

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

CHAPTER 90

## **HOUSE BILL 2353**

AN ACT

AMENDING SECTIONS 13-105 AND 13-708, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-709.01, 13-709.03, 13-709.04 AND 13-709.05, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-709.02 AND 13-907, ARIZONA REVISED STATUTES; AMENDING SECTION 13-1204, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 97, SECTION 1 AND CHAPTER 276, SECTION 2; REPEALING SECTION 13-1204, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 241, SECTION 1 AND CHAPTER 276, SECTION 2; AMENDING SECTIONS 13-1207, 13-1212, 13-1402, 13-1403, 13-2308.01, 13-2312, 13-3101, 13-3407, 13-3411, 13-3601, 13-3961, 28-1387 AND 31-418, ARIZONA REVISED STATUTES; REPEALING TITLE 31, CHAPTER 3, ARTICLE 4, ARIZONA REVISED STATUTES; AMENDING SECTIONS 41-1604.10 AND 41-1604.13, ARIZONA REVISED STATUTES; RELATING TO POSTCONVICTION MATTERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-105, Arizona Revised Statutes, is amended to  
3 read:

4 13-105. Definitions

5 In this title, unless the context otherwise requires:

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

13 2. "Act" means a bodily movement.

14 3. "Benefit" means anything of value or advantage, present or  
15 prospective.

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

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

24 6. "Conduct" means an act or omission and its accompanying culpable  
25 mental state.

26 7. "Crime" means a misdemeanor or a felony.

27 8. "Criminal street gang" means an ongoing formal or informal  
28 association of persons in which members or associates individually or  
29 collectively engage in the commission, attempted commission, facilitation or  
30 solicitation of any felony act and that has at least one individual who is a  
31 criminal street gang member.

32 9. "Criminal street gang member" means an individual to whom at least  
33 two of the following seven criteria that indicate criminal street gang  
34 membership apply:

35 (a) Self-proclamation.

36 (b) Witness testimony or official statement.

37 (c) Written or electronic correspondence.

38 (d) Paraphernalia or photographs.

39 (e) Tattoos.

40 (f) Clothing or colors.

41 (g) Any other indicia of street gang membership.

42 10. "Culpable mental state" means intentionally, knowingly, recklessly  
43 or with criminal negligence as those terms are defined in this paragraph:

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

4 (b) "Knowingly" means, with respect to conduct or to a circumstance  
5 described by a statute defining an offense, that a person is aware or  
6 believes that the person's conduct is of that nature or that the circumstance  
7 exists. It does not require any knowledge of the unlawfulness of the act or  
8 omission.

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

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

24 11. "Dangerous drug" means dangerous drug as defined in section  
25 13-3401.

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

29 13. "Dangerous offense" means an offense involving the discharge, use  
30 or threatening exhibition of a deadly weapon or dangerous instrument or the  
31 intentional or knowing infliction of serious physical injury on another  
32 person.

33 14. "Deadly physical force" means force that is used with the purpose  
34 of causing death or serious physical injury or in the manner of its use or  
35 intended use is capable of creating a substantial risk of causing death or  
36 serious physical injury.

37 15. "Deadly weapon" means anything designed for lethal use, including a  
38 firearm.

39 16. "Economic loss" means any loss incurred by a person as a result of  
40 the commission of an offense. Economic loss includes lost interest, lost  
41 earnings and other losses that would not have been incurred but for the  
42 offense. Economic loss does not include losses incurred by the convicted  
43 person, damages for pain and suffering, punitive damages or consequential  
44 damages.

1           17. "Enterprise" includes any corporation, association, labor union or  
2 other legal entity.

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

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

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

13          21. "Government function" means any activity that a public servant is  
14 legally authorized to undertake on behalf of a government.

15          22. "Historical prior felony conviction" means:

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

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

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

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

24           (ii) INVOLVED A DANGEROUS OFFENSE.

25           ~~(iv)~~ (iii) Involved the illegal control of a criminal enterprise.

26           ~~(v)~~ (iv) Involved aggravated driving under the influence of  
27 intoxicating liquor or drugs.

28           ~~(vi)~~ (v) Involved any dangerous crime against children as defined in  
29 section 13-705.

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

38           (i) A departure from custody or from a juvenile secure care facility,  
39 a juvenile detention facility or an adult correctional facility in which the  
40 person is held or detained, with knowledge that the departure is not  
41 permitted, or the failure to return to custody or detention following a  
42 temporary leave granted for a specific purpose or for a limited period.

43           (ii) A failure to report as ordered to custody or detention to begin  
44 serving a term of incarceration.

1 (c) Any class 4, 5 or 6 felony, except the offenses listed in  
2 subdivision (a) of this paragraph, that was committed within the five years  
3 immediately preceding the date of the present offense. Any time spent on  
4 absconder status while on probation, on escape status or incarcerated is  
5 excluded in calculating if the offense was committed within the preceding  
6 five years. If a court determines a person was not on absconder status while  
7 on probation or escape status, that time is not excluded. For the purposes  
8 of this subdivision, "escape" has the same meaning prescribed in subdivision  
9 (b) of this paragraph.

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

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

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

17 25. "Narcotic drug" means narcotic drugs as defined in section 13-3401.

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

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

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

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

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

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

39 32. "Physical injury" means the impairment of physical condition.

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

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

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

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

5           37. "Public servant":

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

10           (b) Does not include jurors or witnesses.

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

14           38. "Serious physical injury" includes physical injury that creates a  
15 reasonable risk of death, or that causes serious and permanent disfigurement,  
16 serious impairment of health or loss or protracted impairment of the function  
17 of any bodily organ or limb.

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

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

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

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

31           Sec. 2. Section 13-708, Arizona Revised Statutes, is amended to read:

32           13-708. Offenses committed while released from confinement

33           A. A person who is convicted of any felony involving a dangerous  
34 offense that is committed while the person is on probation for a conviction  
35 of a felony offense or parole, work furlough, community supervision or any  
36 other release or has escaped from confinement for conviction of a felony  
37 offense shall be sentenced to imprisonment for not less than the presumptive  
38 sentence authorized under this chapter and is not eligible for suspension or  
39 commutation or release on any basis until the sentence imposed is served.

40           B. A person who is convicted of a dangerous offense that is committed  
41 while the person is on release or has escaped from confinement for a  
42 conviction of a serious offense as defined in section 13-706, an offense  
43 resulting in serious physical injury or an offense involving the use or  
44 exhibition of a deadly weapon or dangerous instrument shall be sentenced to  
45 the maximum sentence authorized under this chapter and is not eligible for

1 suspension or commutation or release on any basis until the sentence imposed  
2 is served. If the court finds that at least two substantial aggravating  
3 circumstances listed in section 13-701, subsection D apply, the court may  
4 increase the maximum sentence authorized under this chapter by up to  
5 twenty-five per cent. A sentence imposed pursuant to this subsection shall  
6 revoke the convicted person's release if the person was on release and shall  
7 be consecutive to any other sentence from which the convicted person had been  
8 temporarily released or had escaped, unless the sentence from which the  
9 convicted person had been paroled or placed on probation was imposed by a  
10 jurisdiction other than this state.

11 C. A person who is convicted of any felony offense that is not  
12 included in subsection A or B of this section and that is committed while the  
13 person is on probation for a conviction of a felony offense or parole, work  
14 furlough, community supervision or any other release or escape from  
15 confinement for conviction of a felony offense shall be sentenced to a term  
16 of not less than the presumptive sentence authorized for the offense and the  
17 person is not eligible for suspension of sentence, probation, pardon or  
18 release from confinement on any basis except as specifically authorized by  
19 section 31-233, subsection A or B until the sentence imposed by the court has  
20 been served, the person is eligible for release pursuant to section  
21 41-1604.07 or the sentence is commuted. The release provisions prescribed by  
22 this section shall not be substituted for any penalties required by the  
23 substantive offense or provision of law that specifies a later release or  
24 completion of the sentence imposed before release. A sentence imposed  
25 pursuant to this subsection shall revoke the convicted person's release if  
26 the person was on release and shall be consecutive to any other sentence from  
27 which the convicted person had been temporarily released or had escaped,  
28 unless the sentence from which the convicted person had been paroled or  
29 placed on probation was imposed by a jurisdiction other than this state. For  
30 the purposes of this subsection, "substantive offense" means the felony,  
31 misdemeanor or petty offense that the trier of fact found beyond a reasonable  
32 doubt the defendant committed. Substantive offense does not include  
33 allegations that, if proven, would enhance the sentence of imprisonment or  
34 fine to which the defendant would otherwise be subject.

