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CHAPTER 301

HOUSE BILL 2207

AN ACT

AMENDING SECTIONS 8-201, 8-203.01, 8-321, 8-341, 8-348, 8-350, 11-361, 11-459, 12-2703, 13-105 AND 13-107, ARIZONA REVISED STATUTES; REPEALING SECTION 13-119, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-501 AND 13-502, ARIZONA REVISED STATUTES; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 24, SECTION 1; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-604; TRANSFERRING AND RENUMBERING SECTION 13-604.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 219, SECTION 1, FOR PLACEMENT IN TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, AS SECTION 13-705; TRANSFERRING AND RENUMBERING SECTION 13-604.02, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, AS SECTION 13-708; REPEALING SECTION 13-604.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 97, SECTION 1; REPEALING SECTION 13-604.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 195, SECTION 1; REPEALING SECTION 13-604.03, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-604.04, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, AS SECTION 13-901.03; AMENDING SECTION 13-607, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-609, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, AS SECTION 13-709; AMENDING SECTIONS 13-610, 13-701 AND 13-702, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-702.01 AND 13-702.02, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTIONS 13-703, 13-703.01, 13-703.02, 13-703.03, 13-703.04, 13-703.05, 13-704, 13-705 AND 13-706, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7.1, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, AS SECTIONS 13-751, 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 AND 13-759, RESPECTIVELY; RENUMBERING SECTIONS 13-708, 13-709 AND 13-713, ARIZONA REVISED STATUTES, AS SECTIONS

Sec. 82. Section 13-3560, Arizona Revised Statutes, as added by Laws 2008, chapter 219, section 4, is amended to read:

13-3560. Aggravated luring a minor for sexual exploitation; classification; definitions

A. A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.

2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

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

C. Aggravated luring a minor for sexual exploitation is a class 2 felony, and if the minor is under fifteen years of age it is punishable pursuant to section ~~13-604.01~~ 13-705, subsection D.

D. The defense prescribed in section 13-1407, subsection F applies to a prosecution pursuant to this section.

E. For the purposes of this section:

1. "Electronic communication device" means any electronic device that is capable of transmitting visual depictions and includes any of the following:

(a) A computer, computer system or network as defined in section 13-2301.

(b) A cellular or wireless telephone as defined in section 13-4801.

2. "Harmful to minors" has the same meaning prescribed in section 13-3501.

Sec. 83. Section 13-3560, Arizona Revised Statutes, as added by Laws 2008, chapter 97, section 2, is renumbered as section 13-3561 and, as so renumbered, is amended to read:

13-3561. Unlawful age misrepresentation; classification; definition

A. A person commits unlawful age misrepresentation if the person is at least eighteen years of age, and knowing or having reason to know that the recipient of a communication is a minor, uses an electronic communication device to knowingly misrepresent the person's age for the purpose of committing any sexual offense involving the recipient that is listed in section 13-3821, subsection A.

B. It is not a defense to a prosecution for a violation of this section that the recipient is not a minor.

C. This section does not apply to peace officers who act in their official capacity within the scope of their authority and in the line of duty.

D. Unlawful age misrepresentation is a class 3 felony, and if the minor is under fifteen years of age it is punishable pursuant to section ~~13-604.01~~ 13-705.

E. For the purposes of this section, "electronic communication device" means any electronic device that is capable of transmitting visual depictions and includes any of the following:

1. A computer, computer system or network as defined in section 13-2301.

2. A cellular or wireless telephone as defined in section 13-4801.

Sec. 84. Section 13-3601, Arizona Revised Statutes, is amended to read:

13-3601. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice

A. "Domestic violence" means any act which is a dangerous crime against children as defined in section ~~13-604.01~~ 13-705 or an offense defined in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.

2. The victim and the defendant have a child in common.

3. The victim or the defendant is pregnant by the other party.

4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.

5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.

B. A peace officer ~~may~~, with or without a warrant, MAY arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether ~~such~~ THE offense is a felony or a misdemeanor and whether ~~such~~ THE offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer

shall arrest a person, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether ~~such~~ THE offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability except pursuant to section 12-820.02. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified under chapter 4 of this title is not deemed to be an act of domestic violence. The release procedures available under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm that is owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.

E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or

another person in the household, the court shall order the return of the firearm to the owner or possessor.

G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections C, D, E and F of this section.

H. Each indictment, information, complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.

I. A person who is arrested pursuant to subsection B of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant.

J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of ~~such~~ THE victim including:

1. An order of protection pursuant to section 13-3602, an injunction pursuant to section 25-315 and an injunction against harassment pursuant to section 12-1809.

2. The emergency telephone number for the local police agency.

3. Telephone numbers for emergency services in the local community.

K. A peace officer is not civilly liable for noncompliance with subsection J of this section.

L. An offense that is included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified. If the defendant committed a felony offense listed in subsection A of this section against a pregnant victim and knew that the victim was pregnant or if the defendant committed a felony offense causing physical injury to a pregnant victim and knew that the victim was pregnant, ~~the maximum sentence otherwise authorized shall be increased by up to two years~~ SECTION 13-709.04, SUBSECTION B APPLIES TO THE SENTENCE IMPOSED.

M. If the defendant is found guilty of a first offense included in domestic violence, the court shall provide the following written notice to the defendant:

> You have been convicted of an offense included in domestic violence. You are now on notice that:
>
> 1. If you are convicted of a second offense included in domestic violence, you may be placed on supervised probation and may be incarcerated as a condition of probation.

2. A third or subsequent charge may be filed as a felony and a conviction for that offense shall result in a term of incarceration.

N. The failure or inability of the court to provide the notice required under subsection M of this section does not preclude the use of the prior convictions for any purpose otherwise permitted.

Sec. 85. Section 13-3623, Arizona Revised Statutes, is amended to read:

13-3623. Child or vulnerable adult abuse; emotional abuse; classification; exceptions; definitions

A. Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to section ~~13-604.01~~ 13-705.

2. If done recklessly, the offense is a class 3 felony.

3. If done with criminal negligence, the offense is a class 4 felony.

B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 4 felony.

2. If done recklessly, the offense is a class 5 felony.

3. If done with criminal negligence, the offense is a class 6 felony.

C. For the purposes of subsections A and B of this section, the terms endangered and abuse include but are not limited to circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of section 13-3407, subsection A, ~~paragraphs~~ PARAGRAPH 3 or 4. Notwithstanding any other provision of this section, a violation committed under the circumstances described in this subsection does not require that a person have care or custody of the child or vulnerable adult.

1 D. A person who intentionally or knowingly engages in emotional abuse
2 of a vulnerable adult who is a patient or resident in any setting in which
3 health care, health-related services or assistance with one or more of the
4 activities of daily living is provided or, having the care or custody of a
5 vulnerable adult, who intentionally or knowingly subjects or permits the
6 vulnerable adult to be subjected to emotional abuse is guilty of a class 6
7 felony.
8 E. This section does not apply to:
9 1. A health care provider as defined in section 36-3201 who permits a
10 patient to die or the patient's condition to deteriorate by not providing
11 health care if that patient refuses that care directly or indirectly through
12 a health care directive as defined in section 36-3201, through a surrogate
13 pursuant to section 36-3231 or through a court appointed guardian as provided
14 for in title 14, chapter 5, article 3.
15 2. A vulnerable adult who is being furnished spiritual treatment
16 through prayer alone and who would not otherwise be considered to be abused,
17 neglected or endangered if medical treatment were being furnished.
18 F. For the purposes of this section:
19 1. "Abuse", when used in reference to a child, means abuse as defined
20 in section 8-201, except for those acts in the definition that are declared
21 unlawful by another statute of this title and, when used in reference to a
22 vulnerable adult, means:
23 (a) Intentional infliction of physical harm.
24 (b) Injury caused by criminally negligent acts or omissions.
25 (c) Unlawful imprisonment, as described in section 13-1303.
26 (d) Sexual abuse or sexual assault.
27 2. "Child" means an individual who is under eighteen years of age.
28 3. "Emotional abuse" means a pattern of ridiculing or demeaning a
29 vulnerable adult, making derogatory remarks to a vulnerable adult, verbally
30 harassing a vulnerable adult or threatening to inflict physical or emotional
31 harm on a vulnerable adult.
32 4. "Physical injury" means the impairment of physical condition and
33 includes any skin bruising, pressure sores, bleeding, failure to thrive,
34 malnutrition, dehydration, burns, fracture of any bone, subdural hematoma,
35 soft tissue swelling, injury to any internal organ or any physical condition
36 that imperils health or welfare.
37 5. "Serious physical injury" means physical injury that creates a
38 reasonable risk of death or that causes serious or permanent disfigurement,
39 serious impairment of health or loss or protracted impairment of the function
40 of any bodily organ or limb.
41 6. "Vulnerable adult" means an individual who is eighteen years of age
42 or older and who is unable to protect himself from abuse, neglect or
43 exploitation by others because of a mental or physical impairment.

Sec. 86. Section 13-3716, Arizona Revised Statutes, is amended to read:

13-3716. Unlawful failure to give notice of conviction of dangerous crime against children or child abuse; classification

A. It is unlawful for a person who has been convicted of a dangerous crime against children as defined in section ~~13-604.01~~ 13-705 or child abuse pursuant to section 13-3623, subsection A or subsection B, paragraph 1 to fail to give notice of the fact of the conviction to a business institution or organization when applying for employment or volunteering for service with any business institution or organization that sponsors any activity in which adults supervise children. For the purposes of this ~~section~~ SUBSECTION, business institutions or organizations include schools, preschools, child care providers and youth organizations.

B. A person who violates this section is guilty of a class 5 felony.

Sec. 87. Section 13-3727, Arizona Revised Statutes, as amended by Laws 2008, chapter 6, section 1, is amended to read:

13-3727. Unlawful residency; persons convicted of criminal offenses; exceptions; preemption; classification

A. It is unlawful for a person who has been convicted of a dangerous crime against children as defined in section ~~13-604.01~~ 13-705 or who has been convicted of an offense committed in another jurisdiction that if committed in this state would be a dangerous crime against children as defined in section ~~13-604.01~~ 13-705, who is required to register pursuant to section 13-3821 and who is classified as a level three offender pursuant to sections 13-3825 and 13-3826 to reside within one thousand feet of the real property comprising any of the following:

1. A private school, as defined in section 15-101, or a public school that provides instruction in kindergarten programs and any combination of kindergarten programs and grades one through eight.

2. A private school, as defined in section 15-101, or a public school that provides instruction in any combination of grades nine through twelve.

3. A child care facility as defined in section 36-881.

B. This section does not apply to any of the following:

1. A person who establishes the person's residence before September 19, 2007 or before a new school or child care facility is located.

2. A person who is a minor.

3. A person who is currently serving a term of probation.

4. A person who has had the person's civil rights restored pursuant to chapter 9 of this title.

5. A person who has not been convicted of a subsequent offense in the previous ten years, excluding any time the person was incarcerated in any federal, state, county or local jail or prison facility.

C. Notwithstanding any other law and as a matter of statewide concern, a county, city or town shall not enact an ordinance that provides for distance restrictions greater than those found in this section.

D. For the purposes of subsection A of this section, measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing the person's residence to the nearest point on the property line of a parcel containing a child care facility or a school.

E. A person who violates this section is guilty of a class 1 misdemeanor.

Sec. 88. Repeal

Section 13-3821, Arizona Revised Statutes, as amended by Laws 2008, chapter 219, section 5, is repealed.

Sec. 89. Section 13-3821, Arizona Revised Statutes, as amended by Laws 2008, chapter 97, section 3, is amended to read:

13-3821. Persons required to register; procedure; identification card; assessment; definitions

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

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

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

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

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

5. Sexual assault pursuant to section 13-1406.

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

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

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

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

10. Child prostitution pursuant to section 13-3212.

1 11. Commercial sexual exploitation of a minor pursuant to section
2 13-3552.
3 12. Sexual exploitation of a minor pursuant to section 13-3553.
4 13. Luring a minor for sexual exploitation pursuant to section 13-3554.
5 14. Sex trafficking of a minor pursuant to section 13-1307.
6 15. A second or subsequent violation of indecent exposure to a person
7 under fifteen years of age pursuant to section 13-1402.
8 16. A second or subsequent violation of public sexual indecency to a
9 minor under the age of fifteen years pursuant to section 13-1403,
10 subsection B.
11 17. A third or subsequent violation of indecent exposure pursuant to
12 section 13-1402.
13 18. A third or subsequent violation of public sexual indecency pursuant
14 to section 13-1403.
15 19. A violation of section 13-3822 or 13-3824.
16 20. Unlawful age misrepresentation.
17 21. AGGRAVATED LURING A MINOR FOR SEXUAL EXPLOITATION PURSUANT TO
18 SECTION 13-3560.
19 B. Before the person is released from confinement the state department
20 of corrections in conjunction with the department of public safety and each
21 county sheriff shall complete the registration of any person who was
22 convicted of a violation of any offense listed under subsection A of this
23 section. Within three days after the person's release from confinement, the
24 state department of corrections shall forward the registered person's records
25 to the department of public safety and to the sheriff of the county in which
26 the registered person intends to reside. Registration pursuant to this
27 subsection shall be consistent with subsection E of this section.
28 C. Notwithstanding subsection A of this section, the judge who
29 sentences a defendant for any violation of chapter 14 or 35.1 of this title
30 or for an offense for which there was a finding of sexual motivation pursuant
31 to section 13-118 may require the person who committed the offense to
32 register pursuant to this section.
33 D. The court may require a person who has been adjudicated delinquent
34 for an act that would constitute an offense specified in subsection A or C of
35 this section to register pursuant to this section. Any duty to register
36 under this subsection shall terminate when the person reaches twenty-five
37 years of age.
38 E. A person who has been convicted of or adjudicated delinquent and
39 who is required to register in the convicting state for an act that would
40 constitute an offense specified in subsection A or C of this section and who
41 is not a resident of this state shall be required to register pursuant to
42 this section if the person is either:
43 1. Employed full-time or part-time in this state, with or without
44 compensation, for more than fourteen consecutive days or for an aggregate
45 period of more than thirty days in a calendar year.

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

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

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

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

I. At the time of registering, the person shall sign or affix an electronic fingerprint to a statement giving such information as required by the director of the department of public safety, including all names by which the person is known, any required online identifier and the name of any website or internet communication service where the identifier is being used. The sheriff shall fingerprint and photograph the person and within three days thereafter shall send copies of the statement, fingerprints and photographs to the department of public safety and the chief of police, if any, of the place where the person resides. The information that is required by this subsection shall include the physical location of the person's residence and the person's address. If the person has a place of residence that is different from the person's address, the person shall provide the person's address, the physical location of the person's residence and the name of the owner of the residence if the residence is privately owned and not offered for rent or lease. If the person receives mail at a post office box, the person shall provide the location and number of the post office box. If the person does not have an address or a permanent place of residence, the person shall provide a description and physical location of any temporary residence and shall register as a transient not less than every ninety days with the sheriff in whose jurisdiction the transient is physically present.

J. On the person's initial registration and every year after the person's initial registration, the person shall confirm any required online identifier and the name of any website or internet communication service where the identifier is being used and the person shall obtain a new nonoperating identification license or a driver license from the motor vehicle division in the department of transportation and shall carry a valid nonoperating identification license or a driver license. Notwithstanding sections 28-3165 and 28-3171, the license is valid for one year from the date of issuance, and the person shall submit to the department of transportation proof of the person's address and place of residence. The motor vehicle division shall annually update the person's address and photograph and shall

make a copy of the photograph available to the department of public safety or to any law enforcement agency. The motor vehicle division shall provide to the department of public safety daily address updates for persons required to register pursuant to this section.

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

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

M. A person who is required to register pursuant to this section because of a conviction for the unlawful imprisonment of a minor or the kidnapping of a minor is required to register, absent additional or subsequent convictions, for a period of ten years from the date that the person is released from prison, jail, probation, community supervision or parole and the person has fulfilled all restitution obligations. Notwithstanding this subsection, a person who has a prior conviction for an offense for which registration is required pursuant to this section is required to register for life.

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

O. At the time of registering, the sheriff shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from a person who has been convicted of an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the offenses listed in subsection A of this section or an offense that was in effect before September 1, 1978 and that, if committed on or after September 1, 1978, has the same elements of an offense listed in subsection A of this section or who is required to register

by the convicting jurisdiction. The sheriff shall transmit the sample to the department of public safety.

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

Q. ON CONVICTION OF ANY OFFENSE FOR WHICH A PERSON IS REQUIRED TO REGISTER PURSUANT TO THIS SECTION, IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE COURT SHALL ORDER THE PERSON TO PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. THE COURT SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS SECTION TO THE COUNTY TREASURER. THE COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT THE MONIES RECEIVED IN THE SEX OFFENDER MONITORING FUND ESTABLISHED BY SECTION 13-3828. NOTWITHSTANDING ANY OTHER LAW, THE COURT SHALL NOT WAIVE THE ASSESSMENT IMPOSED PURSUANT TO THIS SECTION.

~~Q.~~ R. For the purposes of this section:

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

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

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

Sec. 90. Section 13-3824, Arizona Revised Statutes, is amended to read:

13-3824. <u>Violation; classification; assessment</u>

A. A person who is subject to registration under this article and who fails to comply with the requirements of this article is guilty of a class 4 felony.

B. Notwithstanding subsection A of this section, a person who fails to comply with section 13-3821, subsection ~~I~~ J is guilty of a class 6 felony and, in addition to any other penalty prescribed by law, the court shall order the person to pay an additional assessment of two hundred fifty dollars. This assessment is not subject to any surcharge. The court shall transmit the monies received pursuant to this subsection to the county treasurer. The county treasurer shall transmit the monies received to the state treasurer. The state treasurer shall deposit the monies received in the sex offender monitoring fund established by section 13-3828. Notwithstanding any other law, the court shall not waive the assessment imposed pursuant to this subsection.

Sec. 91. Section 13-3828, Arizona Revised Statutes, is amended to read:

13-3828. Sex offender monitoring fund

The sex offender monitoring fund is established consisting of monies collected from assessments pursuant to sections ~~13-119~~ 13-3821 and 13-3824. The department of public safety shall administer the fund. Monies in the fund are subject to legislative appropriation.

Sec. 92. Section 13-3994, Arizona Revised Statutes, is amended to read:

13-3994. Commitment; hearing; jurisdiction; definition

A. A person who is found guilty except insane pursuant to section 13-502 shall be committed to a secure state mental health facility under the department of health services for a period of treatment.

B. If the criminal act of the person committed pursuant to subsection A of this section did not cause the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall set a hearing date within seventy-five days after the person's commitment to determine if the person is entitled to release from confinement or if the person meets the standards for civil commitment pursuant to title 36, chapter 5. The court shall notify the medical director of the mental health facility, the attorney general, the county attorney, the victim and the attorney representing the person, if any, of the date of the hearing. Fourteen days before the hearing the director of the mental health facility shall submit to the court a report addressing the person's mental health and dangerousness.

C. At a hearing held pursuant to subsection B of this section:

1. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the court shall order the person's release and the person's commitment ordered pursuant to section 13-502, subsection D shall terminate. Before determining to release a person pursuant to this paragraph, the court shall consider the entire criminal history of the person and shall not order the person's release if the court determines that the person has a propensity to reoffend.

2. If the court finds that the person still suffers from a mental disease or defect, may present a threat of danger to self or others, is gravely disabled, is persistently or acutely disabled or has a propensity to reoffend, it shall order the county attorney to institute civil commitment proceedings pursuant to title 36 and the person's commitment ordered pursuant to section 13-502, subsection D shall terminate.

D. If the court finds that the criminal act of the person committed pursuant to subsection A of this section caused the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall place the person under the jurisdiction of the psychiatric security review board. The court shall state the beginning date,

length and ending date of the board's jurisdiction over the person. The length of the board's jurisdiction over the person is equal to the sentence the person could have received pursuant to ~~section 13-703, subsection A or~~ section 13-707 or SECTION 13-751, SUBSECTION A OR the presumptive sentence the defendant could have received pursuant to section ~~13-604, section 13-604.01, section 13-701~~ 13-702, subsection ~~C~~ D, SECTION 13-703, SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A, section 13-710 or section 13-1406. In making this determination the court shall not consider the sentence enhancements for prior convictions under section ~~13-604~~ 13-703 OR 13-704. The court shall retain jurisdiction of all matters that are not specifically delegated to the psychiatric security review board for the duration of the presumptive sentence.

E. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not eligible for discharge from the board's jurisdiction until the board's jurisdiction over the person expires.

F. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not entitled to a hearing before the board earlier than one hundred twenty days after the person's initial commitment. A request for a subsequent release hearing may be made pursuant to subsection H of this section. After the hearing, the board may take one of the following actions:

1. If the psychiatric security review board finds that the person still suffers from a mental disease or defect and is dangerous, the board shall order that the person remain committed at the secure state mental health facility.

2. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the psychiatric security review board shall order the person's release. The person shall remain under the jurisdiction of the board. Before determining to release a person pursuant to this paragraph, the board shall consider the entire criminal history of the person and shall not order the person's release if the board determines that the person has a propensity to reoffend.

3. If the psychiatric security review board finds that the person still suffers from a mental disease or defect or that the mental disease or defect is in stable remission but the person is no longer dangerous, the board shall order the person's conditional release. The person shall remain under the board's jurisdiction. The board in conjunction with the state mental health facility and behavioral health community providers shall specify the conditions of the person's release. The board shall continue to monitor and supervise a person who is released conditionally. Before the conditional release of a person, a supervised treatment plan shall be in place, including the necessary funding to implement the plan.

4. If the person is sentenced pursuant to section ~~13-604, subsection F, G, H, I, J or K~~ 13-704, SUBSECTION A, B, C, D OR E and the psychiatric security review board finds that the person no longer needs ongoing treatment for a mental disease and the person is dangerous or has a propensity to reoffend, the board shall order the person to be transferred to the state department of corrections for the remainder of the sentence imposed pursuant to section 13-502, subsection D. The board shall consider the safety and protection of the public.

G. Within twenty days after the psychiatric security review board orders a person to be transferred to the state department of corrections, the person may file a petition for a judicial determination. The person shall serve a copy of the request on the attorney general. If the person files a petition for a judicial determination, the person shall remain in a state mental health facility pending the result of the judicial determination. The person requesting the judicial determination has the burden of proving the issues by clear and convincing evidence. The judicial determination is limited to the following issues:

1. Whether the person no longer needs ongoing treatment for a mental disease.

2. Whether the person is dangerous or has a propensity to reoffend.

H. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section may not seek a new release hearing earlier than twenty months after a prior release hearing, except that the medical director of the state mental health facility may request a new release hearing for a person under the jurisdiction of the psychiatric security review board at any time. The person shall not be held in confinement for more than two years without a hearing before the board to determine if the person should be released or conditionally released.

I. At any hearing for release or conditional release pursuant to this section:

1. Public safety and protection are primary.

2. The applicant has the burden of proof by clear and convincing evidence.

J. At least fifteen days before a hearing is scheduled to consider a person's release, or before the expiration of the board's jurisdiction over the person, the state mental health facility or supervising agency shall submit to the psychiatric security review board a report on the person's mental health. The psychiatric security review board shall determine whether to release the person or to order the county attorney to institute civil commitment proceedings pursuant to title 36.

K. The procedures for civil commitment govern the continued commitment of the person after the expiration of the jurisdiction of the psychiatric security review board.

L. Before a person is released or conditionally released, at least three of the five psychiatric security review board members shall vote for the release or conditional release.

M. If at any time while the person remains under the jurisdiction of the psychiatric security review board it appears to the board, the chairman or vice-chairman of the board or the medical director of the state mental health facility that the person has failed to comply with the terms of the person's conditional release or that the mental health of the person has deteriorated, the board or the chairman or vice-chairman of the board for good cause or the medical director of the state mental health facility may order that the person be returned to a secure state mental health facility for evaluation or treatment. A written order of the board, the chairman or vice-chairman of the board or the medical director is sufficient warrant for any law enforcement officer to take the person into custody and to transport the person accordingly. Any sheriff or other peace officer shall execute the order and shall immediately notify the board of the person's return to the facility. Within twenty days after the person's return to a secure state mental health facility the board shall conduct a hearing and shall give notice within five days before the hearing of the time and place of the hearing to the person, the victim, the attorney representing the person, the county attorney and the attorney general.

N. The director of a facility that is providing treatment to a person on conditional release or any other person who is responsible for the supervision of the person may take the person or request that the person be taken into custody if there is reasonable cause to believe that the person's mental health has deteriorated to the point that the person's conditional release should be revoked and that the person is in need of immediate care, custody or treatment or that deterioration is likely because of noncompliance with a treatment program. A person who is taken into custody pursuant to this subsection shall be transported immediately to a secure state mental health facility and shall have the same rights as any person appearing before the psychiatric security review board.

O. Before the initial hearing or any other hearing before the psychiatric security review board on the release or conditional release of the person, the person, the attorney who is representing the person and the attorney general or county attorney who is representing the state may choose a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1 to examine the person. All costs in connection with the examination shall be approved and paid by the county of the sentencing court. The written examination results shall be filed with the board and shall include an opinion as to:

1. The mental condition of the person.
2. Whether the person is dangerous.

P. Notwithstanding subsection O of this section, the board or the chairman of the board for good cause may order an independent mental health evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1. The written examination results shall be filed with the board pursuant to subsection O of this section.

Q. If a person is found guilty except insane pursuant to section 13-502, the department of health services shall assume custody of the person within ten days after receiving the order committing the person pursuant to subsection A of this section. The Arizona state hospital shall collect census data for guilty except insane treatment programs to establish maximum capacity and the allocation formula required pursuant to section 36-206, subsection D. If the Arizona state hospital reaches its funded capacity for forensic programs, the department of health services may defer the admission of the person found guilty except insane for up to an additional twenty days. The department of health services shall reimburse the county for the actual costs of each day the admission is deferred. If the department of health services is not able to admit the person found guilty except insane at the conclusion of the twenty day deferral period, the department of health services shall notify the sentencing court, the prosecutor and the defense counsel of this fact. On receipt of this notification, the prosecutor or the person's defense counsel may request a hearing to determine the likely length of time admission will continue to be deferred and whether any other action should be taken. On receipt of the request for hearing, the court shall set a hearing within ten days.

R. For the purposes of this section, "state mental health facility" means a secure state mental health facility under the department of health services.

Sec. 93. Section 13-4032, Arizona Revised Statutes, is amended to read:

13-4032. <u>Appeal by state</u>

An appeal may be taken by the state from:

1. An order dismissing an indictment, information or complaint or count of an indictment, information or complaint.

2. An order granting a new trial.

3. A ruling on a question of law adverse to the state when the defendant was convicted and appeals from the judgment.

4. An order made after judgment affecting the substantial rights of the state or a victim, except that the state shall only take an appeal on an order affecting the substantial rights of a victim at the victim's request.

5. A sentence on the grounds that it is illegal, or if the sentence imposed is other than the presumptive sentence authorized by section ~~13-604 or 13-701~~ 13-702, SECTION 13-703, SECTION 13-704 OR SECTION 13-706, SUBSECTION A.

6. An order granting a motion to suppress the use of evidence.

7. A judgment of acquittal of one or more offenses charged in an indictment, information or complaint or count of an indictment, information or complaint that is entered after a verdict of guilty on the offense or offenses.

Sec. 94. Section 13-4062, Arizona Revised Statutes, as amended by Laws 2008, chapter 24, section 3, 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~~ 13-706, subsection ~~W~~ F, paragraph ~~5~~ 1, 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. 95. Section 13-4501, Arizona Revised Statutes, is amended to read:

13-4501. Definitions

In this chapter, unless the context otherwise requires:

1. "Clinical liaison" means a mental health expert or any other individual who has experience and training in mental health or developmental disabilities and who is qualified and appointed by the court to aid in coordinating the treatment or training of individuals who are found incompetent to stand trial. If mental retardation is an issue, the clinical liaison shall be an expert in mental retardation.

2. "Incompetent to stand trial" means that as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object of the proceeding or to assist in the defendant's defense. In the case of a person under ~~the age of~~ eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.

3. "Mental health expert" means a physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is:

(a) Familiar with this state's competency standards and statutes.

(b) Familiar with the treatment, training and restoration programs that are available in this state.

(c) Certified by the court as meeting court developed guidelines using recognized programs or standards.

4. "Mental illness, defect or disability" means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in section 36-551.

5. "Threat to public safety" means charged with the commission of any of the following:

(a) A crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the infliction of physical injury on another person.

(b) A dangerous crime against children pursuant to section ~~13-604.01~~ 13-705.

(c) Two or more nondangerous felonies within a period of twenty-four months.

Sec. 96. Section 13-4511, Arizona Revised Statutes, is amended to read:

13-4511. <u>Competency to refuse treatment; length of sentence</u>

If the court finds that a defendant is incompetent to stand trial, the court shall determine:

1. If the defendant is incompetent to refuse treatment, including medication, and should be subject to involuntary treatment.

2. The maximum sentence the defendant could have received pursuant to section ~~13-604, 13-604.01,~~ 13-702, SECTION 13-703, SECTION 13-704, SUBSECTION A, B, C, D OR E, SECTION 13-705, SECTION 13-706, SUBSECTION A, SECTION 13-707, SECTION 13-708, SUBSECTION D, SECTION 13-710 or SECTION 13-1406 or the sentence the defendant could have received pursuant to section ~~13-703~~ 13-751, subsection A or any section for which a specific sentence is authorized. In making this determination the court shall not consider the

sentence enhancements for prior convictions under section ~~13-604~~ 13-703 OR 13-704.

Sec. 97. Section 13-4515, Arizona Revised Statutes, is amended to read:

13-4515. Duration of order; notice of dismissed charge or voided order; petitions

A. An order or combination of orders that is issued pursuant to section 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to section ~~13-604, 13-604.01,~~ 13-702, SECTION 13-703, SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A, SECTION 13-708, SUBSECTION D OR SECTION 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under section ~~13-604~~ 13-703 OR 13-704 for prior convictions.

B. The court shall notify the prosecutor, the defense attorney, the medical supervisor and the treating facility if the charges against the defendant are dismissed or if an order is voided by the court. No charges shall be dismissed without a hearing prior to the dismissal.

C. If a defendant is discharged or released on the expiration of an order or orders issued pursuant to section 13-4512 or 13-4514, the medical supervisor may file a petition stating that the defendant requires further treatment pursuant to title 36, chapter 5~~,~~ or appointment of a guardian pursuant to title 14.

Sec. 98. Section 15-341, Arizona Revised Statutes, is amended to read:

15-341. General powers and duties; immunity; delegation

A. The governing board shall:

1. Prescribe and enforce policies and procedures for the governance of the schools, not inconsistent with law or rules prescribed by the state board of education.

2. Maintain the schools established by it for the attendance of each pupil for a period of not less than one hundred seventy-five school days or two hundred school days, as applicable, or its equivalent as approved by the superintendent of public instruction for a school district operating on a year-round operation basis, to offer an educational program on the basis of a four day school week or to offer an alternative kindergarten program on the basis of a three day school week, in each school year, and if the funds of the district are sufficient, for a longer period, and as far as practicable with equal rights and privileges.

3. Exclude from schools all books, publications, papers or audiovisual materials of a sectarian, partisan or denominational character.

4. Manage and control the school property within its district.

5. Acquire school furniture, apparatus, equipment, library books and supplies for the use of the schools.

6. Prescribe the curricula and criteria for the promotion and graduation of pupils as provided in sections 15-701 and 15-701.01.

7. Furnish, repair and insure, at full insurable value, the school property of the district.

8. Construct school buildings on approval by a vote of the district electors.

9. Make in the name of the district conveyances of property belonging to the district and sold by the board.

10. Purchase school sites when authorized by a vote of the district at an election conducted as nearly as practicable in the same manner as the election provided in section 15-481 and held on a date prescribed in section 15-491, subsection E, but such authorization shall not necessarily specify the site to be purchased and such authorization shall not be necessary to exchange unimproved property as provided in section 15-342, paragraph 23.

11. Construct, improve and furnish buildings used for school purposes when such buildings or premises are leased from the national park service.

12. Purchase school sites or construct, improve and furnish school buildings from the proceeds of the sale of school property only on approval by a vote of the district electors.

13. Hold pupils to strict account for disorderly conduct on school property.

14. Discipline students for disorderly conduct on the way to and from school.

15. Except as provided in section 15-1224, deposit all monies received by the district as gifts, grants and devises with the county treasurer who shall credit the deposits as designated in the uniform system of financial records. If not inconsistent with the terms of the gifts, grants and devises given, any balance remaining after expenditures for the intended purpose of the monies have been made shall be used for reduction of school district taxes for the budget year, except that in the case of accommodation schools the county treasurer shall carry the balance forward for use by the county school superintendent for accommodation schools for the budget year.

16. Provide that, if a parent or legal guardian chooses not to accept a decision of the teacher as provided in section 15-521, paragraph 3, the parent or legal guardian may request in writing that the governing board review the teacher's decision. Nothing in this paragraph shall be construed to release school districts from any liability relating to a child's promotion or retention.

17. Provide for adequate supervision over pupils in instructional and noninstructional activities by certificated or noncertificated personnel.

18. Use school monies received from the state and county school apportionment exclusively for payment of salaries of teachers and other employees and contingent expenses of the district.

19. Make an annual report to the county school superintendent on or before October 1 each year in the manner and form and on the blanks prescribed by the superintendent of public instruction or county school superintendent. The board shall also make reports directly to the county school superintendent or the superintendent of public instruction whenever required.

20. Deposit all monies received by school districts other than student activities monies or monies from auxiliary operations as provided in sections 15-1125 and 15-1126 with the county treasurer to the credit of the school district except as provided in paragraph 21 of this subsection and sections 15-1223 and 15-1224, and the board shall expend the monies as provided by law for other school funds.

21. Establish a bank account in which the board during a month may deposit miscellaneous monies received directly by the district. The board shall remit monies deposited in the bank account at least monthly to the county treasurer for deposit as provided in paragraph 20 of this subsection and in accordance with the uniform system of financial records.

22. Employ an attorney admitted to practice in this state whose principal practice is in the area of commercial real estate, or a real estate broker who is licensed by this state and who is employed by a reputable commercial real estate company, to negotiate a lease of five or more years for the school district if the governing board decides to enter into a lease of five or more years as lessor of school buildings or grounds as provided in section 15-342, paragraph 7 or 10. Any lease of five or more years negotiated pursuant to this paragraph shall provide that the lessee is responsible for payment of property taxes pursuant to the requirements of section 42-11104.

23. Prescribe and enforce policies and procedures for disciplinary action against a teacher who engages in conduct that is a violation of the policies of the governing board but that is not cause for dismissal of the teacher or for revocation of the certificate of the teacher. Disciplinary action may include suspension without pay for a period of time not to exceed ten school days. Disciplinary action shall not include suspension with pay or suspension without pay for a period of time longer than ten school days. The procedures shall include notice, hearing and appeal provisions for violations that are cause for disciplinary action. The governing board may designate a person or persons to act on behalf of the board on these matters.

24. Prescribe and enforce policies and procedures for disciplinary action against an administrator who engages in conduct that is a violation of the policies of the governing board regarding duties of administrators but that is not cause for dismissal of the administrator or for revocation of the certificate of the administrator. Disciplinary action may include suspension without pay for a period of time not to exceed ten school days. Disciplinary action shall not include suspension with pay or suspension without pay for a period of time longer than ten school days. The procedures shall include

notice, hearing and appeal provisions for violations that are cause for disciplinary action. The governing board may designate a person or persons to act on behalf of the board on these matters. For violations that are cause for dismissal, the provisions of notice, hearing and appeal in chapter 5, article 3 of this title shall apply. The filing of a timely request for a hearing suspends the imposition of a suspension without pay or a dismissal pending completion of the hearing.

25. Notwithstanding section 13-3108, prescribe and enforce policies and procedures that prohibit a person from carrying or possessing a weapon on school grounds unless the person is a peace officer or has obtained specific authorization from the school administrator.

26. Prescribe and enforce policies and procedures relating to the health and safety of all pupils participating in district sponsored practice sessions, games or other interscholastic athletic activities, including the provision of water.

27. Prescribe and enforce policies and procedures regarding the smoking of tobacco within school buildings. The policies and procedures shall be adopted in consultation with school district personnel and members of the community and shall state whether smoking is prohibited in school buildings. If smoking in school buildings is not prohibited, the policies and procedures shall clearly state the conditions and circumstances under which smoking is permitted, those areas in a school building that may be designated as smoking areas and those areas in a school building that may not be designated as smoking areas.

28. Establish an assessment, data gathering and reporting system as prescribed in chapter 7, article 3 of this title.

29. Provide special education programs and related services pursuant to section 15-764, subsection A to all children with disabilities as defined in section 15-761.

30. Administer competency tests prescribed by the state board of education for the graduation of pupils from high school.

31. Secure insurance coverage for all construction projects for purposes of general liability, property damage and workers' compensation and secure performance and payment bonds for all construction projects.

