

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1222

AN ACT

AMENDING SECTIONS 13-604, 13-609, 13-1202, 13-1805 AND 13-2308, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-2320; AMENDING SECTIONS 13-2409 AND 13-2512, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 13, CHAPTER 38, ARTICLE 3, ARIZONA REVISED STATUTES, TO "REGISTRATION OF SEX OFFENDERS AND OFFENDER MONITORING"; AMENDING TITLE 13, CHAPTER 38, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3829; AMENDING SECTION 13-3961, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO CRIMINAL ACTIVITY.

(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 |

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

| <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 |

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

| <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 |

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

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> |
|---------------|----------------|--------------------|----------------|
| 4 Class 2 | 21 years | 28 years | 35 years |
| 5 Class 3 | 15 years | 20 years | 25 years |

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 **IF THE OFFENSE IS**
41 **A CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE**
42 **IS A CLASS 2 OR 3 FELONY.** The additional sentence imposed pursuant to this
43 subsection is in addition to any enhanced sentence that may be applicable.

44 U. A person who is convicted of intentionally or knowingly committing
45 aggravated assault on a peace officer while the officer is engaged in the

1 execution of any official duties pursuant to section 13-1204, subsection A,
2 paragraph 1 or 2 shall be sentenced to imprisonment for not less than the
3 presumptive sentence authorized under this chapter and is not eligible for
4 suspension of sentence, commutation or release on any basis until the
5 sentence imposed is served.

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

9 W. For the purposes of this section:

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

17 2. "Historical prior felony conviction" means:

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

19 (i) Mandated a term of imprisonment except for a violation of chapter
20 34 of this title involving a drug below the threshold amount; or

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

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

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

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

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

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

41 (c) Any class 4, 5 or 6 felony, except the offenses listed in
42 subdivision (a) of this paragraph, that was committed within the five years
43 immediately preceding the date of the present offense. Any time spent on
44 absconder status while on probation or incarcerated is excluded in
45 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 5. "Substantive offense" means the felony, misdemeanor or petty
25 offense that the trier of fact found beyond a reasonable doubt the defendant
26 committed. Substantive offense does not include allegations that, if proven,
27 would enhance the sentence of imprisonment or fine to which the defendant
28 otherwise would be subject.

29 Sec. 2. Section 13-609, Arizona Revised Statutes, is amended to read:

30 13-609. Offenses committed in school safety zone; sentences;
31 definitions

32 A. Except as otherwise prescribed in section 13-3411, a person who is
33 convicted of a felony offense that is committed in a school safety zone is
34 guilty of the same class of felony that the person would otherwise be guilty
35 of if the violation had not occurred within a school safety zone, except that
36 the court may impose a sentence that is one year longer than the minimum,
37 maximum and presumptive sentence for that violation **IF THE PERSON IS NOT A**
38 **CRIMINAL STREET GANG MEMBER OR UP TO FIVE YEARS LONGER THAN THE MINIMUM,**
39 **MAXIMUM AND PRESUMPTIVE SENTENCE FOR THAT VIOLATION IF THE PERSON IS A**
40 **CRIMINAL STREET GANG MEMBER.** The additional sentence imposed under this
41 subsection is in addition to any other enhanced punishment that may be
42 applicable under section 13-604 or ~~other provisions of~~ chapter 34 of this
43 title.

44 B. In addition to any other penalty prescribed by this title, the
45 court may order a person **WHO IS** subject to the provisions of subsection A of

1 this section to pay a fine of not less than two thousand dollars and not more
2 than the maximum authorized by chapter 8 of this title.

3 C. Each school district governing board or its designee, or chief
4 administrative officer in the case of a nonpublic or charter school, may
5 place and maintain permanently affixed signs that are located in a visible
6 manner at the main entrance of each school and that identify the school and
7 its accompanying grounds as a school safety zone. A school may include
8 information regarding the school safety zone boundaries on a sign that
9 identifies the area as a drug free zone and not post separate school safety
10 zone signs.

11 D. For **THE** purposes of this section:

12 1. "School" means any public or nonpublic kindergarten program, common
13 school or high school.

14 2. "School safety zone" means any of the following:

15 (a) The area within three hundred feet of a school or its accompanying
16 grounds.

17 (b) Any public property within one thousand feet of a school or its
18 accompanying grounds.

