

House Engrossed

**FILED**

**MICHELE REAGAN  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

CHAPTER 209

# **HOUSE BILL 2299**

AN ACT

AMENDING SECTIONS 13-501, 13-1401, 13-1404 AND 13-1405, ARIZONA REVISED  
STATUTES; RELATING TO SEXUAL OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-501, Arizona Revised Statutes, is amended to  
3 read:

4 13-501. Persons under eighteen years of age; felony charging;  
5 definitions

6 A. The county attorney shall bring a criminal prosecution against a  
7 juvenile in the same manner as an adult if the juvenile is fifteen, sixteen  
8 or seventeen years of age at the time the alleged offense is committed and  
9 the juvenile is accused of any of the following offenses:

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

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

- 23 1. A class 1 felony.
- 24 2. A class 2 felony.
- 25 3. A class 3 felony in violation of any offense in chapters 10 through  
26 17 or chapter 19 or 23 of this title.
- 27 4. A class 3, 4, 5 or 6 felony involving a dangerous offense.
- 28 5. Any felony offense committed by a chronic felony offender.
- 29 6. Any offense that is properly joined to an offense listed in this  
30 subsection.

31 C. A criminal prosecution shall be brought against a juvenile in the  
32 same manner as an adult if the juvenile has been accused of a criminal  
33 offense and has a historical prior felony conviction.

34 D. At the time the county attorney files a complaint or indictment the  
35 county attorney shall file a notice stating that the juvenile is a chronic  
36 felony offender. Subject to subsection E of this section, the notice shall  
37 establish and confer jurisdiction over the juvenile as a chronic felony  
38 offender.

39 E. On motion of the juvenile the court shall hold a hearing after  
40 arraignment and before trial to determine if a juvenile is a chronic felony  
41 offender. At the hearing the state shall prove by a preponderance of the  
42 evidence that the juvenile is a chronic felony offender. If the court does  
43 not find that the juvenile is a chronic felony offender, the court shall  
44 transfer the juvenile to the juvenile court pursuant to section 8-302. If  
45 the court finds that the juvenile is a chronic felony offender or if the

1 juvenile does not file a motion to determine if the juvenile is a chronic  
2 felony offender, the criminal prosecution shall continue.

3 F. Except as provided in section 13-921, a person who is charged  
4 pursuant to this section shall be sentenced in the criminal court in the same  
5 manner as an adult for any offense for which the person is convicted.

6 G. Unless otherwise provided by law, nothing in this section shall be  
7 construed as to confer jurisdiction in the juvenile court over any person who  
8 is eighteen years of age or older.

9 H. For the purposes of this section:

10 1. "Accused" means a juvenile against whom a complaint, information or  
11 indictment is filed.

12 2. "Chronic felony offender" means a juvenile who has had two prior  
13 and separate adjudications and dispositions for conduct that would constitute  
14 a historical prior felony conviction if the juvenile had been tried as an  
15 adult.

16 3. "Forcible sexual assault" means sexual assault pursuant to section  
17 13-1406 that is committed without consent as defined in section 13-1401,  
18 paragraph 5- 7, subdivision (a).

19 4. "Other violent felony offense" means:

20 (a) Aggravated assault pursuant to section 13-1204, subsection A,  
21 paragraph 1.

22 (b) Aggravated assault pursuant to section 13-1204, subsection A,  
23 paragraph 2 involving the use of a deadly weapon.

24 (c) Drive by shooting pursuant to section 13-1209.

25 (d) Discharging a firearm at a structure pursuant to section 13-1211.

26 Sec. 2. Section 13-1401, Arizona Revised Statutes, is amended to read:  
27 13-1401. Definitions; factors

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

29 1. "Oral sexual contact" means oral contact with the penis, vulva or  
30 anus.

31 2. "POSITION OF TRUST" MEANS A PERSON WHO IS OR WAS ANY OF THE  
32 FOLLOWING:

33 (a) THE MINOR'S PARENT, STEPPARENT, ADOPTIVE PARENT, LEGAL GUARDIAN OR  
34 FOSTER PARENT.

35 (b) THE MINOR'S TEACHER.

36 (c) THE MINOR'S COACH OR INSTRUCTOR, WHETHER THE COACH OR INSTRUCTOR  
37 IS AN EMPLOYEE OR VOLUNTEER.

38 (d) THE MINOR'S CLERGYMAN OR PRIEST.

39 (e) ENGAGED IN A SEXUAL OR ROMANTIC RELATIONSHIP WITH THE MINOR'S  
40 PARENT, ADOPTIVE PARENT, LEGAL GUARDIAN, FOSTER PARENT OR STEPPARENT.

41 ~~2.~~ 3. "Sexual contact" means any direct or indirect touching,  
42 fondling or manipulating of any part of the genitals, anus or female breast  
43 by any part of the body or by any object or causing a person to engage in  
44 such contact.

1           ~~3.~~ 4. "Sexual intercourse" means penetration into the penis, vulva or  
2 anus by any part of the body or by any object or masturbatory contact with  
3 the penis or vulva.