32. Keep on file the resumes of all current and former employees who provide instruction to pupils at a school. Resumes shall include an individual's educational and teaching background and experience in a particular academic content subject area. A school district shall inform parents and guardians of the availability of the resume information and shall make the resume information available for inspection on request of parents and guardians of pupils enrolled at a school. Nothing in this paragraph shall be construed to require any school to release personally identifiable information in relation to any teacher or employee including the teacher's or employee's address, salary, social security number or telephone number.

33. Report to local law enforcement agencies any suspected crime against a person or property that is a serious offense as defined in section ~~13-604~~ 13-706 or that involves a deadly weapon or dangerous instrument or serious physical injury and any conduct that poses a threat of death or serious physical injury to employees, students or anyone on the property of the school. This paragraph does not limit or preclude the reporting by a school district or an employee of a school district of suspected crimes other than those required to be reported by this paragraph. For the purposes of this paragraph, "dangerous instrument", "deadly weapon" and "serious physical injury" have the same ~~meaning~~ MEANINGS prescribed in section 13-105.

34. In conjunction with local law enforcement agencies and local medical facilities, develop an emergency response plan for each school in the school district in accordance with minimum standards developed jointly by the department of education and the division of emergency management within the department of emergency and military affairs.

35. Annually assign at least one school district employee to participate in a multihazard crisis training program developed or selected by the governing board.

36. Provide written notice to the parents or guardians of all students affected in the school district at least thirty days prior to a public meeting to discuss closing a school within the school district. The notice shall include the reasons for the proposed closure and the time and place of the meeting. The governing board shall fix a time for a public meeting on the proposed closure no less than thirty days before voting in a public meeting to close the school. The school district governing board shall give notice of the time and place of the meeting. At the time and place designated in the notice, the school district governing board shall hear reasons for or against closing the school. The school district governing board is exempt from this paragraph if it is determined by the governing board that the school shall be closed because it poses a danger to the health or safety of the pupils or employees of the school.

37. Incorporate instruction on Native American history into appropriate existing curricula.

38. Prescribe and enforce policies and procedures allowing pupils who have been diagnosed with anaphylaxis by a health care provider licensed pursuant to title 32, chapter 13, 14, 17 or 25 or by a registered nurse practitioner licensed and certified pursuant to title 32, chapter 15 to carry and self-administer emergency medications including auto-injectable epinephrine while at school and at school sponsored activities. The pupil's name on the prescription label on the medication container or on the medication device and annual written documentation from the pupil's parent or guardian to the school that authorizes possession and self-administration is sufficient proof that the pupil is entitled to the possession and self-administration of the medication. The policies shall require a pupil who uses auto-injectable epinephrine while at school and at school sponsored

activities to notify the nurse or the designated school staff person of the use of the medication as soon as practicable. A school district and its employees are immune from civil liability with respect to all decisions made and actions taken that are based on good faith implementation of the requirements of this paragraph, except in cases of wanton or wilful neglect.

39. Allow the possession and self-administration of prescription medication for breathing disorders in handheld inhaler devices, by pupils who have been prescribed that medication by a health care professional licensed pursuant to title 32. The pupil's name on the prescription label on the medication container or on the handheld inhaler device and annual written documentation from the pupil's parent or guardian to the school that authorizes possession and self-administration shall be sufficient proof that the pupil is entitled to the possession and self-administration of the medication. A school district and its employees are immune from civil liability with respect to all decisions made and actions taken that are based on a good faith implementation of the requirements of this paragraph.

40. Prescribe and enforce policies and procedures to prohibit pupils from harassing, intimidating and bullying other pupils on school grounds, on school property, on school buses, at school bus stops and at school sponsored events and activities that include the following components:

(a) A procedure for pupils to confidentially report to school officials incidents of harassment, intimidation or bullying.

(b) A procedure for parents and guardians of pupils to submit written reports to school officials of suspected incidents of harassment, intimidation or bullying.

(c) A requirement that school district employees report suspected incidents of harassment, intimidation or bullying to the appropriate school official.

(d) A formal process for the documentation of reported incidents of harassment, intimidation or bullying, except that no documentation shall be maintained unless the harassment, intimidation or bullying has been proven.

(e) A formal process for the investigation by the appropriate school officials of suspected incidents of harassment, intimidation or bullying.

(f) Disciplinary procedures for pupils who have admitted or been found to have committed incidents of harassment, intimidation or bullying.

(g) A procedure that sets forth consequences for submitting false reports of incidents of harassment, intimidation or bullying.

41. Prescribe and enforce policies and procedures regarding changing or adopting attendance boundaries that include the following components:

(a) A procedure for holding public meetings to discuss attendance boundary changes or adoptions that allows public comments.

(b) A procedure to notify the parents or guardians of the students affected.

(c) A procedure to notify the residents of the households affected by the attendance boundary changes.

(d) A process for placing public meeting notices and proposed maps on the school district's website for public review, if the school district maintains a website.

(e) A formal process for presenting the attendance boundaries of the affected area in public meetings that allows public comments.

(f) A formal process for notifying the residents and parents or guardians of the affected area as to the decision of the governing board on the school district's website, if the school district maintains a website.

(g) A formal process for updating attendance boundaries on the school district's website within ninety days of an adopted boundary change. The school district shall send a direct link to the school district's attendance boundaries website to the department of real estate.

(h) If the land that a school was built on was donated within the past five years, a formal process to notify the entity ~~who~~ THAT donated the land affected by the decision of the governing board.

B. Notwithstanding subsection A, paragraphs 8, 10 and 12 of this section, the county school superintendent may construct, improve and furnish school buildings or purchase or sell school sites in the conduct of an accommodation school.

C. If any school district acquires real or personal property, whether by purchase, exchange, condemnation, gift or otherwise, the governing board shall pay to the county treasurer any taxes on the property that were unpaid as of the date of acquisition, including penalties and interest. The lien for unpaid delinquent taxes, penalties and interest on property acquired by a school district:

1. Is not abated, extinguished, discharged or merged in the title to the property.

2. Is enforceable in the same manner as other delinquent tax liens.

D. The governing board may not locate a school on property that is less than one-fourth mile from agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the school district may locate a school within the affected buffer zone. The agreement may include any stipulations regarding the school, including conditions for future expansion of the school and changes in the operational status of the school that will result in a breach of the agreement.

E. A school district, its governing board members, its school council members and its employees are immune from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to subsection A of this section and section 15-342. This waiver does not apply if the school district, its governing board members, its

school council members or its employees are guilty of gross negligence or intentional misconduct.

F. A governing board may delegate in writing to a superintendent, principal or head teacher the authority to prescribe procedures that are consistent with the governing board's policies.

G. Notwithstanding any other provision of this title, a school district governing board shall not take any action that would result in an immediate reduction or a reduction within three years of pupil square footage that would cause the school district to fall below the minimum adequate gross square footage requirements prescribed in section 15-2011, subsection C, unless the governing board notifies the school facilities board established by section 15-2001 of the proposed action and receives written approval from the school facilities board to take the action. A reduction includes an increase in administrative space that results in a reduction of pupil square footage or sale of school sites or buildings, or both. A reduction includes a reconfiguration of grades that results in a reduction of pupil square footage of any grade level. This subsection does not apply to temporary reconfiguration of grades to accommodate new school construction if the temporary reconfiguration does not exceed one year. The sale of equipment that results in an immediate reduction or a reduction within three years that falls below the equipment requirements prescribed in section 15-2011, subsection B is subject to commensurate withholding of school district capital outlay revenue limit monies pursuant to the direction of the school facilities board. Except as provided in section 15-342, paragraph 10, proceeds from the sale of school sites, buildings or other equipment shall be deposited in the school plant fund as provided in section 15-1102.

H. Subsections C through G of this section apply to a county board of supervisors and a county school superintendent when operating and administering an accommodation school.

I. Until the state board of education and the auditor general adopt rules pursuant to section 15-213, subsection I, a school district may procure construction services, including services for new school construction pursuant to section 15-2041, by the construction-manager-at-risk, design-build and job-order-contracting methods of project delivery as provided in title 41, chapter 23, except that the rules adopted by the director of the department of administration do not apply to procurements pursuant to this subsection. Any procurement commenced pursuant to this subsection may be completed pursuant to this subsection.

Sec. 99. Section 15-512, Arizona Revised Statutes, is amended to read:

15-512. <u>Noncertificated personnel; fingerprinting personnel; background investigations; affidavit; civil immunity; violation; classification; definition</u>

A. Noncertificated personnel and personnel who are not paid employees of the school district and who are not either the parent or the guardian of a pupil who attends school in the school district but who are required or

allowed to provide services directly to pupils without the supervision of a certificated employee and who are initially hired by a school district after January 1, 1990 shall be fingerprinted as a condition of employment except for personnel who are required as a condition of licensing to be fingerprinted if the license is required for employment or for personnel who were previously employed by a school district and who reestablished employment with that district within one year after the date that the employee terminated employment with the district. A school district may release the results of a background check to another school district for employment purposes. The employee's fingerprints and the form prescribed in subsection D of this section shall be submitted to the school district within twenty days after the date an employee begins work. A school district may terminate an employee if the information on the form provided under subsection D of this section is inconsistent with the information received from the fingerprint check. The school district shall develop procedures for fingerprinting employees. For the purposes of this subsection, "supervision" means under the direction of and, except for brief periods of time during a school day or a school activity, within sight of a certificated employee when providing direct services to pupils.

B. Fingerprint checks shall be conducted pursuant to section 41-1750, subsection G.

C. The school district shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted employee, except that the school district may not charge the costs of the fingerprint check to personnel of the school district who are not paid employees. The fees charged for fingerprinting shall be deposited with the county treasurer who shall credit the deposit to the fingerprint fund of the school district. The costs charged to a fingerprinted employee are limited to and the proceeds in the fund may only be applied to the actual costs, including personnel costs, incurred as a result of the fingerprint checks. The fingerprint fund is a continuing fund which is not subject to reversion.

D. Personnel required to be fingerprinted as prescribed in subsection A of this section shall certify on forms that are provided by the school and notarized whether they are awaiting trial on or have ever been convicted of or admitted in open court or pursuant to a plea agreement committing any of the following criminal offenses in this state or similar offenses in another jurisdiction:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Kidnapping.
5. Arson.
6. Sexual assault.
7. Sexual exploitation of a minor.

8. Felony offenses involving contributing to the delinquency of a minor.

9. Commercial sexual exploitation of a minor.

10. Felony offenses involving sale, distribution or transportation of, offer to sell, transport, or distribute or conspiracy to sell, transport or distribute marijuana or dangerous or narcotic drugs.

11. Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.

12. Misdemeanor offenses involving the possession or use of marijuana or dangerous drugs.

13. Burglary in the first degree.

14. Burglary in the second or third degree.

15. Aggravated or armed robbery.

16. Robbery.

17. A dangerous crime against children as defined in section ~~13-604.01~~ 13-705.

18. Child abuse.

19. Sexual conduct with a minor.

20. Molestation of a child.

21. Manslaughter.

22. Aggravated assault.

23. Assault.

24. Exploitation of minors involving drug offenses.

E. A school district may refuse to hire or may review or terminate personnel who have been convicted of or admitted committing any of the criminal offenses prescribed in subsection D of this section or of a similar offense in another jurisdiction. A school district which is considering terminating an employee pursuant to ~~the provisions of~~ this subsection shall hold a hearing to determine whether a person already employed shall be terminated. In conducting a review, the governing board shall utilize the guidelines, including the list of offenses that are not subject to review, as prescribed by the state board of education pursuant to section 15-534, subsection C. In considering whether to hire or terminate the employment of a person the governing board shall take into account the following factors:

1. The nature of the crime and the potential for crimes against children.

2. Offenses committed as a minor for which proceedings were held under the jurisdiction of a juvenile or an adult court.

3. Offenses that have been expunged by a court of competent jurisdiction, if the person has been pardoned or if the person's sentence has been commuted.

4. The employment record of the person since the commission of the crime if the crime was committed more than ten years before the governing board's consideration of whether to hire or terminate the person.

5. The reliability of the evidence of an admission of a crime unless made under oath in a court of competent jurisdiction.

F. Before employment with the school district, the district shall make documented, good faith efforts to contact previous employers of a person to obtain information and recommendations which may be relevant to a person's fitness for employment. A governing board shall adopt procedures for conducting background investigations required by this subsection, including one or more standard forms for use by school district officials to document their efforts to obtain information from previous employers. A school district may provide information received as a result of a background investigation required by this section to any other school district, to any other public school and to any public entity that agrees pursuant to a contract or intergovernmental agreement to perform background investigations for school districts or other public schools. School districts and other public schools may enter into intergovernmental agreements pursuant to section 11-952 and cooperative purchasing agreements pursuant to rules adopted in accordance with section 15-213 for the purposes of performing or contracting for the performance of background investigations and for sharing the results of background investigations required by this subsection. Information obtained about an employee or applicant for employment by any school district or other public school in the performance of a background investigation may be retained by that school district or the other public school or by any public entity that agrees pursuant to contract to perform background investigations for school districts or other public schools and may be provided to any school district or other public school that is performing a background investigation required by this subsection.

G. A school district may fingerprint any other employee of the district, whether paid or not, or any other applicant for employment with the school district not otherwise required by this section to be fingerprinted on the condition that the school district may not charge the costs of the fingerprint check to the fingerprinted applicant or nonpaid employee.

H. Subsection A of this section does not apply to a person who provides instruction or other education services to a pupil, with the written consent of the parent or guardian of the pupil, under a work release program, advance placement course or other education program that occurs off school property.

I. Public entities that agree pursuant to contract to perform background investigations, public schools, the department of education and previous employers who provide information pursuant to this section are immune from civil liability unless the information provided is false and is acted on by the school district to the harm of the employee and the public entity, the public school, the previous employer or the department of education knows the information is false or acts with reckless disregard of the information's truth or falsity. A school district which relies on information obtained pursuant to this section in making employment decisions

is immune from civil liability for use of the information unless the information obtained is false and the school district knows the information is false or acts with reckless disregard of the information's truth or falsity.

J. The superintendent of a school district or chief administrator of a charter school or the person's designee who is responsible for implementing the governing board's policy regarding background investigations required by subsection F of this section and who fails to carry out that responsibility is guilty of unprofessional conduct and shall be subject to disciplinary action by the state board.

K. A school district may hire noncertificated personnel before receiving the results of the fingerprint check but may terminate employment if the information on the form provided in subsection D of this section is inconsistent with the information received from the fingerprint check. In addition to any other conditions or requirements deemed necessary by the superintendent of public instruction to protect the health and safety of pupils, noncertificated personnel who are required or allowed unsupervised contact with pupils may be hired by school districts before the results of a fingerprint check are received if all of the following conditions are met:

1. The school district that is seeking to hire the applicant shall document in the applicant's file the necessity for hiring and placement of the applicant before a fingerprint check could be completed.

2. The school district that is seeking to hire the applicant shall do all of the following:

(a) Ensure that the department of public safety completes a statewide criminal history information check on the applicant. A statewide criminal history information check shall be completed by the department of public safety every one hundred twenty days until the date that the fingerprint check is completed.

(b) Obtain references from the applicant's current employer and two most recent previous employers except for applicants who have been employed for at least five years by the applicant's most recent employer.

(c) Provide general supervision of the applicant until the date that the fingerprint check is completed.

(d) Report to the superintendent of public instruction on June 30 and December 31 the number of applicants hired ~~prior to~~ BEFORE the completion of a fingerprint check. In addition, the school district shall report the number of applicants for whom fingerprint checks were not received after one hundred twenty days and after one hundred seventy-five days of hire.

L. Notwithstanding any other law, this section does not apply to pupils who attend school in a school district and who are also employed by a school district.

M. A person who makes a false statement, representation or certification in any application for employment with the school district is guilty of a class 3 misdemeanor.

N. For the purpose of this section, "background investigation" means any communication with an employee's or applicant's former employer that concerns the education, training, experience, qualifications and job performance of the employee or applicant and that is used for the purpose of evaluating the employee or applicant for employment. Background investigation does not include the results of any state or federal criminal history records check.

Sec. 100. Section 15-550, Arizona Revised Statutes, is amended to read:

15-550. Conviction as unprofessional conduct; penalty

A. A teacher who has been convicted of a dangerous crime against children as defined in section ~~13-604.01~~ 13-705 or has been convicted of a violation of section 13-1404 or 13-1406 in which the victim was a minor or section 13-1405 or an act committed in another state or territory which if committed in this state would have been a dangerous crime against children or a violation of section 13-1404 OR 13-1406 in which the victim was a minor or a violation of section 13-1405 ~~or 13-1406~~ is guilty of unprofessional conduct and the teacher's certificate shall be revoked permanently immediately on notification of conviction by the clerk of the court or the magistrate.

B. A teacher who has been convicted of a preparatory offense as prescribed in section 13-1001 of any of the offenses prescribed in subsection A of this section or any crime that requires the teacher to register as a sex offender is guilty of unprofessional conduct and the teacher's certificate shall be permanently revoked on notification of the conviction by a court of competent jurisdiction.

Sec. 101. Section 20-448, Arizona Revised Statutes, is amended to read:

20-448. Unfair discrimination; definitions

A. A person shall not make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable or in any other of the terms and conditions of the contract.

B. A person shall not make or permit any unfair discrimination respecting hemophiliacs or between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of disability insurance or in the benefits payable or in any of the terms or conditions of the contract, or in any other manner whatever. The provisions of this subsection regarding hemophiliacs do not apply to any policy or subscription contract which provides only benefits for specific diseases or for accidental injuries or which provides only indemnity for blood transfusion services or replacement of whole blood products, fractions or derivatives.

C. As to kinds of insurance other than life and disability, a person shall not make or permit any unfair discrimination in favor of particular persons or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors, or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged.

D. An insurer shall not refuse to consider an application for life or disability insurance on the basis of a genetic condition, developmental delay or developmental disability.

E. The rejection of an application or the determining of rates, terms or conditions of a life or disability insurance contract on the basis of a genetic condition, developmental delay or developmental disability constitutes unfair discrimination, unless the applicant's medical condition and history and either claims experience or actuarial projections establish that substantial differences in claims are likely to result from the genetic condition, developmental delay or developmental disability.

F. In addition to the provisions in subsection E of this section, the rejection of an application or the determination of rates, terms or conditions of a disability insurance contract on the basis of a genetic condition constitutes unfair discrimination in the absence of a diagnosis of the condition related to information obtained as a result of a genetic test.

G. An insurer that offers life, disability, property or liability insurance contracts shall not deny a claim incurred or deny, refuse, refuse to renew, restrict, cancel, exclude or limit coverage or charge a different rate for the same coverage solely on the basis that the insured or proposed insured is or has been a victim of domestic violence or is an entity or individual that provides counseling, shelter, protection or other services to victims of domestic violence. If an insurer that offers life, disability, property or liability insurance contracts denies a claim incurred or denies, refuses, refuses to renew, restricts, cancels, excludes or limits coverage or charges a different rate for the same coverage on the basis of a mental or physical condition and the insured or the proposed insured is or has been a victim of domestic violence, the insurer shall submit a written explanation to the insured or proposed insured of the reasons for the insurer's actions, in accordance with section 20-2110. The fact that an insured or proposed insured is or has been the victim of domestic violence is not a mental or physical condition. Nothing contained in this subsection is intended to provide any private right or cause of action to or on behalf of any applicant or insured. It is the specific intent of this subsection to provide solely an administrative remedy to the director for any violation of this section. Nothing in this subsection prevents an insurer from refusing to issue a life insurance policy insuring a person who has been the victim of domestic violence if either of the following is true:

1. The family or household member who commits the act of domestic violence is the applicant for or prospective owner of the policy or would be the beneficiary of the policy and any of the following is true:

(a) The applicant or prospective beneficiary of the policy is known, on the basis of police or court records, to have committed an act of domestic violence.

(b) The insurer has knowledge of an arrest or conviction for a domestic violence related offense by the family or household member.

(c) The insurance company has other reasonable grounds to believe, and those grounds are corroborated, that the applicant or proposed beneficiary of a policy is a family or household member committing acts of domestic violence.

2. The applicant or prospective owner of the policy lacks an insurable interest in the insured.

H. Nothing in subsection G of this section prevents an insurer that:

1. Offers life or disability insurance contracts from underwriting coverage on the basis of an insured's or proposed insured's mental or physical condition if the underwriting:

(a) Does not consider whether or not the mental or physical condition was caused by an act of domestic violence.

(b) Is the same for an insured or proposed insured who is not the victim of domestic violence as it is for an insured or proposed insured who is the victim of domestic violence.

(c) Does not violate any other rule or law.

2. Offers property or liability insurance contracts from underwriting coverage on the basis of the insured's claims history or characteristics of the insured's property and using rating criteria consistent with section 20-384.

I. Any determination made pursuant to section 20-2537 by the external independent review organization shall not be considered in connection with the evaluation of whether any person subject to this article has complied with this section.

J. A property or liability insurer may exclude coverage for losses caused by an insured's intentional or fraudulent act. The exclusion shall not deny an insured's otherwise covered property loss if the property loss is caused by an act of domestic violence by another insured under the policy and the insured who claims the property loss cooperates in any investigation relating to the loss and did not cooperate in or contribute to the creation of the property loss. The insurer may apply reasonable standards of proof for claims filed under this subsection. The insurer may limit the payment to the insured's insurable interest in the property minus any payment made to any mortgagee or other party with a secured interest in the property. This subsection does not require an insurer to pay any amount that is more than the amount of the loss or property coverage limits. An insurer who pays a

claim under this subsection has the right of subrogation against any person except the victim of the domestic violence.

K. All insurers shall adopt and adhere to written policies that are consistent with ~~title 20,~~ chapter 11 OF THIS TITLE and that specify the procedures to be followed by employees, contractors, producers, agents and brokers to ensure the privacy of and to help protect the safety of a victim of domestic violence when taking an application, investigating a claim, pursuing subrogation or taking any other action relating to a policy or claim involving a victim of domestic violence. Insurers shall distribute the written policies to employees, contractors, producers, agents and brokers who have access to personal or privileged information regarding domestic violence.

L. For the purposes of this section:

1. "Developmental delay" means a delay of at least one and one-half standard deviations from the norm.

2. "Developmental disability" has the same meaning prescribed in section 36-551.

3. "Domestic violence" means any act that is a dangerous crime against children as defined in section ~~13-604.01~~ 13-705 or an offense defined in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923 or 13-3623, if any of the following applies:

(a) The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.

(b) The victim and the defendant have a child in common.

(c) The victim or the defendant is pregnant by the other party.

(d) The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister, or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.

(e) The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or has resided in the same household as the defendant.

4. "Gene products" means gene fragments, nucleic acids or proteins derived from deoxyribonucleic acids that would be a reflection of or indicate DNA sequence information.

5. "Genetic condition" means a specific chromosomal or single-gene genetic condition.

6. "Genetic test" means an analysis of an individual's DNA, gene products or chromosomes that indicates a propensity for or susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrates genetic or chromosomal damage due to environmental factors, or carrier status for a disease or disorder.

Sec. 102. Section 25-411, Arizona Revised Statutes, is amended to read:

25-411. Modification of custody decree; affidavit; contents

A. A person shall not make a motion to modify a custody decree earlier than one year after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health. At any time after a joint custody order is entered, a parent may petition the court for modification of the order on the basis of evidence that domestic violence involving a violation of section 13-1201 or 13-1204, spousal abuse or child abuse occurred since the entry of the joint custody order. Six months after a joint custody order is entered, a parent may petition the court for modification of the order based on the failure of the other parent to comply with the provisions of the order. A motion or petition to modify a custody order shall meet the requirements of this section. Except as otherwise provided in subsection B of this section, if a custodial parent is a member of the United States armed forces, the court shall consider the terms of that parent's military family care plan to determine what is in the child's best interest during the custodial parent's military deployment.

B. For the purposes of a motion to modify a custody decree, the military deployment of a custodial parent who is a member of the United States armed forces is not a change in circumstances that materially affects the welfare of the child if the custodial parent has filed a military family care plan with the court at a previous custody proceeding and if the military deployment is less than six months.

C. A custody decree or order that a court enters in contemplation of or during the military deployment of a custodial parent outside of the continental United States shall specifically reference the deployment and include provisions governing the custody of the minor child after the deployment ends. Either parent may file a petition with the court after the deployment ends to modify the decree or order, in compliance with subsection F of this section. The court shall hold a hearing or conference on the petition within thirty days after the petition is filed.

D. The court may modify an order granting or denying parenting time rights whenever modification would serve the best interest of the child, but the court shall not restrict a parent's parenting time rights unless it finds that the parenting time would endanger seriously the child's physical, mental, moral or emotional health.

E. If after a custody or parenting time order is in effect one of the parents is charged with a dangerous crime against children as defined in section ~~13-604.01~~ 13-705, child molestation as defined in section 13-1410 or an act of domestic violence as prescribed in section 13-3601 in which the victim is a minor, the other parent may petition the court for an expedited hearing. Pending the expedited hearing, the court may suspend parenting time or change custody ex parte.

F. To modify any type of custody order a person shall submit an affidavit or verified petition setting forth detailed facts supporting the requested modification and shall give notice, together with a copy of the affidavit or verified petition, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the pleadings, in which case it shall set a date for hearing on why the requested modification should not be granted.

G. The court shall assess attorney fees and costs against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

H. Subsection ~~E~~ F of this section does not apply if the requested relief is for the modification or clarification of visitation and not for a change of joint custody, joint legal custody, joint physical custody or sole custody.

Sec. 103. Section 31-281, Arizona Revised Statutes, is amended to read:

31-281. Transition program; drug offenders; report

A. The department shall establish a transition program. The department shall contract with any private or nonprofit entity to provide eligible inmates with transition services and shall procure transition services pursuant to title 41, chapter 23.

B. The director shall adopt rules to implement this article. The rules shall include:

1. Eligibility criteria for receiving the contracted entity's transition services. To be eligible, at a minimum, an inmate shall:

(a) Be convicted of a violation of title 13, chapter 34, except that an inmate who was convicted of a violation of title 13, chapter 14 or 17 or an offense involving death or physical injury or the use of a deadly weapon or dangerous instrument is not eligible to participate in the transition program.

(b) Be classified by the state department of corrections as a low risk to the community.

(c) Not have been convicted of a violent crime as defined in section ~~13-604.04~~ 13-901.03.

(d) Have a nonviolent risk score as determined by the department.

(e) Not have any felony detainers.

(f) Agree in writing to provide specific information after the inmate is released. The department shall use the information to prepare the report prescribed by subsection D, paragraph 3 of this section.

(g) Have made satisfactory progress on the inmate's individualized corrections plan as determined by the department.

(h) Have maintained civil behavior while incarcerated as determined by the department.

(i) Be current on restitution payments pursuant to section 31-254.

(j) Have a need and ability to benefit from the program as determined by the department.

2. A requirement that the contracted entity train mentors or certify that mentors are trained.

3. The services that may be offered to an inmate.

4. The criteria for inmates to participate in a three month early release program. Inmates are not required to receive an early release.

5. A requirement that an inmate may be released pursuant to this article only after the victim has been provided notice and an opportunity to be heard. The department shall provide notice to a victim who has provided a current address or other contact information. The notice shall inform the victim of the opportunity to be heard on the early release. Any objection to the inmate's early release must be made within twenty days after the department has mailed the notice to the victim.

C. In awarding contracts under this section the department shall comply with section 41-3751.

D. The department shall:

1. Conduct an annual study to determine the recidivism rate of persons who receive the contracted entity's services pursuant to this article.

2. Evaluate the inmate and shall provide the information to the contracted entity. The contracted entity shall make the final determination of program eligibility.

3. Submit a written report to the governor, the president of the senate and the speaker of the house of representatives on or before July 31 of each year and provide a copy of this report to the secretary of state and the director of the Arizona state library, archives and public records. The report shall contain the following information:

(a) The recidivism rate of persons who receive services pursuant to this article.

(b) The number of persons who received services pursuant to this article.

(c) The number of persons who were not provided services pursuant to this article and who were on a list waiting to receive services.

(d) The types of services provided.

(e) The number of persons who received each type of service provided.

Sec. 104. Section 31-403, Arizona Revised Statutes, is amended to read:

31-403. Commutation; restrictions on consideration

A. A person who is otherwise eligible for commutation and who is denied a commutation of sentence recommendation shall not petition or be considered by the board for commutation of that sentence for a period of five years following the date of the board's denial of the commutation recommendation if the offense for which the commutation recommendation was denied involved any of the following:

1. Death in violation of section 13-1104 or 13-1105.

2. Serious physical injury if the person was sentenced pursuant to section ~~13-604~~ 13-704.

3. A dangerous crime against children as defined in section ~~13-604.01~~ 13-705.

4. A felony offense in violation of title 13, chapter 14 or 35.1.

B. Notwithstanding subsection A, paragraph 2 of this section, if, in its sole discretion, the board determines that the person committed an offense that involved serious physical injury as defined in section 13-105 and that the person was not sentenced pursuant to section ~~13-604~~ 13-704, the board may order that the person shall not petition or be considered by the board for commutation of that sentence for a period of five years following the date of the board's denial of the commutation recommendation.

C. Notwithstanding subsection A or B of this section, the board, at the time of denial, may lengthen the five year period of time prescribed in subsection A or B of this section to a period of up to ten years, except that if the offense for which commutation was denied involved a violation of an offense listed in subsection A, paragraph 1 of this section, the board may lengthen the period of time to a period of time that is greater than ten years and that is specified by the board 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. If the chairman is one of the two members constituting a two member quorum under section 31-401, subsection I, and both the chairman and the other member vote to lengthen the five year period to a period of time greater than ten years, no further action shall be taken and the decision on whether to lengthen the five year period shall be considered by the board at a meeting at which at least three members are present and voting.

D. The board may waive the provisions of subsections A, B and C of this section if any of the following applies:

1. The person is in imminent danger of death due to a medical condition, as determined by the board.

2. The person is the subject of a warrant of execution.

3. The sentence for which commutation is sought is the subject of a special order issued by the court pursuant to section 13-603, subsection L.

E. This section applies only to offenses that are committed on or after ~~the effective date of this section~~ JANUARY 1, 2006.

Sec. 105. Section 31-412, Arizona Revised Statutes, as amended by Laws 2008, chapter 24, section 4, 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~~ 13-706, subsection ~~W~~ F, paragraph ~~5~~ 1, 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~~ 13-705. The citation of section ~~13-604.01~~ 13-705 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 5 and section 13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

Sec. 106. Section 41-1604.08, Arizona Revised Statutes, is amended to read:

41-1604.08. <u>Global position system monitoring</u>

A. The department shall assign any person who is in the custody of the department and who was convicted of a violation of section ~~13-604.01~~ 13-705 to a global position monitoring system on the person's release on parole, community supervision, work release or other conditional or temporary release.

B. The department may enter into a contract for the provision of global position monitoring services.

Sec. 107. Section 41-1604.10, Arizona Revised Statutes, is amended to read:

41-1604.10. <u>Earned release credits; forfeiture; restoration; applicability</u>

A. Each prisoner classified as parole eligible, class one, pursuant to section 41-1604.09, shall be allowed the following release credits:

1. If sentenced upon a first conviction other than pursuant to section ~~13-703~~ 13-751 or other than for a felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another, every two days served within class one shall be counted as an earned release credit of one day.

2. If sentenced pursuant to the ~~provisions of~~ section ~~13-604, subsection A~~ 13-703, SUBSECTION B, PARAGRAPH 2, or upon first conviction of a class 4, 5 or 6 felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury or any other provisions of law which prohibits release on any basis until serving not less than one-half the sentence imposed by the court, every two days served within class one shall be counted as an earned release credit of one day.

3. If sentenced ~~according~~ PURSUANT to any other ~~of the provisions~~ PROVISION of section ~~13-604~~ 13-703, SECTION 13-704, SUBSECTION A, B, C, D OR E, SECTION 13-706, SUBSECTION A OR SECTION 13-708, SUBSECTION D or any other provision of law which prohibits release on any basis until serving not less than two-thirds the sentence imposed by the court, every three days served within class one shall be counted as an earned release credit of one day.

B. Release credits earned by a prisoner pursuant to subsection A of this section shall not reduce the term of imprisonment imposed by the court on such prisoner, nor reduce the sentence imposed on the prisoner for the purpose of determining such prisoner's parole eligibility.

C. Upon reclassification of a prisoner resulting from the prisoner's failure to adhere to the rules of the department or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program, the director may declare any and all release credits earned by the prisoner forfeited. In the discretion of the director the release credits may subsequently be restored. The director shall maintain an account of release credits earned by each prisoner.

D. The director, according to rules ~~promulgated~~ ADOPTED by the department, may authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date. A prisoner on earned release credit release is not under the control of the department and the department is not required to provide parole services or otherwise supervise any prisoner released, except that the department may revoke the release of the prisoner until the final expiration of his sentence if the department has reason to believe that the released prisoner has engaged in criminal conduct during the term of his release. If a prisoner has a term of probation to be completed or served, the probation department shall begin supervision of the prisoner when the prisoner is released on the earned release credit date. If the prisoner's term of probation equals or exceeds the prisoner's final expiration date, the director OF THE STATE DEPARTMENT OF CORRECTIONS shall issue the prisoner an

absolute discharge on the prisoner's earned release credit date. The prisoner is not under the control of the department and the department is not required to provide parole services or otherwise supervise the prisoner. If the prisoner's term of probation is less than the prisoner's final expiration date, the prisoner is not under the control of the department and the department is not required to provide parole services or otherwise supervise the prisoner, except that the department may revoke the release at any time between the earned release credit date and the final expiration date if the department has reason to believe that the released prisoner has engaged in criminal conduct during the term of release. The director may issue the prisoner an absolute discharge from the sentence of imprisonment if it appears that the prisoner will live and remain at liberty without violating the law and it is in the best interest of the state. The STATE department of corrections shall provide reasonable notice to the probation department of the scheduled release of the prisoner from confinement by the STATE department OF CORRECTIONS.

E. A prisoner shall forfeit five days of the prisoner's earned release credits if the court finds or a disciplinary hearing held after a review by and recommendations from the attorney general's office determines that the prisoner does any of the following:

1. Brings a claim without substantial justification.

2. Unreasonably expands or delays a proceeding.

3. Testifies falsely or otherwise presents false information or material to the court.

4. Submits a claim that is intended solely to harass the party it is filed against.

F. If the prisoner does not have five days of earned release credits, the prisoner shall forfeit the prisoner's existing earned release credits and be ineligible from accruing earned release credits until the number of earned release credits the prisoner would have otherwise accrued equals the difference between five days and the number of existing earned release credit days the prisoner forfeits pursuant to this section.

G. This section applies only to persons who commit felonies before January 1, 1994.

Sec. 108. Section 41-1604.11, Arizona Revised Statutes, as amended by Laws 2008, chapter 24, section 5, is amended to read:

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

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

1 cooperating voluntarily in medical research that cannot be performed at the
2 prison or institution, or for participating in community action activities
3 directed toward delinquency prevention and community betterment programs.
4 The removal shall not be for a period longer than one day.
5 B. Under specific rules established by the director for the selection
6 of inmates, the director may also authorize furlough, temporary removal or
7 temporary release of any inmate for compassionate leave, for the purpose of
8 furnishing to the inmate medical treatment not available at the prison or
9 institution, for purposes preparatory to a return to the community within
10 ninety days of the inmate's release date or for disaster aid, including local
11 mutual aid and state emergencies. When an inmate is temporarily removed or
12 temporarily released for a purpose preparatory to return to the community or
13 for compassionate leave, the director may require the inmate to reimburse the
14 state, in whole or part, for expenses incurred by the state in connection
15 with the temporary removal or release.
16 C. The board of executive clemency, under specific rules established
17 for the selection of inmates, if it appears to the board, in its sole
18 discretion, that there is a substantial probability that the inmate will
19 remain at liberty without violating the law and that the release is in the
20 best interests of the state, may authorize the release of an inmate on work
21 furlough if the inmate has served not less than six months of the sentence
22 imposed by the court, is within twelve months of the inmate's parole
23 eligibility date and has not been convicted of a sexual offense. The
24 director shall provide information as the board requests concerning any
25 inmate eligible for release on work furlough. The inmate shall not be
26 released on work furlough unless the release is approved by the board.
27 D. An inmate who is otherwise eligible for work furlough pursuant to
28 subsection C of this section, who is not on home arrest and who is currently
29 serving a sentence for a conviction of a serious offense or conspiracy to
30 commit or attempt to commit a serious offense shall not be granted work
31 furlough except by one of the following 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 E. Before holding a hearing on the work furlough under consideration,
41 the board, on request, shall notify and afford an opportunity to be heard to
42 the presiding judge of the superior court in the county in which the inmate
43 requesting a work furlough was sentenced, the prosecuting attorney, the
44 director of the arresting law enforcement agency and the victim of the
45 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~~ 13-704, 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~~ 13-706, subsection ~~W~~ F, paragraph ~~5~~ 1, 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~~ 13-705. The citation of section ~~13-604.01~~ 13-705 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 5 or section 13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

Sec. 109. Section 41-1604.13, Arizona Revised Statutes, as amended by Laws 2008, chapter 24, section 6, is amended to read:

41-1604.13. <u>Home arrest; eligibility; victim notification; conditions; applicability; definition</u>

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 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~~ 13-706, subsection ~~W~~ F, paragraph ~~5~~ 1, 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~~ 13-705. The citation of section ~~13-604.01~~ 13-705 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 5 and section 13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

Sec. 110. Section 41-1604.14, Arizona Revised Statutes, is amended to read:

41-1604.14. <u>Release of prisoners with detainers; eligibility; revocation of release</u>

A. Notwithstanding any law to the contrary, the director may release a prisoner to the custody and control of the United States immigration and ~~naturalization service~~ CUSTOMS ENFORCEMENT if all of the following requirements are satisfied:

1. The department receives an order of deportation for the prisoner from the United States immigration and naturalization service.

