

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2207

AN ACT

AMENDING SECTIONS 8-201, 8-203.01, 8-321, 8-341, 8-348, 8-350, 11-361, 11-459, 12-2703, 13-105 AND 13-107, ARIZONA REVISED STATUTES; REPEALING SECTION 13-119, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-501 AND 13-502, ARIZONA REVISED STATUTES; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 248, SECTION 1; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 287, SECTION 1; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-604; TRANSFERRING AND RENUMBERING SECTIONS 13-604.01 AND 13-604.02, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, AS SECTIONS 13-705 AND 13-708, RESPECTIVELY; REPEALING SECTION 13-604.03, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-604.04, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, AS SECTION 13-901.03; AMENDING SECTION 13-607, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-609, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, AS SECTION 13-709; AMENDING SECTIONS 13-610, 13-701 AND 13-702, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-702.01 AND 13-702.02, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTIONS 13-703, 13-703.01, 13-703.02, 13-703.03, 13-703.04, 13-703.05, 13-704, 13-705 AND 13-706, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7.1, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, AS SECTIONS 13-751, 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 AND 13-759, RESPECTIVELY; RENUMBERING SECTIONS 13-708 AND 13-709, ARIZONA REVISED STATUTES, AS SECTIONS 13-711 AND 13-712, RESPECTIVELY; RENUMBERING SECTION 13-713, ARIZONA REVISED STATUTES, AS SECTION 13-706; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 13-703 AND 13-704; AMENDING SECTION 13-705, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING

SECTION 13-706, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTION 13-707, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-708 AND 13-709, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-709.01, 13-709.02, 13-709.03 AND 13-709.04; AMENDING SECTION 13-710, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-711 AND 13-712, ARIZONA REVISED STATUTES; AMENDING TITLE 13, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7.1; AMENDING SECTION 13-751, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 3 AND AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 4 AND AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-755, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-901.01, 13-902, 13-905, 13-906, 13-907, 13-909, 13-910, 13-912.01, 13-921, 13-1104, 13-1105, 13-1204, 13-1207, 13-1212, 13-1304, 13-1307, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1414, 13-1417, 13-1423, 13-2308.01, 13-2312, 13-2411, 13-3107, 13-3113, 13-3206, 13-3212, 13-3407, 13-3407.01, 13-3408, 13-3409, 13-3411, 13-3419, 13-3422, 13-3552, 13-3553, 13-3554, 13-3601, 13-3623, 13-3716, 13-3727, 13-3821, 13-3824, 13-3828, 13-3994, 13-4032, 13-4062, 13-4501, 13-4511, 13-4515, 15-341, 15-512, 15-550, 20-448, 25-411, 31-281, 31-403, 31-412, 41-1604.08, 41-1604.10, 41-1604.11, 41-1604.13, 41-1604.14, 41-1604.15, 41-1604.16, 41-1609.05, 41-1758.03, 41-1967.01, 41-2814 AND 46-321, ARIZONA REVISED STATUTES; AMENDING LAWS 2003, CHAPTER 255, SECTION 8; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-201, Arizona Revised Statutes, is amended to
3 read:
4 8-201. Definitions
5 In this title, unless the context otherwise requires:
6 1. "Abandoned" means the failure of the parent to provide reasonable
7 support and to maintain regular contact with the child, including providing
8 normal supervision. Abandoned includes a judicial finding that a parent has
9 made only minimal efforts to support and communicate with the child. Failure
10 to maintain a normal parental relationship with the child without just cause
11 for a period of six months constitutes prima facie evidence of abandonment.
12 2. "Abuse" means the infliction or allowing of physical injury,
13 impairment of bodily function or disfigurement or the infliction of or
14 allowing another person to cause serious emotional damage as evidenced by
15 severe anxiety, depression, withdrawal or untoward aggressive behavior and
16 which emotional damage is diagnosed by a medical doctor or psychologist
17 pursuant to section 8-821 and is caused by the acts or omissions of an
18 individual having care, custody and control of a child. Abuse includes:
19 (a) Inflicting or allowing sexual abuse pursuant to section 13-1404,
20 sexual conduct with a minor pursuant to section 13-1405, sexual assault
21 pursuant to section 13-1406, molestation of a child pursuant to section
22 13-1410, commercial sexual exploitation of a minor pursuant to section
23 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest
24 pursuant to section 13-3608 or child prostitution pursuant to section
25 13-3212.
26 (b) Physical injury to a child that results from abuse as described in
27 section 13-3623, subsection C.
28 3. "Adult" means a person who is eighteen years of age or older.
29 4. "Adult court" means the appropriate justice court, municipal court
30 or criminal division of the superior court that has jurisdiction to hear
31 proceedings concerning offenses committed by juveniles as provided in
32 sections 8-327 and 13-501.
33 5. "Award" or "commit" means to assign legal custody.
34 6. "Child", "youth" or "juvenile" means an individual who is under the
35 age of eighteen years.
36 7. "Complaint" means a written statement of the essential facts
37 constituting a public offense that is any of the following:
38 (a) Made on an oath before a judge or commissioner of the superior
39 court or an authorized juvenile hearing officer.
40 (b) Made pursuant to section 13-3903.
41 (c) Accompanied by an affidavit of a law enforcement officer or
42 employee that swears on information and belief to the accuracy of the
43 complaint pursuant to section 13-4261.

1 8. "Custodian" means a person, other than a parent or legal guardian,
2 who stands in loco parentis to the child or a person to whom legal custody of
3 the child has been given by order of the juvenile court.

4 9. "Delinquency hearing" means a proceeding in the juvenile court to
5 determine whether a juvenile has committed a specific delinquent act as set
6 forth in a petition.

7 10. "Delinquent act" means an act by a juvenile that if committed by an
8 adult would be a criminal offense or a petty offense, a violation of any law
9 of this state, or of another state if the act occurred in that state, or a
10 law of the United States, or a violation of any law that can only be violated
11 by a minor and that has been designated as a delinquent offense, or any
12 ordinance of a city, county or political subdivision of this state defining
13 crime. Delinquent act does not include an offense under section 13-501,
14 subsection A or B if the offense is filed in adult court. Any juvenile who
15 is prosecuted as an adult or who is remanded for prosecution as an adult
16 shall not be adjudicated as a delinquent juvenile for the same offense.

17 11. "Delinquent juvenile" means a child who is adjudicated to have
18 committed a delinquent act.

19 12. "Department" means the department of economic security.

20 13. "Dependent child":

21 (a) Means a child who is adjudicated to be:

22 (i) In need of proper and effective parental care and control and who
23 has no parent or guardian, or one who has no parent or guardian willing to
24 exercise or capable of exercising such care and control.

25 (ii) Destitute or who is not provided with the necessities of life,
26 including adequate food, clothing, shelter or medical care.

27 (iii) A child whose home is unfit by reason of abuse, neglect, cruelty
28 or depravity by a parent, a guardian or any other person having custody or
29 care of the child.

30 (iv) Under ~~the age of~~ eight years **OF AGE** and who is found to have
31 committed an act that would result in adjudication as a delinquent juvenile
32 or incorrigible child if committed by an older juvenile or child.

33 (v) Incompetent or not restorable to competency and who is alleged to
34 have committed a serious offense as defined in section ~~13-604~~ **13-706**.

35 (b) Does not include a child who in good faith is being furnished
36 Christian Science treatment by a duly accredited practitioner if none of the
37 circumstances described in subdivision (a) of this paragraph exists.

38 14. "Detention" means the temporary confinement of a juvenile who
39 requires secure care in a physically restricting facility that is completely
40 surrounded by a locked and physically secure barrier with restricted ingress
41 and egress for the protection of the juvenile or the community pending court
42 disposition or as a condition of probation.

- 1 15. "Incorrigible child" means a child who:
2 (a) Is adjudicated as a child who refuses to obey the reasonable and
3 proper orders or directions of a parent, guardian or custodian and who is
4 beyond the control of that person.
5 (b) Is habitually truant from school as defined in section 15-803,
6 subsection C.
7 (c) Is a runaway from the child's home or parent, guardian or
8 custodian.
9 (d) Habitually behaves in such a manner as to injure or endanger the
10 morals or health of self or others.
11 (e) Commits any act constituting an offense that can only be committed
12 by a minor and that is not designated as a delinquent act.
13 (f) Fails to obey any lawful order of a court of competent
14 jurisdiction given in a noncriminal action.
15 16. "Independent living program" includes a residential program with
16 supervision of less than twenty-four hours a day.
17 17. "Juvenile court" means the juvenile division of the superior court
18 when exercising its jurisdiction over children in any proceeding relating to
19 delinquency, dependency or incorrigibility.
20 18. "Law enforcement officer" means a peace officer, sheriff, deputy
21 sheriff, municipal police officer or constable.
22 19. "Medical director of a mental health agency" means a psychiatrist,
23 or licensed physician experienced in psychiatric matters, who is designated
24 in writing by the governing body of the agency as the person in charge of the
25 medical services of the agency, or a psychiatrist designated by the governing
26 body to act for the director. The term includes the superintendent of the
27 state hospital.
28 20. "Mental health agency" means any private or public facility that is
29 licensed by this state as a mental health treatment agency, a psychiatric
30 hospital, a psychiatric unit of a general hospital or a residential treatment
31 center for emotionally disturbed children and that uses secure settings or
32 mechanical restraints.
33 21. "Neglect" or "neglected" means the inability or unwillingness of a
34 parent, guardian or custodian of a child to provide that child with
35 supervision, food, clothing, shelter or medical care if that inability or
36 unwillingness causes substantial risk of harm to the child's health or
37 welfare, except if the inability of a parent or guardian to provide services
38 to meet the needs of a child with a disability or chronic illness is solely
39 the result of the unavailability of reasonable services.
40 22. "Petition" means a written statement of the essential facts that
41 allege delinquency, incorrigibility or dependency.
42 23. "Prevention" means the creation of conditions, opportunities and
43 experiences that encourage and develop healthy, self-sufficient children and
44 that occur before the onset of problems.

1 24. "Protective supervision" means supervision that is ordered by the
2 juvenile court of children who are found to be dependent or incorrigible.

3 25. "Referral" means a report that is submitted to the juvenile court
4 and that alleges that a child is dependent or incorrigible or that a juvenile
5 has committed a delinquent or criminal act.

6 26. "Secure care" means confinement in a facility that is completely
7 surrounded by a locked and physically secure barrier with restricted ingress
8 and egress.

9 27. "Serious emotional injury" means an injury that is diagnosed by a
10 medical doctor or a psychologist and that does any one or a combination of
11 the following:

12 (a) Seriously impairs mental faculties.

13 (b) Causes serious anxiety, depression, withdrawal or social
14 dysfunction behavior to the extent that the child suffers dysfunction that
15 requires treatment.

16 (c) Is the result of sexual abuse pursuant to section 13-1404, sexual
17 conduct with a minor pursuant to section 13-1405, sexual assault pursuant to
18 section 13-1406, molestation of a child pursuant to section 13-1410, child
19 prostitution pursuant to section 13-3212, commercial sexual exploitation of a
20 minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to
21 section 13-3553 or incest pursuant to section 13-3608.

22 28. "Serious physical injury" means an injury that is diagnosed by a
23 medical doctor and that does any one or a combination of the following:

24 (a) Creates a reasonable risk of death.

25 (b) Causes serious or permanent disfigurement.

26 (c) Causes significant physical pain.

27 (d) Causes serious impairment of health.

28 (e) Causes the loss or protracted impairment of an organ or limb.

29 (f) Is the result of sexual abuse pursuant to section 13-1404, sexual
30 conduct with a minor pursuant to section 13-1405, sexual assault pursuant to
31 section 13-1406, molestation of a child pursuant to section 13-1410, child
32 prostitution pursuant to section 13-3212, commercial sexual exploitation of a
33 minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to
34 section 13-3553 or incest pursuant to section 13-3608.

35 29. "Shelter care" means the temporary care of a child in any public or
36 private facility or home that is licensed by this state and that offers a
37 physically nonsecure environment that is characterized by the absence of
38 physically restricting construction or hardware and that provides the child
39 access to the surrounding community.

40 Sec. 2. Section 8-203.01, Arizona Revised Statutes, is amended to
41 read:

42 8-203.01. Fingerprinting juvenile probation officers; affidavit

43 A. ~~Beginning July 1, 1985,~~ Juvenile probation officers employed by the
44 juvenile court shall be fingerprinted as a condition of employment. A
45 juvenile probation officer shall submit fingerprints and the form prescribed

1 in subsection D of this section to the chief juvenile probation officer
2 within twenty days after the date a juvenile probation officer begins work.
3 Employment with the juvenile court as a juvenile probation officer is
4 conditioned on the results of the fingerprint check.

5 B. Fingerprint checks shall be conducted pursuant to section 41-1750,
6 subsection G.

7 C. The juvenile court shall assume the costs of fingerprint checks and
8 may charge these costs to ~~its~~ THE fingerprinted juvenile probation officer.

9 D. Juvenile probation officers shall certify on forms that are
10 provided by the juvenile court and notarized that they are not awaiting trial
11 on and have never been convicted of or admitted committing any of the
12 following criminal offenses in this state or similar offenses in another
13 state or jurisdiction:

- 14 1. Sexual abuse of a minor.
- 15 2. Incest.
- 16 3. First or second degree murder.
- 17 4. Kidnapping.
- 18 5. Arson.
- 19 6. Sexual assault.
- 20 7. Sexual exploitation of a minor.
- 21 8. Contributing to the delinquency of a minor.
- 22 9. Commercial sexual exploitation of a minor.
- 23 10. Felony offenses involving distribution of marijuana, ~~or~~ dangerous
24 DRUGS or narcotic drugs.
- 25 11. Burglary.
- 26 12. Robbery.
- 27 13. A dangerous crime against children ~~as defined in~~ PURSUANT TO
28 section ~~13-604.01~~ 13-705.
- 29 14. Child abuse.
- 30 15. Sexual conduct with a minor.
- 31 16. Molestation of a child.

32 E. The juvenile court shall make documented, good faith efforts to
33 contact previous employers of juvenile probation officers to obtain
34 information or recommendations ~~which~~ THAT may be relevant to an individual's
35 fitness for employment as a juvenile probation officer.

36 Sec. 3. Section 8-321, Arizona Revised Statutes, is amended to read:
37 8-321. Referrals; diversions; conditions; community based
38 alternative programs

39 A. Except as provided in subsection B of this section, before a
40 petition is filed or an admission or adjudication hearing is held, the county
41 attorney may divert the prosecution of a juvenile who is accused of
42 committing a delinquent act or a child who is accused of committing an
43 incorrigible act to a community based alternative program or to a diversion
44 program administered by the juvenile court.

1 B. A juvenile ~~who is a chronic felony offender as defined in section~~
2 ~~13-501, who is a violent felony offender or who is alleged to have committed~~
3 ~~a violation of section 28-1381, 28-1382 or 28-1383~~ is not eligible for
4 diversion IF THE JUVENILE EITHER:

- 5 1. COMMITTED A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.
- 6 2. IS A CHRONIC FELONY OFFENDER AS DEFINED IN SECTION 13-501.
- 7 3. COMMITTED AN OFFENSE THAT IS LISTED IN SECTION 13-501.
- 8 4. IS ALLEGED TO HAVE COMMITTED A VIOLATION OF TITLE 28, CHAPTER 4.

9 C. Except as provided in section 8-323, the county attorney has sole
10 discretion to decide whether to divert or defer prosecution of a juvenile
11 offender. The county attorney may designate the offenses that shall be
12 retained by the juvenile court for diversion or that shall be referred
13 directly to a community based alternative program.

14 D. The county attorney or the juvenile court in cooperation with the
15 county attorney may establish community based alternative programs.

16 E. Except for offenses that the county attorney designates as eligible
17 for diversion or referral to a community based alternative program, on
18 receipt of a referral alleging the commission of an offense, the juvenile
19 probation officer shall submit the referral to the county attorney to
20 determine if a petition should be filed.

21 F. If the county attorney diverts the prosecution of a juvenile to the
22 juvenile court, the juvenile probation officer shall conduct a personal
23 interview with the alleged juvenile offender. At least one of the juvenile's
24 parents or guardians shall attend the interview. The probation officer may
25 waive the requirement for the attendance of the parent or guardian for good
26 cause. If the juvenile acknowledges responsibility for the delinquent or
27 incorrigible act, the juvenile probation officer shall require that the
28 juvenile comply with one or more of the following conditions:

- 29 1. Participation in unpaid community restitution work.
- 30 2. Participation in a counseling program that is approved by the court
31 and that is designed to strengthen family relationships and to prevent
32 repetitive juvenile delinquency.
- 33 3. Participation in an education program that is approved by the court
34 and that has as its goal the prevention of further delinquent behavior.
- 35 4. Participation in an education program that is approved by the court
36 and that is designed to deal with ancillary problems experienced by the
37 juvenile, such as alcohol or drug abuse.
- 38 5. Participation in a nonresidential program of rehabilitation or
39 supervision that is offered by the court or offered by a community youth
40 serving agency and approved by the court.
- 41 6. Payment of restitution to the victim of the delinquent act.
- 42 7. Payment of a monetary assessment.

43 G. If the juvenile successfully complies with the conditions set forth
44 by the probation officer, the county attorney shall not file a petition in
45 juvenile court and the program's resolution shall not be used against the

1 juvenile in any further proceeding and is not an adjudication of
2 incorrigibility or delinquency. The resolution of the program is not a
3 conviction of crime, does not impose any civil disabilities ordinarily
4 resulting from a conviction and does not disqualify the juvenile in any civil
5 service application or appointment.

