

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 219

HOUSE BILL 2480

AN ACT

AMENDING SECTIONS 13-604.01, 13-1407 AND 13-3557, ARIZONA REVISED STATUTES;
AMENDING TITLE 13, CHAPTER 35.1, ARIZONA REVISED STATUTES, BY ADDING SECTION
13-3560; AMENDING SECTION 13-3821, ARIZONA REVISED STATUTES; RELATING TO
SEXUAL EXPLOITATION OF CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-604.01, Arizona Revised Statutes, is amended to
3 read:

4 13-604.01. Dangerous crimes against children; sentences;
5 definitions

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

15 B. Except as otherwise provided in this section, a person who is at
16 least eighteen years of age or who has been tried as an adult and who stands
17 convicted of a dangerous crime against children in the first degree involving
18 attempted first degree murder of a minor who is under twelve years of age,
19 second degree murder of a minor who is under twelve years of age, sexual
20 assault of a minor who is under twelve years of age, sexual conduct with a
21 minor who is under twelve years of age or manufacturing methamphetamine under
22 circumstances that cause physical injury to a minor who is under twelve years
23 of age may be sentenced to life imprisonment and is not eligible for
24 suspension of sentence, probation, pardon or release from confinement on any
25 basis except as specifically authorized by section 31-233, subsection A or B
26 until the person has served thirty-five years or the sentence is commuted.
27 If a life sentence is not imposed pursuant to this subsection, the person
28 shall be sentenced to a presumptive term of imprisonment for twenty years.

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

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

10 E. 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 involving luring a minor for
13 sexual exploitation pursuant to section 13-3554 is guilty of a class 3 felony
14 and shall be sentenced to a presumptive term of imprisonment for ten years
15 and, unless the person has previously been convicted of a predicate felony,
16 the presumptive term may be increased or decreased by up to five years
17 pursuant to section 13-702, subsections B, C and D. If the person is
18 sentenced to a term of imprisonment the person is not eligible for release
19 from confinement on any basis except as specifically authorized by section
20 31-233, subsection A or B until the sentence imposed by the court has been
21 served, the person is eligible for release pursuant to section 41-1604.07 or
22 the sentence is commuted. If the convicted person has been previously
23 convicted of one predicate felony the person shall be sentenced to a
24 presumptive term of imprisonment for fifteen years and is not eligible for
25 suspension of sentence, probation, pardon or release from confinement on any
26 basis except as specifically authorized by section 31-233, subsection A or B
27 until the sentence imposed by the court has been served, the person is
28 eligible for release pursuant to section 41-1604.07 or the sentence is
29 commuted.

30 F. Except as otherwise provided in this section, a person who is at
31 least eighteen years of age or who has been tried as an adult and who stands
32 convicted of a dangerous crime against children involving sexual abuse under
33 section 13-1404 or bestiality under section 13-1411, subsection A, paragraph
34 2 is guilty of a class 3 felony and shall be sentenced to a presumptive term
35 of imprisonment for five years, and unless the person has previously been
36 convicted of a predicate felony, the presumptive term may be increased or
37 decreased by up to two and one-half years pursuant to section 13-702,
38 subsections B, C and D. If the person is sentenced to a term of imprisonment
39 the person is not eligible for 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. If the
43 convicted person has been previously convicted of one predicate felony the
44 person shall be sentenced to a presumptive term of imprisonment for fifteen
45 years and is not eligible for suspension of sentence, probation, pardon or

1 release from confinement on any basis except as specifically authorized by
2 section 31-233, subsection A or B until the sentence imposed by the court has
3 been served, the person is eligible for release pursuant to section
4 41-1604.07 or the sentence is commuted.

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

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

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

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

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

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

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

11 N. For the purposes of this section:

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

14 (a) Second degree murder.

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

18 (c) Sexual assault.

19 (d) Molestation of a child.

20 (e) Sexual conduct with a minor.

21 (f) Commercial sexual exploitation of a minor.

22 (g) Sexual exploitation of a minor.

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

25 (i) Kidnapping.

26 (j) Sexual abuse.

27 (k) Taking a child for the purpose of prostitution as prescribed in
28 section 13-3206.

