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JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 24

SENATE BILL 1067

AN ACT

AMENDING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 248, SECTION 1; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 287, SECTION 1; AMENDING SECTIONS 13-4062, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO SENTENCING.

(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, as amended by Laws 2007, chapter 248, section 1, 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 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

1 defendant's own recognizance or while escaped from preconviction custody
2 shall not be read to the jury. For the purposes of this subsection,
3 "dangerous nature of the felony" means a felony involving the discharge, use
4 or threatening exhibition of a deadly weapon or dangerous instrument or the
5 intentional or knowing infliction of serious physical injury upon another.
6 Q. Intentional failure by the court to impose the mandatory sentences
7 or probation conditions provided in this title shall be deemed to be
8 malfeasance.
9 R. A person who is convicted of committing any felony offense, which
10 felony offense is committed while the person is released on bail or on the
11 defendant's own recognizance on a separate felony offense or while the person
12 is escaped from preconviction custody for a separate felony offense, shall be
13 sentenced to a term of imprisonment two years longer than would otherwise be
14 imposed for the felony offense committed while released on bond or on the
15 defendant's own recognizance or while escaped from preconviction custody.
16 The additional sentence imposed under this subsection is in addition to any
17 enhanced punishment that may be applicable under any of the other subsections
18 of this section. The defendant is not eligible for suspension of sentence,
19 probation, pardon or release from confinement on any basis except as
20 specifically authorized by section 31-233, subsection A or B until the two
21 years are served, the person is eligible for release pursuant to section
22 41-1604.07 or the sentence is commuted.
23 S. A person who is at least eighteen years of age or who has been
24 tried as an adult and who stands convicted of a serious offense except a drug
25 offense, first degree murder or any dangerous crime against children, whether
26 a completed or preparatory offense, and who has previously been convicted of
27 two or more serious offenses not committed on the same occasion shall be
28 sentenced to life imprisonment and is not eligible for suspension of
29 sentence, probation, pardon or release from confinement on any basis except
30 as specifically authorized by section 31-233, subsection A or B until the
31 person has served not less than twenty-five years or the sentence is
32 commuted.
33 T. A person who is convicted of committing any felony offense with the
34 intent to promote, further or assist any criminal conduct by a criminal
35 street gang shall not be eligible for suspension of sentence, probation,
36 pardon or release from confinement on any basis except as authorized by
37 section 31-233, subsection A or B until the sentence imposed by the court has
38 been served, the person is eligible for release pursuant to section
39 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum
40 sentence for the offense shall be increased by three years IF THE OFFENSE IS
41 A CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE
42 IS A CLASS 2 OR 3 FELONY. The additional sentence imposed pursuant to this
43 subsection is in addition to any enhanced sentence that may be applicable.
44 U. A person who is convicted of intentionally or knowingly committing
45 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. "ESCAPE" MEANS:

(a) A DEPARTURE FROM CUSTODY OR FROM A JUVENILE SECURE CARE FACILITY, A JUVENILE DETENTION FACILITY OR AN ADULT CORRECTIONAL FACILITY IN WHICH THE PERSON IS HELD OR DETAINED, WITH KNOWLEDGE THAT THE DEPARTURE IS NOT PERMITTED, OR THE FAILURE TO RETURN TO CUSTODY OR DETENTION FOLLOWING A TEMPORARY LEAVE GRANTED FOR A SPECIFIC PURPOSE OR FOR A LIMITED PERIOD.

(b) A FAILURE TO REPORT AS ORDERED TO CUSTODY OR DETENTION TO BEGIN SERVING A TERM OF INCARCERATION.

~~2.~~ 3. "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 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, ON ESCAPE STATUS 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 OR ESCAPE STATUS, 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, ON ESCAPE STATUS 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 OR ESCAPE STATUS, that time is not excluded.

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

~~3.~~ 4. "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.~~ 5. "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.~~ 6. "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. Repeal

Section 13-604, Arizona Revised Statutes, as amended by Laws 2007, chapter 287, section 1, is repealed.

Sec. 3. Section 13-4062, Arizona Revised Statutes, is amended to read:

13-4062. Anti-marital fact privilege; other privileged communications

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

1. A husband for or against his wife without her consent, nor a wife for or against her husband without his consent, as to events occurring during the marriage, nor can either, during the marriage or afterwards, without consent of the other, be examined as to any communication made by one to the other during the marriage. These exceptions do not apply in a criminal action or proceeding for a crime committed by the husband against the wife, or by the wife against the husband, nor in a criminal action or proceeding against the husband for abandonment, failure to support or provide for or failure or neglect to furnish the necessities of life to the wife or the minor children. Either spouse, at his or her request, but not otherwise, may be examined as a witness for or against the other in a prosecution for an offense listed in section 13-604, subsection W, paragraph ~~4~~ 5, for bigamy or adultery, committed by either spouse, or for sexual assault committed by the husband.

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

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

4. A physician or surgeon, without consent of the physician's or surgeon's patient, as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient.

Sec. 4. 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 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 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. 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, 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~~ 5, 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~~ 5 and section 13-604.01, subsection N, paragraph 1.

Sec. 5. 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, 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~~ 5, 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~~ 5 or section 13-604.01, subsection N, paragraph 1.

1 Sec. 6. Section 41-1604.13, Arizona Revised Statutes, is amended to
2 read:
3 41-1604.13. Home arrest; eligibility; victim notification;
4 conditions; applicability; definition
5 A. An inmate who has served not less than six months of the sentence
6 imposed by the court is eligible for the home arrest program if the inmate:
7 1. Meets the following criteria:
8 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
9 the intentional or knowing infliction of serious physical injury or the use
10 or exhibition of a deadly weapon or dangerous instrument.
11 (b) Was not convicted of a sexual offense.
12 (c) Has not previously been convicted of any felony.
13 2. Violated parole by the commission of a technical violation that was
14 not chargeable or indictable as a criminal offense.
15 3. Is eligible for work furlough.
16 4. Is eligible for parole pursuant to section 31-412, subsection A.
17 B. The board of executive clemency shall determine which inmates are
18 released to the home arrest program based on the criteria in subsection A of
19 this section and based on a determination that there is a substantial
20 probability that the inmate will remain at liberty without violating the law
21 and that the release is in the best interests of the state after considering
22 the offense for which the inmate is presently incarcerated, the prior record
23 of the inmate, the conduct of the inmate while incarcerated and any other
24 information concerning the inmate that is in the possession of the state
25 department of corrections, including any presentence report. The board
26 maintains the responsibility of revocation as applicable to all parolees.
27 C. An inmate who is otherwise eligible for home arrest, who is not on
28 work furlough and who is currently serving a sentence for a conviction of a
29 serious offense or conspiracy to commit or attempt to commit a serious
30 offense shall not be granted home arrest except by one of the following
31 votes:
32 1. A majority affirmative vote if four or more members of the board of
33 executive clemency consider the action.
34 2. A unanimous affirmative vote if three members of the board of
35 executive clemency consider the action.
36 3. A unanimous affirmative vote if two members of the board of
37 executive clemency consider the action pursuant to section 31-401, subsection
38 I and the chairman of the board concurs after reviewing the information
39 considered by the two members.
40 D. Home arrest is conditioned on the following:
41 1. Active electronic monitoring surveillance for a minimum term of one
42 year or until eligible for general parole.
43 2. Participation in gainful employment or other beneficial activities.
44 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~~ 5, 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~~ 5 and section 13-604.01, subsection N, paragraph 1.

APPROVED BY THE GOVERNOR APRIL 14, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2008.