Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 248

HOUSE BILL 2342

AN ACT

AMENDING SECTIONS 13-604, 13-604.01, 13-1307, 13-1419, 13-3211, 13-3212, 13-3213, 13-3554, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; RELATING TO SEXUAL OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

13-604. Dangerous and repetitive offenders; definitions

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

Felony	Minimum	Presumptive	Maximum
Class 4	3 years	4.5 years	6 years
Class 5	1.5 years	2.25 years	3 years
Class 6	1 year	1.75 years	2.25 years

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

Felony	Minimum	Presumptive	Maximum
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years

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

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

Felony	Minimum	Presumptive	Maximum
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

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

Felony	Minimum	Presumptive	Maximum
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

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

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

Felony	Minimum	Presumptive	Maximum
Class 4	4 years	6 years	8 years
Class 5	2 years	3 years	4 years
Class 6	1.5 years	2.25 years	3 years

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

Felony	Minimum	Presumptive	Maximum
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

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

Felony	Minimum	Presumptive	Maximum
Class 4	12 years	14 years	16 years
Class 5	6 years	7 years	8 years
Class 6	4.5 years	5.25 years	6 years

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

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

Felony	Minimum	Presumptive	Maximum
Class 2	7 years	10.5 years	21 years
Class 3	5 years	7.5 years	15 years

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

Felony	Minimum	Presumptive	Maximum
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

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

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

Felony	Minimum	Presumptive	Maximum
Class 2	21 years	28 years	35 years
Class 3	15 years	20 years	25 years

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

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

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

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

P. The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if the previous conviction or the allegation that the defendant committed a felony while released on bond or on the defendant's own recognizance or while escaped from preconviction custody as provided in subsection R of this section is charged in the indictment or information and admitted or found by the court or if the dangerous nature of the felony is charged in the indictment or information and admitted or found by the trier of fact. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed prior to release. The court shall allow the allegation of a prior conviction, the dangerous nature of the felony or the allegation 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

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

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

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

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

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

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

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

V. Except as provided in section 13-604.01 or 13-703, if the victim is an unborn child in the womb at any stage of its development, the defendant shall be sentenced pursuant to this section.

W. For the purposes of this section:

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

2. "Historical prior felony conviction" means:

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

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

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

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

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

(v) Involved aggravated driving under the influence of intoxicating liquor or drugs, driving while under the influence of intoxicating liquor or drugs with a suspended, canceled, revoked or refused driver license or driving under the influence of intoxicating liquor or drugs with two or more driving under the influence of intoxicating liquor or drug convictions within a period of ~~sixty~~ EIGHTY-FOUR months; or

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

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

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

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

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

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

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

(a) First degree murder.

(b) Second degree murder.

(c) Manslaughter.

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

(e) Sexual assault.

(f) Any dangerous crime against children.

(g) Arson of an occupied structure.

(h) Armed robbery.

(i) Burglary in the first degree.

(j) Kidnapping.

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

(l) CHILD PROSTITUTION.

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

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

13-604.01. <u>Dangerous crimes against children; sentences; definitions</u>

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

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

attempted first degree murder of a minor who is under twelve years of age, second degree murder of a minor who is under twelve years of age, sexual assault of a minor who is under twelve years of age, sexual conduct with a minor who is under twelve years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is under twelve years of age may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. If a life sentence is not imposed pursuant to this subsection, the person shall be sentenced to a presumptive term of imprisonment for twenty years.

C. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is twelve, thirteen or fourteen years of age, second degree murder of a minor who is twelve, thirteen or fourteen years of age, sexual assault of a minor who is twelve, thirteen or fourteen years of age, taking a child for the purpose of prostitution, child prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen years of age, continuous sexual abuse of a child, sex trafficking of a minor who is under fifteen years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is twelve, thirteen or fourteen years of age or involving or using minors in drug offenses shall be sentenced to a presumptive term of imprisonment for twenty years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for thirty years.

