

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 188

SENATE BILL 1052

AN ACT

AMENDING SECTIONS 13-604, 13-604.01, 13-703, 13-1102, 13-1103, 13-1104, 13-1105, 13-4062, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; RELATING TO OFFENSES AGAINST UNBORN CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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 by
13 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 be
15 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

21
22 B. Except as provided in subsection I, J or K of this section or
23 section 13-604.01, a person who is at least eighteen years of age or who has
24 been tried as an adult and who stands convicted of a class 2 or 3 felony,
25 whether a completed or preparatory offense, and who has a historical prior
26 felony conviction shall be sentenced to imprisonment as prescribed in this
27 subsection and shall not be eligible for suspension of sentence, probation,
28 pardon or release from confinement on any basis except as specifically
29 authorized by section 31-233, subsection A or B until the sentence imposed by
30 the court has been served, the person is eligible for release pursuant to
31 section 41-1604.07 or the sentence is commuted. The presumptive term may be
32 mitigated or aggravated within the range prescribed under this subsection
33 pursuant to the terms of section 13-702, subsections B, C and D. The terms
34 are as follows:

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

37
38 C. Except as provided in subsection F, G, H or S of this section or
39 section 13-604.01, a person who is at least eighteen years of age or who has
40 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,
41 whether a completed or preparatory offense, and who has two or more
42 historical prior felony convictions shall be sentenced to imprisonment as
43 prescribed in this subsection and shall not be eligible for suspension of
44 sentence, probation, pardon or release from confinement on any basis except
45 as specifically authorized by section 31-233, subsection A or B until the

1 sentence imposed by the court has been served, the person is eligible for
2 release pursuant to section 41-1604.07 or the sentence is commuted. The
3 presumptive term may be mitigated or aggravated within the range prescribed
4 under this subsection pursuant to the terms of section 13-702, subsections B,
5 C and D. The terms are as follows:

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

10 D. Except as provided in subsection I, J, K or S of this section or
11 section 13-604.01, a person who is at least eighteen years of age or who has
12 been tried as an adult and who stands convicted of a class 2 or 3 felony, and
13 who has two or more historical prior felony convictions, shall be sentenced
14 to imprisonment as prescribed in this subsection and shall not be eligible
15 for suspension of sentence, probation, pardon or release from confinement on
16 any basis except as specifically authorized by section 31-233, subsection A
17 or B until the sentence imposed by the court has been served, the person is
18 eligible for release pursuant to section 41-1604.07 or the sentence is
19 commuted. The presumptive term may be mitigated or aggravated within the
20 range prescribed under this subsection pursuant to the terms of section
21 13-702, subsections B, C and D. The terms are as follows:

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

25 E. A person who is at least eighteen years of age or who has been
26 tried as an adult and who stands convicted of any misdemeanor or petty
27 offense, other than a traffic offense, and who has been convicted of one or
28 more of the same misdemeanors or petty offenses within two years next
29 preceding the date of the present offense shall be sentenced for the next
30 higher class of offense than that for which such person currently stands
31 convicted.

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

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
1				
2	Class 4	4 years	6 years	8 years
3	Class 5	2 years	3 years	4 years
4	Class 6	1.5 years	2.25 years	3 years

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

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
20				
21	Class 4	8 years	10 years	12 years
22	Class 5	4 years	5 years	6 years
23	Class 6	3 years	3.75 years	4.5 years

24 H. Except as provided in subsection S of this section or section
25 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the
26 intentional or knowing infliction of serious physical injury or the
27 discharge, use or threatening exhibition of a deadly weapon or dangerous
28 instrument a person who has two or more historical prior felony convictions
29 involving the intentional or knowing infliction of serious physical injury or
30 the use or exhibition of a deadly weapon or dangerous instrument shall be
31 sentenced to imprisonment as prescribed in this subsection and shall not be
32 eligible for suspension of sentence, probation, pardon or release from
33 confinement on any basis except as specifically authorized by section 31-233,
34 subsection A or B until the sentence imposed by the court has been served,
35 the person is eligible for release pursuant to section 41-1604.07 or the
36 sentence is commuted. The presumptive term may be mitigated or aggravated
37 within the range prescribed under this subsection pursuant to the terms of
38 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>
39				
40	Class 4	12 years	14 years	16 years
41	Class 5	6 years	7 years	8 years
42	Class 6	4.5 years	5.25 years	6 years

43 I. Except as provided in section 13-604.01, upon a first conviction of
44 a class 2 or 3 felony involving discharge, use or threatening exhibition of a
45 deadly weapon or dangerous instrument or upon conviction of a class 2 or 3

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

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

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

32 K. Except as provided in subsection S of this section or section
33 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge,
34 use or threatening exhibition of a deadly weapon or dangerous instrument or
35 the intentional or knowing infliction of serious physical injury upon
36 another, a person who has two or more historical prior felony convictions
37 that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly
38 weapon or dangerous instrument or the intentional or knowing infliction of
39 serious physical injury on another shall be sentenced to imprisonment as
40 prescribed in this subsection and shall not be eligible for suspension of
41 sentence, probation, pardon or release from confinement on any basis except
42 as specifically authorized by section 31-233, subsection A or B until the
43 sentence imposed by the court has been served, the person is eligible for
44 release pursuant to section 41-1604.07 or the sentence is commuted. The
45 presumptive term may be mitigated or aggravated within the range prescribed

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

3 <u>Felony</u>	4 <u>Minimum</u>	5 <u>Presumptive</u>	6 <u>Maximum</u>
7 Class 2	8 21 years	9 28 years	10 35 years
11 Class 3	12 15 years	13 20 years	14 25 years

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

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

23 N. A person who has been convicted in any court outside the
 24 jurisdiction of this state of an offense which if committed within this state
 25 would be punishable as a felony or misdemeanor is subject to the provisions
 26 of this section. A person who has been convicted as an adult of an offense
 27 punishable as a felony or a misdemeanor under the provisions of any prior
 28 code in this state shall be subject to the provisions of this section.