35 D. A person who is convicted of committing any felony offense that is  
36 committed while the person is released on bond or on the person's own  
37 recognizance on a separate felony offense or while the person is escaped from  
38 preconviction custody for a separate felony offense shall be sentenced to a  
39 term of imprisonment two years longer than would otherwise be imposed for the  
40 felony offense committed while on release. The additional sentence imposed  
41 under this subsection is in addition to any enhanced punishment that may be  
42 applicable under section 13-703, section 13-704, section ~~13-709.01,~~  
43 ~~subsection A~~ 13-1204, SUBSECTION C or section 13-709.02, ~~subsection C~~. The  
44 person is not eligible for suspension of sentence, probation, pardon or  
45 release from confinement on any basis, except as specifically authorized by

1 section 31-233, subsection A or B, until the two years are served, the person  
2 is eligible for release pursuant to section 41-1604.07 or the sentence is  
3 commuted. The penalties prescribed by this subsection shall be substituted  
4 for the penalties otherwise authorized by law if the allegation that the  
5 person committed a felony while released on bond or on the person's own  
6 recognizance or while escaped from preconviction custody is charged in the  
7 indictment or information and admitted or found by the court. The release  
8 provisions prescribed by this subsection shall not be substituted for any  
9 penalties required by the substantive offense or provision of law that  
10 specifies a later release or completion of the sentence imposed before  
11 release. The court shall allow the allegation that the person committed a  
12 felony while released on bond or on the person's own recognizance on a  
13 separate felony offense or while escaped from preconviction custody on a  
14 separate felony offense at any time before the case is actually tried unless  
15 the allegation is filed fewer than twenty days before the case is actually  
16 tried and the court finds on the record that the person was in fact  
17 prejudiced by the untimely filing and states the reasons for these findings.  
18 The allegation that the person committed a felony while released on bond or  
19 on the person's own recognizance or while escaped from preconviction custody  
20 shall not be read to the jury. For the purposes of this subsection,  
21 "substantive offense" means the felony offense that the trier of fact found  
22 beyond a reasonable doubt the person committed. Substantive offense does not  
23 include allegations that, if proven, would enhance the sentence of  
24 imprisonment or fine to which the person otherwise would be subject.

25 Sec. 3. Repeal

26 Sections 13-709.01, 13-709.03, 13-709.04 and 13-709.05, Arizona Revised  
27 Statutes, are repealed.

28 Sec. 4. Section 13-709.02, Arizona Revised Statutes, is amended to  
29 read:

30 13-709.02. Offenses committed with intent to promote, further  
31 or assist a criminal street gang

32 ~~A. If a person is convicted of a violation of section 13-2308.01 and~~  
33 ~~the court finds at least one aggravating circumstance listed in section~~  
34 ~~13-701, subsection D, the court may impose a life sentence. If the court~~  
35 ~~imposes a life sentence, the court may order that the defendant not be~~  
36 ~~released on any basis for the remainder of the defendant's natural life. If~~  
37 ~~the court does not sentence the defendant to natural life, the defendant~~  
38 ~~shall not be released on any basis until the person has served twenty-five~~  
39 ~~calendar years.~~

40 ~~B. A person who is convicted of a knowing violation of section~~  
41 ~~13-2312, subsection C is not eligible for probation, pardon, suspension of~~  
42 ~~sentence or release on any basis until the person has served the sentence~~  
43 ~~imposed by the court or the sentence is commuted.~~

44 ~~C. A person who is convicted of committing any felony offense with the~~  
45 ~~intent to promote, further or assist any criminal conduct by a criminal~~

1 street gang shall not be eligible for suspension of sentence, probation,  
2 pardon or release from confinement on any basis except as authorized by  
3 section 31-233, subsection A or B until the sentence imposed by the court has  
4 been served, the person is eligible for release pursuant to section  
5 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum  
6 sentence for the offense shall be increased by three years if the offense is  
7 a class 4, 5 or 6 felony or shall be increased by five years if the offense  
8 is a class 2 or 3 felony. The additional sentence imposed pursuant to this  
9 ~~subsection~~ SECTION is in addition to any enhanced sentence that may be  
10 applicable.

11 Sec. 5. Section 13-907, Arizona Revised Statutes, is amended to read:  
12 13-907. Setting aside judgment of convicted person on  
13 discharge; application; release from disabilities;  
14 exceptions

15 A. Except as ~~otherwise~~ provided in SUBSECTION D OF this section, every  
16 person convicted of a criminal offense, on fulfillment of the conditions of  
17 probation or sentence and discharge by the court, may apply to the judge,  
18 justice of the peace or magistrate who pronounced sentence or imposed  
19 probation or such judge, justice of the peace or magistrate's successor in  
20 office to have the judgment of guilt set aside. The convicted person shall  
21 be informed of this right at the time of discharge.

22 B. ~~The application to set aside the judgment may be made by~~ The  
23 convicted person or ~~by~~, IF AUTHORIZED IN WRITING, the convicted person's  
24 attorney or probation officer ~~authorized in writing~~ MAY APPLY TO SET ASIDE  
25 THE JUDGMENT.

26 C. If the judge, justice of the peace or magistrate grants the  
27 application, the judge, justice of the peace or magistrate shall set aside  
28 the judgment of guilt, dismiss the accusations or information and order that  
29 the person be released from all penalties and disabilities resulting from the  
30 conviction ~~other than~~ EXCEPT those imposed by:

31 1. The department of transportation pursuant to section 28-3304,  
32 28-3306, 28-3307, 28-3308 or 28-3319, except that the conviction may be used  
33 as a conviction if ~~such~~ THE conviction would be admissible had it not been  
34 set aside and may be pleaded and proved in any subsequent prosecution of such  
35 person by the state or any of its subdivisions for any offense or used by the  
36 department of transportation in enforcing section 28-3304, 28-3306, 28-3307,  
37 28-3308 or 28-3319 as if the judgment of guilt had not been set aside.

38 2. The game and fish commission pursuant to section 17-314 or 17-340.

39 D. This section does not apply to a person WHO WAS convicted of a  
40 criminal offense:

41 1. ~~Involving the infliction of serious physical injury.~~

42 2. ~~Involving the use or exhibition of a deadly weapon or dangerous~~  
43 ~~instrument.~~

- 1           1. INVOLVING A DANGEROUS OFFENSE.
- 2           ~~3.~~ 2. For which the person is required or ordered by the court to
- 3 register pursuant to section 13-3821.
- 4           ~~4.~~ 3. For which there has been a finding of sexual motivation
- 5 pursuant to section 13-118.
- 6           ~~5.~~ 4. In which the victim is a minor under fifteen years of age.
- 7           ~~6.~~ 5. In violation of section 28-3473, any local ordinance relating
- 8 to stopping, standing or operation of a vehicle or title 28, chapter 3,
- 9 except a violation of section 28-693 or any local ordinance relating to the
- 10 same subject matter as section 28-693.
- 11           Sec. 6. Section 13-1204, Arizona Revised Statutes, as amended by Laws
- 12 2010, chapter 97, section 1 and chapter 276, section 2, is amended to read:
- 13           13-1204. Aggravated assault; classification; definition
- 14           A. A person commits aggravated assault if the person commits assault
- 15 as prescribed by section 13-1203 under any of the following circumstances:
- 16           1. If the person causes serious physical injury to another.
- 17           2. If the person uses a deadly weapon or dangerous instrument.
- 18           3. If the person commits the assault by any means of force that causes
- 19 temporary but substantial disfigurement, temporary but substantial loss or
- 20 impairment of any body organ or part or a fracture of any body part.
- 21           4. If the person commits the assault while the victim is bound or
- 22 otherwise physically restrained or while the victim's capacity to resist is
- 23 substantially impaired.
- 24           5. If the person commits the assault after entering the private home
- 25 of another with the intent to commit the assault.
- 26           6. If the person is eighteen years of age or older and commits the
- 27 assault on a ~~child who is~~ MINOR UNDER fifteen years of age ~~or under~~.
- 28           7. If the person commits assault as prescribed by section 13-1203,
- 29 subsection A, paragraph 1 or 3 and the person is in violation of an order of
- 30 protection issued against the person pursuant to section 13-3602 or 13-3624.
- 31           8. If the person commits the assault knowing or having reason to know
- 32 that the victim is any of the following:
- 33           (a) A peace officer, or a person summoned and directed by the officer
- 34 while engaged in the execution of any official duties.
- 35           (b) A constable, or a person summoned and directed by the constable
- 36 while engaged in the execution of any official duties.
- 37           (c) A firefighter, fire investigator, fire inspector, emergency
- 38 medical technician or paramedic engaged in the execution of any official
- 39 duties, or a person summoned and directed by such individual while engaged in
- 40 the execution of any official duties.
- 41           (d) A teacher or other person employed by any school and the teacher
- 42 or other employee is on the grounds of a school or grounds adjacent to the
- 43 school or is in any part of a building or vehicle used for school purposes,
- 44 any teacher or school nurse visiting a private home in the course of the
- 45 teacher's or nurse's professional duties or any teacher engaged in any

1 authorized and organized classroom activity held on other than school  
2 grounds.