6 H. In order to participate in a community based alternative program
7 the juvenile who is referred to a program shall admit responsibility for the
8 essential elements of the accusation and shall cooperate with the program in
9 all of its proceedings.

10 I. All of the following apply to each community based alternative
11 program that is established pursuant to this section:

12 1. The juvenile's participation is voluntary.

13 2. The victim's participation is voluntary.

14 3. The community based alternative program shall ensure that the
15 victim, the juvenile's parent or guardian and any other persons who are
16 directly affected by an offense have the right to participate.

17 4. The participants shall agree to the consequences imposed on the
18 juvenile or the juvenile's parent or guardian.

19 5. The meetings and records shall be open to the public.

20 J. After holding a meeting the participants in the community based
21 alternative program may agree on any legally reasonable consequences that the
22 participants determine are necessary to fully and fairly resolve the matter
23 except confinement.

24 K. The participants shall determine consequences within thirty days
25 after referral to the community based alternative program, and the juvenile
26 shall complete the consequences within ninety days after the matter is
27 referred to the community based alternative program. The county attorney or
28 the juvenile probation officer may extend the time in which to complete the
29 consequences for good cause. If the community based alternative program
30 involves a school, the deadlines for determination and completion of
31 consequences shall be thirty and ninety school days, respectively.

32 L. The community based alternative program, the juvenile, the
33 juvenile's parent or guardian and the victim may sign a written contract in
34 which the parties agree to the program's resolution of the matter and in
35 which the juvenile's parent or guardian agrees to ensure that the juvenile
36 complies with the contract. The contract may provide that the parent or
37 guardian shall post a bond payable to this state to secure the performance of
38 any consequence imposed on the juvenile pursuant to subsection J of this
39 section.

40 M. If the juvenile successfully completes the consequences, the county
41 attorney shall not file a petition in juvenile court and the program's
42 resolution shall not be used against the juvenile in any further proceeding
43 and is not an adjudication of incorrigibility or delinquency. The resolution
44 of the program is not a conviction of crime, does not impose any civil

1 disabilities ordinarily resulting from a conviction and does not disqualify
2 the juvenile in any civil service application or appointment.

3 N. The county attorney or juvenile court shall assess the parent of a
4 juvenile who is diverted pursuant to subsection A of this section a fee of
5 fifty dollars unless, after determining the inability of the parent to pay
6 the fee, the county attorney or juvenile court assesses a lesser amount. All
7 monies assessed pursuant to this subsection shall be used for the
8 administration and support of community based alternative programs or
9 juvenile court diversion programs. Any amount greater than forty dollars of
10 the fee assessed pursuant to this subsection shall only be used to supplement
11 monies currently used for the salaries of juvenile probation and surveillance
12 officers and for support of programs and services of the superior court
13 juvenile probation departments. The clerk of the superior court shall pay
14 all monies collected from this assessment to the county treasurer for deposit
15 in the juvenile probation fund, to be utilized as provided in section 12-268,
16 and the county attorney shall pay all monies collected from this assessment
17 into the county attorney juvenile diversion fund established by section
18 11-537.

19 O. The supreme court shall annually establish an average cost per
20 juvenile for providing diversion services in each county, based on the monies
21 appropriated for diversion pursuant to section 8-322, excluding the cost of
22 juvenile intake services provided by the juvenile court, and the number of
23 juveniles diverted the previous year. On the county attorney's certification
24 to the supreme court of the number of juveniles diverted to a county attorney
25 community based alternative program each quarter, the annual average cost per
26 juvenile for each juvenile diverted shall be reimbursed to the county
27 attorney juvenile diversion fund established by section 11-537 out of monies
28 appropriated to the supreme court for diversion programs.

29 P. If the juvenile does not acknowledge responsibility for the
30 offense, or fails to comply with the consequences set by the community based
31 alternative program, the case shall be submitted to the county attorney for
32 review.

33 Q. After reviewing a referral, if the county attorney declines
34 prosecution, the county attorney may return the case to the juvenile
35 probation department for further action as provided in subsection F of this
36 section.

37 ~~R. For the purposes of this section, "violent" means an offense~~
38 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~
39 ~~dangerous instrument or the intentional or knowing infliction of serious~~
40 ~~physical injury on another person and includes an offense listed in section~~
41 ~~13-501.~~

42 Sec. 4. Section 8-341, Arizona Revised Statutes, is amended to read:
43 8-341. Disposition and commitment; definitions

44 A. After receiving and considering the evidence on the proper
45 disposition of the case, the court may enter judgment as follows:

1 1. It may award a delinquent juvenile:
2 (a) To the care of the juvenile's parents, subject to the supervision
3 of a probation department.
4 (b) To a probation department, subject to any conditions the court may
5 impose, including a period of incarceration in a juvenile detention center of
6 not more than one year.
7 (c) To a reputable citizen of good moral character, subject to the
8 supervision of a probation department.
9 (d) To a private agency or institution, subject to the supervision of
10 a probation officer.
11 (e) To the department of juvenile corrections.
12 (f) To maternal or paternal relatives, subject to the supervision of a
13 probation department.
14 (g) To an appropriate official of a foreign country of which the
15 juvenile is a foreign national who is unaccompanied by a parent or guardian
16 in this state to remain on unsupervised probation for at least one year on
17 the condition that the juvenile cooperate with that official.
18 2. It may award an incorrigible child:
19 (a) To the care of the child's parents, subject to the supervision of
20 a probation department.
21 (b) To the protective supervision of a probation department, subject
22 to any conditions the court may impose.
23 (c) To a reputable citizen of good moral character, subject to the
24 supervision of a probation department.
25 (d) To a public or private agency, subject to the supervision of a
26 probation department.
27 (e) To maternal or paternal relatives, subject to the supervision of a
28 probation department.
29 B. If a juvenile is placed on probation pursuant to this section, the
30 period of probation may continue until the juvenile's eighteenth birthday,
31 except that the term of probation shall not exceed one year if all of the
32 following apply:
33 1. The juvenile is not charged with a subsequent offense.
34 2. The juvenile has not been found in violation of a condition of
35 probation.
36 3. The court has not made a determination that it is in the best
37 interests of the juvenile or the public to require continued
38 supervision. The court shall state by minute entry or written order its
39 reasons for finding that continued supervision is required.
40 4. The offense for which the juvenile is placed on probation does not
41 involve ~~the discharge, use or threatening exhibition of a deadly weapon or~~
42 ~~dangerous instrument or the intentional or knowing infliction of serious~~
43 ~~physical injury on another~~ A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.
44 5. The offense for which the juvenile is placed on probation does not
45 involve a violation of title 13, chapter 14 or 35.1.

1 6. Restitution ordered pursuant to section 8-344 has been made.

2 C. If a juvenile is adjudicated as a first time felony juvenile
3 offender, the court shall provide the following written notice to the
4 juvenile:

5 You have been adjudicated a first time felony juvenile
6 offender. You are now on notice that if you are adjudicated of
7 another offense that would be a felony offense if committed by
8 an adult and if you commit the other offense when you are
9 fourteen years of age or older, you will be placed on juvenile
10 intensive probation, which may include home arrest and
11 electronic monitoring, or you may be placed on juvenile
12 intensive probation and may be incarcerated for a period of time
13 in a juvenile detention center, or you may be committed to the
14 department of juvenile corrections or you may be prosecuted as
15 an adult. If you are convicted as an adult of a felony offense
16 and you commit any other offense, you will be prosecuted as an
17 adult.

18 D. If a juvenile is fourteen years of age or older and is adjudicated
19 as a repeat felony juvenile offender, the juvenile court shall place the
20 juvenile on juvenile intensive probation, which may include home arrest and
21 electronic monitoring, may place the juvenile on juvenile intensive
22 probation, which may include incarceration for a period of time in a juvenile
23 detention center, or may commit the juvenile to the department of juvenile
24 corrections pursuant to subsection A, paragraph 1, subdivision (e) of this
25 section for a significant period of time.

26 E. If the juvenile is adjudicated as a repeat felony juvenile
27 offender, the court shall provide the following written notice to the
28 juvenile:

29 You have been adjudicated a repeat felony juvenile
30 offender. You are now on notice that if you are arrested for
31 another offense that would be a felony offense if committed by
32 an adult and if you commit the other offense when you are
33 fifteen years of age or older, you will be tried as an adult in
34 the criminal division of the superior court. If you commit the
35 other offense when you are fourteen years of age or older, you
36 may be tried as an adult in the criminal division of the
37 superior court. If you are convicted as an adult, you will be
38 sentenced to a term of incarceration. If you are convicted as
39 an adult of a felony offense and you commit any other offense,
40 you will be prosecuted as an adult.

41 F. The failure or inability of the court to provide the notices
42 required under subsections C and E of this section does not preclude the use
43 of the prior adjudications for any purpose otherwise permitted.

1 G. Except as provided in subsection S of this section, after
2 considering the nature of the offense and the age, physical and mental
3 condition and earning capacity of the juvenile, the court shall order the
4 juvenile to pay a reasonable monetary assessment if the court determines that
5 an assessment is in aid of rehabilitation. If the director of the department
6 of juvenile corrections determines that enforcement of an order for monetary
7 assessment as a term and condition of conditional liberty is not
8 cost-effective, the director may require the youth to perform an equivalent
9 amount of community restitution in lieu of the payment ordered as a condition
10 of conditional liberty.

11 H. If a child is adjudicated incorrigible, the court may impose a
12 monetary assessment on the child of not more than one hundred fifty dollars.

13 I. A juvenile who is charged with unlawful purchase, possession or
14 consumption of spirituous liquor is subject to section 8-323. The monetary
15 assessment for a conviction of unlawful purchase, possession or consumption
16 of spirituous liquor by a juvenile shall not exceed five hundred dollars.
17 The court of competent jurisdiction may order a monetary assessment or
18 equivalent community restitution.

19 J. The court shall require the monetary assessment imposed under
20 subsection G or H of this section on a juvenile who is not committed to the
21 department of juvenile corrections to be satisfied in one or both of the
22 following forms:

23 1. Monetary reimbursement by the juvenile in a lump sum or installment
24 payments through the clerk of the superior court for appropriate
25 distribution.

26 2. A program of work, not in conflict with regular schooling, to
27 repair damage to the victim's property, to provide community restitution or
28 to provide the juvenile with a job for wages. The court order for
29 restitution or monetary assessment shall specify, according to the
30 dispositional program, the amount of reimbursement and the portion of wages
31 of either existing or provided work that is to be credited toward
32 satisfaction of the restitution or assessment, or the nature of the work to
33 be performed and the number of hours to be spent working. The number of
34 hours to be spent working shall be set by the court based on the severity of
35 the offense but shall not be less than sixteen hours.

36 K. If a juvenile is committed to the department of juvenile
37 corrections the court shall specify the amount of the monetary assessment
38 imposed pursuant to subsection G or H of this section.

39 L. After considering the length of stay guidelines developed pursuant
40 to section 41-2816, subsection C, the court may set forth in the order of
41 commitment the minimum period during which the juvenile shall remain in
42 secure care while in the custody of the department of juvenile corrections.
43 When the court awards a juvenile to the department of juvenile corrections or
44 an institution or agency, it shall transmit with the order of commitment
45 copies of a diagnostic psychological evaluation and educational assessment if

1 one has been administered, copies of the case report, all other psychological
2 and medical reports, restitution orders, any request for postadjudication
3 notice that has been submitted by a victim and any other documents or records
4 pertaining to the case requested by the department of juvenile corrections or
5 an institution or agency. The department shall not release a juvenile from
6 secure care before the juvenile completes the length of stay determined by
7 the court in the commitment order unless the county attorney in the county
8 from which the juvenile was committed requests the committing court to reduce
9 the length of stay. The department may temporarily escort the juvenile from
10 secure care pursuant to section 41-2804, may release the juvenile from secure
11 care without a further court order after the juvenile completes the length of
12 stay determined by the court or may retain the juvenile in secure care for
13 any period subsequent to the completion of the length of stay in accordance
14 with the law.

15 M. Written notice of the release of any juvenile pursuant to
16 subsection L of this section shall be made to any victim requesting notice,
17 the juvenile court that committed the juvenile and the county attorney of the
18 county from which the juvenile was committed.

19 N. Notwithstanding any law to the contrary, if a person is under the
20 supervision of the court as an adjudicated delinquent juvenile at the time
21 the person reaches eighteen years of age, treatment services may be provided
22 until the person reaches twenty-one years of age if the court, the person and
23 the state agree to the provision of the treatment and a motion to transfer
24 the person pursuant to section 8-327 has not been filed or has been
25 withdrawn. The court may terminate the provision of treatment services after
26 the person reaches eighteen years of age if the court determines that any of
27 the following applies:

- 28 1. The person is not progressing toward treatment goals.
- 29 2. The person terminates treatment.
- 30 3. The person commits a new offense after reaching eighteen years of
31 age.
- 32 4. Continued treatment is not required or is not in the best interests
33 of the state or the person.

34 O. On the request of a victim of an act that may have involved
35 significant exposure as defined in section 13-1415 or that if committed by an
36 adult would be a sexual offense, the prosecuting attorney shall petition the
37 adjudicating court to require that the juvenile be tested for the presence of
38 the human immunodeficiency virus. If the victim is a minor the prosecuting
39 attorney shall file this petition at the request of the victim's parent or
40 guardian. If the act committed against a victim is an act that if committed
41 by an adult would be a sexual offense or the court determines that sufficient
42 evidence exists to indicate that significant exposure occurred, it shall
43 order the department of juvenile corrections or the department of health
44 services to test the juvenile pursuant to section 13-1415. Notwithstanding
45 any law to the contrary, the department of juvenile corrections and the

1 department of health services shall release the test results only to the
2 victim, the delinquent juvenile, the delinquent juvenile's parent or guardian
3 and a minor victim's parent or guardian and shall counsel them regarding the
4 meaning and health implications of the results.

5 P. If a juvenile has been adjudicated delinquent for an offense that
6 if committed by an adult would be a felony, the court shall provide the
7 department of public safety Arizona automated fingerprint identification
8 system established in section 41-2411 with the juvenile's fingerprints,
9 personal identification data and other pertinent information. If a juvenile
10 has been committed to the department of juvenile corrections the department
11 shall provide the fingerprints and information required by this subsection to
12 the Arizona automated fingerprint identification system. If the juvenile's
13 fingerprints and information have been previously submitted to the Arizona
14 automated fingerprint identification system the information is not required
15 to be resubmitted.

16 Q. Access to fingerprint records submitted pursuant to subsection P of
17 this section shall be limited to the administration of criminal justice as
18 defined in section 41-1750. Dissemination of fingerprint information shall
19 be limited to the name of the juvenile, juvenile case number, date of
20 adjudication and court of adjudication.

21 R. If a juvenile is adjudicated delinquent for an offense that if
22 committed by an adult would be a misdemeanor, the court may prohibit the
23 juvenile from carrying or possessing a firearm while the juvenile is under
24 the jurisdiction of the department of juvenile corrections or the juvenile
25 court.

26 S. The court shall order a juvenile who is adjudicated delinquent for
27 a violation of section 13-1602, subsection A, paragraph 5 to pay a fine of at
28 least three hundred dollars but not more than one thousand dollars. Any
29 restitution ordered shall be paid in accordance with section 13-809,
30 subsection A. The court may order the juvenile to perform community
31 restitution in lieu of the payment for all or part of the fine if it is in
32 the best interests of the juvenile. The amount of community restitution
33 shall be equivalent to the amount of the fine by crediting any service
34 performed at a rate of ten dollars per hour.

35 T. For the purposes of this section:

36 1. "First time felony juvenile offender" means a juvenile who is
37 adjudicated delinquent for an offense that would be a felony offense if
38 committed by an adult.

39 2. "Repeat felony juvenile offender" means a juvenile to whom both of
40 the following apply:

41 (a) Is adjudicated delinquent for an offense that would be a felony
42 offense if committed by an adult.

43 (b) Previously has been adjudicated a first time felony juvenile
44 offender.

1 3. "Sexual offense" means oral sexual contact, sexual contact or
2 sexual intercourse as defined in section 13-1401.

3 Sec. 5. Section 8-348, Arizona Revised Statutes, is amended to read:
4 8-348. Setting aside adjudication: application; release from
5 disabilities; exceptions

6 A. Except as provided in subsections C and D of this section, a person
7 who is at least eighteen years of age, who has been adjudicated delinquent or
8 incorrigible and who has fulfilled the conditions of probation and discharge
9 ordered by the court or who is discharged from the department of juvenile
10 corrections pursuant to section 41-2820 on successful completion of the
11 individual treatment plan may apply to the juvenile court to set aside the
12 adjudication. The court or the department of juvenile corrections shall
13 inform the person of this right at the time the person is discharged. The
14 person or, if authorized in writing, the person's attorney, probation officer
15 or parole officer may apply to set aside the adjudication. A copy of the
16 application shall be served on the prosecutor.

17 B. If the court grants the application, the court shall set aside the
18 adjudication and shall order that the person be released from all penalties
19 and disabilities resulting from the adjudication except those imposed by the
20 department of transportation pursuant to section 28-3304, 28-3306, 28-3307 or
21 28-3308. Regardless of whether the court sets aside the adjudication, the
22 adjudication may be used for any purpose as provided in section 8-207 or
23 13-501 and the department of transportation may use the adjudication for the
24 purposes of enforcing the provisions of section 28-3304, 28-3306, 28-3307 or
25 28-3308 as if the adjudication had not been set aside.