2. The prisoner has served at least one-half of the sentence imposed by the court.

3. The prisoner was convicted of a class 3, 4, 5 or 6 felony offense.

4. The prisoner was not convicted of an offense under title 13, chapter 11.

5. The prisoner was not convicted of a sexual offense pursuant to ~~sections~~ SECTION 13-1404, 13-1405, 13-1406 or 13-1410.

6. The prisoner was not sentenced pursuant to section ~~13-604~~ 13-703, SECTION 13-704, SUBSECTION A, B, C, D OR E, SECTION 13-706, SUBSECTION A OR SECTION 13-708, SUBSECTION D.

B. If a prisoner who is released pursuant to this section returns illegally to the United States, on notification from any federal or state law enforcement agency that the prisoner is in custody, the director shall revoke the prisoner's release. The prisoner shall not be eligible for parole, community supervision or any other release from confinement until the remainder of the sentence of imprisonment is served, except pursuant to section 31-233, subsection A or B.

Sec. 111. Section 41-1604.15, Arizona Revised Statutes, is amended to read:

41-1604.15. Probation or other release noneligibility; violent crime; under the influence of marijuana, a dangerous drug or a narcotic drug

Notwithstanding any law to the contrary, any person who is convicted of a violent crime as defined in section ~~13-604.04~~ 13-901.03 that is committed while the person is under the influence of marijuana, a dangerous drug or a narcotic drug as defined in section 13-3401 is not eligible for probation or release on any basis until the entire sentence has been served. Pursuant to section 41-1604.07, the director shall include any such person in a noneligible earned release credit class and the prisoner is not eligible for placement in an eligible earned release credit class.

Sec. 112. Section 41-1604.16, Arizona Revised Statutes, is amended to read:

41-1604.16. Parole or community supervision eligibility for persons previously convicted of possession or use of marijuana, a dangerous drug or a narcotic drug

A. Notwithstanding any law to the contrary, if a prisoner has been convicted of the possession or use of marijuana pursuant to section 13-3405, subsection A, paragraph 1, possession or use of a dangerous drug pursuant to section 13-3407, subsection A, paragraph 1 or possession or use of a narcotic drug pursuant to section 13-3408, subsection A, paragraph 1 and the prisoner is not concurrently serving another sentence, the prisoner is eligible for parole or if the offense for which the prisoner was incarcerated was

committed on or after January 1, 1994, the prisoner is eligible for community supervision.

B. Any person who has previously been convicted of a violent crime as defined in section ~~13-604.04~~ 13-901.03 or who has previously been convicted and sentenced in any jurisdiction in the United States of any felony offense is not eligible for parole or community supervision pursuant to this section. If the department is unable to determine if a person has a prior felony conviction, the department shall refer the inmate record to the sentencing court. The sentencing court shall determine if the person has a prior felony conviction. For the purposes of this subsection, the age of the conviction does not matter.

C. On or before June 3, 1997, the director of the state department of corrections shall prepare a list that identifies each person who is eligible for parole or community supervision pursuant to this section and shall deliver the list to the board of executive clemency.

D. An offense THAT IS committed in another jurisdiction AND THAT IS not classified as a felony in Arizona is not a felony offense for purposes of this section.

Sec. 113. Section 41-1609.05, Arizona Revised Statutes, is amended to read:

41-1609.05. <u>Community accountability pilot program; fund; program termination; definition</u>

A. The department shall contract with an experienced private or nonprofit entity to operate a community accountability pilot program to provide eligible inmates with supervision and treatment services. The department shall procure community accountability services pursuant to chapter 23 of this title.

B. Inmates enrolled in the program may be removed by the director pursuant to subsection E of this section.

C. The goals of the community accountability pilot program include:

1. Reducing recidivism.

2. Providing treatment and rehabilitation services based on the inmate's risk for recidivism and need for treatment.

3. Providing supervision through electronic monitoring based on the inmate's risk for recidivism and need for supervision.

4. Preparing eligible inmates for independent living following community supervision.

5. Enhancing public safety.

D. The community accountability pilot program may provide services to eligible inmates that are designed to lower recidivism rates, including the following community based services:

1. Substance abuse education and treatment.

2. Random mandatory drug testing.

3. Electronic monitoring, remote alcohol testing, global positioning system tracking and voice identification community tracking.

4. Life skills programming.
5. Employment preparation.
6. Anger management.
7. Parenting skills, family orientation and family reunification.
8. Cognitive skills training.
9. General equivalency diplomas and adult basic education.
10. Housing assistance.
11. Health care and stress management.
12. Transportation planning.
13. Group and individual counseling.

E. The director shall identify inmates who are eligible for the community accountability pilot program and shall determine all supervision, admission and termination requirements. The director may remove an inmate from the program. The director may order an eligible inmate to participate in the program in lieu of parole or community supervision revocation or if the inmate is at risk of violating or revocation of parole or community supervision.

F. The contracting entity shall operate the program, including the management of any facility and its staff, the design of the program and the installation and maintenance of all equipment necessary for operation of any facility. Facilities that are established and operated under the pilot program shall be known as community accountability reporting centers. The contracting entity shall use existing risk assessment scores utilized by the department to establish treatment services based on the inmate's risk and need. Case managers shall provide monthly reports to the eligible inmate's supervising officer, except that a violation shall be reported within twenty-four hours.

G. After an eligible inmate has been in the program for sixty days or more, the department may require as a condition of program participation that the eligible inmate pay a supervision fee, unless the inmate is determined to be indigent. The case manager shall monitor the collection of the fee. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the community accountability fund established pursuant to subsection H of this section.

H. The community accountability fund is established consisting of fees collected pursuant to subsection G of this section. The director shall administer the fund for the purposes of this section. Monies in this fund are continuously appropriated.

I. During each year of operation of the pilot program, the contracting entity shall provide monthly reports to the department and the joint legislative budget committee.

J. The pilot program established by this section ends on July 1, 2012 pursuant to section 41-3102.

K. For the purposes of this section, "eligible inmate" means an inmate who is on community supervision or who is eligible for community supervision and who has not been convicted of a violent crime as defined in section ~~13-604.04~~ 13-901.03, a dangerous crime against children as defined in section ~~13-604.01~~ 13-705 or a sexual offense pursuant to title 13, chapter 14 or 35.1.

Sec. 114. Section 41-1758.03, Arizona Revised Statutes, is amended to read:

41-1758.03. Fingerprint clearance cards; issuance; immunity

A. On receiving the state and federal criminal history record of a person, the division shall compare the record with the list of criminal offenses that preclude the person from receiving a fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections B and C of this section, the division shall issue the person a fingerprint clearance card.

B. A person who is subject to registration as a sex offender in this state or any other jurisdiction or who is awaiting trial on or who has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card:

1. Sexual abuse of a vulnerable adult.
2. Incest.
3. First or second degree murder.
4. Sexual assault.
5. Sexual exploitation of a minor.
6. Sexual exploitation of a vulnerable adult.
7. Commercial sexual exploitation of a minor.
8. Commercial sexual exploitation of a vulnerable adult.
9. Child prostitution as prescribed in section 13-3212.
10. Child abuse.
11. Abuse of a vulnerable adult.
12. Sexual conduct with a minor.
13. Molestation of a child.
14. Molestation of a vulnerable adult.
15. A dangerous crime against children as defined in ~~13-604.01~~ SECTION 13-705.
16. Exploitation of minors involving drug offenses.
17. Taking a child for the purposes of prostitution as prescribed in section 13-3206.
18. Neglect or abuse of a vulnerable adult.
19. Sex trafficking.
20. Sexual abuse.
21. Production, publication, sale, possession and presentation of obscene items as prescribed in section 13-3502.

22. Furnishing harmful items to minors as prescribed in section 13-3506.

23. Furnishing harmful items to minors by internet activity as prescribed in section 13-3506.01.

24. Obscene or indecent telephone communications to minors for commercial purposes as prescribed in section 13-3512.

25. Luring a minor for sexual exploitation.

26. Enticement of persons for purposes of prostitution.

27. Procurement by false pretenses of person for purposes of prostitution.

28. Procuring or placing persons in a house of prostitution.

29. Receiving earnings of a prostitute.

30. Causing one's spouse to become a prostitute.

31. Detention of persons in a house of prostitution for debt.

32. Keeping or residing in a house of prostitution or employment in prostitution.

33. Pandering.

34. Transporting persons for the purpose of prostitution, polygamy and concubinage.

35. Portraying adult as a minor as prescribed in section 13-3555.

36. Admitting minors to public displays of sexual conduct as prescribed in section 13-3558.

C. A person who is awaiting trial on or who has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to section 41-619.55:

1. Manslaughter.

2. Endangerment.

3. Threatening or intimidating.

4. Assault.

5. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.

6. Assault by vicious animals.

7. Drive by shooting.

8. Assaults on officers or fire fighters.

9. Discharging a firearm at a structure.

10. Indecent exposure.

11. Public sexual indecency.

12. Aggravated criminal damage.

13. Theft.

14. Theft by extortion.

15. Shoplifting.

16. Forgery.

17. Criminal possession of a forgery device.
18. Obtaining a signature by deception.
19. Criminal impersonation.
20. Theft of a credit card or obtaining a credit card by fraudulent means.
21. Receipt of anything of value obtained by fraudulent use of a credit card.
22. Forgery of a credit card.
23. Fraudulent use of a credit card.
24. Possession of any machinery, plate or other contrivance or incomplete credit card.
25. False statement as to financial condition or identity to obtain a credit card.
26. Fraud by persons authorized to provide goods or services.
27. Credit card transaction record theft.
28. Misconduct involving weapons.
29. Misconduct involving explosives.
30. Depositing explosives.
31. Misconduct involving simulated explosive devices.
32. Concealed weapon violation.
33. Possession and sale of peyote.
34. Possession and sale of a vapor-releasing substance containing a toxic substance.
35. Sale of precursor chemicals.
36. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs.
37. Manufacture or distribution of an imitation controlled substance.
38. Manufacture or distribution of an imitation prescription-only drug.
39. Manufacture or distribution of an imitation over-the-counter drug.
40. Possession or possession with intent to use an imitation controlled substance.
41. Possession or possession with intent to use an imitation prescription-only drug.
42. Possession or possession with intent to use an imitation over-the-counter drug.
43. Manufacture of certain substances and drugs by certain means.
44. Adding poison or other harmful substance to food, drink or medicine.
45. A criminal offense involving criminal trespass and burglary under title 13, chapter 15.
46. A criminal offense under title 13, chapter 23.
47. Child neglect.
48. Misdemeanor offenses involving contributing to the delinquency of a minor.
49. Offenses involving domestic violence.

1 50. Arson.
2 51. Kidnapping.
3 52. Felony offenses involving sale, distribution or transportation of,
4 offer to sell, transport or distribute or conspiracy to sell, transport or
5 distribute marijuana, dangerous drugs or narcotic drugs.
6 53. Robbery.
7 54. Aggravated assault.
8 55. Felony offenses involving contributing to the delinquency of a
9 minor.
10 56. Negligent homicide.
11 57. Criminal damage.
12 58. Misappropriation of charter school monies as prescribed in section
13 13-1818.
14 59. Taking identity of another person or entity.
15 60. Aggravated taking identity of another person or entity.
16 61. Trafficking in the identity of another person or entity.
17 62. Cruelty to animals.
18 63. Prostitution.
19 64. Sale or distribution of material harmful to minors through vending
20 machines as prescribed in section 13-3513.
21 65. Welfare fraud.
22 D. A person who is awaiting trial on or who has been convicted of
23 committing or attempting or conspiring to commit a violation of section
24 28-1381, 28-1382 or 28-1383 in this state or the same or similar offense in
25 another state or jurisdiction within five years from the date of applying for
26 a fingerprint clearance card is precluded from driving any vehicle to
27 transport employees or clients of the employing agency as part of the
28 person's employment. The division shall place a notation on the fingerprint
29 clearance card that indicates this driving restriction. This subsection does
30 not preclude a person from driving a vehicle alone as part of the person's
31 employment.
32 E. Notwithstanding subsection C of this section, on receiving written
33 notice from the board of fingerprinting that a good cause exception was
34 granted pursuant to section 41-619.55, the division shall issue a fingerprint
35 clearance card to the person.
36 F. If the division denies a person's application for a fingerprint
37 clearance card pursuant to subsection C of this section and a good cause
38 exception is requested pursuant to section 41-619.55, the division shall
39 release, on request by the board of fingerprinting, the person's criminal
40 history record to the board of fingerprinting.
41 G. A person shall be granted a fingerprint clearance card if either of
42 the following applies:
43 1. An agency granted a good cause exception before August 16, 1999 and
44 no new precluding offense is identified. The fingerprint clearance card
45 shall specify only the program that granted the good cause exception. On the

1 request of the applicant, the agency that granted the prior good cause
2 exception shall notify the division in writing of the date on which the prior
3 good cause exception was granted and the date of the conviction and the name
4 of the offense for which the good cause exception was granted.
5 2. The board granted a good cause exception and no new precluding
6 offense is identified. The fingerprint clearance card shall specify the
7 programs for which the board granted the good cause exception.
8 H. The licensee or contract provider shall assume the costs of
9 fingerprint checks and may charge these costs to persons required to be
10 fingerprinted.
11 I. A person who is under eighteen years of age or who is at least
12 ninety-nine years of age is exempt from the fingerprint clearance card
13 requirements of this section. At all times the person shall be under the
14 direct visual supervision of personnel who have valid fingerprint clearance
15 cards.
16 J. The division may conduct periodic state criminal history records
17 checks for the purpose of updating the clearance status of current
18 fingerprint clearance card holders and may notify the board of fingerprinting
19 and the agency employing the person of the results of the records check.
20 K. The division shall revoke a person's fingerprint clearance card on
21 receipt of a written request for revocation from the board of fingerprinting
22 pursuant to section 41-619.55.
23 L. The division shall not issue a fingerprint clearance card to a
24 person if the division cannot determine, within thirty business days after
25 receipt of the person's state and federal criminal history record
26 information, whether the person is awaiting trial on or has been convicted of
27 committing any of the offenses listed in subsection B or C of this section.
28 If the division is unable to make the determination required by this section
29 and does not issue a fingerprint clearance card to a person, the person may
30 request a good cause exception pursuant to section 41-619.55.
31 M. Except as provided in subsection N of this section, if after
32 conducting a state and federal criminal history record check the division
33 determines that it is not authorized to issue a fingerprint clearance card to
34 a person, the division shall notify the agency that licenses or employs the
35 person that the division is not authorized to issue a fingerprint clearance
36 card. This notice shall include the criminal history information on which
37 the denial was based. This criminal history information is subject to
38 dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.
39 N. If, after conducting a state and federal criminal history record
40 check on a person who requests a fingerprint clearance card pursuant to
41 section 15-1881, the division determines that it is not authorized to issue a
42 fingerprint clearance card to the person, the division shall not notify the
43 agency. The division shall notify the person who requested the card that the
44 division is not authorized to issue a fingerprint clearance card.

O. The division is not liable for damages resulting from:

1. The issuance of a fingerprint clearance card to a person who is later found to have been ineligible to receive a fingerprint clearance card at the time the card was issued.

2. The denial of a fingerprint clearance card to a person who is later found to have been eligible to receive a fingerprint clearance card at the time issuance of the card was denied.

P. The issuance of a fingerprint clearance card does not entitle a person to employment.

Sec. 115. Section 41-1967.01, Arizona Revised Statutes, is amended to read:

41-1967.01. <u>Child care home provider; registration; fingerprints; definition</u>

A. A child care home provider who receives compensation to care for four or fewer children and who has not been certified by the department of economic security pursuant to section 46-807 or licensed or certified by the department of health services pursuant to section 36-883 or 36-897.01 shall register with the department of economic security if the child care home provider wishes to be listed with the child care resource and referral system.

B. Each applicant for registration shall submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. Child care providers shall have a valid fingerprint clearance card issued pursuant to chapter 12, article 3.1 of this title or shall apply for a fingerprint clearance card by the date of registration with the department.

D. By the date of registration, child care providers shall certify on forms that are provided by the department and notarized whether:

1. They are awaiting trial on or have been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

(a) Sexual abuse of a minor.

(b) Incest.

(c) First or second degree murder.

(d) Kidnapping.

(e) Arson.

(f) Sexual assault.

(g) Sexual exploitation of a minor.

(h) Felony offenses involving contributing to the delinquency of a minor.

(i) Commercial sexual exploitation of a minor.

(j) Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.

(k) Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.

(l) Burglary.

(m) Aggravated or armed robbery.

(n) Robbery.

(o) A dangerous crime against children as defined in section ~~13-604.01~~ 13-705.

(p) Child abuse.

(q) Sexual conduct with a minor.

(r) Molestation of a child.

(s) Manslaughter.

(t) Assault or aggravated assault.

(u) Exploitation of minors involving drug offenses.

(v) A violation of section 28-1381, 28-1382 or 28-1383.

(w) Offenses involving domestic violence.

2. They are parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.

3. They have been denied a license to operate a child care facility for cause in this state or another state or had a license or certificate to operate a child care facility revoked.

E. The notarized forms are confidential.

F. Each applicant for registration shall not have been the subject of an investigation where a report of child abuse or neglect has been substantiated.

G. Each applicant shall maintain current training and certification in first aid and infant and child cardiopulmonary resuscitation.

H. The applicant shall enclose any pool on the applicant's premises pursuant to section 36-1681, subsections A, B and C.

I. The applicant shall separately store firearms and ammunition under lock and key or combination lock.

J. The department shall adopt rules to carry out this section.

K. The director shall charge a fee for processing the fingerprint information required pursuant to this section.

L. Any obligation or liability under this section is governed by the provisions of section 41-1967, subsections F, G and H.

M. For the purposes of this section, "child care provider" means a registered child care home provider pursuant to subsection A of this section.

Sec. 116. Section 41-2814, Arizona Revised Statutes, is amended to read:

41-2814. Fingerprinting personnel; exception; violation; classification; definition

A. All employees of the department and all contract service providers that provide services primarily on department premises shall be fingerprinted. These individuals shall submit fingerprints and the form prescribed in subsection F of this section within seven days after the date of employment. Employment with the department is conditioned on the results of the fingerprint check. Fingerprint checks shall be conducted pursuant to section 41-1750, subsection G, paragraph 1.

B. Except as provided in subsection A of this section, a paid or unpaid employee of a licensee or contract provider who has direct contact with committed youth shall have a valid fingerprint clearance card issued pursuant to chapter 12, article 3.1 of this title or shall apply for a fingerprint clearance card within seven days of beginning employment.

C. A service contract or license with any contract provider or licensee that involves the employment of persons who have direct contact with committed youth shall provide that the contract or license may be canceled or terminated immediately if a person certifies pursuant to subsection F of this section that the person is awaiting trial on or has been convicted of any of the offenses listed in subsection F of this section in this jurisdiction or acts committed in another jurisdiction that would be offenses in this jurisdiction or if the person does not possess or is denied issuance of a valid fingerprint clearance card.

D. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection C of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsection F of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in subsection F, paragraphs 1, 2, 3, 6, 7, 9, 15 through 18 and 21 of this section is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring or allowing direct contact with committed youth.

E. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection C of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsection F of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in subsection F, paragraphs 4, 5, 8, 10 through 14, 19, 20, 22 and 23 of this section is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring or allowing direct contact with committed youth unless the employee is granted a good cause exception pursuant to section 41-619.55.

F. Personnel who are employed by the department and contract personnel who have direct contact with committed youth shall certify on forms provided by the department and notarized whether they are awaiting trial on or have ever been convicted of or committed any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Kidnapping.
5. Arson.
6. Sexual assault.
7. Sexual exploitation of a minor.
8. Felony offenses involving contributing to the delinquency of a minor.
9. Commercial sexual exploitation of a minor.
10. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.
11. Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.
12. Burglary.
13. Aggravated or armed robbery.
14. Robbery.
15. A dangerous crime against children as defined in section ~~13-604.01~~ 13-705.
16. Child abuse.
17. Sexual conduct with a minor.
18. Molestation of a child.
19. Manslaughter.
20. Assault or aggravated assault.
21. Exploitation of minors involving drug offenses.
22. A violation of section 28-1381, 28-1382 or 28-1383.
23. Offenses involving domestic violence.

G. The department shall make documented, good faith efforts to contact previous employers of personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment.

H. Hospital employees, licensed medical personnel, staff and volunteers who provide services to juveniles in a health care facility located outside the secure care facility and who are under the direct visual supervision as is medically reasonable of the department's employees or the department's contracted security employees are exempt from the requirements of this section.

I. The department of juvenile corrections shall notify the department of public safety if the department of juvenile corrections receives credible evidence that a person who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.03, subsection B.

2. Falsified information on the form required by subsection F of this section.

J. A person who makes a false statement, representation or certification in an application for employment with the department is guilty of a class 3 misdemeanor.

K. For the purposes of this section, "employee" means paid and unpaid personnel who have direct contact with committed youth.

Sec. 117. Section 46-321, Arizona Revised Statutes, is amended to read:

46-321. Fingerprinting; affidavit

A. Sponsors, except military bases and federally recognized Indian tribes, receiving federal child care food program monies from the department of education shall register with the department of education in order to receive those monies, unless they are public schools, child care facilities licensed by the department of health services or child care homes certified by the department of economic security.

B. Sponsors, except military bases and federally recognized Indian tribes, receiving federal child care food program monies as provided in subsection A of this section shall require all child care providers to submit the form prescribed in subsection F of this section to the department of education and to have valid fingerprint clearance cards issued pursuant to title 41, chapter 12, article 3.1 or to apply for a fingerprint clearance card within seven working days of employment before they receive any of those monies.

C. Sponsors that are federally recognized Indian tribes or military bases may submit and the department shall accept certifications that state that any child care personnel who is employed or who will be employed during the contract term has not been convicted of, has not admitted to or is not awaiting trial on any of the offenses listed in subsection F of this section or is not the parent or guardian of a child adjudicated to be a dependent child as defined in section 8-201 or the parent or guardian of a child adjudicated a dependent child under similar provisions in another state or jurisdiction.

D. Sponsors that are federally recognized Indian tribes or military bases may submit and the department shall accept certifications that state that good faith efforts have been made to contact previous employers of tribal and military child care personnel.

E. The department of education shall charge sponsors receiving federal child care food program monies as provided in subsection A of this section for the costs of their fingerprint checks.

F. Sponsors receiving federal child care food program monies as provided in subsection A of this section shall require all child care personnel to certify on forms that are provided by the department of education and notarized that:

1. They are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

(a) Sexual abuse of a minor.

(b) Incest.

(c) First or second degree murder.

(d) Kidnapping.

(e) Arson.

(f) Sexual assault.

(g) Sexual exploitation of a minor.

(h) Felony offenses involving contributing to the delinquency of a minor.

(i) Commercial sexual exploitation of a minor.

(j) Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.

(k) Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.

(l) Burglary.

(m) Aggravated or armed robbery.

(n) Robbery.

(o) A dangerous crime against children as defined in section ~~13-604.01~~ 13-705.

(p) Child abuse.

(q) Sexual conduct with a minor.

(r) Molestation of a child.

(s) Manslaughter.

(t) Assault or aggravated assault.

(u) Exploitation of minors involving drug offenses.

(v) A violation of section 28-1381, 28-1382 or 28-1383.

(w) Offenses involving domestic violence.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.

3. They have not been denied a license to operate a facility for the care of children for cause in this state or another state or had a license or certificate to operate such a facility revoked.

G. Sponsors shall make documented, good faith efforts to contact previous employers of child care personnel who receive federal child care food program monies as provided in subsection A of this section to obtain information or recommendations that may be relevant to an individual's fitness for child care.

H. The notarized forms are confidential.

I. The state board of education shall notify the department of public safety if the state board of education receives credible evidence that any child care provider who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.03, subsection B.

2. Falsified information on the form required by subsection F of this section.

Sec. 118. Laws 2003, chapter 255, section 8 is amended to read:

Sec. 8. Conditional enactment

A. The following do not become effective unless on or before June 30, 2013 the Arizona supreme court or the supreme court of the United States rules that it is constitutional for a crime victim in a capital case to make a sentencing recommendation:

1. Section ~~13-703.01~~ 13-752, Arizona Revised Statutes, as amended by ~~section 3 of this act~~ LAWS 2005, CHAPTER 325, SECTION 4, AS TRANSFERRED AND RENUMBERED BY SECTION 26 OF THIS ACT AND AS AMENDED BY SECTION 40 OF THIS ACT.

2. LAWS 2003, CHAPTER 255, section 4 ~~of this act~~.

3. Section 13-4426, Arizona Revised Statutes~~, as added by this act~~.

B. The attorney general shall notify in writing the director of the Arizona legislative council of the date on which the condition is met or if the condition is not met.

Sec. 119. Intent

By this act, the legislature intends to reorganize title 13, chapters 6 and 7, Arizona Revised Statutes, for the purpose of simplifying the criminal sentencing laws. This act is not intended to make any substantive changes to the criminal sentencing laws except for very limited adjustments to the sentence length for repetitive offenders to account for combining sections 13-604 and 13-702.02, Arizona Revised Statutes, as repealed by this act.

Sec. 120. Effective date

Except as provided by Laws 2003, chapter 255, section 8, as amended by this act, this act is effective from and after December 31, 2008.

APPROVED BY THE GOVERNOR JULY 7, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 7, 2008.

13-711, 13-712 AND 13-706, RESPECTIVELY; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 13-703 AND 13-704; AMENDING SECTION 13-705, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-706, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTION 13-707, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-708 AND 13-709, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-709.01, 13-709.02, 13-709.03 AND 13-709.04; AMENDING SECTION 13-710, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-711 AND 13-712, ARIZONA REVISED STATUTES; AMENDING TITLE 13, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7.1; AMENDING SECTION 13-751, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 3 AND AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 4 AND AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-755, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-901.01, 13-902, 13-905, 13-906, 13-909, 13-910, 13-912.01, 13-921, 13-1104, 13-1105, 13-1204, 13-1207, 13-1212, 13-1304, 13-1307, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1414, 13-1417, 13-1423, 13-2308.01, 13-2312, 13-2411, 13-3107, 13-3113, 13-3206, 13-3212, 13-3407, 13-3407.01, 13-3408, 13-3409, 13-3411, 13-3419, 13-3422, 13-3552, 13-3553 AND 13-3554, ARIZONA REVISED STATUTES; AMENDING SECTION 13-3560, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2008, CHAPTER 219, SECTION 4; RENUMBERING SECTION 13-3560, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2008, CHAPTER 97, SECTION 2, AS SECTION 13-3561; AMENDING SECTION 13-3561, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-3601, 13-3623 AND 13-3716, ARIZONA REVISED STATUTES; AMENDING SECTION 13-3727, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 6, SECTION 1; REPEALING SECTION 13-3821, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 219, SECTION 5; AMENDING SECTION 13-3821, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 97, SECTION 3; AMENDING SECTIONS 13-3824, 13-3828, 13-3994 AND 13-4032, ARIZONA REVISED STATUTES; AMENDING SECTION 13-4062, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 24, SECTION 3; AMENDING SECTIONS 13-4501, 13-4511, 13-4515, 15-341, 15-512, 15-550, 20-448, 25-411, 31-281 AND 31-403, ARIZONA REVISED STATUTES; AMENDING SECTION 31-412, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 24, SECTION 4; AMENDING SECTIONS 41-1604.08 AND 41-1604.10, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1604.11, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 24, SECTION 5; AMENDING SECTION 41-1604.13, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 24, SECTION 6; AMENDING SECTIONS 41-1604.14, 41-1604.15, 41-1604.16, 41-1609.05, 41-1758.03, 41-1967.01, 41-2814 AND 46-321, ARIZONA REVISED STATUTES; AMENDING LAWS 2003, CHAPTER 255, SECTION 8; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-201, Arizona Revised Statutes, is amended to read:

8-201. Definitions

In this title, unless the context otherwise requires:

1. "Abandoned" means the failure of the parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandoned includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

2. "Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to section 8-821 and is caused by the acts or omissions of an individual having care, custody and control of a child. Abuse includes:

(a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.

(b) Physical injury to a child that results from abuse as described in section 13-3623, subsection C.

3. "Adult" means a person who is eighteen years of age or older.

4. "Adult court" means the appropriate justice court, municipal court or criminal division of the superior court that has jurisdiction to hear proceedings concerning offenses committed by juveniles as provided in sections 8-327 and 13-501.

5. "Award" or "commit" means to assign legal custody.

6. "Child", "youth" or "juvenile" means an individual who is under the age of eighteen years.

7. "Complaint" means a written statement of the essential facts constituting a public offense that is any of the following:

(a) Made on an oath before a judge or commissioner of the superior court or an authorized juvenile hearing officer.

(b) Made pursuant to section 13-3903.

(c) Accompanied by an affidavit of a law enforcement officer or employee that swears on information and belief to the accuracy of the complaint pursuant to section 13-4261.

8. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court.

9. "Delinquency hearing" means a proceeding in the juvenile court to determine whether a juvenile has committed a specific delinquent act as set forth in a petition.

10. "Delinquent act" means an act by a juvenile that if committed by an adult would be a criminal offense or a petty offense, a violation of any law of this state, or of another state if the act occurred in that state, or a law of the United States, or a violation of any law that can only be violated by a minor and that has been designated as a delinquent offense, or any ordinance of a city, county or political subdivision of this state defining crime. Delinquent act does not include an offense under section 13-501, subsection A or B if the offense is filed in adult court. Any juvenile who is prosecuted as an adult or who is remanded for prosecution as an adult shall not be adjudicated as a delinquent juvenile for the same offense.

11. "Delinquent juvenile" means a child who is adjudicated to have committed a delinquent act.

12. "Department" means the department of economic security.

13. "Dependent child":

(a) Means a child who is adjudicated to be:

(i) In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.

(ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.

(iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.

(iv) Under ~~the age of~~ eight years OF AGE and who is found to have committed an act that would result in adjudication as a delinquent juvenile or incorrigible child if committed by an older juvenile or child.

(v) Incompetent or not restorable to competency and who is alleged to have committed a serious offense as defined in section ~~13-604~~ 13-706.

(b) Does not include a child who in good faith is being furnished Christian Science treatment by a duly accredited practitioner if none of the circumstances described in subdivision (a) of this paragraph exists.

14. "Detention" means the temporary confinement of a juvenile who requires secure care in a physically restricting facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress for the protection of the juvenile or the community pending court disposition or as a condition of probation.

15. "Incorrigible child" means a child who:

(a) Is adjudicated as a child who refuses to obey the reasonable and proper orders or directions of a parent, guardian or custodian and who is beyond the control of that person.

(b) Is habitually truant from school as defined in section 15-803, subsection C.

(c) Is a runaway from the child's home or parent, guardian or custodian.

(d) Habitually behaves in such a manner as to injure or endanger the morals or health of self or others.

(e) Commits any act constituting an offense that can only be committed by a minor and that is not designated as a delinquent act.

(f) Fails to obey any lawful order of a court of competent jurisdiction given in a noncriminal action.

16. "Independent living program" includes a residential program with supervision of less than twenty-four hours a day.

17. "Juvenile court" means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.

18. "Law enforcement officer" means a peace officer, sheriff, deputy sheriff, municipal police officer or constable.

19. "Medical director of a mental health agency" means a psychiatrist, or licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency, or a psychiatrist designated by the governing body to act for the director. The term includes the superintendent of the state hospital.

20. "Mental health agency" means any private or public facility that is licensed by this state as a mental health treatment agency, a psychiatric hospital, a psychiatric unit of a general hospital or a residential treatment center for emotionally disturbed children and that uses secure settings or mechanical restraints.

21. "Neglect" or "neglected" means the inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare, except if the inability of a parent or guardian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.

22. "Petition" means a written statement of the essential facts that allege delinquency, incorrigibility or dependency.

23. "Prevention" means the creation of conditions, opportunities and experiences that encourage and develop healthy, self-sufficient children and that occur before the onset of problems.

24. "Protective supervision" means supervision that is ordered by the juvenile court of children who are found to be dependent or incorrigible.

25. "Referral" means a report that is submitted to the juvenile court and that alleges that a child is dependent or incorrigible or that a juvenile has committed a delinquent or criminal act.

26. "Secure care" means confinement in a facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress.

27. "Serious emotional injury" means an injury that is diagnosed by a medical doctor or a psychologist and that does any one or a combination of the following:

(a) Seriously impairs mental faculties.

(b) Causes serious anxiety, depression, withdrawal or social dysfunction behavior to the extent that the child suffers dysfunction that requires treatment.

(c) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

28. "Serious physical injury" means an injury that is diagnosed by a medical doctor and that does any one or a combination of the following:

(a) Creates a reasonable risk of death.

(b) Causes serious or permanent disfigurement.

(c) Causes significant physical pain.

(d) Causes serious impairment of health.

(e) Causes the loss or protracted impairment of an organ or limb.

(f) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

29. "Shelter care" means the temporary care of a child in any public or private facility or home that is licensed by this state and that offers a physically nonsecure environment that is characterized by the absence of physically restricting construction or hardware and that provides the child access to the surrounding community.

Sec. 2. Section 8-203.01, Arizona Revised Statutes, is amended to read:

8-203.01. <u>Fingerprinting juvenile probation officers; affidavit</u>

A. ~~Beginning July 1, 1985,~~ Juvenile probation officers employed by the juvenile court shall be fingerprinted as a condition of employment. A juvenile probation officer shall submit fingerprints and the form prescribed

in subsection D of this section to the chief juvenile probation officer within twenty days after the date a juvenile probation officer begins work. Employment with the juvenile court as a juvenile probation officer is conditioned on the results of the fingerprint check.

B. Fingerprint checks shall be conducted pursuant to section 41-1750, subsection G.

C. The juvenile court shall assume the costs of fingerprint checks and may charge these costs to ~~its~~ THE fingerprinted juvenile probation officer.

D. Juvenile probation officers shall certify on forms that are provided by the juvenile court and notarized that they are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Kidnapping.
5. Arson.
6. Sexual assault.
7. Sexual exploitation of a minor.
8. Contributing to the delinquency of a minor.
9. Commercial sexual exploitation of a minor.
10. Felony offenses involving distribution of marijuana, ~~or~~ dangerous DRUGS or narcotic drugs.
11. Burglary.
12. Robbery.
13. A dangerous crime against children ~~as defined in~~ PURSUANT TO section ~~13-604.01~~ 13-705.
14. Child abuse.
15. Sexual conduct with a minor.
16. Molestation of a child.

E. The juvenile court shall make documented, good faith efforts to contact previous employers of juvenile probation officers to obtain information or recommendations ~~which~~ THAT may be relevant to an individual's fitness for employment as a juvenile probation officer.

Sec. 3. Section 8-321, Arizona Revised Statutes, is amended to read:

8-321. <u>Referrals; diversions; conditions; community based alternative programs</u>

A. Except as provided in subsection B of this section, before a petition is filed or an admission or adjudication hearing is held, the county attorney may divert the prosecution of a juvenile who is accused of committing a delinquent act or a child who is accused of committing an incorrigible act to a community based alternative program or to a diversion program administered by the juvenile court.

B. A juvenile ~~who is a chronic felony offender as defined in section 13-501, who is a violent felony offender or who is alleged to have committed a violation of section 28-1381, 28-1382 or 28-1383~~ is not eligible for diversion IF ANY OF THE FOLLOWING APPLY TO THE JUVENILE:

1. COMMITTED A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.

2. IS A CHRONIC FELONY OFFENDER AS DEFINED IN SECTION 13-501.

3. COMMITTED AN OFFENSE THAT IS LISTED IN SECTION 13-501.

4. IS ALLEGED TO HAVE COMMITTED A VIOLATION OF SECTION 28-1381, 28-1382 OR 28-1383.

C. Except as provided in section 8-323, the county attorney has sole discretion to decide whether to divert or defer prosecution of a juvenile offender. The county attorney may designate the offenses that shall be retained by the juvenile court for diversion or that shall be referred directly to a community based alternative program.

D. The county attorney or the juvenile court in cooperation with the county attorney may establish community based alternative programs.

E. Except for offenses that the county attorney designates as eligible for diversion or referral to a community based alternative program, on receipt of a referral alleging the commission of an offense, the juvenile probation officer shall submit the referral to the county attorney to determine if a petition should be filed.

F. If the county attorney diverts the prosecution of a juvenile to the juvenile court, the juvenile probation officer shall conduct a personal interview with the alleged juvenile offender. At least one of the juvenile's parents or guardians shall attend the interview. The probation officer may waive the requirement for the attendance of the parent or guardian for good cause. If the juvenile acknowledges responsibility for the delinquent or incorrigible act, the juvenile probation officer shall require that the juvenile comply with one or more of the following conditions:

1. Participation in unpaid community restitution work.

2. Participation in a counseling program that is approved by the court and that is designed to strengthen family relationships and to prevent repetitive juvenile delinquency.