3 (e) A health care practitioner who is certified or licensed pursuant to  
4 title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the  
5 licensed health care practitioner while engaged in the person's professional  
6 duties. This subdivision does not apply if the person who commits the  
7 assault is seriously mentally ill, as defined in section 36-550, or is  
8 afflicted with alzheimer's disease or related dementia.

9 (f) A prosecutor.

10 (g) A CODE ENFORCEMENT OFFICER AS DEFINED IN SECTION 39-123.

11 (h) A STATE OR MUNICIPAL PARK RANGER.

12 (i) A PUBLIC DEFENDER.

13 9. If the person knowingly takes or attempts to exercise control over  
14 any of the following:

15 (a) A peace officer's or other officer's firearm and the person knows  
16 or has reason to know that the victim is a peace officer or other officer  
17 employed by one of the agencies listed in paragraph 10, subdivision (a), item  
18 (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the  
19 execution of any official duties.

20 (b) Any weapon other than a firearm that is being used by a peace  
21 officer or other officer or that the officer is attempting to use, and the  
22 person knows or has reason to know that the victim is a peace officer or  
23 other officer employed by one of the agencies listed in paragraph 10,  
24 subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is  
25 engaged in the execution of any official duties.

26 (c) Any implement that is being used by a peace officer or other  
27 officer or that the officer is attempting to use, and the person knows or has  
28 reason to know that the victim is a peace officer or other officer employed  
29 by one of the agencies listed in paragraph 10, subdivision (a), item (i),  
30 (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution  
31 of any official duties. For the purposes of this subdivision, "implement"  
32 means an object that is designed for or that is capable of restraining or  
33 injuring an individual. Implement does not include handcuffs.

34 10. If the person meets both of the following conditions:

35 (a) Is imprisoned or otherwise subject to the custody of any of the  
36 following:

37 (i) The state department of corrections.

38 (ii) The department of juvenile corrections.

39 (iii) A law enforcement agency.

40 (iv) A county or city jail or an adult or juvenile detention facility  
41 of a city or county.

42 (v) Any other entity that is contracting with the state department of  
43 corrections, the department of juvenile corrections, a law enforcement  
44 agency, another state, any private correctional facility, a county, a city or

1 the federal bureau of prisons or other federal agency that has responsibility  
2 for sentenced or unsentenced prisoners.

3 (b) Commits an assault knowing or having reason to know that the  
4 victim is acting in an official capacity as an employee of any of the  
5 entities listed in subdivision (a) of this paragraph.

6 B. A person commits aggravated assault if the person commits assault  
7 by either intentionally, knowingly or recklessly causing any physical injury  
8 to another person, intentionally placing another person in reasonable  
9 apprehension of imminent physical injury or knowingly touching another person  
10 with the intent to injure the person, and both of the following occur:

11 1. The person intentionally or knowingly impedes the normal breathing  
12 or circulation of blood of another person by applying pressure to the throat  
13 or neck or by obstructing the nose and mouth either manually or through the  
14 use of an instrument.

15 2. Any of the circumstances exists that are set forth in section  
16 13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.

17 C. A PERSON WHO IS CONVICTED OF INTENTIONALLY OR KNOWINGLY COMMITTING  
18 AGGRAVATED ASSAULT ON A PEACE OFFICER WHILE THE OFFICER IS ENGAGED IN THE  
19 EXECUTION OF ANY OFFICIAL DUTIES PURSUANT TO SUBSECTION A, PARAGRAPH 1 OR 2  
20 OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN THE  
21 PRESUMPTIVE SENTENCE AUTHORIZED UNDER CHAPTER 7 OF THIS TITLE AND IS NOT  
22 ELIGIBLE FOR SUSPENSION OF SENTENCE, COMMUTATION OR RELEASE ON ANY BASIS  
23 UNTIL THE SENTENCE IMPOSED IS SERVED.

24 ~~G.~~ D. Except pursuant to subsections ~~D~~ and E AND F of this section,  
25 aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9,  
26 subdivision (a) of this section is a class 3 felony except if the victim is  
27 under fifteen years of age in which case it is a class 2 felony punishable  
28 pursuant to section 13-705. Aggravated assault pursuant to subsection A,  
29 paragraph 3 or subsection B of this section is a class 4 felony. Aggravated  
30 assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph  
31 10 of this section is a class 5 felony. Aggravated assault pursuant to  
32 subsection A, paragraph 4, 5, 6, ~~or 7, paragraph OR 8, subdivision (b), (c),~~  
33 ~~(d), (e), or (f)~~ or paragraph 9, subdivision (c) of this section is a class 6  
34 felony.

35 ~~D.~~ E. Aggravated assault pursuant to subsection A, paragraph 1 or 2  
36 of this section committed on a peace officer while the officer is engaged in  
37 the execution of any official duties is a class 2 felony. Aggravated assault  
38 pursuant to subsection A, paragraph 3 of this section committed on a peace  
39 officer while the officer is engaged in the execution of any official duties  
40 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph  
41 8, subdivision (a) of this section committed on a peace officer while the  
42 officer is engaged in the execution of any official duties is a class 5  
43 felony unless the assault results in any physical injury to the peace officer  
44 while the officer is engaged in the execution of any official duties, in  
45 which case it is a class 4 felony.

1        ~~F.~~ F. Aggravated assault pursuant to:  
2            1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony  
3 if committed on a prosecutor.  
4            2. Subsection A, paragraph 3 of this section is a class 3 felony if  
5 committed on a prosecutor.  
6            3. Subsection A, paragraph 8, subdivision (f) of this section is a  
7 class 5 felony if the assault results in physical injury to a prosecutor.  
8        ~~F.~~ G. For the purposes of this section, "prosecutor" means a county  
9 attorney, a municipal prosecutor or the attorney general and includes an  
10 assistant or deputy county attorney, municipal prosecutor or attorney  
11 general.

12        Sec. 7. Repeal  
13        Section 13-1204, Arizona Revised Statutes, as amended by Laws 2010,  
14 chapter 241, section 1 and chapter 276, section 2, is repealed.

15        Sec. 8. Section 13-1207, Arizona Revised Statutes, is amended to read:  
16 13-1207. Prisoners who commit assault with intent to incite to  
17 riot or participate in riot; classification

18        A. A person, while in the custody of the state department of  
19 corrections or a county or city jail, who commits assault ~~upon~~ ON another  
20 person with the intent to incite to riot or who participates in a riot is  
21 guilty of a class 2 felony ~~and section 13-709.01, subsection B applies to the~~  
22 ~~sentence imposed.~~

23        B. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION SHALL NOT  
24 BE ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM  
25 CONFINEMENT ON ANY BASIS UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN  
26 SERVED OR COMMUTED AND THE SENTENCE SHALL BE CONSECUTIVE TO ANY OTHER  
27 SENTENCE PRESENTLY BEING SERVED BY THE CONVICTED PERSON.

28        Sec. 9. Section 13-1212, Arizona Revised Statutes, is amended to read:  
29 13-1212. Prisoner assault with bodily fluids; liability for  
30 costs; classification; definition

31        A. A prisoner commits prisoner assault with bodily fluids if the  
32 prisoner throws or projects any bodily fluid at or onto a correctional  
33 facility employee or private prison security officer who the prisoner knows  
34 or reasonably should know is an employee of a correctional facility or is a  
35 private prison security officer.

36        B. A prisoner who is convicted of a violation of this section is  
37 liable for any costs incurred by the correctional facility employee or  
38 private prison security officer, including costs incurred for medical  
39 expenses or cleaning uniforms.

40        C. The state department of corrections shall adopt rules for the  
41 payment of costs pursuant to subsection B ~~of this section~~. Monies in the  
42 prisoner's trust fund or retention account established by the correctional  
43 facility in which the prisoner is incarcerated may be used to pay the costs  
44 pursuant to subsection B ~~of this section~~.

1 D. A prisoner who violates this section is guilty of a class 6 felony  
2 and the sentence imposed for a violation of this section shall run  
3 consecutively pursuant to section 13-709.01, subsection C TO ANY SENTENCE OF  
4 IMPRISONMENT FOR WHICH THE PRISONER WAS CONFINED OR TO ANY TERM OF COMMUNITY  
5 SUPERVISION, PROBATION, PAROLE, WORK FURLOUGH OR OTHER RELEASE FROM  
6 CONFINEMENT.

