

REFERENCE TITLE: youthful sex offenders; sentencing; registration

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

## **SB 1426**

Introduced by  
Senators Johnson: Garcia

AN ACT

AMENDING SECTION 13-105, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-611; AMENDING SECTIONS 13-3821 AND 13-3825, 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 13-105, Arizona Revised Statutes, is amended to  
3 read:  
4 13-105. Definitions  
5 In this title, unless the context otherwise requires:  
6 1. "Act" means a bodily movement.  
7 2. "Benefit" means anything of value or advantage, present or  
8 prospective.  
9 3. "Calendar year" means three hundred sixty-five days' actual time  
10 served without release, suspension or commutation of sentence, probation,  
11 pardon or parole, work furlough or release from confinement on any other  
12 basis.  
13 4. "Community supervision" means that portion of a felony sentence  
14 THAT IS imposed by the court pursuant to section 13-603, subsection I and  
15 THAT IS served in the community after completing a period of imprisonment or  
16 served in prison in accordance with section 41-1604.07.  
17 5. "Conduct" means an act or omission and its accompanying culpable  
18 mental state.  
19 6. "Crime" means a misdemeanor or a felony.  
20 7. "Criminal street gang" means an ongoing formal or informal  
21 association of persons whose IN WHICH members or associates individually or  
22 collectively engage in the commission, attempted commission, facilitation or  
23 solicitation of any felony act and that has at least one individual who is a  
24 criminal street gang member.  
25 8. "Criminal street gang member" means an individual to whom two of  
26 the following seven criteria that indicate criminal street gang membership  
27 apply:  
28 (a) Self-proclamation.  
29 (b) Witness testimony or official statement.  
30 (c) Written or electronic correspondence.  
31 (d) Paraphernalia or photographs.  
32 (e) Tattoos.  
33 (f) Clothing or colors.  
34 (g) Any other indicia of street gang membership.  
35 9. "Culpable mental state" means intentionally, knowingly, recklessly  
36 or with criminal negligence as those terms are ~~thusly~~ defined:  
37 (a) "Intentionally" or "with the intent to" means, with respect to a  
38 result or to conduct described by a statute defining an offense, that a  
39 person's objective is to cause that result or to engage in that conduct.  
40 (b) "Knowingly" means, with respect to conduct or to a circumstance  
41 described by a statute defining an offense, that a person is aware or  
42 believes that ~~his or her~~ THE PERSON'S conduct is of that nature or that the  
43 circumstance exists. It does not require any knowledge of the unlawfulness  
44 of the act or omission.

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

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

16 10. "Dangerous drug" means dangerous drug as defined by IN section  
17 13-3401.

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

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

25 13. "Deadly weapon" means anything designed for lethal use, including a  
26 firearm.

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

33 15. "Enterprise" includes any corporation, association, labor union or  
34 other legal entity.

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

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

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

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

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

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

8           22. "Narcotic drug" means narcotic drugs as defined ~~by~~ IN section  
9 13-3401.

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

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

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

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

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

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

31           29. "Physical injury" means the impairment of physical condition.

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

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

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

37           33. "Public servant":

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

42           (b) Does not include jurors or witnesses.