3. Participation in an education program that is approved by the court and that has as its goal the prevention of further delinquent behavior.

4. Participation in an education program that is approved by the court and that is designed to deal with ancillary problems experienced by the juvenile, such as alcohol or drug abuse.

5. Participation in a nonresidential program of rehabilitation or supervision that is offered by the court or offered by a community youth serving agency and approved by the court.

6. Payment of restitution to the victim of the delinquent act.

7. Payment of a monetary assessment.

G. If the juvenile successfully complies with the conditions set forth by the probation officer, the county attorney shall not file a petition in

1 juvenile court and the program's resolution shall not be used against the
2 juvenile in any further proceeding and is not an adjudication of
3 incorrigibility or delinquency. The resolution of the program is not a
4 conviction of crime, does not impose any civil disabilities ordinarily
5 resulting from a conviction and does not disqualify the juvenile in any civil
6 service application or appointment.
7 H. In order to participate in a community based alternative program
8 the juvenile who is referred to a program shall admit responsibility for the
9 essential elements of the accusation and shall cooperate with the program in
10 all of its proceedings.
11 I. All of the following apply to each community based alternative
12 program that is established pursuant to this section:
13 1. The juvenile's participation is voluntary.
14 2. The victim's participation is voluntary.
15 3. The community based alternative program shall ensure that the
16 victim, the juvenile's parent or guardian and any other persons who are
17 directly affected by an offense have the right to participate.
18 4. The participants shall agree to the consequences imposed on the
19 juvenile or the juvenile's parent or guardian.
20 5. The meetings and records shall be open to the public.
21 J. After holding a meeting the participants in the community based
22 alternative program may agree on any legally reasonable consequences that the
23 participants determine are necessary to fully and fairly resolve the matter
24 except confinement.
25 K. The participants shall determine consequences within thirty days
26 after referral to the community based alternative program, and the juvenile
27 shall complete the consequences within ninety days after the matter is
28 referred to the community based alternative program. The county attorney or
29 the juvenile probation officer may extend the time in which to complete the
30 consequences for good cause. If the community based alternative program
31 involves a school, the deadlines for determination and completion of
32 consequences shall be thirty and ninety school days, respectively.
33 L. The community based alternative program, the juvenile, the
34 juvenile's parent or guardian and the victim may sign a written contract in
35 which the parties agree to the program's resolution of the matter and in
36 which the juvenile's parent or guardian agrees to ensure that the juvenile
37 complies with the contract. The contract may provide that the parent or
38 guardian shall post a bond payable to this state to secure the performance of
39 any consequence imposed on the juvenile pursuant to subsection J of this
40 section.
41 M. If the juvenile successfully completes the consequences, the county
42 attorney shall not file a petition in juvenile court and the program's
43 resolution shall not be used against the juvenile in any further proceeding
44 and is not an adjudication of incorrigibility or delinquency. The resolution
45 of the program is not a conviction of crime, does not impose any civil

disabilities ordinarily resulting from a conviction and does not disqualify the juvenile in any civil service application or appointment.

N. The county attorney or juvenile court shall assess the parent of a juvenile who is diverted pursuant to subsection A of this section a fee of fifty dollars unless, after determining the inability of the parent to pay the fee, the county attorney or juvenile court assesses a lesser amount. All monies assessed pursuant to this subsection shall be used for the administration and support of community based alternative programs or juvenile court diversion programs. Any amount greater than forty dollars of the fee assessed pursuant to this subsection shall only be used to supplement monies currently used for the salaries of juvenile probation and surveillance officers and for support of programs and services of the superior court juvenile probation departments. The clerk of the superior court shall pay all monies collected from this assessment to the county treasurer for deposit in the juvenile probation fund, to be utilized as provided in section 12-268, and the county attorney shall pay all monies collected from this assessment into the county attorney juvenile diversion fund established by section 11-537.

O. The supreme court shall annually establish an average cost per juvenile for providing diversion services in each county, based on the monies appropriated for diversion pursuant to section 8-322, excluding the cost of juvenile intake services provided by the juvenile court, and the number of juveniles diverted the previous year. On the county attorney's certification to the supreme court of the number of juveniles diverted to a county attorney community based alternative program each quarter, the annual average cost per juvenile for each juvenile diverted shall be reimbursed to the county attorney juvenile diversion fund established by section 11-537 out of monies appropriated to the supreme court for diversion programs.

P. If the juvenile does not acknowledge responsibility for the offense, or fails to comply with the consequences set by the community based alternative program, the case shall be submitted to the county attorney for review.

Q. After reviewing a referral, if the county attorney declines prosecution, the county attorney may return the case to the juvenile probation department for further action as provided in subsection F of this section.

~~R. For the purposes of this section, "violent" means an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person and includes an offense listed in section 13-501.~~

Sec. 4. Section 8-341, Arizona Revised Statutes, is amended to read:

8-341. <u>Disposition and commitment; definitions</u>

A. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

1. It may award a delinquent juvenile:

(a) To the care of the juvenile's parents, subject to the supervision of a probation department.

(b) To a probation department, subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a private agency or institution, subject to the supervision of a probation officer.

(e) To the department of juvenile corrections.

(f) To maternal or paternal relatives, subject to the supervision of a probation department.

(g) To an appropriate official of a foreign country of which the juvenile is a foreign national who is unaccompanied by a parent or guardian in this state to remain on unsupervised probation for at least one year on the condition that the juvenile cooperate with that official.

2. It may award an incorrigible child:

(a) To the care of the child's parents, subject to the supervision of a probation department.

(b) To the protective supervision of a probation department, subject to any conditions the court may impose.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a public or private agency, subject to the supervision of a probation department.

(e) To maternal or paternal relatives, subject to the supervision of a probation department.

B. If a juvenile is placed on probation pursuant to this section, the period of probation may continue until the juvenile's eighteenth birthday, except that the term of probation shall not exceed one year if all of the following apply:

1. The juvenile is not charged with a subsequent offense.

2. The juvenile has not been found in violation of a condition of probation.

3. The court has not made a determination that it is in the best interests of the juvenile or the public to require continued supervision. The court shall state by minute entry or written order its reasons for finding that continued supervision is required.

4. The offense for which the juvenile is placed on probation does not involve ~~the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another~~ A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.

5. The offense for which the juvenile is placed on probation does not involve a violation of title 13, chapter 14 or 35.1.

6. Restitution ordered pursuant to section 8-344 has been made.

C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile:

> You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

D. If a juvenile is fourteen years of age or older and is adjudicated as a repeat felony juvenile offender, the juvenile court shall place the juvenile on juvenile intensive probation, which may include home arrest and electronic monitoring, may place the juvenile on juvenile intensive probation, which may include incarceration for a period of time in a juvenile detention center, or may commit the juvenile to the department of juvenile corrections pursuant to subsection A, paragraph 1, subdivision (e) of this section for a significant period of time.

E. If the juvenile is adjudicated as a repeat felony juvenile offender, the court shall provide the following written notice to the juvenile:

> You have been adjudicated a repeat felony juvenile offender. You are now on notice that if you are arrested for another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fifteen years of age or older, you will be tried as an adult in the criminal division of the superior court. If you commit the other offense when you are fourteen years of age or older, you may be tried as an adult in the criminal division of the superior court. If you are convicted as an adult, you will be sentenced to a term of incarceration. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

F. The failure or inability of the court to provide the notices required under subsections C and E of this section does not preclude the use of the prior adjudications for any purpose otherwise permitted.

G. Except as provided in subsection S of this section, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, the court shall order the juvenile to pay a reasonable monetary assessment if the court determines that an assessment is in aid of rehabilitation. If the director of the department of juvenile corrections determines that enforcement of an order for monetary assessment as a term and condition of conditional liberty is not cost-effective, the director may require the youth to perform an equivalent amount of community restitution in lieu of the payment ordered as a condition of conditional liberty.

H. If a child is adjudicated incorrigible, the court may impose a monetary assessment on the child of not more than one hundred fifty dollars.

I. A juvenile who is charged with unlawful purchase, possession or consumption of spirituous liquor is subject to section 8-323. The monetary assessment for a conviction of unlawful purchase, possession or consumption of spirituous liquor by a juvenile shall not exceed five hundred dollars. The court of competent jurisdiction may order a monetary assessment or equivalent community restitution.

J. The court shall require the monetary assessment imposed under subsection G or H of this section on a juvenile who is not committed to the department of juvenile corrections to be satisfied in one or both of the following forms:

1. Monetary reimbursement by the juvenile in a lump sum or installment payments through the clerk of the superior court for appropriate distribution.

2. A program of work, not in conflict with regular schooling, to repair damage to the victim's property, to provide community restitution or to provide the juvenile with a job for wages. The court order for restitution or monetary assessment shall specify, according to the dispositional program, the amount of reimbursement and the portion of wages of either existing or provided work that is to be credited toward satisfaction of the restitution or assessment, or the nature of the work to be performed and the number of hours to be spent working. The number of hours to be spent working shall be set by the court based on the severity of the offense but shall not be less than sixteen hours.

K. If a juvenile is committed to the department of juvenile corrections the court shall specify the amount of the monetary assessment imposed pursuant to subsection G or H of this section.

L. After considering the length of stay guidelines developed pursuant to section 41-2816, subsection C, the court may set forth in the order of commitment the minimum period during which the juvenile shall remain in secure care while in the custody of the department of juvenile corrections. When the court awards a juvenile to the department of juvenile corrections or an institution or agency, it shall transmit with the order of commitment copies of a diagnostic psychological evaluation and educational assessment if

one has been administered, copies of the case report, all other psychological and medical reports, restitution orders, any request for postadjudication notice that has been submitted by a victim and any other documents or records pertaining to the case requested by the department of juvenile corrections or an institution or agency. The department shall not release a juvenile from secure care before the juvenile completes the length of stay determined by the court in the commitment order unless the county attorney in the county from which the juvenile was committed requests the committing court to reduce the length of stay. The department may temporarily escort the juvenile from secure care pursuant to section 41-2804, may release the juvenile from secure care without a further court order after the juvenile completes the length of stay determined by the court or may retain the juvenile in secure care for any period subsequent to the completion of the length of stay in accordance with the law.

M. Written notice of the release of any juvenile pursuant to subsection L of this section shall be made to any victim requesting notice, the juvenile court that committed the juvenile and the county attorney of the county from which the juvenile was committed.

N. Notwithstanding any law to the contrary, if a person is under the supervision of the court as an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment services may be provided until the person reaches twenty-one years of age if the court, the person and the state agree to the provision of the treatment and a motion to transfer the person pursuant to section 8-327 has not been filed or has been withdrawn. The court may terminate the provision of treatment services after the person reaches eighteen years of age if the court determines that any of the following applies:

1. The person is not progressing toward treatment goals.

2. The person terminates treatment.

3. The person commits a new offense after reaching eighteen years of age.

4. Continued treatment is not required or is not in the best interests of the state or the person.

O. On the request of a victim of an act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus. If the victim is a minor the prosecuting attorney shall file this petition at the request of the victim's parent or guardian. If the act committed against a victim is an act that if committed by an adult would be a sexual offense or the court determines that sufficient evidence exists to indicate that significant exposure occurred, it shall order the department of juvenile corrections or the department of health services to test the juvenile pursuant to section 13-1415. Notwithstanding any law to the contrary, the department of juvenile corrections and the

department of health services shall release the test results only to the victim, the delinquent juvenile, the delinquent juvenile's parent or guardian and a minor victim's parent or guardian and shall counsel them regarding the meaning and health implications of the results.

P. If a juvenile has been adjudicated delinquent for an offense that if committed by an adult would be a felony, the court shall provide the department of public safety Arizona automated fingerprint identification system established in section 41-2411 with the juvenile's fingerprints, personal identification data and other pertinent information. If a juvenile has been committed to the department of juvenile corrections the department shall provide the fingerprints and information required by this subsection to the Arizona automated fingerprint identification system. If the juvenile's fingerprints and information have been previously submitted to the Arizona automated fingerprint identification system the information is not required to be resubmitted.

Q. Access to fingerprint records submitted pursuant to subsection P of this section shall be limited to the administration of criminal justice as defined in section 41-1750. Dissemination of fingerprint information shall be limited to the name of the juvenile, juvenile case number, date of adjudication and court of adjudication.

R. If a juvenile is adjudicated delinquent for an offense that if committed by an adult would be a misdemeanor, the court may prohibit the juvenile from carrying or possessing a firearm while the juvenile is under the jurisdiction of the department of juvenile corrections or the juvenile court.

S. The court shall order a juvenile who is adjudicated delinquent for a violation of section 13-1602, subsection A, paragraph 5 to pay a fine of at least three hundred dollars but not more than one thousand dollars. Any restitution ordered shall be paid in accordance with section 13-809, subsection A. The court may order the juvenile to perform community restitution in lieu of the payment for all or part of the fine if it is in the best interests of the juvenile. The amount of community restitution shall be equivalent to the amount of the fine by crediting any service performed at a rate of ten dollars per hour.

T. For the purposes of this section:

1. "First time felony juvenile offender" means a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

2. "Repeat felony juvenile offender" means a juvenile to whom both of the following apply:

(a) Is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

(b) Previously has been adjudicated a first time felony juvenile offender.

3. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

Sec. 5. Section 8-348, Arizona Revised Statutes, is amended to read:

8-348. Setting aside adjudication; application; release from disabilities; exceptions

A. Except as provided in subsections C and D of this section, a person who is at least eighteen years of age, who has been adjudicated delinquent or incorrigible and who has fulfilled the conditions of probation and discharge ordered by the court or who is discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individual treatment plan may apply to the juvenile court to set aside the adjudication. The court or the department of juvenile corrections shall inform the person of this right at the time the person is discharged. The person or, if authorized in writing, the person's attorney, probation officer or parole officer may apply to set aside the adjudication. A copy of the application shall be served on the prosecutor.

B. If the court grants the application, the court shall set aside the adjudication and shall order that the person be released from all penalties and disabilities resulting from the adjudication except those imposed by the department of transportation pursuant to section 28-3304, 28-3306, 28-3307 or 28-3308. Regardless of whether the court sets aside the adjudication, the adjudication may be used for any purpose as provided in section 8-207 or 13-501 and the department of transportation may use the adjudication for the purposes of enforcing the provisions of section 28-3304, 28-3306, 28-3307 or 28-3308 as if the adjudication had not been set aside.

C. A person may not apply to set aside the adjudication if the person either:

1. Has been convicted of a criminal offense.

2. Has a criminal charge pending.

3. Has not successfully completed all of the terms and conditions of probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the ~~individualized~~ INDIVIDUAL treatment plan.

4. Has not paid in full all restitution and monetary assessments.

D. This section does not apply to a person who was adjudicated delinquent for any of the following:

1. An offense involving the infliction of serious physical injury AS DEFINED IN SECTION 13-105.

2. An offense involving the use or exhibition of a deadly weapon or dangerous instrument AS DEFINED IN SECTION 13-105.

3. An offense in violation of title 13, chapter 14.

4. An offense in violation of section 28-1381, 28-1382, 28-1383 or 28-3473.

5. A civil traffic violation under title 28, chapter 3.

~~E. For the purposes of this section:~~

~~1. "Dangerous instrument" and "deadly weapon" have the same meaning prescribed in section 13-105.~~

~~2. "Serious physical injury" has the same meaning prescribed in section 13-105.~~

Sec. 6. Section 8-350, Arizona Revised Statutes, is amended to read:

8-350. Dangerous offenders; sex offenders; notification to schools; definition

A. If a ~~person~~ JUVENILE is adjudicated delinquent for or convicted of a dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or 13-1417 and the ~~person~~ JUVENILE is placed on probation and is attending school, the court shall notify the elementary or high school district in which the ~~person~~ JUVENILE resides that the ~~person~~ JUVENILE has been adjudicated delinquent or convicted and is on probation. The elementary or high school district shall transmit this notice to the school that the person attends.

B. Elementary or high school districts and local elementary and high schools through the local school district may request from the court the criminal history of individual students to determine if a student has been adjudicated delinquent for or convicted of a dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or 13-1417.

C. The school that the person attends shall make the information it receives pursuant to this section available to teachers, parents, guardians or custodians ~~upon~~ ON request.

D. For the purposes of this section, "dangerous offense" ~~means an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person~~ HAS THE SAME MEANING PRESCRIBED IN SECTION 13-105.

Sec. 7. Section 11-361, Arizona Revised Statutes, is amended to read:

11-361. Definition of program

For the purposes of this article, unless the context otherwise requires, "program" means a special supervision program in which the county attorney of a participating county may divert or defer, before a guilty plea or a trial, the prosecution of a person WHO IS accused of committing a crime, ~~other than~~ EXCEPT THAT THE COUNTY ATTORNEY MAY NOT DIVERT OR DEFER THE PROSECUTION OF a person who:

1. Has been previously convicted of a felony. ~~,~~

2. Is accused of committing 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 or~~ A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.

3. Has previously completed a program established pursuant to this article.

Sec. 8. Section 11-459, Arizona Revised Statutes, is amended to read:

11-459. Prisoner work, community restitution work and home detention program; eligibility; monitoring; procedures; home detention for persons sentenced for driving under the influence of alcohol or drugs; community restitution work committee; members; duties

A. The sheriff may establish a prisoner work, community restitution work and home detention program for eligible sentenced prisoners, which shall be treated the same as confinement in jail and shall fulfill the sheriff's duty to take charge of and keep the county jail and prisoners.

B. A prisoner is not eligible for a prisoner work, community restitution work and home detention program if any of the following applies:

1. After independent review and determination of the jail's classification program, the prisoner is found by the sheriff to constitute a risk to either himself or other members of the community.

2. The prisoner has a past history of violent behavior.

3. The prisoner has been convicted of a serious offense as defined in section ~~13-604~~ 13-706 or has been determined to be a dangerous and repetitive offender.

4. Jail time is being served as a result of a felony conviction.

5. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a prisoner work, community restitution work and home detention program.

6. The prisoner is sentenced to a county jail and is being held for another jurisdiction.

C. ~~For prisoners who are~~ IF A PRISONER IS selected for the program, the sheriff may require electronic monitoring in the prisoner's home whenever the prisoner is not at the prisoner's regular place of employment or while the prisoner is assigned to a community work task. If electronic monitoring is required, the prisoner shall remain under the control of a home detention device that constantly monitors the prisoner's location in order to determine that the prisoner has not left the prisoner's premises. In all other cases, the sheriff shall implement a system of monitoring using visitation, telephone contact or other appropriate methods to assure compliance with the home detention requirements. The sheriff may place appropriate restrictions on prisoners in the program, including testing prisoners for consumption of alcoholic beverages or drugs or prohibiting association with individuals who are determined to be detrimental to the prisoner's successful participation in the program.

D. If a prisoner is placed on electronic monitoring pursuant to subsection C of this section, the prisoner shall pay an electronic monitoring fee in an amount ranging from zero to full cost and thirty dollars per month while on electronic monitoring, unless, after determining the inability of the prisoner to pay these fees, the sheriff assesses a lesser fee. The

1 SHERIFF SHALL USE THE fees collected ~~shall be used by the sheriff~~ to offset
2 operational costs of the program.
3 E. Prisoners who are selected for the home detention program shall be
4 employed in the county in which they are incarcerated. The sheriff shall
5 review the place of employment to determine whether it is appropriate for a
6 home detention prisoner. If the prisoner is terminated from employment or
7 does not come to work, the employer shall notify the sheriff's office.
8 Alternatively, or in addition, a community restitution work assignment may be
9 made by the sheriff to a program recommended to the sheriff by the community
10 restitution work committee. If a prisoner is incapable of performing
11 community restitution or being employed, the sheriff may exempt the prisoner
12 from these programs.
13 F. The sheriff may require that a prisoner who is employed during the
14 week also participate in community restitution work programs on weekends.
15 G. The sheriff may allow prisoners to be away from home detention for
16 special purposes, including church attendance, medical appointments or
17 funerals. The standard for review and determination of such leave is the
18 same as that implemented to decide transportation requests for similar
19 purposes made by prisoners WHO ARE confined in the county jail.
20 H. Community restitution work shall include public works projects
21 operated and supervised by public agencies of this state or counties, cities
22 or towns on recommendation of the community restitution work committee and
23 approval of the sheriff. The community restitution work committee may also
24 recommend and the sheriff may approve other forms of community restitution
25 work sponsored and supervised by public or private community oriented
26 organizations and agencies.
27 I. The community restitution work committee is established in each
28 county and is composed of two designees of the sheriff, a representative of
29 the county attorney's office selected by the county attorney, a
30 representative of a local police agency selected by the police chief of the
31 largest city in the county and three persons selected by the county board of
32 supervisors from the private sector. A sheriff's designee shall serve as
33 committee chairman and schedule all meetings. The committee shall meet as
34 often as necessary, but no less than once every three months, for the purpose
35 of considering and recommending appropriate community restitution work
36 projects for home detention prisoners. The committee shall make its
37 recommendations to the sheriff. Members are not eligible to receive
38 compensation.
39 J. At any time the sheriff may terminate a prisoner's participation in
40 the prisoner work, community restitution work and home detention program and
41 require that the prisoner complete the remaining term of the prisoner's
42 sentence in jail confinement.

K. If authorized by the court, a person who is sentenced pursuant to section 28-1381 or 28-1382 shall not be placed under home detention in a prisoner work, community restitution work and home detention program except as provided in subsections L through Q of this section.

L. By a majority vote of the full membership of the board of supervisors after a public hearing and a finding of necessity a county may authorize the sheriff to establish a home detention program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If the board ~~authorized~~ AUTHORIZES the establishment of a home detention program, a county sheriff may establish the program. A prisoner who is placed under the program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in alcohol or substance abuse programs unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The county shall use the collected monies to offset operational costs of the program.

M. If a county sheriff establishes a home detention program under subsection L of this section, a prisoner must meet the following eligibility requirements for the program:

1. Subsection B of this section applies in determining eligibility for the program.

2. If the prisoner is sentenced under section 28-1381, subsection I, the prisoner first serves a minimum of twenty-four consecutive hours in jail.

3. Notwithstanding section 28-1387, subsection C, if the prisoner is sentenced under section 28-1381, subsection K or section 28-1382, subsection D or F, the prisoner first serves a minimum of fifteen consecutive days in jail before being placed under home detention.

4. The prisoner is required to comply with all of the following requirements for the duration of the prisoner's participation in the home detention program:

(a) All of the provisions of subsections C through H of this section.

(b) Testing at least once a day for the use of alcoholic beverages or drugs by a scientific method that is not limited to urinalysis or a breath or intoxication test in the prisoner's home or at the office of a person designated by the court to conduct these tests.

(c) Participation in an alcohol or drug program, or both. These programs shall be accredited by the department of health services or a county probation department.

(d) Prohibition of association with any individual determined to be detrimental to the prisoner's successful participation in the program.

(e) All other provisions of the sentence imposed.

5. Any additional eligibility criteria that the county may impose.

N. If a county sheriff establishes a home detention program under subsection L of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to

remain at home during the consecutive hours ordered. The detention device shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises. Nothing in this subsection shall be deemed to waive the minimum jail confinement requirements under subsection M, paragraph 2 of this section.

O. The court shall terminate a prisoner's participation in the home detention program and shall require the prisoner to complete the remaining term of the jail sentence by jail confinement if either:

1. The prisoner fails to successfully complete a court ordered alcohol or drug screening, counseling, education and treatment program pursuant to subsection M, paragraph 4, subdivision (c) of this section or section 28-1381, subsection J or L or violates an order pursuant to section 28-1382, subsection E or G.

2. The prisoner leaves the premises during a time that the prisoner is ordered to be on the premises without permission of the court or supervising authority.

P. At any other time the court may terminate a prisoner's participation in the home detention program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.

Q. The sheriff may terminate the program at any time.

R. A person who is sentenced pursuant to section 28-1383 shall not be placed under home detention in a prisoner work, community restitution work and home detention program.

Sec. 9. Section 12-2703, Arizona Revised Statutes, is amended to read:

12-2703. Scope of remedies; violation; classification

A. It is unlawful for any person to render for compensation any service constituting the unauthorized practice of immigration and nationality law or to otherwise violate this chapter.

B. A person having an interest or right that is or may be adversely affected under this chapter may initiate an action for civil remedies. The provisions of this article are in addition to all other causes of action, remedies and penalties that are available in this state.

C. The attorney general shall initiate appropriate proceedings to prevent or to stop violations of this chapter.

D. SECTION 13-703, SUBSECTION A AND SUBSECTION B, PARAGRAPH 1 DO NOT APPLY FOR THE PURPOSE OF ENHANCING THE SENTENCE OF A PERSON WHO IS CONVICTED OF TWO OR MORE OFFENSES UNDER THIS SECTION.

~~D.~~ E. A person who violates this chapter is guilty of a class 6 felony.

~~E. The provisions of section 13-702.02 shall not apply to enhance the sentence of a person convicted of two or more offenses under this section.~~

Sec. 10. Section 13-105, Arizona Revised Statutes, is amended to read:

13-105. Definitions

In this title, unless the context otherwise requires:

1. "ABSCONDER" MEANS A PROBATIONER WHO HAS MOVED FROM THE PROBATIONER'S PRIMARY 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 AN ABSCONDER WHEN THE PROBATIONER IS VOLUNTARILY OR INVOLUNTARILY RETURNED TO PROBATION SERVICE.

~~1.~~ 2. "Act" means a bodily movement.

~~2.~~ 3. "Benefit" means anything of value or advantage, present or prospective.

~~3.~~ 4. "Calendar year" means three hundred sixty-five days' actual time served without release, suspension or commutation of sentence, probation, pardon or parole, work furlough or release from confinement on any other basis.

~~4.~~ 5. "Community supervision" means that portion of a felony sentence THAT IS imposed by the court pursuant to section 13-603, subsection I and THAT IS served in the community after completing a period of imprisonment or served in prison in accordance with section 41-1604.07.

~~5.~~ 6. "Conduct" means an act or omission and its accompanying culpable mental state.

~~6.~~ 7. "Crime" means a misdemeanor or a felony.

~~7.~~ 8. "Criminal street gang" means an ongoing formal or informal association of persons ~~whose~~ IN WHICH members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and that has at least one individual who is a criminal street gang member.

~~8.~~ 9. "Criminal street gang member" means an individual to whom AT LEAST two of the following seven criteria that indicate criminal street gang membership apply:

(a) Self-proclamation.

(b) Witness testimony or official statement.

(c) Written or electronic correspondence.

(d) Paraphernalia or photographs.

(e) Tattoos.

(f) Clothing or colors.

(g) Any other indicia of street gang membership.

~~9.~~ 10. "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as those terms are ~~thusly~~ defined IN THIS PARAGRAPH:

(a) "Intentionally" or "with the intent to" means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.

(b) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that ~~his or her~~ THE PERSON'S conduct is of that nature or that the

circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

(c) "Recklessly" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but WHO is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

(d) "Criminal negligence" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

~~10.~~ 11. "Dangerous drug" means dangerous drug as defined ~~by~~ IN section 13-3401.

~~11.~~ 12. "Dangerous instrument" means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.

13. "DANGEROUS OFFENSE" MEANS AN OFFENSE INVOLVING THE DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR THE INTENTIONAL OR KNOWING INFLICTION OF SERIOUS PHYSICAL INJURY ON ANOTHER PERSON.

~~12.~~ 14. "Deadly physical force" means force ~~which~~ THAT is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.

~~13.~~ 15 "Deadly weapon" means anything designed for lethal use, including a firearm.

~~14.~~ 16. "Economic loss" means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses ~~which~~ THAT would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.

~~15.~~ 17. "Enterprise" includes any corporation, association, labor union or other legal entity.

~~16.~~ 18. "Felony" means an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state.

~~17.~~ 19. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon ~~which~~ THAT will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.

~~18.~~ 20. "Government" means the state, any political subdivision of the state or any department, agency, board, commission, institution or governmental instrumentality of or within the state or political subdivision.

~~19.~~ 21. "Government function" means any activity ~~which~~ THAT a public servant is legally authorized to undertake on behalf of a government.

22. "HISTORICAL PRIOR FELONY CONVICTION" MEANS:

(a) ANY PRIOR FELONY CONVICTION FOR WHICH THE OFFENSE OF CONVICTION EITHER:

(i) MANDATED A TERM OF IMPRISONMENT EXCEPT FOR A VIOLATION OF CHAPTER 34 OF THIS TITLE INVOLVING A DRUG BELOW THE THRESHOLD AMOUNT.

(ii) INVOLVED THE INTENTIONAL OR KNOWING INFLICTION OF SERIOUS PHYSICAL INJURY.

(iii) INVOLVED THE USE OR EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT.

(iv) INVOLVED THE ILLEGAL CONTROL OF A CRIMINAL ENTERPRISE.

(v) INVOLVED AGGRAVATED DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

(vi) INVOLVED ANY DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705.

(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. FOR THE PURPOSES OF THIS SUBDIVISION, "ESCAPE" MEANS:

(i) 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.

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

(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. FOR THE PURPOSES OF THIS SUBDIVISION, "ESCAPE" HAS THE SAME MEANING PRESCRIBED IN SUBDIVISION (b) OF THIS PARAGRAPH.

(d) ANY FELONY CONVICTION THAT IS A THIRD OR MORE PRIOR FELONY CONVICTION.

~~20.~~ 23. "Intoxication" means any mental or physical incapacity resulting from use of drugs, toxic vapors or intoxicating liquors.

~~21.~~ 24. "Misdemeanor" means an offense for which a sentence to a term of imprisonment other than to the custody of the state department of corrections is authorized by any law of this state.

~~22.~~ 25. "Narcotic drug" means narcotic drugs as defined ~~by~~ IN section 13-3401.

~~23.~~ 26. "Offense" or "public offense" means conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state.

~~24.~~ 27. "Omission" means the failure to perform an act as to which a duty of performance is imposed by law.

~~25.~~ 28. "Peace officer" means any person vested by law with a duty to maintain public order and make arrests.

~~26.~~ 29. "Person" means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.

~~27.~~ 30. "Petty offense" means an offense for which a sentence of a fine only is authorized by law.

~~28.~~ 31. "Physical force" means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.

~~29.~~ 32. "Physical injury" means the impairment of physical condition.

~~30.~~ 33. "Possess" means knowingly to have physical possession or otherwise to exercise dominion or control over property.

~~31.~~ 34. "Possession" means a voluntary act if the defendant knowingly exercised dominion or control over property.

35. "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.

~~32.~~ 36. "Property" means anything of value, tangible or intangible.

~~33.~~ 37. "Public servant":

(a) Means any officer or employee of any branch of government, whether elected, appointed or otherwise employed, including a peace officer, and any person participating as an advisor or consultant or otherwise in performing a governmental function.

(b) Does not include jurors or witnesses.

(c) Includes those who have been elected, appointed, employed or designated to become a public servant although not yet occupying that position.

~~34.~~ 38. "Serious physical injury" includes physical injury ~~which~~ THAT creates a reasonable risk of death, or which causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

~~35.~~ 39. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

~~36.~~ 40. "Vehicle" means a device in, upon or by which any person or property is, may be or could have been transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

~~37.~~ 41. "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.

~~38.~~ 42. "Voluntary intoxication" means intoxication caused by the knowing use of drugs, toxic vapors or intoxicating liquors by a person, the tendency of which to cause intoxication the person knows or ought to know, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.

Sec. 11. Section 13-107, Arizona Revised Statutes, is amended to read:

13-107. Time limitations

A. A prosecution for any homicide, any offense that is listed in chapter 14 or 35.1 of this title and that is a class 2 felony, any violent sexual assault pursuant to section 13-1423, any violation of section 13-2308.01, any misuse of public monies or a felony involving falsification of public records or any attempt to commit an offense listed in this subsection may be commenced at any time.

B. Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods after actual discovery by the state or the political subdivision having jurisdiction of the offense or discovery by the state or the political subdivision that should have occurred with the exercise of reasonable diligence, whichever first occurs:

1. For a class 2 through a class 6 felony, seven years.

2. For a misdemeanor, one year.

3. For a petty offense, six months.

C. For the purposes of subsection B of this section, a prosecution is commenced when an indictment, information or complaint is filed.

D. The period of limitation does not run during any time when the accused is absent from the state or has no reasonably ascertainable place of abode within the state.

E. The period of limitation does not run for a serious offense as defined in section ~~13-604~~ 13-706 during any time when the identity of the person who commits the offense or offenses is unknown.

F. The time limitation within which a prosecution of a class 6 felony shall commence shall be determined pursuant to subsection B, paragraph 1 of this section, irrespective of whether a court enters a judgment of conviction for or a prosecuting attorney designates the offense as a misdemeanor.

G. If a complaint, indictment or information filed before the period of limitation has expired is dismissed for any reason, a new prosecution may be commenced within six months after the dismissal becomes final even if the period of limitation has expired at the time of the dismissal or will expire within six months of the dismissal.

Sec. 12. Repeal

Section 13-119, Arizona Revised Statutes, is repealed.

Sec. 13. Section 13-501, Arizona Revised Statutes, is amended to read:

13-501. Persons under eighteen years of age; felony charging; definitions

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age and is accused of any of the following offenses:

1. First degree murder in violation of section 13-1105.
2. Second degree murder in violation of section 13-1104.
3. Forcible sexual assault in violation of section 13-1406.
4. Armed robbery in violation of section 13-1904.
5. Any other violent felony offense.
6. Any felony offense committed by a chronic felony offender.
7. Any offense that is properly joined to an offense listed in this subsection.

B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least fourteen years of age and is accused of any of the following offenses:

1. A class 1 felony.
2. A class 2 felony.
3. A class 3 felony in violation of any offense in chapters 10 through 17 or chapter 19 or 23 of this title.
4. A class 3, 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 DANGEROUS OFFENSE.
5. Any felony offense committed by a chronic felony offender.
6. Any offense that is properly joined to an offense listed in this subsection.

C. A criminal prosecution shall be brought against a juvenile in the same manner as an adult if the juvenile has been accused of a criminal offense and has a historical prior felony conviction.

D. At the time the county attorney files a complaint or indictment the county attorney shall file a notice stating that the juvenile is a chronic felony offender. Subject to subsection E of this section, the notice shall establish and confer jurisdiction over the juvenile as a chronic felony offender.

E. Upon motion of the juvenile the court shall hold a hearing after arraignment and before trial to determine if a juvenile is a chronic felony offender. At the hearing the state shall prove by a preponderance of the evidence that the juvenile is a chronic felony offender. If the court does not find that the juvenile is a chronic felony offender, the court shall transfer the juvenile to the juvenile court pursuant to section 8-302. If the court finds that the juvenile is a chronic felony offender or if the juvenile does not file a motion to determine if the juvenile is a chronic felony offender, the criminal prosecution shall continue.

F. Except as provided in section 13-921, a person who is charged pursuant to this section shall be sentenced in the criminal court in the same manner as an adult for any offense for which the person is convicted.

G. For the purposes of this section:

1. "Accused" means a juvenile against whom a complaint, information or indictment is filed.

2. "Chronic felony offender" means a juvenile who has had two prior and separate adjudications and dispositions for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult.

3. "Forcible sexual assault" means sexual assault pursuant to section 13-1406 that is committed without consent as defined in section 13-1401, paragraph ~~4~~ 5, subdivision (a).

~~4. "Historical prior felony conviction" has the same meaning prescribed in section 13-604.~~

~~5.~~ 4. "Other violent felony offense" means:

(a) Aggravated assault pursuant to section 13-1204, subsection A, paragraph 1.

(b) Aggravated assault pursuant to section 13-1204, subsection A, paragraph 2 involving the use of a deadly weapon.

(c) Drive by shooting pursuant to section 13-1209.

(d) Discharging a firearm at a structure pursuant to section 13-1211.