7 E. For the purposes of this section, "bodily fluids" means saliva,  
8 blood, seminal fluid, urine or feces.

9 Sec. 10. Section 13-1402, Arizona Revised Statutes, is amended to  
10 read:

11 13-1402. Indecent exposure; exception; classification

12 A. A person commits indecent exposure if he or she exposes his or her  
13 genitals or anus or she exposes the areola or nipple of her breast or breasts  
14 and another person is present, and the defendant is reckless about whether  
15 the other person, as a reasonable person, would be offended or alarmed by the  
16 act.

17 B. Indecent exposure does not include an act of breast-feeding by a  
18 mother.

19 C. Indecent exposure to a person who is fifteen or more years of age  
20 is a class 1 misdemeanor. Indecent exposure to a person who is under fifteen  
21 years of age is a class 6 felony.

22 D. A person who is convicted of a felony violation of this section and  
23 who has two or more historical prior felony convictions for a violation of  
24 this section or section 13-1403 involving indecent exposure or public sexual  
25 indecency to a minor who is under fifteen years of age shall be sentenced  
26 pursuant to section 13-709.05 TO A TERM OF IMPRISONMENT AS FOLLOWS:

<u>MITIGATED</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>	<u>AGGRAVATED</u>
6 YEARS	8 YEARS	10 YEARS	12 YEARS	15 YEARS

29 E. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTION D OF THIS  
30 SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,  
31 SUBSECTIONS D AND E.

32 Sec. 11. Section 13-1403, Arizona Revised Statutes, is amended to  
33 read:

34 13-1403. Public sexual indecency; public sexual indecency to a  
35 minor; classification

36 A. A person commits public sexual indecency by intentionally or  
37 knowingly engaging in any of the following acts, if another person is  
38 present, and the defendant is reckless about whether such other person, as a  
39 reasonable person, would be offended or alarmed by the act:

- 40 1. An act of sexual contact.
- 41 2. An act of oral sexual contact.
- 42 3. An act of sexual intercourse.
- 43 4. An act of bestiality.

44 B. A person commits public sexual indecency to a minor if the person  
45 intentionally or knowingly engages in any of the acts listed in subsection A

1 OF THIS SECTION and such person is reckless about whether a minor who is  
2 under fifteen years of age is present.

3 C. Public sexual indecency is a class 1 misdemeanor. Public sexual  
4 indecency to a minor is a class 5 felony.

5 D. A person who is convicted of a felony violation of this section and  
6 who has two or more historical prior felony convictions for a violation of  
7 this section or section 13-1402 involving indecent exposure or public sexual  
8 indecency to a minor who is under fifteen years of age shall be sentenced  
9 ~~pursuant to section 13-709.05~~ TO A TERM OF IMPRISONMENT AS FOLLOWS:

10	<u>MITIGATED</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>	<u>AGGRAVATED</u>
11	6 YEARS	8 YEARS	10 YEARS	12 YEARS	15 YEARS

12 E. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTION D OF THIS  
13 SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,  
14 SUBSECTIONS D AND E.

15 Sec. 12. Section 13-2308.01, Arizona Revised Statutes, is amended to  
16 read:

17 13-2308.01. Terrorism; classification

18 A. It is unlawful for a person to intentionally or knowingly do any of  
19 the following:

- 20 1. Engage in an act of terrorism.
- 21 2. Organize, manage, direct, supervise or finance an act of terrorism.
- 22 3. Solicit, incite or induce others to promote or further an act of  
23 terrorism.

24 4. Without lawful authority or when exceeding lawful authority,  
25 manufacture, sell, deliver, display, use, make accessible to others, possess  
26 or exercise control over a weapon of mass destruction knowing or having  
27 reason to know that the device or object involved is a weapon of mass  
28 destruction.

29 5. Make property available to another, by transaction, transportation  
30 or otherwise, knowing or having reason to know that the property is intended  
31 to facilitate an act of terrorism.

32 6. Provide advice, assistance or direction in the conduct, financing  
33 or management of an act of terrorism knowing or having reason to know that an  
34 act of terrorism has occurred or may result by:

- 35 (a) Harboring or concealing any person or property.
- 36 (b) Warning any person of impending discovery, apprehension,  
37 prosecution or conviction. This subdivision does not apply to a warning that  
38 is given in connection with an effort to bring another person into compliance  
39 with the law.
- 40 (c) Providing any person with material support or resources or any  
41 other means of avoiding discovery, apprehension, prosecution or conviction.
- 42 (d) Concealing or disguising the nature, location, source, ownership  
43 or control of material support or resources.
- 44 (e) Preventing or obstructing by means of force, deception or  
45 intimidation anyone from performing an act that might aid in the discovery,

1 apprehension, prosecution or conviction of any person or that might aid in  
2 the prevention of an act of terrorism.

3 (f) Suppressing by any act of concealment, alteration or destruction  
4 any physical evidence that might aid in the discovery, apprehension,  
5 prosecution or conviction of any person or that might aid in the prevention  
6 of an act of terrorism.

7 (g) Concealing the identity of any person.

8 B. This section does not apply to any person who is a member or  
9 employee of the armed forces of the United States, a federal or state  
10 governmental agency or any political subdivision of a state, a charitable,  
11 scientific or educational institution or a private entity if both of the  
12 following apply:

13 1. The person is engaged in lawful activity within the scope of the  
14 person's employment and the person is otherwise duly authorized or licensed  
15 to manufacture, possess, sell, deliver, display, use, exercise control over  
16 or make accessible to others any weapon of mass destruction or to otherwise  
17 engage in any activity described in this paragraph.

18 2. The person is in compliance with all applicable federal and state  
19 laws in doing so.

20 C. A violation of subsection A of this section is a class 2 felony,  
21 except that if the court finds that at least one of the aggravating  
22 circumstances listed in section 13-701, subsection D applies, the defendant  
23 ~~shall be sentenced pursuant to section 13-709.02, subsection A~~ COURT MAY  
24 IMPOSE A LIFE SENTENCE. IF THE COURT IMPOSES A LIFE SENTENCE, THE COURT MAY  
25 ORDER THAT THE DEFENDANT NOT BE RELEASED ON ANY BASIS FOR THE REMAINDER OF  
26 THE DEFENDANT'S NATURAL LIFE. IF THE COURT DOES NOT SENTENCE THE DEFENDANT  
27 TO NATURAL LIFE, THE DEFENDANT SHALL NOT BE RELEASED ON ANY BASIS UNTIL THE  
28 PERSON HAS SERVED TWENTY-FIVE CALENDAR YEARS.

29 Sec. 13. Section 13-2312, Arizona Revised Statutes, is amended to  
30 read:

31 13-2312. Illegal control of an enterprise; illegally conducting  
32 an enterprise; classification

33 A. A person commits illegal control of an enterprise if such person,  
34 through racketeering or its proceeds, acquires or maintains, by investment or  
35 otherwise, control of any enterprise.

36 B. A person commits illegally conducting an enterprise if such person  
37 is employed by or associated with any enterprise and conducts such  
38 enterprise's affairs through racketeering or participates directly or  
39 indirectly in the conduct of any enterprise that the person knows is being  
40 conducted through racketeering.

41 C. A person violates this section if he THE PERSON hires, engages or  
42 uses a minor for any conduct preparatory to or in completion of any offense  
43 in this section.

44 D. A knowing violation of subsection A or B ~~of this section~~ is a class  
45 3 felony. A knowing violation of subsection C ~~of this section~~ is a class 2

1 ~~felony and section 13-709.02, subsection B applies to the sentence imposed~~  
2 THE PERSON IS NOT ELIGIBLE FOR PROBATION, PARDON, SUSPENSION OF SENTENCE OR  
3 RELEASE ON ANY BASIS UNTIL THE PERSON HAS SERVED THE SENTENCE IMPOSED BY THE  
4 COURT OR THE SENTENCE IS COMMUTED.

5 Sec. 14. Section 13-3101, Arizona Revised Statutes, is amended to  
6 read:

7 13-3101. Definitions

8 A. In this chapter, unless the context otherwise requires:

9 1. "Deadly weapon" means anything that is designed for lethal use.  
10 The term includes a firearm.

11 2. "Deface" means to remove, alter or destroy the manufacturer's  
12 serial number.

13 3. "Explosive" means any dynamite, nitroglycerine, black powder, or  
14 other similar explosive material, including plastic explosives. Explosive  
15 does not include ammunition or ammunition components such as primers,  
16 percussion caps, smokeless powder, black powder and black powder substitutes  
17 used for hand loading purposes.

18 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
19 rifle, shotgun or other weapon that will expel, is designed to expel or may  
20 readily be converted to expel a projectile by the action of an explosive.  
21 Firearm does not include a firearm in permanently inoperable condition.

22 5. "Improvised explosive device" means a device that incorporates  
23 explosives or destructive, lethal, noxious, pyrotechnic or incendiary  
24 chemicals and that is designed to destroy, disfigure, terrify or harass.

