowing infliction of serious physical injury or the
8 discharge, use or threatening exhibition of a deadly weapon or dangerous
9 instrument a person who has two or more historical prior felony convictions
10 involving the intentional or knowing infliction of serious physical injury
11 or the use or exhibition of a deadly weapon or dangerous instrument shall be
12 sentenced to imprisonment as prescribed in this subsection and shall not be
13 eligible for suspension of sentence, probation, pardon or release from
14 confinement on any basis except as specifically authorized by section 31-233,
15 subsection A or B until the sentence imposed by the court has been served,
16 the person is eligible for release pursuant to section 41-1604.07 or the
17 sentence is commuted. The presumptive term may be mitigated or aggravated
18 within the range prescribed under this subsection pursuant to the terms of
19 section 13-702, subsections B, C and D. The terms are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
20				
21	Class 4	12 years	14 years	16 years
22	Class 5	6 years	7 years	8 years
23	Class 6	4.5 years	5.25 years	6 years

24 I. Except as provided in section 13-604.01, upon a first conviction
25 of a class 2 or 3 felony involving discharge, use or threatening exhibition
26 of a deadly weapon or dangerous instrument or upon conviction of a class 2
27 or 3 felony when the intentional or knowing infliction of serious physical
28 injury upon another has occurred, the defendant shall be sentenced to
29 imprisonment as prescribed in this subsection and shall not be eligible for
30 suspension of sentence, probation, pardon or release from confinement on any
31 basis except as specifically authorized by section 31-233, subsection A or
32 B until the sentence imposed by the court has been served, the person is
33 eligible for release pursuant to section 41-1604.07 or the sentence is
34 commuted. The presumptive term may be mitigated or aggravated within the
35 range prescribed under this subsection pursuant to the terms of section
36 13-702, subsections B, C and D. The terms are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
37				
38	Class 2	7 years	10.5 years	21 years
39	Class 3	5 years	7.5 years	15 years

40 J. Except as provided in section 13-604.01, upon conviction of a class
41 2 or 3 felony involving the discharge, use or threatening exhibition of a
42 deadly weapon or dangerous instrument or the intentional or knowing
43 infliction of serious physical injury upon another, a person who has a
44 historical prior felony conviction that is a class 1, 2 or 3 felony involving

1 the use or exhibition of a deadly weapon or dangerous instrument or the
 2 intentional or knowing infliction of serious physical injury on another shall
 3 be sentenced to imprisonment as prescribed in this subsection and shall not
 4 be eligible for suspension of sentence, probation, pardon or release from
 5 confinement on any basis except as specifically authorized by section 31-233,
 6 subsection A or B until the sentence imposed by the court has been served,
 7 the person is eligible for release pursuant to section 41-1604.07 or the
 8 sentence is commuted. The presumptive term may be mitigated or aggravated
 9 within the range prescribed under this subsection pursuant to the terms of
 10 section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

14 K. Except as provided in subsection S of this section or section
 15 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge,
 16 use or threatening exhibition of a deadly weapon or dangerous instrument or
 17 the intentional or knowing infliction of serious physical injury upon
 18 another, a person who has two or more historical prior felony convictions
 19 that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly
 20 weapon or dangerous instrument or the intentional or knowing infliction of
 21 serious physical injury on another shall be sentenced to imprisonment as
 22 prescribed in this subsection and shall not be eligible for suspension of
 23 sentence, probation, pardon or release from confinement on any basis except
 24 as specifically authorized by section 31-233, subsection A or B until the
 25 sentence imposed by the court has been served, the person is eligible for
 26 release pursuant to section 41-1604.07 or the sentence is commuted. The
 27 presumptive term may be mitigated or aggravated within the range prescribed
 28 under this subsection pursuant to the terms of section 13-702, subsections
 29 B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	21 years	28 years	35 years
Class 3	15 years	20 years	25 years

33 L. For the purposes of subsections I, J and K of this section in
 34 determining the applicability of the penalties provided in this section for
 35 second or subsequent class 2 or 3 felonies, the conviction for any felony
 36 committed prior to October 1, 1978 which, if committed after October 1, 1978,
 37 could be a dangerous felony under this section may be designated by the state
 38 as a prior felony.

39 M. Convictions for two or more offenses committed on the same
 40 occasion shall be counted as only one conviction for purposes of this
 41 section.

42 N. A person who has been convicted in any court outside the
 43 jurisdiction of this state of an offense which if committed within this state
 44 would be punishable as a felony or misdemeanor is subject to the provisions

1 of this section. A person who has been convicted as an adult of an offense
2 punishable as a felony or a misdemeanor under the provisions of any prior
3 code in this state shall be subject to the provisions of this section.

4 O. Time spent incarcerated within the two years next preceding the
5 date of the offense for which a person is currently being sentenced under
6 subsection E of this section shall not be included in the two years required
7 to be free of convictions for purposes of that subsection.