Sec. 14. Section 13-502, Arizona Revised Statutes, is amended to read:

13-502. <u>Insanity test; burden of proof; guilty except insane verdict</u>

A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was

1 wrong. A mental disease or defect constituting legal insanity is an
2 affirmative defense. Mental disease or defect does not include disorders
3 that result from acute voluntary intoxication or withdrawal from alcohol or
4 drugs, character defects, psychosexual disorders or impulse control
5 disorders. Conditions that do not constitute legal insanity include but are
6 not limited to momentary, temporary conditions arising from the pressure of
7 the circumstances, moral decadence, depravity or passion growing out of
8 anger, jealousy, revenge, hatred or other motives in a person who does not
9 suffer from a mental disease or defect or an abnormality that is manifested
10 only by criminal conduct.
11 B. In a case involving the death or serious physical injury of or the
12 threat of death or serious physical injury to another person, if a plea of
13 insanity is made and the court determines that a reasonable basis exists to
14 support the plea, the court may commit the defendant to a secure state mental
15 health facility under the department of health services, a secure county
16 mental health evaluation and treatment facility or another secure licensed
17 mental health facility for up to thirty days for mental health evaluation and
18 treatment. Experts at the mental health facility who are licensed pursuant
19 to title 32, who are familiar with this state's insanity statutes, who are
20 specialists in mental diseases and defects and who are knowledgeable
21 concerning insanity shall observe and evaluate the defendant. The expert or
22 experts who examine the defendant shall submit a written report of the
23 evaluation to the court, the defendant's attorney and the prosecutor. The
24 court shall order the defendant to pay the costs of the mental health
25 facility to the clerk of the court. The clerk of the court shall transmit
26 the reimbursements to the mental health facility for all of its costs. If
27 the court finds the defendant is indigent or otherwise is unable to pay all
28 or any of the costs, the court shall order the county to reimburse the mental
29 health facility for the remainder of the costs. Notwithstanding section
30 36-545.02, the mental health facility may maintain the reimbursements. If
31 the court does not commit the defendant to a secure state mental health
32 facility, a secure county mental health evaluation and treatment facility or
33 another secure licensed mental health facility, the court shall appoint an
34 independent expert who is licensed pursuant to title 32, who is familiar with
35 this state's insanity statutes, who is a specialist in mental diseases and
36 defects and who is knowledgeable concerning insanity to observe and evaluate
37 the defendant. The expert who examines the defendant shall submit a written
38 report of the evaluation to the court, the defendant's attorney and the
39 prosecutor. The court shall order the defendant to pay the costs of the
40 services of the independent expert to the clerk of the court. The clerk of
41 the court shall transmit the reimbursements to the expert. If the court
42 finds the defendant is indigent or otherwise unable to pay all or any of the
43 costs, the court shall order the county to reimburse the expert for the
44 remainder of the costs. This subsection does not prohibit the defendant or
45 this state from obtaining additional psychiatric examinations by other mental

health experts who are licensed pursuant to title 32, who are familiar with this state's insanity statutes, who are specialists in mental diseases and defects and who are knowledgeable concerning insanity.

C. The defendant shall prove the defendant's legal insanity by clear and convincing evidence.

D. If the finder of fact finds the defendant guilty except insane, the court shall determine the sentence the defendant could have received pursuant to ~~section 13-703, subsection A or~~ section 13-707 or SECTION 13-751, SUBSECTION A OR the presumptive sentence the defendant could have received pursuant to section ~~13-604, section 13-604.01, section 13-701, subsection C,~~ 13-702, SECTION 13-703, SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A, section 13-710 or section 13-1406 if the defendant had not been found insane, and the judge shall sentence the defendant to a term of incarceration in the state department of corrections and shall order the defendant to be placed under the jurisdiction of the psychiatric security review board and committed to a state mental health facility under the department of health services pursuant to section 13-3994 for that term. In making this determination the court shall not consider the sentence enhancements for prior convictions under section ~~13-604~~ 13-703 OR 13-704. The court shall expressly identify each act that the defendant committed and separately find whether each act involved the death or physical injury of or a substantial threat of death or physical injury to another person.

E. A guilty except insane verdict is not a criminal conviction for sentencing enhancement purposes under section ~~13-604~~ 13-703 OR 13-704.

Sec. 15. Repeal

Section 13-604, Arizona Revised Statutes, as amended by Laws 2008, chapter 24, section 1, is repealed.

Sec. 16. Title 13, chapter 6, Arizona Revised Statutes, is amended by adding a new section 13-604, to read:

13-604. Class 6 felony; designation

A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A PERSON IS CONVICTED OF ANY CLASS 6 FELONY NOT INVOLVING A DANGEROUS OFFENSE AND IF THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT IT WOULD BE UNDULY HARSH TO SENTENCE THE DEFENDANT FOR A FELONY, THE COURT MAY ENTER JUDGMENT OF CONVICTION FOR A CLASS 1 MISDEMEANOR AND MAKE DISPOSITION ACCORDINGLY OR MAY PLACE THE DEFENDANT ON PROBATION IN ACCORDANCE WITH CHAPTER 9 OF THIS TITLE AND REFRAIN FROM DESIGNATING THE OFFENSE AS A FELONY OR MISDEMEANOR UNTIL THE PROBATION IS TERMINATED. THE OFFENSE SHALL BE TREATED AS A FELONY FOR ALL PURPOSES UNTIL SUCH TIME AS THE COURT MAY ACTUALLY ENTER AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR. THIS SUBSECTION DOES NOT APPLY TO ANY PERSON WHO STANDS CONVICTED OF A CLASS 6 FELONY AND WHO HAS PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES.

B. IF A CRIME OR PUBLIC OFFENSE IS PUNISHABLE IN THE DISCRETION OF THE COURT BY A SENTENCE AS A CLASS 6 FELONY OR A CLASS 1 MISDEMEANOR, THE OFFENSE SHALL BE DEEMED A MISDEMEANOR IF THE PROSECUTING ATTORNEY FILES ANY OF THE FOLLOWING:

1. AN INFORMATION IN SUPERIOR COURT DESIGNATING THE OFFENSE AS A MISDEMEANOR.

2. A COMPLAINT IN JUSTICE COURT OR MUNICIPAL COURT DESIGNATING THE OFFENSE AS A MISDEMEANOR WITHIN THE JURISDICTION OF THE RESPECTIVE COURT.

3. A COMPLAINT, WITH THE CONSENT OF THE DEFENDANT, BEFORE OR DURING THE PRELIMINARY HEARING AMENDING THE COMPLAINT TO CHARGE A MISDEMEANOR.

Sec. 17. Transfer and renumber

A. Section 13-604.01, Arizona Revised Statutes, as amended by Laws 2008, chapter 219, section 1, is transferred and renumbered for placement in title 13, chapter 7, Arizona Revised Statutes, as section 13-705.

B. Section 13-604.02, Arizona Revised Statutes, is transferred and renumbered for placement in title 13, chapter 7, Arizona Revised Statutes, as section 13-708.

Sec. 18. Repeal

A. Section 13-604.01, Arizona Revised Statutes, as amended by Laws 2008, chapter 97, section 1, is repealed.

B. Section 13-604.01, Arizona Revised Statutes, as amended by Laws 2008, chapter 195, section 1, is repealed.

C. Section 13-604.03, Arizona Revised Statutes, is repealed.

Sec. 19. Transfer and renumber

Section 13-604.04, Arizona Revised Statutes, is transferred and renumbered for placement in title 13, chapter 9, Arizona Revised Statutes, as section 13-901.03.

Sec. 20. Section 13-607, Arizona Revised Statutes, is amended to read:

13-607. Judgment of guilt and sentence document; fingerprint; contents of document; recitations

A. At the time of sentencing a person convicted of a felony offense or a violation of section 13-1802, 13-1805, 28-1381 or 28-1382, the court shall execute a judgment of guilt and sentence document or minute order as prescribed by this section.

B. The court or a person appointed by the court shall at the time of sentencing and in open court permanently affix ~~a~~ THE DEFENDANT'S fingerprint ~~of the defendant~~ to the document or order.

C. The document or order shall recite all of the following in addition to any information deemed appropriate by the court:

1. The DEFENDANT'S full name and date of birth ~~of the defendant~~.

2. The name of the counsel for the defendant or, if counsel was waived, the fact that the defendant knowingly, voluntarily and intelligently waived the defendant's right to counsel after having been fully apprised of the defendant's right to counsel.

3. The name, statutory citation and classification of the offense.

4. Whether there was a finding by the trier of fact that the offense was of a dangerous or repetitive nature pursuant to section ~~13-604 or 13-604.02~~ 13-703, 13-704 OR 13-708.

5. Whether the basis of the finding of guilt was by trial to a jury or to the court, or by plea of guilty or no contest.

6. That there was a knowing, voluntary and intelligent waiver of the right to a jury trial if the finding of guilt was based on a trial to the court.

7. That there was a knowing, voluntary and intelligent waiver of all pertinent rights if the finding of guilt was based on a plea of guilty or no contest.

8. A certification by the court or the clerk of the court that at the time of sentencing and in open court the defendant's fingerprint was permanently affixed to the document or order.

D. The document or order shall be made a permanent part of the public records of the court, and the recitations contained in the document or order are prima facie evidence of the facts stated in the recitations.

Sec. 21. Transfer and renumber

Section 13-609, Arizona Revised Statutes, is transferred and renumbered for placement in title 13, chapter 7, Arizona Revised Statutes, as section 13-709.

Sec. 22. Section 13-610, Arizona Revised Statutes, is amended to read:

13-610. DNA testing

A. Within thirty days after a person is sentenced to the state department of corrections or a person who is accepted under the interstate compact for the supervision of parolees and probationers arrives in this state, the state department of corrections shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense listed in this section and was sentenced to a term of imprisonment or was convicted of any offense that was committed in another jurisdiction that if committed in this state would be a violation of any offense listed in this section and the person is under the supervision of the state department of corrections. The state department of corrections shall transmit the sample to the department of public safety.

B. Within thirty days after a person is placed on probation and sentenced to a term of incarceration in a county jail detention facility or is detained in a county juvenile detention facility, the county detention facility shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county detention facility shall transmit the sample to the department of public safety.

C. Within thirty days after a person is convicted and placed on probation without a term of incarceration or adjudicated delinquent and placed on probation, the county probation department shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county probation department shall transmit the sample to the department of public safety.

D. Within thirty days after the arrival of a person who is accepted under the interstate compact for the supervision of parolees and probationers and who is under the supervision of a county probation department, the county probation department shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense that was committed in another jurisdiction that if committed in this state would be a violation of any offense listed in this section and was sentenced to a term of probation. The county probation department shall transmit the sample to the department of public safety.

E. Within thirty days after a juvenile is committed to the department of juvenile corrections, the department of juvenile corrections shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the youth if the youth was adjudicated delinquent for an offense listed in this section and was committed to a secure care facility. The department of juvenile corrections shall transmit the sample to the department of public safety.

F. Within thirty days after the arrival in this state of a juvenile who is accepted by the department of juvenile corrections pursuant to the interstate compact on juveniles and who was adjudicated for an offense that was committed in another jurisdiction that if committed in this state would be a violation of any offense listed in this section, the compact administrator shall request that the sending state impose as a condition of supervision that the juvenile submit a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing. If the sending state does not impose that condition, the department of juvenile corrections shall request a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing within thirty days after the juvenile's arrival in this state. The department of juvenile corrections shall transmit the sample to the department of public safety.

G. Notwithstanding subsections A through F of this section, the agency that is responsible for securing a sample pursuant to this section shall not secure the sample if the scientific criminal analysis section of the department of public safety has previously received and maintains a sample sufficient for deoxyribonucleic acid testing.

1 H. The department of public safety shall do all of the following:
2 1. Conduct or oversee through mutual agreement an analysis of the
3 samples that it receives pursuant to subsections K, L and O of this section.
4 2. Make and maintain a report of the results of each deoxyribonucleic
5 acid analysis.
6 3. Maintain samples of blood and other bodily substances for at least
7 thirty-five years.
8 I. Any sample and the result of any test that is obtained pursuant to
9 this section may be used only as follows:
10 1. For law enforcement identification purposes.
11 2. In a proceeding in a criminal prosecution or juvenile adjudication.
12 3. In a proceeding under title 36, chapter 37.
13 J. If the conviction of a person who is subject to this section is
14 overturned on appeal or postconviction relief and a final mandate has been
15 issued, on petition of the person to the superior court in the county in
16 which the conviction occurred, the court shall order that the person's
17 deoxyribonucleic acid profile resulting from that conviction be expunged from
18 the Arizona deoxyribonucleic acid identification system established by
19 section 41-2418 unless the person has been convicted of another offense that
20 would require the person to submit to deoxyribonucleic acid testing pursuant
21 to this section.
22 K. If a person is arrested for any offense listed in subsection O,
23 paragraph 3 of this section and is transferred by the arresting authority to
24 a state, county or local law enforcement agency or jail, the arresting
25 authority or its designee shall secure a sufficient sample of buccal cells or
26 other bodily substances for deoxyribonucleic acid testing and extraction from
27 the person for the purpose of determining identification characteristics.
28 The arresting authority or its designee shall transmit the sample to the
29 department of public safety.
30 L. If a judicial officer as defined in section 13-3967 releases a
31 person on the person's own recognizance or on bail, the judicial officer
32 shall order the person to report, within five days, if the person is charged
33 with a felony or misdemeanor offense listed in subsection O, paragraph 3 of
34 this section to the law enforcement agency that arrested the person or its
35 designee and submit a sufficient sample of buccal cells or other bodily
36 substances for deoxyribonucleic acid testing and extraction. The arresting
37 authority or its designee shall transmit the sample to the department of
38 public safety. If a person does not comply with an order made pursuant to
39 this subsection, the court shall revoke the person's release.
40 M. A person who is subject to subsection K or L of this section may
41 petition the superior court in the county in which the arrest occurred or the
42 criminal charge was filed to order that the person's deoxyribonucleic acid
43 profile and sample be expunged from the Arizona deoxyribonucleic acid
44 identification system, unless the person has been arrested or charged with or
45 convicted of another offense that would require the person to submit to

deoxyribonucleic acid testing pursuant to this section, if any of the following applies:

1. The criminal charges are not filed within the applicable period prescribed by section 13-107.

2. The criminal charges are dismissed.

3. The person is acquitted at trial.

N. If any sample that is submitted to the department of public safety under this section is found to be unacceptable for analysis and use or cannot be used by the department, the department shall require that another sample of blood or other bodily substances be secured pursuant to this section.

O. This section applies to persons who are:

1. Convicted of any felony offense.

2. Adjudicated delinquent for any of the following offenses:

(a) A violation or an attempt to violate any offense in chapter 11 of this title, any felony offense in chapter 14 or 35.1 of this title or section 13-1507, 13-1508 or 13-3608.

(b) Any offense for which a person is required to register pursuant to section 13-3821.

(c) A violation of any felony offense in chapter 34 of this title that may be prosecuted pursuant to section 13-501, subsection B, paragraph 2.

(d) A violation of any felony offense that is listed in section 13-501.

3. ~~Beginning January 1, 2008,~~ Arrested for a violation of any offense in chapter 11 of this title, a violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1417, 13-1507, 13-1508, 13-3208, 13-3214, 13-3555 or 13-3608 or a violation of any serious offense ~~pursuant to~~ AS DEFINED IN section ~~13-604~~ 13-706 ~~involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury.~~ THAT IS A DANGEROUS OFFENSE.

Sec. 23. Section 13-701, Arizona Revised Statutes, is amended to read:

13-701. Sentence of imprisonment for felony; presentence report; aggravating and mitigating factors; consecutive terms of imprisonment; definition

A. A sentence of imprisonment for a felony shall be a definite term of years and the person sentenced, unless otherwise provided by law, shall be committed to the custody of the state department of corrections.

B. No prisoner may be transferred to the custody of the state department of corrections without a certified copy of the judgment and sentence, signed by the sentencing judge, and a copy of a recent presentence investigation report unless the court has waived preparation of the report.

~~C. Except as provided in section 13-604 the term of imprisonment for a felony shall be determined as follows for a first offense:~~

~~1. For a class 2 felony, five years.~~

~~2. For a class 3 felony, three and one-half years.~~

~~3. For a class 4 felony, two and one-half years.~~
~~4. For a class 5 felony, one and one-half years.~~
~~5. For a class 6 felony, one year.~~

C. THE MINIMUM OR MAXIMUM TERM IMPOSED PURSUANT TO SECTION 13-702, 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 OR 13-3419 MAY BE IMPOSED ONLY IF ONE OR MORE OF THE CIRCUMSTANCES ALLEGED TO BE IN AGGRAVATION OF THE CRIME ARE FOUND TO BE TRUE BY THE TRIER OF FACT BEYOND A REASONABLE DOUBT OR ARE ADMITTED BY THE DEFENDANT, EXCEPT THAT AN ALLEGED AGGRAVATING CIRCUMSTANCE UNDER SUBSECTION D, PARAGRAPH 11 OF THIS SECTION SHALL BE FOUND TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE BY THE COURT, ON ANY EVIDENCE OR INFORMATION INTRODUCED OR SUBMITTED TO THE COURT OR THE TRIER OF FACT BEFORE SENTENCING OR ANY EVIDENCE PRESENTED AT TRIAL, AND FACTUAL FINDINGS AND REASONS IN SUPPORT OF SUCH FINDINGS ARE SET FORTH ON THE RECORD AT THE TIME OF SENTENCING.

D. FOR THE PURPOSE OF DETERMINING THE SENTENCE PURSUANT TO SUBSECTION C OF THIS SECTION, THE TRIER OF FACT SHALL DETERMINE AND THE COURT SHALL CONSIDER THE FOLLOWING AGGRAVATING CIRCUMSTANCES, EXCEPT THAT THE COURT SHALL DETERMINE AN AGGRAVATING CIRCUMSTANCE UNDER PARAGRAPH 11 OF THIS SUBSECTION:

1. INFLICTION OR THREATENED INFLICTION OF SERIOUS PHYSICAL INJURY, EXCEPT IF THIS CIRCUMSTANCE IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF CONVICTION OR HAS BEEN UTILIZED TO ENHANCE THE RANGE OF PUNISHMENT UNDER SECTION 13-704.

2. USE, THREATENED USE OR POSSESSION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT DURING THE COMMISSION OF THE CRIME, EXCEPT IF THIS CIRCUMSTANCE IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF CONVICTION OR HAS BEEN UTILIZED TO ENHANCE THE RANGE OF PUNISHMENT UNDER SECTION 13-704.

3. IF THE OFFENSE INVOLVES THE TAKING OF OR DAMAGE TO PROPERTY, THE VALUE OF THE PROPERTY TAKEN OR DAMAGED.

4. PRESENCE OF AN ACCOMPLICE.

5. ESPECIALLY HEINOUS, CRUEL OR DEPRAVED MANNER IN WHICH THE OFFENSE WAS COMMITTED.

6. THE DEFENDANT COMMITTED THE OFFENSE AS CONSIDERATION FOR THE RECEIPT, OR IN THE EXPECTATION OF THE RECEIPT, OF ANYTHING OF PECUNIARY VALUE.

7. THE DEFENDANT PROCURED THE COMMISSION OF THE OFFENSE BY PAYMENT, OR PROMISE OF PAYMENT, OF ANYTHING OF PECUNIARY VALUE.

8. AT THE TIME OF THE COMMISSION OF THE OFFENSE, THE DEFENDANT WAS A PUBLIC SERVANT AND THE OFFENSE INVOLVED CONDUCT DIRECTLY RELATED TO THE DEFENDANT'S OFFICE OR EMPLOYMENT.

9. THE VICTIM OR, IF THE VICTIM HAS DIED AS A RESULT OF THE CONDUCT OF THE DEFENDANT, THE VICTIM'S IMMEDIATE FAMILY SUFFERED PHYSICAL, EMOTIONAL OR FINANCIAL HARM.

10. DURING THE COURSE OF THE COMMISSION OF THE OFFENSE, THE DEATH OF AN UNBORN CHILD AT ANY STAGE OF ITS DEVELOPMENT OCCURRED.

11. THE DEFENDANT WAS PREVIOUSLY CONVICTED OF A FELONY WITHIN THE TEN YEARS IMMEDIATELY PRECEDING THE DATE OF THE OFFENSE. A CONVICTION OUTSIDE THE JURISDICTION OF THIS STATE FOR AN OFFENSE THAT IF COMMITTED IN THIS STATE WOULD BE PUNISHABLE AS A FELONY IS A FELONY CONVICTION FOR THE PURPOSES OF THIS PARAGRAPH.

12. THE DEFENDANT WAS WEARING BODY ARMOR AS DEFINED IN SECTION 13-3116.

13. THE VICTIM OF THE OFFENSE IS AT LEAST SIXTY-FIVE YEARS OF AGE OR IS A DISABLED PERSON AS DEFINED IN SECTION 38-492, SUBSECTION B.

14. THE DEFENDANT WAS APPOINTED PURSUANT TO TITLE 14 AS A FIDUCIARY AND THE OFFENSE INVOLVED CONDUCT DIRECTLY RELATED TO THE DEFENDANT'S DUTIES TO THE VICTIM AS FIDUCIARY.

15. EVIDENCE THAT THE DEFENDANT COMMITTED THE CRIME OUT OF MALICE TOWARD A VICTIM BECAUSE OF THE VICTIM'S IDENTITY IN A GROUP LISTED IN SECTION 41-1750, SUBSECTION A, PARAGRAPH 3 OR BECAUSE OF THE DEFENDANT'S PERCEPTION OF THE VICTIM'S IDENTITY IN A GROUP LISTED IN SECTION 41-1750, SUBSECTION A, PARAGRAPH 3.

16. THE DEFENDANT WAS CONVICTED OF A VIOLATION OF SECTION 13-1102, SECTION 13-1103, SECTION 13-1104, SUBSECTION A, PARAGRAPH 3 OR SECTION 13-1204, SUBSECTION A, PARAGRAPH 1 OR 2 ARISING FROM AN ACT THAT WAS COMMITTED WHILE DRIVING A MOTOR VEHICLE AND THE DEFENDANT'S ALCOHOL CONCENTRATION AT THE TIME OF COMMITTING THE OFFENSE WAS 0.15 OR MORE. FOR THE PURPOSES OF THIS PARAGRAPH, "ALCOHOL CONCENTRATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-101.

17. LYING IN WAIT FOR THE VICTIM OR AMBUSHING THE VICTIM DURING THE COMMISSION OF ANY FELONY.

18. THE OFFENSE WAS COMMITTED IN THE PRESENCE OF A CHILD AND ANY OF THE CIRCUMSTANCES EXISTS THAT ARE SET FORTH IN SECTION 13-3601, SUBSECTION A.

19. THE OFFENSE WAS COMMITTED IN RETALIATION FOR A VICTIM EITHER REPORTING CRIMINAL ACTIVITY OR BEING INVOLVED IN AN ORGANIZATION, OTHER THAN A LAW ENFORCEMENT AGENCY, THAT IS ESTABLISHED FOR THE PURPOSE OF REPORTING OR PREVENTING CRIMINAL ACTIVITY.

20. THE DEFENDANT WAS IMPERSONATING A PEACE OFFICER AS DEFINED IN SECTION 1-215.

21. THE DEFENDANT WAS IN VIOLATION OF 8 UNITED STATES CODE SECTION 1323, 1324, 1325, 1326 OR 1328 AT THE TIME OF THE COMMISSION OF THE OFFENSE.

22. THE DEFENDANT USED A REMOTE STUN GUN OR AN AUTHORIZED REMOTE STUN GUN IN THE COMMISSION OF THE OFFENSE. FOR THE PURPOSES OF THIS PARAGRAPH:

(a) "AUTHORIZED REMOTE STUN GUN" MEANS A REMOTE STUN GUN THAT HAS ALL OF THE FOLLOWING:

(i) AN ELECTRICAL DISCHARGE THAT IS LESS THAN ONE HUNDRED THOUSAND VOLTS AND LESS THAN NINE JOULES OF ENERGY PER PULSE.

(ii) A SERIAL OR IDENTIFICATION NUMBER ON ALL PROJECTILES THAT ARE DISCHARGED FROM THE REMOTE STUN GUN.

(iii) AN IDENTIFICATION AND TRACKING SYSTEM THAT, ON DEPLOYMENT OF REMOTE ELECTRODES, DISPERSES CODED MATERIAL THAT IS TRACEABLE TO THE PURCHASER THROUGH RECORDS THAT ARE KEPT BY THE MANUFACTURER ON ALL REMOTE STUN GUNS AND ALL INDIVIDUAL CARTRIDGES SOLD.

(iv) A TRAINING PROGRAM THAT IS OFFERED BY THE MANUFACTURER.

(b) "REMOTE STUN GUN" MEANS AN ELECTRONIC DEVICE THAT EMITS AN ELECTRICAL CHARGE AND THAT IS DESIGNED AND PRIMARILY EMPLOYED TO INCAPACITATE A PERSON OR ANIMAL EITHER THROUGH CONTACT WITH ELECTRODES ON THE DEVICE ITSELF OR REMOTELY THROUGH WIRED PROBES THAT ARE ATTACHED TO THE DEVICE OR THROUGH A SPARK, PLASMA, IONIZATION OR OTHER CONDUCTIVE MEANS EMITTING FROM THE DEVICE.

23. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE, THE DEFENDANT COMMITTED A VIOLATION OF SECTION 28-661, 28-662 OR 28-663.

24. ANY OTHER FACTOR THAT THE STATE ALLEGES IS RELEVANT TO THE DEFENDANT'S CHARACTER OR BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE CRIME.

E. FOR THE PURPOSE OF DETERMINING THE SENTENCE PURSUANT TO SUBSECTION C OF THIS SECTION, THE COURT SHALL CONSIDER THE FOLLOWING MITIGATING CIRCUMSTANCES:

1. THE AGE OF THE DEFENDANT.

2. THE DEFENDANT'S CAPACITY TO APPRECIATE THE WRONGFULNESS OF THE DEFENDANT'S CONDUCT OR TO CONFORM THE DEFENDANT'S CONDUCT TO THE REQUIREMENTS OF LAW WAS SIGNIFICANTLY IMPAIRED, BUT NOT SO IMPAIRED AS TO CONSTITUTE A DEFENSE TO PROSECUTION.

3. THE DEFENDANT WAS UNDER UNUSUAL OR SUBSTANTIAL DURESS, ALTHOUGH NOT TO A DEGREE THAT WOULD CONSTITUTE A DEFENSE TO PROSECUTION.

4. THE DEGREE OF THE DEFENDANT'S PARTICIPATION IN THE CRIME WAS MINOR, ALTHOUGH NOT SO MINOR AS TO CONSTITUTE A DEFENSE TO PROSECUTION.

5. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE, THE DEFENDANT COMPLIED WITH ALL DUTIES IMPOSED UNDER SECTIONS 28-661, 28-662 AND 28-663.

6. ANY OTHER FACTOR THAT IS RELEVANT TO THE DEFENDANT'S CHARACTER OR BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE CRIME AND THAT THE COURT FINDS TO BE MITIGATING.

F. IF THE TRIER OF FACT FINDS AT LEAST ONE AGGRAVATING CIRCUMSTANCE, THE TRIAL COURT MAY FIND BY A PREPONDERANCE OF THE EVIDENCE ADDITIONAL AGGRAVATING CIRCUMSTANCES. IN DETERMINING WHAT SENTENCE TO IMPOSE, THE COURT SHALL TAKE INTO ACCOUNT THE AMOUNT OF AGGRAVATING CIRCUMSTANCES AND WHETHER THE AMOUNT OF MITIGATING CIRCUMSTANCES IS SUFFICIENTLY SUBSTANTIAL TO JUSTIFY THE LESSER TERM. IF THE TRIER OF FACT FINDS AGGRAVATING CIRCUMSTANCES AND THE COURT DOES NOT FIND ANY MITIGATING CIRCUMSTANCES, THE COURT SHALL IMPOSE AN AGGRAVATED SENTENCE.

G. THE COURT IN IMPOSING A SENTENCE SHALL CONSIDER THE EVIDENCE AND OPINIONS PRESENTED BY THE VICTIM OR THE VICTIM'S IMMEDIATE FAMILY AT ANY AGGRAVATION OR MITIGATION PROCEEDING OR IN THE PRESENTENCE REPORT.

H. THIS SECTION DOES NOT AFFECT ANY PROVISION OF LAW THAT IMPOSES THE DEATH PENALTY, THAT EXPRESSLY PROVIDES FOR IMPRISONMENT FOR LIFE OR THAT AUTHORIZES OR RESTRICTS THE GRANTING OF PROBATION AND SUSPENDING THE EXECUTION OF SENTENCE.

I. THE INTENTIONAL FAILURE BY THE COURT TO IMPOSE THE MANDATORY SENTENCES OR PROBATION CONDITIONS PROVIDED IN THIS TITLE IS MALFEASANCE.

J. FOR THE PURPOSES OF THIS SECTION, "TRIER OF FACT" MEANS A JURY, UNLESS THE DEFENDANT AND THE STATE WAIVE A JURY IN WHICH CASE THE TRIER OF FACT MEANS THE COURT.

Sec. 24. Section 13-702, Arizona Revised Statutes, is amended to read:

13-702. First time felony offenders; sentencing; definition

A. ~~Sentences provided in section 13-701 for a first conviction of a felony,~~ UNLESS A SPECIFIC SENTENCE IS OTHERWISE PROVIDED, THE TERM OF IMPRISONMENT FOR A FIRST FELONY OFFENSE SHALL BE THE PRESUMPTIVE SENTENCE DETERMINED PURSUANT TO SUBSECTION D OF THIS SECTION. Except FOR those felonies 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 DANGEROUS OFFENSE or if a specific sentence is otherwise provided, THE COURT may ~~be increased~~ INCREASE or ~~reduced by the court~~ REDUCE THE PRESUMPTIVE SENTENCE within the ranges set by ~~this~~ subsection D OF THIS SECTION. Any reduction or increase shall be based on the aggravating and mitigating circumstances ~~contained~~ LISTED in SECTION 13-701, subsections ~~C and D of this section~~ D AND E and shall be within the ~~following~~ ranges~~:~~ PRESCRIBED IN SUBSECTION D OF THIS SECTION.

	~~Minimum~~	~~Maximum~~
~~1. For a class 2 felony~~	~~4 years~~	~~10 years~~
~~2. For a class 3 felony~~	~~2.5 years~~	~~7 years~~
~~3. For a class 4 felony~~	~~1.5 years~~	~~3 years~~
~~4. For a class 5 felony~~	~~9 months~~	~~2 years~~
~~5. For a class 6 felony~~	~~6 months~~	~~1.5 years~~

~~B. The upper or lower term imposed pursuant to section 13-604, 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may be imposed only if one or more of the circumstances alleged to be in aggravation of the crime are found to be true by the trier of fact beyond a reasonable doubt or are admitted by the defendant, except that an alleged aggravating circumstance under subsection C, paragraph 11 of this section shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of such findings are set forth on the record at the time of sentencing.~~

~~C. For the purpose of determining the sentence pursuant to section 13-710 and subsection A of this section, the trier of fact shall determine and the court shall consider the following aggravating circumstances, except that the court shall determine an aggravating circumstance under paragraph 11 of this subsection:~~

~~1. Infliction or threatened infliction of serious physical injury, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 13-604.~~

~~2. Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of the crime, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 13-604.~~

~~3. If the offense involves the taking of or damage to property, the value of the property so taken or damaged.~~

~~4. Presence of an accomplice.~~

~~5. Especially heinous, cruel or depraved manner in which the offense was committed.~~

~~6. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.~~

~~7. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.~~

~~8. At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to the defendant's office or employment.~~

~~9. The victim or, if the victim has died as a result of the conduct of the defendant, the victim's immediate family suffered physical, emotional or financial harm.~~

~~10. During the course of the commission of the offense, the death of an unborn child at any stage of its development occurred.~~

~~11. The defendant was previously convicted of a felony within the ten years immediately preceding the date of the offense. A conviction outside the jurisdiction of this state for an offense that if committed in this state would be punishable as a felony is a felony conviction for the purposes of this paragraph.~~

~~12. The defendant was wearing body armor as defined in section 13-3116.~~

~~13. The victim of the offense is at least sixty-five years of age or is a disabled person as defined by section 38-492.~~

~~14. The defendant was appointed pursuant to title 14 as a fiduciary and the offense involved conduct directly related to the defendant's duties to the victim as fiduciary.~~

~~15. Evidence that the defendant committed the crime out of malice toward a victim because of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3 or because of the defendant's perception of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3.~~

~~16. The defendant was convicted of a violation of section 13-1102, section 13-1103, section 13-1104, subsection A, paragraph 3 or section 13-1204, subsection A, paragraph 1 or 2 arising from an act that was committed while driving a motor vehicle and the defendant's alcohol concentration at the time of committing the offense was 0.15 or more. For the purposes of this paragraph, "alcohol concentration" has the same meaning prescribed in section 28-101.~~

~~17. Lying in wait for the victim or ambushing the victim during the commission of any felony.~~

~~18. The offense was committed in the presence of a child and any of the circumstances exist that are set forth in section 13-3601, subsection A.~~

~~19. The offense was committed in retaliation for a victim's either reporting criminal activity or being involved in an organization, other than a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity.~~

~~20. The defendant was impersonating a peace officer as defined in section 1-215.~~

~~21. The defendant was in violation of 8 United States Code section 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.~~

~~22. The defendant used a remote stun gun or an authorized remote stun gun in the commission of the offense. For the purposes of this paragraph:~~

~~(a) "Authorized remote stun gun" means a remote stun gun that has all of the following:~~

~~(i) An electrical discharge that is less than one hundred thousand volts and less than nine joules of energy per pulse.~~

~~(ii) A serial or identification number on all projectiles that are discharged from the remote stun gun.~~

~~(iii) An identification and tracking system that, on deployment of remote electrodes, disperses coded material that is traceable to the purchaser through records that are kept by the manufacturer on all remote stun guns and all individual cartridges sold.~~

~~(iv) A training program that is offered by the manufacturer.~~

~~(b) "Remote stun gun" means an electronic device that emits an electrical charge and that is designed and primarily employed to incapacitate a person or animal either through contact with electrodes on the device itself or remotely through wired probes that are attached to the device or through a spark, plasma, ionization or other conductive means emitting from the device.~~

~~23. During or immediately following the commission of the offense, the defendant committed a violation of either section 28-661, 28-662 or 28-663.~~

~~24. Any other factor that the state alleges is relevant to the defendant's character or background or to the nature or circumstances of the crime.~~

~~D. For the purpose of determining the sentence pursuant to section 13-710 and subsection A of this section, the court shall consider the following mitigating circumstances:~~

~~1. The age of the defendant.~~

~~2. The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.~~

~~3. The defendant was under unusual or substantial duress, although not such as to constitute a defense to prosecution.~~

~~4. The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.~~

~~5. During or immediately following the commission of the offense, the defendant complied with all duties imposed under sections 28-661, 28-662 and 28-663.~~

~~6. Any other factor that is relevant to the defendant's character or background or to the nature or circumstances of the crime and that the court finds to be mitigating.~~

~~If the trier of fact finds at least one aggravating circumstance, the trial court may find by a preponderance of the evidence additional aggravating circumstances. In determining what sentence to impose, the court shall take into account the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to call for the lesser term. If the trier of fact finds aggravating circumstances and the court does not find any mitigating circumstances, the court shall impose an aggravated sentence.~~

~~E. The court in imposing a sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in the presentence report.~~

~~F. Nothing in this section affects any provision of law that imposes the death penalty, that expressly provides for imprisonment for life or that authorizes or restricts the granting of probation and suspending the execution of sentence.~~

~~G. Notwithstanding any other provision of this title, if a person is convicted of any class 6 felony not involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument and if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title~~

~~and refrain from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony for all purposes until such time as the court may actually enter an order designating the offense a misdemeanor. This subsection does not apply to any person who stands convicted of a class 6 felony and who has previously been convicted of two or more felonies. If a crime or public offense is punishable in the discretion of the court by a sentence as a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney:~~

~~1. Files an information in superior court designating the offense as a misdemeanor.~~

~~2. Files a complaint in justice court or municipal court designating the offense as a misdemeanor within the jurisdiction of the respective court.~~

~~3. Files a complaint, with the consent of the defendant, before or during the preliminary hearing amending the complaint to charge a misdemeanor.~~

B. IF A PERSON IS CONVICTED OF A FELONY WITHOUT HAVING PREVIOUSLY BEEN CONVICTED OF ANY FELONY AND IF AT LEAST TWO OF THE AGGRAVATING FACTORS LISTED IN SECTION 13-701, SUBSECTION D APPLY, THE COURT MAY INCREASE THE MAXIMUM TERM OF IMPRISONMENT OTHERWISE AUTHORIZED FOR THAT OFFENSE TO AN AGGRAVATED TERM. IF A PERSON IS CONVICTED OF A FELONY WITHOUT HAVING PREVIOUSLY BEEN CONVICTED OF ANY FELONY AND IF THE COURT FINDS AT LEAST TWO MITIGATING FACTORS LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE COURT MAY DECREASE THE MINIMUM TERM OF IMPRISONMENT OTHERWISE AUTHORIZED FOR THAT OFFENSE TO A MITIGATED TERM.

C. THE AGGRAVATED OR MITIGATED TERM IMPOSED PURSUANT TO SUBSECTION D OF THIS SECTION MAY BE IMPOSED ONLY IF AT LEAST TWO OF THE AGGRAVATING CIRCUMSTANCES ARE FOUND BEYOND A REASONABLE DOUBT TO BE TRUE BY THE TRIER OF FACT OR ARE ADMITTED BY THE DEFENDANT, EXCEPT THAT AN AGGRAVATING CIRCUMSTANCE UNDER SECTION 13-701, SUBSECTION D, PARAGRAPH 11 SHALL BE FOUND TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE BY THE COURT, ON ANY EVIDENCE OR INFORMATION INTRODUCED OR SUBMITTED TO THE COURT OR THE TRIER OF FACT BEFORE SENTENCING OR ANY EVIDENCE PRESENTED AT TRIAL, AND FACTUAL FINDINGS AND REASONS IN SUPPORT OF THESE FINDINGS ARE SET FORTH ON THE RECORD AT THE TIME OF SENTENCING.