25 6. "Occupied structure" means any building, object, vehicle,  
26 watercraft, aircraft or place with sides and a floor that is separately  
27 securable from any other structure attached to it, that is used for lodging,  
28 business, transportation, recreation or storage and in which one or more  
29 human beings either are or are likely to be present or so near as to be in  
30 equivalent danger at the time the discharge of a firearm occurs. Occupied  
31 structure includes any dwelling house, whether occupied, unoccupied or  
32 vacant.

33 7. "Prohibited possessor" means any person:

34 (a) Who has been found to constitute a danger to ~~himself~~ SELF or to  
35 others or to be persistently or acutely disabled or gravely disabled pursuant  
36 to court order under section 36-540, and whose right to possess a firearm has  
37 not been restored pursuant to section 13-925.

38 (b) Who has been convicted within or without this state of a felony or  
39 who has been adjudicated delinquent for a felony and whose civil right to  
40 possess or carry a gun or firearm has not been restored.

41 (c) Who is at the time of possession serving a term of imprisonment in  
42 any correctional or detention facility.

43 (d) Who is at the time of possession serving a term of probation  
44 pursuant to a conviction for a domestic violence offense as defined in  
45 section 13-3601 or a felony offense, parole, community supervision, work

1 furlough, home arrest or release on any other basis or who is serving a term  
2 of probation or parole pursuant to the interstate compact under title 31,  
3 chapter 3, article 4- 4.1.

4 (e) Who is an undocumented alien or a nonimmigrant alien traveling  
5 with or without documentation in this state for business or pleasure or who  
6 is studying in this state and who maintains a foreign residence abroad. This  
7 subdivision does not apply to:

8 (i) Nonimmigrant aliens who possess a valid hunting license or permit  
9 that is lawfully issued by a state in the United States.

10 (ii) Nonimmigrant aliens who enter the United States to participate in  
11 a competitive target shooting event or to display firearms at a sports or  
12 hunting trade show that is sponsored by a national, state or local firearms  
13 trade organization devoted to the competitive use or other sporting use of  
14 firearms.

15 (iii) Certain diplomats.

16 (iv) Officials of foreign governments or distinguished foreign  
17 visitors who are designated by the United States department of state.

18 (v) Persons who have received a waiver from the United States attorney  
19 general.

20 8. "Prohibited weapon":

21 (a) Includes the following:

22 (i) An item that is a bomb, grenade, rocket having a propellant charge  
23 of more than four ounces or mine and that is explosive, incendiary or poison  
24 gas.

25 (ii) A device that is designed, made or adapted to muffle the report  
26 of a firearm.

27 (iii) A firearm that is capable of shooting more than one shot  
28 automatically, without manual reloading, by a single function of the trigger.

29 (iv) A rifle with a barrel length of less than sixteen inches, or  
30 shotgun with a barrel length of less than eighteen inches, or any firearm  
31 that is made from a rifle or shotgun and that, as modified, has an overall  
32 length of less than twenty-six inches.

33 (v) An instrument, including a nunchaku, that consists of two or more  
34 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,  
35 wire or chain, in the design of a weapon used in connection with the practice  
36 of a system of self-defense.

37 (vi) A breakable container that contains a flammable liquid with a  
38 flash point of one hundred fifty degrees Fahrenheit or less and that has a  
39 wick or similar device capable of being ignited.

40 (vii) A chemical or combination of chemicals, compounds or materials,  
41 including dry ice, that is possessed or manufactured for the purpose of  
42 generating a gas to cause a mechanical failure, rupture or bursting or an  
43 explosion or detonation of the chemical or combination of chemicals,  
44 compounds or materials.

45 (viii) An improvised explosive device.

1 (ix) Any combination of parts or materials that is designed and  
2 intended for use in making or converting a device into an item set forth in  
3 item (i), (vi) or (viii) of this subdivision.

4 (b) Does not include:

5 (i) Any fireworks that are imported, distributed or used in compliance  
6 with state laws or local ordinances.

7 (ii) Any propellant, propellant actuated devices or propellant  
8 actuated industrial tools that are manufactured, imported or distributed for  
9 their intended purposes.

10 (iii) A device that is commercially manufactured primarily for the  
11 purpose of illumination.

12 B. The items set forth in subsection A, paragraph 8, subdivision (a),  
13 items (i), (ii), (iii) and (iv) of this section do not include any firearms  
14 or devices that are registered in the national firearms registry and transfer  
15 records of the United States treasury department or any firearm that has been  
16 classified as a curio or relic by the United States treasury department.

17 Sec. 15. Section 13-3407, Arizona Revised Statutes, is amended to  
18 read:

19 13-3407. Possession, use, administration, acquisition, sale,  
20 manufacture or transportation of dangerous drugs;  
21 classification

22 A. A person shall not knowingly:

- 23 1. Possess or use a dangerous drug.  
24 2. Possess a dangerous drug for sale.  
25 3. Possess equipment or chemicals, or both, for the purpose of  
26 manufacturing a dangerous drug.  
27 4. Manufacture a dangerous drug.  
28 5. Administer a dangerous drug to another person.  
29 6. Obtain or procure the administration of a dangerous drug by fraud,  
30 deceit, misrepresentation or subterfuge.  
31 7. Transport for sale, import into this state or offer to transport  
32 for sale or import into this state, sell, transfer or offer to sell or  
33 transfer a dangerous drug.

34 B. A person who violates:

- 35 1. Subsection A, paragraph 1 of this section is guilty of a class 4  
36 felony. Unless the drug involved is lysergic acid diethylamide,  
37 methamphetamine, amphetamine or phencyclidine or the person was previously  
38 convicted of a felony offense or a violation of this section or section  
39 13-3408, the court on motion of the state, considering the nature and  
40 circumstances of the offense, for a person not previously convicted of any  
41 felony offense or a violation of this section or section 13-3408 may enter  
42 judgment of conviction for a class 1 misdemeanor and make disposition  
43 accordingly or may place the defendant on probation in accordance with  
44 chapter 9 of this title and refrain from designating the offense as a felony  
45 or misdemeanor until the probation is successfully terminated. The offense

1 shall be treated as a felony for all purposes until the court enters an order  
2 designating the offense a misdemeanor.

3 2. Subsection A, paragraph 2 of this section is guilty of a class 2  
4 felony.

5 3. Subsection A, paragraph 3 of this section is guilty of a class 3  
6 felony, except that if the offense involved methamphetamine, the person is  
7 guilty of a class 2 felony.

8 4. Subsection A, paragraph 4 of this section is guilty of a class 2  
9 felony.

10 5. Subsection A, paragraph 5 of this section is guilty of a class 2  
11 felony.

12 6. Subsection A, paragraph 6 of this section is guilty of a class 3  
13 felony.

14 7. Subsection A, paragraph 7 of this section is guilty of a class 2  
15 felony.

16 C. Except as provided in subsection E of this section, a person who is  
17 convicted of a violation of subsection A, paragraph 1, 3 or 6 and who has not  
18 previously been convicted of any felony or who has not been sentenced  
19 pursuant to section 13-703, section 13-704, section 13-706, subsection A,  
20 section 13-708, subsection D or any other law making the convicted person  
21 ineligible for probation is eligible for probation.

22 D. Except as provided in subsection E of this section, if the  
23 aggregate amount of dangerous drugs involved in one offense or all of the  
24 offenses that are consolidated for trial equals or exceeds the statutory  
25 threshold amount, a person who is convicted of a violation of subsection A,  
26 paragraph 2, 5 or 7 of this section is not eligible for suspension of  
27 sentence, probation, pardon or release from confinement on any basis until  
28 the person has served the sentence imposed by the court, the person is  
29 eligible for release pursuant to section 41-1604.07 or the sentence is  
30 commuted.

31 E. If the person is convicted of a violation of subsection A,  
32 paragraph 2, 3, 4 or 7 of this section and the drug involved is  
33 methamphetamine, the person shall be sentenced pursuant to section 13-709.03,  
34 ~~subsections A or B.~~ AS FOLLOWS:

35	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
36	5 CALENDAR YEARS	10 CALENDAR YEARS	15 CALENDAR YEARS

37 A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A,  
38 PARAGRAPH 2, 3, 4 OR 7 OF THIS SECTION INVOLVING METHAMPHETAMINE OR SECTION  
39 13-3407.01 SHALL BE SENTENCED AS FOLLOWS:

40	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
41	10 CALENDAR YEARS	15 CALENDAR YEARS	20 CALENDAR YEARS

42 F. A person who is convicted of a violation of subsection A, paragraph  
43 4 of this section or subsection A, paragraph 2, 3 or 7 of this section  
44 involving methamphetamine is not eligible for suspension of sentence,  
45 probation, pardon or release from confinement on any basis until the person

1 has served the sentence imposed by the court, the person is eligible for  
2 release pursuant to section 41-1604.07 or the sentence is commuted.