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

E. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO STANDS CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN INVOLVING LURING A MINOR FOR SEXUAL EXPLOITATION PURSUANT TO SECTION 13-3554 IS GUILTY OF A CLASS 3 FELONY AND SHALL BE SENTENCED TO A PRESUMPTIVE TERM OF IMPRISONMENT FOR TEN YEARS AND, UNLESS THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF A PREDICATE FELONY, THE PRESUMPTIVE TERM MAY BE INCREASED OR DECREASED BY UP TO FIVE YEARS PURSUANT TO SECTION 13-702, SUBSECTIONS B, C AND D. IF THE PERSON IS SENTENCED TO A TERM OF IMPRISONMENT THE PERSON IS NOT ELIGIBLE FOR RELEASE

FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED. IF THE CONVICTED PERSON HAS BEEN PREVIOUSLY CONVICTED OF ONE PREDICATE FELONY THE PERSON SHALL BE SENTENCED TO A PRESUMPTIVE TERM OF IMPRISONMENT FOR FIFTEEN YEARS AND IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED.

~~E.~~ F. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children involving sexual abuse under section 13-1404 or bestiality under section 13-1411, subsection A, paragraph 2 is guilty of a class 3 felony and shall be sentenced to a presumptive term of imprisonment for five years, and unless the person has previously been convicted of a predicate felony, the presumptive term may be increased or decreased by up to two and one-half years pursuant to section 13-702, subsections B, C and D. If the person is sentenced to a term of imprisonment the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for fifteen years and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

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

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

~~H.~~ I. A person who stands convicted of any dangerous crime against children in the first degree pursuant to subsection C or D of this section and who has been previously convicted of two or more predicate felonies shall

be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served not fewer than thirty-five years or the sentence is commuted.

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

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

~~K.~~ L. The sentence THAT IS imposed on a person by the court for a dangerous crime against children under subsection D of this section and that involves child molestation or sexual abuse pursuant to subsection ~~E~~ F of this section may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed on a person for any other dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time, including child molestation and sexual abuse of the same victim.

~~L.~~ M. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

~~M.~~ N. For the purposes of this section:

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

(a) Second degree murder.

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

(c) Sexual assault.

(d) Molestation of a child.

(e) Sexual conduct with a minor.
(f) Commercial sexual exploitation of a minor.
(g) Sexual exploitation of a minor.
(h) Child abuse as prescribed in section 13-3623, subsection A, paragraph 1.
(i) Kidnapping.
(j) Sexual abuse.
(k) Taking a child for the purpose of prostitution as prescribed in section 13-3206.
(l) Child prostitution as prescribed in section 13-3212.
(m) Involving or using minors in drug offenses.
(n) Continuous sexual abuse of a child.
(o) Attempted first degree murder.
(p) Sex trafficking.
(q) Manufacturing methamphetamine under circumstances that cause physical injury to a minor.
(r) Bestiality as prescribed in section 13-1411, subsection A, paragraph 2.
(s) LURING A MINOR FOR SEXUAL EXPLOITATION.
A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.
2. "Predicate felony" means any felony involving child abuse pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.
Sec. 3. Section 13-1307, Arizona Revised Statutes, is amended to read:
13-1307. Sex trafficking; classification
A. It is unlawful for a person to knowingly recruit, entice, harbor, transport, provide or obtain by any means another person WHO IS EIGHTEEN YEARS OF AGE OR OLDER with the intent of causing the other person to engage in prostitution by force, fraud or coercion.
B. IT IS UNLAWFUL FOR A PERSON TO RECRUIT, ENTICE, HARBOR, TRANSPORT, PROVIDE OR OBTAIN BY ANY MEANS ANOTHER PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE WITH THE INTENT OF CAUSING THE OTHER PERSON TO ENGAGE IN PROSTITUTION.
C. NOTWITHSTANDING ANY OTHER LAW, A SENTENCE IMPOSED ON A PERSON FOR A VIOLATION OF SUBSECTION B OF THIS SECTION SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE IMPOSED ON THE PERSON AT ANY TIME.
~~B.~~ D. A person who violates this section is guilty of a class 2 felony, except that~~,~~ if the offense is committed against a person who is under fifteen years of age, the offense is a dangerous crime against children punishable pursuant to section 13-604.01.