D. THE TERM OF IMPRISONMENT FOR A PRESUMPTIVE, MINIMUM, MAXIMUM, MITIGATED OR AGGRAVATED SENTENCE SHALL BE WITHIN THE RANGE PRESCRIBED UNDER THIS SUBSECTION. THE TERMS ARE AS FOLLOWS:

FELONY	MITIGATED	MINIMUM	PRESUMPTIVE	MAXIMUM	AGGRAVATED
CLASS 2	3 YEARS	4 YEARS	5 YEARS	10 YEARS	12.5 YEARS
CLASS 3	2 YEARS	2.5 YEARS	3.5 YEARS	7 YEARS	8.75 YEARS
CLASS 4	1 YEAR	1.5 YEARS	2.5 YEARS	3 YEARS	3.75 YEARS
CLASS 5	.5 YEARS	.75 YEARS	1.5 YEARS	2 YEARS	2.5 YEARS
CLASS 6	.33 YEARS	.5 YEARS	1 YEAR	1.5 YEARS	2 YEARS

E. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE SENTENCING OCCURS OF ITS INTENT TO INCREASE OR DECREASE A SENTENCE TO THE AGGRAVATED OR MITIGATED SENTENCE PURSUANT THIS SECTION. IF THE COURT FAILS TO INFORM THE PARTIES, A PARTY WAIVES ITS RIGHT TO BE INFORMED UNLESS THE PARTY TIMELY OBJECTS AT THE TIME OF SENTENCING.

~~H.~~ F. For the purposes of this section, "trier of fact" means a jury, unless the defendant and the state waive a jury in which case the trier of fact means the court.

Sec. 25. Repeal

Sections 13-702.01 and 13-702.02, Arizona Revised Statutes, are repealed.

Sec. 26. Transfer and renumber

The following Arizona Revised Statutes sections are transferred and renumbered for placement in title 13, chapter 7.1, Arizona Revised Statutes, as added by this act, as follows:

1. Section 13-703 as section 13-751.
2. Section 13-703.01, as amended by Laws 2005, chapter 325, section 3, as section 13-752, as amended by section 39 of this act.
3. Section 13-703.01, as amended by Laws 2005, chapter 325, section 4, as section 13-752, as amended by section 40 of this act.
4. Section 13-703.02 as section 13-753.
5. Section 13-703.03 as section 13-754.
6. Section 13-703.04 as section 13-755.
7. Section 13-703.05 as section 13-756.
8. Section 13-704 as section 13-757.
9. Section 13-705 as section 13-758.
10. Section 13-706 as section 13-759.

Sec. 27. Renumber

A. Section 13-708, Arizona Revised Statutes, is renumbered as section 13-711.

B. Section 13-709, Arizona Revised Statutes, is renumbered as section 13-712.

C. Section 13-713, Arizona Revised Statutes, is renumbered as section 13-706.

Sec. 28. Title 13, chapter 7, Arizona Revised Statutes, is amended by adding new sections 13-703 and 13-704, to read:

13-703. Repetitive offenders; sentencing; definition

A. A PERSON SHALL BE SENTENCED AS A CATEGORY ONE REPETITIVE OFFENDER IF THE PERSON IS CONVICTED OF TWO FELONY OFFENSES THAT WERE NOT COMMITTED ON THE SAME OCCASION BUT THAT EITHER ARE CONSOLIDATED FOR TRIAL PURPOSES OR ARE NOT HISTORICAL PRIOR FELONY CONVICTIONS.

B. A PERSON SHALL BE SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER IF THE PERSON EITHER:

1. IS CONVICTED OF THREE OR MORE FELONY OFFENSES THAT WERE NOT COMMITTED ON THE SAME OCCASION BUT THAT EITHER ARE CONSOLIDATED FOR TRIAL PURPOSES OR ARE NOT HISTORICAL PRIOR FELONY CONVICTIONS.

2. EXCEPT AS PROVIDED IN SECTION 13-704 OR 13-705, IS AT LEAST EIGHTEEN YEARS OF AGE OR HAS BEEN TRIED AS AN ADULT AND STANDS CONVICTED OF A FELONY AND HAS ONE HISTORICAL PRIOR FELONY CONVICTION.

C. EXCEPT AS PROVIDED IN SECTION 13-704 OR 13-705, A PERSON SHALL BE SENTENCED AS A CATEGORY THREE REPETITIVE OFFENDER IF THE PERSON IS AT LEAST EIGHTEEN YEARS OF AGE OR HAS BEEN TRIED AS AN ADULT AND STANDS CONVICTED OF A FELONY AND HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS.

D. THE PRESUMPTIVE TERM SET BY THIS SECTION MAY BE AGGRAVATED OR MITIGATED WITHIN THE RANGE UNDER THIS SECTION PURSUANT TO SECTION 13-701, SUBSECTIONS C, D AND E.

E. IF A PERSON IS SENTENCED AS A CATEGORY ONE REPETITIVE OFFENDER PURSUANT TO SUBSECTION A OF THIS SECTION AND IF AT LEAST TWO AGGRAVATING CIRCUMSTANCES LISTED IN SECTION 13-701, SUBSECTION D APPLY OR AT LEAST TWO MITIGATING CIRCUMSTANCES LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE COURT MAY IMPOSE A MITIGATED OR AGGRAVATED SENTENCE PURSUANT TO SUBSECTION H OF THIS SECTION.

F. IF A PERSON IS SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER PURSUANT TO SUBSECTION B, PARAGRAPH 2 OF THIS SECTION AND IF AT LEAST TWO AGGRAVATING CIRCUMSTANCES LISTED IN SECTION 13-701, SUBSECTION D APPLY OR AT LEAST TWO MITIGATING CIRCUMSTANCES LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE COURT MAY IMPOSE A MITIGATED OR AGGRAVATED SENTENCE PURSUANT TO SUBSECTION I OF THIS SECTION.

G. IF A PERSON IS SENTENCED AS A CATEGORY THREE REPETITIVE OFFENDER PURSUANT TO SUBSECTION C OF THIS SECTION AND AT LEAST TWO AGGRAVATING CIRCUMSTANCES LISTED IN SECTION 13-701, SUBSECTION D OR AT LEAST TWO MITIGATING CIRCUMSTANCES LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE COURT MAY IMPOSE A MITIGATED OR AGGRAVATED SENTENCE PURSUANT TO SUBSECTION J OF THIS SECTION.

H. A CATEGORY ONE REPETITIVE OFFENDER SHALL BE SENTENCED WITHIN THE FOLLOWING RANGES:

FELONY	MITIGATED	MINIMUM	PRESUMPTIVE	MAXIMUM	AGGRAVATED
CLASS 2	3 YEARS	4 YEARS	5 YEARS	10 YEARS	12.5 YEARS
CLASS 3	1.8 YEARS	2.5 YEARS	3.5 YEARS	7 YEARS	8.75 YEARS
CLASS 4	1.1 YEARS	1.5 YEARS	2.5 YEARS	3 YEARS	3.75 YEARS
CLASS 5	.5 YEARS	.75 YEARS	1.5 YEARS	2 YEARS	2.5 YEARS
CLASS 6	.3 YEARS	.5 YEARS	1 YEAR	1.5 YEARS	1.8 YEARS

I. A CATEGORY TWO REPETITIVE OFFENDER SHALL BE SENTENCED WITHIN THE FOLLOWING RANGES:

FELONY	MITIGATED	MINIMUM	PRESUMPTIVE	MAXIMUM	AGGRAVATED
CLASS 2	4.5 YEARS	6 YEARS	9.25 YEARS	18.5 YEARS	23.1 YEARS
CLASS 3	3.3 YEARS	4.5 YEARS	6.5 YEARS	13 YEARS	16.25 YEARS
CLASS 4	2.25 YEARS	3 YEARS	4.5 YEARS	6 YEARS	7.5 YEARS

CLASS 5	1 YEAR	1.5 YEARS	2.25 YEARS	3 YEARS	3.75 YEARS
CLASS 6	.75 YEARS	1 YEAR	1.75 YEARS	2.25 YEARS	2.75 YEARS

J. A CATEGORY THREE REPETITIVE OFFENDER SHALL BE SENTENCED WITHIN THE FOLLOWING RANGES:

FELONY	MITIGATED	MINIMUM	PRESUMPTIVE	MAXIMUM	AGGRAVATED
CLASS 2	10.5 YEARS	14 YEARS	15.75 YEARS	28 YEARS	35 YEARS
CLASS 3	7.5 YEARS	10 YEARS	11.25 YEARS	20 YEARS	25 YEARS
CLASS 4	6 YEARS	8 YEARS	10 YEARS	12 YEARS	15 YEARS
CLASS 5	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7.5 YEARS
CLASS 6	2.25 YEARS	3 YEARS	3.75 YEARS	4.5 YEARS	5.75 YEARS

K. THE AGGRAVATED OR MITIGATED TERM IMPOSED PURSUANT TO SUBSECTION H, I OR J OF THIS SECTION MAY BE IMPOSED ONLY IF AT LEAST TWO OF THE AGGRAVATING CIRCUMSTANCES ARE FOUND BEYOND A REASONABLE DOUBT TO BE TRUE BY THE TRIER OF FACT OR ARE ADMITTED BY THE DEFENDANT, EXCEPT THAT AN AGGRAVATING CIRCUMSTANCE UNDER SECTION 13-701, SUBSECTION D, PARAGRAPH 11 SHALL BE FOUND TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE BY THE COURT, ON ANY EVIDENCE OR INFORMATION INTRODUCED OR SUBMITTED TO THE COURT OR THE TRIER OF FACT BEFORE SENTENCING OR ANY EVIDENCE PRESENTED AT TRIAL, AND FACTUAL FINDINGS AND REASONS IN SUPPORT OF THESE FINDINGS ARE SET FORTH ON THE RECORD AT THE TIME OF SENTENCING.

L. CONVICTIONS FOR TWO OR MORE OFFENSES COMMITTED ON THE SAME OCCASION SHALL BE COUNTED AS ONLY ONE CONVICTION FOR THE PURPOSES OF SUBSECTION B, PARAGRAPH 2 AND SUBSECTION C OF THIS SECTION.

M. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE WOULD BE PUNISHABLE AS A FELONY IS SUBJECT TO THIS SECTION. A PERSON WHO HAS BEEN CONVICTED AS AN ADULT OF AN OFFENSE PUNISHABLE AS A FELONY UNDER THE PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO THIS SECTION.

N. THE PENALTIES PRESCRIBED BY THIS SECTION SHALL BE SUBSTITUTED FOR THE PENALTIES OTHERWISE AUTHORIZED BY LAW IF AN ALLEGATION OF PRIOR CONVICTION IS CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND BY THE COURT. THE RELEASE PROVISIONS PRESCRIBED BY THIS SECTION SHALL NOT BE SUBSTITUTED FOR ANY PENALTIES REQUIRED BY THE SUBSTANTIVE OFFENSE OR A PROVISION OF LAW THAT SPECIFIES A LATER RELEASE OR COMPLETION OF THE SENTENCE IMPOSED BEFORE RELEASE. THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION AT ANY TIME BEFORE 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 PERSON WAS IN FACT PREJUDICED BY THE UNTIMELY FILING AND STATES THE REASONS FOR THESE FINDINGS. IF THE ALLEGATION OF A PRIOR CONVICTION IS FILED, THE STATE MUST MAKE AVAILABLE TO THE PERSON A COPY OF ANY MATERIAL OR INFORMATION OBTAINED CONCERNING THE PRIOR CONVICTION. THE CHARGE OF PREVIOUS CONVICTION SHALL NOT BE READ TO THE JURY. FOR THE PURPOSES OF THIS SUBSECTION, "SUBSTANTIVE OFFENSE" MEANS THE FELONY OFFENSE THAT THE TRIER OF FACT FOUND BEYOND A REASONABLE DOUBT THE PERSON COMMITTED. SUBSTANTIVE OFFENSE DOES NOT INCLUDE ALLEGATIONS THAT, IF

PROVEN, WOULD ENHANCE THE SENTENCE OF IMPRISONMENT OR FINE TO WHICH THE PERSON OTHERWISE WOULD BE SUBJECT.

O. A PERSON WHO IS SENTENCED 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, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED.

P. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE SENTENCING OCCURS OF ITS INTENT TO IMPOSE AN AGGRAVATED OR MITIGATED SENTENCE PURSUANT TO SUBSECTION H, I OR J OF THIS SECTION. IF THE COURT FAILS TO INFORM THE PARTIES, A PARTY WAIVES ITS RIGHT TO BE INFORMED UNLESS THE PARTY TIMELY OBJECTS AT THE TIME OF SENTENCING.

Q. THE COURT IN IMPOSING A SENTENCE SHALL CONSIDER THE EVIDENCE AND OPINIONS PRESENTED BY THE VICTIM OR THE VICTIM'S IMMEDIATE FAMILY AT ANY AGGRAVATION OR MITIGATION PROCEEDING OR IN THE PRESENTENCE REPORT.

13-704. Dangerous offenders; sentencing

A. EXCEPT AS PROVIDED IN SECTION 13-705, A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO STANDS CONVICTED OF A FELONY THAT IS A DANGEROUS OFFENSE SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

FELONY	MINIMUM	PRESUMPTIVE	MAXIMUM
CLASS 2	7 YEARS	10.5 YEARS	21 YEARS
CLASS 3	5 YEARS	7.5 YEARS	15 YEARS
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

B. EXCEPT AS PROVIDED IN SECTION 13-705, A PERSON WHO IS CONVICTED OF A CLASS 4, 5 OR 6 FELONY THAT IS A DANGEROUS OFFENSE AND WHO HAS ONE HISTORICAL PRIOR FELONY CONVICTION INVOLVING A DANGEROUS OFFENSE SHALL BE SENTENCED TO A TERM OF IMPRISONMENT 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

C. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION A, A PERSON WHO IS CONVICTED OF A CLASS 4, 5 OR 6 FELONY THAT IS A DANGEROUS OFFENSE AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS INVOLVING DANGEROUS OFFENSES SHALL BE SENTENCED TO A TERM OF IMPRISONMENT 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

D. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION A, A PERSON WHO IS CONVICTED OF A CLASS 2 OR 3 FELONY INVOLVING A DANGEROUS OFFENSE AND WHO HAS ONE HISTORICAL PRIOR FELONY CONVICTION THAT IS A CLASS 1, 2 OR 3 FELONY INVOLVING A DANGEROUS OFFENSE SHALL BE SENTENCED TO A TERM OF IMPRISONMENT 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. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION A, A PERSON WHO IS CONVICTED OF A CLASS 2 OR 3 FELONY INVOLVING A DANGEROUS OFFENSE AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS THAT ARE CLASS 1, 2 OR 3 FELONIES INVOLVING DANGEROUS OFFENSES SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

FELONY	MINIMUM	PRESUMPTIVE	MAXIMUM
CLASS 2	21 YEARS	28 YEARS	35 YEARS
CLASS 3	15 YEARS	20 YEARS	25 YEARS

F. A PERSON WHO IS CONVICTED OF TWO OR MORE FELONY OFFENSES THAT ARE DANGEROUS OFFENSES AND THAT WERE NOT COMMITTED ON THE SAME OCCASION BUT THAT ARE CONSOLIDATED FOR TRIAL PURPOSES OR THAT ARE NOT HISTORICAL PRIOR FELONY CONVICTIONS SHALL BE SENTENCED, FOR THE SECOND OR SUBSEQUENT OFFENSE, PURSUANT TO THIS SUBSECTION. IF THE COURT INCREASES OR DECREASES A SENTENCE PURSUANT TO THIS SUBSECTION, THE COURT SHALL STATE ON THE RECORD THE REASONS FOR THE INCREASE OR DECREASE. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE THE SENTENCING OCCURS OF ITS INTENT TO INCREASE OR DECREASE A SENTENCE PURSUANT TO THIS SUBSECTION. IF THE COURT FAILS TO INFORM THE PARTIES, A PARTY WAIVES ITS RIGHT TO BE INFORMED UNLESS THE PARTY TIMELY OBJECTS AT THE TIME OF SENTENCING. THE TERMS ARE AS FOLLOWS:

1. FOR THE SECOND DANGEROUS OFFENSE:

FELONY	MINIMUM	MAXIMUM	INCREASED MAXIMUM
CLASS 2	10.5 YEARS	21 YEARS	26.25 YEARS
CLASS 3	7.5 YEARS	15 YEARS	18.75 YEARS
CLASS 4	6 YEARS	8 YEARS	10 YEARS
CLASS 5	3 YEARS	4 YEARS	5 YEARS
CLASS 6	2.25 YEARS	3 YEARS	3.75 YEARS

2. FOR ANY DANGEROUS OFFENSE SUBSEQUENT TO THE SECOND DANGEROUS FELONY OFFENSE:

FELONY	MINIMUM	MAXIMUM	INCREASED MAXIMUM
CLASS 2	15.75 YEARS	28 YEARS	35 YEARS
CLASS 3	11.25 YEARS	20 YEARS	25 YEARS
CLASS 4	10 YEARS	12 YEARS	15 YEARS
CLASS 5	5 YEARS	6 YEARS	7.5 YEARS
CLASS 6	3.75 YEARS	4.5 YEARS	5.6 YEARS

G. A PERSON WHO IS SENTENCED PURSUANT TO SUBSECTION A, B, C, D, E OR F OF 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, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED.

H. THE PRESUMPTIVE TERM AUTHORIZED BY THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO THE TERMS OF SECTION 13-701, SUBSECTIONS C, D OR E.

I. FOR THE PURPOSES OF DETERMINING THE APPLICABILITY OF THE PENALTIES PROVIDED IN SUBSECTION A, B, C, D OR E OF THIS SECTION FOR SECOND OR SUBSEQUENT CLASS 2 OR 3 FELONIES, THE CONVICTION FOR ANY FELONY COMMITTED BEFORE OCTOBER 1, 1978 THAT, IF COMMITTED AFTER OCTOBER 1, 1978, COULD BE A DANGEROUS OFFENSE UNDER SUBSECTION A, B, C, D OR E OF THIS SECTION MAY BE DESIGNATED BY THE STATE AS A PRIOR FELONY.

J. CONVICTIONS FOR TWO OR MORE OFFENSES COMMITTED ON THE SAME OCCASION SHALL BE COUNTED AS ONLY ONE CONVICTION FOR THE PURPOSES OF SUBSECTION A, B, C, D OR E OF THIS SECTION.

K. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE WOULD BE PUNISHABLE AS A FELONY IS SUBJECT TO SUBSECTION A, B, C, D OR E OF THIS SECTION. A PERSON WHO HAS BEEN CONVICTED OF AN OFFENSE PUNISHABLE AS A FELONY UNDER THE PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO SUBSECTION A, B, C, D OR E OF THIS SECTION.

L. THE PENALTIES PRESCRIBED BY THIS SECTION SHALL BE SUBSTITUTED FOR THE PENALTIES OTHERWISE AUTHORIZED BY LAW IF AN ALLEGATION OF PRIOR CONVICTION IS CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND BY THE COURT OR IF AN ALLEGATION OF DANGEROUS OFFENSE 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 BEFORE RELEASE. THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION OR THE ALLEGATION OF A DANGEROUS OFFENSE AT ANY TIME BEFORE 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. IF 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 PRIOR CONVICTION SHALL NOT BE READ TO THE JURY. FOR THE PURPOSES OF THIS SUBSECTION, "SUBSTANTIVE OFFENSE" MEANS THE FELONY 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.

M. EXCEPT AS PROVIDED IN SECTION 13-705 OR 13-751, 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.

Sec. 29. Section 13-705, Arizona Revised Statutes, as transferred and renumbered by this act, is amended to read:

13-705. Dangerous crimes against children; sentences; definitions

A. A person who is at least eighteen years of age and who ~~stands~~ IS 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~~ IS 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.~~ AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
13 YEARS	20 YEARS	27 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~~ IS 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~~ AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
13 YEARS	20 YEARS	27 YEARS

A person WHO has been previously convicted of one predicate felony ~~the person~~ shall be sentenced to a ~~presumptive~~ term of imprisonment ~~for thirty years.~~ AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
23 YEARS	30 YEARS	37 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~~ IS 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, aggravated luring a minor for sexual exploitation, child abuse or kidnapping shall be sentenced to a ~~presumptive~~ term of imprisonment ~~for seventeen years. If the convicted~~ AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
10 YEARS	17 YEARS	24 YEARS

A person WHO has been previously convicted of one predicate felony ~~the person~~ shall be sentenced to a ~~presumptive~~ term of imprisonment ~~for twenty-eight years.~~ AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
21 YEARS	28 YEARS	35 YEARS

E. Except as otherwise provided in this section, IF a person ~~who~~ is at least eighteen years of age or ~~who~~ has been tried as an adult and ~~who stands~~ IS 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~~ OR UNLAWFUL AGE MISREPRESENTATION AND is sentenced to a term of imprisonment, THE TERM OF IMPRISONMENT IS AS FOLLOWS AND 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~~:

MINIMUM	PRESUMPTIVE	MAXIMUM
5 YEARS	10 YEARS	15 YEARS

A person WHO has been previously convicted of one predicate felony ~~the person~~ shall be sentenced to a ~~presumptive~~ term of imprisonment ~~for fifteen years~~ AS FOLLOWS 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, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted~~.~~:

MINIMUM	PRESUMPTIVE	MAXIMUM
8 YEARS	15 YEARS	22 YEARS

F. Except as otherwise provided in this section, IF a person ~~who~~ is at least eighteen years of age or ~~who~~ has been tried as an adult and ~~who stands~~ IS 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~~ AND IS 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 TERM OF IMPRISONMENT IS AS FOLLOWS AND 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~~:

MINIMUM	PRESUMPTIVE	MAXIMUM
2.5 YEARS	5 YEARS	7.5 YEARS

A person WHO has been previously convicted of one predicate felony ~~the person~~ shall be sentenced to a ~~presumptive~~ term of imprisonment ~~for fifteen years~~ AS FOLLOWS 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, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted~~.~~:

MINIMUM	PRESUMPTIVE	MAXIMUM
8 YEARS	15 YEARS	22 YEARS

G. The presumptive sentences prescribed in subsections B, C and D of this section or 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~~ 13-701, subsections ~~B,~~ C, ~~and~~ D AND E.

H. Except as provided in subsection F of this section, a person WHO IS 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.

I. A person who ~~stands~~ IS 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.

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~~ IS convicted of a dangerous crime against children in the second degree pursuant to subsection B, C or D of this section 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 TERM OF IMPRISONMENT IS AS FOLLOWS AND 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: ~~.~~

MINIMUM	PRESUMPTIVE	MAXIMUM
5 YEARS	10 YEARS	15 YEARS

K. 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.

~~K.~~ L. Section ~~13-604, subsections M and O~~ 13-704, SUBSECTION J AND SECTION 13-707, SUBSECTION B apply to the determination of prior convictions.

~~L.~~ M. The sentence imposed on a person by the court for a dangerous crime against children under subsection D of this section involving child molestation or sexual abuse pursuant to subsection 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.

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

O. 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.

~~N.~~ P. 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.

(t) Aggravated luring a minor for sexual exploitation.

(u) UNLAWFUL AGE MISREPRESENTATION.

~~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. 30. Section 13-706, Arizona Revised Statutes, as renumbered by this act, is amended to read:

13-706. <u>Serious, violent or aggravated offenders; sentencing; life imprisonment; definition</u>

A. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO IS CONVICTED OF A SERIOUS OFFENSE EXCEPT A DRUG OFFENSE, FIRST DEGREE MURDER OR ANY DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705, 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 AT LEAST TWENTY-FIVE YEARS OR THE SENTENCE IS COMMUTED.

~~A.~~ B. Unless a longer term of imprisonment or death is the prescribed penalty and notwithstanding any provision that establishes a shorter term of imprisonment, a person who has been convicted of committing or attempting or conspiring to commit any violent or aggravated felony and who has previously been convicted on separate occasions of two or more violent or aggravated felonies not committed on the same occasion shall be sentenced to imprisonment for life and is not eligible for suspension of sentence, probation, pardon or release on any basis except that the person may be eligible for commutation after the person has served at least thirty-five years.

~~B.~~ C. In order for the penalty under subsection ~~A~~ B of this section to apply, both of the following must occur:

1. The aggravated or violent felonies that comprise the prior convictions shall have been entered within fifteen years of the conviction for the third offense, not including time spent in custody or on probation for an offense or while the person is an absconder.

2. The sentence for the first aggravated or violent felony conviction shall have been imposed before the conduct occurred that gave rise to the second conviction, and the sentence for the second aggravated or violent felony conviction shall have been imposed before the conduct occurred that gave rise to the third conviction.

~~C.~~ D. Chapter 3 of this title applies to all offenses under this section.

~~D.~~ E. For the purposes of this section, if a person has been convicted of an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the offenses listed in this section and that has the same elements of an offense listed in this section, the offense committed in another jurisdiction is considered an offense committed in this state.

~~E.~~ F. For the purposes of this section~~,~~:

1. "SERIOUS OFFENSE" MEANS ANY OF THE FOLLOWING OFFENSES IF COMMITTED IN THIS STATE OR ANY OFFENSE COMMITTED OUTSIDE THIS STATE THAT 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.

2. "Violent or aggravated felony" means any of the following offenses:

~~1.~~ (a) First degree murder.

~~2.~~ (b) Second degree murder.

~~3.~~ (c) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

~~4.~~ (d) Dangerous or deadly assault by prisoner.

~~5.~~ (e) Committing assault with intent to incite to riot or participate in riot.

~~6.~~ (f) Drive by shooting.

~~7.~~ (g) Discharging a firearm at a residential structure if the structure is occupied.

~~8.~~ (h) Kidnapping.

~~9.~~ (i) Sexual conduct with a minor that is a class 2 felony.

~~10.~~ (j) Sexual assault.

~~11.~~ (k) Molestation of a child.

~~12.~~ (l) Continuous sexual abuse of a child.

~~13.~~ (m) Violent sexual assault.

~~14.~~ (n) Burglary in the first degree committed in a residential structure if the structure is occupied.

~~15.~~ (o) Arson of an occupied structure.

~~16.~~ (p) Arson of an occupied jail or prison facility.

~~17.~~ (q) Armed robbery.

~~18.~~ (r) Participating in or assisting a criminal syndicate or leading or participating in a criminal street gang.

~~19.~~ (s) Terrorism.

~~20.~~ (t) Taking a child for the purpose of prostitution.

~~21.~~ (u) Child prostitution.

~~22.~~ (v) Commercial sexual exploitation of a minor.

~~23.~~ (w) Sexual exploitation of a minor.

~~24.~~ (x) Unlawful introduction of disease or parasite as prescribed by section 13-2912, subsection A, paragraph 2 or 3.

Sec. 31. Section 13-707, Arizona Revised Statutes, is amended to read:

13-707. Misdemeanors; sentencing

A. A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state

department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:

1. For a class 1 misdemeanor, six months.
2. For a class 2 misdemeanor, four months.
3. For a class 3 misdemeanor, thirty days.

B. 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 THE PERSON CURRENTLY IS CONVICTED. TIME SPENT INCARCERATED WITHIN THE TWO YEARS NEXT PRECEDING THE DATE OF THE OFFENSE FOR WHICH A PERSON IS CURRENTLY BEING SENTENCED SHALL NOT BE INCLUDED IN THE TWO YEARS REQUIRED TO BE FREE OF CONVICTIONS.

C. IF A PERSON IS CONVICTED OF A MISDEMEANOR OFFENSE AND THE OFFENSE REQUIRES ENHANCED PUNISHMENT BECAUSE IT IS A SECOND OR SUBSEQUENT OFFENSE, THE COURT SHALL DETERMINE THE EXISTENCE OF THE PREVIOUS CONVICTION. THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION TO BE MADE IN THE SAME MANNER AS THE ALLEGATION PRESCRIBED BY SECTION 28-1387, SUBSECTION A.

D. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE WOULD BE PUNISHABLE AS A MISDEMEANOR OR PETTY OFFENSE IS SUBJECT TO THIS SECTION. A PERSON WHO HAS BEEN CONVICTED AS AN ADULT OF AN OFFENSE PUNISHABLE AS A MISDEMEANOR OR PETTY OFFENSE UNDER THE PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO THIS SECTION.

~~B.~~ E. The court may~~, pursuant to this section,~~ direct that ~~the~~ A person WHO IS sentenced PURSUANT TO SUBSECTION A OF THIS SECTION shall not be released on any basis until the sentence imposed by the court has been served.

Sec. 32. Section 13-708, Arizona Revised Statutes, as transferred and renumbered by this act, is amended to read:

13-708. Offenses committed while released from confinement

A. ~~Notwithstanding any law to the contrary,~~ A person WHO IS convicted of any felony INVOLVING A DANGEROUS offense ~~involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction on another of serious physical injury if~~ THAT IS committed while the person is on probation, for a conviction of a felony offense or parole, work furlough, community supervision or any other release or ~~escape~~ HAS ESCAPED from confinement for conviction of a felony offense shall be sentenced to imprisonment for not less than the presumptive sentence authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served.

B. ~~If the person committed the~~ A PERSON WHO IS CONVICTED OF A DANGEROUS offense THAT IS COMMITTED while THE PERSON IS on release or ~~escape~~ HAS ESCAPED from confinement for a conviction of a serious offense as defined

in section ~~13-604~~ 13-706, an offense resulting in serious physical injury or an offense involving the use or exhibition of a deadly weapon or dangerous instrument~~, the person~~ shall be sentenced to the maximum sentence authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served. If the court finds that at least two substantial aggravating circumstances listed in section ~~13-702~~ 13-701, subsection ~~C~~ D apply, the court may increase the maximum sentence authorized under this chapter by up to twenty-five per cent. A sentence imposed pursuant to this subsection shall revoke the convicted person's release if the person was on release and shall be consecutive to any other sentence from which the convicted person had been temporarily released or had escaped, unless the sentence from which the convicted person had been paroled or placed on probation was imposed by a jurisdiction other than this state.

~~B.~~ C. ~~Notwithstanding any law to the contrary,~~ A person WHO IS convicted of any felony offense THAT IS not included in subsection A OR B of this section ~~if~~ AND THAT IS committed while the person is on probation for a conviction of a felony offense or parole, work furlough, community supervision or any other release or escape from confinement for conviction of a felony offense shall be sentenced to a term of not less than the presumptive sentence authorized for the offense 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, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. 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~~ BEFORE release. A sentence imposed pursuant to this subsection shall revoke the convicted person's release if the person was on release and shall be consecutive to any other sentence from which the convicted person had been temporarily released or had escaped, unless the sentence from which the convicted person had been paroled or placed on probation was imposed by a jurisdiction other than this state. For THE purposes of this subsection, "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 would otherwise be subject.

D. A PERSON WHO IS CONVICTED OF COMMITTING ANY FELONY OFFENSE THAT IS COMMITTED WHILE THE PERSON IS RELEASED ON BOND OR ON THE PERSON'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 ON RELEASE. THE ADDITIONAL SENTENCE IMPOSED

UNDER THIS SUBSECTION IS IN ADDITION TO ANY ENHANCED PUNISHMENT THAT MAY BE APPLICABLE UNDER SECTION 13-703, SECTION 13-704, SECTION 13-709.01, SUBSECTION A OR SECTION 13-709.02, SUBSECTION C. 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 TWO YEARS ARE SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED. THE PENALTIES PRESCRIBED BY THIS SUBSECTION SHALL BE SUBSTITUTED FOR THE PENALTIES OTHERWISE AUTHORIZED BY LAW IF THE ALLEGATION THAT THE PERSON COMMITTED A FELONY WHILE RELEASED ON BOND OR ON THE PERSON'S OWN RECOGNIZANCE OR WHILE ESCAPED FROM PRECONVICTION CUSTODY IS CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND BY THE COURT. THE RELEASE PROVISIONS PRESCRIBED BY THIS SUBSECTION 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 BEFORE RELEASE. THE COURT SHALL ALLOW THE ALLEGATION THAT THE PERSON COMMITTED A FELONY WHILE RELEASED ON BOND OR ON THE PERSON'S OWN RECOGNIZANCE ON A SEPARATE FELONY OFFENSE OR WHILE ESCAPED FROM PRECONVICTION CUSTODY ON A SEPARATE FELONY OFFENSE AT ANY TIME BEFORE 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 PERSON WAS IN FACT PREJUDICED BY THE UNTIMELY FILING AND STATES THE REASONS FOR THESE FINDINGS. THE ALLEGATION THAT THE PERSON COMMITTED A FELONY WHILE RELEASED ON BOND OR ON THE PERSON'S OWN RECOGNIZANCE OR WHILE ESCAPED FROM PRECONVICTION CUSTODY SHALL NOT BE READ TO THE JURY. FOR THE PURPOSES OF THIS SUBSECTION, "SUBSTANTIVE OFFENSE" MEANS THE FELONY OFFENSE THAT THE TRIER OF FACT FOUND BEYOND A REASONABLE DOUBT THE PERSON COMMITTED. SUBSTANTIVE OFFENSE DOES NOT INCLUDE ALLEGATIONS THAT, IF PROVEN, WOULD ENHANCE THE SENTENCE OF IMPRISONMENT OR FINE TO WHICH THE PERSON OTHERWISE WOULD BE SUBJECT.

Sec. 33. Section 13-709, Arizona Revised Statutes, as transferred and renumbered by this act, is amended to read:

13-709. <u>Offenses committed in school safety zone; sentences; definitions</u>

A. Except as otherwise prescribed in section 13-3411, a person who is convicted of a felony offense that is committed in a school safety zone is guilty of the same class of felony that the person would otherwise be guilty of if the violation had not occurred within a school safety zone, except that the court may impose a sentence that is one year longer than the minimum, maximum and presumptive sentence for that violation if the person is not a criminal street gang member or up to five years longer than the minimum, maximum and presumptive sentence for that violation if the person is a criminal street gang member. The additional sentence imposed under this subsection is in addition to any other enhanced punishment that may be applicable under section ~~13-604~~ 13-703, SECTION 13-704, SECTION 13-706, SECTION 13-708, SUBSECTION D or chapter 34 of this title.

B. In addition to any other penalty prescribed by this title, the court may order a person who is subject to ~~the provisions of~~ subsection A of this section to pay a fine of not less than two thousand dollars and not more than the maximum authorized by chapter 8 of this title.

C. Each school district governing board or its designee, or chief administrative officer in the case of a nonpublic or charter school, may place and maintain permanently affixed signs that are located in a visible manner at the main entrance of each school and that identify the school and its accompanying grounds as a school safety zone. A school may include information regarding the school safety zone boundaries on a sign that identifies the area as a drug free zone and not post separate school safety zone signs.

D. For the purposes of this section:

1. "School" means any public or nonpublic kindergarten program, common school or high school.

2. "School safety zone" means any of the following:

(a) The area within three hundred feet of a school or its accompanying grounds.

(b) Any public property within one thousand feet of a school or its accompanying grounds.

(c) Any school bus.

(d) A bus contracted to transport pupils to any school during the time when the contracted vehicle is transporting pupils on behalf of the school.

(e) A school bus stop.

(f) Any bus stop where school children are awaiting, boarding or exiting a bus contracted to transport pupils to any school.

Sec. 34. Title 13, chapter 7, Arizona Revised Statutes, is amended by adding sections 13-709.01, 13-709.02, 13-709.03 and 13-709.04, to read:

13-709.01. <u>Special sentencing provisions; assault</u>

A. 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.

B. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-1207 SHALL NOT BE ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED. A SENTENCE IMPOSED PURSUANT TO SECTION 13-1207 SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE PRESENTLY BEING SERVED BY THE CONVICTED PERSON.

C. THE SENTENCE IMPOSED FOR A VIOLATION OF SECTION 13-1212 SHALL RUN CONSECUTIVELY TO ANY SENTENCE OF IMPRISONMENT FOR WHICH THE PRISONER WAS CONFINED OR TO ANY TERM OF COMMUNITY SUPERVISION, PROBATION, PAROLE, WORK FURLOUGH OR OTHER RELEASE FROM CONFINEMENT.

13-709.02. Special sentencing provisions; organized crime; fraud; terrorism

A. IF A PERSON IS CONVICTED OF A VIOLATION OF SECTION 13-2308.01 AND THE COURT FINDS AT LEAST ONE AGGRAVATING CIRCUMSTANCE LISTED IN SECTION 13-701, SUBSECTION D, THE COURT MAY IMPOSE A LIFE SENTENCE. IF THE COURT IMPOSES A LIFE SENTENCE, THE COURT MAY ORDER THAT THE DEFENDANT NOT BE RELEASED ON ANY BASIS FOR THE REMAINDER OF THE DEFENDANT'S NATURAL LIFE. IF THE COURT DOES NOT SENTENCE THE DEFENDANT TO NATURAL LIFE, THE DEFENDANT SHALL NOT BE RELEASED ON ANY BASIS UNTIL THE PERSON HAS SERVED TWENTY-FIVE CALENDAR YEARS.

B. A PERSON WHO IS CONVICTED OF A KNOWING VIOLATION OF SECTION 13-2312, SUBSECTION C IS NOT ELIGIBLE FOR PROBATION, PARDON, SUSPENSION OF SENTENCE OR RELEASE ON ANY BASIS UNTIL THE PERSON HAS SERVED THE SENTENCE IMPOSED BY THE COURT OR THE SENTENCE IS COMMUTED.