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

33 P. The penalties prescribed by this section shall be substituted for
 34 the penalties otherwise authorized by law if the previous conviction or the
 35 allegation that the defendant committed a felony while released on bond or on
 36 the defendant's own recognizance or while escaped from preconviction custody
 37 as provided in subsection R of this section is charged in the indictment or
 38 information and admitted or found by the court or if the dangerous nature of
 39 the felony is charged in the indictment or information and admitted or found
 40 by the trier of fact. The release provisions prescribed by this section
 41 shall not be substituted for any penalties required by the substantive
 42 offense or provision of law that specifies a later release or completion of
 43 the sentence imposed prior to release. The court shall allow the allegation
 44 of a prior conviction, the dangerous nature of the felony or the allegation
 45 that the defendant committed a felony while released on bond or on the
 defendant's own recognizance or while escaped from preconviction custody at
 any time prior to the date the case is actually tried unless the allegation
 is filed fewer than twenty days before the case is actually tried and the
 court finds on the record that the defendant was in fact prejudiced by the
 untimely filing and states the reasons for these findings, provided that when
 the allegation of a prior conviction is filed, the state must make available
 to the defendant a copy of any material or information obtained concerning
 the prior conviction. The charge of previous conviction or the allegation
 that the defendant committed a felony while released on bond or on the

1 defendant's own recognizance or while escaped from preconviction custody
2 shall not be read to the jury. For the purposes of this subsection,
3 "dangerous nature of the felony" means a felony involving the discharge, use
4 or threatening exhibition of a deadly weapon or dangerous instrument or the
5 intentional or knowing infliction of serious physical injury upon another.

6 Q. Intentional failure by the court to impose the mandatory sentences
7 or probation conditions provided in this title shall be deemed to be
8 malfeasance.

9 R. A person who is convicted of committing any felony offense, which
10 felony offense is committed while the person is released on bail or on the
11 defendant's own recognizance on a separate felony offense or while the person
12 is escaped from preconviction custody for a separate felony offense, shall be
13 sentenced to a term of imprisonment two years longer than would otherwise be
14 imposed for the felony offense committed while released on bond or on the
15 defendant's own recognizance or while escaped from preconviction custody.
16 The additional sentence imposed under this subsection is in addition to any
17 enhanced punishment that may be applicable under any of the other subsections
18 of this section. The defendant is not eligible for suspension of sentence,
19 probation, pardon or release from confinement on any basis except as
20 specifically authorized by section 31-233, subsection A or B until the two
21 years are served, the person is eligible for release pursuant to section
22 41-1604.07 or the sentence is commuted.

23 S. A person who is at least eighteen years of age or who has been
24 tried as an adult and who stands convicted of a serious offense except a drug
25 offense, first degree murder or any dangerous crime against children, whether
26 a completed or preparatory offense, and who has previously been convicted of
27 two or more serious offenses not committed on the same occasion shall be
28 sentenced to life imprisonment and is not eligible for suspension of
29 sentence, probation, pardon or release from confinement on any basis except
30 as specifically authorized by section 31-233, subsection A or B until the
31 person has served not less than twenty-five years or the sentence is
32 commuted.

33 T. A person who is convicted of committing any felony offense with the
34 intent to promote, further or assist any criminal conduct by a criminal
35 street gang shall not be eligible for suspension of sentence, probation,
36 pardon or release from confinement on any basis except as authorized by
37 section 31-233, subsection A or B until the sentence imposed by the court has
38 been served, the person is eligible for release pursuant to section
39 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum
40 sentence for the offense shall be increased by three years. The additional
41 sentence imposed pursuant to this subsection is in addition to any enhanced
42 sentence that may be applicable.

43 U. A person who is convicted of intentionally or knowingly committing
44 aggravated assault on a peace officer while the officer is engaged in the
45 execution of any official duties pursuant to section 13-1204, subsection A,

1 paragraph 1 or 2 shall be sentenced to imprisonment for not less than the
2 presumptive sentence authorized under this chapter and is not eligible for
3 suspension of sentence, commutation or release on any basis until the
4 sentence imposed is served.

5 V. EXCEPT AS PROVIDED IN SECTION 13-604.01 OR 13-703, IF THE VICTIM IS
6 AN UNBORN CHILD IN THE WOMB AT ANY STAGE OF ITS DEVELOPMENT, THE DEFENDANT
7 SHALL BE SENTENCED PURSUANT TO THIS SECTION.

8 V. W. ~~As used in~~ FOR THE PURPOSES OF this section:

9 1. "Absconder" means a probationer who has moved from the
10 probationer's primary place of residence without permission of the probation
11 officer, and WHO cannot be located within ninety days of the previous
12 contact, and AGAINST WHOM a petition to revoke has been filed in the
13 superior court alleging that the probationer's whereabouts are unknown. A
14 probationer is no longer deemed to be an absconder when voluntarily or
15 involuntarily returned to probation service.

16 2. "Historical prior felony conviction" means:

17 (a) Any prior felony conviction for which the offense of conviction:

18 (i) Mandated a term of imprisonment except for a violation of chapter
19 34 of this title involving a drug below the threshold amount; or

20 (ii) Involved the intentional or knowing infliction of serious
21 physical injury; or

22 (iii) Involved the use or exhibition of a deadly weapon or dangerous
23 instrument; or

24 (iv) Involved the illegal control of a criminal enterprise; or

25 (v) Involved aggravated driving under the influence of intoxicating
26 liquor or drugs, driving while under the influence of intoxicating liquor or
27 drugs with a suspended, canceled, revoked or refused driver license or
28 driving under the influence of intoxicating liquor or drugs with two or more
29 driving under the influence of intoxicating liquor or drug convictions within
30 a period of sixty months; or

31 (vi) Involved any dangerous crime against children as defined in
32 section 13-604.01.

33 (b) Any class 2 or 3 felony, except the offenses listed in subdivision
34 (a) of this paragraph, that was committed within the ten years immediately
35 preceding the date of the present offense. Any time spent on absconder
36 status while on probation or incarcerated is excluded in calculating if the
37 offense was committed within the preceding ten years. If a court determines
38 a person was not on absconder status while on probation that time is not
39 excluded.

40 (c) Any class 4, 5 or 6 felony, except the offenses listed in
41 subdivision (a) of this paragraph, that was committed within the five years
42 immediately preceding the date of the present offense. Any time spent on
43 absconder status while on probation or incarcerated is excluded in
44 calculating if the offense was committed within the preceding five years. If

1 a court determines a person was not on absconder status while on probation
2 that time is not excluded.

3 (d) Any felony conviction that is a third or more prior felony
4 conviction.

5 3. "Preconviction custody" means the confinement of a person in a
6 jail in this state or another state after the person is arrested for or
7 charged with a felony offense.