Sec. 4. Section 13-1419, Arizona Revised Statutes, is amended to read:

13-1419. Unlawful sexual conduct; correctional facilities; classification; definition

A. A person ~~who is employed by the state department of corrections, the department of juvenile corrections, a private prison facility or a city or county jail, or who contracts to provide services with the state department of corrections, the department of juvenile corrections, a private prison facility or a city or county jail~~ commits unlawful sexual conduct by engaging in ~~oral sexual contact, sexual contact or sexual intercourse~~ ANY ACT OF A SEXUAL NATURE with ~~a person~~ AN OFFENDER who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility or a city or county jail or with an offender who is under the supervision of either department or a city or county. FOR THE PURPOSES OF THIS SUBSECTION, "PERSON" MEANS A PERSON WHO:

1. IS EMPLOYED BY THE STATE DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF JUVENILE CORRECTIONS.

2. IS EMPLOYED BY A PRIVATE PRISON FACILITY OR A CITY OR COUNTY JAIL.

3. CONTRACTS TO PROVIDE SERVICES WITH THE STATE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF JUVENILE CORRECTIONS, A PRIVATE PRISON FACILITY OR A CITY OR COUNTY JAIL.

4. IS AN OFFICIAL VISITOR, VOLUNTEER OR AGENCY REPRESENTATIVE OF THE STATE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF JUVENILE CORRECTIONS, A PRIVATE PRISON FACILITY OR A CITY OR COUNTY JAIL.

~~B. A prisoner who is in the custody of the state department of corrections, a private prison facility or a city or county jail or an offender who is on release status and who is under the supervision of the state department of corrections or a city or county commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact or sexual intercourse with a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail.~~

~~C.~~ B. This section does not apply to~~:~~

~~1.~~ a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail or an offender who is on release status if the person was lawfully married to the prisoner or offender on release status before the prisoner or offender was sentenced to the state department of corrections or was incarcerated in a city or county jail.

~~2. An offender who is on release status and who was lawfully married to a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail if the marriage occurred prior to the offender being sentenced~~

~~to the state department of corrections or incarcerated in a city or county jail.~~

~~D.~~ C. Unlawful sexual conduct with ~~a person~~ AN OFFENDER under ~~the age of~~ fifteen YEARS OF AGE is a class 2 felony. Unlawful sexual conduct with ~~a person~~ AN OFFENDER between ~~the ages of~~ fifteen and seventeen YEARS OF AGE is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.

D. FOR THE PURPOSES OF THIS SECTION, "ANY ACT OF A SEXUAL NATURE":

1. INCLUDES THE FOLLOWING:

(a) ANY COMPLETED, ATTEMPTED, THREATENED OR REQUESTED TOUCHING OF THE GENITALIA, ANUS, GROIN, BREAST, INNER THIGH, PUBIC AREA OR BUTTOCKS WITH THE INTENT TO AROUSE OR GRATIFY SEXUAL DESIRE.

(b) ANY ACT OF EXPOSING THE GENITALIA, ANUS, GROIN, BREAST, INNER THIGH, PUBIC AREA OR BUTTOCKS WITH THE INTENT TO AROUSE OR GRATIFY SEXUAL DESIRE.

(c) ANY ACT OF PHOTOGRAPHING, VIDEOTAPING, FILMING, DIGITALLY RECORDING OR OTHERWISE VIEWING, WITH OR WITHOUT A DEVICE, A PRISONER OR OFFENDER WITH THE INTENT TO AROUSE OR GRATIFY SEXUAL DESIRE, EITHER:

(i) WHILE THE PRISONER OR OFFENDER IS IN A STATE OF UNDRESS OR PARTIAL DRESS.

(ii) WHILE THE PRISONER OR OFFENDER IS URINATING OR DEFECATING.

2. DOES NOT INCLUDE AN ACT DONE PURSUANT TO A BONA FIDE MEDICAL EXAM OR LAWFUL INTERNAL SEARCH.

Sec. 5. Section 13-3211, Arizona Revised Statutes, is amended to read:

13-3211. Definitions

~~For the purposes of~~ IN this chapter, unless the context otherwise requires:

1. "Employee" means a person who conducts lawful or unlawful business for another person under a master-servant relationship or as an independent contractor and who is compensated by wages, commissions, tips or other valuable consideration.

2. "House of prostitution" means any building, structure or place THAT IS used for the purpose of prostitution or lewdness or where acts of prostitution occur.

3. "Operate and maintain" means to organize, design, perpetuate or control. Operate and maintain includes providing financial support by paying utilities, rent, maintenance costs or advertising costs, supervising activities or work schedules, and directing or furthering the aims of the enterprise.