29 (l) Child prostitution as prescribed in section 13-3212.

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

31 (n) Continuous sexual abuse of a child.

32 (o) Attempted first degree murder.

33 (p) Sex trafficking.

34 (q) Manufacturing methamphetamine under circumstances that cause
35 physical injury to a minor.

36 (r) Bestiality as prescribed in section 13-1411, subsection A,
37 paragraph 2.

38 (s) Luring a minor for sexual exploitation.

39 (t) AGGRAVATED LURING A MINOR FOR SEXUAL EXPLOITATION.

40 A dangerous crime against children is in the first degree if it is a
41 completed offense and is in the second degree if it is a preparatory offense,
42 except attempted first degree murder is a dangerous crime against children in
43 the first degree.

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

7 Sec. 2. Section 13-1407, Arizona Revised Statutes, is amended to read:
8 13-1407. Defenses

9 A. It is a defense to a prosecution pursuant to sections 13-1404 and
10 13-1405 involving a minor if the act was done in furtherance of lawful
11 medical practice.

12 B. It is a defense to a prosecution pursuant to sections 13-1404 and
13 13-1405 in which the victim's lack of consent is based on incapacity to
14 consent because the victim was fifteen, sixteen or seventeen years of age if
15 at the time the defendant engaged in the conduct constituting the offense the
16 defendant did not know and could not reasonably have known the age of the
17 victim.

18 C. It is a defense to a prosecution pursuant to section 13-1402,
19 13-1404, 13-1405 or 13-1406 if the act was done by a duly licensed physician
20 or registered nurse or a person acting under the physician's or nurse's
21 direction, or any other person who renders emergency care at the scene of an
22 emergency occurrence, the act consisted of administering a recognized and
23 lawful form of treatment that was reasonably adapted to promoting the
24 physical or mental health of the patient and the treatment was administered
25 in an emergency when the duly licensed physician or registered nurse or a
26 person acting under the physician's or nurse's direction, or any other person
27 rendering emergency care at the scene of an emergency occurrence, reasonably
28 believed that no one competent to consent could be consulted and that a
29 reasonable person, wishing to safeguard the welfare of the patient, would
30 consent.

31 D. It is a defense to a prosecution pursuant to section 13-1404 or
32 13-1405 that the person was the spouse of the other person at the time of
33 commission of the act. It is not a defense to a prosecution pursuant to
34 section 13-1406 that the defendant was the spouse of the victim at the time
35 of commission of the act.

36 E. It is a defense to a prosecution pursuant to section 13-1404 or
37 13-1410 that the defendant was not motivated by a sexual interest. It is a
38 defense to a prosecution pursuant to section 13-1404 involving a victim under
39 fifteen years of age that the defendant was not motivated by a sexual
40 interest.

41 F. It is a defense to a prosecution pursuant to ~~section~~ SECTIONS
42 13-1405 AND 13-3560 if the victim is fifteen, sixteen or seventeen years of
43 age, the defendant is under nineteen years of age or attending high school
44 and is no more than twenty-four months older than the victim and the conduct
45 is consensual.

1 would be a violation or attempted violation of any of the following offenses
2 or an offense that was in effect before September 1, 1978 and that, if
3 committed on or after September 1, 1978, has the same elements of an offense
4 listed in this section or who is required to register by the convicting
5 jurisdiction, within ten days after the conviction or within ten days after
6 entering and remaining in any county of this state, shall register with the
7 sheriff of that county:

8 1. Unlawful imprisonment pursuant to section 13-1303 if the victim is
9 under eighteen years of age and the unlawful imprisonment was not committed
10 by the child's parent.

11 2. Kidnapping pursuant to section 13-1304 if the victim is under
12 eighteen years of age and the kidnapping was not committed by the child's
13 parent.

14 3. Sexual abuse pursuant to section 13-1404 if the victim is under
15 eighteen years of age.

16 4. Sexual conduct with a minor pursuant to section 13-1405.

17 5. Sexual assault pursuant to section 13-1406.

18 6. Sexual assault of a spouse if the offense was committed before
19 August 12, 2005.

20 7. Molestation of a child pursuant to section 13-1410.

