

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# HOUSE BILL 2342

AN ACT

AMENDING SECTIONS 13-604, 13-604.01, 13-1307, 13-1419, 13-3211, 13-3212, 13-3213, 13-3554, 31-412, 41-1604.11 AND 41-1604.13, 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 13-604, Arizona Revised Statutes, is amended to  
3 read:

4 13-604. Dangerous and repetitive offenders; definitions

5 A. Except as provided in subsection F, G or H of this section or  
6 section 13-604.01, a person who is at least eighteen years of age or who has  
7 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,  
8 whether a completed or preparatory offense, and who has a historical prior  
9 felony conviction shall be sentenced to imprisonment as prescribed in this  
10 subsection and shall not be eligible for suspension of sentence, probation,  
11 pardon or release from confinement on any basis except as specifically  
12 authorized by section 31-233, subsection A or B until the sentence imposed by  
13 the court has been served, the person is eligible for release pursuant to  
14 section 41-1604.07 or the sentence is commuted. The presumptive term may be  
15 mitigated or aggravated within the range prescribed under this subsection  
16 pursuant to the terms of section 13-702, subsections B, C and D. The terms  
17 are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| Class 4       | 3 years        | 4.5 years          | 6 years        |
| Class 5       | 1.5 years      | 2.25 years         | 3 years        |
| Class 6       | 1 year         | 1.75 years         | 2.25 years     |

22 B. Except as provided in subsection I, J or K of this section or  
23 section 13-604.01, a person who is at least eighteen years of age or who has  
24 been tried as an adult and who stands convicted of a class 2 or 3 felony,  
25 whether a completed or preparatory offense, and who has a historical prior  
26 felony conviction shall be sentenced to imprisonment as prescribed in this  
27 subsection and shall not be eligible for suspension of sentence, probation,  
28 pardon or release from confinement on any basis except as specifically  
29 authorized by section 31-233, subsection A or B until the sentence imposed by  
30 the court has been served, the person is eligible for release pursuant to  
31 section 41-1604.07 or the sentence is commuted. The presumptive term may be  
32 mitigated or aggravated within the range prescribed under this subsection  
33 pursuant to the terms of section 13-702, subsections B, C and D. The terms  
34 are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| Class 2       | 6 years        | 9.25 years         | 18.5 years     |
| Class 3       | 4.5 years      | 6.5 years          | 13 years       |

38 C. Except as provided in subsection F, G, H or S of this section or  
39 section 13-604.01, a person who is at least eighteen years of age or who has  
40 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,  
41 whether a completed or preparatory offense, and who has two or more  
42 historical prior felony convictions shall be sentenced to imprisonment as  
43 prescribed in this subsection and shall not be eligible for suspension of  
44 sentence, probation, pardon or release from confinement on any basis except  
45 as specifically authorized by section 31-233, subsection A or B until the

1 sentence imposed by the court has been served, the person is eligible for  
2 release pursuant to section 41-1604.07 or the sentence is commuted. The  
3 presumptive term may be mitigated or aggravated within the range prescribed  
4 under this subsection pursuant to the terms of section 13-702, subsections B,  
5 C and D. The terms are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| 6 Class 4     | 8 years        | 10 years           | 12 years       |
| 7 Class 5     | 4 years        | 5 years            | 6 years        |
| 8 Class 6     | 3 years        | 3.75 years         | 4.5 years      |

9  
10 D. Except as provided in subsection I, J, K or S of this section or  
11 section 13-604.01, a person who is at least eighteen years of age or who has  
12 been tried as an adult and who stands convicted of a class 2 or 3 felony, and  
13 who has two or more historical prior felony convictions, shall be sentenced  
14 to imprisonment as prescribed in this subsection and shall not be eligible  
15 for suspension of sentence, probation, pardon or release from confinement on  
16 any basis except as specifically authorized by section 31-233, subsection A  
17 or B until the sentence imposed by the court has been served, the person is  
18 eligible for release pursuant to section 41-1604.07 or the sentence is  
19 commuted. The presumptive term may be mitigated or aggravated within the  
20 range prescribed under this subsection pursuant to the terms of section  
21 13-702, subsections B, C and D. The terms are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| 22 Class 2    | 14 years       | 15.75 years        | 28 years       |
| 23 Class 3    | 10 years       | 11.25 years        | 20 years       |

24  
25 E. A person who is at least eighteen years of age or who has been  
26 tried as an adult and who stands convicted of any misdemeanor or petty  
27 offense, other than a traffic offense, and who has been convicted of one or  
28 more of the same misdemeanors or petty offenses within two years next  
29 preceding the date of the present offense shall be sentenced for the next  
30 higher class of offense than that for which such person currently stands  
31 convicted.

32 F. Except as provided in section 13-604.01, a person who is at least  
33 eighteen years of age or who has been tried as an adult and who stands  
34 convicted of a class 4, 5 or 6 felony involving the intentional or knowing  
35 infliction of serious physical injury or the discharge, use or threatening  
36 exhibition of a deadly weapon or dangerous instrument without having  
37 previously been convicted of any felony shall be sentenced to imprisonment as  
38 prescribed in this subsection and shall not be eligible for suspension of  
39 sentence, probation, pardon or release from confinement on any basis except  
40 as specifically authorized by section 31-233, subsection A or B until the  
41 sentence imposed by the court has been served, the person is eligible for  
42 release pursuant to section 41-1604.07 or the sentence is commuted. The  
43 presumptive term may be mitigated or aggravated within the range prescribed  
44 under this subsection pursuant to the terms of section 13-702, subsections B,  
45 C and D. The terms are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| Class 4       | 4 years        | 6 years            | 8 years        |
| Class 5       | 2 years        | 3 years            | 4 years        |
| Class 6       | 1.5 years      | 2.25 years         | 3 years        |

5 G. Except as provided in section 13-604.01, upon conviction of a class  
6 4, 5 or 6 felony involving the intentional or knowing infliction of serious  
7 physical injury or the discharge, use or threatening exhibition of a deadly  
8 weapon or dangerous instrument a person who has a historical prior felony  
9 conviction involving the intentional or knowing infliction of serious  
10 physical injury or the use or exhibition of a deadly weapon or dangerous  
11 instrument shall be sentenced to imprisonment as prescribed in this  
12 subsection and shall not be eligible for suspension of sentence, probation,  
13 pardon or release from confinement on any basis except as specifically  
14 authorized by section 31-233, subsection A or B until the sentence imposed by  
15 the court has been served, the person is eligible for release pursuant to  
16 section 41-1604.07 or the sentence is commuted. The presumptive term may be  
17 mitigated or aggravated within the range prescribed under this subsection  
18 pursuant to the terms of section 13-702, subsections B, C and D. The terms  
19 are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| Class 4       | 8 years        | 10 years           | 12 years       |
| Class 5       | 4 years        | 5 years            | 6 years        |
| Class 6       | 3 years        | 3.75 years         | 4.5 years      |