4. "Oral sexual contact" means oral contact with the penis, vulva or anus.

5. "Prostitution" means engaging in or agreeing or offering to engage in sexual conduct ~~with another person~~ under a fee arrangement with ~~that person or~~ any ~~other~~ person FOR MONEY OR ANY OTHER VALUABLE CONSIDERATION.

6. "Prostitution enterprise" means any corporation, partnership, association or other legal entity or any group of individuals associated in fact although not a legal entity engaged in providing prostitution services.

7. "Sadomasochistic abuse" means flagellation or torture by or ~~upon~~ ON a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

8. "Sexual conduct" means sexual contact, sexual intercourse, oral sexual contact or sadomasochistic abuse.

9. "Sexual contact" means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast.

10. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object.

Sec. 6. Section 13-3212, Arizona Revised Statutes, is amended to read:

13-3212. Child prostitution; classification; increased punishment

A. A person commits child prostitution by knowingly:

1. Causing any minor to engage in prostitution.

2. Using any minor for THE purposes of prostitution.

3. Permitting a minor WHO IS under ~~such~~ THE person's custody or control to engage in prostitution.

4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.

5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.

6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.

7. Transporting or financing the transportation of any minor ~~through or across this state~~ with the intent that ~~such~~ THE minor engage in prostitution.

8. ENGAGING IN PROSTITUTION WITH A MINOR.

B. NOTWITHSTANDING ANY OTHER LAW, A SENTENCE IMPOSED ON A PERSON FOR A VIOLATION OF THIS SECTION INVOLVING A MINOR WHO IS FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE IMPOSED ON THE PERSON AT ANY TIME.

C. IF A PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 8 OF THIS SECTION, THE VICTIM IS FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE AND THE COURT SENTENCES THE PERSON TO A TERM OF PROBATION, THE COURT SHALL ORDER THAT AS AN INITIAL TERM OF PROBATION THE PERSON BE IMPRISONED IN THE COUNTY JAIL FOR NOT LESS THAN THIRTY DAYS. THIS JAIL TERM OF INCARCERATION SHALL NOT BE DELETED, DEFERRED OR OTHERWISE SUSPENDED AND SHALL COMMENCE ON THE DATE OF SENTENCING. THIS SUBSECTION DOES NOT APPLY TO PERSONS WHO ARE SENTENCED TO SERVE A PERIOD OF INCARCERATION IN THE STATE DEPARTMENT OF CORRECTIONS.

~~B.~~ D. Child prostitution is a class 2 felony, and if the minor is under fifteen years of age it is punishable pursuant to section 13-604.01.

E. IF THE MINOR IS FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE, CHILD PROSTITUTION PURSUANT TO SUBSECTION A, PARAGRAPH 1, 2, 3, 4, 5, 6 OR 7 OF THIS SECTION IS A CLASS 2 FELONY, THE PERSON CONVICTED SHALL BE SENTENCED PURSUANT TO THIS SECTION AND THE PERSON IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED. THE PRESUMPTIVE TERM MAY BE AGGRAVATED OR MITIGATED WITHIN THE RANGE UNDER THIS SECTION PURSUANT TO SECTION 13-702, SUBSECTIONS B, C AND D. THE TERMS ARE AS FOLLOWS:

1. THE TERM FOR A FIRST OFFENSE IS AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
7 YEARS	10.5 YEARS	21 YEARS

2. THE TERM FOR A DEFENDANT WHO HAS ONE HISTORICAL PRIOR FELONY CONVICTION IS AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
14 YEARS	15.75 YEARS	28 YEARS

3. THE TERM FOR A DEFENDANT WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS IS AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
21 YEARS	28 YEARS	35 YEARS

Sec. 7. Section 13-3213, Arizona Revised Statutes, is amended to read:

13-3213. Defense

It is a defense to a prosecution pursuant to section 13-3212, SUBSECTION A, PARAGRAPH 8, if the defendant engaged in the conduct constituting the offense with a minor ~~of~~ WHO IS fifteen, sixteen or seventeen years of age and at the time of the offense the defendant ~~did not know and~~ could not reasonably have known the age of the minor.

Sec. 8. Section 13-3554, Arizona Revised Statutes, is amended to read:

13-3554. Luring a minor for sexual exploitation; classification

A. A person commits luring a minor for sexual exploitation by offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor.