21 8. Continuous sexual abuse of a child pursuant to section 13-1417.

22 9. Taking a child for the purpose of prostitution pursuant to section
23 13-3206.

24 10. Child prostitution pursuant to section 13-3212.

25 11. Commercial sexual exploitation of a minor pursuant to section
26 13-3552.

27 12. Sexual exploitation of a minor pursuant to section 13-3553.

28 13. Luring a minor for sexual exploitation pursuant to section 13-3554.

29 14. Sex trafficking of a minor pursuant to section 13-1307.

30 15. A second or subsequent violation of indecent exposure to a person
31 under fifteen years of age pursuant to section 13-1402.

32 16. A second or subsequent violation of public sexual indecency to a
33 minor under the age of fifteen years pursuant to section 13-1403,
34 subsection B.

35 17. A third or subsequent violation of indecent exposure pursuant to
36 section 13-1402.

37 18. A third or subsequent violation of public sexual indecency pursuant
38 to section 13-1403.

39 19. A violation of section 13-3822 or 13-3824.

40 20. AGGRAVATED LURING A MINOR FOR SEXUAL EXPLOITATION PURSUANT TO
41 SECTION 13-3560.

42 B. Before the person is released from confinement the state department
43 of corrections in conjunction with the department of public safety and each
44 county sheriff shall complete the registration of any person who was
45 convicted of a violation of any offense listed under subsection A of this

1 section. Within three days after the person's release from confinement, the
2 state department of corrections shall forward the registered person's records
3 to the department of public safety and to the sheriff of the county in which
4 the registered person intends to reside. Registration pursuant to this
5 subsection shall be consistent with subsection E of this section.

6 C. Notwithstanding subsection A of this section, the judge who
7 sentences a defendant for any violation of chapter 14 or 35.1 of this title
8 or for an offense for which there was a finding of sexual motivation pursuant
9 to section 13-118 may require the person who committed the offense to
10 register pursuant to this section.

11 D. The court may require a person who has been adjudicated delinquent
12 for an act that would constitute an offense specified in subsection A or C of
13 this section to register pursuant to this section. Any duty to register
14 under this subsection shall terminate when the person reaches twenty-five
15 years of age.

16 E. A person who has been convicted of or adjudicated delinquent and
17 who is required to register in the convicting state for an act that would
18 constitute an offense specified in subsection A or C of this section and who
19 is not a resident of this state shall be required to register pursuant to
20 this section if the person is either:

21 1. Employed full-time or part-time in this state, with or without
22 compensation, for more than fourteen consecutive days or for an aggregate
23 period of more than thirty days in a calendar year.

24 2. Enrolled as a full-time or part-time student in any school in this
25 state for more than fourteen consecutive days or for an aggregate period of
26 more than thirty days in a calendar year. For the purposes of this
27 paragraph, "school" means an educational institution of any description,
28 public or private, wherever located in this state.

29 F. Any duty to register under subsection D or E of this section for a
30 juvenile adjudication terminates when the person reaches twenty-five years of
31 age.

32 G. The court may order the termination of any duty to register under
33 this section on successful completion of probation if the person was under
34 eighteen years of age when the offense for which the person was convicted was
35 committed.

36 H. The court may order the suspension or termination of any duty to
37 register under this section after a hearing held pursuant to section 13-923.

38 I. At the time of registering, the person shall sign or affix an
39 electronic fingerprint to a statement giving such information as required by
40 the director of the department of public safety, including all names by which
41 the person is known, any required online identifier and the name of any
42 website or internet communication service where the identifier is being used.
43 The sheriff shall fingerprint and photograph the person and within three days
44 thereafter shall send copies of the statement, fingerprints and photographs
45 to the department of public safety and the chief of police, if any, of the

1 place where the person resides. The information that is required by this
2 subsection shall include the physical location of the person's residence and
3 the person's address. If the person has a place of residence that is
4 different from the person's address, the person shall provide the person's
5 address, the physical location of the person's residence and the name of the
6 owner of the residence if the residence is privately owned and not offered
7 for rent or lease. If the person receives mail at a post office box, the
8 person shall provide the location and number of the post office box. If the
9 person does not have an address or a permanent place of residence, the person
10 shall provide a description and physical location of any temporary residence
11 and shall register as a transient not less than every ninety days with the
12 sheriff in whose jurisdiction the transient is physically present.