C. 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 IF THE OFFENSE IS A CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE IS A CLASS 2 OR 3 FELONY. THE ADDITIONAL SENTENCE IMPOSED PURSUANT TO THIS SUBSECTION IS IN ADDITION TO ANY ENHANCED SENTENCE THAT MAY BE APPLICABLE.

13-709.03. Special sentencing provisions; drug offenses

A. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-3407, SUBSECTION A, PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE SHALL BE SENTENCED AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
5 YEARS	10 YEARS	15 YEARS

B. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-3407, SUBSECTION A, PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SECTION 13-3407, SUBSECTION A, PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE OR SECTION 13-3407.01 SHALL BE SENTENCED AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
10 YEARS	15 YEARS	20 YEARS

C. THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCE FOR A VIOLATION OF SECTION 13-3411, SUBSECTION A SHALL BE INCREASED BY ONE YEAR. A PERSON IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM

CONFINEMENT ON ANY BASIS EXCEPT PURSUANT TO SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED. THE ADDITIONAL SENTENCE IMPOSED UNDER SECTION 13-3411, SUBSECTION B IS IN ADDITION TO ANY ENHANCED PUNISHMENT THAT MAY BE APPLICABLE UNDER SECTION 13-703, SECTION 13-704, SECTION 13-708, SUBSECTION D OR ANY PROVISION OF CHAPTER 34 OF THIS TITLE.

D. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTIONS A AND B OF THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701, SUBSECTIONS D AND E.

13-709.04. Special sentencing provision; family offenses

A. IF A PERSON IS CONVICTED OF AN OFFENSE INVOLVING DOMESTIC VIOLENCE AND THE VICTIM WAS PREGNANT AT THE TIME OF THE COMMISSION OF THE OFFENSE, AT THE TIME OF SENTENCING THE COURT SHALL TAKE INTO CONSIDERATION THE FACT THAT THE VICTIM WAS PREGNANT AND MAY INCREASE THE SENTENCE.

B. THE MAXIMUM SENTENCE OTHERWISE AUTHORIZED FOR A VIOLATION OF SECTION 13-3601, SUBSECTION A SHALL BE INCREASED BY UP TO TWO YEARS IF THE DEFENDANT COMMITTED A FELONY OFFENSE AGAINST A PREGNANT VICTIM AND KNEW THAT THE VICTIM WAS PREGNANT OR IF THE DEFENDANT COMMITTED A FELONY OFFENSE CAUSING PHYSICAL INJURY TO A PREGNANT VICTIM AND KNEW THAT THE VICTIM WAS PREGNANT.

Sec. 35. Section 13-710, Arizona Revised Statutes, is amended to read:

13-710. Sentence for second degree murder

A. Except as provided in section ~~13-604, subsection S or section 13-604.01~~ 13-705 OR SECTION 13-706, SUBSECTION A, a person who ~~stands~~ IS convicted of second degree murder as defined by section 13-1104 shall be sentenced ~~to a presumptive term of sixteen calendar years. The presumptive term imposed pursuant to this subsection may be mitigated or aggravated by up to six years pursuant to the terms of section 13-702, subsections C and D.~~ AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
10 YEARS	16 YEARS	22 YEARS

B. Except as provided in section ~~13-604, subsection S or section 13-604.01~~ 13-704 OR SECTION 13-706, SUBSECTION A, a person who ~~stands~~ IS convicted of second degree murder as defined by section 13-1104 and who has previously been convicted of second degree murder or a class 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 a presumptive term of twenty calendar years. The presumptive term imposed pursuant to this subsection may be mitigated or aggravated by up to five years pursuant to the terms of section 13-702, subsections C and D.~~ AS FOLLOWS:

MINIMUM	PRESUMPTIVE	MAXIMUM
15 YEARS	20 YEARS	25 YEARS

C. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTIONS A AND B OF THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701, SUBSECTIONS D AND E.

Sec. 36. Repeal

Sections 13-711 and 13-712, Arizona Revised Statutes, are repealed.

Sec. 37. Title 13, Arizona Revised Statutes, is amended by adding chapter 7.1, to read:

CHAPTER 7.1

CAPITAL SENTENCING

Sec. 38. Section 13-751, Arizona Revised Statutes, as transferred and renumbered by this act, is amended to read:

13-751. Sentence of death or life imprisonment; aggravating and mitigating circumstances; definition

A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder as defined in section 13-1105, the defendant shall be sentenced to death or imprisonment in the custody of the state department of corrections for life or natural life as determined and in accordance with the procedures provided in section ~~13-703.01~~ 13-752. A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis. If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years if the murdered person was fifteen or more years of age and thirty-five years if the murdered person was under fifteen years of age or was an unborn child. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

B. At the aggravation phase of the sentencing proceeding that is held pursuant to section ~~13-703.01~~ 13-752, the admissibility of information relevant to any of the aggravating circumstances set forth in subsection F of this section shall be governed by the rules of evidence applicable to criminal trials. The burden of establishing the existence of any of the aggravating circumstances set forth in subsection F of this section is on the prosecution. The prosecution must prove the existence of the aggravating circumstances beyond a reasonable doubt.

C. At the penalty phase of the sentencing proceeding that is held pursuant to section ~~13-703.01~~ 13-752, the prosecution or the defendant may present any information that is relevant to any of the mitigating circumstances included in subsection G of this section, regardless of its admissibility under the rules governing admission of evidence at criminal trials. The burden of establishing the existence of the mitigating circumstances included in subsection G of this section is on the defendant. The defendant must prove the existence of the mitigating circumstances by a preponderance of the evidence. If the trier of fact is a jury, the jurors do not have to agree unanimously that a mitigating circumstance has been proven

1 to exist. Each juror may consider any mitigating circumstance found by that
2 juror in determining the appropriate penalty.
3 D. Evidence that is admitted at the trial and that relates to any
4 aggravating or mitigating circumstances shall be deemed admitted as evidence
5 at a sentencing proceeding if the trier of fact considering that evidence is
6 the same trier of fact that determined the defendant's guilt. The
7 prosecution and the defendant shall be permitted to rebut any information
8 received at the aggravation or penalty phase of the sentencing proceeding and
9 shall be given fair opportunity to present argument as to whether the
10 information is sufficient to establish the existence of any of the
11 circumstances included in subsections F and G of this section.
12 E. In determining whether to impose a sentence of death or life
13 imprisonment, the trier of fact shall take into account the aggravating and
14 mitigating circumstances that have been proven. The trier of fact shall
15 impose a sentence of death if the trier of fact finds one or more of the
16 aggravating circumstances enumerated in subsection F of this section and then
17 determines that there are no mitigating circumstances sufficiently
18 substantial to call for leniency.
19 F. The trier of fact shall consider the following aggravating
20 circumstances in determining whether to impose a sentence of death:
21 1. The defendant has been convicted of another offense in the United
22 States for which under Arizona law a sentence of life imprisonment or death
23 was imposable.
24 2. The defendant has been or was previously convicted of a serious
25 offense, whether preparatory or completed. Convictions for serious offenses
26 committed on the same occasion as the homicide, or not committed on the same
27 occasion but consolidated for trial with the homicide, shall be treated as a
28 serious offense under this paragraph.
29 3. In the commission of the offense the defendant knowingly created a
30 grave risk of death to another person or persons in addition to the person
31 murdered during the commission of the offense.
32 4. The defendant procured the commission of the offense by payment, or
33 promise of payment, of anything of pecuniary value.
34 5. The defendant committed the offense as consideration for the
35 receipt, or in expectation of the receipt, of anything of pecuniary value.
36 6. The defendant committed the offense in an especially heinous, cruel
37 or depraved manner.
38 7. The defendant committed the offense while:
39 (a) In the custody of or on authorized or unauthorized release from
40 the state department of corrections, a law enforcement agency or a county or
41 city jail.
42 (b) On probation for a felony offense.
43 8. The defendant has been convicted of one or more other homicides, as
44 defined in section 13-1101, that were committed during the commission of the
45 offense.

9. The defendant was an adult at the time the offense was committed or was tried as an adult and the murdered person was under fifteen years of age, was an unborn child in the womb at any stage of its development or was seventy years of age or older.

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

11. The defendant committed the offense with the intent to promote, further or assist the objectives of a criminal street gang or criminal syndicate or to join a criminal street gang or criminal syndicate.

12. The defendant committed the offense to prevent a person's cooperation with an official law enforcement investigation, to prevent a person's testimony in a court proceeding, in retaliation for a person's cooperation with an official law enforcement investigation or in retaliation for a person's testimony in a court proceeding.

13. The offense was committed in a cold, calculated manner without pretense of moral or legal justification.

14. The defendant used a remote stun gun or an authorized remote stun gun in the commission of the offense. For the purposes of this paragraph:

(a) "Authorized remote stun gun" means a remote stun gun that has all of the following:

(i) An electrical discharge that is less than one hundred thousand volts and less than nine joules of energy per pulse.

(ii) A serial or identification number on all projectiles that are discharged from the remote stun gun.

(iii) An identification and tracking system that, on deployment of remote electrodes, disperses coded material that is traceable to the purchaser through records that are kept by the manufacturer on all remote stun guns and all individual cartridges sold.

(iv) A training program that is offered by the manufacturer.

(b) "Remote stun gun" means an electronic device that emits an electrical charge and that is designed and primarily employed to incapacitate a person or animal either through contact with electrodes on the device itself or remotely through wired probes that are attached to the device or through a spark, plasma, ionization or other conductive means emitting from the device.

G. The trier of fact shall consider as mitigating circumstances any factors proffered by the defendant or the state that are relevant in determining whether to impose a sentence less than death, including any aspect of the defendant's character, propensities or record and any of the circumstances of the offense, including but not limited to the following:

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

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

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

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

5. The defendant's age.

H. For purposes of determining whether a conviction of any dangerous crime against children is a serious offense pursuant to this section, an unborn child shall be treated like a minor who is under twelve years of age.

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

1. First degree murder.
2. Second degree murder.
3. Manslaughter.
4. Aggravated assault resulting in serious physical injury or committed by the use, threatened use or exhibition of a deadly weapon or dangerous instrument.
5. Sexual assault.
6. Any dangerous crime against children.
7. Arson of an occupied structure.
8. Robbery.
9. Burglary in the first degree.
10. Kidnapping.
11. Sexual conduct with a minor under fifteen years of age.
12. Burglary in the second degree.
13. Terrorism.

Sec. 39. Section 13-752, Arizona Revised Statutes, as amended by Laws 2005, chapter 325, section 3 and as transferred and renumbered by this act, is amended to read:

13-752. <u>Sentences of death, life imprisonment or natural life; imposition; sentencing proceedings; definitions</u>

A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder, the trier of fact at the sentencing proceeding shall determine whether to impose a sentence of death in accordance with the procedures provided in this section. If the trier of fact determines that a sentence of death is not appropriate, or if the state has not filed a notice of intent to seek the death penalty, and the defendant is convicted of first degree murder, the court shall determine whether to impose a sentence of life or natural life.

B. Before trial, the prosecution shall notice one or more of the aggravating circumstances under section ~~13-703~~ 13-751, subsection F.

C. If the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall then immediately determine whether one or more alleged aggravating circumstances have been proven. This proceeding is the aggravation phase of the sentencing proceeding.

D. If the trier of fact finds that one or more of the alleged aggravating circumstances have been proven, the trier of fact shall then immediately determine whether the death penalty should be imposed. This proceeding is the penalty phase of the sentencing proceeding.

E. At the aggravation phase, the trier of fact shall make a special finding on whether each alleged aggravating circumstance has been proven based on the evidence that was presented at the trial or at the aggravation phase. If the trier of fact is a jury, a unanimous verdict is required to find that the aggravating circumstance has been proven. If the trier of fact unanimously finds that an aggravating circumstance has not been proven, the defendant is entitled to a special finding that the aggravating circumstance has not been proven. If the trier of fact unanimously finds no aggravating circumstances, the court shall then determine whether to impose a sentence of life or natural life on the defendant.

F. The penalty phase shall be held immediately after the trier of fact finds at the aggravation phase that one or more of the aggravating circumstances under section ~~13-703~~ 13-751, subsection F have been proven. A finding by the trier of fact that any of the remaining aggravating circumstances alleged has not been proven or the inability of the trier of fact to agree on the issue of whether any of the remaining aggravating circumstances alleged has been proven shall not prevent the holding of the penalty phase.

G. At the penalty phase, the defendant and the state may present any evidence that is relevant to the determination of whether there is mitigation that is sufficiently substantial to call for leniency. In order for the trier of fact to make this determination, the state may present any evidence that demonstrates that the defendant should not be shown leniency.

H. The trier of fact shall determine unanimously whether death is the appropriate sentence. If the trier of fact is a jury and the jury unanimously determines that the death penalty is not appropriate, the court shall determine whether to impose a sentence of life or natural life.

I. If the trier of fact at any prior phase of the trial is the same trier of fact at the subsequent phase, any evidence that was presented at any prior phase of the trial shall be deemed admitted as evidence at any subsequent phase of the trial.

J. At the aggravation phase, if the trier of fact is a jury, the jury is unable to reach a verdict on any of the alleged aggravating circumstances and the jury has not found that at least one of the alleged aggravating circumstances has been proven, the court shall dismiss the jury and shall

1 impanel a new jury. The new jury shall not retry the issue of the
2 defendant's guilt or the issue regarding any of the aggravating circumstances
3 that the first jury found not proved by unanimous verdict. If the new jury
4 is unable to reach a unanimous verdict, the court shall impose a sentence of
5 life or natural life on the defendant.
6 K. At the penalty phase, if the trier of fact is a jury and the jury
7 is unable to reach a verdict, the court shall dismiss the jury and shall
8 impanel a new jury. The new jury shall not retry the issue of the
9 defendant's guilt or the issue regarding any of the aggravating circumstances
10 that the first jury found by unanimous verdict to be proved or not proved.
11 If the new jury is unable to reach a unanimous verdict, the court shall
12 impose a sentence of life or natural life on the defendant.
13 L. If the jury that rendered a verdict of guilty is not the jury first
14 impaneled for the aggravation phase, the jury impaneled in the aggravation
15 phase shall not retry the issue of the defendant's guilt. If the jury
16 impaneled in the aggravation phase is unable to reach a verdict on any of the
17 alleged aggravating circumstances and the jury has not found that at least
18 one of the alleged aggravating circumstances has been proven, the court shall
19 dismiss the jury and shall impanel a new jury. The new jury shall not retry
20 the issue of the defendant's guilt or the issue regarding any of the
21 aggravating circumstances that the first jury found not proved by unanimous
22 verdict. If the new jury is unable to reach a unanimous verdict, the court
23 shall impose a sentence of life or natural life on the defendant.
24 M. Alternate jurors who are impaneled for the trial in a case in which
25 the offense is punishable by death shall not be excused from the case until
26 the completion of the sentencing proceeding.
27 N. If the sentence of a person who was sentenced to death is
28 overturned, the person shall be resentenced pursuant to this section by a
29 jury that is specifically impaneled for this purpose as if the original
30 sentencing had not occurred.
31 O. In any case that requires sentencing or resentencing in which the
32 defendant has been convicted of an offense that is punishable by death and in
33 which the trier of fact was a judge or a jury that has since been discharged,
34 the defendant shall be sentenced or resentenced pursuant to this section by a
35 jury that is specifically impaneled for this purpose.
36 P. The trier of fact shall make all factual determinations required by
37 this section or the Constitution of the United States or this state to impose
38 a death sentence. If the defendant bears the burden of proof, the issue
39 shall be determined in the penalty phase. If the state bears the burden of
40 proof, the issue shall be determined in the aggravation phase.
41 Q. If the death penalty was not alleged or was alleged but not
42 imposed, the court shall determine whether to impose a sentence of life or
43 natural life. In determining whether to impose a sentence of life or natural
44 life, the court:

1. May consider any evidence introduced before sentencing or at any other sentencing proceeding.

2. Shall consider the aggravating and mitigating circumstances listed in section ~~13-702~~ 13-701 and any statement made by a victim.

R. Subject to ~~the provisions of~~ section ~~13-703~~ 13-751, subsection B, a victim has the right to be present at the aggravation phase and to present any information that is relevant to the proceeding. A victim has the right to be present and to present information at the penalty phase. At the penalty phase, the victim may present information about the murdered person and the impact of the murder on the victim and other family members and may submit a victim impact statement in any format to the trier of fact.

S. For the purposes of this section:

1. "Trier of fact" means a jury unless the defendant and the state waive a jury, in which case the trier of fact shall be the court.

2. "Victim" means the murdered person's spouse, parent, child, grandparent or sibling, any other person related to the murdered person by consanguinity or affinity to the second degree or any other lawful representative of the murdered person, except if the spouse, parent, child, grandparent, sibling, other person related to the murdered person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

Sec. 40. Section 13-752, Arizona Revised Statutes, as amended by Laws 2005, chapter 325, section 4 and as transferred and renumbered by this act, is amended to read:

13-752. <u>Sentences of death, life imprisonment or natural life; imposition; sentencing proceedings; definitions</u>

A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder, the trier of fact at the sentencing proceeding shall determine whether to impose a sentence of death in accordance with the procedures provided in this section. If the trier of fact determines that a sentence of death is not appropriate, or if the state has not filed a notice of intent to seek the death penalty, and the defendant is convicted of first degree murder, the court shall determine whether to impose a sentence of life or natural life.

B. Before trial, the prosecution shall notice one or more of the aggravating circumstances under section ~~13-703~~ 13-751, subsection F.

C. If the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall then immediately determine whether one or more alleged aggravating circumstances have been proven. This proceeding is the aggravation phase of the sentencing proceeding.

D. If the trier of fact finds that one or more of the alleged aggravating circumstances have been proven, the trier of fact shall then immediately determine whether the death penalty should be imposed. This proceeding is the penalty phase of the sentencing proceeding.

E. At the aggravation phase, the trier of fact shall make a special finding on whether each alleged aggravating circumstance has been proven based on the evidence that was presented at the trial or at the aggravation phase. If the trier of fact is a jury, a unanimous verdict is required to find that the aggravating circumstance has been proven. If the trier of fact unanimously finds that an aggravating circumstance has not been proven, the defendant is entitled to a special finding that the aggravating circumstance has not been proven. If the trier of fact unanimously finds no aggravating circumstances, the court shall then determine whether to impose a sentence of life or natural life on the defendant.

F. The penalty phase shall be held immediately after the trier of fact finds at the aggravation phase that one or more of the aggravating circumstances under section ~~13-703~~ 13-751, subsection F have been proven. A finding by the trier of fact that any of the remaining aggravating circumstances alleged has not been proven or the inability of the trier of fact to agree on the issue of whether any of the remaining aggravating circumstances alleged has been proven shall not prevent the holding of the penalty phase.

G. At the penalty phase, the defendant and the state may present any evidence that is relevant to the determination of whether there is mitigation that is sufficiently substantial to call for leniency. In order for the trier of fact to make this determination, the state may present any evidence that demonstrates that the defendant should not be shown leniency.

H. The trier of fact shall determine unanimously whether death is the appropriate sentence. If the trier of fact is a jury and the jury unanimously determines that the death penalty is not appropriate, the court shall determine whether to impose a sentence of life or natural life.

I. If the trier of fact at any prior phase of the trial is the same trier of fact at the subsequent phase, any evidence that was presented at any prior phase of the trial shall be deemed admitted as evidence at any subsequent phase of the trial.

J. At the aggravation phase, if the trier of fact is a jury, the jury is unable to reach a verdict on any of the alleged aggravating circumstances and the jury has not found that at least one of the alleged aggravating circumstances has been proven, the court shall dismiss the jury and shall impanel a new jury. The new jury shall not retry the issue of the defendant's guilt or the issue regarding any of the aggravating circumstances that the first jury found not proved by unanimous verdict. If the new jury is unable to reach a unanimous verdict, the court shall impose a sentence of life or natural life on the defendant.

K. At the penalty phase, if the trier of fact is a jury and the jury is unable to reach a verdict, the court shall dismiss the jury and shall impanel a new jury. The new jury shall not retry the issue of the defendant's guilt or the issue regarding any of the aggravating circumstances that the first jury found by unanimous verdict to be proved or not proved.

If the new jury is unable to reach a unanimous verdict, the court shall impose a sentence of life or natural life on the defendant.

L. If the jury that rendered a verdict of guilty is not the jury first impaneled for the aggravation phase, the jury impaneled in the aggravation phase shall not retry the issue of the defendant's guilt. If the jury impaneled in the aggravation phase is unable to reach a verdict on any of the alleged aggravating circumstances and the jury has not found that at least one of the alleged aggravating circumstances has been proven, the court shall dismiss the jury and shall impanel a new jury. The new jury shall not retry the issue of the defendant's guilt or the issue regarding any of the aggravating circumstances that the first jury found not proved by unanimous verdict. If the new jury is unable to reach a unanimous verdict, the court shall impose a sentence of life or natural life on the defendant.

M. Alternate jurors who are impaneled for the trial in a case in which the offense is punishable by death shall not be excused from the case until the completion of the sentencing proceeding.

N. If the sentence of a person who was sentenced to death is overturned, the person shall be resentenced pursuant to this section by a jury that is specifically impaneled for this purpose as if the original sentencing had not occurred.

O. In any case that requires sentencing or resentencing in which the defendant has been convicted of an offense that is punishable by death and in which the trier of fact was a judge or a jury that has since been discharged, the defendant shall be sentenced or resentenced pursuant to this section by a jury that is specifically impaneled for this purpose.

P. The trier of fact shall make all factual determinations required by this section or the Constitution of the United States or this state to impose a death sentence. If the defendant bears the burden of proof, the issue shall be determined in the penalty phase. If the state bears the burden of proof, the issue shall be determined in the aggravation phase.

Q. If the death penalty was not alleged or was alleged but not imposed, the court shall determine whether to impose a sentence of life or natural life. In determining whether to impose a sentence of life or natural life, the court:

1. May consider any evidence introduced before sentencing or at any other sentencing proceeding.

2. Shall consider the aggravating and mitigating circumstances listed in section ~~13-702~~ 13-701 and any statement made by a victim.

R. Subject to ~~the provisions of~~ section ~~13-703~~ 13-751, subsection B, a victim has the right to be present at the aggravation phase and to present any information that is relevant to the proceeding. A victim has the right to be present at the penalty phase. At the penalty phase, the victim has the right to be heard pursuant to section 13-4426.

S. For the purposes of this section:

1. "Trier of fact" means a jury unless the defendant and the state waive a jury, in which case the trier of fact shall be the court.

2. "Victim" means the murdered person's spouse, parent, child, grandparent or sibling, any other person related to the murdered person by consanguinity or affinity to the second degree or any other lawful representative of the murdered person, except if the spouse, parent, child, grandparent, sibling, other person related to the murdered person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

Sec. 41. Section 13-755, Arizona Revised Statutes, as transferred and renumbered by this act, is amended to read:

13-755. Death sentences; supreme court review

A. The supreme court shall review all death sentences. On review, the supreme court shall independently review the trial court's findings of aggravation and mitigation and the propriety of the death sentence.

B. If the supreme court determines that an error was made regarding a finding of aggravation or mitigation, the supreme court shall independently determine if the mitigation the supreme court finds is sufficiently substantial to warrant leniency in light of the existing aggravation. If the supreme court finds that the mitigation is not sufficiently substantial to warrant leniency, the supreme court shall affirm the death sentence. If the supreme court finds that the mitigation is sufficiently substantial to warrant leniency, the supreme court shall impose a life sentence pursuant to section ~~13-703~~ 13-751, subsection A.

C. The independent review required by subsection A does not preclude the supreme court from remanding a case for further action if the trial court erroneously excluded evidence or if the appellate record does not adequately reflect the evidence presented.

Sec. 42. Section 13-901.01, Arizona Revised Statutes, is amended to read:

13-901.01. Probation for persons convicted of possession or use of controlled substances or drug paraphernalia; treatment; prevention; education; exceptions; definition

A. Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance or drug paraphernalia is eligible for probation. The court shall suspend the imposition or execution of sentence and place the person on probation.

B. Any person who has been convicted of or indicted for a violent crime as defined in section ~~13-604.04~~ 13-901.03 is not eligible for probation as provided for in this section but instead shall be sentenced pursuant to chapter 34 of this title.

C. Personal possession or use of a controlled substance pursuant to this section shall not include possession for sale, production, manufacturing or transportation for sale of any controlled substance.

D. If a person is convicted of personal possession or use of a controlled substance or drug paraphernalia, as a condition of probation, the court shall require participation in an appropriate drug treatment or education program administered by a qualified agency or organization that provides such programs to persons who abuse controlled substances. Each person who is enrolled in a drug treatment or education program shall be required to pay for participation in the program to the extent of the person's financial ability.

E. A person who has been placed on probation pursuant to this section and who is determined by the court to be in violation of probation shall have new conditions of probation established by the court. The court shall select the additional conditions it deems necessary, including intensified drug treatment, community restitution, intensive probation, home arrest or any other sanctions except that the court shall not impose a term of incarceration unless the court determines that the person violated probation by committing an offense listed in chapter 34 or 34.1 of this title or an act in violation of an order of the court relating to drug treatment.

F. If a person is convicted a second time of personal possession or use of a controlled substance or drug paraphernalia, the court may include additional conditions of probation it deems necessary, including intensified drug treatment, community restitution, intensive probation, home arrest or any other action within the jurisdiction of the court.

G. At any time while the defendant is on probation, if after having a reasonable opportunity to do so the defendant fails or refuses to participate in drug treatment, the probation department or the prosecutor may petition the court to revoke the defendant's probation. If the court finds that the defendant refused to participate in drug treatment, the defendant shall no longer be eligible for probation under this section but instead shall be sentenced pursuant to chapter 34 of this title.

H. A person is not eligible for probation under this section but instead shall be sentenced pursuant to chapter 34 of this title if the court finds the person either:

1. Had been convicted three times of personal possession of a controlled substance or drug paraphernalia.

2. Refused drug treatment as a term of probation.

3. Rejected probation.

4. Was convicted of the personal possession or use of a controlled substance or drug paraphernalia and the offense involved methamphetamine.

I. Subsections G and H of this section do not prohibit the defendant from being placed on probation pursuant to section 13-901 if the defendant otherwise qualifies for probation under that section.

J. For the purposes of this section, "controlled substance" has the same meaning prescribed in section 36-2501.

Sec. 43. Section 13-902, Arizona Revised Statutes, is amended to read:

13-902. Periods of probation

A. Unless terminated sooner, probation may continue for the following periods:

1. For a class 2 felony, seven years.
2. For a class 3 felony, five years.
3. For a class 4 felony, four years.
4. For a class 5 or 6 felony, three years.
5. For a class 1 misdemeanor, three years.
6. For a class 2 misdemeanor, two years.
7. For a class 3 misdemeanor, one year.

B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:

1. For a violation of section 28-1381 or 28-1382, five years.
2. For a violation of section 28-1383, ten years.

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than five years.
2. For a misdemeanor, not more than two years.

D. Notwithstanding any other provision of law, justice courts and municipal courts may impose the probation periods specified in subsection A, paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

E. After conviction of a felony offense or an attempt to commit any offense that is included in chapter 14 or 35.1 of this title or section 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may continue for a term of not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

F. After conviction of a violation of section 13-3824, subsection A, if a term of probation is imposed and the offense for which the person was required to register was a felony, probation may continue for a term of not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

G. ~~Beginning November 1, 2006,~~ After conviction of a dangerous crime against children as defined in section ~~13-604.01~~ 13-705, if a term of probation is imposed, the court shall require global position system monitoring for the duration of the term of probation.

Sec. 44. Section 13-905, Arizona Revised Statutes, is amended to read:

13-905. Restoration of civil rights; persons completing probation

A. A person who has been convicted of two or more felonies and whose period of probation has been completed may have any civil rights which were lost or suspended by ~~his~~ THE felony conviction restored by the judge who discharges him at the end of the term of probation.

B. ~~Upon~~ ON proper application, a person who has been discharged from probation either ~~prior to~~ BEFORE or after adoption of this chapter may have any civil rights which were lost or suspended by ~~his~~ THE felony conviction restored by the superior court judge by whom the person was sentenced or ~~his~~ THE JUDGE'S successors in office from the county in which ~~he~~ THE PERSON was originally convicted. The clerk of ~~such~~ THE superior court shall have the responsibility for processing the application ~~upon~~ ON request of the person involved or ~~his~~ THE PERSON'S attorney. The superior court shall ~~cause~~ SERVE a copy of the application ~~to be served upon~~ ON the county attorney.

C. If the person was convicted of a dangerous offense under section ~~13-604~~ 13-704, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm. If the person was convicted of a serious offense as defined in section ~~13-604~~ 13-706 the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for ten years from the date of his discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for two years from the date of ~~his~~ THE PERSON'S discharge from probation.

Sec. 45. Section 13-906, Arizona Revised Statutes, is amended to read:

13-906. Applications by persons discharged from prison

A. ~~Upon~~ ON proper application, a person who has been convicted of two or more felonies and who has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his conviction restored by the superior court judge by whom the person was sentenced or ~~his~~ THE JUDGE'S successors in office from the county in which ~~he~~ THE PERSON was originally sentenced.

B. A person who is subject to ~~the provisions of~~ subsection A of this section may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the state department of corrections. The clerk of the superior court that sentenced the applicant shall have the responsibility for processing applications for restoration of civil rights upon request of the person involved, ~~his~~ THE PERSON'S attorney or a representative of the state department of corrections. The superior court shall ~~cause~~ SERVE a copy of the application ~~to be served upon~~ ON the county attorney.

C. If the person was convicted of a dangerous offense under section ~~13-604~~ 13-704, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm. If the person was convicted of a serious offense as defined in section ~~13-604~~ 13-706, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for ten years from the date of his absolute discharge from imprisonment. If the person was convicted of any other felony offense, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for two years from the date of ~~his~~ THE PERSON'S absolute discharge from imprisonment.

Sec. 46. Section 13-909, Arizona Revised Statutes, is amended to read:

13-909. Restoration of civil rights; persons completing probation for federal offense

A. A person who has been convicted of two or more felonies and whose period of probation has been completed may have any civil rights which were lost or suspended by ~~his~~ THE felony conviction in a United States district court restored by the presiding judge of the superior court in the county in which ~~he~~ THE PERSON now resides, ~~upon~~ ON filing of an affidavit of discharge from the judge who discharged him at the end of the term of probation.

B. ~~Upon~~ ON proper application, a person who has been discharged from probation either ~~prior to~~ BEFORE or after adoption of this chapter may have any civil rights which were lost or suspended by ~~his~~ THE felony conviction restored by an application filed with the clerk of the superior court in the county in which ~~he~~ THE PERSON now resides. The clerk of the superior court shall process the application ~~upon~~ ON request of the person involved or ~~his~~ THE PERSON'S attorney.

C. If the person was convicted of an offense which would be a dangerous offense under section ~~13-604~~ 13-704, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm. If the person was convicted of an offense which would be a serious offense as defined in section ~~13-604~~ 13-706 the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for ten years from the date of ~~his~~ THE PERSON'S discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of his right to possess or carry a gun or firearm for two years from the date of his discharge from probation.

Sec. 47. Section 13-910, Arizona Revised Statutes, is amended to read:

13-910. Applications by persons discharged from federal prison

A. ~~Upon~~ ON proper application, a person who has been convicted of two or more felonies and who has received an absolute discharge from imprisonment in a federal prison may have any civil rights which were lost or suspended by ~~his~~ THE conviction restored by the presiding judge of the superior court in the county in which ~~he~~ THE PERSON now resides.

B. A person who is subject to ~~the provisions of~~ subsection A of this section may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the federal bureau of prisons, unless it is shown to be impossible to obtain such certificate. Such application shall be filed with the clerk of the superior court in the county in which the person now resides, and such clerk shall be responsible for processing applications for restoration of civil rights upon request of the person involved or ~~his~~ THE PERSON'S attorney.

C. If the person was convicted of an offense which would be a dangerous offense under section ~~13-604~~ 13-704, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm. If the person was convicted of an offense which would be a serious offense as defined in section ~~13-604~~ 13-706, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for ten years from the date of ~~his~~ THE PERSON'S absolute discharge from imprisonment. If the person was convicted of any other felony offense, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for two years from the date of ~~his~~ THE PERSON'S absolute discharge from imprisonment.

Sec. 48. Section 13-912.01, Arizona Revised Statutes, is amended to read:

13-912.01. Restoration of civil rights; persons adjudicated delinquent

A. A person who was adjudicated delinquent and whose period of probation has been completed may have ~~his~~ THE right to possess or carry a gun or firearm restored by the judge who discharges the person at the end of ~~his~~ THE PERSON'S term of probation.

B. A person who was adjudicated delinquent and who has been discharged from probation, on proper application, may have ~~his~~ THE right to carry or possess a gun or firearm restored by the judge of the juvenile court in the county where the person was adjudicated delinquent or ~~his~~ THE JUDGE'S successors. The clerk of the superior court shall process the application on the request of the person involved or the person's attorney. The applicant shall serve a copy of the application on the county attorney.

C. If the person's adjudication was for a dangerous offense under section ~~13-604~~ 13-704, a serious offense as defined in section ~~13-604~~ 13-706, burglary in the first degree, burglary in the second degree or arson, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm until the person attains thirty years of age. If the person's adjudication was for any other felony offense, the person may not file for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for two years from the date of ~~his~~ THE PERSON'S discharge.

Sec. 49. Section 13-921, Arizona Revised Statutes, is amended to read:

13-921. Probation for defendants under eighteen years of age; dual adult juvenile probation

A. The court may enter a judgment of guilt and place the defendant on probation pursuant to this section if all of the following apply:

1. The defendant is under eighteen years of age at the time the offense is committed.

2. The defendant is convicted of a felony offense.

3. The defendant is not sentenced to a term of imprisonment.

4. The defendant does not have a historical prior felony conviction ~~as defined in section 13-604~~.

B. If the court places a defendant on probation pursuant to this section, all of the following apply:

1. Except as provided in paragraphs 2, 3 and 4 of this subsection, if the defendant successfully completes the terms and conditions of probation, the court may set aside the judgment of guilt, dismiss the information or indictment, expunge the defendant's record and order the person to be released from all penalties and disabilities resulting from the conviction. The clerk of the court in which the conviction occurred shall notify each agency to which the original conviction was reported that all penalties and disabilities have been discharged and that the defendant's record has been expunged.

2. The conviction may be used as a conviction if it would be admissible pursuant to section ~~13-604~~ 13-703 OR 13-704 as if it had not been set aside and the conviction may be pleaded and proved as a prior conviction in any subsequent prosecution of the defendant.

3. The conviction is deemed to be a conviction for the purposes of sections 28-3304, 28-3305, 28-3306 and 28-3320.

4. The defendant shall comply with sections 13-3821 and 13-3822.

C. A defendant who is placed on probation pursuant to this section is deemed to be on adult probation.

D. If a defendant is placed on probation pursuant to this section, the court as a condition of probation may order the defendant to participate in services that are available to the juvenile court.

E. The court may order that a defendant who is placed on probation pursuant to this section be incarcerated in a county jail at whatever time or intervals, consecutive or nonconsecutive, that the court determines. The incarceration shall not extend beyond the period of court ordered probation, and the length of time the defendant actually spends in a county jail shall not exceed one year.

F. In addition to the provisions of this section, the court may apply any of the provisions of section 13-901.

Sec. 50. Section 13-1104, Arizona Revised Statutes, is amended to read:

13-1104. Second degree murder; classification

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

1. The person intentionally causes the death of another person, including an unborn child or, as a result of intentionally causing the death of another person, causes the death of an unborn child; or

2. Knowing that the person's conduct will cause death or serious physical injury, the person causes the death of another person, including an unborn child or, as a result of knowingly causing the death of another person, causes the death of an unborn child; or

3. Under circumstances manifesting extreme indifference to human life, the person recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person, including an unborn child or, as a result of recklessly causing the death of another person, causes the death of an unborn child.

B. An offense under this section applies to an unborn child in the womb at any stage of its development. A person may not be prosecuted under this section if any of the following applies:

1. The person was performing an abortion for which the consent of the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, has been obtained or for which the consent was implied or authorized by law.

2. The person was performing medical treatment on the pregnant woman or the pregnant woman's unborn child.

3. The person was the unborn child's mother.

C. Second degree murder is a class 1 felony and is punishable as provided by section ~~13-604, subsection S, section 13-604.01~~ 13-705 if the victim is under fifteen years of age or is an unborn child, SECTION 13-706, SUBSECTION A or section 13-710.

Sec. 51. Section 13-1105, Arizona Revised Statutes, is amended to read:

13-1105. First degree murder; classification

A. A person commits first degree murder if:

1. Intending or knowing that the person's conduct will cause death, the person causes the death of another person, including an unborn child, with premeditation or, as a result of causing the death of another person with premeditation, causes the death of an unborn child.