B. It is not a defense to a prosecution for a violation of this section that the other person ~~was a peace officer posing as~~ IS NOT a minor.

C. Luring a minor for sexual exploitation is a class 3 felony, and if the minor is under fifteen years of age it is punishable pursuant to section 13-604.01~~, subsection I~~.

Sec. 9. Section 31-412, Arizona Revised Statutes, is amended to read:

31-412. Criteria for release on parole; release; custody of parolee; definition

A. If a prisoner is certified as eligible for parole pursuant to section 41-1604.09 the board of executive clemency shall authorize the

release of the applicant ~~upon~~ ON parole if the applicant has reached the applicant's earliest parole eligibility date pursuant to section 41-1604.09, subsection D and it appears to the board, in its sole discretion, that there is a substantial probability that the applicant will remain at liberty without violating the law and that the release is in the best interests of the state. The applicant shall thereupon be allowed to go ~~upon~~ ON parole in the legal custody and under the control of the state department of corrections, until the board revokes the parole or grants an absolute discharge from parole or until the prisoner reaches the prisoner's individual earned release credit date pursuant to section 41-1604.10. When the prisoner reaches the prisoner's individual earned release credit date the prisoner's parole shall be terminated and the prisoner shall no longer be under the authority of the board but shall be subject to revocation under section 41-1604.10.

B. Notwithstanding subsection A of this section, the director of the state department of corrections may certify as eligible for parole any prisoner, regardless of the classification of the prisoner, who has reached the prisoner's parole eligibility date pursuant to section 41-1604.09, subsection D, unless an increased term has been imposed pursuant to section 41-1604.09, subsection F, for the sole purpose of parole to the custody of any other jurisdiction to serve a term of imprisonment imposed by the other jurisdiction or to stand trial on criminal charges in the other jurisdiction or for the sole purpose of parole to the custody of the state department of corrections to serve any consecutive term imposed on the prisoner. ~~Upon~~ ON review of an application for parole pursuant to this subsection the board may authorize parole if, in its discretion, parole appears to be in the best interests of the state.

C. A prisoner who is otherwise eligible for parole, who is not on home arrest or work furlough and who is currently serving a sentence for a conviction of a serious offense or conspiracy to commit or attempt to commit a serious offense shall not be granted parole or absolute discharge from imprisonment except by one of the following votes:

1. A majority affirmative vote if four or more members consider the action.

2. A unanimous affirmative vote if three members consider the action.

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

D. The board, ~~shall~~ as a condition of parole, SHALL order a prisoner to make any court-ordered restitution.

E. Payment of restitution by the prisoner in accordance with subsection D of this section shall be made through the clerk of the superior court in the county in which the prisoner was sentenced for the offense for which the prisoner has been imprisoned in the same manner as restitution is paid as a condition of probation. The clerk of the superior court shall

report to the board monthly whether or not restitution has been paid for that month by the prisoner.

F. The board shall not disclose the address of the victim or the victim's immediate family to any party without the written consent of the victim or the victim's family.

G. For the purposes of this section, "serious offense" includes any of the following:

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

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

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

Sec. 10. Section 41-1604.11, Arizona Revised Statutes, is amended to read:

41-1604.11. Order for removal; purposes; duration; work furlough; notice; failure to return; classification; applicability; definition

A. The director of the state department of corrections may authorize the temporary removal under custody from prison or any other institution for the detention of adults under the jurisdiction of the state department of corrections of any inmate for the purpose of employing that inmate in any work directly connected with the administration, management or maintenance of the prison or institution in which the inmate is confined, for purposes of cooperating voluntarily in medical research that cannot be performed at the prison or institution, or for participating in community action activities directed toward delinquency prevention and community betterment programs. The removal shall not be for a period longer than one day.

B. Under specific rules established by the director for the selection of inmates, the director may also authorize furlough, temporary removal or temporary release of any inmate for compassionate leave, for the purpose of furnishing to the inmate medical treatment not available at the prison or institution, for purposes preparatory to a return to the community within ninety days of the inmate's release date or for disaster aid, including local mutual aid and state emergencies. When an inmate is temporarily removed or temporarily released for a purpose preparatory to return to the community or for compassionate leave, the director may require the inmate to reimburse the state, in whole or part, for expenses incurred by the state in connection with the temporary removal or release.