8 4. "Serious offense" means any of the following offenses if
9 committed in this state or any offense committed outside this state which if
10 committed in this state would constitute one of the following offenses:

11 (a) First degree murder.

12 (b) Second degree murder.

13 (c) Manslaughter.

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

17 (e) Sexual assault.

18 (f) Any dangerous crime against children.

19 (g) Arson of an occupied structure.

20 (h) Armed robbery.

21 (i) Burglary in the first degree.

22 (j) Kidnapping.

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

24 5. "Substantive offense" means the felony, misdemeanor or petty
25 offense that the trier of fact found beyond a reasonable doubt the defendant
26 committed. Substantive offense does not include allegations that, if proven,
27 would enhance the sentence of imprisonment or fine to which the defendant
28 otherwise would be subject.

29 Sec. 2. Section 13-604.01, Arizona Revised Statutes, is amended to
30 read:

31 13-604.01. Dangerous crimes against children; sentences;
32 definitions

33 A. A person who is at least eighteen years of age and who stands
34 convicted of a dangerous crime against children in the first degree involving
35 sexual assault of a minor who is twelve years of age or younger or sexual
36 conduct with a minor who is twelve years of age or younger shall be sentenced
37 to life imprisonment and is not eligible for suspension of sentence,
38 probation, pardon or release from confinement on any basis except as
39 specifically authorized by section 31-233, subsection A or B until the person
40 has served thirty-five years or the sentence is commuted. This subsection
41 does not apply to masturbatory contact.

42 B. Except as otherwise provided in this section, a person who is at
43 least eighteen years of age or who has been tried as an adult and who stands
44 convicted of a dangerous crime against children in the first degree involving
45 attempted first degree murder of a minor who is under twelve years of age, or

1 second degree murder of a minor who is under twelve years of age, ~~or~~ sexual
2 assault of a minor who is under twelve years of age or sexual conduct with a
3 minor who is under twelve years of age may be sentenced to life imprisonment
4 and is not eligible for suspension of sentence, probation, pardon or release
5 from confinement on any basis except as specifically authorized by section
6 31-233, subsection A or B until the person has served thirty-five years or
7 the sentence is commuted. If a life sentence is not imposed pursuant to this
8 subsection, the person shall be sentenced to a presumptive term of
9 imprisonment for twenty years.

10 C. Except as otherwise provided in this section, a person who is at
11 least eighteen years of age or who has been tried as an adult and who stands
12 convicted of a dangerous crime against children in the first degree involving
13 attempted first degree murder of a minor who is twelve, thirteen or fourteen
14 years of age, second degree murder of a minor who is twelve, thirteen or
15 fourteen years of age, sexual assault of a minor who is twelve, thirteen or
16 fourteen years of age, taking a child for the purpose of prostitution, child
17 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen
18 years of age, ~~or~~ continuous sexual abuse of a child or involving or using
19 minors in drug offenses shall be sentenced to a presumptive term of
20 imprisonment for twenty years. If the convicted person has been previously
21 convicted of one predicate felony the person shall be sentenced to a
22 presumptive term of imprisonment for thirty years.

23 D. Except as otherwise provided in this section, a person who is at
24 least eighteen years of age or who has been tried as an adult and who stands
25 convicted of a dangerous crime against children in the first degree involving
26 aggravated assault, molestation of a child, commercial sexual exploitation of
27 a minor, sexual exploitation of a minor, child abuse or kidnapping shall be
28 sentenced to a presumptive term of imprisonment for seventeen years. If the
29 convicted person has been previously convicted of one predicate felony the
30 person shall be sentenced to a presumptive term of imprisonment for
31 twenty-eight years.

32 E. Except as otherwise provided in this section, a person who is at
33 least eighteen years of age or who has been tried as an adult and who stands
34 convicted of a dangerous crime against children involving sexual abuse under
35 section 13-1404 is guilty of a class 3 felony and shall be sentenced to a
36 presumptive term of imprisonment for five years, and unless the person has
37 previously been convicted of a predicate felony, the presumptive term may be
38 increased or decreased by up to two and one-half years pursuant to section
39 13-702, subsections B, C, ~~AND D and E~~. If the person is sentenced to a term
40 of imprisonment the person is not eligible for release from confinement on
41 any basis except as specifically authorized by section 31-233, subsection A
42 or B until the sentence imposed by the court has been served, the person is
43 eligible for release pursuant to section 41-1604.07 or the sentence is
44 commuted. If the convicted person has been previously convicted of one
45 predicate felony the person shall be sentenced to a presumptive term of

1 imprisonment for fifteen years and is not eligible for suspension of
2 sentence, probation, pardon or release from confinement on any basis except
3 as specifically authorized by section 31-233, subsection A or B until the
4 sentence imposed by the court has been served, the person is eligible for
5 release pursuant to section 41-1604.07 or the sentence is commuted.

6 F. The presumptive sentences prescribed in subsections B, C and D of
7 this section or subsection E of this section if the person has previously
8 been convicted of a predicate felony may be increased or decreased by up to
9 seven years pursuant to the provisions of section 13-702, subsections B, C
10 and D.

11 G. Except as provided in subsection E of this section, a person
12 sentenced for a dangerous crime against children in the first degree pursuant
13 to this section is not eligible for suspension of sentence, probation,
14 pardon, or release from confinement on any basis except as specifically
15 authorized by section 31-233, subsection A or B until the sentence imposed by
16 the court has been served or commuted.

17 H. A person who stands convicted of any dangerous crime against
18 children in the first degree pursuant to subsection C or D of this section
19 having been previously convicted of two or more predicate felonies shall be
20 sentenced to life imprisonment and is not eligible for suspension of
21 sentence, probation, pardon or release from confinement on any basis except
22 as specifically authorized by section 31-233, subsection A or B until the
23 person has served not fewer than thirty-five years or the sentence is
24 commuted.

25 I. Notwithstanding chapter 10 of this title, a person who is at least
26 eighteen years of age or who has been tried as an adult and who stands
27 convicted of a dangerous crime against children in the second degree pursuant
28 to subsection C or D of this section or luring a minor for sexual
29 exploitation pursuant to section 13-3554 is guilty of a class 3 felony and
30 shall be sentenced to a presumptive term of imprisonment for ten years. The
31 presumptive term may be increased or decreased by up to five years pursuant
32 to section 13-702, subsections B, C and D. If the person is sentenced to a
33 term of imprisonment the person is not eligible for release from confinement
34 on any basis except as specifically authorized by section 31-233, subsection
35 A or B until the person has served the sentence imposed by the court, the
36 person is eligible for release pursuant to section 41-1604.07 or the sentence
37 is commuted. A person who is convicted of any dangerous crime against
38 children in the second degree having been previously convicted of one or more
39 predicate felonies is not eligible for suspension of sentence, probation,
40 pardon or release from confinement on any basis except as specifically
41 authorized by section 31-233, subsection A or B until the sentence imposed by
42 the court has been served, the person is eligible for release pursuant to
43 section 41-1604.07 or the sentence is commuted.