13 J. On the person's initial registration and every year after the
14 person's initial registration, the person shall confirm any required online
15 identifier and the name of any website or internet communication service
16 where the identifier is being used, ~~the person~~ shall obtain a new
17 nonoperating identification license or a driver license from the motor
18 vehicle division in the department of transportation and shall carry a valid
19 nonoperating identification license or a driver license. Notwithstanding
20 sections 28-3165 and 28-3171, the license is valid for one year from the date
21 of issuance, and the person shall submit to the department of transportation
22 proof of the person's address and place of residence. The motor vehicle
23 division shall annually update the person's address and photograph and shall
24 make a copy of the photograph available to the department of public safety or
25 to any law enforcement agency. The motor vehicle division shall provide to
26 the department of public safety daily address updates for persons required to
27 register pursuant to this section.

28 K. Except as provided in subsection E or ~~K~~ L of this section, the
29 clerk of the superior court in the county in which a person has been
30 convicted of a violation of any offense listed under subsection A of this
31 section or has been ordered to register pursuant to subsection C or D of this
32 section shall notify the sheriff in that county of the conviction within ten
33 days after entry of the judgment.

34 L. Within ten days after entry of judgment, a court not of record
35 shall notify the arresting law enforcement agency of an offender's conviction
36 of a violation of section 13-1402. Within ten days after receiving this
37 information, the law enforcement agency shall determine if the offender is
38 required to register pursuant to this section. If the law enforcement agency
39 determines that the offender is required to register, the law enforcement
40 agency shall provide the information required by section 13-3825 to the
41 department of public safety and shall make community notification as required
42 by law.

43 M. A person who is required to register pursuant to this section
44 because of a conviction for the unlawful imprisonment of a minor or the
45 kidnapping of a minor is required to register, absent additional or

1 subsequent convictions, for a period of ten years from the date that the
2 person is released from prison, jail, probation, community supervision or
3 parole and the person has fulfilled all restitution obligations.
4 Notwithstanding this subsection, a person who has a prior conviction for an
5 offense for which registration is required pursuant to this section is
6 required to register for life.

7 N. A person who is required to register pursuant to this section and
8 who is a student at a public or private institution of postsecondary
9 education or who is employed, with or without compensation, at a public or
10 private institution of postsecondary education or who carries on a vocation
11 at a public or private institution of postsecondary education shall notify
12 the county sheriff having jurisdiction of the institution of postsecondary
13 education. The person WHO IS required to register pursuant to this section
14 shall also notify the sheriff of each change in enrollment or employment
15 status at the institution.

16 O. At the time of registering, the sheriff shall secure a sufficient
17 sample of blood or other bodily substances for deoxyribonucleic acid testing
18 and extraction from a person who has been convicted of an offense committed
19 in another jurisdiction that if committed in this state would be a violation
20 or attempted violation of any of the offenses listed in subsection A of this
21 section or an offense that was in effect before September 1, 1978 and that,
22 if committed on or after September 1, 1978, has the same elements of an
23 offense listed in subsection A of this section or who is required to register
24 by the convicting jurisdiction. The sheriff shall transmit the sample to the
25 department of public safety.

26 P. Any person WHO IS required to register under subsection A of this
27 section shall register ~~their~~ THE PERSON'S required online identifier and the
28 name of any website or internet communication service where the identifier is
29 being used or ~~intends to use the identifier~~ IS INTENDED TO BE USED with the
30 sheriff from and after December 31, 2007, regardless of whether the person
31 was required to register an identifier at the time of ~~their~~ THE PERSON'S
32 initial registration under this section.

33 Q. For the purposes of this section:

34 1. "Address" means the location at which the person receives mail.

35 2. "Required online identifier" means any electronic e-mail address
36 information or instant message, chat, social networking or other similar
37 internet communication name, but does not include A social security number,
38 date of birth, or pin number.

39 3. "Residence" means the person's dwelling place, whether permanent or
40 temporary.

APPROVED BY THE GOVERNOR MAY 20, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2008.