24 H. Except as provided in subsection S of this section or section  
25 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the  
26 intentional or knowing infliction of serious physical injury or the  
27 discharge, use or threatening exhibition of a deadly weapon or dangerous  
28 instrument a person who has two or more historical prior felony convictions  
29 involving the intentional or knowing infliction of serious physical injury or  
30 the use or exhibition of a deadly weapon or dangerous instrument shall be  
31 sentenced to imprisonment as prescribed in this subsection and shall not be  
32 eligible for suspension of sentence, probation, pardon or release from  
33 confinement on any basis except as specifically authorized by section 31-233,  
34 subsection A or B until the sentence imposed by the court has been served,  
35 the person is eligible for release pursuant to section 41-1604.07 or the  
36 sentence is commuted. The presumptive term may be mitigated or aggravated  
37 within the range prescribed under this subsection pursuant to the terms of  
38 section 13-702, subsections B, C and D. The terms are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| Class 4       | 12 years       | 14 years           | 16 years       |
| Class 5       | 6 years        | 7 years            | 8 years        |
| Class 6       | 4.5 years      | 5.25 years         | 6 years        |

43 I. Except as provided in section 13-604.01, upon a first conviction of  
44 a class 2 or 3 felony involving discharge, use or threatening exhibition of a  
45 deadly weapon or dangerous instrument or upon conviction of a class 2 or 3

1 felony when the intentional or knowing infliction of serious physical injury  
2 upon another has occurred, the defendant shall be sentenced to imprisonment  
3 as prescribed in this subsection and shall not be eligible for suspension of  
4 sentence, probation, pardon or release from confinement on any basis except  
5 as specifically authorized by section 31-233, subsection A or B until the  
6 sentence imposed by the court has been served, the person is eligible for  
7 release pursuant to section 41-1604.07 or the sentence is commuted. The  
8 presumptive term may be mitigated or aggravated within the range prescribed  
9 under this subsection pursuant to the terms of section 13-702, subsections B,  
10 C and D. The terms are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| Class 2       | 7 years        | 10.5 years         | 21 years       |
| Class 3       | 5 years        | 7.5 years          | 15 years       |

14 J. Except as provided in section 13-604.01, upon conviction of a class  
15 2 or 3 felony involving the discharge, use or threatening exhibition of a  
16 deadly weapon or dangerous instrument or the intentional or knowing  
17 infliction of serious physical injury upon another, a person who has a  
18 historical prior felony conviction that is a class 1, 2 or 3 felony involving  
19 the use or exhibition of a deadly weapon or dangerous instrument or the  
20 intentional or knowing infliction of serious physical injury on another shall  
21 be sentenced to imprisonment as prescribed in this subsection and shall not  
22 be eligible for suspension of sentence, probation, pardon or release from  
23 confinement on any basis except as specifically authorized by section 31-233,  
24 subsection A or B until the sentence imposed by the court has been served,  
25 the person is eligible for release pursuant to section 41-1604.07 or the  
26 sentence is commuted. The presumptive term may be mitigated or aggravated  
27 within the range prescribed under this subsection pursuant to the terms of  
28 section 13-702, subsections B, C and D. The terms are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| Class 2       | 14 years       | 15.75 years        | 28 years       |
| Class 3       | 10 years       | 11.25 years        | 20 years       |

32 K. Except as provided in subsection S of this section or section  
33 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge,  
34 use or threatening exhibition of a deadly weapon or dangerous instrument or  
35 the intentional or knowing infliction of serious physical injury upon  
36 another, a person who has two or more historical prior felony convictions  
37 that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly  
38 weapon or dangerous instrument or the intentional or knowing infliction of  
39 serious physical injury on another shall be sentenced to imprisonment as  
40 prescribed in this subsection and shall not be eligible for suspension of  
41 sentence, probation, pardon or release from confinement on any basis except  
42 as specifically authorized by section 31-233, subsection A or B until the  
43 sentence imposed by the court has been served, the person is eligible for  
44 release pursuant to section 41-1604.07 or the sentence is commuted. The  
45 presumptive term may be mitigated or aggravated within the range prescribed

1 under this subsection pursuant to the terms of section 13-702, subsections B,  
2 C and D. The terms are as follows:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| 3 Class 2     | 21 years       | 28 years           | 35 years       |
| 4 Class 3     | 15 years       | 20 years           | 25 years       |

5  
6 L. For the purposes of subsections I, J and K of this section in  
7 determining the applicability of the penalties provided in this section for  
8 second or subsequent class 2 or 3 felonies, the conviction for any felony  
9 committed ~~prior to~~ BEFORE October 1, 1978 which, if committed after October  
10 1, 1978, could be a dangerous felony under this section may be designated by  
11 the state as a prior felony.

12 M. Convictions for two or more offenses committed on the same occasion  
13 shall be counted as only one conviction for purposes of this section.

14 N. A person who has been convicted in any court outside the  
15 jurisdiction of this state of an offense which if committed within this state  
16 would be punishable as a felony or misdemeanor is subject to the provisions  
17 of this section. A person who has been convicted as an adult of an offense  
18 punishable as a felony or a misdemeanor under the provisions of any prior  
19 code in this state shall be subject to the provisions of this section.

20 O. Time spent incarcerated within the two years next preceding the  
21 date of the offense for which a person is currently being sentenced under  
22 subsection E of this section shall not be included in the two years required  
23 to be free of convictions for purposes of that subsection.

24 P. The penalties prescribed by this section shall be substituted for  
25 the penalties otherwise authorized by law if the previous conviction or the  
26 allegation that the defendant committed a felony while released on bond or on  
27 the defendant's own recognizance or while escaped from preconviction custody  
28 as provided in subsection R of this section is charged in the indictment or  
29 information and admitted or found by the court or if the dangerous nature of  
30 the felony is charged in the indictment or information and admitted or found  
31 by the trier of fact. The release provisions prescribed by this section  
32 shall not be substituted for any penalties required by the substantive  
33 offense or provision of law that specifies a later release or completion of  
34 the sentence imposed prior to release. The court shall allow the allegation  
35 of a prior conviction, the dangerous nature of the felony or the allegation  
36 that the defendant committed a felony while released on bond or on the  
37 defendant's own recognizance or while escaped from preconviction custody at  
38 any time prior to the date the case is actually tried unless the allegation  
39 is filed fewer than twenty days before the case is actually tried and the  
40 court finds on the record that the defendant was in fact prejudiced by the  
41 untimely filing and states the reasons for these findings, provided that when  
42 the allegation of a prior conviction is filed, the state must make available  
43 to the defendant a copy of any material or information obtained concerning  
44 the prior conviction. The charge of previous conviction or the allegation  
45 that the defendant committed a felony while released on bond or on the

1 defendant's own recognizance or while escaped from preconviction custody  
2 shall not be read to the jury. For the purposes of this subsection,  
3 "dangerous nature of the felony" means a felony involving the discharge, use  
4 or threatening exhibition of a deadly weapon or dangerous instrument or the  
5 intentional or knowing infliction of serious physical injury upon another.