26 C. A person may not apply to set aside the adjudication if the person
27 either:

28 1. Has been convicted of a criminal offense.

29 2. Has a criminal charge pending.

30 3. Has not successfully completed all of the terms and conditions of
31 probation or been discharged from the department of juvenile corrections
32 pursuant to section 41-2820 on successful completion of the **individualized**
33 **INDIVIDUAL** treatment plan.

34 4. Has not paid in full all restitution and monetary assessments.

35 D. This section does not apply to a person who was adjudicated
36 delinquent for any of the following:

37 1. An offense involving the infliction of serious physical injury **AS**
38 **DEFINED IN SECTION 13-105**.

39 2. An offense involving the use or exhibition of a deadly weapon or
40 dangerous instrument **AS DEFINED IN SECTION 13-105**.

41 3. An offense in violation of title 13, chapter 14.

42 4. An offense in violation of section 28-1381, 28-1382, 28-1383 or
43 28-3473.

44 5. A civil traffic violation under title 28, chapter 3.

1 ~~E. For the purposes of this section:~~
2 ~~1. "Dangerous instrument" and "deadly weapon" have the same meaning~~
3 ~~prescribed in section 13-105.~~
4 ~~2. "Serious physical injury" has the same meaning prescribed in~~
5 ~~section 13-105.~~

6 Sec. 6. Section 8-350, Arizona Revised Statutes, is amended to read:
7 8-350. Dangerous offenders; sex offenders; notification to
8 schools; definition

9 A. If a ~~person~~ JUVENILE is adjudicated delinquent for or convicted of
10 a dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or
11 13-1417 and the ~~person~~ JUVENILE is placed on probation and is attending
12 school, the court shall notify the elementary or high school district in
13 which the ~~person~~ JUVENILE resides that the ~~person~~ JUVENILE has been
14 adjudicated delinquent or convicted and is on probation. The elementary or
15 high school district shall transmit this notice to the school that the person
16 attends.

17 B. Elementary or high school districts and local elementary and high
18 schools through the local school district may request from the court the
19 criminal history of individual students to determine if a student has been
20 adjudicated delinquent for or convicted of a dangerous offense or a violation
21 of section 13-1405, 13-1406, 13-1410 or 13-1417.

22 C. The school that the person attends shall make the information it
23 receives pursuant to this section available to teachers, parents, guardians
24 or custodians ~~upon~~ ON request.

25 D. For the purposes of this section, "dangerous offense" ~~means an~~
26 ~~offense involving the discharge, use or threatening exhibition of a deadly~~
27 ~~weapon or dangerous instrument or the intentional or knowing infliction of~~
28 ~~serious physical injury on another person~~ HAS THE SAME MEANING PRESCRIBED IN
29 SECTION 13-105.

30 Sec. 7. Section 11-361, Arizona Revised Statutes, is amended to read:
31 11-361. Definition of program

32 For the purposes of this article, unless the context otherwise
33 requires, "program" means a special supervision program in which the county
34 attorney of a participating county may divert or defer, before a guilty plea
35 or a trial, the prosecution of a person WHO IS accused of committing a crime,
36 ~~other than~~ EXCEPT THAT THE COUNTY ATTORNEY MAY NOT DIVERT OR DEFER THE
37 PROSECUTION OF a person who:

- 38 1. Has been previously convicted of a felony. ~~—~~
- 39 2. Is accused of committing a ~~felony involving the discharge, use or~~
40 ~~threatening exhibition of a deadly weapon or dangerous instrument or the~~
41 ~~intentional or knowing infliction of serious physical injury or~~ DANGEROUS
42 OFFENSE AS DEFINED IN SECTION 13-105 THAT IS A FELONY.
- 43 3. Has previously completed a program established pursuant to this
44 article.

1 Sec. 8. Section 11-459, Arizona Revised Statutes, is amended to read:

2 11-459. Prisoner work, community restitution work and home
3 detention program; eligibility; monitoring;
4 procedures; home detention for persons sentenced for
5 driving under the influence of alcohol or drugs;
6 community restitution work committee; members; duties

7 A. The sheriff may establish a prisoner work, community restitution
8 work and home detention program for eligible sentenced prisoners, which shall
9 be treated the same as confinement in jail and shall fulfill the sheriff's
10 duty to take charge of and keep the county jail and prisoners.

11 B. A prisoner is not eligible for a prisoner work, community
12 restitution work and home detention program if any of the following applies:

13 1. After independent review and determination of the jail's
14 classification program, the prisoner is found by the sheriff to constitute a
15 risk to either himself or other members of the community.

16 2. The prisoner has a past history of violent behavior.

17 3. The prisoner has been convicted of a serious offense as defined in
18 section ~~13-604~~ 13-706 or has been determined to be a dangerous and repetitive
19 offender.

20 4. Jail time is being served as a result of a felony conviction.

21 5. The sentencing judge states at the time of the sentence that the
22 prisoner may not be eligible for a prisoner work, community restitution work
23 and home detention program.

24 6. The prisoner is sentenced to a county jail and is being held for
25 another jurisdiction.

26 C. ~~For prisoners who are~~ IF A PRISONER IS selected for the program,
27 the sheriff may require electronic monitoring in the prisoner's home whenever
28 the prisoner is not at the prisoner's regular place of employment or while
29 the prisoner is assigned to a community work task. If electronic monitoring
30 is required, the prisoner shall remain under the control of a home detention
31 device that constantly monitors the prisoner's location in order to determine
32 that the prisoner has not left the prisoner's premises. In all other cases,
33 the sheriff shall implement a system of monitoring using visitation,
34 telephone contact or other appropriate methods to assure compliance with the
35 home detention requirements. The sheriff may place appropriate restrictions
36 on prisoners in the program, including testing prisoners for consumption of
37 alcoholic beverages or drugs or prohibiting association with individuals who
38 are determined to be detrimental to the prisoner's successful participation
39 in the program.

40 D. If a prisoner is placed on electronic monitoring pursuant to
41 subsection C of this section, the prisoner shall pay an electronic monitoring
42 fee in an amount ranging from zero to full cost and thirty dollars per month
43 while on electronic monitoring, unless, after determining the inability of
44 the prisoner to pay these fees, the sheriff assesses a lesser fee. The

1 SHERIFF SHALL USE THE fees collected ~~shall be used by the sheriff~~ to offset
2 operational costs of the program.

3 E. Prisoners who are selected for the home detention program shall be
4 employed in the county in which they are incarcerated. The sheriff shall
5 review the place of employment to determine whether it is appropriate for a
6 home detention prisoner. If the prisoner is terminated from employment or
7 does not come to work, the employer shall notify the sheriff's office.
8 Alternatively, or in addition, a community restitution work assignment may be
9 made by the sheriff to a program recommended to the sheriff by the community
10 restitution work committee. If a prisoner is incapable of performing
11 community restitution or being employed, the sheriff may exempt the prisoner
12 from these programs.

13 F. The sheriff may require that a prisoner who is employed during the
14 week also participate in community restitution work programs on weekends.

15 G. The sheriff may allow prisoners to be away from home detention for
16 special purposes, including church attendance, medical appointments or
17 funerals. The standard for review and determination of such leave is the
18 same as that implemented to decide transportation requests for similar
19 purposes made by prisoners WHO ARE confined in the county jail.

20 H. Community restitution work shall include public works projects
21 operated and supervised by public agencies of this state or counties, cities
22 or towns on recommendation of the community restitution work committee and
23 approval of the sheriff. The community restitution work committee may also
24 recommend and the sheriff may approve other forms of community restitution
25 work sponsored and supervised by public or private community oriented
26 organizations and agencies.

27 I. The community restitution work committee is established in each
28 county and is composed of two designees of the sheriff, a representative of
29 the county attorney's office selected by the county attorney, a
30 representative of a local police agency selected by the police chief of the
31 largest city in the county and three persons selected by the county board of
32 supervisors from the private sector. A sheriff's designee shall serve as
33 committee chairman and schedule all meetings. The committee shall meet as
34 often as necessary, but no less than once every three months, for the purpose
35 of considering and recommending appropriate community restitution work
36 projects for home detention prisoners. The committee shall make its
37 recommendations to the sheriff. Members are not eligible to receive
38 compensation.

39 J. At any time the sheriff may terminate a prisoner's participation in
40 the prisoner work, community restitution work and home detention program and
41 require that the prisoner complete the remaining term of the prisoner's
42 sentence in jail confinement.

1 K. If authorized by the court, a person who is sentenced pursuant to
2 section 28-1381 or 28-1382 shall not be placed under home detention in a
3 prisoner work, community restitution work and home detention program except
4 as provided in subsections L through Q of this section.

5 L. By a majority vote of the full membership of the board of
6 supervisors after a public hearing and a finding of necessity a county may
7 authorize the sheriff to establish a home detention program for persons who
8 are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If
9 the board ~~authorized~~ **AUTHORIZES** the establishment of a home detention
10 program, a county sheriff may establish the program. A prisoner who is
11 placed under the program established pursuant to this subsection shall bear
12 the cost of all testing, monitoring and enrollment in alcohol or substance
13 abuse programs unless, after determining the inability of the prisoner to pay
14 the cost, the court assesses a lesser amount. The county shall use the
15 collected monies to offset operational costs of the program.

16 M. If a county sheriff establishes a home detention program under
17 subsection L of this section, a prisoner must meet the following eligibility
18 requirements for the program:

19 1. Subsection B of this section applies in determining eligibility
20 for the program.

21 2. If the prisoner is sentenced under section 28-1381, subsection I,
22 the prisoner first serves a minimum of twenty-four consecutive hours in jail.

23 3. Notwithstanding section 28-1387, subsection C, if the prisoner is
24 sentenced under section 28-1381, subsection K or section 28-1382, subsection
25 D or F, the prisoner first serves a minimum of fifteen consecutive days in
26 jail before being placed under home detention.

27 4. The prisoner is required to comply with all of the following
28 requirements for the duration of the prisoner's participation in the home
29 detention program:

30 (a) All of the provisions of subsections C through H of this section.

31 (b) Testing at least once a day for the use of alcoholic beverages or
32 drugs by a scientific method that is not limited to urinalysis or a breath or
33 intoxication test in the prisoner's home or at the office of a person
34 designated by the court to conduct these tests.

35 (c) Participation in an alcohol or drug program, or both. These
36 programs shall be accredited by the department of health services or a county
37 probation department.

38 (d) Prohibition of association with any individual determined to be
39 detrimental to the prisoner's successful participation in the program.

40 (e) All other provisions of the sentence imposed.

41 5. Any additional eligibility criteria that the county may impose.

42 N. If a county sheriff establishes a home detention program under
43 subsection L of this section, the court, on placing the prisoner in the
44 program, shall require electronic monitoring in the prisoner's home and, if
45 consecutive hours of jail time are ordered, shall require the prisoner to

1 remain at home during the consecutive hours ordered. The detention device
2 shall constantly monitor the prisoner's location to ensure that the prisoner
3 does not leave the premises. Nothing in this subsection shall be deemed to
4 waive the minimum jail confinement requirements under subsection M, paragraph
5 2 of this section.

6 O. The court shall terminate a prisoner's participation in the home
7 detention program and shall require the prisoner to complete the remaining
8 term of the jail sentence by jail confinement if either:

9 1. The prisoner fails to successfully complete a court ordered alcohol
10 or drug screening, counseling, education and treatment program pursuant to
11 subsection M, paragraph 4, subdivision (c) of this section or section
12 28-1381, subsection J or L or violates an order pursuant to section 28-1382,
13 subsection E or G.

14 2. The prisoner leaves the premises during a time that the prisoner is
15 ordered to be on the premises without permission of the court or supervising
16 authority.

17 P. At any other time the court may terminate a prisoner's
18 participation in the home detention program and require the prisoner to
19 complete the remaining term of the jail sentence by jail confinement.

20 Q. The sheriff may terminate the program at any time.

21 R. A person who is sentenced pursuant to section 28-1383 shall not be
22 placed under home detention in a prisoner work, community restitution work
23 and home detention program.

24 Sec. 9. Section 12-2703, Arizona Revised Statutes, is amended to read:
25 12-2703. Scope of remedies; violation; classification

26 A. It is unlawful for any person to render for compensation any
27 service constituting the unauthorized practice of immigration and nationality
28 law or to otherwise violate this chapter.

29 B. A person having an interest or right that is or may be adversely
30 affected under this chapter may initiate an action for civil remedies. The
31 provisions of this article are in addition to all other causes of action,
32 remedies and penalties that are available in this state.

33 C. The attorney general shall initiate appropriate proceedings to
34 prevent or to stop violations of this chapter.

35 D. SECTION 13-703, SUBSECTION A AND SUBSECTION B, PARAGRAPH 1 DO NOT
36 APPLY FOR THE PURPOSE OF ENHANCING THE SENTENCE OF A PERSON WHO IS CONVICTED
37 OF TWO OR MORE OFFENSES UNDER THIS SECTION.

38 ~~D.~~ E. A person who violates this chapter is guilty of a class 6
39 felony.

40 ~~E. The provisions of section 13-702.02 shall not apply to enhance the~~
41 ~~sentence of a person convicted of two or more offenses under this section.~~

42 Sec. 10. Section 13-105, Arizona Revised Statutes, is amended to read:
43 13-105. Definitions

44 In this title, unless the context otherwise requires:

1 1. "ABSCONDER" MEANS A PROBATIONER WHO HAS MOVED FROM THE
2 PROBATIONER'S PRIMARY RESIDENCE WITHOUT PERMISSION OF THE PROBATION OFFICER,
3 WHO CANNOT BE LOCATED WITHIN NINETY DAYS OF THE PREVIOUS CONTACT AND AGAINST
4 WHOM A PETITION TO REVOKE HAS BEEN FILED IN THE SUPERIOR COURT ALLEGING THAT
5 THE PROBATIONER'S WHEREABOUTS ARE UNKNOWN. A PROBATIONER IS NO LONGER DEEMED
6 AN ABSCONDER WHEN THE PROBATIONER IS VOLUNTARILY OR INVOLUNTARILY RETURNED TO
7 PROBATION SERVICE.

8 ~~1-~~ 2. "Act" means a bodily movement.

9 ~~2-~~ 3. "Benefit" means anything of value or advantage, present or
10 prospective.

11 ~~3-~~ 4. "Calendar year" means three hundred sixty-five days' actual
12 time served without release, suspension or commutation of sentence,
13 probation, pardon or parole, work furlough or release from confinement on any
14 other basis.

15 ~~4-~~ 5. "Community supervision" means that portion of a felony sentence
16 THAT IS imposed by the court pursuant to section 13-603, subsection I and
17 THAT IS served in the community after completing a period of imprisonment or
18 served in prison in accordance with section 41-1604.07.

19 ~~5-~~ 6. "Conduct" means an act or omission and its accompanying
20 culpable mental state.

21 ~~6-~~ 7. "Crime" means a misdemeanor or a felony.

22 ~~7-~~ 8. "Criminal street gang" means an ongoing formal or informal
23 association of persons whose IN WHICH members or associates individually or
24 collectively engage in the commission, attempted commission, facilitation or
25 solicitation of any felony act and that has at least one individual who is a
26 criminal street gang member.

27 ~~8-~~ 9. "Criminal street gang member" means an individual to whom AT
28 LEAST two of the following seven criteria that indicate criminal street gang
29 membership apply:

- 30 (a) Self-proclamation.
- 31 (b) Witness testimony or official statement.
- 32 (c) Written or electronic correspondence.
- 33 (d) Paraphernalia or photographs.
- 34 (e) Tattoos.
- 35 (f) Clothing or colors.
- 36 (g) Any other indicia of street gang membership.

37 ~~9-~~ 10. "Culpable mental state" means intentionally, knowingly,
38 recklessly or with criminal negligence as those terms are ~~thusly~~ defined IN
39 THIS PARAGRAPH:

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

43 (b) "Knowingly" means, with respect to conduct or to a circumstance
44 described by a statute defining an offense, that a person is aware or
45 believes that ~~his or her~~ THE PERSON'S conduct is of that nature or that the

1 circumstance exists. It does not require any knowledge of the unlawfulness
2 of the act or omission.

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

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

18 ~~10.~~ 11. "Dangerous drug" means dangerous drug as defined by IN section
19 13-3401.

20 ~~11.~~ 12. "Dangerous instrument" means anything that under the
21 circumstances in which it is used, attempted to be used or threatened to be
22 used is readily capable of causing death or serious physical injury.

23 13. "DANGEROUS OFFENSE" MEANS AN OFFENSE INVOLVING THE DISCHARGE, USE
24 OR THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR THE
25 INTENTIONAL OR KNOWING INFLICTION OF SERIOUS PHYSICAL INJURY ON ANOTHER
26 PERSON.

27 ~~12.~~ 14. "Deadly physical force" means force which THAT is used with
28 the purpose of causing death or serious physical injury or in the manner of
29 its use or intended use is capable of creating a substantial risk of causing
30 death or serious physical injury.

31 ~~13.~~ 15 "Deadly weapon" means anything designed for lethal use,
32 including a firearm.

33 ~~14.~~ 16. "Economic loss" means any loss incurred by a person as a
34 result of the commission of an offense. Economic loss includes lost
35 interest, lost earnings and other losses which THAT would not have been
36 incurred but for the offense. Economic loss does not include losses incurred
37 by the convicted person, damages for pain and suffering, punitive damages or
38 consequential damages.

39 ~~15.~~ 17. "Enterprise" includes any corporation, association, labor
40 union or other legal entity.