1 J. Section 13-604, subsections M and O apply to the determination of
2 prior convictions.

3 K. The sentence imposed on a person by the court for a dangerous crime
4 against children under subsection D of this section involving child
5 molestation or sexual abuse pursuant to subsection E of this section may be
6 served concurrently with other sentences if the offense involved only one
7 victim. The sentence imposed on a person for any other dangerous crime
8 against children in the first or second degree shall be consecutive to any
9 other sentence imposed on the person at any time, including child molestation
10 and sexual abuse of the same victim.

11 L. IN THIS SECTION, FOR PURPOSES OF PUNISHMENT AN UNBORN CHILD SHALL
12 BE TREATED LIKE A MINOR WHO IS UNDER TWELVE YEARS OF AGE.

13 ~~L.~~ M. ~~In~~ FOR THE PURPOSES OF this section:

14 1. "Dangerous crime against children" means any of the following that
15 is committed against a minor who is under fifteen years of age:

16 (a) Second degree murder.

17 (b) Aggravated assault resulting in serious physical injury or
18 involving the discharge, use or threatening exhibition of a deadly weapon or
19 dangerous instrument.

20 (c) Sexual assault.

21 (d) Molestation of a child.

22 (e) Sexual conduct with a minor.

23 (f) Commercial sexual exploitation of a minor.

24 (g) Sexual exploitation of a minor.

25 (h) Child abuse as prescribed in section 13-3623, subsection A,
26 paragraph 1.

27 (i) Kidnapping.

28 (j) Sexual abuse.

29 (k) Taking a child for the purpose of prostitution as defined in
30 section 13-3206.

31 (l) Child prostitution as defined in section 13-3212.

32 (m) Involving or using minors in drug offenses.

33 (n) Continuous sexual abuse of a child.

34 (o) Attempted first degree murder.

35 A dangerous crime against children is in the first degree if it is a
36 completed offense and is in the second degree if it is a preparatory offense,
37 except attempted first degree murder is a dangerous crime against children in
38 the first degree.

39 2. "Predicate felony" means any felony involving child abuse pursuant
40 to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct
41 involving the intentional or knowing infliction of serious physical injury or
42 the discharge, use or threatening exhibition of a deadly weapon or dangerous
43 instrument, or a dangerous crime against children in the first or second
44 degree.

1 Sec. 3. Section 13-703, Arizona Revised Statutes, is amended to read:
2 13-703. Sentence of death or life imprisonment; aggravating and
3 mitigating circumstances; definition

4 A. If the state has filed a notice of intent to seek the death penalty
5 and the defendant is convicted of first degree murder as defined in section
6 13-1105, the defendant shall be sentenced to death or imprisonment in the
7 custody of the state department of corrections for life or natural life as
8 determined and in accordance with the procedures provided in section
9 13-703.01. A defendant who is sentenced to natural life is not eligible for
10 commutation, parole, work furlough, work release or release from confinement
11 on any basis. If the defendant is sentenced to life, the defendant shall not
12 be released on any basis until the completion of the service of twenty-five
13 calendar years if the murdered person was fifteen or more years of age and
14 thirty-five years if the murdered person was under fifteen years of age OR
15 WAS AN UNBORN CHILD. IN THIS SECTION, FOR PURPOSES OF PUNISHMENT AN UNBORN
16 CHILD SHALL BE TREATED LIKE A MINOR WHO IS UNDER TWELVE YEARS OF AGE.

17 B. At the aggravation phase of the sentencing proceeding that is held
18 pursuant to section 13-703.01, the admissibility of information relevant to
19 any of the aggravating circumstances set forth in subsection F of this
20 section shall be governed by the rules of evidence applicable to criminal
21 trials. The burden of establishing the existence of any of the aggravating
22 circumstances set forth in subsection F of this section is on the
23 prosecution. The prosecution must prove the existence of the aggravating
24 circumstances beyond a reasonable doubt.

25 C. At the penalty phase of the sentencing proceeding that is held
26 pursuant to section 13-703.01, the prosecution or the defendant may present
27 any information that is relevant to any of the mitigating circumstances
28 included in subsection G of this section, regardless of its admissibility
29 under the rules governing admission of evidence at criminal trials. The
30 burden of establishing the existence of the mitigating circumstances included
31 in subsection G of this section is on the defendant. The defendant must
32 prove the existence of the mitigating circumstances by a preponderance of the
33 evidence. If the trier of fact is a jury, the jurors do not have to agree
34 unanimously that a mitigating circumstance has been proven to exist. Each
35 juror may consider any mitigating circumstance found by that juror in
36 determining the appropriate penalty.

37 D. Evidence that is admitted at the trial and that relates to any
38 aggravating or mitigating circumstances shall be deemed admitted as evidence
39 at a sentencing proceeding if the trier of fact considering that evidence is
40 the same trier of fact that determined the defendant's guilt. The
41 prosecution and the defendant shall be permitted to rebut any information
42 received at the aggravation or penalty phase of the sentencing proceeding and
43 shall be given fair opportunity to present argument as to whether the
44 information is sufficient to establish the existence of any of the
45 circumstances included in subsections F and G of this section.

1 E. In determining whether to impose a sentence of death or life
2 imprisonment, the trier of fact shall take into account the aggravating and
3 mitigating circumstances that have been proven. The trier of fact shall
4 impose a sentence of death if the trier of fact finds one or more of the
5 aggravating circumstances enumerated in subsection F of this section and then
6 determines that there are no mitigating circumstances sufficiently
7 substantial to call for leniency.

8 F. The trier of fact shall consider the following aggravating
9 circumstances in determining whether to impose a sentence of death:

10 1. The defendant has been convicted of another offense in the United
11 States for which under Arizona law a sentence of life imprisonment or death
12 was imposable.