6 Q. Intentional failure by the court to impose the mandatory sentences  
7 or probation conditions provided in this title shall be deemed to be  
8 malfeasance.

9 R. A person who is convicted of committing any felony offense, which  
10 felony offense is committed while the person is released on bail or on the  
11 defendant's own recognizance on a separate felony offense or while the person  
12 is escaped from preconviction custody for a separate felony offense, shall be  
13 sentenced to a term of imprisonment two years longer than would otherwise be  
14 imposed for the felony offense committed while released on bond or on the  
15 defendant's own recognizance or while escaped from preconviction custody.  
16 The additional sentence imposed under this subsection is in addition to any  
17 enhanced punishment that may be applicable under any of the other subsections  
18 of this section. The defendant is not eligible for suspension of sentence,  
19 probation, pardon or release from confinement on any basis except as  
20 specifically authorized by section 31-233, subsection A or B until the two  
21 years are served, the person is eligible for release pursuant to section  
22 41-1604.07 or the sentence is commuted.

23 S. A person who is at least eighteen years of age or who has been  
24 tried as an adult and who stands convicted of a serious offense except a drug  
25 offense, first degree murder or any dangerous crime against children, whether  
26 a completed or preparatory offense, and who has previously been convicted of  
27 two or more serious offenses not committed on the same occasion shall be  
28 sentenced to life imprisonment and is not eligible for suspension of  
29 sentence, probation, pardon or release from confinement on any basis except  
30 as specifically authorized by section 31-233, subsection A or B until the  
31 person has served not less than twenty-five years or the sentence is  
32 commuted.

33 T. A person who is convicted of committing any felony offense with the  
34 intent to promote, further or assist any criminal conduct by a criminal  
35 street gang shall not be eligible for suspension of sentence, probation,  
36 pardon or release from confinement on any basis except as authorized by  
37 section 31-233, subsection A or B until the sentence imposed by the court has  
38 been served, the person is eligible for release pursuant to section  
39 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum  
40 sentence for the offense shall be increased by three years. The additional  
41 sentence imposed pursuant to this subsection is in addition to any enhanced  
42 sentence that may be applicable.

43 U. A person who is convicted of intentionally or knowingly committing  
44 aggravated assault on a peace officer while the officer is engaged in the  
45 execution of any official duties pursuant to section 13-1204, subsection A,

1 paragraph 1 or 2 shall be sentenced to imprisonment for not less than the  
2 presumptive sentence authorized under this chapter and is not eligible for  
3 suspension of sentence, commutation or release on any basis until the  
4 sentence imposed is served.

5 V. Except as provided in section 13-604.01 or 13-703, if the victim is  
6 an unborn child in the womb at any stage of its development, the defendant  
7 shall be sentenced pursuant to this section.

8 W. For the purposes of this section:

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

16 2. "Historical prior felony conviction" means:

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

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; or

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

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

24 (iv) Involved the illegal control of a criminal enterprise; or

25 (v) Involved aggravated driving under the influence of intoxicating  
26 liquor or drugs, driving while under the influence of intoxicating liquor or  
27 drugs with a suspended, canceled, revoked or refused driver license or  
28 driving under the influence of intoxicating liquor or drugs with two or more  
29 driving under the influence of intoxicating liquor or drug convictions within  
30 a period of ~~sixty~~ EIGHTY-FOUR months; or

31 (vi) Involved any dangerous crime against children as defined in  
32 section 13-604.01.

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

40 (c) Any class 4, 5 or 6 felony, except the offenses listed in  
41 subdivision (a) of this paragraph, that was committed within the five years  
42 immediately preceding the date of the present offense. Any time spent on  
43 absconder status while on probation or incarcerated is excluded in  
44 calculating if the offense was committed within the preceding five years. If

1 a court determines a person was not on absconder status while on probation  
2 that time is not excluded.

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

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

8 4. "Serious offense" means any of the following offenses if committed  
9 in this state or any offense committed outside this state which if committed  
10 in this state would constitute one of the following offenses:

11 (a) First degree murder.

12 (b) Second degree murder.

13 (c) Manslaughter.

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

17 (e) Sexual assault.

18 (f) Any dangerous crime against children.

19 (g) Arson of an occupied structure.

20 (h) Armed robbery.

21 (i) Burglary in the first degree.

22 (j) Kidnapping.

23 (k) Sexual conduct with a minor under fifteen years of age.

24 (l) **CHILD PROSTITUTION.**

25 5. "Substantive offense" means the felony, misdemeanor or petty  
26 offense that the trier of fact found beyond a reasonable doubt the defendant  
27 committed. Substantive offense does not include allegations that, if proven,  
28 would enhance the sentence of imprisonment or fine to which the defendant  
29 otherwise would be subject.

30 Sec. 2. Section 13-604.01, Arizona Revised Statutes, is amended to  
31 read:

32 13-604.01. Dangerous crimes against children; sentences;  
33 definitions

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

43 B. Except as otherwise provided in this section, a person who is at  
44 least eighteen years of age or who has been tried as an adult and who stands  
45 convicted of a dangerous crime against children in the first degree involving

1 attempted first degree murder of a minor who is under twelve years of age,  
2 second degree murder of a minor who is under twelve years of age, sexual  
3 assault of a minor who is under twelve years of age, sexual conduct with a  
4 minor who is under twelve years of age or manufacturing methamphetamine under  
5 circumstances that cause physical injury to a minor who is under twelve years  
6 of age may be sentenced to life imprisonment and is not eligible for  
7 suspension of sentence, probation, pardon or release from confinement on any  
8 basis except as specifically authorized by section 31-233, subsection A or B  
9 until the person has served thirty-five years or the sentence is commuted.  
10 If a life sentence is not imposed pursuant to this subsection, the person  
11 shall be sentenced to a presumptive term of imprisonment for twenty years.

12 C. Except as otherwise provided in this section, a person who is at  
13 least eighteen years of age or who has been tried as an adult and who stands  
14 convicted of a dangerous crime against children in the first degree involving  
15 attempted first degree murder of a minor who is twelve, thirteen or fourteen  
16 years of age, second degree murder of a minor who is twelve, thirteen or  
17 fourteen years of age, sexual assault of a minor who is twelve, thirteen or  
18 fourteen years of age, taking a child for the purpose of prostitution, child  
19 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen  
20 years of age, continuous sexual abuse of a child, sex trafficking of a minor  
21 who is under fifteen years of age or manufacturing methamphetamine under  
22 circumstances that cause physical injury to a minor who is twelve, thirteen  
23 or fourteen years of age or involving or using minors in drug offenses shall  
24 be sentenced to a presumptive term of imprisonment for twenty years. If the  
25 convicted person has been previously convicted of one predicate felony the  
26 person shall be sentenced to a presumptive term of imprisonment for thirty  
27 years.