19 (c) Any school bus.

20 (d) A bus contracted to transport pupils to any school during the time
21 when the contracted vehicle is transporting pupils on behalf of the school.

22 (e) A school bus stop.

23 (f) Any bus stop where school children are awaiting, boarding or
24 exiting a bus contracted to transport pupils to any school.

25 Sec. 3. Section 13-1202, Arizona Revised Statutes, is amended to read:

26 **13-1202. Threatening or intimidating; classification**

27 A. A person commits threatening or intimidating if the person
28 threatens or intimidates by word or conduct:

29 1. To cause physical injury to another person or serious damage to the
30 property of another; or

31 2. To cause, or in reckless disregard to causing, serious public
32 inconvenience including, but not limited to, evacuation of a building, place
33 of assembly or transportation facility; or

34 3. To cause physical injury to another person or damage to the
35 property of another in order to promote, further or assist in the interests
36 of or to cause, induce or solicit another person to participate in a criminal
37 street gang, a criminal syndicate or a racketeering enterprise.

38 B. Threatening or intimidating pursuant to subsection A, paragraph 1
39 or 2 is a class 1 misdemeanor, except that it is a class 6 felony if:

40 1. The offense is committed in retaliation for a victim's either
41 reporting criminal activity or being involved in an organization, other than
42 a law enforcement agency, that is established for the purpose of reporting or
43 preventing criminal activity.

44 2. **THE PERSON IS A CRIMINAL STREET GANG MEMBER.**

1 C. Threatening or intimidating pursuant to subsection A, paragraph 3
2 is a class ~~4~~ 3 felony.

3 Sec. 4. Section 13-1805, Arizona Revised Statutes, is amended to read:
4 13-1805. Shoplifting; detaining suspect; defense to wrongful
5 detention; civil action by merchant; public
6 services; classification

7 A. A person commits shoplifting if, while in an establishment in which
8 merchandise is displayed for sale, the person knowingly obtains such goods of
9 another with the intent to deprive that person of such goods by:

10 1. Removing any of the goods from the immediate display or from any
11 other place within the establishment without paying the purchase price; or

12 2. Charging the purchase price of the goods to a fictitious person or
13 any person without that person's authority; or

14 3. Paying less than the purchase price of the goods by some trick or
15 artifice such as altering, removing, substituting or otherwise disfiguring
16 any label, price tag or marking; or

17 4. Transferring the goods from one container to another; or

18 5. Concealment.

19 B. Any person who knowingly conceals ~~upon~~ ON himself or another person
20 unpurchased merchandise of any mercantile establishment while within the
21 mercantile establishment is presumed to have the necessary culpable mental
22 state pursuant to subsection A of this section.

23 C. A merchant, or a merchant's agent or employee, with reasonable
24 cause, may detain on the premises in a reasonable manner and for a reasonable
25 time any person who is suspected of shoplifting as prescribed in subsection A
26 of this section for questioning or summoning a law enforcement officer.

27 D. Reasonable cause is a defense to a civil or criminal action against
28 a peace officer, a merchant or an agent or employee of the merchant for false
29 arrest, false or unlawful imprisonment or wrongful detention.

30 E. If a minor engages in conduct that violates subsection A of this
31 section, notwithstanding the fact that the minor may not be held responsible
32 because of the person's minority, any merchant WHO IS injured by the
33 shoplifting of the minor may bring a civil action against the parent or legal
34 guardian of the minor under either section 12-661 or 12-692.

35 F. Any merchant who is injured by the shoplifting of an adult or
36 emancipated minor in violation of subsection A of this section may bring a
37 civil action against the adult or emancipated minor pursuant to section
38 12-691.

39 ~~H.~~ G. In imposing sentence on a person who is convicted of violating
40 this section, the court may require any person to perform public services
41 designated by the court in addition to or in lieu of any fine that the court
42 might impose.

43 ~~G.~~ H. Shoplifting property with a value of two thousand dollars or
44 more, ~~or~~ shoplifting property during any continuing criminal episode
45 regardless of the value of the goods OR SHOPLIFTING PROPERTY IF DONE TO

1 PROMOTE, FURTHER OR ASSIST ANY CRIMINAL STREET GANG OR CRIMINAL SYNDICATE is
2 a class 5 felony. Shoplifting property with a value of one thousand dollars
3 or more but less than two thousand dollars is a class 6 felony. Shoplifting
4 property valued at less than one thousand dollars is a class 1 misdemeanor,
5 unless the property is a firearm in which case the shoplifting is a class 6
6 felony. For the purposes of this subsection, "continuing criminal episode"
7 means theft committed from at least three separate retail establishments
8 within a period of three consecutive days.