13 2. The defendant has been or was previously convicted of a serious
14 offense, whether preparatory or completed. Convictions for serious offenses
15 committed on the same occasion as the homicide, or not committed on the same
16 occasion but consolidated for trial with the homicide, shall be treated as a
17 serious offense under this paragraph.

18 3. In the commission of the offense the defendant knowingly created a
19 grave risk of death to another person or persons in addition to the person
20 murdered during the commission of the offense.

21 4. The defendant procured the commission of the offense by payment, or
22 promise of payment, of anything of pecuniary value.

23 5. The defendant committed the offense as consideration for the
24 receipt, or in expectation of the receipt, of anything of pecuniary value.

25 6. The defendant committed the offense in an especially heinous, cruel
26 or depraved manner.

27 7. The defendant committed the offense while:

28 (a) In the custody of or on authorized or unauthorized release from
29 the state department of corrections, a law enforcement agency or a county or
30 city jail.

31 (b) On probation for a felony offense.

32 8. The defendant has been convicted of one or more other homicides, as
33 defined in section 13-1101, that were committed during the commission of the
34 offense.

35 9. The defendant was an adult at the time the offense was committed or
36 was tried as an adult and the murdered person was under fifteen years of age,
37 ~~or~~ WAS AN UNBORN CHILD IN THE WOMB AT ANY STAGE OF ITS DEVELOPMENT OR was
38 seventy years of age or older.

39 10. The murdered person was an on duty peace officer who was killed in
40 the course of performing the officer's official duties and the defendant
41 knew, or should have known, that the murdered person was a peace officer.

42 G. The trier of fact shall consider as mitigating circumstances any
43 factors proffered by the defendant or the state that are relevant in
44 determining whether to impose a sentence less than death, including any

1 aspect of the defendant's character, propensities or record and any of the
2 circumstances of the offense, including but not limited to the following:

3 1. The defendant's capacity to appreciate the wrongfulness of his
4 conduct or to conform his conduct to the requirements of law was
5 significantly impaired, but not so impaired as to constitute a defense to
6 prosecution.

7 2. The defendant was under unusual and substantial duress, although
8 not such as to constitute a defense to prosecution.

9 3. The defendant was legally accountable for the conduct of another
10 under the provisions of section 13-303, but his participation was relatively
11 minor, although not so minor as to constitute a defense to prosecution.

12 4. The defendant could not reasonably have foreseen that his conduct
13 in the course of the commission of the offense for which the defendant was
14 convicted would cause, or would create a grave risk of causing, death to
15 another person.

16 5. The defendant's age.

17 H. FOR PURPOSES OF DETERMINING WHETHER A CONVICTION OF ANY DANGEROUS
18 CRIME AGAINST CHILDREN IS A SERIOUS OFFENSE PURSUANT TO THIS SECTION, AN
19 UNBORN CHILD SHALL BE TREATED LIKE A MINOR WHO IS UNDER TWELVE YEARS OF AGE.

20 ~~H.~~ I. For the purposes of this section, "serious offense" means any
21 of the following offenses if committed in this state or any offense committed
22 outside this state that if committed in this state would constitute one of
23 the following offenses:

- 24 1. First degree murder.
- 25 2. Second degree murder.
- 26 3. Manslaughter.
- 27 4. Aggravated assault resulting in serious physical injury or
28 committed by the use, threatened use or exhibition of a deadly weapon or
29 dangerous instrument.
- 30 5. Sexual assault.
- 31 6. Any dangerous crime against children.
- 32 7. Arson of an occupied structure.
- 33 8. Robbery.
- 34 9. Burglary in the first degree.
- 35 10. Kidnapping.
- 36 11. Sexual conduct with a minor under fifteen years of age.

37 Sec. 4. Section 13-1102, Arizona Revised Statutes, is amended to read:
38 13-1102. Negligent homicide; classification

39 A. A person commits negligent homicide if with criminal negligence
40 such THE person causes the death of another person, INCLUDING AN UNBORN
41 CHILD.

42 B. AN OFFENSE UNDER THIS SECTION APPLIES TO AN UNBORN CHILD IN THE
43 WOMB AT ANY STAGE OF ITS DEVELOPMENT. A PERSON MAY NOT BE PROSECUTED UNDER
44 THIS SECTION IF ANY OF THE FOLLOWING APPLIES:

1 1. THE PERSON WAS PERFORMING AN ABORTION FOR WHICH THE CONSENT OF THE
2 PREGNANT WOMAN, OR A PERSON AUTHORIZED BY LAW TO ACT ON THE PREGNANT WOMAN'S
3 BEHALF, HAS BEEN OBTAINED OR FOR WHICH THE CONSENT WAS IMPLIED OR AUTHORIZED
4 BY LAW.

5 2. THE PERSON WAS PERFORMING MEDICAL TREATMENT ON THE PREGNANT WOMAN
6 OR THE PREGNANT WOMAN'S UNBORN CHILD.

7 3. THE PERSON WAS THE UNBORN CHILD'S MOTHER.

8 ~~B.~~ C. Negligent homicide is a class 4 felony.

9 Sec. 5. Section 13-1103, Arizona Revised Statutes, is amended to read:
10 13-1103. Manslaughter; classification

11 A. A person commits manslaughter by:

12 1. Recklessly causing the death of another person; or

13 2. Committing second degree murder as defined in section 13-1104,
14 subsection A upon a sudden quarrel or heat of passion resulting from adequate
15 provocation by the victim; or

16 3. Intentionally aiding another to commit suicide; or

17 4. Committing second degree murder as defined in section 13-1104,
18 subsection A, paragraph 3, while being coerced to do so by the use or
19 threatened immediate use of unlawful deadly physical force upon such person
20 or a third person which a reasonable person in his situation would have been
21 unable to resist; or

22 5. Knowingly or recklessly causing the death of an unborn child ~~at any~~
23 ~~stage of its development~~ by any physical injury to the mother ~~of such child~~
24 ~~which would be murder if the death of the mother had occurred.~~

25 B. AN OFFENSE UNDER SUBSECTION A, PARAGRAPH 5 OF THIS SECTION APPLIES
26 TO AN UNBORN CHILD IN THE WOMB AT ANY STAGE OF ITS DEVELOPMENT. A PERSON
27 SHALL NOT BE PROSECUTED UNDER SUBSECTION A, PARAGRAPH 5 OF THIS SECTION IF
28 ANY OF THE FOLLOWING APPLIES:

29 1. THE PERSON WAS PERFORMING AN ABORTION FOR WHICH THE CONSENT OF THE
30 PREGNANT WOMAN, OR A PERSON AUTHORIZED BY LAW TO ACT ON THE PREGNANT WOMAN'S
31 BEHALF, HAS BEEN OBTAINED OR FOR WHICH THE CONSENT WAS IMPLIED OR AUTHORIZED
32 BY LAW.