28 D. Except as otherwise provided in this section, a person who is at  
29 least eighteen years of age or who has been tried as an adult and who stands  
30 convicted of a dangerous crime against children in the first degree involving  
31 aggravated assault, molestation of a child, commercial sexual exploitation of  
32 a minor, sexual exploitation of a minor, child abuse or kidnapping shall be  
33 sentenced to a presumptive term of imprisonment for seventeen years. If the  
34 convicted person has been previously convicted of one predicate felony the  
35 person shall be sentenced to a presumptive term of imprisonment for  
36 twenty-eight years.

37 E. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO IS AT  
38 LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO STANDS  
39 CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN INVOLVING LURING A MINOR FOR  
40 SEXUAL EXPLOITATION PURSUANT TO SECTION 13-3554 IS GUILTY OF A CLASS 3 FELONY  
41 AND SHALL BE SENTENCED TO A PRESUMPTIVE TERM OF IMPRISONMENT FOR TEN YEARS  
42 AND, UNLESS THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF A PREDICATE FELONY,  
43 THE PRESUMPTIVE TERM MAY BE INCREASED OR DECREASED BY UP TO FIVE YEARS  
44 PURSUANT TO SECTION 13-702, SUBSECTIONS B, C AND D. IF THE PERSON IS  
45 SENTENCED TO A TERM OF IMPRISONMENT THE PERSON IS NOT ELIGIBLE FOR RELEASE

1 FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION  
2 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN  
3 SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR  
4 THE SENTENCE IS COMMUTED. IF THE CONVICTED PERSON HAS BEEN PREVIOUSLY  
5 CONVICTED OF ONE PREDICATE FELONY THE PERSON SHALL BE SENTENCED TO A  
6 PRESUMPTIVE TERM OF IMPRISONMENT FOR FIFTEEN YEARS AND IS NOT ELIGIBLE FOR  
7 SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY  
8 BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B  
9 UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS  
10 ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS  
11 COMMUTED.

12 ~~E.~~ F. Except as otherwise provided in this section, a person who is  
13 at least eighteen years of age or who has been tried as an adult and who  
14 stands convicted of a dangerous crime against children involving sexual abuse  
15 under section 13-1404 or bestiality under section 13-1411, subsection A,  
16 paragraph 2 is guilty of a class 3 felony and shall be sentenced to a  
17 presumptive term of imprisonment for five years, and unless the person has  
18 previously been convicted of a predicate felony, the presumptive term may be  
19 increased or decreased by up to two and one-half years pursuant to section  
20 13-702, subsections B, C and D. If the person is sentenced to a term of  
21 imprisonment the person is not eligible for release from confinement on any  
22 basis except as specifically authorized by section 31-233, subsection A or B  
23 until the sentence imposed by the court has been served, the person is  
24 eligible for release pursuant to section 41-1604.07 or the sentence is  
25 commuted. If the convicted person has been previously convicted of one  
26 predicate felony the person shall be sentenced to a presumptive term of  
27 imprisonment for fifteen years and is not eligible for suspension of  
28 sentence, probation, pardon or release from confinement on any basis except  
29 as specifically authorized by section 31-233, subsection A or B until the  
30 sentence imposed by the court has been served, the person is eligible for  
31 release pursuant to section 41-1604.07 or the sentence is commuted.

32 ~~F.~~ G. The presumptive sentences prescribed in subsections B, C and D  
33 of this section or ~~subsection~~ SUBSECTIONS E AND F of this section if the  
34 person has previously been convicted of a predicate felony may be increased  
35 or decreased by up to seven years pursuant to the provisions of section  
36 13-702, subsections B, C and D.

37 ~~G.~~ H. Except as provided in subsection ~~E~~ F of this section, a person  
38 sentenced for a dangerous crime against children in the first degree pursuant  
39 to this section is not eligible for suspension of sentence, probation, pardon  
40 or release from confinement on any basis except as specifically authorized by  
41 section 31-233, subsection A or B until the sentence imposed by the court has  
42 been served or commuted.

43 ~~H.~~ I. A person who stands convicted of any dangerous crime against  
44 children in the first degree pursuant to subsection C or D of this section  
45 and who has been previously convicted of two or more predicate felonies shall

1 be sentenced to life imprisonment and is not eligible for suspension of  
2 sentence, probation, pardon or release from confinement on any basis except  
3 as specifically authorized by section 31-233, subsection A or B until the  
4 person has served not fewer than thirty-five years or the sentence is  
5 commuted.

6 ~~I.~~ J. Notwithstanding chapter 10 of this title, a person who is at  
7 least eighteen years of age or who has been tried as an adult and who stands  
8 convicted of a dangerous crime against children in the second degree pursuant  
9 to subsection C or D of this section ~~or luring a minor for sexual~~  
10 ~~exploitation pursuant to section 13-3554~~ is guilty of a class 3 felony and  
11 shall be sentenced to a presumptive term of imprisonment for ten years. The  
12 presumptive term may be increased or decreased by up to five years pursuant  
13 to section 13-702, subsections B, C and D. If the person is sentenced to a  
14 term of imprisonment the person is not eligible for release from confinement  
15 on any basis except as specifically authorized by section 31-233, subsection  
16 A or B until the person has served the sentence imposed by the court, the  
17 person is eligible for release pursuant to section 41-1604.07 or the sentence  
18 is commuted. A person who is convicted of any dangerous crime against  
19 children in the second degree and who has been previously convicted of one or  
20 more predicate felonies is not eligible for suspension of sentence,  
21 probation, pardon or release from confinement on any basis except as  
22 specifically authorized by section 31-233, subsection A or B until the  
23 sentence imposed by the court has been served, the person is eligible for  
24 release pursuant to section 41-1604.07 or the sentence is commuted.

25 ~~J.~~ K. Section 13-604, subsections M and O apply to the determination  
26 of prior convictions.

27 ~~K.~~ L. The sentence THAT IS imposed on a person by the court for a  
28 dangerous crime against children under subsection D of this section and that  
29 involves child molestation or sexual abuse pursuant to subsection ~~E~~ F of  
30 this section may be served concurrently with other sentences if the offense  
31 involved only one victim. The sentence imposed on a person for any other  
32 dangerous crime against children in the first or second degree shall be  
33 consecutive to any other sentence imposed on the person at any time,  
34 including child molestation and sexual abuse of the same victim.

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

37 ~~M.~~ N. For the purposes of this section:

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

40 (a) Second degree murder.

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

44 (c) Sexual assault.

45 (d) Molestation of a child.