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



- 1           2. Kidnapping pursuant to section 13-1304 if the victim is under  
2 eighteen years of age and the kidnapping was not committed by the child's  
3 parent.
- 4           3. Sexual abuse pursuant to section 13-1404 if the victim is under  
5 eighteen years of age.
- 6           4. Sexual conduct with a minor pursuant to section 13-1405.
- 7           5. Sexual assault pursuant to section 13-1406.
- 8           6. Sexual assault of a spouse if the offense was committed before  
9 August 12, 2005.
- 10          7. Molestation of a child pursuant to section 13-1410.
- 11          8. Continuous sexual abuse of a child pursuant to section 13-1417.
- 12          9. Taking a child for the purpose of prostitution pursuant to section  
13 13-3206.
- 14          10. Child prostitution pursuant to section 13-3212.
- 15          11. Commercial sexual exploitation of a minor pursuant to section  
16 13-3552.
- 17          12. Sexual exploitation of a minor pursuant to section 13-3553.
- 18          13. Luring a minor for sexual exploitation pursuant to section 13-3554.
- 19          14. Sex trafficking of a minor pursuant to section 13-1307.
- 20          15. A second or subsequent violation of indecent exposure to a person  
21 under fifteen years of age pursuant to section 13-1402.
- 22          16. A second or subsequent violation of public sexual indecency to a  
23 minor under ~~the age of~~ fifteen years **OF AGE** pursuant to section 13-1403,  
24 subsection B.
- 25          17. A third or subsequent violation of indecent exposure pursuant to  
26 section 13-1402.
- 27          18. A third or subsequent violation of public sexual indecency pursuant  
28 to section 13-1403.
- 29          19. A violation of section 13-3822 or 13-3824.
- 30            B. Before the person is released from confinement the state department  
31 of corrections in conjunction with the department of public safety and each  
32 county sheriff shall complete the registration of any person who was  
33 convicted of a violation of any offense listed under subsection A of this  
34 section. Within three days after the person's release from confinement, the  
35 state department of corrections shall forward the registered person's records  
36 to the department of public safety and to the sheriff of the county in which  
37 the registered person intends to reside. Registration pursuant to this  
38 subsection shall be consistent with subsection E of this section.
- 39            C. Notwithstanding subsection A of this section, the judge who  
40 sentences a defendant for any violation of chapter 14 or 35.1 of this title  
41 or for an offense for which there was a finding of sexual motivation pursuant  
42 to section 13-118 may require the person who committed the offense to  
43 register pursuant to this section.
- 44            D. The court may require a person who has been adjudicated delinquent  
45 for an act that would constitute an offense specified in subsection A or C of

1 this section to register pursuant to this section. Any duty to register  
2 under this subsection shall terminate when the person reaches twenty-five  
3 years of age.

4 E. A person who has been convicted of or adjudicated delinquent and  
5 who is required to register in the convicting state for an act that would  
6 constitute an offense specified in subsection A or C of this section and who  
7 is not a resident of this state shall be required to register pursuant to  
8 this section if the person is either:

9 1. Employed full-time or part-time in this state, with or without  
10 compensation, for more than fourteen consecutive days or for an aggregate  
11 period of more than thirty days in a calendar year.

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

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

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

24 H. At the time of registering, the person shall sign or affix an  
25 electronic fingerprint to a statement giving such information as required by  
26 the director of the department of public safety, including all names by which  
27 the person is known. The sheriff shall fingerprint and photograph the person  
28 and within three days thereafter shall send copies of the statement,  
29 fingerprints and photographs to the department of public safety and the chief  
30 of police, if any, of the place where the person resides. The information  
31 that is required by this subsection shall include the physical location of  
32 the person's residence and the person's address. If the person has a place  
33 of residence that is different from the person's address, the person shall  
34 provide the person's address, the physical location of the person's residence  
35 and the name of the owner of the residence if the residence is privately  
36 owned and not offered for rent or lease. If the person receives mail at a  
37 post office box, the person shall provide the location and number of the post  
38 office box. If the person does not have an address or a permanent place of  
39 residence, the person shall provide a description and physical location of  
40 any temporary residence and shall register as a transient not less than every  
41 ninety days with the sheriff in whose jurisdiction the transient is  
42 physically present.

43 I. On the person's initial registration and every year after the  
44 person's initial registration, the person shall obtain a new nonoperating  
45 identification license or a driver license from the motor vehicle division in

1 the department of transportation and shall carry a valid nonoperating  
2 identification license or a driver license. Notwithstanding sections 28-3165  
3 and 28-3171, the license is valid for one year from the date of issuance, and  
4 the person shall submit to the department of transportation proof of the  
5 person's address and place of residence. The motor vehicle division shall  
6 annually update the person's address and photograph and shall make a copy of  
7 the photograph available to the department of public safety or to any law  
8 enforcement agency. The motor vehicle division shall provide to the  
9 department of public safety daily address updates for persons required to  
10 register pursuant to this section.