4           ~~4.~~ 5. "Spouse" means a person who is legally married and cohabiting.

5           6. "TEACHER" MEANS A CERTIFICATED TEACHER AS DEFINED IN SECTION 15-501  
6 OR ANY OTHER PERSON WHO PROVIDES INSTRUCTION TO PUPILS IN ANY SCHOOL  
7 DISTRICT, CHARTER SCHOOL OR ACCOMMODATION SCHOOL, THE ARIZONA STATE SCHOOLS  
8 FOR THE DEAF AND THE BLIND OR A PRIVATE SCHOOL IN THIS STATE.

9           ~~5.~~ 7. "Without consent" includes any of the following:

10           (a) The victim is coerced by the immediate use or threatened use of  
11 force against a person or property.

12           (b) The victim is incapable of consent by reason of mental disorder,  
13 mental defect, drugs, alcohol, sleep or any other similar impairment of  
14 cognition and such condition is known or should have reasonably been known to  
15 the defendant. For THE purposes of this subdivision, "mental defect" means  
16 the victim is unable to comprehend the distinctively sexual nature of the  
17 conduct or is incapable of understanding or exercising the right to refuse to  
18 engage in the conduct with another.

19           (c) The victim is intentionally deceived as to the nature of the act.

20           (d) The victim is intentionally deceived to erroneously believe that  
21 the person is the victim's spouse.

22           B. THE FOLLOWING FACTORS MAY BE CONSIDERED IN DETERMINING WHETHER A  
23 RELATIONSHIP IS CURRENTLY OR WAS PREVIOUSLY A SEXUAL OR ROMANTIC RELATIONSHIP  
24 PURSUANT TO SUBSECTION A, PARAGRAPH 2, SUBDIVISION (e) OF THIS SECTION:

25           1. THE TYPE OF RELATIONSHIP.

26           2. THE LENGTH OF THE RELATIONSHIP.

27           3. THE FREQUENCY OF THE INTERACTION BETWEEN THE TWO PERSONS.

28           4. IF THE RELATIONSHIP HAS TERMINATED, THE LENGTH OF TIME SINCE THE  
29 TERMINATION.

30           Sec. 3. Section 13-1404, Arizona Revised Statutes, is amended to read:

31           13-1404. Sexual abuse; classification

32           A. A person commits sexual abuse by intentionally or knowingly  
33 engaging in sexual contact with any person who is fifteen or more years of  
34 age without consent of that person or with any person who is under fifteen  
35 years of age if the sexual contact involves only the female breast.

36           B. IT IS NOT A DEFENSE TO A PROSECUTION FOR A VIOLATION OF THIS  
37 SECTION THAT THE OTHER PERSON CONSENTED IF THE OTHER PERSON WAS FIFTEEN,  
38 SIXTEEN OR SEVENTEEN YEARS OF AGE AND THE DEFENDANT WAS IN A POSITION OF  
39 TRUST.

40           ~~B.~~ C. Sexual abuse is a class 5 felony unless the victim is under  
41 fifteen years of age in which case sexual abuse is a class 3 felony  
42 punishable pursuant to section 13-705.

1           Sec. 4. Section 13-1405, Arizona Revised Statutes, is amended to read:  
2           13-1405. Sexual conduct with a minor; classification

3           A. A person commits sexual conduct with a minor by intentionally or  
4 knowingly engaging in sexual intercourse or oral sexual contact with any  
5 person who is under eighteen years of age.

6           B. Sexual conduct with a minor who is under fifteen years of age is a  
7 class 2 felony and is punishable pursuant to section 13-705. Sexual conduct  
8 with a minor who is at least fifteen years of age is a class 6 felony.  
9 Sexual conduct with a minor who is at least fifteen years of age is a class 2  
10 felony if the person is or was ~~the minor's parent, stepparent, adoptive~~  
11 ~~parent, legal guardian or foster parent or the minor's teacher or clergyman~~  
12 ~~or priest~~ IN A POSITION OF TRUST and the convicted person is not eligible for  
13 suspension of sentence, probation, pardon or release from confinement on any  
14 basis except as specifically authorized by section 31-233, subsection A or B  
15 until the sentence imposed has been served or commuted.

16           C. ~~For the purposes of this section, "teacher" means a certificated~~  
17 ~~teacher as defined in section 15-501 or any other person who provides~~  
18 ~~instruction to pupils in any school district, charter school or accommodation~~  
19 ~~school, the Arizona state schools for the deaf and the blind or a private~~  
20 ~~school in this state.~~

APPROVED BY THE GOVERNOR APRIL 6, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2015.

Passed the House February 23, 2015

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate March 30, 2015

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

31<sup>st</sup> day of March, 2015

at 12:22 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 6<sup>th</sup> day of

April

at 1:49 o'clock P. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 31<sup>st</sup> day of March, 2015 SS

at 8:30 o'clock A. M. SS

[Signature]  
Secretary of State

H.B. 2299