- 1 (e) Sexual conduct with a minor.
- 2 (f) Commercial sexual exploitation of a minor.
- 3 (g) Sexual exploitation of a minor.
- 4 (h) Child abuse as prescribed in section 13-3623, subsection A,
- 5 paragraph 1.
- 6 (i) Kidnapping.
- 7 (j) Sexual abuse.
- 8 (k) Taking a child for the purpose of prostitution as prescribed in
- 9 section 13-3206.
- 10 (l) Child prostitution as prescribed in section 13-3212.
- 11 (m) Involving or using minors in drug offenses.
- 12 (n) Continuous sexual abuse of a child.
- 13 (o) Attempted first degree murder.
- 14 (p) Sex trafficking.
- 15 (q) Manufacturing methamphetamine under circumstances that cause
- 16 physical injury to a minor.
- 17 (r) Bestiality as prescribed in section 13-1411, subsection A,
- 18 paragraph 2.
- 19 (s) **LURING A MINOR FOR SEXUAL EXPLOITATION.**

20 A dangerous crime against children is in the first degree if it is a  
21 completed offense and is in the second degree if it is a preparatory offense,  
22 except attempted first degree murder is a dangerous crime against children in  
23 the first degree.

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

30 Sec. 3. Section 13-1307, Arizona Revised Statutes, is amended to read:  
31 **13-1307. Sex trafficking: classification**

32 A. It is unlawful for a person to knowingly recruit, entice, harbor,  
33 transport, provide or obtain by any means another person **WHO IS EIGHTEEN**  
34 **YEARS OF AGE OR OLDER** with the intent of causing the other person to engage  
35 in prostitution by force, fraud or coercion.

36 **B. IT IS UNLAWFUL FOR A PERSON TO RECRUIT, ENTICE, HARBOR, TRANSPORT,**  
37 **PROVIDE OR OBTAIN BY ANY MEANS ANOTHER PERSON WHO IS UNDER EIGHTEEN YEARS OF**  
38 **AGE WITH THE INTENT OF CAUSING THE OTHER PERSON TO ENGAGE IN PROSTITUTION.**

39 **C. NOTWITHSTANDING ANY OTHER LAW, A SENTENCE IMPOSED ON A PERSON FOR A**  
40 **VIOLATION OF SUBSECTION B OF THIS SECTION SHALL BE CONSECUTIVE TO ANY OTHER**  
41 **SENTENCE IMPOSED ON THE PERSON AT ANY TIME.**

42 ~~B.~~ **D.** A person who violates this section is guilty of a class 2  
43 felony, except that, ~~if~~ if the offense is committed against a person who is  
44 under fifteen years of age, the offense is a dangerous crime against children  
45 punishable pursuant to section 13-604.01.

1 Sec. 4. Section 13-1419, Arizona Revised Statutes, is amended to read:

2 13-1419. Unlawful sexual conduct; correctional facilities;  
3 classification; definition

4 A. A person ~~who is employed by the state department of corrections,~~  
5 ~~the department of juvenile corrections, a private prison facility or a city~~  
6 ~~or county jail, or who contracts to provide services with the state~~  
7 ~~department of corrections, the department of juvenile corrections, a private~~  
8 ~~prison facility or a city or county jail~~ commits unlawful sexual conduct by  
9 engaging in ~~oral sexual contact, sexual contact or sexual intercourse~~ ANY ACT  
10 OF A SEXUAL NATURE with ~~a person~~ AN OFFENDER who is in the custody of the  
11 state department of corrections, the department of juvenile corrections, a  
12 private prison facility or a city or county jail or with an offender who is  
13 under the supervision of either department or a city or county. FOR THE  
14 PURPOSES OF THIS SUBSECTION, "PERSON" MEANS A PERSON WHO:

15 1. IS EMPLOYED BY THE STATE DEPARTMENT OF CORRECTIONS OR THE  
16 DEPARTMENT OF JUVENILE CORRECTIONS.

17 2. IS EMPLOYED BY A PRIVATE PRISON FACILITY OR A CITY OR COUNTY JAIL.

18 3. CONTRACTS TO PROVIDE SERVICES WITH THE STATE DEPARTMENT OF  
19 CORRECTIONS, THE DEPARTMENT OF JUVENILE CORRECTIONS, A PRIVATE PRISON  
20 FACILITY OR A CITY OR COUNTY JAIL.

21 4. IS AN OFFICIAL VISITOR, VOLUNTEER OR AGENCY REPRESENTATIVE OF THE  
22 STATE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF JUVENILE CORRECTIONS, A  
23 PRIVATE PRISON FACILITY OR A CITY OR COUNTY JAIL.

24 ~~B. A prisoner who is in the custody of the state department of~~  
25 ~~corrections, a private prison facility or a city or county jail or an~~  
26 ~~offender who is on release status and who is under the supervision of the~~  
27 ~~state department of corrections or a city or county commits unlawful sexual~~  
28 ~~conduct by engaging in oral sexual contact, sexual contact or sexual~~  
29 ~~intercourse with a person who is employed by the state department of~~  
30 ~~corrections, a private prison facility or a city or county jail or who~~  
31 ~~contracts to provide services with the state department of corrections, a~~  
32 ~~private prison facility or a city or county jail.~~

33 ~~C. B. This section does not apply to:~~

34 ~~1. a person who is employed by the state department of corrections, a~~  
35 ~~private prison facility or a city or county jail or who contracts to provide~~  
36 ~~services with the state department of corrections, a private prison facility~~  
37 ~~or a city or county jail or an offender who is on release status if the~~  
38 ~~person was lawfully married to the prisoner or offender on release status~~  
39 ~~before the prisoner or offender was sentenced to the state department of~~  
40 ~~corrections or was incarcerated in a city or county jail.~~

41 ~~2. An offender who is on release status and who was lawfully married~~  
42 ~~to a person who is employed by the state department of corrections, a private~~  
43 ~~prison facility or a city or county jail or who contracts to provide services~~  
44 ~~with the state department of corrections, a private prison facility or a city~~  
45 ~~or county jail if the marriage occurred prior to the offender being sentenced~~

1 ~~to the state department of corrections or incarcerated in a city or county~~  
2 ~~jail.~~

3 ~~D.~~ C. Unlawful sexual conduct with ~~a person~~ AN OFFENDER under ~~the age~~  
4 ~~of~~ fifteen YEARS OF AGE is a class 2 felony. Unlawful sexual conduct with ~~a~~  
5 ~~person~~ AN OFFENDER between ~~the ages of~~ fifteen and seventeen YEARS OF AGE is  
6 a class 3 felony. All other unlawful sexual conduct is a class 5 felony.

7 D. FOR THE PURPOSES OF THIS SECTION, "ANY ACT OF A SEXUAL NATURE":

8 1. INCLUDES THE FOLLOWING:

9 (a) ANY COMPLETED, ATTEMPTED, THREATENED OR REQUESTED TOUCHING OF THE  
10 GENITALIA, ANUS, GROIN, BREAST, INNER THIGH, PUBIC AREA OR BUTTOCKS WITH THE  
11 INTENT TO AROUSE OR GRATIFY SEXUAL DESIRE.