33 2. THE PERSON WAS PERFORMING MEDICAL TREATMENT ON THE PREGNANT WOMAN
34 OR THE PREGNANT WOMAN'S UNBORN CHILD.

35 3. THE PERSON WAS THE UNBORN CHILD'S MOTHER.

36 ~~B.~~ C. Manslaughter is a class 2 felony.

37 Sec. 6. Section 13-1104, Arizona Revised Statutes, is amended to read:
38 13-1104. Second degree murder; classification

39 A. A person commits second degree murder if without premeditation:

40 1. ~~Such~~ THE person intentionally causes the death of another person,
41 INCLUDING AN UNBORN CHILD OR, AS A RESULT OF INTENTIONALLY CAUSING THE DEATH
42 OF ANOTHER PERSON, CAUSES THE DEATH OF AN UNBORN CHILD; or

43 2. Knowing that ~~his~~ THE PERSON'S conduct will cause death or serious
44 physical injury, ~~such~~ THE person causes the death of another person,

1 INCLUDING AN UNBORN CHILD OR, AS A RESULT OF KNOWINGLY CAUSING THE DEATH OF
2 ANOTHER PERSON, CAUSES THE DEATH OF AN UNBORN CHILD; or

3 3. Under circumstances manifesting extreme indifference to human life,
4 ~~such~~ THE person recklessly engages in conduct ~~which~~ THAT creates a grave risk
5 of death and thereby causes the death of another person, INCLUDING AN UNBORN
6 CHILD OR, AS A RESULT OF RECKLESSLY CAUSING THE DEATH OF ANOTHER PERSON,
7 CAUSES THE DEATH OF AN UNBORN CHILD.

8 B. AN OFFENSE UNDER THIS SECTION APPLIES TO AN UNBORN CHILD IN THE
9 WOMB AT ANY STAGE OF ITS DEVELOPMENT. A PERSON MAY NOT BE PROSECUTED UNDER
10 THIS SECTION IF ANY OF THE FOLLOWING APPLIES:

11 1. THE PERSON WAS PERFORMING AN ABORTION FOR WHICH THE CONSENT OF THE
12 PREGNANT WOMAN, OR A PERSON AUTHORIZED BY LAW TO ACT ON THE PREGNANT WOMAN'S
13 BEHALF, HAS BEEN OBTAINED OR FOR WHICH THE CONSENT WAS IMPLIED OR AUTHORIZED
14 BY LAW.

15 2. THE PERSON WAS PERFORMING MEDICAL TREATMENT ON THE PREGNANT WOMAN
16 OR THE PREGNANT WOMAN'S UNBORN CHILD.

17 3. THE PERSON WAS THE UNBORN CHILD'S MOTHER.

18 ~~B-~~ C. Second degree murder is a class 1 felony and is punishable as
19 provided by section 13-604, subsection S, section 13-604.01 if the victim is
20 under fifteen years of age or IS AN UNBORN CHILD OR section 13-710.

21 Sec. 7. Section 13-1105, Arizona Revised Statutes, is amended to read:
22 13-1105. First degree murder; classification

23 A. A person commits first degree murder if:

24 1. Intending or knowing that the person's conduct will cause death,
25 the person causes the death of another PERSON, INCLUDING AN UNBORN CHILD,
26 with premeditation OR, AS A RESULT OF CAUSING THE DEATH OF ANOTHER PERSON
27 WITH PREMEDITATION, CAUSES THE DEATH OF AN UNBORN CHILD.

28 2. Acting either alone or with one or more other persons the person
29 commits or attempts to commit sexual conduct with a minor under section
30 13-1405, sexual assault under section 13-1406, molestation of a child under
31 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under
32 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under
33 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under
34 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory
35 threshold amount for each offense or combination of offenses, involving or
36 using minors in drug offenses under section 13-3409, kidnapping under section
37 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under
38 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or
39 13-1904, escape under section 13-2503 or 13-2504, child abuse under section
40 13-3623, subsection A, paragraph 1, or unlawful flight from a pursuing law
41 enforcement vehicle under section 28-622.01 and in the course of and in
42 furtherance of the offense or immediate flight from the offense, the person
43 or another person causes the death of any person.

1 3. Intending or knowing that the person's conduct will cause death to
2 a law enforcement officer, the person causes the death of a law enforcement
3 officer who is in the line of duty.

4 B. Homicide, as prescribed in subsection A, paragraph 2 of this
5 section, requires no specific mental state other than what is required for
6 the commission of any of the enumerated felonies.

7 C. AN OFFENSE UNDER SUBSECTION A, PARAGRAPH 1 OF THIS SECTION APPLIES
8 TO AN UNBORN CHILD IN THE WOMB AT ANY STAGE OF ITS DEVELOPMENT. A PERSON
9 SHALL NOT BE PROSECUTED UNDER SUBSECTION A, PARAGRAPH 1 OF THIS SECTION IF
10 ANY OF THE FOLLOWING APPLIES:

11 1. THE PERSON WAS PERFORMING AN ABORTION FOR WHICH THE CONSENT OF THE
12 PREGNANT WOMAN, OR A PERSON AUTHORIZED BY LAW TO ACT ON THE PREGNANT WOMAN'S
13 BEHALF, HAS BEEN OBTAINED OR FOR WHICH THE CONSENT WAS IMPLIED OR AUTHORIZED
14 BY LAW.

15 2. THE PERSON WAS PERFORMING MEDICAL TREATMENT ON THE PREGNANT WOMAN
16 OR THE PREGNANT WOMAN'S UNBORN CHILD.

17 3. THE PERSON WAS THE UNBORN CHILD'S MOTHER.

18 ~~C.~~ D. First degree murder is a class 1 felony and is punishable by
19 death or life imprisonment as provided by sections 13-703 and 13-703.01.