41 ~~16.~~ 18. "Felony" means an offense for which a sentence to a term of
42 imprisonment in the custody of the state department of corrections is
43 authorized by any law of this state.

1 ~~17.~~ 19. "Firearm" means any loaded or unloaded handgun, pistol,
2 revolver, rifle, shotgun or other weapon ~~which~~ that will or is designed to or
3 may readily be converted to expel a projectile by the action of expanding
4 gases, except that it does not include a firearm in permanently inoperable
5 condition.

6 ~~18.~~ 20. "Government" means the state, any political subdivision of the
7 state or any department, agency, board, commission, institution or
8 governmental instrumentality of or within the state or political subdivision.

9 ~~19.~~ 21. "Government function" means any activity ~~which~~ THAT a public
10 servant is legally authorized to undertake on behalf of a government.

11 22. "HISTORICAL PRIOR FELONY CONVICTION" MEANS:

12 (a) ANY PRIOR FELONY CONVICTION FOR WHICH THE OFFENSE OF CONVICTION
13 EITHER:

14 (i) MANDATED A TERM OF IMPRISONMENT EXCEPT FOR A VIOLATION OF CHAPTER
15 34 OF THIS TITLE INVOLVING A DRUG BELOW THE THRESHOLD AMOUNT.

16 (ii) INVOLVED THE INTENTIONAL OR KNOWING INFLECTION OF SERIOUS
17 PHYSICAL INJURY.

18 (iii) INVOLVED THE USE OR EXHIBITION OF A DEADLY WEAPON OR DANGEROUS
19 INSTRUMENT.

20 (iv) INVOLVED THE ILLEGAL CONTROL OF A CRIMINAL ENTERPRISE.

21 (v) INVOLVED AGGRAVATED DRIVING UNDER THE INFLUENCE OF INTOXICATING
22 LIQUOR OR DRUGS.

23 (vi) INVOLVED ANY DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN
24 SECTION 13-705.

25 (b) ANY CLASS 2 OR 3 FELONY, EXCEPT THE OFFENSES LISTED IN SUBDIVISION
26 (a) OF THIS PARAGRAPH, THAT WAS COMMITTED WITHIN THE TEN YEARS IMMEDIATELY
27 PRECEDING THE DATE OF THE PRESENT OFFENSE. ANY TIME SPENT ON ABSCONDER
28 STATUS WHILE ON PROBATION OR INCARCERATED IS EXCLUDED IN CALCULATING IF THE
29 OFFENSE WAS COMMITTED WITHIN THE PRECEDING TEN YEARS. IF A COURT DETERMINES
30 A PERSON WAS NOT ON ABSCONDER STATUS WHILE ON PROBATION, THAT TIME IS NOT
31 EXCLUDED.

32 (c) ANY CLASS 4, 5 OR 6 FELONY, EXCEPT THE OFFENSES LISTED IN
33 SUBDIVISION (a) OF THIS PARAGRAPH, THAT WAS COMMITTED WITHIN THE FIVE YEARS
34 IMMEDIATELY PRECEDING THE DATE OF THE PRESENT OFFENSE. ANY TIME SPENT ON
35 ABSCONDER STATUS WHILE ON PROBATION OR INCARCERATED IS EXCLUDED IN
36 CALCULATING IF THE OFFENSE WAS COMMITTED WITHIN THE PRECEDING FIVE YEARS. IF
37 A COURT DETERMINES A PERSON WAS NOT ON ABSCONDER STATUS WHILE ON PROBATION,
38 THAT TIME IS NOT EXCLUDED.

39 (d) ANY FELONY CONVICTION THAT IS A THIRD OR MORE PRIOR FELONY
40 CONVICTION.

41 ~~20.~~ 23. "Intoxication" means any mental or physical incapacity
42 resulting from use of drugs, toxic vapors or intoxicating liquors.

43 ~~21.~~ 24. "Misdemeanor" means an offense for which a sentence to a term
44 of imprisonment other than to the custody of the state department of
45 corrections is authorized by any law of this state.

1 ~~22.~~ 25. "Narcotic drug" means narcotic drugs as defined ~~by~~ IN section
2 13-3401.

3 ~~23.~~ 26. "Offense" or "public offense" means conduct for which a
4 sentence to a term of imprisonment or of a fine is provided by any law of the
5 state in which it occurred or by any law, regulation or ordinance of a
6 political subdivision of that state and, if the act occurred in a state other
7 than this state, it would be so punishable under the laws, regulations or
8 ordinances of this state or of a political subdivision of this state if the
9 act had occurred in this state.

10 ~~24.~~ 27. "Omission" means the failure to perform an act as to which a
11 duty of performance is imposed by law.

12 ~~25.~~ 28. "Peace officer" means any person vested by law with a duty to
13 maintain public order and make arrests.

14 ~~26.~~ 29. "Person" means a human being and, as the context requires, an
15 enterprise, a public or private corporation, an unincorporated association, a
16 partnership, a firm, a society, a government, a governmental authority or an
17 individual or entity capable of holding a legal or beneficial interest in
18 property.

19 ~~27.~~ 30. "Petty offense" means an offense for which a sentence of a
20 fine only is authorized by law.

21 ~~28.~~ 31. "Physical force" means force used upon or directed toward the
22 body of another person and includes confinement, but does not include deadly
23 physical force.

24 ~~29.~~ 32. "Physical injury" means the impairment of physical condition.

25 ~~30.~~ 33. "Possess" means knowingly to have physical possession or
26 otherwise to exercise dominion or control over property.

27 ~~31.~~ 34. "Possession" means a voluntary act if the defendant knowingly
28 exercised dominion or control over property.

29 35. "PRECONVICTION CUSTODY" MEANS THE CONFINEMENT OF A PERSON IN A JAIL
30 IN THIS STATE OR ANOTHER STATE AFTER THE PERSON IS ARRESTED FOR OR CHARGED
31 WITH A FELONY OFFENSE.

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

33 ~~33.~~ 37. "Public servant":

34 (a) Means any officer or employee of any branch of government, whether
35 elected, appointed or otherwise employed, including a peace officer, and any
36 person participating as an advisor or consultant or otherwise in performing a
37 governmental function.

38 (b) Does not include jurors or witnesses.

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

42 ~~34.~~ 38. "Serious physical injury" includes physical injury ~~which~~ THAT
43 creates a reasonable risk of death, or which causes serious and permanent
44 disfigurement, serious impairment of health or loss or protracted impairment
45 of the function of any bodily organ or limb.

1 ~~35-~~ 39. "Unlawful" means contrary to law or, where the context so
2 requires, not permitted by law.

3 ~~36-~~ 40. "Vehicle" means a device in, upon or by which any person or
4 property is, may be or could have been transported or drawn upon a highway,
5 waterway or airway, excepting devices moved by human power or used
6 exclusively upon stationary rails or tracks.

7 ~~37-~~ 41. "Voluntary act" means a bodily movement performed consciously
8 and as a result of effort and determination.

9 ~~38-~~ 42. "Voluntary intoxication" means intoxication caused by the
10 knowing use of drugs, toxic vapors or intoxicating liquors by a person, the
11 tendency of which to cause intoxication the person knows or ought to know,
12 unless the person introduces them pursuant to medical advice or under such
13 duress as would afford a defense to an offense.

14 Sec. 11. Section 13-107, Arizona Revised Statutes, is amended to read:

15 13-107. Time limitations

16 A. A prosecution for any homicide, any offense that is listed in
17 chapter 14 or 35.1 of this title and that is a class 2 felony, any violent
18 sexual assault pursuant to section 13-1423, any violation of section
19 13-2308.01, any misuse of public monies or a felony involving falsification
20 of public records or any attempt to commit an offense listed in this
21 subsection may be commenced at any time.

22 B. Except as otherwise provided in this section, prosecutions for
23 other offenses must be commenced within the following periods after actual
24 discovery by the state or the political subdivision having jurisdiction of
25 the offense or discovery by the state or the political subdivision that
26 should have occurred with the exercise of reasonable diligence, whichever
27 first occurs:

- 28 1. For a class 2 through a class 6 felony, seven years.
- 29 2. For a misdemeanor, one year.
- 30 3. For a petty offense, six months.

31 C. For the purposes of subsection B of this section, a prosecution is
32 commenced when an indictment, information or complaint is filed.

33 D. The period of limitation does not run during any time when the
34 accused is absent from the state or has no reasonably ascertainable place of
35 abode within the state.

36 E. The period of limitation does not run for a serious offense as
37 defined in section ~~13-604~~ 13-706 during any time when the identity of the
38 person who commits the offense or offenses is unknown.

39 F. The time limitation within which a prosecution of a class 6 felony
40 shall commence shall be determined pursuant to subsection B, paragraph 1 of
41 this section, irrespective of whether a court enters a judgment of conviction
42 for or a prosecuting attorney designates the offense as a misdemeanor.

43 G. If a complaint, indictment or information filed before the period
44 of limitation has expired is dismissed for any reason, a new prosecution may
45 be commenced within six months after the dismissal becomes final even if the

1 period of limitation has expired at the time of the dismissal or will expire
2 within six months of the dismissal.

3 Sec. 12. Repeal

4 Section 13-119, Arizona Revised Statutes, is repealed.

5 Sec. 13. Section 13-501, Arizona Revised Statutes, is amended to read:

6 13-501. Persons under eighteen years of age; felony charging;
7 definitions

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

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

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

- 23 1. A class 1 felony.
- 24 2. A class 2 felony.
- 25 3. A class 3 felony in violation of any offense in chapters 10 through
26 17 or chapter 19 or 23 of this title.
- 27 4. A class 3, 4, 5 or 6 felony involving ~~the intentional or knowing~~
28 ~~infliction of serious physical injury or the discharge, use or threatening~~
29 ~~exhibition of a deadly weapon or dangerous instrument~~ A DANGEROUS OFFENSE.
- 30 5. Any felony offense committed by a chronic felony offender.
- 31 6. Any offense that is properly joined to an offense listed in this
32 subsection.

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

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

41 E. Upon motion of the juvenile the court shall hold a hearing after
42 arraignment and before trial to determine if a juvenile is a chronic felony
43 offender. At the hearing the state shall prove by a preponderance of the
44 evidence that the juvenile is a chronic felony offender. If the court does
45 not find that the juvenile is a chronic felony offender, the court shall

1 transfer the juvenile to the juvenile court pursuant to section 8-302. If
2 the court finds that the juvenile is a chronic felony offender or if the
3 juvenile does not file a motion to determine if the juvenile is a chronic
4 felony offender, the criminal prosecution shall continue.

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

8 G. For the purposes of this section:

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

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

15 3. "Forcible sexual assault" means sexual assault pursuant to section
16 13-1406 that is committed without consent as defined in section 13-1401,
17 paragraph ~~4~~ 5, subdivision (a).

18 ~~4. "Historical prior felony conviction" has the same meaning~~
19 ~~prescribed in section 13-604.~~

20 ~~5.~~ 4. "Other violent felony offense" means:

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

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

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

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

27 Sec. 14. Section 13-502, Arizona Revised Statutes, is amended to read:

28 13-502. Insanity test; burden of proof; guilty except insane
29 verdict

30 A. A person may be found guilty except insane if at the time of the
31 commission of the criminal act the person was afflicted with a mental disease
32 or defect of such severity that the person did not know the criminal act was
33 wrong. A mental disease or defect constituting legal insanity is an
34 affirmative defense. Mental disease or defect does not include disorders
35 that result from acute voluntary intoxication or withdrawal from alcohol or
36 drugs, character defects, psychosexual disorders or impulse control
37 disorders. Conditions that do not constitute legal insanity include but are
38 not limited to momentary, temporary conditions arising from the pressure of
39 the circumstances, moral decadence, depravity or passion growing out of
40 anger, jealousy, revenge, hatred or other motives in a person who does not
41 suffer from a mental disease or defect or an abnormality that is manifested
42 only by criminal conduct.

43 B. In a case involving the death or serious physical injury of or the
44 threat of death or serious physical injury to another person, if a plea of
45 insanity is made and the court determines that a reasonable basis exists to

1 support the plea, the court may commit the defendant to a secure state mental
2 health facility under the department of health services, a secure county
3 mental health evaluation and treatment facility or another secure licensed
4 mental health facility for up to thirty days for mental health evaluation and
5 treatment. Experts at the mental health facility who are licensed pursuant
6 to title 32, who are familiar with this state's insanity statutes, who are
7 specialists in mental diseases and defects and who are knowledgeable
8 concerning insanity shall observe and evaluate the defendant. The expert or
9 experts who examine the defendant shall submit a written report of the
10 evaluation to the court, the defendant's attorney and the prosecutor. The
11 court shall order the defendant to pay the costs of the mental health
12 facility to the clerk of the court. The clerk of the court shall transmit
13 the reimbursements to the mental health facility for all of its costs. If
14 the court finds the defendant is indigent or otherwise is unable to pay all
15 or any of the costs, the court shall order the county to reimburse the mental
16 health facility for the remainder of the costs. Notwithstanding section
17 36-545.02, the mental health facility may maintain the reimbursements. If
18 the court does not commit the defendant to a secure state mental health
19 facility, a secure county mental health evaluation and treatment facility or
20 another secure licensed mental health facility, the court shall appoint an
21 independent expert who is licensed pursuant to title 32, who is familiar with
22 this state's insanity statutes, who is a specialist in mental diseases and
23 defects and who is knowledgeable concerning insanity to observe and evaluate
24 the defendant. The expert who examines the defendant shall submit a written
25 report of the evaluation to the court, the defendant's attorney and the
26 prosecutor. The court shall order the defendant to pay the costs of the
27 services of the independent expert to the clerk of the court. The clerk of
28 the court shall transmit the reimbursements to the expert. If the court
29 finds the defendant is indigent or otherwise unable to pay all or any of the
30 costs, the court shall order the county to reimburse the expert for the
31 remainder of the costs. This subsection does not prohibit the defendant or
32 this state from obtaining additional psychiatric examinations by other mental
33 health experts who are licensed pursuant to title 32, who are familiar with
34 this state's insanity statutes, who are specialists in mental diseases and
35 defects and who are knowledgeable concerning insanity.

36 C. The defendant shall prove the defendant's legal insanity by clear
37 and convincing evidence.

38 D. If the finder of fact finds the defendant guilty except insane, the
39 court shall determine the sentence the defendant could have received pursuant
40 to ~~section 13-703, subsection A or~~ section 13-707 or SECTION 13-751,
41 SUBSECTION A OR the presumptive sentence the defendant could have received
42 pursuant to section ~~13-604, section 13-604.01, section 13-701, subsection C,~~
43 13-702, SECTION 13-703, SECTION 13-704, SECTION 13-705, SECTION 13-706,
44 SUBSECTION A, section 13-710 or section 13-1406 if the defendant had not been
45 found insane, and the judge shall sentence the defendant to a term of

1 incarceration in the state department of corrections and shall order the
2 defendant to be placed under the jurisdiction of the psychiatric security
3 review board and committed to a state mental health facility under the
4 department of health services pursuant to section 13-3994 for that term. In
5 making this determination the court shall not consider the sentence
6 enhancements for prior convictions under section ~~13-604~~ 13-703 OR 13-704.
7 The court shall expressly identify each act that the defendant committed and
8 separately find whether each act involved the death or physical injury of or
9 a substantial threat of death or physical injury to another person.

10 E. A guilty except insane verdict is not a criminal conviction for
11 sentencing enhancement purposes under section ~~13-604~~ 13-703 OR 13-704.

12 Sec. 15. Repeal

13 A. Section ~~13-604~~, Arizona Revised Statutes, as amended by Laws 2007,
14 chapter 248, section 1, is repealed.

15 B. Section ~~13-604~~, Arizona Revised Statutes, as amended by Laws 2007,
16 chapter 287, section 1, is repealed.

17 Sec. 16. Title 13, chapter 6, Arizona Revised Statutes, is amended by
18 adding a new section 13-604, to read:

19 ~~13-604.~~ Class 6 felony; designation

20 A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A PERSON IS
21 CONVICTED OF ANY CLASS 6 FELONY NOT INVOLVING A DANGEROUS OFFENSE AND IF THE
22 COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE
23 HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT IT WOULD BE
24 UNDULY HARSH TO SENTENCE THE DEFENDANT FOR A FELONY, THE COURT MAY ENTER
25 JUDGMENT OF CONVICTION FOR A CLASS 1 MISDEMEANOR AND MAKE DISPOSITION
26 ACCORDINGLY OR MAY PLACE THE DEFENDANT ON PROBATION IN ACCORDANCE WITH
27 CHAPTER 9 OF THIS TITLE AND REFRAIN FROM DESIGNATING THE OFFENSE AS A FELONY
28 OR MISDEMEANOR UNTIL THE PROBATION IS TERMINATED. THE OFFENSE SHALL BE
29 TREATED AS A FELONY FOR ALL PURPOSES UNTIL SUCH TIME AS THE COURT MAY
30 ACTUALLY ENTER AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR. THIS
31 SUBSECTION DOES NOT APPLY TO ANY PERSON WHO STANDS CONVICTED OF A CLASS 6
32 FELONY AND WHO HAS PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES.

33 B. IF A CRIME OR PUBLIC OFFENSE IS PUNISHABLE IN THE DISCRETION OF THE
34 COURT BY A SENTENCE AS A CLASS 6 FELONY OR A CLASS 1 MISDEMEANOR, THE OFFENSE
35 SHALL BE DEEMED A MISDEMEANOR IF THE PROSECUTING ATTORNEY:

36 1. FILES AN INFORMATION IN SUPERIOR COURT DESIGNATING THE OFFENSE AS A
37 MISDEMEANOR.