12 (b) ANY ACT OF EXPOSING THE GENITALIA, ANUS, GROIN, BREAST, INNER  
13 THIGH, PUBIC AREA OR BUTTOCKS WITH THE INTENT TO AROUSE OR GRATIFY SEXUAL  
14 DESIRE.

15 (c) ANY ACT OF PHOTOGRAPHING, VIDEOTAPING, FILMING, DIGITALLY  
16 RECORDING OR OTHERWISE VIEWING, WITH OR WITHOUT A DEVICE, A PRISONER OR  
17 OFFENDER WITH THE INTENT TO AROUSE OR GRATIFY SEXUAL DESIRE, EITHER:

18 (i) WHILE THE PRISONER OR OFFENDER IS IN A STATE OF UNDRRESS OR PARTIAL  
19 DRESS.

20 (ii) WHILE THE PRISONER OR OFFENDER IS URINATING OR DEFECATING.

21 2. DOES NOT INCLUDE AN ACT DONE PURSUANT TO A BONA FIDE MEDICAL EXAM  
22 OR LAWFUL INTERNAL SEARCH.

23 Sec. 5. Section 13-3211, Arizona Revised Statutes, is amended to read:

24 13-3211. Definitions

25 ~~For the purposes of~~ IN this chapter, unless the context otherwise  
26 requires:

27 1. "Employee" means a person who conducts lawful or unlawful business  
28 for another person under a master-servant relationship or as an independent  
29 contractor and who is compensated by wages, commissions, tips or other  
30 valuable consideration.

31 2. "House of prostitution" means any building, structure or place THAT  
32 IS used for the purpose of prostitution or lewdness or where acts of  
33 prostitution occur.

34 3. "Operate and maintain" means to organize, design, perpetuate or  
35 control. Operate and maintain includes providing financial support by paying  
36 utilities, rent, maintenance costs or advertising costs, supervising  
37 activities or work schedules, and directing or furthering the aims of the  
38 enterprise.

39 4. "Oral sexual contact" means oral contact with the penis, vulva or  
40 anus.

41 5. "Prostitution" means engaging in or agreeing or offering to engage  
42 in sexual conduct ~~with another person~~ under a fee arrangement with ~~that~~  
43 ~~person or~~ any ~~other~~ person FOR MONEY OR ANY OTHER VALUABLE CONSIDERATION.

1           6. "Prostitution enterprise" means any corporation, partnership,  
2 association or other legal entity or any group of individuals associated in  
3 fact although not a legal entity engaged in providing prostitution services.

4           7. "Sadomasochistic abuse" means flagellation or torture by or ~~upon~~ ON  
5 a person who is nude or clad in undergarments or in revealing or bizarre  
6 costume or the condition of being fettered, bound or otherwise physically  
7 restrained on the part of one so clothed.

8           8. "Sexual conduct" means sexual contact, sexual intercourse, oral  
9 sexual contact or sadomasochistic abuse.

10          9. "Sexual contact" means any direct or indirect fondling or  
11 manipulating of any part of the genitals, anus or female breast.

12          10. "Sexual intercourse" means penetration into the penis, vulva or  
13 anus by any part of the body or by any object.

14          Sec. 6. Section 13-3212, Arizona Revised Statutes, is amended to read:  
15 13-3212. Child prostitution; classification; increased  
16 punishment

17          A. A person commits child prostitution by knowingly:

18           1. Causing any minor to engage in prostitution.

19           2. Using any minor for THE purposes of prostitution.

20           3. Permitting a minor WHO IS under ~~such~~ THE person's custody or  
21 control to engage in prostitution.

22           4. Receiving any benefit for or on account of procuring or placing a  
23 minor in any place or in the charge or custody of any person for the purpose  
24 of prostitution.

25           5. Receiving any benefit pursuant to an agreement to participate in  
26 the proceeds of prostitution of a minor.

27           6. Financing, managing, supervising, controlling or owning, either  
28 alone or in association with others, prostitution activity involving a minor.

29           7. Transporting or financing the transportation of any minor ~~through~~  
30 ~~or across this state~~ with the intent that ~~such~~ THE minor engage in  
31 prostitution.

32           8. ENGAGING IN PROSTITUTION WITH A MINOR.

33          B. NOTWITHSTANDING ANY OTHER LAW, A SENTENCE IMPOSED ON A PERSON FOR A  
34 VIOLATION OF THIS SECTION INVOLVING A MINOR WHO IS FIFTEEN, SIXTEEN OR  
35 SEVENTEEN YEARS OF AGE SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE IMPOSED ON  
36 THE PERSON AT ANY TIME.

37          C. IF A PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH  
38 8 OF THIS SECTION, THE VICTIM IS FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE  
39 AND THE COURT SENTENCES THE PERSON TO A TERM OF PROBATION, THE COURT SHALL  
40 ORDER THAT AS AN INITIAL TERM OF PROBATION THE PERSON BE IMPRISONED IN THE  
41 COUNTY JAIL FOR NOT LESS THAN THIRTY DAYS. THIS JAIL TERM OF INCARCERATION  
42 SHALL NOT BE DELETED, DEFERRED OR OTHERWISE SUSPENDED AND SHALL COMMENCE ON  
43 THE DATE OF SENTENCING. THIS SUBSECTION DOES NOT APPLY TO PERSONS WHO ARE  
44 SENTENCED TO SERVE A PERIOD OF INCARCERATION IN THE STATE DEPARTMENT OF  
45 CORRECTIONS.

1 ~~B-~~ D. Child prostitution is a class 2 felony, and if the minor is  
2 under fifteen years of age it is punishable pursuant to section 13-604.01.

3 E. IF THE MINOR IS FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE, CHILD  
4 PROSTITUTION PURSUANT TO SUBSECTION A, PARAGRAPH 1, 2, 3, 4, 5, 6 OR 7 OF  
5 THIS SECTION IS A CLASS 2 FELONY, THE PERSON CONVICTED SHALL BE SENTENCED  
6 PURSUANT TO THIS SECTION AND THE PERSON IS NOT ELIGIBLE FOR SUSPENSION OF  
7 SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT  
8 AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE  
9 SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED. THE PRESUMPTIVE  
10 TERM MAY BE AGGRAVATED OR MITIGATED WITHIN THE RANGE UNDER THIS SECTION  
11 PURSUANT TO SECTION 13-702, SUBSECTIONS B, C AND D. THE TERMS ARE AS  
12 FOLLOWS:

13 1. THE TERM FOR A FIRST OFFENSE IS AS FOLLOWS:

|    |                |                    |                |
|----|----------------|--------------------|----------------|
| 14 | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
| 15 | 7 YEARS        | 10.5 YEARS         | 21 YEARS       |