9 I. A person who commits shoplifting and who has previously committed
10 or been convicted within the past five years of two or more offenses
11 involving burglary, shoplifting, robbery or theft or who in the course of
12 shoplifting entered the mercantile establishment with an artifice,
13 instrument, container, device or other article that was intended to
14 facilitate shoplifting is guilty of a class 4 felony.

15 Sec. 5. Section 13-2308, Arizona Revised Statutes, is amended to read:

16 13-2308. Participating in or assisting a criminal syndicate;
17 leading or participating in a criminal street gang

18 A. A person commits participating in a criminal syndicate by:

19 1. Intentionally organizing, managing, directing, supervising or
20 financing a criminal syndicate with the intent to promote or further the
21 criminal objectives of the syndicate; or

22 2. Knowingly inciting or inducing others to engage in violence or
23 intimidation to promote or further the criminal objectives of a criminal
24 syndicate; or

25 3. Furnishing advice or direction in the conduct, financing or
26 management of a criminal syndicate's affairs with the intent to promote or
27 further the criminal objectives of a criminal syndicate; or

28 4. Intentionally promoting or furthering the criminal objectives of a
29 criminal syndicate by inducing or committing any act or omission by a public
30 servant in violation of his official duty; or

31 5. Hiring, engaging or using a minor for any conduct preparatory to or
32 in completion of any offense in this section.

33 B. A person shall not be convicted pursuant to subsection A of this
34 section on the basis of accountability as an accomplice unless he
35 participates in violating this section in one of the ways specified.

36 C. A person commits assisting a criminal syndicate by committing any
37 felony offense, whether completed or preparatory, with the intent to promote
38 or further the criminal objectives of a criminal syndicate.

39 D. Except as provided in subsection E or F of this section,
40 participating in a criminal syndicate is a class 2 felony.

41 E. A violation of subsection A, paragraph 5 of this section is a class
42 2 felony and the person convicted is not eligible for probation, pardon,
43 suspension of sentence or release on any basis until the person has served
44 the sentence imposed by the court or the sentence is commuted.

1 F. Assisting a criminal syndicate is a class 4 felony. ~~If committed~~
2 ~~for the benefit of, at the direction of, or in association with any criminal~~
3 ~~street gang with the intent to promote, further or assist any criminal~~
4 ~~conduct by the gang, assisting a criminal syndicate is a class 3 felony.~~

5 ~~G. A person who violates subsection A, paragraph 1, 2, 3 or 4 of this~~
6 ~~section for the benefit of, at the direction of or in association with any~~
7 ~~criminal street gang, with the intent to promote, further or assist any~~
8 ~~criminal conduct by the gang, is guilty of a class 2 felony.~~

9 ~~H. G.~~ Use of a common name or common identifying sign or symbol shall
10 be admissible and may be considered in proving the combination of persons or
11 enterprises required by this section.

12 Sec. 6. Title 13, chapter 23, Arizona Revised Statutes, is amended by
13 adding section 13-2320, to read:

14 13-2320. Participating in or assisting a criminal street gang;
15 classification

16 A. A PERSON COMMITS PARTICIPATING IN A CRIMINAL STREET GANG BY ANY OF
17 THE FOLLOWING:

18 1. INTENTIONALLY ORGANIZING, MANAGING, DIRECTING, SUPERVISING OR
19 FINANCING A CRIMINAL STREET GANG WITH THE INTENT TO PROMOTE OR FURTHER THE
20 CRIMINAL OBJECTIVES OF THE CRIMINAL STREET GANG.

21 2. KNOWINGLY INCITING OR INDUCING OTHERS TO ENGAGE IN VIOLENCE OR
22 INTIMIDATION TO PROMOTE OR FURTHER THE CRIMINAL OBJECTIVES OF A CRIMINAL
23 STREET GANG.