2. Acting either alone or with one or more other persons the person commits or attempts to commit sexual conduct with a minor under section 13-1405, sexual assault under section 13-1406, molestation of a child under section 13-1410, terrorism under section 13-2308.01, marijuana offenses under section 13-3405, subsection A, paragraph 4, dangerous drug offenses under section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory

threshold amount for each offense or combination of offenses, involving or using minors in drug offenses under section 13-3409, kidnapping under section 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or 13-1904, escape under section 13-2503 or 13-2504, child abuse under section 13-3623, subsection A, paragraph 1~~,~~ or unlawful flight from a pursuing law enforcement vehicle under section 28-622.01 and, in the course of and in furtherance of the offense or immediate flight from the offense, the person or another person causes the death of any person.

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

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

C. An offense under subsection A, paragraph 1 of this section applies to an unborn child in the womb at any stage of its development. A person shall not be prosecuted under subsection A, paragraph 1 of this section if any of the following applies:

1. The person was performing an abortion for which the consent of the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, has been obtained or for which the consent was implied or authorized by law.

2. The person was performing medical treatment on the pregnant woman or the pregnant woman's unborn child.

3. The person was the unborn child's mother.

D. First degree murder is a class 1 felony and is punishable by death or life imprisonment as provided by sections ~~13-703~~ 13-751 and ~~13-703.01~~ 13-752.

Sec. 52. Section 13-1204, Arizona Revised Statutes, is amended to read:

13-1204. Aggravated assault; classification; definition

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.

2. If the person uses a deadly weapon or dangerous instrument.

3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.

4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.

5. If the person commits the assault after entering the private home of another with the intent to commit the assault.

6. If the person is eighteen years of age or older and commits the assault on a child who is fifteen years of age or under.

7. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.

8. If the person commits the assault knowing or having reason to know that the victim is any of the following:

(a) A peace officer, or a person summoned and directed by the officer while engaged in the execution of any official duties.

(b) A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties.

(c) A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.

(d) A ~~licensed~~ health care practitioner who is certified or licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. This subdivision does not apply if the person who commits the assault is seriously mentally ill, as defined in section 36-550, or is afflicted with alzheimer's disease or related dementia.

(e) A prosecutor.

9. If the person knowingly takes or attempts to exercise control over any of the following:

(a) A peace officer's or other officer's firearm and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.

(b) Any weapon other than a firearm that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.

(c) Any implement that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution

of any official duties. For the purposes of this ~~paragraph~~ SUBDIVISION, "implement" means an object that is designed for or that is capable of restraining or injuring an individual. Implement does not include handcuffs.

10. If the person meets both of the following conditions:

(a) Is imprisoned or otherwise subject to the custody of any of the following:

(i) The state department of corrections.

(ii) The department of juvenile corrections.

(iii) A law enforcement agency.

(iv) A county or city jail or an adult or juvenile detention facility of a city or county.

(v) Any other entity that is contracting with the state department of corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

(b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (a) of this paragraph.

B. Except pursuant to subsections C and D of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9, subdivision (a) of this section is a class 3 felony except if the victim is under fifteen years of age in which case it is a class 2 felony punishable pursuant to section ~~13-604.01~~ 13-705. Aggravated assault pursuant to subsection A, paragraph 3 of this section is a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6 felony.

C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 3 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 8, subdivision (a) of this section resulting in any physical injury to a peace officer while the officer is engaged in the execution of any official duties is a class 5 felony.

D. Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.

2. Subsection A, paragraph 3 of this section is a class 3 felony if committed on a prosecutor.

3. Subsection A, paragraph 8, subdivision (e) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

E. For the purposes of this section, "prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.

Sec. 53. Section 13-1207, Arizona Revised Statutes, is amended to read:

13-1207. Prisoners who commit assault with intent to incite to riot or participate in riot; classification

A person, while in the custody of the state department of corrections or a county or city jail, who commits assault upon another person with the intent to incite to riot or who participates in a riot is guilty of a class 2 felony ~~and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the court has been served or commuted. A sentence imposed pursuant to this section shall be consecutive to any other sentence presently being served by the convicted person~~ AND SECTION 13-709.01, SUBSECTION B APPLIES TO THE SENTENCE IMPOSED.

Sec. 54. Section 13-1212, Arizona Revised Statutes, is amended to read:

13-1212. Prisoner assault with bodily fluids; liability for costs; classification; definition

A. A prisoner commits prisoner assault with bodily fluids if the prisoner throws or projects any bodily fluid at or onto a correctional facility employee or private prison security officer who the prisoner knows or reasonably should know is an employee of a correctional facility or is a private prison security officer.

B. A prisoner who is convicted of a violation of this section is liable for any costs incurred by the correctional facility employee or private prison security officer, including costs incurred for medical expenses or cleaning uniforms.

C. The state department of corrections shall adopt rules for the payment of costs pursuant to subsection B OF THIS SECTION. Monies in the prisoner's trust fund or retention account established by the correctional facility in which the prisoner is incarcerated may be used to pay the costs pursuant to subsection B OF THIS SECTION.

D. A prisoner who violates this section is guilty of a class 6 felony and the sentence imposed for a violation of this section shall run consecutively ~~to any sentence of imprisonment for which the prisoner was confined or to any term of community supervision, probation, parole, work furlough or other release from confinement~~ PURSUANT TO SECTION 13-709.01, SUBSECTION C.

E. For the purposes of this section, "bodily fluids" means saliva, blood, seminal fluid, urine or feces.

Sec. 55. Section 13-1304, Arizona Revised Statutes, is amended to read:

13-1304. Kidnapping; classification; consecutive sentence

A. A person commits kidnapping by knowingly restraining another person with the intent to:

1. Hold the victim for ransom, as a shield or hostage; or

2. Hold the victim for involuntary servitude; or

3. Inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony; or

4. Place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or ~~such~~ THE third person~~.~~; OR

5. Interfere with the performance of a governmental or political function~~.~~; OR

6. Seize or exercise control over any airplane, train, bus, ship or other vehicle.

B. Kidnapping is a class 2 felony unless the victim is released voluntarily by the defendant without physical injury in a safe place ~~prior to~~ BEFORE arrest and ~~prior to~~ BEFORE accomplishing any of the further enumerated offenses in subsection A of this section in which case it is a class 4 felony. If the victim is released pursuant to an agreement with the state and without any physical injury, it is a class 3 felony. If the victim is under fifteen years of age kidnapping is a class 2 felony punishable pursuant to section ~~13-604.01~~ 13-705. The sentence for kidnapping of a victim under fifteen years of age shall run consecutively to any other sentence imposed on the defendant and to any undischarged term of imprisonment of the defendant.

Sec. 56. 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.

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~~ 13-705.

Sec. 57. Section 13-1404, Arizona Revised Statutes, is amended to read:

13-1404. Sexual abuse; classification

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person WHO IS fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.

B. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony punishable pursuant to section ~~13-604.01~~ 13-705.

Sec. 58. Section 13-1405, Arizona Revised Statutes, is amended to read:

13-1405. Sexual conduct with a minor; classification

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.

B. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to section ~~13-604.01~~ 13-705. Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is the minor's parent, stepparent, adoptive parent, legal guardian or foster parent and the convicted 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 has been served or commuted.

Sec. 59. Section 13-1406, Arizona Revised Statutes, is amended to read:

13-1406. Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and 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. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section ~~13-604.01~~ 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section ~~13-702~~ 13-701, subsections ~~B,~~ C, ~~and~~ D AND E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, 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. The term for a first offense is as follows:

Minimum	Presumptive	Maximum
5.25 years	7 years	14 years

The term for a defendant who has one historical prior felony conviction is as follows:

Minimum	Presumptive	Maximum
7 years	10.5 years	21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

Minimum	Presumptive	Maximum
14 years	15.75 years	28 years

C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding ~~sections 13-604 and 13-604.01~~ SECTION 13-703, SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A AND SECTION 13-708, SUBSECTION D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person 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 at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to section ~~13-604.01, subsection A~~ 13-705.

Sec. 60. Section 13-1410, Arizona Revised Statutes, is amended to read:

13-1410. Molestation of a child; classification

A. A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child WHO IS under fifteen years of age.

B. Molestation of a child is a class 2 felony that is punishable pursuant to section ~~13-604.01~~ 13-705.

Sec. 61. Section 13-1411, Arizona Revised Statutes, is amended to read:

13-1411. Bestiality; classification; definition

A. A person commits bestiality by knowingly doing either of the following:

1. Engaging in oral sexual contact, sexual contact or sexual intercourse with an animal.

2. Causing another person to engage in oral sexual contact, sexual contact or sexual intercourse with an animal.

B. In addition to any other penalty imposed for a violation of subsection A of this section, the court may order that the convicted person do any of the following:

1. Undergo a psychological assessment and participate in appropriate counseling at the convicted person's own expense.

2. Reimburse an animal shelter as defined in section 11-1022 for any reasonable costs incurred for the care and maintenance of any animal that was taken to the animal shelter as a result of conduct proscribed by subsection A of this section.

C. This section does not apply to:

1. Accepted veterinary medical practices performed by a licensed veterinarian or veterinary technician.

2. Insemination of animals by the same species, bred for commercial purposes.

3. Accepted animal husbandry practices that provide necessary care for animals bred for commercial purposes.

D. Bestiality is a class 6 felony, except that bestiality pursuant to subsection A, paragraph 2 of this section is a class 3 felony punishable pursuant to section ~~13-604.01~~ 13-705 if the other person is a minor under fifteen years of age.

E. For the purposes of this section, "animal" means a nonhuman mammal, bird, reptile or amphibian, either dead or alive.

Sec. 62. Section 13-1414, Arizona Revised Statutes, is amended to read:

13-1414. Expenses of investigation

Any medical expenses arising out of the need to secure evidence that a person has been the victim of a dangerous crime against children as defined in section ~~13-604.01~~ 13-705 or a sexual assault shall be paid by the county in which the offense occurred.

Sec. 63. Section 13-1417, Arizona Revised Statutes, is amended to read:

13-1417. Continuous sexual abuse of a child; classification

A. A person who over a period of three months or more in duration engages in three or more acts in violation of section 13-1405, 13-1406 or 13-1410 with a child WHO IS under fourteen years of age is guilty of continuous sexual abuse of a child.

B. Continuous sexual abuse of a child is a class 2 felony and is punishable pursuant to section ~~13-604.01~~ 13-705.

C. To convict a person of continuous sexual abuse of a child, the trier of fact shall unanimously agree that the requisite number of acts occurred. The trier of fact does not need to agree on which acts constitute the requisite number.

D. Any other felony sexual offense involving the victim shall not be charged in the same proceeding with a charge under this section unless the other charged felony sexual offense occurred outside the time period charged under this section or the other felony sexual offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved. If more than one victim is involved, a separate count may be charged for each victim.

Sec. 64. Section 13-1423, Arizona Revised Statutes, is amended to read:

13-1423. Violent sexual assault; natural life sentence

A. A person is guilty of violent sexual assault if in the course of committing an offense under section 13-1404, 13-1405, 13-1406 or 13-1410 the offense involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has a historical prior felony conviction for a sexual offense under this chapter or any offense committed outside this state that if committed in this state would constitute a sexual offense under this chapter.

B. Notwithstanding ~~sections 13-604 and 13-604.01~~ SECTION 13-703, SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A AND SECTION 13-708, SUBSECTION D, a person who is guilty of a violent sexual assault shall be sentenced to life imprisonment and the court shall order that the person not be released on any basis for the remainder of the person's natural life.

Sec. 65. Section 13-2308.01, Arizona Revised Statutes, is amended to read:

13-2308.01. Terrorism; classification

A. It is unlawful for a person to intentionally or knowingly do any of the following:

1. Engage in an act of terrorism.

2. Organize, manage, direct, supervise or finance an act of terrorism.

3. Solicit, incite or induce others to promote or further an act of terrorism.

4. Without lawful authority or when exceeding lawful authority, manufacture, sell, deliver, display, use, make accessible to others, possess or exercise control over a weapon of mass destruction knowing or having reason to know that the device or object involved is a weapon of mass destruction.

5. Make property available to another, by transaction, transportation or otherwise, knowing or having reason to know that the property is intended to facilitate an act of terrorism.

6. Provide advice, assistance or direction in the conduct, financing or management of an act of terrorism knowing or having reason to know that an act of terrorism has occurred or may result by:

(a) Harboring or concealing any person or property.

(b) Warning any person of impending discovery, apprehension, prosecution or conviction. This subdivision does not apply to a warning that is given in connection with an effort to bring another person into compliance with the law.

(c) Providing any person with material support or resources or any other means of avoiding discovery, apprehension, prosecution or conviction.

(d) Concealing or disguising the nature, location, source, ownership or control of material support or resources.

(e) Preventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of any person or that might aid in the prevention of an act of terrorism.

(f) Suppressing by any act of concealment, alteration or destruction any physical evidence that might aid in the discovery, apprehension, prosecution or conviction of any person or that might aid in the prevention of an act of terrorism.

(g) Concealing the identity of any person.

B. This section does not apply to any person who is a member or employee of the armed forces of the United States, a federal or state governmental agency or any political subdivision of a state, a charitable, scientific or educational institution or a private entity if both of the following apply:

1. The person is engaged in lawful activity within the scope of the person's employment and the person is otherwise duly authorized or licensed to manufacture, possess, sell, deliver, display, use, exercise control over or make accessible to others any weapon of mass destruction or to otherwise engage in any activity described in this paragraph.

2. The person is in compliance with all applicable federal and state laws in doing so.

C. A violation of subsection A of this section is a class 2 felony, except that if the court finds that at least one of the aggravating circumstances listed in section ~~13-702~~ 13-701, subsection ~~C~~ D applies, ~~the court may impose a life sentence. If the court imposes a life sentence, the court may order that the defendant not be released on any basis for the remainder of the defendant's natural life. If the court does not sentence the defendant to natural life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years~~ THE DEFENDANT SHALL BE SENTENCED PURSUANT TO SECTION 13-709.02, SUBSECTION A.

Sec. 66. Section 13-2312, Arizona Revised Statutes, is amended to read:

13-2312. <u>Illegal control of an enterprise; illegally conducting an enterprise; classification</u>

A. A person commits illegal control of an enterprise if such person, through racketeering or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.

B. A person commits illegally conducting an enterprise if such person is employed by or associated with any enterprise and conducts such enterprise's affairs through racketeering or participates directly or indirectly in the conduct of any enterprise that the person knows is being conducted through racketeering.

C. A person violates this section if he hires, engages or uses a minor for any conduct preparatory to or in completion of any offense in this section.

D. A knowing violation of ~~this~~ SUBSECTION A OR B OF THIS section is a class 3 felony~~, except that~~. A knowing violation of subsection C OF THIS SECTION is a class 2 felony and ~~the person convicted is not eligible for probation, pardon, suspension of sentence or release on any basis until the person has served the sentence imposed by the court or the sentence is commuted~~ SECTION 13-709.02, SUBSECTION B APPLIES TO THE SENTENCE IMPOSED.

Sec. 67. Section 13-2411, Arizona Revised Statutes, is amended to read:

13-2411. Impersonating a peace officer; classification; definition

A. A person commits impersonating a peace officer if the person, without lawful authority, pretends to be a peace officer and engages in any conduct with the intent to induce another to submit to the person's pretended authority or to rely ~~upon~~ ON the person's pretended acts.

B. It is not a defense to a prosecution under this section that the law enforcement agency the person pretended to represent did not in fact exist or that the law enforcement agency the person pretended to represent did not in fact possess the authority claimed for it.

C. Impersonating a peace officer is a class 6 felony, except that impersonating a peace officer during the commission of any of the following felonies is a class 4 felony:

1. Negligent homicide.
2. Manslaughter.
3. First degree murder.
4. Second degree murder.
5. Assault.
6. Aggravated assault.
7. Sexual assault.
8. Violent sexual assault.
9. Sexual abuse.
10. Unlawfully administering intoxicating liquors, narcotic ~~drug~~ DRUGS or dangerous ~~drug~~ DRUGS.
11. Attack by a person's vicious animal ~~pursuant to~~ AS PRESCRIBED IN section 13-1208.
12. Drive by shooting.
13. Discharging a firearm at a structure.
14. Aggravated criminal damage.

15. Theft.
16. Theft by extortion.
17. Theft of a credit card or obtaining a credit card by fraudulent means.
18. Misconduct involving weapons.
19. Misconduct involving explosives.
20. Depositing explosives.
21. Procuring or placing persons in a house of prostitution.
22. Dangerous crimes against children ~~pursuant to~~ AS PRESCRIBED IN section ~~13-604.01~~ 13-705.
23. Burglary.
24. Arson.
25. Kidnapping.
26. Robbery.

D. For the purposes of this section, "peace officer" has the same meaning prescribed in section 1-215 and includes any federal law enforcement officer or agent who has the power to make arrests pursuant to federal law.

Sec. 68. Section 13-3107, Arizona Revised Statutes, is amended to read:

13-3107. Unlawful discharge of firearms; exceptions; classification; definitions

A. A person who with criminal negligence discharges a firearm within or into the limits of any municipality is guilty of a class 6 felony.

B. Notwithstanding the fact that the offense involves the discharge of a deadly weapon, unless ~~the~~ A dangerous ~~nature of the felony~~ OFFENSE is ~~charged~~ ALLEGED and proven pursuant to section ~~13-604, subsection P~~ 13-704, SUBSECTION L, ~~the provisions of~~ section ~~13-702, subsection G apply~~ 13-604 APPLIES to this offense.

C. This section does not apply if the firearm is discharged:

1. As allowed pursuant to ~~the provisions of~~ chapter 4 of this title.
2. On a properly supervised range.
3. In an area recommended as a hunting area by the Arizona game and fish department, approved and posted as required by the chief of police, but any such area may be closed when deemed unsafe by the chief of police or the director of the ARIZONA game and fish department.
4. For the control of nuisance wildlife by permit from the Arizona game and fish department or the United States fish and wildlife service.
5. By special permit of the chief of police of the municipality.
6. As required by an animal control officer in the performance of duties as specified in section 9-499.04.
7. Using blanks.
8. More than one mile from any occupied structure as defined in section 13-3101.

9. In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.

D. For the purposes of this section:

1. "Municipality" means any city or town and includes any property that is fully enclosed within the city or town.

2. "Properly supervised range" means a range that is ~~operated~~ ANY OF THE FOLLOWING:

(a) OPERATED by a club affiliated with the national rifle association of America, the amateur trapshooting association, the national skeet association or any other nationally recognized shooting organization, or by any public or private school. ~~, or~~

(b) Approved by any agency of the federal government, this state~~,~~ OR a county or city within which the range is located. ~~or~~

(c) OPERATED with adult supervision for shooting air or carbon dioxide gas operated guns, or for shooting in underground ranges on private or public property.

Sec. 69. Section 13-3113, Arizona Revised Statutes, is amended to read:

13-3113. Adjudicated delinquents; firearm possession; classification

A person who was previously adjudicated delinquent for an offense that would be a felony if committed by an adult and who possesses, uses or carries a firearm within ten years from the date of his adjudication or his release or escape from custody is guilty of a class 5 felony for a first offense and a class 4 felony for a second or subsequent offense if the person was previously adjudicated for an offense that if committed as an adult would constitute:

1. Burglary in the first degree.

2. Burglary in the second degree.

3. Arson.

4. Any felony offense involving the use or threatening exhibition of a deadly weapon or dangerous instrument.

5. A serious offense as defined in section ~~13-604~~ 13-706.

Sec. 70. Section 13-3206, Arizona Revised Statutes, is amended to read:

13-3206. Taking child for purpose of prostitution; classification

A person who takes away any minor from ~~such person's~~ THE MINOR'S father, mother, guardian or other person having the legal custody of ~~such person~~ THE MINOR, for the purpose of prostitution, is guilty of a class 4 felony. If the minor is under fifteen years of age, taking a child for THE PURPOSE OF prostitution is a class 2 felony and is punishable pursuant to section ~~13-604.01~~ 13-705.

Sec. 71. 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 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 with the intent that 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.

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~~ 13-705.

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~~ 13-701, subsections ~~B,~~ C, ~~and~~ D AND E. 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. 72. Section 13-3407, Arizona Revised Statutes, is amended to read:

13-3407. Possession, use, administration, acquisition, sale, manufacture or transportation of dangerous drugs; classification

A. A person shall not knowingly:

1. Possess or use a dangerous drug.

2. Possess a dangerous drug for sale.

3. Possess equipment or chemicals, or both, for the purpose of manufacturing a dangerous drug.

4. Manufacture a dangerous drug.

5. Administer a dangerous drug to another person.

6. Obtain or procure the administration of a dangerous drug by fraud, deceit, misrepresentation or subterfuge.

7. Transport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer a dangerous drug.

B. A person who violates:

1. Subsection A, paragraph 1 of this section is guilty of a class 4 felony. Unless the drug involved is lysergic acid diethylamide, methamphetamine, amphetamine or phencyclidine or the person was previously convicted of a felony offense or a violation of this section or section 13-3408, the court on motion of the state, considering the nature and circumstances of the offense, for a person not previously convicted of any felony offense or a violation of this section or section 13-3408 may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is successfully terminated. The offense shall be treated as a felony for all purposes until the court enters an order designating the offense a misdemeanor.

2. Subsection A, paragraph 2 of this section is guilty of a class 2 felony.

3. Subsection A, paragraph 3 of this section is guilty of a class 3 felony, except that if the offense involved methamphetamine, the person is guilty of a class 2 felony.

4. Subsection A, paragraph 4 of this section is guilty of a class 2 felony.

5. Subsection A, paragraph 5 of this section is guilty of a class 2 felony.

6. Subsection A, paragraph 6 of this section is guilty of a class 3 felony.

7. Subsection A, paragraph 7 of this section is guilty of a class 2 felony.

C. Except as provided in subsection E of this section, a person who is convicted of a violation of subsection A, paragraph 1, 3 or 6 and who has not previously been convicted of any felony or who has not been sentenced pursuant to section ~~13-604~~ 13-703, SECTION 13-704, SECTION 13-706, SUBSECTION A, SECTION 13-708, SUBSECTION D or any other law making the convicted person ineligible for probation is eligible for probation.

D. Except as provided in subsection E of this section, if the aggregate amount of dangerous drugs involved in one offense or all of the offenses that are consolidated for trial equals or exceeds the statutory threshold amount, a person who is convicted of a violation of subsection A, paragraph 2, 5 or 7 of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis 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.

E. If the person is convicted of a violation of subsection A, paragraph 2, 3, 4 or 7 of this section and the drug involved is methamphetamine, the person shall be sentenced pursuant to section ~~13-712~~ 13-709.03, SUBSECTIONS A OR B.

F. A person who is convicted of a violation of subsection A, paragraph 4 of this section or subsection A, paragraph 2, 3 or 7 of this section involving methamphetamine is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis 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.

G. If a person is convicted of a violation of subsection A, paragraph 5 of this section, if the drug is administered without the other person's consent, if the other person is under eighteen years of age and if the drug is flunitrazepam, gamma hydroxy butrate or ketamine hydrochloride, the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis 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.

H. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of ~~any provision of~~ this section to pay a fine of not less than one thousand dollars or three times the value as determined by the court of the dangerous drugs involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

I. A person who is convicted of a violation of ~~a provision of~~ this section for which probation or release before the expiration of the sentence imposed by the court is authorized is prohibited from using any marijuana, dangerous drug, narcotic drug or prescription-only drug except as lawfully administered by a health care practitioner and as a condition of any probation or release shall be required to submit to drug testing administered under the supervision of the probation department of the county or the state department of corrections, as appropriate, during the duration of the term of probation or before the expiration of the sentence imposed.

J. If a person who is convicted of a violation of ~~a provision of~~ this section is granted probation, the court shall order that as a condition of probation the person perform not less than three hundred sixty hours of community restitution with an agency or organization ~~providing~~ THAT PROVIDES counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

Sec. 73. Section 13-3407.01, Arizona Revised Statutes, is amended to read:

13-3407.01. Manufacturing methamphetamine under circumstances that cause physical injury to a minor; classification

A. A person shall not knowingly manufacture methamphetamine under any circumstance that causes physical injury to a minor who is under fifteen years of age.

B. A person who violates this section is guilty of a class 2 felony and is punishable as provided by section ~~13-604.01~~ 13-705.

Sec. 74. Section 13-3408, Arizona Revised Statutes, is amended to read:

13-3408. Possession, use, administration, acquisition, sale, manufacture or transportation of narcotic drugs; classification

A. A person shall not knowingly:

1. Possess or use a narcotic drug.

2. Possess a narcotic drug for sale.

3. Possess equipment or chemicals, or both, for the purpose of manufacturing a narcotic drug.

4. Manufacture a narcotic drug.

5. Administer a narcotic drug to another person.

6. Obtain or procure the administration of a narcotic drug by fraud, deceit, misrepresentation or subterfuge.

7. Transport for sale, import into this state, offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer a narcotic drug.

B. A person who violates:

1. Subsection A, paragraph 1 of this section is guilty of a class 4 felony.

2. Subsection A, paragraph 2 of this section is guilty of a class 2 felony.

3. Subsection A, paragraph 3 of this section is guilty of a class 3 felony.

4. Subsection A, paragraph 4 of this section is guilty of a class 2 felony.

5. Subsection A, paragraph 5 of this section is guilty of a class 2 felony.

6. Subsection A, paragraph 6 of this section is guilty of a class 3 felony.

7. Subsection A, paragraph 7 of this section is guilty of a class 2 felony.

C. A person who is convicted of a violation of subsection A, paragraph 1, 3 or 6 of this section and who has not previously been convicted of any felony or who has not been sentenced pursuant to section ~~13-604~~ 13-703, SECTION 13-704, SUBSECTION A, B, C, D OR E, SECTION 13-706, SUBSECTION A, SECTION 13-708, SUBSECTION D or any other provision of law making the convicted person ineligible for probation is eligible for probation.

D. If the aggregate amount of narcotic drugs involved in one offense or all of the offenses that are consolidated for trial equals or exceeds the statutory threshold amount, a person who is convicted of a violation of subsection A, paragraph 2, 5 or 7 of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis 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.

E. A person who is convicted of a violation of subsection A, paragraph 4 of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis 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.

F. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of ~~any provision of~~ this section to pay a fine of not less than two thousand dollars or three times the value as determined by the court of the narcotic drugs involved in or giving rise to the charge, whichever is greater, and not more than the

maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

G. A person who is convicted of a violation of ~~a provision of~~ this section for which probation or release before the expiration of the sentence imposed by the court is authorized is prohibited from using any marijuana, dangerous drug, narcotic drug or prescription-only drug except as lawfully administered by a health care practitioner and as a condition of any probation or release shall be required to submit to drug testing administered under the supervision of the probation department of the county or the state department of corrections, as appropriate, during the duration of the term of probation or before the expiration of the sentence imposed.

H. If a person who is convicted of a violation of this section is granted probation, the court shall order that as a condition of probation the person perform not less than three hundred sixty hours of community restitution with an agency or organization that provides counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

Sec. 75. Section 13-3409, Arizona Revised Statutes, is amended to read:

13-3409. Involving or using minors in drug offenses; classification

A. A person shall not knowingly:

1. Hire, employ or use a minor to engage in any conduct, completed or preparatory, ~~which~~ THAT is prohibited by sections 13-3404, 13-3404.01, ~~and~~ 13-3405 ~~through~~, 13-3406, 13-3407 AND 13-3408.

2. Sell, transfer or offer to sell or transfer to a minor any substance if its possession is prohibited by sections 13-3404, 13-3404.01, 13-3405, 13-3407 and 13-3408.

B. A person who violates ~~a provision of~~ this section is guilty of a class 2 felony and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the court has been served or commuted, and if the minor is under fifteen years of age it is punishable pursuant to section ~~13-604.01~~ 13-705, subsection C.

C. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of this section to pay a fine of not less than two thousand dollars or three times the value as determined by the court of the substance involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

Sec. 76. Section 13-3411, Arizona Revised Statutes, is amended to read:

13-3411. Possession, use, sale or transfer of marijuana, peyote, prescription drugs, dangerous drugs or narcotic drugs or manufacture of dangerous drugs in a drug free school zone; violation; classification; definitions

A. It is unlawful for a person to do any of the following:

1. Intentionally be present in a drug free school zone to sell or transfer marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs.

2. Possess or use marijuana, peyote, dangerous drugs or narcotic drugs in a drug free school zone.

3. Manufacture dangerous drugs in a drug free school zone.

B. A person who violates subsection A of this section is guilty of the same class of felony that the person would otherwise be guilty of had the violation not occurred within a drug free school zone, ~~but the minimum, maximum and presumptive sentence for that violation shall be increased by one year. A person convicted of violating subsection A of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The additional sentence imposed under this subsection is in addition to any enhanced punishment that may be applicable under section 13-604 or other provisions of this chapter~~ AND SECTION 13-709.03, SUBSECTION C APPLIES TO THE SENTENCE IMPOSED.

C. In addition to any other penalty prescribed by this title, the court shall order a person WHO IS convicted of a violation of this section to pay a fine of not less than two thousand dollars or three times the value as determined by the court of the drugs involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

D. Each school district's governing board or its designee, or the chief administrative officer in the case of a nonpublic school, shall place and maintain permanently affixed signs located in a visible manner at the main entrance of each school that identifies the school and its accompanying grounds as a drug free school zone.

E. The drug free school zone map prepared pursuant to title 15 shall constitute an official record as to the location and boundaries of each drug free school zone. The school district's governing board or its designee, or the chief administrative officer in the case of any nonpublic school, shall promptly notify the county attorney of any changes in the location and boundaries of any school property and shall file with the county recorder the original map prepared pursuant to title 15.

F. All school personnel who observe a violation of this section shall immediately report the violation to a school administrator. The administrator shall immediately report the violation to a peace officer. It is unlawful for any school personnel or school administrator to fail to report a violation as prescribed in this section.

G. School personnel having custody or control of school records of a student involved in an alleged violation of this section shall make the records available to a peace officer upon written request signed by a magistrate. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding. A person furnishing records required under this subsection or a person participating in a judicial or administrative proceeding or investigation resulting from the furnishing of records required under this subsection is immune from civil or criminal liability by reason of such action unless the person acted with malice.

H. A person who violates subsection F of this section is guilty of a class 3 misdemeanor.

I. For THE purposes of this section:

1. "Drug free school zone" means the area within three hundred feet of a school or its accompanying grounds, any public property within one thousand feet of a school or its accompanying grounds, a school bus stop or on any school bus or bus contracted to transport pupils to any school.

2. "School" means any public or nonpublic kindergarten program, common school or high school.

Sec. 77. Section 13-3419, Arizona Revised Statutes, is amended to read:

13-3419. <u>Multiple drug offenses not committed on the same occasion; sentencing</u>

A. Except for a person convicted of possession offenses pursuant to section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A, paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is convicted of two or more offenses under this chapter that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions ~~as defined in section 13-604~~ shall be sentenced for the second or subsequent offense pursuant to this section. The person 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, except that a person sentenced pursuant to paragraph 1 of this subsection shall be eligible for probation. The presumptive term for paragraph 1, 2, 3 or 4 of this subsection may be aggravated within the range under this section pursuant to section ~~13-702~~ 13-701, subsections ~~B,~~ C and D. The presumptive term for paragraph 1, 2 or 3 of this subsection may be mitigated within the

range under this section pursuant to section ~~13-702~~ 13-701, subsections ~~B,~~ C and ~~D~~ E. The terms are as follows:

1. For two offenses for which the aggregate amount of drugs involved in one offense or both of the offenses is less than the statutory threshold amount for the second offense:

Felony	Minimum	Presumptive	Maximum
Class 2	4 years	5 years	10 years
Class 3	2.5 years	3.5 years	7 years
Class 4	1.5 years	2.5 years	3 years
Class 5	.75 years	1.5 years	2 years

2. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses is less than the statutory threshold amount for any offense subsequent to the second offense:

Felony	Minimum	Presumptive	Maximum
Class 2	4 years	5 years	10 years
Class 3	2.5 years	3.5 years	7 years
Class 4	1.5 years	2.5 years	3 years
Class 5	.75 years	1.5 years	2 years

3. For two offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for the second offense:

Felony	Minimum	Presumptive	Maximum
Class 2	4 years	5 years	10 years
Class 3	2.5 years	3.5 years	7 years
Class 4	1.5 years	2.5 years	3 years
Class 5	~~9 months~~ .75 YEARS	1.5 years	2 years

4. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for any offense subsequent to the second offense:

Felony	Minimum	Presumptive	Maximum
Class 2	4 years	7 years	12 years
Class 3	2.5 years	5 years	9 years
Class 4	1.5 years	3 years	5 years
Class 5	~~9 months~~ .75 YEARS	2.5 years	4 years

B. For offenders WHO ARE sentenced pursuant to subsection A~~, paragraphs 1 through 4~~ of this section the court may increase the maximum sentence otherwise authorized by up to twenty-five per cent.

C. For offenders WHO ARE sentenced pursuant to subsection A, paragraph 1, 2 or 3 of this section the court may decrease the minimum sentence otherwise authorized by up to twenty-five per cent.

D. If the court increases or decreases a sentence pursuant to this section, the court shall state on the record the reasons for the increase or decrease.

E. The court shall inform all of the parties before the sentencing occurs of its intent to increase or decrease a sentence pursuant to this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

Sec. 78. Section 13-3422, Arizona Revised Statutes, is amended to read:

13-3422. Drug court program; establishment; participation

A. The presiding judge of the superior court in each county may establish a drug court program as defined in section 13-3401.

B. Cases assigned to the drug court program may consist of defendants who are drug dependent persons and who are charged with a probation eligible offense under this chapter, including preparatory offenses.

C. A defendant may be admitted into the drug court program prior to a guilty plea or a trial only on the agreement of the court and the prosecutor.

D. A defendant is not eligible for entry into the drug court program pursuant to subsections F and H of this section if any of the following applies:

1. The defendant has been convicted of a serious offense as defined in section ~~13-604~~ 13-706.

2. The defendant has been convicted of an offense under chapter 14 of this title.

3. The defendant has been convicted of ~~an~~ A DANGEROUS offense ~~involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury~~.

4. The defendant has completed or previously been terminated from a drug court program other than a juvenile drug court program.

5. The defendant has completed or previously been terminated from a drug diversion program other than a juvenile drug diversion program for an offense in violation of this chapter.

E. For the purposes of subsection D of this section, the age of the conviction does not matter.

F. Notwithstanding any law to the contrary, if a defendant who is assigned to the drug court program is subsequently found guilty of the offense and probation is otherwise available, the court, without entering a judgment of guilt and with the concurrence of the defendant, may defer further proceedings and place the defendant on probation. The terms and conditions of probation shall provide for the treatment of the drug dependent person and shall include any other conditions and requirements that the court deems appropriate, including the imposition of a fine, payment of fees and any other terms and conditions as provided by law which are not in violation of section 13-901.01.

G. If the defendant is placed on probation pursuant to subsection F of this section and the defendant violates a term or condition of probation, the court may terminate the defendant's participation in the drug court program, enter an adjudication of guilt and revoke the defendant's probation.

H. If the defendant is convicted of an offense listed in subsection I of this section and is placed on probation pursuant to subsection F of this section, on fulfillment of the terms and conditions of probation, the court may discharge the defendant and dismiss the proceedings against the defendant or may dispose of the case as provided by law.

I. A defendant is eligible for dismissal of proceedings as provided in subsection H of this section if the defendant is convicted of any of the following offenses:

1. Possession or use of marijuana in violation of section 13-3405, subsection A, paragraph 1.

2. Possession or use of a prescription-only drug in violation of section 13-3406, subsection A, paragraph 1.

3. Possession or use of a dangerous drug in violation of section 13-3407, subsection A, paragraph 1.

4. Possession or use of a narcotic drug in violation of section 13-3408, subsection A, paragraph 1.

5. Possession or use of drug paraphernalia in violation of section 13-3415, subsection A.

6. Any preparatory offense, as prescribed in chapter 10 of this title, to an offense listed in this subsection.

J. If the defendant is placed on probation pursuant to subsection F of this section and the defendant fails to fulfill the terms and conditions of probation, the court shall enter an adjudication of guilt and sentence the defendant as provided by law.

K. If a defendant chooses not to participate in the drug court program, the defendant shall be prosecuted as provided by law.

L. This section does not prohibit the presiding judge of the superior court from establishing a drug court program other than as defined in section 13-3401 with other terms and conditions, including requiring a defendant to participate in a drug court program subsequent to the entry of judgment of guilt and sentencing.

Sec. 79. Section 13-3552, Arizona Revised Statutes, is amended to read:

13-3552. <u>Commercial sexual exploitation of a minor; classification</u>

A. A person commits commercial sexual exploitation of a minor by knowingly:

1. Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.

2. Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.

3. Permitting a minor under ~~such~~ THE person's custody or control to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.

4. Transporting or financing the transportation of any minor through or across this state with the intent that the minor engage in prostitution, exploitive exhibition or other sexual conduct for the purpose of producing a visual depiction or live act depicting such conduct.

B. Commercial sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to section ~~13-604.01~~ 13-705.

Sec. 80. Section 13-3553, Arizona Revised Statutes, is amended to read:

13-3553. Sexual exploitation of a minor; evidence; classification

A. A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

B. If any visual depiction of sexual exploitation of a minor is admitted into evidence, the court shall seal that evidence at the conclusion of any grand jury proceeding, hearing or trial.

C. Sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to section ~~13-604.01~~ 13-705.

Sec. 81. 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 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~~ 13-705.