16 2. THE TERM FOR A DEFENDANT WHO HAS ONE HISTORICAL PRIOR FELONY  
17 CONVICTION IS AS FOLLOWS:

|    |                |                    |                |
|----|----------------|--------------------|----------------|
| 18 | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
| 19 | 14 YEARS       | 15.75 YEARS        | 28 YEARS       |

20 3. THE TERM FOR A DEFENDANT WHO HAS TWO OR MORE HISTORICAL PRIOR  
21 FELONY CONVICTIONS IS AS FOLLOWS:

|    |                |                    |                |
|----|----------------|--------------------|----------------|
| 22 | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
| 23 | 21 YEARS       | 28 YEARS           | 35 YEARS       |

24 Sec. 7. Section 13-3213, Arizona Revised Statutes, is amended to read:  
25 13-3213. Defense

26 It is a defense to a prosecution pursuant to section 13-3212,  
27 SUBSECTION A, PARAGRAPH 8, if the defendant engaged in the conduct  
28 constituting the offense with a minor ~~of~~ WHO IS fifteen, sixteen or seventeen  
29 years of age and at the time of the offense the defendant ~~did not know and~~  
30 could not reasonably have known the age of the minor.

31 Sec. 8. Section 13-3554, Arizona Revised Statutes, is amended to read:  
32 13-3554. Luring a minor for sexual exploitation; classification

33 A. A person commits luring a minor for sexual exploitation by offering  
34 or soliciting sexual conduct with another person knowing or having reason to  
35 know that the other person is a minor.

36 B. It is not a defense to a prosecution for a violation of this  
37 section that the other person ~~was a peace officer posing as~~ IS NOT a minor.

38 C. Luring a minor for sexual exploitation is a class 3 felony, and if  
39 the minor is under fifteen years of age it is punishable pursuant to section  
40 13-604.01, ~~subsection I~~.

41 Sec. 9. Section 31-412, Arizona Revised Statutes, is amended to read:  
42 31-412. Criteria for release on parole; release; custody of  
43 parolee; definition

44 A. If a prisoner is certified as eligible for parole pursuant to  
45 section 41-1604.09 the board of executive clemency shall authorize the

1 release of the applicant ~~upon~~ ON parole if the applicant has reached the  
2 applicant's earliest parole eligibility date pursuant to section 41-1604.09,  
3 subsection D and it appears to the board, in its sole discretion, that there  
4 is a substantial probability that the applicant will remain at liberty  
5 without violating the law and that the release is in the best interests of  
6 the state. The applicant shall thereupon be allowed to go ~~upon~~ ON parole in  
7 the legal custody and under the control of the state department of  
8 corrections, until the board revokes the parole or grants an absolute  
9 discharge from parole or until the prisoner reaches the prisoner's individual  
10 earned release credit date pursuant to section 41-1604.10. When the prisoner  
11 reaches the prisoner's individual earned release credit date the prisoner's  
12 parole shall be terminated and the prisoner shall no longer be under the  
13 authority of the board but shall be subject to revocation under section  
14 41-1604.10.

15 B. Notwithstanding subsection A of this section, the director of the  
16 state department of corrections may certify as eligible for parole any  
17 prisoner, regardless of the classification of the prisoner, who has reached  
18 the prisoner's parole eligibility date pursuant to section 41-1604.09,  
19 subsection D, unless an increased term has been imposed pursuant to section  
20 41-1604.09, subsection F, for the sole purpose of parole to the custody of  
21 any other jurisdiction to serve a term of imprisonment imposed by the other  
22 jurisdiction or to stand trial on criminal charges in the other jurisdiction  
23 or for the sole purpose of parole to the custody of the state department of  
24 corrections to serve any consecutive term imposed on the prisoner. ~~Upon~~ ON  
25 review of an application for parole pursuant to this subsection the board may  
26 authorize parole if, in its discretion, parole appears to be in the best  
27 interests of the state.

28 C. A prisoner who is otherwise eligible for parole, who is not on home  
29 arrest or work furlough and who is currently serving a sentence for a  
30 conviction of a serious offense or conspiracy to commit or attempt to commit  
31 a serious offense shall not be granted parole or absolute discharge from  
32 imprisonment except by one of the following votes:

33 1. A majority affirmative vote if four or more members consider the  
34 action.

35 2. A unanimous affirmative vote if three members consider the action.

36 3. A unanimous affirmative vote if two members consider the action  
37 pursuant to section 31-401, subsection I and the chairman concurs after  
38 reviewing the information considered by the two members.

39 D. The board, ~~shall~~ as a condition of parole, **SHALL** order a prisoner  
40 to make any court-ordered restitution.

41 E. Payment of restitution by the prisoner in accordance with  
42 subsection D of this section shall be made through the clerk of the superior  
43 court in the county in which the prisoner was sentenced for the offense for  
44 which the prisoner has been imprisoned in the same manner as restitution is  
45 paid as a condition of probation. The clerk of the superior court shall

1 report to the board monthly whether or not restitution has been paid for that  
2 month by the prisoner.

3 F. The board shall not disclose the address of the victim or the  
4 victim's immediate family to any party without the written consent of the  
5 victim or the victim's family.

6 G. For the purposes of this section, "serious offense" includes any of  
7 the following:

8 1. A serious offense as defined in section 13-604, subsection W,  
9 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

10 2. A dangerous crime against children as defined in section 13-604.01.  
11 The citation of section 13-604.01 is not a necessary element for a serious  
12 offense designation.

13 3. A conviction under a prior criminal code for any offense that  
14 possesses reasonably equivalent offense elements as the offense elements that  
15 are listed under section 13-604, subsection W, paragraph 4 and section  
16 13-604.01, subsection ~~M~~ N, paragraph 1.

17 Sec. 10. Section 41-1604.11, Arizona Revised Statutes, is amended to  
18 read:

19 41-1604.11. Order for removal; purposes; duration; work  
20 furlough; notice; failure to return;  
21 classification; applicability; definition

22 A. The director of the state department of corrections may authorize  
23 the temporary removal under custody from prison or any other institution for  
24 the detention of adults under the jurisdiction of the state department of  
25 corrections of any inmate for the purpose of employing that inmate in any  
26 work directly connected with the administration, management or maintenance of  
27 the prison or institution in which the inmate is confined, for purposes of  
28 cooperating voluntarily in medical research that cannot be performed at the  
29 prison or institution, or for participating in community action activities  
30 directed toward delinquency prevention and community betterment programs.  
31 The removal shall not be for a period longer than one day.

32 B. Under specific rules established by the director for the selection  
33 of inmates, the director may also authorize furlough, temporary removal or  
34 temporary release of any inmate for compassionate leave, for the purpose of  
35 furnishing to the inmate medical treatment not available at the prison or  
36 institution, for purposes preparatory to a return to the community within  
37 ninety days of the inmate's release date or for disaster aid, including local  
38 mutual aid and state emergencies. When an inmate is temporarily removed or  
39 temporarily released for a purpose preparatory to return to the community or  
40 for compassionate leave, the director may require the inmate to reimburse the  
41 state, in whole or part, for expenses incurred by the state in connection  
42 with the temporary removal or release.