C. The board of executive clemency, under specific rules established for the selection of inmates, if it appears to the board, in its sole discretion, that there is a substantial probability that the inmate will

remain at liberty without violating the law and that the release is in the best interests of the state, may authorize the release of an inmate on work furlough if the inmate has served not less than six months of the sentence imposed by the court, is within twelve months of the inmate's parole eligibility date and has not been convicted of a sexual offense. The director shall provide information as the board requests concerning any inmate eligible for release on work furlough. The inmate shall not be released on work furlough unless the release is approved by the board.

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

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

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

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

E. Before holding a hearing on the work furlough under consideration, the board ~~shall~~, on request, SHALL notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting a work furlough was sentenced, the prosecuting attorney, the director of the arresting law enforcement agency and the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting the work furlough, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of the victim's right to be present and submit a written report to the board expressing the victim's opinion concerning the inmate's release. No hearing concerning work furlough shall be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

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

G. If the board finds that an inmate has failed to comply with the terms and conditions of release or that the best interests of this state would be served by revocation of an inmate's work furlough, the board may issue a warrant for retaking the inmate before the expiration of the inmate's

maximum sentence. After return of the inmate, the board may revoke the inmate's work furlough after the inmate has been given an opportunity to be heard.

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

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

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

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

L. Prisoners who have served at least one calendar year and WHO are serving a sentence for conviction of a crime committed on or after October 1, 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02 or 36-1002.03, and who are sentenced to the custody of the state department of corrections, may be temporarily released, according to the rules of the department, at the discretion of the director, one hundred eighty calendar days prior to expiration of the term imposed and shall remain under the control of the state department of corrections until expiration of the maximum sentence specified. If an offender released under this section or pursuant to section 31-411, subsection B violates the rules, the offender may be returned to custody and shall be classified to a parole class as provided by the rules of the department.

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

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

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

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

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

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

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

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

1. Meets the following criteria:

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

(b) Was not convicted of a sexual offense.

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

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

3. Is eligible for work furlough.

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

B. The board of executive clemency shall determine which inmates are released to the home arrest program based on the criteria in subsection A of this section and based on a determination that there is a substantial probability that the inmate will remain at liberty without violating the law and that the release is in the best interests of the state after considering the offense for which the inmate is presently incarcerated, the prior record of the inmate, the conduct of the inmate while incarcerated and any other information concerning the inmate ~~which~~ THAT is in the possession of the state department of corrections, including any presentence report. The board maintains the responsibility of revocation as applicable to all parolees.

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

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

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

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

D. Home arrest is conditioned on the following:

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

2. Participation in gainful employment or other beneficial activities.

3. Submission to alcohol and drug tests as mandated.

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

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

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

7. Compliance with all other conditions of supervision.

E. Before holding a hearing on home arrest, the board on request shall notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting home arrest was sentenced, the prosecuting attorney and the director of the arresting law enforcement agency. The board shall notify the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting home arrest, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of the victim's right to be present and to submit a written report to the board expressing the victim's opinion concerning the inmate's release. No hearing concerning home arrest may be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

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

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

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

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

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

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

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

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

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

Sec. 12. Emergency

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

APPROVED BY THE GOVERNOR JUNE 13, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 14, 2007.

Passed the House February 26, 20 07

by the following vote: 47 Ayes,

12 Nays, 1 Not Voting

Speaker of the House

Pro Tempore

Herman L. Moore

Chief Clerk of the House

Passed the Senate April 24, 20 07

by the following vote: 24 Ayes,

6 Nays, 0 Not Voting

with Emergency

Timothy S. Bee

President of the Senate

Charmain B. Allerton

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____

Secretary to the Governor

Approved this _____day of

_____

at _____ o'clock _____M.

_____

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____

Secretary of State

H.B. 2342

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

June 12, 2007,

by the following vote: 49 Ayes,

0 Nays, 11 Not Voting
with emergency

Speaker of the House

Pro Tempore

Herman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

12th day of June, 2007,

at 1:04 o'clock P. M.

Jennifer Pacha
Secretary to the Governor

Approved this 13 day of

June, 2007,

at 5:05 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 14 day of June, 2007,

at 9:49 o'clock A. M.

Janice K. Brewer
Secretary of State

H.B. 2342