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

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

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

35 M. A person who is required to register pursuant to this section and  
36 who is a student at a public or private institution of postsecondary  
37 education or who is employed, with or without compensation, at a public or  
38 private institution of postsecondary education or who carries on a vocation  
39 at a public or private institution of postsecondary education shall notify  
40 the county sheriff having jurisdiction of the institution of postsecondary  
41 education. The person required to register pursuant to this section shall  
42 also notify the sheriff of each change in enrollment or employment status at  
43 the institution.

44 N. At the time of registering, the sheriff shall secure a sufficient  
45 sample of blood or other bodily substances for deoxyribonucleic acid testing

1 and extraction from a person who has been convicted of an offense committed  
2 in another jurisdiction that if committed in this state would be a violation  
3 or attempted violation of any of the offenses listed in subsection A of this  
4 section or an offense that was in effect before September 1, 1978 and that,  
5 if committed on or after September 1, 1978, has the same elements of an  
6 offense listed in subsection A of this section or who is required to register  
7 by the convicting jurisdiction. The sheriff shall transmit the sample to the  
8 department of public safety.

9 ~~O. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, THE JUDGE WHO~~  
10 ~~SENTENCES A YOUTHFUL SEX OFFENDER FOR ANY VIOLATION OF CHAPTER 14 OR 35.1 OF~~  
11 ~~THIS TITLE MAY REQUIRE THE YOUTHFUL SEX OFFENDER TO REGISTER PURSUANT TO THIS~~  
12 ~~SECTION.~~

13 ~~O.~~ P. For the purposes of this section:

- 14 1. "Address" means the location at which the person receives mail.
- 15 2. "Residence" means the person's dwelling place, whether permanent or  
16 temporary.

17 Sec. 4. Section 13-3825, Arizona Revised Statutes, is amended to read:  
18 13-3825. Community notification

19 A. Within seventy-two hours after a person who was convicted is  
20 released from confinement or who was accepted under the interstate compact  
21 for the supervision of parolees and probationers and has arrived in this  
22 state, the agency that had custody or responsibility for supervision of the  
23 person who was convicted of committing an offense for which the person was  
24 required or ordered by the court to register pursuant to section 13-3821 or  
25 that has accepted supervision under the interstate compact for the  
26 supervision of parolees and probationers shall provide all of the following  
27 information to the department of public safety by entering all of the  
28 following information into the sex offender profile and notification  
29 database:

- 30 1. The offender's identifying information.
- 31 2. A risk assessment of the offender.
- 32 3. The offender's date of release from confinement or, if the offender  
33 is sentenced to probation without jail time, the date the sentence is  
34 imposed.

35 B. Following the tenth day after the person is released from  
36 confinement or, if the offender is sentenced to probation without jail time,  
37 the date the sentence is imposed, the department of public safety shall  
38 cross-reference the information the department receives pursuant to  
39 subsection A of this section with the sex offender registry to determine if  
40 the person is registered as required or ordered by the court pursuant to  
41 section 13-3821. If the person is not registered, the local law enforcement  
42 agency or the department of public safety shall request that the county  
43 attorney in the county in which the person was convicted petition the court  
44 for an arrest warrant to be issued and, if appropriate, notify the interstate  
45 compact administrator for this state. If the person is registered, the

1 department of public safety shall forward the information the department  
2 received pursuant to subsection A of this section to the sheriff in the  
3 county where the person is registered.