3 G. If a person is convicted of a violation of subsection A, paragraph  
4 5 of this section, if the drug is administered without the other person's  
5 consent, if the other person is under eighteen years of age and if the drug  
6 is flunitrazepam, gamma hydroxy butrate or ketamine hydrochloride, the  
7 convicted person is not eligible for suspension of sentence, probation,  
8 pardon or release from confinement on any basis until the person has served  
9 the sentence imposed by the court, the person is eligible for release  
10 pursuant to section 41-1604.07 or the sentence is commuted.

11 H. In addition to any other penalty prescribed by this title, the  
12 court shall order a person who is convicted of a violation of this section to  
13 pay a fine of not less than one thousand dollars or three times the value as  
14 determined by the court of the dangerous drugs involved in or giving rise to  
15 the charge, whichever is greater, and not more than the maximum authorized by  
16 chapter 8 of this title. A judge shall not suspend any part or all of the  
17 imposition of any fine required by this subsection.

18 I. A person who is convicted of a violation of this section for which  
19 probation or release before the expiration of the sentence imposed by the  
20 court is authorized is prohibited from using any marijuana, dangerous drug,  
21 narcotic drug or prescription-only drug except as lawfully administered by a  
22 health care practitioner and as a condition of any probation or release shall  
23 be required to submit to drug testing administered under the supervision of  
24 the probation department of the county or the state department of  
25 corrections, as appropriate, during the duration of the term of probation or  
26 before the expiration of the sentence imposed.

27 J. If a person who is convicted of a violation of this section is  
28 granted probation, the court shall order that as a condition of probation the  
29 person perform not less than three hundred sixty hours of community  
30 restitution with an agency or organization that provides counseling,  
31 rehabilitation or treatment for alcohol or drug abuse, an agency or  
32 organization that provides medical treatment to persons who abuse controlled  
33 substances, an agency or organization that serves persons who are victims of  
34 crime or any other appropriate agency or organization.

35 K. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTION E OF THIS  
36 SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,  
37 SUBSECTIONS D AND E.

38 Sec. 16. Section 13-3411, Arizona Revised Statutes, is amended to  
39 read:

40 13-3411. Possession, use, sale or transfer of marijuana,  
41 peyote, prescription drugs, dangerous drugs or  
42 narcotic drugs or manufacture of dangerous drugs in  
43 a drug free school zone; violation; classification;  
44 definitions

45 A. It is unlawful for a person to do any of the following:

1           1. Intentionally be present in a drug free school zone to sell or  
2 transfer marijuana, peyote, prescription-only drugs, dangerous drugs or  
3 narcotic drugs.

4           2. Possess or use marijuana, peyote, dangerous drugs or narcotic drugs  
5 in a drug free school zone.

6           3. Manufacture dangerous drugs in a drug free school zone.

7           B. A person who violates subsection A of this section is guilty of the  
8 same class of felony that the person would otherwise be guilty of had the  
9 violation not occurred within a drug free school zone, ~~and section 13-709.03,~~  
10 ~~subsection C applies to the sentence imposed~~ EXCEPT THAT THE PRESUMPTIVE,  
11 MINIMUM AND MAXIMUM SENTENCE SHALL BE INCREASED BY ONE YEAR. THE ADDITIONAL  
12 SENTENCE IMPOSED UNDER THIS SUBSECTION IS IN ADDITION TO ANY ENHANCED  
13 PUNISHMENT THAT MAY BE APPLICABLE UNDER SECTION 13-703, SECTION 13-704,  
14 SECTION 13-708, SUBSECTION D OR ANY PROVISION IN THIS CHAPTER. A PERSON IS  
15 NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM  
16 CONFINEMENT ON ANY BASIS EXCEPT PURSUANT TO SECTION 31-233, SUBSECTION A OR B  
17 UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED.

18           C. In addition to any other penalty prescribed by this title, the  
19 court shall order a person who is convicted of a violation of this section to  
20 pay a fine of not less than two thousand dollars or three times the value as  
21 determined by the court of the drugs involved in or giving rise to the  
22 charge, whichever is greater, and not more than the maximum authorized by  
23 chapter 8 of this title. A judge shall not suspend any part or all of the  
24 imposition of any fine required by this subsection.

25           D. Each school district's governing board or its designee, or the  
26 chief administrative officer in the case of a nonpublic school, shall place  
27 and maintain permanently affixed signs located in a visible manner at the  
28 main entrance of each school that identifies the school and its accompanying  
29 grounds as a drug free school zone.

30           E. The drug free school zone map prepared pursuant to title 15 shall  
31 constitute an official record as to the location and boundaries of each drug  
32 free school zone. The school district's governing board or its designee, or  
33 the chief administrative officer in the case of any nonpublic school, shall  
34 promptly notify the county attorney of any changes in the location and  
35 boundaries of any school property and shall file with the county recorder the  
36 original map prepared pursuant to title 15.

37           F. All school personnel who observe a violation of this section shall  
38 immediately report the violation to a school administrator. The  
39 administrator shall immediately report the violation to a peace officer. It  
40 is unlawful for any school personnel or school administrator to fail to  
41 report a violation as prescribed in this section.

42           G. School personnel having custody or control of school records of a  
43 student involved in an alleged violation of this section shall make the  
44 records available to a peace officer upon written request signed by a  
45 magistrate. Records disclosed pursuant to this subsection are confidential

1 and may be used only in a judicial or administrative proceeding. A person  
2 furnishing records required under this subsection or a person participating  
3 in a judicial or administrative proceeding or investigation resulting from  
4 the furnishing of records required under this subsection is immune from civil  
5 or criminal liability by reason of such action unless the person acted with  
6 malice.

7 H. A person who violates subsection F of this section is guilty of a  
8 class 3 misdemeanor.

9 I. For the purposes of this section:

10 1. "Drug free school zone" means the area within three hundred feet of  
11 a school or its accompanying grounds, any public property within one thousand  
12 feet of a school or its accompanying grounds, a school bus stop or on any  
13 school bus or bus contracted to transport pupils to any school.

14 2. "School" means any public or nonpublic kindergarten program, common  
15 school or high school.

16 Sec. 17. Section 13-3601, Arizona Revised Statutes, is amended to  
17 read:

18 13-3601. Domestic violence; definition; classification;  
19 sentencing option; arrest and procedure for  
20 violation; weapon seizure

21 A. "Domestic violence" means any act that is a dangerous crime against  
22 children as defined in section 13-705 or an offense prescribed in section  
23 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204,  
24 13-1302, 13-1303, 13-1304, 13-1406, 13-1502, 13-1503, 13-1504, 13-1602 or  
25 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section  
26 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A,  
27 paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019,  
28 13-3601.02 or 13-3623, if any of the following applies:

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

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

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

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

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

43 6. The relationship between the victim and the defendant is currently  
44 or was previously a romantic or sexual relationship. The following factors  
45 may be considered in determining whether the relationship between the victim

1 and the defendant is currently or was previously a romantic or sexual  
2 relationship;

3 (a) The type of relationship.

4 (b) The length of the relationship.

5 (c) The frequency of the interaction between the victim and the  
6 defendant.

7 (d) If the relationship has terminated, the length of time since the  
8 termination.

9 B. A peace officer, with or without a warrant, may arrest a person if  
10 the officer has probable cause to believe that domestic violence has been  
11 committed and the officer has probable cause to believe that the person to be  
12 arrested has committed the offense, whether the offense is a felony or a  
13 misdemeanor and whether the offense was committed within or without the  
14 presence of the peace officer. In cases of domestic violence involving the  
15 infliction of physical injury or involving the discharge, use or threatening  
16 exhibition of a deadly weapon or dangerous instrument, the peace officer  
17 shall arrest a person, with or without a warrant, if the officer has probable  
18 cause to believe that the offense has been committed and the officer has  
19 probable cause to believe that the person to be arrested has committed the  
20 offense, whether the offense was committed within or without the presence of  
21 the peace officer, unless the officer has reasonable grounds to believe that  
22 the circumstances at the time are such that the victim will be protected from  
23 further injury. Failure to make an arrest does not give rise to civil  
24 liability except pursuant to section 12-820.02. In order to arrest both  
25 parties, the peace officer shall have probable cause to believe that both  
26 parties independently have committed an act of domestic violence. An act of  
27 self-defense that is justified under chapter 4 of this title is not deemed to  
28 be an act of domestic violence. The release procedures available under  
29 section 13-3883, subsection A, paragraph 4 and section 13-3903 are not  
30 applicable to arrests made pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

1 L. IF A PERSON IS CONVICTED OF AN OFFENSE INVOLVING DOMESTIC VIOLENCE  
2 AND THE VICTIM WAS PREGNANT AT THE TIME OF THE COMMISSION OF THE OFFENSE, AT  
3 THE TIME OF SENTENCING THE COURT SHALL TAKE INTO CONSIDERATION THE FACT THAT  
4 THE VICTIM WAS PREGNANT AND MAY INCREASE THE SENTENCE.