8 P. The penalties prescribed by this section shall be substituted for
9 the penalties otherwise authorized by law if the previous conviction, ~~the~~
10 ~~dangerous nature of the felony~~ or the allegation that the defendant committed
11 a felony while released on bond or on ~~his~~ THE DEFENDANT'S own recognizance
12 as provided in subsection R of this section is charged in the indictment or
13 information and admitted or found by the COURT OR IF THE DANGEROUS NATURE OF
14 THE FELONY IS CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND
15 BY THE trier of fact. The court shall allow the allegation of a prior
16 conviction, the dangerous nature of the felony or the allegation that the
17 defendant committed a felony while released on bond or on ~~his~~ THE DEFENDANT'S
18 own recognizance at any time prior to the date the case is actually tried
19 unless the allegation is filed fewer than twenty days before the case is
20 actually tried and the court finds on the record that the defendant was in
21 fact prejudiced by the untimely filing and states the reasons for these
22 findings, provided that when the allegation of a prior conviction is filed,
23 the state must make available to the defendant a copy of any material or
24 information obtained concerning the prior conviction. ~~Before the trial on~~
25 ~~the charge of the previous conviction or the allegation that the defendant~~
26 ~~committed a felony while released on bond or on his own recognizance,~~ The
27 charge of previous conviction or the allegation that the defendant committed
28 a felony while released on bond or on ~~his~~ THE DEFENDANT'S own recognizance
29 shall not be read to the jury. For the purposes of this subsection,
30 "dangerous nature of the felony" means a felony involving the discharge, use
31 or threatening exhibition of a deadly weapon or dangerous instrument or the
32 intentional or knowing infliction of serious physical injury upon another.

33 Q. Intentional failure by the court to impose the mandatory sentences
34 or probation conditions provided in this title shall be deemed to be
35 malfeasance.

36 R. A person convicted of committing any felony offense, which felony
37 offense is committed while the person is released on bail or on ~~his~~ THE
38 PERSON'S own recognizance on a separate felony offense, shall be sentenced
39 to a term of imprisonment two years longer than would otherwise be imposed
40 for the felony offense committed while released on bond or on ~~his~~ THE
41 DEFENDANT'S own recognizance. The additional sentence imposed under this
42 subsection is in addition to any enhanced punishment that may be applicable
43 under any of the other subsections of this section. The defendant is not
44 eligible for suspension of sentence, probation, pardon or release from

1 confinement on any basis except as specifically authorized by section 31-233,
2 subsection A or B until the two years are served, the person is eligible for
3 release pursuant to section 41-1604.07 or the sentence is commuted.

4 S. A person who is at least eighteen years of age or who has been
5 tried as an adult and who stands convicted of a serious offense except a drug
6 offense, first degree murder or any dangerous crime against children, whether
7 a completed or preparatory offense, and who has previously been convicted of
8 two or more serious offenses not committed on the same occasion shall be
9 sentenced to life imprisonment and is not eligible for suspension of
10 sentence, probation, pardon or release from confinement on any ~~other~~ basis
11 except as specifically authorized by section 31-233, subsection A or B until
12 the person has served not less than twenty-five years or the sentence is
13 commuted.

14 T. A person convicted of committing any felony offense with the intent
15 to promote, further or assist any criminal conduct by a criminal street gang
16 shall not be eligible for suspension of sentence, probation, pardon or
17 release from confinement on any basis except as authorized by section 31-233,
18 subsection A or B until the sentence imposed by the court has been served,
19 the person is eligible for release pursuant to section 41-1604.07 or the
20 sentence is commuted. The presumptive, minimum and maximum sentence for the
21 offense shall be increased by three years. The additional sentence imposed
22 pursuant to this subsection is in addition to any enhanced sentence that may
23 be applicable.

24 U. As used in this section:

25 1. "Historical prior felony conviction" means:

26 (a) Any prior felony conviction for which the offense of conviction
27 mandated a term of imprisonment, that involved the intentional or knowing
28 infliction of serious physical injury, the use or exhibition of a deadly
29 weapon or dangerous instrument or the illegal control of a criminal
30 enterprise, that was a violation of section 28-697 or that involved any
31 dangerous crime against children as defined in section 13-604.01.

32 (b) Any class 2 or 3 felony, except the offenses listed in subdivision
33 (a) of this paragraph, that was committed within the ten years immediately
34 preceding the date of the present offense. Any time spent incarcerated is
35 excluded in calculating if the offense was committed within the preceding ten
36 years.

37 (c) Any class 4, 5 or 6 felony, except the offenses listed in
38 subdivision (a) of this paragraph, that was committed within the five years
39 immediately preceding the date of the present offense. Any time spent
40 incarcerated is excluded in calculating if the offense was committed within
41 the preceding five years.

42 (d) Any felony conviction that is a third or more prior felony
43 conviction.

1 2. "Serious offense" means any of the following offenses if committed
2 in this state or any offense committed outside this state which if committed
3 in this state would constitute one of the following offenses:

4 (a) First degree murder.

5 (b) Second degree murder.

6 (c) Manslaughter.

7 (d) Aggravated assault resulting in serious physical injury or
8 involving the discharge, use or threatening exhibition of a deadly weapon or
9 dangerous instrument.

10 (e) Sexual assault.

11 (f) Any dangerous crime against children.

12 (g) Arson of an occupied structure.

13 (h) Armed robbery.

14 (i) Burglary in the first degree.

15 (j) Kidnapping.

16 (k) Sexual conduct with a minor under fifteen years of age.

17 Sec. 2. Title 13, chapter 6, Arizona Revised Statutes, is amended by
18 adding section 13-604.03, to read:

19 13-604.03. Repetitive offenders; misdemeanors

20 IF A DEFENDANT IS CONVICTED OF A MISDEMEANOR OFFENSE AND THE OFFENSE
21 REQUIRES ENHANCED PUNISHMENT BECAUSE IT IS A SECOND OR SUBSEQUENT OFFENSE,
22 THE EXISTENCE OF THE PREVIOUS CONVICTION SHALL BE DETERMINED BY THE COURT.
23 THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION TO BE MADE IN THE
24 SAME MANNER AS THE ALLEGATION PRESCRIBED BY SECTION 28-692.01, SUBSECTION J.

APPROVED BY THE GOVERNOR MARCH 25, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 25, 1996