24 3. FURNISHING ADVICE OR DIRECTION IN THE CONDUCT, FINANCING OR
25 MANAGEMENT OF A CRIMINAL STREET GANG'S AFFAIRS WITH THE INTENT TO PROMOTE OR
26 FURTHER THE CRIMINAL OBJECTIVES OF A CRIMINAL STREET GANG.

27 4. INTENTIONALLY PROMOTING OR FURTHERING THE CRIMINAL OBJECTIVES OF A
28 CRIMINAL STREET GANG BY INDUCING OR COMMITTING ANY ACT OR OMISSION BY A
29 PUBLIC SERVANT IN VIOLATION OF THE PUBLIC SERVANT'S OFFICIAL DUTY.

30 B. A PERSON COMMITS ASSISTING A CRIMINAL STREET GANG BY COMMITTING ANY
31 FELONY OFFENSE, WHETHER COMPLETED OR PREPARATORY FOR THE BENEFIT OF, AT THE
32 DIRECTION OF OR IN ASSOCIATION WITH ANY CRIMINAL STREET GANG.

33 C. PARTICIPATING IN A CRIMINAL STREET GANG IS A CLASS 2 FELONY.

34 D. ASSISTING A CRIMINAL STREET GANG IS A CLASS 3 FELONY.

35 E. USE OF A COMMON NAME OR COMMON IDENTIFYING SIGN OR SYMBOL SHALL BE
36 ADMISSIBLE AND MAY BE CONSIDERED IN PROVING THE EXISTENCE OF A CRIMINAL
37 STREET GANG OR MEMBERSHIP IN A CRIMINAL STREET GANG.

38 Sec. 7. Section 13-2409, Arizona Revised Statutes, is amended to read:

39 13-2409. Obstructing criminal investigations or prosecutions;
40 classification

41 A person who knowingly attempts by means of bribery, misrepresentation,
42 intimidation or force or threats of force to obstruct, delay or prevent the
43 communication of information or testimony relating to a violation of any
44 criminal statute to a peace officer, magistrate, prosecutor or grand jury or
45 who knowingly injures another in his person or property on account of the

1 giving by the latter or by any other person of any such information or
2 testimony to a peace officer, magistrate, prosecutor or grand jury is guilty
3 of a class 5 felony, **EXCEPT THAT IT IS A CLASS 3 FELONY IF THE PERSON COMMITS**
4 **THE OFFENSE WITH THE INTENT TO PROMOTE, FURTHER OR ASSIST A CRIMINAL STREET**
5 **GANG.**

6 Sec. 8. Section 13-2512, Arizona Revised Statutes, is amended to read:
7 **13-2512. Hindering prosecution in the first degree;**
8 **classification**

9 A. A person commits hindering prosecution in the first degree if, with
10 the intent to hinder the apprehension, prosecution, conviction or punishment
11 of another for any felony, the person renders assistance to the other person.

12 B. Hindering prosecution in the first degree is a class 5 felony,
13 except that ~~hindering prosecution in the first degree where a~~ **IT IS A CLASS 3**
14 **FELONY IF EITHER:**

15 1. **THE** person knows or has reason to know that ~~it~~ **THE OFFENSE** involves
16 terrorism or murder ~~is a class 3 felony.~~

17 2. **THE PERSON COMMITS THE OFFENSE WITH THE INTENT TO PROMOTE, FURTHER**
18 **OR ASSIST A CRIMINAL STREET GANG.**

19 Sec. 9. **Heading change**

20 The article heading of title 13, chapter 38, article 3, Arizona Revised
21 Statutes, is changed from "REGISTRATION OF SEX OFFENDERS" to "REGISTRATION OF
22 SEX OFFENDERS AND OFFENDER MONITORING".

23 Sec. 10. Title 13, chapter 38, article 3, Arizona Revised Statutes, is
24 amended by adding section 13-3829, to read:

25 **13-3829. Criminal street gang and sex offender monitoring;**
26 **qualified vendor; definition**

27 A. **THE DEPARTMENT OF PUBLIC SAFETY MAY ENTER INTO A CONTRACT WITH A**
28 **QUALIFIED VENDOR TO PROVIDE A DATA MONITORING AND ALERT SYSTEM FOR PERSONS**
29 **WHO ARE FOUND TO BE EITHER CRIMINAL STREET GANG MEMBERS PURSUANT TO SECTION**
30 **13-105 OR PERSONS WHO ARE REQUIRED TO REGISTER PURSUANT TO SECTION 13-3821.**