5 ~~L.~~ M. An offense that is included in domestic violence carries the  
6 classification prescribed in the section of this title in which the offense  
7 is classified. If the defendant committed a felony offense listed in  
8 subsection A of this section against a pregnant victim and knew that the  
9 victim was pregnant or if the defendant committed a felony offense causing  
10 physical injury to a pregnant victim and knew that the victim was pregnant,  
11 ~~section 13-709.04, subsection B applies to the sentence imposed~~ THE MAXIMUM  
12 SENTENCE OTHERWISE AUTHORIZED FOR THAT VIOLATION SHALL BE INCREASED BY UP TO  
13 TWO YEARS.

14 Sec. 18. Section 13-3961, Arizona Revised Statutes, is amended to  
15 read:

16 13-3961. Offenses not bailable; purpose; preconviction;  
17 exceptions

18 A. A person who is in custody shall not be admitted to bail if the  
19 proof is evident or the presumption great that the person is guilty of the  
20 offense charged and the offense charged is one of the following:

- 21 1. A capital offense.
- 22 2. Sexual assault.
- 23 3. Sexual conduct with a minor who is under fifteen years of age.
- 24 4. Molestation of a child who is under fifteen years of age.
- 25 5. A serious felony offense if there is probable cause to believe that  
26 the person has entered or remained in the United States illegally. For the  
27 purposes of this paragraph:

28 (a) The court shall consider all of the following in making a  
29 determination that a person has entered or remained in the United States  
30 illegally:

31 (i) Whether a hold has been placed on the arrested person by the  
32 United States immigration and customs enforcement.

33 (ii) Any indication by a law enforcement agency that the person is in  
34 the United States illegally.

35 (iii) Whether an admission by the arrested person has been obtained by  
36 the court or a law enforcement agency that the person has entered or remained  
37 in the United States illegally.

38 (iv) Any information received from a law enforcement agency pursuant  
39 to section 13-3906.

40 (v) Any evidence that the person has recently entered or remained in  
41 the United States illegally.

42 (vi) Any other relevant information that is obtained by the court or  
43 that is presented to the court by a party or any other person.

44 (b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or  
45 any violation of section 28-1383.

1           B. The purposes of bail and any conditions of release that are set by  
2 a judicial officer include:

- 3           1. Assuring the appearance of the accused.
- 4           2. Protecting against the intimidation of witnesses.
- 5           3. Protecting the safety of the victim, any other person or the  
6 community.

7           C. The initial determination of whether an offense isailable  
8 pursuant to subsection A of this section shall be made by the magistrate or  
9 judicial officer at the time of the person's initial appearance.

10          D. Except as provided in subsection A of this section, a person who is  
11 in custody shall not be admitted to bail if the person is charged with a  
12 felony offense and the state certifies by motion and the court finds after a  
13 hearing on the matter that there is clear and convincing evidence that the  
14 person charged poses a substantial danger to another person or the community  
15 or engaged in conduct constituting a violent offense, that no condition or  
16 combination of conditions of release may be imposed that will reasonably  
17 assure the safety of the other person or the community and that the proof is  
18 evident or the presumption great that the person committed the offense for  
19 which the person is charged. For the purposes of this subsection, "violent  
20 offense" means either of the following:

- 21           1. A dangerous crime against children.
- 22           2. Terrorism.

23          E. On oral motion of the state, the court shall order the hearing  
24 required by subsection D of this section at or within twenty-four hours of  
25 the initial appearance unless the person who is subject to detention or the  
26 state moves for a continuance. A continuance that is granted on the motion  
27 of the person shall not exceed five calendar days unless there are  
28 extenuating circumstances. A continuance on the motion of the state shall be  
29 granted on good cause shown and shall not exceed twenty-four hours. The  
30 prosecutor shall provide reasonable notice and an opportunity for victims and  
31 witnesses to be present and heard at any hearing. The person may be detained  
32 pending the hearing. The person is entitled to representation by counsel and  
33 is entitled to present information by proffer or otherwise, to testify and to  
34 present witnesses in the person's own behalf. Testimony of the person  
35 charged that is given during the hearing shall not be admissible on the issue  
36 of guilt in any subsequent judicial proceeding, except as it might relate to  
37 the compliance with or violation of any condition of release subsequently  
38 imposed or the imposition of appropriate sentence or in perjury proceedings,  
39 or for the purposes of impeachment. The case of the person shall be placed  
40 on an expedited calendar and, consistent with the sound administration of  
41 justice, the person's trial shall be given priority. The person may be  
42 admitted to bail in accordance with the Arizona rules of criminal procedure  
43 whenever a judicial officer finds that a subsequent event has eliminated the  
44 basis for detention.

1 F. The finding of an indictment or the filing of an information does  
2 not add to the strength of the proof or the presumption to be drawn.

3 G. In a hearing pursuant to subsection C- D of this section, proof  
4 that the person is a criminal street gang member may give rise to the  
5 inference that the person poses a substantial danger to another person or the  
6 community and that no condition or combination of conditions of release may  
7 be imposed that will reasonably assure the safety of the other person or the  
8 community.

9 Sec. 19. Section 28-1387, Arizona Revised Statutes, is amended to  
10 read:

11 28-1387. Prior convictions; alcohol or other drug screening,  
12 education and treatment; license suspension;  
13 supervised probation; civil liability; procedures

14 A. The court shall allow the allegation of a prior conviction or any  
15 other pending charge of a violation of section 28-1381, 28-1382 or 28-1383 or  
16 an act in another jurisdiction that if committed in this state would be a  
17 violation of section 28-1381, 28-1382 or 28-1383 filed twenty or more days  
18 before the date the case is actually tried and may allow the allegation of a  
19 prior conviction or any other pending charge of a violation of section  
20 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if  
21 committed in this state would be a violation of section 28-1381, 28-1382 or  
22 28-1383 filed at any time before the date the case is actually tried if this  
23 state makes available to the defendant when the allegation is filed a copy of  
24 any information obtained concerning the prior conviction or other pending  
25 charge. Any conviction may be used to enhance another conviction  
26 irrespective of the dates on which the offenses occurred within the  
27 eighty-four month provision. For the purposes of this article, an order of a  
28 juvenile court adjudicating a person delinquent is equivalent to a  
29 conviction.

30 B. In addition to any other penalties prescribed by law, the judge  
31 shall order a person who is convicted of a violation of section 28-1381,  
32 28-1382 or 28-1383 to complete alcohol or other drug screening that is  
33 provided by a facility approved by the department of health services or a  
34 probation department. If a judge determines that the person requires further  
35 alcohol or other drug education or treatment, the person may be required  
36 pursuant to court order to obtain alcohol or other drug education or  
37 treatment under the court's supervision from an approved facility. The judge  
38 may review an education or treatment determination at the request of the  
39 state, the defendant or the probation officer or on the judge's initiative.  
40 The person shall pay the costs of the screening, education or treatment  
41 unless, after considering the person's ability to pay all or part of the  
42 costs, the court waives all or part of the costs. If a person is referred to  
43 a screening, education or treatment facility, the facility shall report to  
44 the court whether the person has successfully completed the screening,  
45 education or treatment program. The court may accept evidence of a person's

1 completion of an alcohol or other drug screening, ~~education or treatment~~  
2 program pursuant to section 28-1445 as sufficient to meet the requirements of  
3 this section or section 28-1381, 28-1382 or 28-1383 or may order the person  
4 to complete additional alcohol or other drug screening, education or  
5 treatment programs. If a person has previously been ordered to complete an  
6 alcohol or other drug screening, education or treatment program pursuant to  
7 this section, the judge shall order the person to complete an alcohol or  
8 other drug screening, education or treatment program unless the court  
9 determines that alternative sanctions are more appropriate.

10 C. After a person who is sentenced pursuant to section 28-1381,  
11 subsection I has served twenty-four consecutive hours in jail or after a  
12 person who is sentenced pursuant to section 28-1381, subsection K or section  
13 28-1382, subsection D or E has served forty-eight consecutive hours in jail  
14 and after the court receives confirmation that the person is employed or is a  
15 student, the court may provide in the sentence that the defendant, if the  
16 defendant is employed or is a student and can continue the defendant's  
17 employment or schooling, may continue the employment or schooling for not  
18 more than twelve hours a day nor more than five days a week. The person  
19 shall spend the remaining day, days or parts of days in jail until the  
20 sentence is served and shall be allowed out of jail only long enough to  
21 complete the actual hours of employment or schooling.