38 2. FILES A COMPLAINT IN JUSTICE COURT OR MUNICIPAL COURT DESIGNATING
39 THE OFFENSE AS A MISDEMEANOR WITHIN THE JURISDICTION OF THE RESPECTIVE COURT.

40 3. FILES A COMPLAINT, WITH THE CONSENT OF THE DEFENDANT, BEFORE OR
41 DURING THE PRELIMINARY HEARING AMENDING THE COMPLAINT TO CHARGE A
42 MISDEMEANOR.

1 Sec. 17. Transfer and renumber

2 A. Section 13-604.01, Arizona Revised Statutes, is transferred and
3 renumbered for placement in title 13, chapter 7, Arizona Revised Statutes, as
4 section 13-705.

5 B. Section 13-604.02, Arizona Revised Statutes, is transferred and
6 renumbered for placement in title 13, chapter 7, Arizona Revised Statutes, as
7 section 13-708.

8 Sec. 18. Repeal

9 Section ~~13-604.03~~, Arizona Revised Statutes, is repealed.

10 Sec. 19. Transfer and renumber

11 Section 13-604.04, Arizona Revised Statutes, is transferred and
12 renumbered for placement in title 13, chapter 9, Arizona Revised Statutes, as
13 section 13-901.03.

14 Sec. 20. Section 13-607, Arizona Revised Statutes, is amended to read:
15 13-607. Judgment of guilt and sentence document; fingerprint;
16 contents of document; recitations

17 A. At the time of sentencing a person convicted of a felony offense or
18 a violation of section 13-1802, 13-1805, 28-1381 or 28-1382, the court shall
19 execute a judgment of guilt and sentence document or minute order as
20 prescribed by this section.

21 B. The court or a person appointed by the court shall at the time of
22 sentencing and in open court permanently affix ~~a~~ THE DEFENDANT'S fingerprint
23 ~~of the defendant~~ to the document or order.

24 C. The document or order shall recite all of the following in addition
25 to any information deemed appropriate by the court:

26 1. The DEFENDANT'S full name and date of birth ~~of the defendant~~.

27 2. The name of the counsel for the defendant or, if counsel was
28 waived, the fact that the defendant knowingly, voluntarily and intelligently
29 waived the defendant's right to counsel after having been fully apprised of
30 the defendant's right to counsel.

31 3. The name, statutory citation and classification of the offense.

32 4. Whether there was a finding by the trier of fact that the offense
33 was of a dangerous or repetitive nature pursuant to section ~~13-604 or~~
34 ~~13-604.02~~ 13-703, 13-704 OR 13-708.

35 5. Whether the basis of the finding of guilt was by trial to a jury or
36 to the court, or by plea of guilty or no contest.

37 6. That there was a knowing, voluntary and intelligent waiver of the
38 right to a jury trial if the finding of guilt was based on a trial to the
39 court.

40 7. That there was a knowing, voluntary and intelligent waiver of all
41 pertinent rights if the finding of guilt was based on a plea of guilty or no
42 contest.

43 8. A certification by the court or the clerk of the court that at the
44 time of sentencing and in open court the defendant's fingerprint was
45 permanently affixed to the document or order.

1 D. The document or order shall be made a permanent part of the public
2 records of the court, and the recitations contained in the document or order
3 are prima facie evidence of the facts stated in the recitations.

4 Sec. 21. Transfer and renumber

5 Section 13-609, Arizona Revised Statutes, is transferred and renumbered
6 for placement in title 13, chapter 7, Arizona Revised Statutes, as section
7 13-709.

8 Sec. 22. Section 13-610, Arizona Revised Statutes, is amended to read:
9 13-610. DNA testing

10 A. Within thirty days after a person is sentenced to the state
11 department of corrections or a person who is accepted under the interstate
12 compact for the supervision of parolees and probationers arrives in this
13 state, the state department of corrections shall secure a sufficient sample
14 of blood or other bodily substances for deoxyribonucleic acid testing and
15 extraction from the person if the person was convicted of an offense listed
16 in this section and was sentenced to a term of imprisonment or was convicted
17 of any offense that was committed in another jurisdiction that if committed
18 in this state would be a violation of any offense listed in this section and
19 the person is under the supervision of the state department of corrections.
20 The state department of corrections shall transmit the sample to the
21 department of public safety.

22 B. Within thirty days after a person is placed on probation and
23 sentenced to a term of incarceration in a county jail detention facility or
24 is detained in a county juvenile detention facility, the county detention
25 facility shall secure a sufficient sample of blood or other bodily substances
26 for deoxyribonucleic acid testing and extraction from the person if the
27 person was convicted of or adjudicated delinquent for an offense listed in
28 this section. The county detention facility shall transmit the sample to the
29 department of public safety.

30 C. Within thirty days after a person is convicted and placed on
31 probation without a term of incarceration or adjudicated delinquent and
32 placed on probation, the county probation department shall secure a
33 sufficient sample of blood or other bodily substances for deoxyribonucleic
34 acid testing and extraction from the person if the person was convicted of or
35 adjudicated delinquent for an offense listed in this section. The county
36 probation department shall transmit the sample to the department of public
37 safety.

38 D. Within thirty days after the arrival of a person who is accepted
39 under the interstate compact for the supervision of parolees and probationers
40 and who is under the supervision of a county probation department, the county
41 probation department shall secure a sufficient sample of blood or other
42 bodily substances for deoxyribonucleic acid testing and extraction from the
43 person if the person was convicted of an offense that was committed in
44 another jurisdiction that if committed in this state would be a violation of
45 any offense listed in this section and was sentenced to a term of probation.

1 The county probation department shall transmit the sample to the department
2 of public safety.

3 E. Within thirty days after a juvenile is committed to the department
4 of juvenile corrections, the department of juvenile corrections shall secure
5 a sufficient sample of blood or other bodily substances for deoxyribonucleic
6 acid testing and extraction from the youth if the youth was adjudicated
7 delinquent for an offense listed in this section and was committed to a
8 secure care facility. The department of juvenile corrections shall transmit
9 the sample to the department of public safety.

10 F. Within thirty days after the arrival in this state of a juvenile
11 who is accepted by the department of juvenile corrections pursuant to the
12 interstate compact on juveniles and who was adjudicated for an offense that
13 was committed in another jurisdiction that if committed in this state would
14 be a violation of any offense listed in this section, the compact
15 administrator shall request that the sending state impose as a condition of
16 supervision that the juvenile submit a sufficient sample of blood or other
17 bodily substances for deoxyribonucleic acid testing. If the sending state
18 does not impose that condition, the department of juvenile corrections shall
19 request a sufficient sample of blood or other bodily substances for
20 deoxyribonucleic acid testing within thirty days after the juvenile's arrival
21 in this state. The department of juvenile corrections shall transmit the
22 sample to the department of public safety.

23 G. Notwithstanding subsections A through F of this section, the agency
24 that is responsible for securing a sample pursuant to this section shall not
25 secure the sample if the scientific criminal analysis section of the
26 department of public safety has previously received and maintains a sample
27 sufficient for deoxyribonucleic acid testing.

28 H. The department of public safety shall do all of the following:

29 1. Conduct or oversee through mutual agreement an analysis of the
30 samples that it receives pursuant to subsections K, L and O of this section.

31 2. Make and maintain a report of the results of each deoxyribonucleic
32 acid analysis.

33 3. Maintain samples of blood and other bodily substances for at least
34 thirty-five years.

35 I. Any sample and the result of any test that is obtained pursuant to
36 this section may be used only as follows:

37 1. For law enforcement identification purposes.

38 2. In a proceeding in a criminal prosecution or juvenile adjudication.

39 3. In a proceeding under title 36, chapter 37.

40 J. If the conviction of a person who is subject to this section is
41 overturned on appeal or postconviction relief and a final mandate has been
42 issued, on petition of the person to the superior court in the county in
43 which the conviction occurred, the court shall order that the person's
44 deoxyribonucleic acid profile resulting from that conviction be expunged from
45 the Arizona deoxyribonucleic acid identification system established by

1 section 41-2418 unless the person has been convicted of another offense that
2 would require the person to submit to deoxyribonucleic acid testing pursuant
3 to this section.

4 K. If a person is arrested for any offense listed in subsection O,
5 paragraph 3 of this section and is transferred by the arresting authority to
6 a state, county or local law enforcement agency or jail, the arresting
7 authority or its designee shall secure a sufficient sample of buccal cells or
8 other bodily substances for deoxyribonucleic acid testing and extraction from
9 the person for the purpose of determining identification characteristics.
10 The arresting authority or its designee shall transmit the sample to the
11 department of public safety.

12 L. If a judicial officer as defined in section 13-3967 releases a
13 person on the person's own recognizance or on bail, the judicial officer
14 shall order the person to report, within five days, if the person is charged
15 with a felony or misdemeanor offense listed in subsection O, paragraph 3 of
16 this section to the law enforcement agency that arrested the person or its
17 designee and submit a sufficient sample of buccal cells or other bodily
18 substances for deoxyribonucleic acid testing and extraction. The arresting
19 authority or its designee shall transmit the sample to the department of
20 public safety. If a person does not comply with an order made pursuant to
21 this subsection, the court shall revoke the person's release.

22 M. A person who is subject to subsection K or L of this section may
23 petition the superior court in the county in which the arrest occurred or the
24 criminal charge was filed to order that the person's deoxyribonucleic acid
25 profile and sample be expunged from the Arizona deoxyribonucleic acid
26 identification system, unless the person has been arrested or charged with or
27 convicted of another offense that would require the person to submit to
28 deoxyribonucleic acid testing pursuant to this section, if any of the
29 following applies:

30 1. The criminal charges are not filed within the applicable period
31 prescribed by section 13-107.

32 2. The criminal charges are dismissed.

33 3. The person is acquitted at trial.

34 N. If any sample that is submitted to the department of public safety
35 under this section is found to be unacceptable for analysis and use or cannot
36 be used by the department, the department shall require that another sample
37 of blood or other bodily substances be secured pursuant to this section.

38 O. This section applies to persons who are:

39 1. Convicted of any felony offense.

40 2. Adjudicated delinquent for any of the following offenses:

41 (a) A violation or an attempt to violate any offense in chapter 11 of
42 this title, any felony offense in chapter 14 or 35.1 of this title or section
43 13-1507, 13-1508 or 13-3608.

1 (b) Any offense for which a person is required to register pursuant to
2 section 13-3821.

3 (c) A violation of any felony offense in chapter 34 of this title that
4 may be prosecuted pursuant to section 13-501, subsection B, paragraph 2.

5 (d) A violation of any felony offense that is listed in section
6 13-501.

7 3. Beginning January 1, 2008, arrested for a violation of any offense
8 in chapter 11 of this title, a violation of section 13-1402, 13-1403,
9 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1417, 13-1507, 13-1508,
10 13-3208, 13-3214, 13-3555 or 13-3608 or a violation of any serious offense
11 ~~pursuant to AS DEFINED IN section 13-604~~ 13-706 involving the discharge, use
12 or threatening exhibition of a deadly weapon or dangerous instrument or the
13 intentional or knowing infliction of serious physical injury.

14 Sec. 23. Section 13-701, Arizona Revised Statutes, is amended to read:

15 13-701. Sentence of imprisonment for felony; presentence
16 report; aggravating and mitigating factors;
17 consecutive terms of imprisonment; definition

18 A. A sentence of imprisonment for a felony shall be a definite term of
19 years and the person sentenced, unless otherwise provided by law, shall be
20 committed to the custody of the state department of corrections.

21 B. No prisoner may be transferred to the custody of the state
22 department of corrections without a certified copy of the judgment and
23 sentence, signed by the sentencing judge, and a copy of a recent presentence
24 investigation report unless the court has waived preparation of the report.

25 ~~C. Except as provided in section 13-604 the term of imprisonment for a~~
26 ~~felony shall be determined as follows for a first offense:~~

27 ~~1. For a class 2 felony, five years.~~

28 ~~2. For a class 3 felony, three and one half years.~~

29 ~~3. For a class 4 felony, two and one half years.~~

30 ~~4. For a class 5 felony, one and one half years.~~

31 ~~5. For a class 6 felony, one year.~~

32 C. THE MINIMUM OR MAXIMUM TERM IMPOSED PURSUANT TO SECTION 13-702,
33 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 OR 13-3419 MAY BE
34 IMPOSED ONLY IF ONE OR MORE OF THE CIRCUMSTANCES ALLEGED TO BE IN AGGRAVATION
35 OF THE CRIME ARE FOUND TO BE TRUE BY THE TRIER OF FACT BEYOND A REASONABLE
36 DOUBT OR ARE ADMITTED BY THE DEFENDANT, EXCEPT THAT AN ALLEGED AGGRAVATING
37 CIRCUMSTANCE UNDER SUBSECTION D, PARAGRAPH 11 OF THIS SECTION SHALL BE FOUND
38 TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE
39 BY THE COURT, ON ANY EVIDENCE OR INFORMATION INTRODUCED OR SUBMITTED TO THE
40 COURT OR THE TRIER OF FACT BEFORE SENTENCING OR ANY EVIDENCE PRESENTED AT
41 TRIAL, AND FACTUAL FINDINGS AND REASONS IN SUPPORT OF SUCH FINDINGS ARE SET
42 FORTH ON THE RECORD AT THE TIME OF SENTENCING.

1 D. FOR THE PURPOSE OF DETERMINING THE SENTENCE PURSUANT TO SUBSECTION
2 C OF THIS SECTION, THE TRIER OF FACT SHALL DETERMINE AND THE COURT SHALL
3 CONSIDER THE FOLLOWING AGGRAVATING CIRCUMSTANCES, EXCEPT THAT THE COURT SHALL
4 DETERMINE AN AGGRAVATING CIRCUMSTANCE UNDER PARAGRAPH 11 OF THIS SUBSECTION:

5 1. INFLICTION OR THREATENED INFLICTION OF SERIOUS PHYSICAL INJURY,
6 EXCEPT IF THIS CIRCUMSTANCE IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF
7 CONVICTION OR HAS BEEN UTILIZED TO ENHANCE THE RANGE OF PUNISHMENT UNDER
8 SECTION 13-704.

9 2. USE, THREATENED USE OR POSSESSION OF A DEADLY WEAPON OR DANGEROUS
10 INSTRUMENT DURING THE COMMISSION OF THE CRIME, EXCEPT IF THIS CIRCUMSTANCE IS
11 AN ESSENTIAL ELEMENT OF THE OFFENSE OF CONVICTION OR HAS BEEN UTILIZED TO
12 ENHANCE THE RANGE OF PUNISHMENT UNDER SECTION 13-704.

13 3. IF THE OFFENSE INVOLVES THE TAKING OF OR DAMAGE TO PROPERTY, THE
14 VALUE OF THE PROPERTY SO TAKEN OR DAMAGED.

15 4. PRESENCE OF AN ACCOMPLICE.

16 5. ESPECIALLY HEINOUS, CRUEL OR DEPRAVED MANNER IN WHICH THE OFFENSE
17 WAS COMMITTED.

18 6. THE DEFENDANT COMMITTED THE OFFENSE AS CONSIDERATION FOR THE
19 RECEIPT, OR IN THE EXPECTATION OF THE RECEIPT, OF ANYTHING OF PECUNIARY
20 VALUE.

21 7. THE DEFENDANT PROCURED THE COMMISSION OF THE OFFENSE BY PAYMENT, OR
22 PROMISE OF PAYMENT, OF ANYTHING OF PECUNIARY VALUE.

23 8. AT THE TIME OF THE COMMISSION OF THE OFFENSE, THE DEFENDANT WAS A
24 PUBLIC SERVANT AND THE OFFENSE INVOLVED CONDUCT DIRECTLY RELATED TO THE
25 DEFENDANT'S OFFICE OR EMPLOYMENT.

26 9. THE VICTIM OR, IF THE VICTIM HAS DIED AS A RESULT OF THE CONDUCT OF
27 THE DEFENDANT, THE VICTIM'S IMMEDIATE FAMILY SUFFERED PHYSICAL, EMOTIONAL OR
28 FINANCIAL HARM.

29 10. DURING THE COURSE OF THE COMMISSION OF THE OFFENSE, THE DEATH OF AN
30 UNBORN CHILD AT ANY STAGE OF ITS DEVELOPMENT OCCURRED.

31 11. THE DEFENDANT WAS PREVIOUSLY CONVICTED OF A FELONY WITHIN THE TEN
32 YEARS IMMEDIATELY PRECEDING THE DATE OF THE OFFENSE. A CONVICTION OUTSIDE
33 THE JURISDICTION OF THIS STATE FOR AN OFFENSE THAT IF COMMITTED IN THIS STATE
34 WOULD BE PUNISHABLE AS A FELONY IS A FELONY CONVICTION FOR THE PURPOSES OF
35 THIS PARAGRAPH.

36 12. THE DEFENDANT WAS WEARING BODY ARMOR AS DEFINED IN SECTION 13-3116.

37 13. THE VICTIM OF THE OFFENSE IS AT LEAST SIXTY-FIVE YEARS OF AGE OR IS
38 A DISABLED PERSON AS DEFINED IN SECTION 38-492.

39 14. THE DEFENDANT WAS APPOINTED PURSUANT TO TITLE 14 AS A FIDUCIARY AND
40 THE OFFENSE INVOLVED CONDUCT DIRECTLY RELATED TO THE DEFENDANT'S DUTIES TO
41 THE VICTIM AS FIDUCIARY.