43 C. The board of executive clemency, under specific rules established  
44 for the selection of inmates, if it appears to the board, in its sole  
45 discretion, that there is a substantial probability that the inmate will

1 remain at liberty without violating the law and that the release is in the  
2 best interests of the state, may authorize the release of an inmate on work  
3 furlough if the inmate has served not less than six months of the sentence  
4 imposed by the court, is within twelve months of the inmate's parole  
5 eligibility date and has not been convicted of a sexual offense. The  
6 director shall provide information as the board requests concerning any  
7 inmate eligible for release on work furlough. The inmate shall not be  
8 released on work furlough unless the release is approved by the board.

9 D. An inmate who is otherwise eligible for work furlough pursuant to  
10 subsection C of this section, who is not on home arrest and who is currently  
11 serving a sentence for a conviction of a serious offense or conspiracy to  
12 commit or attempt to commit a serious offense shall not be granted work  
13 furlough except by one of the following votes:

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

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

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

22 E. Before holding a hearing on the work furlough under consideration,  
23 the board ~~shall~~, on request, **SHALL** notify and afford an opportunity to be  
24 heard to the presiding judge of the superior court in the county in which the  
25 inmate requesting a work furlough was sentenced, the prosecuting attorney,  
26 the director of the arresting law enforcement agency and the victim of the  
27 offense for which the inmate is incarcerated. The notice shall state the  
28 name of the inmate requesting the work furlough, the offense for which the  
29 inmate was sentenced, the length of the sentence and the date of admission to  
30 the custody of the state department of corrections. The notice to the victim  
31 shall also inform the victim of the victim's right to be present and submit a  
32 written report to the board expressing the victim's opinion concerning the  
33 inmate's release. No hearing concerning work furlough shall be held until  
34 fifteen days after the date of giving the notice. On mailing the notice, the  
35 board shall file a hard copy of the notice as evidence that notification was  
36 sent.

37 F. The board shall require that every inmate released on work furlough  
38 comply with the terms and conditions of release as the board may impose,  
39 including that the inmate be gainfully employed while on work furlough and  
40 that the inmate make restitution to the victim of the offense for which the  
41 inmate was incarcerated.

42 G. If the board finds that an inmate has failed to comply with the  
43 terms and conditions of release or that the best interests of this state  
44 would be served by revocation of an inmate's work furlough, the board may  
45 issue a warrant for retaking the inmate before the expiration of the inmate's

1 maximum sentence. After return of the inmate, the board may revoke the  
2 inmate's work furlough after the inmate has been given an opportunity to be  
3 heard.

4 H. If the board denies the release of an inmate on work furlough or  
5 home arrest, it may prescribe that the inmate not be recommended again for  
6 release on work furlough or home arrest for a period of up to one year.

7 I. The director shall transmit a monthly report containing the name,  
8 date of birth, offense for which the inmate was sentenced, length of the  
9 sentence and date of admission to the state department of corrections of each  
10 inmate on work furlough or home arrest to the chairperson of the house of  
11 representatives judiciary committee or its successor committee and the  
12 chairperson of the senate judiciary committee or its successor committee.  
13 The director shall also submit a report containing this information for any  
14 inmate released on work furlough or home arrest within a jurisdiction to the  
15 county attorney, sheriff and chief of police for the jurisdiction in which  
16 the inmate is released on work furlough or home arrest.

17 J. Any inmate who knowingly fails to return from furlough, home  
18 arrest, work furlough or temporary removal or temporary release granted under  
19 this section is guilty of a class 5 felony.

20 K. At any given time if the director declares there is a shortage of  
21 beds available for inmates within the state department of corrections, the  
22 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be  
23 suspended for any inmate who has served not less than six months of the  
24 sentence imposed by the court, who has not been previously convicted of a  
25 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving  
26 a sexual offense, the use or exhibition of a deadly weapon or dangerous  
27 instrument or the infliction of serious physical injury pursuant to section  
28 13-604, and the inmate shall be continuously eligible for parole, home arrest  
29 or work furlough.

30 L. Prisoners who have served at least one calendar year and WHO are  
31 serving a sentence for conviction of a crime committed on or after October 1,  
32 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02  
33 or 36-1002.03, and who are sentenced to the custody of the state department  
34 of corrections, may be temporarily released, according to the rules of the  
35 department, at the discretion of the director, one hundred eighty calendar  
36 days prior to expiration of the term imposed and shall remain under the  
37 control of the state department of corrections until expiration of the  
38 maximum sentence specified. If an offender released under this section or  
39 pursuant to section 31-411, subsection B violates the rules, the offender may  
40 be returned to custody and shall be classified to a parole class as provided  
41 by the rules of the department.

42 M. This section applies only to persons who commit felony offenses  
43 before January 1, 1994.

44 N. For the purposes of this section, "serious offense" means any of  
45 the following:



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

5           D. Home arrest is conditioned on the following:

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

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

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

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

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

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

20          7. Compliance with all other conditions of supervision.

21          E. Before holding a hearing on home arrest, the board on request shall  
22 notify and afford an opportunity to be heard to the presiding judge of the  
23 superior court in the county in which the inmate requesting home arrest was  
24 sentenced, the prosecuting attorney and the director of the arresting law  
25 enforcement agency. The board shall notify the victim of the offense for  
26 which the inmate is incarcerated. The notice shall state the name of the  
27 inmate requesting home arrest, the offense for which the inmate was  
28 sentenced, the length of the sentence and the date of admission to the  
29 custody of the state department of corrections. The notice to the victim  
30 shall also inform the victim of the victim's right to be present and to  
31 submit a written report to the board expressing the victim's opinion  
32 concerning the inmate's release. No hearing concerning home arrest may be  
33 held until fifteen days after the date of giving the notice. On mailing the  
34 notice, the board shall file a hard copy of the notice as evidence that  
35 notification was sent.

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

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

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

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

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

8           K. For the purposes of this section, "serious offense" includes any of  
9 the following:

10           1. A serious offense as defined in section 13-604, subsection W,  
11 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

12           2. A dangerous crime against children as defined in section 13-604.01.  
13 The citation of section 13-604.01 is not a necessary element for a serious  
14 offense designation.

15           3. A conviction under a prior criminal code for any offense that  
16 possesses reasonably equivalent offense elements as the offense elements that  
17 are listed under section 13-604, subsection W, paragraph 4 and section  
18 13-604.01, subsection ~~M~~ N, paragraph 1.

19           Sec. 12. Emergency

20           This act is an emergency measure that is necessary to preserve the  
21 public peace, health or safety and is operative immediately as provided by  
22 law.