4 C. After receiving the information pursuant to subsection B of this  
5 section, the sheriff shall forward the information to the chief law  
6 enforcement officer of the community in which the person resides. After  
7 reviewing the information received and any other information available to the  
8 local law enforcement agency, the local law enforcement agency shall  
9 categorize each offender and place each offender into a notification level.  
10 Within forty-five days, the local law enforcement agency shall notify the  
11 community of the offender's presence in the community pursuant to the  
12 guidelines established by the community notification guidelines committee.  
13 If the community does not have a chief law enforcement officer, the sheriff  
14 shall perform the duties of the local law enforcement agency.

15 D. If a person who has been convicted of an offense in another state  
16 registers pursuant to section 13-3821, subsection A, the sheriff in the  
17 county in which the person registers shall forward the information to the  
18 chief law enforcement officer of the community in which the person resides.  
19 The chief law enforcement officer shall contact the state in which the person  
20 was convicted and shall obtain information regarding the person. After  
21 reviewing the information received and any other information available, the  
22 local law enforcement agency shall complete the risk assessment, shall  
23 categorize the person, shall place the person into a notification level and  
24 shall enter the information into the computer system. If the law enforcement  
25 agency is unable to obtain sufficient information to complete the sex  
26 offender community notification risk assessment, the agency shall categorize  
27 the offender as a level two offender. Within forty-five days, the local law  
28 enforcement agency shall notify the community of the person's presence in the  
29 community pursuant to the guidelines established by the community  
30 notification guidelines committee. If the community does not have a chief  
31 law enforcement officer, the sheriff shall perform the duties of the local  
32 law enforcement agency.

33 E. On receiving notice pursuant to section 13-3822 that a person who  
34 is required to register has moved from the person's address, the chief law  
35 enforcement officer of the community to which the person has relocated may  
36 notify that community of the person's relocation to the community, pursuant  
37 to subsection C of this section. If the community does not have a local law  
38 enforcement agency, the sheriff of the county to which the person has  
39 relocated shall notify the community of the person's relocation.

40 F. In cooperation with the county probation department or the state  
41 department of corrections, a law enforcement agency may delegate all or part  
42 of the notification process for offenders on community supervision to the  
43 county probation department or to the state department of corrections, as  
44 appropriate.

1 G. Information concerning a person who is required to register  
2 pursuant to section 13-3821, ~~and~~ who is subject to the provisions of  
3 community notification and who is a student at a public or private  
4 institution of postsecondary education or who is employed or carries on a  
5 vocation, with or without compensation, at a public or private institution of  
6 postsecondary education shall be promptly made available by the county  
7 sheriff to the law enforcement agency having jurisdiction for performing  
8 community notification pursuant to guidelines adopted under section 13-3826.  
9 The law enforcement agency shall notify the institution's administration and  
10 shall complete appropriate campus notification pursuant to guidelines adopted  
11 under section 13-3826.

12 H. This section does not prohibit law enforcement officers from giving  
13 a community notice of any circumstances or persons that pose a danger to the  
14 community under circumstances that are not provided for under this section.

15 I. Except as provided in subsection J of this section, this section  
16 applies to all persons who are subject to the registration requirements in  
17 section 13-3821 whether or not the person was convicted before or after June  
18 1, 1996.

19 J. This section does not apply to **YOUTHFUL SEX OFFENDERS AND** persons  
20 **WHO ARE** subject to the registration requirements in section 13-3821 as a  
21 result of offenses adjudicated by a juvenile court unless ordered by the  
22 court.

23 K. Notwithstanding subsections B and C of this section, the agency  
24 that had custody or responsibility for supervision of an offender or the  
25 court that sentenced the offender who was convicted of committing an offense  
26 that subjects the offender to the registration requirements of section  
27 13-3821 and who committed the offense before June 1, 1996 may conduct a risk  
28 assessment for the offender as existing resources are available pursuant to  
29 guidelines adopted by the community notification guidelines committee  
30 pursuant to section 13-3826. Community notification pursuant to this section  
31 and sex offender web site notification pursuant to section 13-3827 shall only  
32 be conducted after the risk assessment is complete.