42 15. EVIDENCE THAT THE DEFENDANT COMMITTED THE CRIME OUT OF MALICE
43 TOWARD A VICTIM BECAUSE OF THE VICTIM'S IDENTITY IN A GROUP LISTED IN SECTION
44 41-1750, SUBSECTION A, PARAGRAPH 3 OR BECAUSE OF THE DEFENDANT'S PERCEPTION

1 OF THE VICTIM'S IDENTITY IN A GROUP LISTED IN SECTION 41-1750, SUBSECTION A,
2 PARAGRAPH 3.

3 16. THE DEFENDANT WAS CONVICTED OF A VIOLATION OF SECTION 13-1102,
4 SECTION 13-1103, SECTION 13-1104, SUBSECTION A, PARAGRAPH 3 OR SECTION
5 13-1204, SUBSECTION A, PARAGRAPH 1 OR 2 ARISING FROM AN ACT THAT WAS
6 COMMITTED WHILE DRIVING A MOTOR VEHICLE AND THE DEFENDANT'S ALCOHOL
7 CONCENTRATION AT THE TIME OF COMMITTING THE OFFENSE WAS 0.15 OR MORE. FOR
8 THE PURPOSES OF THIS PARAGRAPH, "ALCOHOL CONCENTRATION" HAS THE SAME MEANING
9 PRESCRIBED IN SECTION 28-101.

10 17. LYING IN WAIT FOR THE VICTIM OR AMBUSHING THE VICTIM DURING THE
11 COMMISSION OF ANY FELONY.

12 18. THE OFFENSE WAS COMMITTED IN THE PRESENCE OF A CHILD AND ANY OF THE
13 CIRCUMSTANCES EXISTS THAT ARE SET FORTH IN SECTION 13-3601, SUBSECTION A.

14 19. THE OFFENSE WAS COMMITTED IN RETALIATION FOR A VICTIM'S EITHER
15 REPORTING CRIMINAL ACTIVITY OR BEING INVOLVED IN AN ORGANIZATION, OTHER THAN
16 A LAW ENFORCEMENT AGENCY, THAT IS ESTABLISHED FOR THE PURPOSE OF REPORTING OR
17 PREVENTING CRIMINAL ACTIVITY.

18 20. THE DEFENDANT WAS IMPERSONATING A PEACE OFFICER AS DEFINED IN
19 SECTION 1-215.

20 21. THE DEFENDANT WAS IN VIOLATION OF 8 UNITED STATES CODE SECTION
21 1323, 1324, 1325, 1326 OR 1328 AT THE TIME OF THE COMMISSION OF THE OFFENSE.

22 22. THE DEFENDANT USED A REMOTE STUN GUN OR AN AUTHORIZED REMOTE STUN
23 GUN IN THE COMMISSION OF THE OFFENSE. FOR THE PURPOSES OF THIS PARAGRAPH:

24 (a) "AUTHORIZED REMOTE STUN GUN" MEANS A REMOTE STUN GUN THAT HAS ALL
25 OF THE FOLLOWING:

26 (i) AN ELECTRICAL DISCHARGE THAT IS LESS THAN ONE HUNDRED THOUSAND
27 VOLTS AND LESS THAN NINE JOULES OF ENERGY PER PULSE.

28 (ii) A SERIAL OR IDENTIFICATION NUMBER ON ALL PROJECTILES THAT ARE
29 DISCHARGED FROM THE REMOTE STUN GUN.

30 (iii) AN IDENTIFICATION AND TRACKING SYSTEM THAT, ON DEPLOYMENT OF
31 REMOTE ELECTRODES, DISPERSES CODED MATERIAL THAT IS TRACEABLE TO THE
32 PURCHASER THROUGH RECORDS THAT ARE KEPT BY THE MANUFACTURER ON ALL REMOTE
33 STUN GUNS AND ALL INDIVIDUAL CARTRIDGES SOLD.

34 (iv) A TRAINING PROGRAM THAT IS OFFERED BY THE MANUFACTURER.

35 (b) "REMOTE STUN GUN" MEANS AN ELECTRONIC DEVICE THAT EMITS AN
36 ELECTRICAL CHARGE AND THAT IS DESIGNED AND PRIMARILY EMPLOYED TO INCAPACITATE
37 A PERSON OR ANIMAL EITHER THROUGH CONTACT WITH ELECTRODES ON THE DEVICE
38 ITSELF OR REMOTELY THROUGH WIRED PROBES THAT ARE ATTACHED TO THE DEVICE OR
39 THROUGH A SPARK, PLASMA, IONIZATION OR OTHER CONDUCTIVE MEANS EMITTING FROM
40 THE DEVICE.

41 23. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE, THE
42 DEFENDANT COMMITTED A VIOLATION OF SECTION 28-661, 28-662 OR 28-663.

43 24. ANY OTHER FACTOR THAT THE STATE ALLEGES IS RELEVANT TO THE
44 DEFENDANT'S CHARACTER OR BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE
45 CRIME.

1 E. FOR THE PURPOSE OF DETERMINING THE SENTENCE PURSUANT TO SUBSECTION
2 C OF THIS SECTION, THE COURT SHALL CONSIDER THE FOLLOWING MITIGATING
3 CIRCUMSTANCES:

4 1. THE AGE OF THE DEFENDANT.

5 2. THE DEFENDANT'S CAPACITY TO APPRECIATE THE WRONGFULNESS OF THE
6 DEFENDANT'S CONDUCT OR TO CONFORM THE DEFENDANT'S CONDUCT TO THE REQUIREMENTS
7 OF LAW WAS SIGNIFICANTLY IMPAIRED, BUT NOT SO IMPAIRED AS TO CONSTITUTE A
8 DEFENSE TO PROSECUTION.

9 3. THE DEFENDANT WAS UNDER UNUSUAL OR SUBSTANTIAL DURESS, ALTHOUGH NOT
10 SUCH AS TO CONSTITUTE A DEFENSE TO PROSECUTION.

11 4. THE DEGREE OF THE DEFENDANT'S PARTICIPATION IN THE CRIME WAS MINOR,
12 ALTHOUGH NOT SO MINOR AS TO CONSTITUTE A DEFENSE TO PROSECUTION.

13 5. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE, THE
14 DEFENDANT COMPLIED WITH ALL DUTIES IMPOSED UNDER SECTIONS 28-661, 28-662 AND
15 28-663.

16 6. ANY OTHER FACTOR THAT IS RELEVANT TO THE DEFENDANT'S CHARACTER OR
17 BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE CRIME AND THAT THE COURT
18 FINDS TO BE MITIGATING.

19 F. IF THE TRIER OF FACT FINDS AT LEAST ONE AGGRAVATING CIRCUMSTANCE,
20 THE TRIAL COURT MAY FIND BY A PREPONDERANCE OF THE EVIDENCE ADDITIONAL
21 AGGRAVATING CIRCUMSTANCES. IN DETERMINING WHAT SENTENCE TO IMPOSE, THE COURT
22 SHALL TAKE INTO ACCOUNT THE AMOUNT OF AGGRAVATING CIRCUMSTANCES AND WHETHER
23 THE AMOUNT OF MITIGATING CIRCUMSTANCES IS SUFFICIENTLY SUBSTANTIAL TO CALL
24 FOR THE LESSER TERM. IF THE TRIER OF FACT FINDS AGGRAVATING CIRCUMSTANCES
25 AND THE COURT DOES NOT FIND ANY MITIGATING CIRCUMSTANCES, THE COURT SHALL
26 IMPOSE AN AGGRAVATED SENTENCE.

27 G. THE COURT IN IMPOSING A SENTENCE SHALL CONSIDER THE EVIDENCE AND
28 OPINIONS PRESENTED BY THE VICTIM OR THE VICTIM'S IMMEDIATE FAMILY AT ANY
29 AGGRAVATION OR MITIGATION PROCEEDING OR IN THE PRESENTENCE REPORT.

30 H. NOTHING IN THIS SECTION AFFECTS ANY PROVISION OF LAW THAT IMPOSES
31 THE DEATH PENALTY, THAT EXPRESSLY PROVIDES FOR IMPRISONMENT FOR LIFE OR THAT
32 AUTHORIZES OR RESTRICTS THE GRANTING OF PROBATION AND SUSPENDING THE
33 EXECUTION OF SENTENCE.

34 I. THE INTENTIONAL FAILURE BY THE COURT TO IMPOSE THE MANDATORY
35 SENTENCES OR PROBATION CONDITIONS PROVIDED IN THIS TITLE IS MALFEASANCE.

36 J. FOR THE PURPOSES OF THIS SECTION, "TRIER OF FACT" MEANS A JURY,
37 UNLESS THE DEFENDANT AND THE STATE WAIVE A JURY IN WHICH CASE THE TRIER OF
38 FACT MEANS THE COURT.

39 Sec. 24. Section 13-702, Arizona Revised Statutes, is amended to read:
40 13-702. First time felony offenders; sentencing; definition

41 A. ~~Sentences provided in section 13-701 for a first conviction of a~~
42 ~~felony,~~ EXCEPT AS PROVIDED IN SECTIONS 13-703 AND 13-704, THE TERM OF
43 IMPRISONMENT FOR A FIRST FELONY OFFENSE SHALL BE THE PRESUMPTIVE SENTENCE
44 DETERMINED PURSUANT TO SUBSECTION D OF THIS SECTION. Except FOR those
45 felonies involving ~~the discharge, use or threatening exhibition of a deadly~~

1 ~~weapon or dangerous instrument or the intentional or knowing infliction of~~
 2 ~~serious physical injury upon another~~ A DANGEROUS OFFENSE or if a specific
 3 sentence is otherwise provided, THE COURT may ~~be increased~~ INCREASE or
 4 ~~reduced by the court~~ REDUCE THE PRESUMPTIVE SENTENCE within the ranges set by
 5 ~~this~~ subsection D OF THIS SECTION. Any reduction or increase shall be based
 6 on the aggravating and mitigating circumstances ~~contained~~ LISTED in SECTION
 7 13-701, subsections ~~C and D of this section~~ D AND E and shall be within the
 8 ~~following~~ ranges:— PRESCRIBED IN SUBSECTION D OF THIS SECTION.

| | <u>Minimum</u> | <u>Maximum</u> |
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15 ~~B. The upper or lower term imposed pursuant to section 13-604,~~
 16 ~~13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may~~
 17 ~~be imposed only if one or more of the circumstances alleged to be in~~
 18 ~~aggravation of the crime are found to be true by the trier of fact beyond a~~
 19 ~~reasonable doubt or are admitted by the defendant, except that an alleged~~
 20 ~~aggravating circumstance under subsection C, paragraph 11 of this section~~
 21 ~~shall be found to be true by the court, or in mitigation of the crime are~~
 22 ~~found to be true by the court, on any evidence or information introduced or~~
 23 ~~submitted to the court or the trier of fact before sentencing or any evidence~~
 24 ~~presented at trial, and factual findings and reasons in support of such~~
 25 ~~findings are set forth on the record at the time of sentencing.~~

26 ~~C. For the purpose of determining the sentence pursuant to section~~
 27 ~~13-710 and subsection A of this section, the trier of fact shall determine~~
 28 ~~and the court shall consider the following aggravating circumstances, except~~
 29 ~~that the court shall determine an aggravating circumstance under paragraph 11~~
 30 ~~of this subsection:~~

31 ~~1. Infliction or threatened infliction of serious physical injury,~~
 32 ~~except if this circumstance is an essential element of the offense of~~
 33 ~~conviction or has been utilized to enhance the range of punishment under~~
 34 ~~section 13-604.~~

35 ~~2. Use, threatened use or possession of a deadly weapon or dangerous~~
 36 ~~instrument during the commission of the crime, except if this circumstance is~~
 37 ~~an essential element of the offense of conviction or has been utilized to~~
 38 ~~enhance the range of punishment under section 13-604.~~

39 ~~3. If the offense involves the taking of or damage to property, the~~
 40 ~~value of the property so taken or damaged.~~

41 ~~4. Presence of an accomplice.~~

42 ~~5. Especially heinous, cruel or depraved manner in which the offense~~
 43 ~~was committed.~~

1 ~~6. The defendant committed the offense as consideration for the~~
2 ~~receipt, or in the expectation of the receipt, of anything of pecuniary~~
3 ~~value.~~

4 ~~7. The defendant procured the commission of the offense by payment, or~~
5 ~~promise of payment, of anything of pecuniary value.~~

6 ~~8. At the time of the commission of the offense, the defendant was a~~
7 ~~public servant and the offense involved conduct directly related to the~~
8 ~~defendant's office or employment.~~

9 ~~9. The victim or, if the victim has died as a result of the conduct of~~
10 ~~the defendant, the victim's immediate family suffered physical, emotional or~~
11 ~~financial harm.~~

12 ~~10. During the course of the commission of the offense, the death of an~~
13 ~~unborn child at any stage of its development occurred.~~

14 ~~11. The defendant was previously convicted of a felony within the ten~~
15 ~~years immediately preceding the date of the offense. A conviction outside~~
16 ~~the jurisdiction of this state for an offense that if committed in this state~~
17 ~~would be punishable as a felony is a felony conviction for the purposes of~~
18 ~~this paragraph.~~

19 ~~12. The defendant was wearing body armor as defined in section 13-3116.~~

20 ~~13. The victim of the offense is at least sixty-five years of age or is~~
21 ~~a disabled person as defined by section 38-492.~~

22 ~~14. The defendant was appointed pursuant to title 14 as a fiduciary and~~
23 ~~the offense involved conduct directly related to the defendant's duties to~~
24 ~~the victim as fiduciary.~~

25 ~~15. Evidence that the defendant committed the crime out of malice~~
26 ~~toward a victim because of the victim's identity in a group listed in section~~
27 ~~41-1750, subsection A, paragraph 3 or because of the defendant's perception~~
28 ~~of the victim's identity in a group listed in section 41-1750, subsection A,~~
29 ~~paragraph 3.~~

30 ~~16. The defendant was convicted of a violation of section 13-1102,~~
31 ~~section 13-1103, section 13-1104, subsection A, paragraph 3 or section~~
32 ~~13-1204, subsection A, paragraph 1 or 2 arising from an act that was~~
33 ~~committed while driving a motor vehicle and the defendant's alcohol~~
34 ~~concentration at the time of committing the offense was 0.15 or more. For~~
35 ~~the purposes of this paragraph, "alcohol concentration" has the same meaning~~
36 ~~prescribed in section 28-101.~~

37 ~~17. Lying in wait for the victim or ambushing the victim during the~~
38 ~~commission of any felony.~~

39 ~~18. The offense was committed in the presence of a child and any of the~~
40 ~~circumstances exist that are set forth in section 13-3601, subsection A.~~

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

1 ~~20. The defendant was impersonating a peace officer as defined in~~
2 ~~section 1-215.~~

3 ~~21. The defendant was in violation of 8 United States Code section~~
4 ~~1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.~~

5 ~~22. The defendant used a remote stun gun or an authorized remote stun~~
6 ~~gun in the commission of the offense. For the purposes of this paragraph:~~

7 ~~(a) "Authorized remote stun gun" means a remote stun gun that has all~~
8 ~~of the following:~~

9 ~~(i) An electrical discharge that is less than one hundred thousand~~
10 ~~volts and less than nine joules of energy per pulse.~~

11 ~~(ii) A serial or identification number on all projectiles that are~~
12 ~~discharged from the remote stun gun.~~

13 ~~(iii) An identification and tracking system that, on deployment of~~
14 ~~remote electrodes, disperses coded material that is traceable to the~~
15 ~~purchaser through records that are kept by the manufacturer on all remote~~
16 ~~stun guns and all individual cartridges sold.~~

17 ~~(iv) A training program that is offered by the manufacturer.~~

18 ~~(b) "Remote stun gun" means an electronic device that emits an~~
19 ~~electrical charge and that is designed and primarily employed to incapacitate~~
20 ~~a person or animal either through contact with electrodes on the device~~
21 ~~itself or remotely through wired probes that are attached to the device or~~
22 ~~through a spark, plasma, ionization or other conductive means emitting from~~
23 ~~the device.~~

24 ~~23. During or immediately following the commission of the offense, the~~
25 ~~defendant committed a violation of either section 28-661, 28-662 or 28-663.~~

26 ~~24. Any other factor that the state alleges is relevant to the~~
27 ~~defendant's character or background or to the nature or circumstances of the~~
28 ~~crime.~~

29 ~~D. For the purpose of determining the sentence pursuant to section~~
30 ~~13-710 and subsection A of this section, the court shall consider the~~
31 ~~following mitigating circumstances:~~

32 ~~1. The age of the defendant.~~

33 ~~2. The defendant's capacity to appreciate the wrongfulness of the~~
34 ~~defendant's conduct or to conform the defendant's conduct to the requirements~~
35 ~~of law was significantly impaired, but not so impaired as to constitute a~~
36 ~~defense to prosecution.~~

37 ~~3. The defendant was under unusual or substantial duress, although not~~
38 ~~such as to constitute a defense to prosecution.~~

39 ~~4. The degree of the defendant's participation in the crime was minor,~~
40 ~~although not so minor as to constitute a defense to prosecution.~~

41 ~~5. During or immediately following the commission of the offense, the~~
42 ~~defendant complied with all duties imposed under sections 28-661, 28-662 and~~
43 ~~28-663.~~

1 ~~6. Any other factor that is relevant to the defendant's character or~~
2 ~~background or to the nature or circumstances of the crime and that the court~~
3 ~~finds to be mitigating.~~