31 B. **THE VENDOR SHALL MONITOR THE MOVEMENT AND ANY CHANGE OF RESIDENCE**
32 **OR ADDRESS OF A CRIMINAL STREET GANG MEMBER OR REGISTERED SEX OFFENDER**
33 **THROUGH PUBLIC RECORDS OR OTHER RECORD INFORMATION SYSTEMS.**

34 C. **THE VENDOR SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OR A LOCAL**
35 **LAW ENFORCEMENT AGENCY IF A CRIMINAL STREET GANG MEMBER OR REGISTERED SEX**
36 **OFFENDER DOES ANY OF THE FOLLOWING:**

37 1. **MOVES FROM ANOTHER STATE TO A RESIDENCE OR ADDRESS IN THIS STATE.**

38 2. **MOVES FROM A RESIDENCE OR ADDRESS IN THIS STATE TO A RESIDENCE OR**
39 **ADDRESS IN ANOTHER STATE.**

40 3. **MOVES FROM A RESIDENCE OR ADDRESS IN THIS STATE TO ANOTHER**
41 **RESIDENCE OR ADDRESS IN THIS STATE.**

42 D. **FOR THE PURPOSES OF THIS SECTION, "QUALIFIED VENDOR" MEANS A VENDOR**
43 **THAT IS EXPERIENCED IN AND CAPABLE OF FULFILLING THE REQUIREMENTS OF THIS**
44 **SECTION ON A DAILY BASIS.**

1 Sec. 11. Section 13-3961, Arizona Revised Statutes, is amended to
2 read:

3 13-3961. Offenses not bailable; purpose; preconviction;
4 exceptions

5 A. A person who is in custody shall not be admitted to bail if the
6 proof is evident or the presumption great that the person is guilty of the
7 offense and the offense charged is either:

- 8 1. A capital offense.
- 9 2. Sexual assault.
- 10 3. Sexual conduct with a minor who is under fifteen years of age.
- 11 4. Molestation of a child who is under fifteen years of age.
- 12 5. A serious felony offense if the person has entered or remained in

13 the United States illegally. For the purposes of this paragraph, "serious
14 felony offense" means any class 1, 2, 3 or 4 felony or any violation of
15 section 28-1383.

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

- 18 1. Assuring the appearance of the accused.
- 19 2. Protecting against the intimidation of witnesses.
- 20 3. Protecting the safety of the victim, any other person or the
21 community.

22 C. A person who is in custody shall not be admitted to bail if the
23 person is charged with a felony offense and the state certifies by motion and
24 the court finds after a hearing on the matter that there is clear and
25 convincing evidence that the person charged poses a substantial danger to
26 another person or the community or engaged in conduct constituting a violent
27 offense, that no condition or combination of conditions of release may be
28 imposed that will reasonably assure the safety of the other person or the
29 community and that the proof is evident or the presumption great that the
30 person committed the offense for which the person is charged. For the
31 purposes of this subsection, "violent offense" means either of the following:

- 32 1. A dangerous crime against children.
- 33 2. Terrorism.

34 D. On oral motion of the state, the court shall order the hearing
35 required by subsection C **OF THIS SECTION** at or within twenty-four hours of
36 the initial appearance unless the person who is subject to detention or the
37 state moves for a continuance. A continuance that is granted on the motion
38 of the person shall not exceed five calendar days unless there are
39 extenuating circumstances. A continuance on the motion of the state shall be
40 granted on good cause shown and shall not exceed twenty-four hours. The
41 person may be detained pending the hearing. The person is entitled to
42 representation by counsel and is entitled to present information by proffer
43 or otherwise, to testify and to present witnesses in the person's own behalf.
44 Testimony of the person charged that is given during the hearing shall not be
45 admissible on the issue of guilt in any subsequent judicial proceeding,

1 except as it might relate to the compliance with or violation of any
2 condition of release subsequently imposed or the imposition of appropriate
3 sentence or in perjury proceedings, or for the purposes of impeachment. The
4 case of the person shall be placed on an expedited calendar and, consistent
5 with the sound administration of justice, the person's trial shall be given
6 priority. The person may be admitted to bail in accordance with the Arizona
7 rules of criminal procedure whenever a judicial officer finds that a
8 subsequent event has eliminated the basis for detention.