20 Sec. 8. Section 13-4062, Arizona Revised Statutes, is amended to read:
21 13-4062. Anti-marital fact privilege; other privileged
22 communications

23 A person shall not be examined as a witness in the following cases:

24 1. A husband for or against his wife without her consent, nor a wife
25 for or against her husband without his consent, as to events occurring during
26 the marriage, nor can either, during the marriage or afterwards, without
27 consent of the other, be examined as to any communication made by one to the
28 other during the marriage. These exceptions do not apply in a criminal
29 action or proceeding for a crime committed by the husband against the wife,
30 or by the wife against the husband, nor in a criminal action or proceeding
31 against the husband for abandonment, failure to support or provide for or
32 failure or neglect to furnish the necessities of life to the wife or the
33 minor children. Either spouse, at his or her request, but not otherwise, may
34 be examined as a witness for or against the other in a prosecution for an
35 offense listed in section 13-604, subsection V- W, paragraph 4, for bigamy
36 or adultery, committed by either spouse, or for sexual assault committed by
37 the husband.

38 2. An attorney, without consent of the attorney's client, as to any
39 communication made by the client to the attorney, or the attorney's advice
40 given in the course of professional employment.

41 3. A clergyman or priest, without consent of the person making the
42 confession, as to any confession made to the clergyman or priest in his
43 professional character in the course of discipline enjoined by the church to
44 which the clergyman or priest belongs.

1 institution, for purposes preparatory to a return to the community within
2 ninety days of the inmate's release date or for disaster aid, including local
3 mutual aid and state emergencies. When an inmate is temporarily removed or
4 temporarily released for a purpose preparatory to return to the community or
5 for compassionate leave, the director may require the inmate to reimburse the
6 state, in whole or part, for expenses incurred by the state in connection
7 with the temporary removal or release.

8 C. The board of executive clemency, under specific rules established
9 for the selection of inmates, if it appears to the board, in its sole
10 discretion, that there is a substantial probability that the inmate will
11 remain at liberty without violating the law and that the release is in the
12 best interests of the state, may authorize the release of an inmate on work
13 furlough if the inmate has served not less than six months of the sentence
14 imposed by the court, is within twelve months of the inmate's parole
15 eligibility date and has not been convicted of a sexual offense. The
16 director shall provide information as the board requests concerning any
17 inmate eligible for release on work furlough. The inmate shall not be
18 released on work furlough unless the release is approved by the board.

19 D. An inmate who is otherwise eligible for work furlough pursuant to
20 subsection C of this section, who is not on home arrest and who is currently
21 serving a sentence for a conviction of a serious offense or conspiracy to
22 commit or attempt to commit a serious offense shall not be granted work
23 furlough except by one of the following votes:

24 1. A majority affirmative vote if four or more members of the board of
25 executive clemency consider the action.

26 2. A unanimous affirmative vote if three members of the board of
27 executive clemency consider the action.

28 3. A unanimous affirmative vote if two members of the board of
29 executive clemency consider the action pursuant to section 31-401, subsection
30 I and the chairman of the board concurs after reviewing the information
31 considered by the two members.

32 E. Before holding a hearing on the work furlough under consideration,
33 the board shall, on request, notify and afford an opportunity to be heard to
34 the presiding judge of the superior court in the county in which the inmate
35 requesting a work furlough was sentenced, the prosecuting attorney, the
36 director of the arresting law enforcement agency and the victim of the
37 offense for which the inmate is incarcerated. The notice shall state the
38 name of the inmate requesting the work furlough, the offense for which the
39 inmate was sentenced, the length of the sentence and the date of admission to
40 the custody of the state department of corrections. The notice to the victim
41 shall also inform the victim of the victim's right to be present and submit a
42 written report to the board expressing the victim's opinion concerning the
43 inmate's release. No hearing concerning work furlough shall be held until
44 fifteen days after the date of giving the notice. On mailing the notice, the

1 board shall file a hard copy of the notice as evidence that notification was
2 sent.

3 F. The board shall require that every inmate released on work furlough
4 comply with the terms and conditions of release as the board may impose,
5 including that the inmate be gainfully employed while on work furlough and
6 that the inmate make restitution to the victim of the offense for which the
7 inmate was incarcerated.

8 G. If the board finds that an inmate has failed to comply with the
9 terms and conditions of release or that the best interests of this state
10 would be served by revocation of an inmate's work furlough, the board may
11 issue a warrant for retaking the inmate before the expiration of the inmate's
12 maximum sentence. After return of the inmate, the board may revoke the
13 inmate's work furlough after the inmate has been given an opportunity to be
14 heard.

15 H. If the board denies the release of an inmate on work furlough or
16 home arrest, it may prescribe that the inmate not be recommended again for
17 release on work furlough or home arrest for a period of up to one year.

18 I. The director shall transmit a monthly report containing the name,
19 date of birth, offense for which the inmate was sentenced, length of the
20 sentence and date of admission to the state department of corrections of each
21 inmate on work furlough or home arrest to the chairperson of the house of
22 representatives judiciary committee or its successor committee and the
23 chairperson of the senate judiciary committee or its successor
24 committee. The director shall also submit a report containing this
25 information for any inmate released on work furlough or home arrest within a
26 jurisdiction to the county attorney, sheriff and chief of police for the
27 jurisdiction in which the inmate is released on work furlough or home arrest.

28 J. Any inmate who knowingly fails to return from furlough, home
29 arrest, work furlough or temporary removal or temporary release granted under
30 ~~the provisions of~~ this section is guilty of a class 5 felony.

31 K. At any given time if the director declares there is a shortage of
32 beds available for inmates within the state department of corrections, the
33 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
34 suspended for any inmate who has served not less than six months of the
35 sentence imposed by the court, who has not been previously convicted of a
36 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
37 a sexual offense, the use or exhibition of a deadly weapon or dangerous
38 instrument or the infliction of serious physical injury pursuant to section
39 13-604, and the inmate shall be continuously eligible for parole, home arrest
40 or work furlough.

41 L. Prisoners who have served at least one calendar year and are
42 serving a sentence for conviction of a crime committed on or after October 1,
43 1978, under ~~the provisions of~~ section 13-604, 13-1406, 13-1410, 13-3406,
44 36-1002.01, 36-1002.02 or 36-1002.03, and who are sentenced to the custody of
45 the state department of corrections, may be temporarily released, according

1 to the rules of the department, at the discretion of the director, one
2 hundred eighty calendar days prior to expiration of the term imposed and
3 shall remain under the control of the state department of corrections until
4 expiration of the maximum sentence specified. If an offender released under
5 this section or pursuant to section 31-411, subsection B violates the rules,
6 the offender may be returned to custody and shall be classified to a parole
7 class as provided by the rules of the department.