4 ~~If the trier of fact finds at least one aggravating circumstance, the trial~~
5 ~~court may find by a preponderance of the evidence additional aggravating~~
6 ~~circumstances. In determining what sentence to impose, the court shall take~~
7 ~~into account the amount of aggravating circumstances and whether the amount~~
8 ~~of mitigating circumstances is sufficiently substantial to call for the~~
9 ~~lesser term. If the trier of fact finds aggravating circumstances and the~~
10 ~~court does not find any mitigating circumstances, the court shall impose an~~
11 ~~aggravated sentence.~~

12 ~~E. The court in imposing a sentence shall consider the evidence and~~
13 ~~opinions presented by the victim or the victim's immediate family at any~~
14 ~~aggravation or mitigation proceeding or in the presentence report.~~

15 ~~F. Nothing in this section affects any provision of law that imposes~~
16 ~~the death penalty, that expressly provides for imprisonment for life or that~~
17 ~~authorizes or restricts the granting of probation and suspending the~~
18 ~~execution of sentence.~~

19 ~~G. Notwithstanding any other provision of this title, if a person is~~
20 ~~convicted of any class 6 felony not involving the intentional or knowing~~
21 ~~infliction of serious physical injury or the discharge, use or threatening~~
22 ~~exhibition of a deadly weapon or dangerous instrument and if the court,~~
23 ~~having regard to the nature and circumstances of the crime and to the history~~
24 ~~and character of the defendant, is of the opinion that it would be unduly~~
25 ~~harsh to sentence the defendant for a felony, the court may enter judgment of~~
26 ~~conviction for a class 1 misdemeanor and make disposition accordingly or may~~
27 ~~place the defendant on probation in accordance with chapter 9 of this title~~
28 ~~and refrain from designating the offense as a felony or misdemeanor until the~~
29 ~~probation is terminated. The offense shall be treated as a felony for all~~
30 ~~purposes until such time as the court may actually enter an order designating~~
31 ~~the offense a misdemeanor. This subsection does not apply to any person who~~
32 ~~stands convicted of a class 6 felony and who has previously been convicted of~~
33 ~~two or more felonies. If a crime or public offense is punishable in the~~
34 ~~discretion of the court by a sentence as a class 6 felony or a class 1~~
35 ~~misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting~~
36 ~~attorney:~~

37 ~~1. Files an information in superior court designating the offense as a~~
38 ~~misdemeanor.~~

39 ~~2. Files a complaint in justice court or municipal court designating~~
40 ~~the offense as a misdemeanor within the jurisdiction of the respective court.~~

41 ~~3. Files a complaint, with the consent of the defendant, before or~~
42 ~~during the preliminary hearing amending the complaint to charge a~~
43 ~~misdemeanor.~~

1 B. IF A PERSON IS CONVICTED OF A FELONY WITHOUT HAVING PREVIOUSLY BEEN
 2 CONVICTED OF ANY FELONY AND IF AT LEAST TWO OF THE AGGRAVATING FACTORS LISTED
 3 IN SECTION 13-701, SUBSECTION D APPLY, THE COURT MAY INCREASE THE MAXIMUM
 4 TERM OF IMPRISONMENT OTHERWISE AUTHORIZED FOR THAT OFFENSE TO AN AGGRAVATED
 5 TERM. IF A PERSON IS CONVICTED OF A FELONY WITHOUT HAVING PREVIOUSLY BEEN
 6 CONVICTED OF ANY FELONY AND IF THE COURT FINDS AT LEAST TWO MITIGATING
 7 FACTORS LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE COURT MAY DECREASE
 8 THE MINIMUM TERM OF IMPRISONMENT OTHERWISE AUTHORIZED FOR THAT OFFENSE TO A
 9 MITIGATED TERM.

10 C. THE AGGRAVATED OR MITIGATED TERM IMPOSED PURSUANT TO SUBSECTION D
 11 OF THIS SECTION MAY BE IMPOSED ONLY IF AT LEAST TWO OF THE AGGRAVATING
 12 CIRCUMSTANCES ARE FOUND BEYOND A REASONABLE DOUBT TO BE TRUE BY THE TRIER OF
 13 FACT OR ARE ADMITTED BY THE DEFENDANT, EXCEPT THAT AN AGGRAVATING
 14 CIRCUMSTANCE UNDER SECTION 13-701, SUBSECTION D, PARAGRAPH 11 SHALL BE FOUND
 15 TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE
 16 BY THE COURT, ON ANY EVIDENCE OR INFORMATION INTRODUCED OR SUBMITTED TO THE
 17 COURT OR THE TRIER OF FACT BEFORE SENTENCING OR ANY EVIDENCE PRESENTED AT
 18 TRIAL, AND FACTUAL FINDINGS AND REASONS IN SUPPORT OF THESE FINDINGS ARE SET
 19 FORTH ON THE RECORD AT THE TIME OF SENTENCING.

20 D. THE TERM OF IMPRISONMENT FOR A PRESUMPTIVE, MINIMUM, MAXIMUM,
 21 MITIGATED OR AGGRAVATED SENTENCE SHALL BE WITHIN THE RANGE PRESCRIBED UNDER
 22 THIS SUBSECTION. THE TERMS ARE AS FOLLOWS:

| <u>FELONY</u> | <u>MITIGATED</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> | <u>AGGRAVATED</u> |
|---------------|------------------|----------------|--------------------|----------------|-------------------|
| 23 CLASS 2 | 3 YEARS | 4 YEARS | 5 YEARS | 10 YEARS | 12.5 YEARS |
| 24 CLASS 3 | 2 YEARS | 2.5 YEARS | 3.5 YEARS | 7 YEARS | 8.75 YEARS |
| 25 CLASS 4 | 1 YEAR | 1.5 YEARS | 2.5 YEARS | 3 YEARS | 3.75 YEARS |
| 26 CLASS 5 | .5 YEARS | .75 YEARS | 1.5 YEARS | 2 YEARS | 2.5 YEARS |
| 27 CLASS 6 | .33 YEARS | .5 YEARS | 1 YEAR | 1.5 YEARS | 2 YEARS |

28 E. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE SENTENCING OCCURS
 29 OF ITS INTENT TO INCREASE OR DECREASE A SENTENCE TO THE AGGRAVATED OR
 30 MITIGATED SENTENCE PURSUANT THIS SECTION. IF THE COURT FAILS TO INFORM THE
 31 PARTIES, A PARTY WAIVES ITS RIGHT TO BE INFORMED UNLESS THE PARTY TIMELY
 32 OBJECTS AT THE TIME OF SENTENCING.
 33

34 ~~H.~~ F. For the purposes of this section, "trier of fact" means a jury,
 35 unless the defendant and the state waive a jury in which case the trier of
 36 fact means the court.

37 Sec. 25. Repeal

38 Sections 13-702.01 and 13-702.02, Arizona Revised Statutes, are
 39 repealed.

40 Sec. 26. Transfer and renumber

41 The following Arizona Revised Statutes sections are transferred and
 42 renumbered for placement in title 13, chapter 7.1, Arizona Revised Statutes,
 43 as added by this act, as follows:

- 1 1. Section 13-703 as section 13-751.
- 2 2. Section 13-703.01, as amended by Laws 2005, chapter 325, section 3,
- 3 as section 13-752, as amended by section 39 of this act.
- 4 3. Section 13-703.01, as amended by Laws 2005, chapter 325, section 4,
- 5 as section 13-752, as amended by section 40 of this act.
- 6 4. Section 13-703.02 as section 13-753.
- 7 5. Section 13-703.03 as section 13-754.
- 8 6. Section 13-703.04 as section 13-755.
- 9 7. Section 13-703.05 as section 13-756.
- 10 8. Section 13-704 as section 13-757.
- 11 9. Section 13-705 as section 13-758.
- 12 10. Section 13-706 as section 13-759.
- 13 Sec. 27. Renumber
- 14 A. Section 13-708, Arizona Revised Statutes, is renumbered as section
- 15 13-711.
- 16 B. Section 13-709, Arizona Revised Statutes, is renumbered as section
- 17 13-712.
- 18 C. Section 13-713, Arizona Revised Statutes, is renumbered as section
- 19 13-706.
- 20 Sec. 28. Title 13, chapter 7, Arizona Revised Statutes, is amended by
- 21 adding new sections 13-703 and 13-704, to read:
- 22 13-703. Repetitive offenders; sentencing; definition
- 23 A. A PERSON SHALL BE SENTENCED AS A CATEGORY ONE REPETITIVE OFFENDER
- 24 IF THE PERSON IS CONVICTED OF TWO FELONY OFFENSES THAT WERE NOT COMMITTED ON
- 25 THE SAME OCCASION BUT THAT EITHER ARE CONSOLIDATED FOR TRIAL PURPOSES OR ARE
- 26 NOT HISTORICAL PRIOR FELONY CONVICTIONS.
- 27 B. A PERSON SHALL BE SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER
- 28 IF THE PERSON EITHER:
- 29 1. IS CONVICTED OF THREE OR MORE FELONY OFFENSES THAT WERE NOT
- 30 COMMITTED ON THE SAME OCCASION BUT THAT EITHER ARE CONSOLIDATED FOR TRIAL
- 31 PURPOSES OR ARE NOT HISTORICAL PRIOR FELONY CONVICTIONS.
- 32 2. EXCEPT AS PROVIDED IN SECTION 13-704 OR 13-705, IS AT LEAST
- 33 EIGHTEEN YEARS OF AGE OR HAS BEEN TRIED AS AN ADULT AND STANDS CONVICTED OF A
- 34 FELONY AND HAS ONE HISTORICAL PRIOR FELONY CONVICTION.
- 35 C. EXCEPT AS PROVIDED IN SECTION 13-704 OR 13-705, A PERSON SHALL BE
- 36 SENTENCED AS A CATEGORY THREE REPETITIVE OFFENDER IF THE PERSON IS AT LEAST
- 37 EIGHTEEN YEARS OF AGE OR HAS BEEN TRIED AS AN ADULT AND STANDS CONVICTED OF A
- 38 FELONY AND HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS.
- 39 D. THE PRESUMPTIVE TERM SET BY THIS SECTION MAY BE AGGRAVATED OR
- 40 MITIGATED WITHIN THE RANGE UNDER THIS SECTION PURSUANT TO SECTION 13-701,
- 41 SUBSECTIONS C, D AND E.
- 42 E. IF A PERSON IS SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER
- 43 PURSUANT TO SUBSECTION B, PARAGRAPH 2 OF THIS SECTION AND IF AT LEAST TWO
- 44 AGGRAVATING FACTORS LISTED IN SECTION 13-701, SUBSECTION D APPLY OR AT LEAST
- 45 TWO MITIGATING FACTORS LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE

1 COURT MAY IMPOSE A MITIGATED OR AGGRAVATED SENTENCE PURSUANT TO SUBSECTION H
2 OF THIS SECTION.

3 F. IF A PERSON IS SENTENCED AS A CATEGORY THREE REPETITIVE OFFENDER
4 PURSUANT TO SUBSECTION C OF THIS SECTION AND AT LEAST TWO AGGRAVATING FACTORS
5 LISTED IN SECTION 13-701, SUBSECTION D OR AT LEAST TWO MITIGATING FACTORS
6 LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE COURT MAY IMPOSE A
7 MITIGATED OR AGGRAVATED SENTENCE PURSUANT TO SUBSECTION I OF THIS SECTION.

8 G. A CATEGORY ONE REPETITIVE OFFENDER SHALL BE SENTENCED WITHIN THE
9 FOLLOWING RANGES:

| <u>FELONY</u> | <u>MITIGATED</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> | <u>AGGRAVATED</u> |
|---------------|------------------|----------------|--------------------|----------------|-------------------|
| 10 CLASS 2 | 3 YEARS | 4 YEARS | 5 YEARS | 10 YEARS | 12.5 YEARS |
| 11 CLASS 3 | 1.8 YEARS | 2.5 YEARS | 3.5 YEARS | 7 YEARS | 8.75 YEARS |
| 12 CLASS 4 | 1 YEAR | 1.5 YEARS | 2.5 YEARS | 3 YEARS | 3.75 YEARS |
| 13 CLASS 5 | .5 YEARS | .75 YEARS | 1.5 YEARS | 2 YEARS | 2.5 YEARS |
| 14 CLASS 6 | .3 YEARS | .5 YEARS | 1 YEAR | 1.5 YEARS | 1.8 YEARS |

15 H. A CATEGORY TWO REPETITIVE OFFENDER SHALL BE SENTENCED WITHIN THE
16 FOLLOWING RANGES:

| <u>FELONY</u> | <u>MITIGATED</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> | <u>AGGRAVATED</u> |
|---------------|------------------|----------------|--------------------|----------------|-------------------|
| 17 CLASS 2 | 4.5 YEARS | 6 YEARS | 9.25 YEARS | 18.5 YEARS | 23.1 YEARS |
| 18 CLASS 3 | 3.3 YEARS | 4.5 YEARS | 6.5 YEARS | 13 YEARS | 16.25 YEARS |
| 19 CLASS 4 | 2.25 YEARS | 3 YEARS | 4.5 YEARS | 6 YEARS | 7.5 YEARS |
| 20 CLASS 5 | 1 YEAR | 1.5 YEARS | 2.25 YEARS | 3 YEARS | 3.75 YEARS |
| 21 CLASS 6 | .75 YEARS | 1 YEAR | 1.75 YEARS | 2.25 YEARS | 2.7 YEARS |

22 I. A CATEGORY THREE REPETITIVE OFFENDER SHALL BE SENTENCED WITHIN THE
23 FOLLOWING RANGES:

| <u>FELONY</u> | <u>MITIGATED</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> | <u>AGGRAVATED</u> |
|---------------|------------------|----------------|--------------------|----------------|-------------------|
| 24 CLASS 2 | 10.5 YEARS | 14 YEARS | 15.75 YEARS | 28 YEARS | 35 YEARS |
| 25 CLASS 3 | 7.5 YEARS | 10 YEARS | 11.25 YEARS | 20 YEARS | 25 YEARS |
| 26 CLASS 4 | 6 YEARS | 8 YEARS | 10 YEARS | 12 YEARS | 15 YEARS |
| 27 CLASS 5 | 3 YEARS | 4 YEARS | 5 YEARS | 6 YEARS | 7.5 YEARS |
| 28 CLASS 6 | 2.25 YEARS | 3 YEARS | 3.75 YEARS | 4.5 YEARS | 5.6 YEARS |

29 J. THE AGGRAVATED OR MITIGATED TERM IMPOSED PURSUANT TO SUBSECTION G,
30 H OR I OF THIS SECTION MAY BE IMPOSED ONLY IF AT LEAST TWO OF THE AGGRAVATING
31 CIRCUMSTANCES ARE FOUND BEYOND A REASONABLE DOUBT TO BE TRUE BY THE TRIER OF
32 FACT OR ARE ADMITTED BY THE DEFENDANT, EXCEPT THAT AN AGGRAVATING
33 CIRCUMSTANCE UNDER SECTION 13-701, SUBSECTION D, PARAGRAPH 11 SHALL BE FOUND
34 TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE
35 BY THE COURT, ON ANY EVIDENCE OR INFORMATION INTRODUCED OR SUBMITTED TO THE
36 COURT OR THE TRIER OF FACT BEFORE SENTENCING OR ANY EVIDENCE PRESENTED AT
37 TRIAL, AND FACTUAL FINDINGS AND REASONS IN SUPPORT OF THESE FINDINGS ARE SET
38 FORTH ON THE RECORD AT THE TIME OF SENTENCING.

39 K. CONVICTIONS FOR TWO OR MORE OFFENSES COMMITTED ON THE SAME OCCASION
40 SHALL BE COUNTED AS ONLY ONE CONVICTION FOR THE PURPOSES OF SUBSECTION B,
41 PARAGRAPH 2 AND SUBSECTION C OF THIS SECTION.
42
43
44

1 L. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE
2 JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE
3 WOULD BE PUNISHABLE AS A FELONY IS SUBJECT TO THIS SECTION. A PERSON WHO HAS
4 BEEN CONVICTED AS AN ADULT OF AN OFFENSE PUNISHABLE AS A FELONY UNDER THE
5 PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO THIS SECTION.

6 M. THE PENALTIES PRESCRIBED BY THIS SECTION SHALL BE SUBSTITUTED FOR
7 THE PENALTIES OTHERWISE AUTHORIZED BY LAW IF AN ALLEGATION OF PRIOR
8 CONVICTION IS CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND
9 BY THE COURT. THE RELEASE PROVISIONS PRESCRIBED BY THIS SECTION SHALL NOT BE
10 SUBSTITUTED FOR ANY PENALTIES REQUIRED BY THE SUBSTANTIVE OFFENSE OR A
11 PROVISION OF LAW THAT SPECIFIES A LATER RELEASE OR COMPLETION OF THE SENTENCE
12 IMPOSED BEFORE RELEASE. THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR
13 CONVICTION AT ANY TIME BEFORE THE DATE THE CASE IS ACTUALLY TRIED UNLESS THE
14 ALLEGATION IS FILED FEWER THAN TWENTY DAYS BEFORE THE CASE IS ACTUALLY TRIED
15 AND THE COURT FINDS ON THE RECORD THAT THE DEFENDANT WAS IN FACT PREJUDICED
16 BY THE UNTIMELY FILING AND STATES THE REASONS FOR THESE FINDINGS. IF THE
17 ALLEGATION OF A PRIOR CONVICTION IS FILED, THE STATE MUST MAKE AVAILABLE TO
18 THE DEFENDANT A COPY OF ANY MATERIAL OR INFORMATION OBTAINED CONCERNING THE
19 PRIOR CONVICTION. THE CHARGE OF PREVIOUS CONVICTION SHALL NOT BE READ TO THE
20 JURY.