9 E. The finding of an indictment or the filing of an information does
10 not add to the strength of the proof or the presumption to be drawn.

11 F. IN A HEARING PURSUANT TO SUBSECTION C OF THIS SECTION, PROOF THAT
12 THE PERSON IS A CRIMINAL STREET GANG MEMBER MAY GIVE RISE TO THE INFERENCE
13 THAT THE PERSON POSES A SUBSTANTIAL DANGER TO ANOTHER PERSON OR THE COMMUNITY
14 AND THAT NO CONDITION OR COMBINATION OF CONDITIONS OF RELEASE MAY BE IMPOSED
15 THAT WILL REASONABLY ASSURE THE SAFETY OF THE OTHER PERSON OR THE COMMUNITY.

16 Sec. 12. Joint legislative study committee on security threat
17 groups and criminal street gangs; duties; report

18 A. The joint legislative study committee on security threat groups and
19 criminal street gangs is established consisting of the following members:

20 1. Two members of the senate who are appointed by the president of the
21 senate and who are members of different political parties. The president of
22 the senate shall designate one of these members to serve as cochairperson of
23 the committee.

24 2. Two members of the house of representatives who are appointed by
25 the speaker of the house of representatives and who are members of different
26 political parties. The speaker of the house of representatives shall
27 designate one of these members to serve as cochairperson of the committee.

28 3. The director of the state department of corrections or the
29 director's designee.

30 4. The director of the department of juvenile corrections or the
31 director's designee.

32 5. The director of the department of public safety or the director's
33 designee.

34 6. The director of the adult services division in the administrative
35 office of the courts or the director's designee.

36 7. One county attorney, or the county attorney's designee, who
37 represents a county with a population of four hundred thousand persons or
38 less and who is appointed by the president of the senate.

39 8. One county attorney, or the county attorney's designee, who
40 represents a county with a population of more than four hundred thousand
41 persons and who is appointed by the speaker of the house of representatives.

42 9. One public defender, or the public defender's designee, who
43 represents a county with a population of four hundred thousand persons or
44 less and who is appointed by the speaker of the house of representatives.

1 10. One public defender, or the public defender's designee, who
2 represents a county with a population of more than four hundred thousand
3 persons and who is appointed by the president of the senate.

4 11. Two police chiefs who are appointed by the Arizona chiefs' of
5 police association, one of whom represents a city or town with a population
6 of one hundred thousand or more persons and one of whom represents a city or
7 town with a population of less than one hundred thousand persons, or their
8 designees.

9 12. Two sheriffs who are appointed by the Arizona sheriffs'
10 association, one of whom represents a county with a population of five
11 hundred thousand or more persons and one of whom represents a county with a
12 population of less than five hundred thousand persons, or their designees.

13 13. One person who is a member of a nonprofit organization that
14 provides criminal street gang prevention programs and who is appointed by the
15 president of the senate.

16 14. One person who is a member of a local school board and who is
17 appointed by the speaker of the house of representatives.

18 B. The committee shall meet a minimum of three times at a time and
19 place set by the cochairpersons.

20 C. Members of the committee are not eligible to receive compensation
21 but are eligible for reimbursement of expenses pursuant to title 38, chapter
22 4, article 2, Arizona Revised Statutes.

23 D. The committee shall:

24 1. Define the category of security threat groups and criminal street
25 gangs.

26 2. Evaluate current criminal charging and sentencing enhancements for
27 criminal street gang offenses and security threat group offenses.

28 3. Identify and evaluate current prevention based programs in
29 communities and schools.

30 4. Evaluate sentencing enhancements that could monitor a criminal
31 street gang member or security threat group member while on probation or
32 community supervision and after any sentence is complete.

33 5. Identify funding sources for prevention programs relating to
34 criminal street gang and security threat group members.

35 6. Make recommendations concerning laws, rules or procedures that are
36 necessary to improve the prevention, prosecution and punishment of criminal
37 street gang members and security threat group members.

38 E. The committee shall report its findings and recommendations to the
39 governor, the president of the senate and the speaker of the house of
40 representatives on or before December 31, 2007 and shall provide a copy of
41 this report to the secretary of state and the director of the Arizona state
42 library, archives and public records.