22 D. Unless the license of a person convicted under section 28-1381 or  
23 28-1382 has been or is suspended pursuant to section 28-1321 or 28-1385, the  
24 department on receipt of the abstract of conviction of a violation of section  
25 28-1381 or 28-1382 shall suspend the license of the affected person for not  
26 less than ninety consecutive days.

27 E. When the department receives notification that the person meets the  
28 criteria provided in section 28-1385, subsection G, the department shall  
29 suspend the driving privileges of the person for not less than thirty  
30 consecutive days and shall restrict the driving privileges of the person for  
31 not less than sixty consecutive additional days to travel between any of the  
32 following:

33 1. The person's place of employment and residence and during specified  
34 periods of time while at employment.

35 2. The person's place of residence and the person's secondary or  
36 postsecondary school, according to the person's employment or educational  
37 schedule.

38 3. The person's place of residence and a screening, education or  
39 treatment facility for scheduled appointments.

40 4. The person's place of residence and the office of the person's  
41 probation officer for scheduled appointments.

42 F. If a person is placed on probation for violating section 28-1381 or  
43 28-1382, the probation shall be supervised unless the court finds that  
44 supervised probation is not necessary or the court does not have supervisory  
45 probation services.

1 G. Any political subdivision processing or using the services of a  
2 person ordered to perform community restitution pursuant to section 28-1381  
3 or 28-1382 does not incur any civil liability to the person ordered to  
4 perform community restitution as a result of these activities unless the  
5 political subdivision or its agent or employee acts with gross negligence.

6 H. If a person fails to complete the community restitution ordered  
7 pursuant to section 28-1381, subsection K or section 28-1382, subsection E,  
8 the court may order alternative sanctions if the court determines that  
9 alternative sanctions are more appropriate.

10 I. Except for another violation of this article, the state shall not  
11 dismiss a charge of violating any provision of this article unless there is  
12 an insufficient legal or factual basis to pursue that charge.

13 Sec. 20. Section 31-418, Arizona Revised Statutes, is amended to read:  
14 31-418. Community supervision fee; deposit; community  
15 corrections enhancement fund

16 A. During the period of time that the prisoner remains on community  
17 supervision, the state department of corrections shall require as a condition  
18 of community supervision that the prisoner pay a monthly supervision fee of  
19 at least sixty-five dollars unless, after determining the inability of the  
20 prisoner to pay the fee, the department requires payment of a lesser amount.  
21 The supervising community supervision officer shall monitor the collection of  
22 the fee.

23 B. Seventy per cent of the monies collected pursuant to subsection A  
24 of this section shall be deposited, pursuant to sections 35-146 and 35-147,  
25 in the victim compensation and assistance fund established by section 41-2407  
26 and thirty per cent shall be deposited in the community corrections  
27 enhancement fund established by this section.

28 C. The community corrections enhancement fund is established  
29 consisting of monies received pursuant to subsection B of this section,  
30 sections 31-411, ~~31-466~~, 31-467.06 and 41-1604.08 and section 41-1604.13,  
31 subsection D, paragraph 8. The department shall administer the fund and use  
32 fund monies to pay for costs related to community corrections.

33 Sec. 21. Repeal

34 Title 31, chapter 3, article 4, Arizona Revised Statutes, is repealed.

35 Sec. 22. Section 41-1604.10, Arizona Revised Statutes, is amended to  
36 read:

37 41-1604.10. Earned release credits; forfeiture; restoration;  
38 applicability

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

41 1. If sentenced upon a first conviction other than pursuant to section  
42 13-751 or other than for a felony involving ~~the use or exhibition of a deadly~~  
43 ~~weapon or dangerous instrument or the intentional or knowing infliction of~~  
44 ~~serious physical injury upon another~~ A DANGEROUS OFFENSE AS DEFINED IN

1 SECTION 13-105, every two days served within class one shall be counted as an  
2 earned release credit of one day.

3 2. If sentenced pursuant to the section 13-703, subsection B,  
4 paragraph 2, or upon first conviction of a class 4, 5 or 6 felony involving  
5 ~~the use or exhibition of a deadly weapon or dangerous instrument or the~~  
6 ~~intentional or knowing infliction of serious physical injury~~ A DANGEROUS  
7 OFFENSE AS DEFINED IN SECTION 13-105 or any other provisions of law which  
8 prohibits release on any basis until serving not less than one-half the  
9 sentence imposed by the court, every two days served within class one shall  
10 be counted as an earned release credit of one day.

11 3. If sentenced pursuant to any other provision of section 13-703,  
12 section 13-704, subsection A, B, C, D or E, section 13-706, subsection A or  
13 section 13-708, subsection D or any other provision of law which prohibits  
14 release on any basis until serving not less than two-thirds the sentence  
15 imposed by the court, every three days served within class one shall be  
16 counted as an earned release credit of one day.

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

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

28 D. The director, according to rules adopted by the department, may  
29 authorize the release of any prisoner who has earned release credits which,  
30 when added to the time served by the prisoner, equal the sentence imposed by  
31 the court which shall be the prisoner's earned release credit date. A  
32 prisoner on earned release credit release is not under the control of the  
33 department and the department is not required to provide parole services or  
34 otherwise supervise any prisoner released, except that the department may  
35 revoke the release of the prisoner until the final expiration of his sentence  
36 if the department has reason to believe that the released prisoner has  
37 engaged in criminal conduct during the term of his release. If a prisoner  
38 has a term of probation to be completed or served, the probation department  
39 shall begin supervision of the prisoner when the prisoner is released on the  
40 earned release credit date. If the prisoner's term of probation equals or  
41 exceeds the prisoner's final expiration date, the director of the state  
42 department of corrections shall issue the prisoner an absolute discharge on  
43 the prisoner's earned release credit date. The prisoner is not under the  
44 control of the department and the department is not required to provide  
45 parole services or otherwise supervise the prisoner. If the prisoner's term

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

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

- 17 1. Brings a claim without substantial justification.
- 18 2. Unreasonably expands or delays a proceeding.
- 19 3. Testifies falsely or otherwise presents false information or  
20 material to the court.
- 21 4. Submits a claim that is intended solely to harass the party it is  
22 filed against.

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

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

31 Sec. 23. Section 41-1604.13, Arizona Revised Statutes, is amended to  
32 read:

33 41-1604.13. Home arrest; eligibility; victim notification;  
34 conditions; applicability; definitions

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

- 37 1. Meets the following criteria:
  - 38 (a) Was convicted of committing a class 4, 5 or 6 felony not involving  
39 ~~the intentional or knowing infliction of serious physical injury or the use~~  
40 ~~or exhibition of a deadly weapon or dangerous instrument~~ A DANGEROUS OFFENSE.
  - 41 (b) Was not convicted of a sexual offense.
  - 42 (c) Has not previously been convicted of any felony.
- 43 2. Violated parole by the commission of a technical violation that was  
44 not chargeable or indictable as a criminal offense.
- 45 3. Is eligible for work furlough.

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

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

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

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

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

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

25           D. Home arrest is conditioned on the following:

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

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

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

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

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

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

40           7. Compliance with all other conditions of supervision.

41           8. Payment of a monthly home arrest supervision fee of at least  
42 sixty-five dollars unless, after determining the inability of the inmate to  
43 pay the fee, the department requires payment of a lesser amount. The  
44 supervising corrections officer shall monitor the collection of the fee.

1 Monies collected shall be deposited, pursuant to sections 35-146 and 35-147,  
2 in the community corrections enhancement fund established by section 31-418.

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

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

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

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

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

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

33 K. For the purposes of this section: —

34 1. "DANGEROUS OFFENSE" HAS THE SAME MEANING PRESCRIBED IN SECTION  
35 13-105.

36 2. "Serious offense" includes any of the following:

37 1- (a) A serious offense as defined in section 13-706, subsection F,  
38 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

39 2- (b) A dangerous crime against children as defined in section  
40 13-705. The citation of section 13-705 is not a necessary element for a  
41 serious offense designation.

42 3- (c) A conviction under a prior criminal code for any offense that  
43 possesses reasonably equivalent offense elements as the offense elements that  
44 are listed under section 13-705, subsection P, paragraph 1 or section 13-706,  
45 subsection F, paragraph 1.

~~APPROVED BY THE GOVERNOR APRIL 13, 2011.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2011.~~



HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 7, 2011,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
7 day of April, 2011,

at 2:35 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 13<sup>th</sup> day of

April, 2011,

at 10:00 o'clock A. M.

[Signature]  
Governor of Arizona

H.B. 2353

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 13<sup>th</sup> day of April, 2011,

at 4:59 o'clock P. M.

[Signature]  
Secretary of State