8 M. This section applies only to persons who commit felony offenses
9 before January 1, 1994.

10 N. For the purposes of this section, "serious offense" means any of
11 the following:

12 1. A serious offense as defined in section 13-604, subsection ~~V~~ W,
13 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

14 2. A dangerous crime against children as defined in section 13-604.01.
15 The citation of section 13-604.01 is not a necessary element for a serious
16 offense designation.

17 3. A conviction under a prior criminal code for any offense that
18 possesses reasonably equivalent offense elements as the offense elements that
19 are listed under section 13-604, subsection ~~V~~ W, paragraph 4 or section
20 13-604.01, subsection ~~L~~ M, paragraph 1.

21 Sec. 11. Section 41-1604.13, Arizona Revised Statutes, is amended to
22 read:

23 41-1604.13. Home arrest; eligibility; victim notification;
24 conditions; applicability; definition

25 A. An inmate who has served not less than six months of the sentence
26 imposed by the court is eligible for the home arrest program if the inmate:

27 1. Meets the following criteria:

28 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
29 the intentional or knowing infliction of serious physical injury or the use
30 or exhibition of a deadly weapon or dangerous instrument.

31 (b) Was not convicted of a sexual offense.

32 (c) Has not previously been convicted of any felony.

33 2. Violated parole by the commission of a technical violation that was
34 not chargeable or indictable as a criminal offense.

35 3. Is eligible for work furlough.

36 4. Is eligible for parole pursuant to section 31-412, subsection A.

37 B. The board of executive clemency shall determine which inmates are
38 released to the home arrest program based on the criteria in subsection A of
39 this section and based on a determination that there is a substantial
40 probability that the inmate will remain at liberty without violating the law
41 and that the release is in the best interests of the state after considering
42 the offense for which the inmate is presently incarcerated, the prior record
43 of the inmate, the conduct of the inmate while incarcerated and any other
44 information concerning the inmate which is in the possession of the state

1 department of corrections, including any presentence report. The board
2 maintains the responsibility of revocation as applicable to all parolees.

3 C. An inmate who is otherwise eligible for home arrest, who is not on
4 work furlough and who is currently serving a sentence for a conviction of a
5 serious offense or conspiracy to commit or attempt to commit a serious
6 offense shall not be granted home arrest except by one of the following
7 votes:

8 1. A majority affirmative vote if four or more members of the board of
9 executive clemency consider the action.

10 2. A unanimous affirmative vote if three members of the board of
11 executive clemency consider the action.

12 3. A unanimous affirmative vote if two members of the board of
13 executive clemency consider the action pursuant to section 31-401, subsection
14 I and the chairman of the board concurs after reviewing the information
15 considered by the two members.

16 D. Home arrest is conditioned on the following:

17 1. Active electronic monitoring surveillance for a minimum term of one
18 year or until eligible for general parole.

19 2. Participation in gainful employment or other beneficial activities.

20 3. Submission to alcohol and drug tests as mandated.

21 4. Payment of the electronic monitoring fee in an amount determined by
22 the board of not less than one dollar per day and not more than the total
23 cost of the electronic monitoring unless, after determining the inability of
24 the inmate to pay the fee, the board requires payment of a lesser
25 amount. The fees collected shall be returned to the department's home arrest
26 program to offset operational costs of the program.

27 5. Remaining at the inmate's place of residence at all times except
28 for movement out of the residence according to mandated conditions.

29 6. Adherence to any other conditions imposed by the court, board of
30 executive clemency or supervising corrections officers.

31 7. Compliance with all other conditions of supervision.

32 E. Before holding a hearing on home arrest, the board on request shall
33 notify and afford an opportunity to be heard to the presiding judge of the
34 superior court in the county in which the inmate requesting home arrest was
35 sentenced, the prosecuting attorney and the director of the arresting law
36 enforcement agency. The board shall notify the victim of the offense for
37 which the inmate is incarcerated. The notice shall state the name of the
38 inmate requesting home arrest, the offense for which the inmate was
39 sentenced, the length of the sentence and the date of admission to the
40 custody of the state department of corrections. The notice to the victim
41 shall also inform the victim of the victim's right to be present and to
42 submit a written report to the board expressing the victim's opinion
43 concerning the inmate's release. No hearing concerning home arrest may be
44 held until fifteen days after the date of giving the notice. On mailing the

1 notice, the board shall file a hard copy of the notice as evidence that
2 notification was sent.

3 F. An inmate who is placed on home arrest is on inmate status, is
4 subject to all the limitations of rights and movement and is entitled only to
5 due process rights of return.

6 G. If an inmate violates a condition of home arrest which THAT poses
7 any threat or danger to the community, or commits an additional felony
8 offense, the board shall revoke the home arrest and return the inmate to the
9 custody of the state department of corrections to complete the term of
10 imprisonment as authorized by law.

11 H. The ratio of supervising corrections officers to supervisees in the
12 home arrest program shall be no greater than one officer for every
13 twenty-five supervisees.

14 I. The board shall determine when the supervisee is eligible for
15 transfer to the regular parole program pursuant to section 31-411.

16 J. This section applies only to persons who commit felony offenses
17 before January 1, 1994.

18 K. For the purposes of this section, "serious offense" includes any of
19 the following:

20 1. A serious offense as defined in section 13-604, subsection ~~V~~ W,
21 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

22 2. A dangerous crime against children as defined in section 13-604.01.
23 The citation of section 13-604.01 is not a necessary element for a serious
24 offense designation.

25 3. A conviction under a prior criminal code for any offense that
26 possesses reasonably equivalent offense elements as the offense elements that
27 are listed under section 13-604, subsection ~~V~~ W, paragraph 4 and section
28 13-604.01, subsection ~~L~~ M, paragraph 1.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 19, 2005,

by the following vote: 16 Ayes,

12 Nays, 2 Not Voting

Ken Bennett
President of the Senate
Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 3:41 o'clock P. M.

Winnifer Herrera
Secretary to the Governor

Approved this 25 day of

April, 2005,

at 4:15 o'clock P. M.

Jan Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005,

at 4:33 o'clock P. M.

Janice K. Brewer
Secretary of State

S.B. 1052

Passed the House April 13, 2005,

by the following vote: 42 Ayes,

16 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate March 3, 2005,

by the following vote: 17 Ayes,

12 Nays, 1 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1052

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State