21 N. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT ELIGIBLE
22 FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON
23 ANY BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A
24 OR B, UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS
25 ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS
26 COMMUTED.

27 O. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE SENTENCING OCCURS
28 OF ITS INTENT TO IMPOSE AN AGGRAVATED OR MITIGATED SENTENCE PURSUANT TO
29 SUBSECTION H OR I OF THIS SECTION. IF THE COURT FAILS TO INFORM THE PARTIES,
30 A PARTY WAIVES ITS RIGHT TO BE INFORMED UNLESS THE PARTY TIMELY OBJECTS AT
31 THE TIME OF SENTENCING.

32 P. THE COURT IN IMPOSING A SENTENCE SHALL CONSIDER THE EVIDENCE AND
33 OPINIONS PRESENTED BY THE VICTIM OR THE VICTIM'S IMMEDIATE FAMILY AT ANY
34 AGGRAVATION OR MITIGATION PROCEEDING OR IN THE PRESENTENCE REPORT.

35 Q. FOR THE PURPOSES OF THIS SECTION, "SUBSTANTIVE OFFENSE" MEANS THE
36 FELONY OFFENSE THAT THE TRIER OF FACT FOUND BEYOND A REASONABLE DOUBT THE
37 DEFENDANT COMMITTED. SUBSTANTIVE OFFENSE DOES NOT INCLUDE ALLEGATIONS THAT,
38 IF PROVEN, WOULD ENHANCE THE SENTENCE OF IMPRISONMENT OR FINE TO WHICH THE
39 DEFENDANT OTHERWISE WOULD BE SUBJECT.

40 13-704. Dangerous offenders; sentencing

41 A. EXCEPT AS PROVIDED IN SECTION 13-705, A PERSON WHO IS AT LEAST
42 EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO STANDS
43 CONVICTED OF A FELONY THAT IS A DANGEROUS OFFENSE SHALL BE SENTENCED TO A
44 TERM OF IMPRISONMENT AS FOLLOWS:

| | <u>FELONY</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|---|---------------|----------------|--------------------|----------------|
| 1 | | | | |
| 2 | CLASS 2 | 7 YEARS | 10.5 YEARS | 21 YEARS |
| 3 | CLASS 3 | 5 YEARS | 7.5 YEARS | 15 YEARS |
| 4 | CLASS 4 | 4 YEARS | 6 YEARS | 8 YEARS |
| 5 | CLASS 5 | 2 YEARS | 3 YEARS | 4 YEARS |
| 6 | CLASS 6 | 1.5 YEARS | 2.25 YEARS | 3 YEARS |

7 B. EXCEPT AS PROVIDED IN SECTION 13-705, A PERSON WHO IS CONVICTED OF
8 A CLASS 4, 5 OR 6 FELONY THAT IS A DANGEROUS OFFENSE AND WHO HAS ONE
9 HISTORICAL PRIOR FELONY CONVICTION INVOLVING A DANGEROUS OFFENSE SHALL BE
10 SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

| | <u>FELONY</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----|---------------|----------------|--------------------|----------------|
| 11 | | | | |
| 12 | CLASS 4 | 8 YEARS | 10 YEARS | 12 YEARS |
| 13 | CLASS 5 | 4 YEARS | 5 YEARS | 6 YEARS |
| 14 | CLASS 6 | 3 YEARS | 3.75 YEARS | 4 YEARS |

15 C. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION
16 A, A PERSON WHO IS CONVICTED OF A CLASS 4, 5 OR 6 FELONY THAT IS A DANGEROUS
17 OFFENSE AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS INVOLVING
18 DANGEROUS OFFENSES SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

| | <u>FELONY</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----|---------------|----------------|--------------------|----------------|
| 19 | | | | |
| 20 | CLASS 4 | 12 YEARS | 14 YEARS | 16 YEARS |
| 21 | CLASS 5 | 6 YEARS | 7 YEARS | 8 YEARS |
| 22 | CLASS 6 | 4.5 YEARS | 5.25 YEARS | 6 YEARS |

23 D. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION
24 A, A PERSON WHO IS CONVICTED OF A CLASS 2 OR 3 FELONY INVOLVING A DANGEROUS
25 OFFENSE AND WHO HAS ONE HISTORICAL PRIOR FELONY CONVICTION THAT IS A CLASS 1,
26 2 OR 3 FELONY INVOLVING A DANGEROUS OFFENSE SHALL BE SENTENCED TO A TERM OF
27 IMPRISONMENT AS FOLLOWS:

| | <u>FELONY</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----|---------------|----------------|--------------------|----------------|
| 28 | | | | |
| 29 | CLASS 2 | 14 YEARS | 15.75 YEARS | 28 YEARS |
| 30 | CLASS 3 | 10 YEARS | 11.25 YEARS | 20 YEARS |

31 E. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION
32 A, A PERSON WHO IS CONVICTED OF A CLASS 2 OR 3 FELONY INVOLVING A DANGEROUS
33 OFFENSE AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS THAT ARE
34 CLASS 1, 2 OR 3 FELONIES INVOLVING DANGEROUS OFFENSES SHALL BE SENTENCED TO A
35 TERM OF IMPRISONMENT AS FOLLOWS:

| | <u>FELONY</u> | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----|---------------|----------------|--------------------|----------------|
| 36 | | | | |
| 37 | CLASS 2 | 21 YEARS | 28 YEARS | 35 YEARS |
| 38 | CLASS 3 | 15 YEARS | 20 YEARS | 25 YEARS |

39 F. A PERSON WHO IS CONVICTED OF TWO OR MORE FELONY OFFENSES THAT ARE
40 DANGEROUS OFFENSES AND THAT WERE NOT COMMITTED ON THE SAME OCCASION BUT THAT
41 ARE CONSOLIDATED FOR TRIAL PURPOSES OR THAT ARE NOT HISTORICAL PRIOR FELONY
42 CONVICTIONS SHALL BE SENTENCED, FOR THE SECOND OR SUBSEQUENT OFFENSE,
43 PURSUANT TO THIS SUBSECTION. IF THE COURT INCREASES OR DECREASES A SENTENCE
44 PURSUANT TO THIS SUBSECTION, THE COURT SHALL STATE ON THE RECORD THE REASONS
45 FOR THE INCREASE OR DECREASE. THE COURT SHALL INFORM ALL OF THE PARTIES

1 BEFORE THE SENTENCING OCCURS OF ITS INTENT TO INCREASE OR DECREASE A SENTENCE
2 PURSUANT TO THIS SUBSECTION. IF THE COURT FAILS TO INFORM THE PARTIES, A
3 PARTY WAIVES ITS RIGHT TO BE INFORMED UNLESS THE PARTY TIMELY OBJECTS AT THE
4 TIME OF SENTENCING. THE TERMS ARE AS FOLLOWS:

5 1. FOR THE SECOND DANGEROUS OFFENSE:

| | <u>FELONY</u> | <u>MINIMUM</u> | <u>MAXIMUM</u> | <u>INCREASED MAXIMUM</u> |
|----|---------------|----------------|----------------|------------------------------|
| 6 | | | | |
| 7 | | | | |
| 8 | CLASS 2 | 10.5 YEARS | 21 YEARS | 26.25 YEARS |
| 9 | CLASS 3 | 7.5 YEARS | 15 YEARS | 18.75 YEARS |
| 10 | CLASS 4 | 6 YEARS | 8 YEARS | 10 YEARS |
| 11 | CLASS 5 | 3 YEARS | 4 YEARS | 5 YEARS |
| 12 | CLASS 6 | 2.25 YEARS | 3 YEARS | 3.75 YEARS |

13 2. FOR ANY DANGEROUS OFFENSE SUBSEQUENT TO THE SECOND DANGEROUS FELONY
14 OFFENSE:

| | <u>FELONY</u> | <u>MINIMUM</u> | <u>MAXIMUM</u> | <u>INCREASED MAXIMUM</u> |
|----|---------------|----------------|----------------|------------------------------|
| 15 | | | | |
| 16 | | | | |
| 17 | CLASS 2 | 15.75 YEARS | 28 YEARS | 35 YEARS |
| 18 | CLASS 3 | 11.25 YEARS | 20 YEARS | 25 YEARS |
| 19 | CLASS 4 | 10 YEARS | 12 YEARS | 15 YEARS |
| 20 | CLASS 5 | 5 YEARS | 6 YEARS | 7.5 YEARS |
| 21 | CLASS 6 | 3.75 YEARS | 4.5 YEARS | 5.6 YEARS |

22 G. A PERSON WHO IS SENTENCED PURSUANT TO SUBSECTION A, B, C, D, E OR F
23 OF THIS SECTION IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON
24 OR RELEASE FROM CONFINEMENT ON ANY BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED
25 BY SECTION 31-233, SUBSECTION A OR B, UNTIL THE SENTENCE IMPOSED BY THE COURT
26 HAS BEEN SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION
27 41-1604.07 OR THE SENTENCE IS COMMUTED.

28 H. THE PRESUMPTIVE TERM AUTHORIZED BY THIS SECTION MAY BE MITIGATED OR
29 AGGRAVATED PURSUANT TO THE TERMS OF SECTION 13-701, SUBSECTIONS C, D OR E.

30 I. FOR THE PURPOSES OF DETERMINING THE APPLICABILITY OF THE PENALTIES
31 PROVIDED IN SUBSECTION A, B, C, D OR E OF THIS SECTION FOR SECOND OR
32 SUBSEQUENT CLASS 2 OR 3 FELONIES, THE CONVICTION FOR ANY FELONY COMMITTED
33 BEFORE OCTOBER 1, 1978 THAT, IF COMMITTED AFTER OCTOBER 1, 1978, COULD BE A
34 DANGEROUS OFFENSE UNDER SUBSECTION A, B, C, D OR E OF THIS SECTION MAY BE
35 DESIGNATED BY THE STATE AS A PRIOR FELONY.

36 J. CONVICTIONS FOR TWO OR MORE OFFENSES COMMITTED ON THE SAME OCCASION
37 SHALL BE COUNTED AS ONLY ONE CONVICTION FOR THE PURPOSES OF SUBSECTION A, B,
38 C, D OR E OF THIS SECTION.

39 K. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE
40 JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE
41 WOULD BE PUNISHABLE AS A FELONY IS SUBJECT TO SUBSECTION A, B, C, D OR E OF
42 THIS SECTION. A PERSON WHO HAS BEEN CONVICTED OF AN OFFENSE PUNISHABLE AS A
43 FELONY UNDER THE PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO
44 SUBSECTION A, B, C, D OR E OF THIS SECTION.

1 L. THE PENALTIES PRESCRIBED BY THIS SECTION SHALL BE SUBSTITUTED FOR
2 THE PENALTIES OTHERWISE AUTHORIZED BY LAW IF AN ALLEGATION OF PRIOR
3 CONVICTION IS CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND
4 BY THE COURT OR IF AN ALLEGATION OF DANGEROUS OFFENSE IS CHARGED IN THE
5 INDICTMENT OR INFORMATION AND ADMITTED OR FOUND BY THE TRIER OF FACT. THE
6 RELEASE PROVISIONS PRESCRIBED BY THIS SECTION SHALL NOT BE SUBSTITUTED FOR
7 ANY PENALTIES REQUIRED BY THE SUBSTANTIVE OFFENSE OR PROVISION OF LAW THAT
8 SPECIFIES A LATER RELEASE OR COMPLETION OF THE SENTENCE IMPOSED BEFORE
9 RELEASE. THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION OR THE
10 ALLEGATION OF A DANGEROUS OFFENSE AT ANY TIME BEFORE THE DATE THE CASE IS
11 ACTUALLY TRIED UNLESS THE ALLEGATION IS FILED FEWER THAN TWENTY DAYS BEFORE
12 THE CASE IS ACTUALLY TRIED AND THE COURT FINDS ON THE RECORD THAT THE
13 DEFENDANT WAS IN FACT PREJUDICED BY THE UNTIMELY FILING AND STATES THE
14 REASONS FOR THESE FINDINGS. IF THE ALLEGATION OF A PRIOR CONVICTION IS
15 FILED, THE STATE MUST MAKE AVAILABLE TO THE DEFENDANT A COPY OF ANY MATERIAL
16 OR INFORMATION OBTAINED CONCERNING THE PRIOR CONVICTION. THE CHARGE OF PRIOR
17 CONVICTION SHALL NOT BE READ TO THE JURY. FOR THE PURPOSES OF THIS
18 SUBSECTION, "SUBSTANTIVE OFFENSE" MEANS THE FELONY THAT THE TRIER OF FACT
19 FOUND BEYOND A REASONABLE DOUBT THE DEFENDANT COMMITTED. SUBSTANTIVE OFFENSE
20 DOES NOT INCLUDE ALLEGATIONS THAT, IF PROVEN, WOULD ENHANCE THE SENTENCE OF
21 IMPRISONMENT OR FINE TO WHICH THE DEFENDANT OTHERWISE WOULD BE SUBJECT.

22 M. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE THE SENTENCING
23 OCCURS OF ITS INTENT TO INCREASE OR DECREASE A SENTENCE PURSUANT TO THIS
24 SECTION. IF THE COURT FAILS TO INFORM THE PARTIES, A PARTY WAIVES ITS RIGHT
25 TO BE INFORMED UNLESS THE PARTY TIMELY OBJECTS AT THE TIME OF SENTENCING.

26 N. EXCEPT AS PROVIDED IN SECTION 13-705 OR 13-751, IF THE VICTIM IS AN
27 UNBORN CHILD IN THE WOMB AT ANY STAGE OF ITS DEVELOPMENT, THE DEFENDANT SHALL
28 BE SENTENCED PURSUANT TO THIS SECTION.

29 Sec. 29. Section 13-705, Arizona Revised Statutes, as transferred and
30 renumbered by this act, is amended to read:

31 13-705. Dangerous crimes against children: sentences;
32 definitions

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

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

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

| <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----------------|--------------------|----------------|
| 13 YEARS | 20 YEARS | 27 YEARS |

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

| <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----------------|--------------------|----------------|
| 13 YEARS | 20 YEARS | 27 YEARS |

30 THE TERM OF IMPRISONMENT FOR A person WHO has been previously convicted of
 31 one predicate felony ~~the person shall be sentenced to a presumptive term of~~
 32 ~~imprisonment for thirty years.~~ IS AS FOLLOWS:

| <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----------------|--------------------|----------------|
| 23 YEARS | 30 YEARS | 37 YEARS |

35 D. Except as otherwise provided in this section, a person who is at
 36 least eighteen years of age or who has been tried as an adult and who stands
 37 convicted of a dangerous crime against children in the first degree involving
 38 aggravated assault, molestation of a child, commercial sexual exploitation of
 39 a minor, sexual exploitation of a minor, child abuse or kidnapping shall be
 40 sentenced to a ~~presumptive~~ term of imprisonment ~~for seventeen years.~~ ~~If the~~
 41 ~~convicted~~ AS FOLLOWS:

1 the court has been served, the person is eligible for release pursuant to
2 section 41-1604.07 or the sentence is commuted. ~~If the convicted:~~

| <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----------------|--------------------|----------------|
| 2.5 YEARS | 5 YEARS | 7.5 YEARS |

5 THE TERM OF IMPRISONMENT FOR person WHO has been previously convicted of one
6 predicate felony ~~the person shall be sentenced to a presumptive term of~~
7 ~~imprisonment for fifteen years~~ IS AS FOLLOWS and THE PERSON is not eligible
8 for suspension of sentence, probation, pardon or release from confinement on
9 any basis except as specifically authorized by section 31-233, subsection A
10 or B until the sentence imposed by the court has been served, the person is
11 eligible for release pursuant to section 41-1604.07 or the sentence is
12 commuted. ~~:-~~

| <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----------------|--------------------|----------------|
| 8 YEARS | 15 YEARS | 22 YEARS |

15 G. The presumptive sentences prescribed in subsections B, C and D of
16 this section or subsections E and F of this section if the person has
17 previously been convicted of a predicate felony may be increased or decreased
18 ~~by up to seven years~~ pursuant to ~~the provisions of~~ section ~~13-702~~ 13-701,
19 subsections ~~B, C, and D~~ AND E.

20 H. Except as provided in subsection F of this section, a person WHO IS
21 sentenced for a dangerous crime against children in the first degree pursuant
22 to this section is not eligible for suspension of sentence, probation, pardon
23 or release from confinement on any basis except as specifically authorized by
24 section 31-233, subsection A or B until the sentence imposed by the court has
25 been served or commuted.

26 I. A person who ~~stands~~ IS convicted of any dangerous crime against
27 children in the first degree pursuant to subsection C or D of this section
28 and who has been previously convicted of two or more predicate felonies shall
29 be sentenced to life imprisonment and is not eligible for suspension of
30 sentence, probation, pardon or release from confinement on any basis except
31 as specifically authorized by section 31-233, subsection A or B until the
32 person has served not fewer than thirty-five years or the sentence is
33 commuted.

34 J. Notwithstanding chapter 10 of this title, a person who is at least
35 eighteen years of age or who has been tried as an adult and who stands
36 convicted of a dangerous crime against children in the second degree pursuant
37 to subsection C or D of this section is guilty of a class 3 felony and ~~shall~~
38 ~~be sentenced to a presumptive term of imprisonment for ten years. The~~
39 ~~presumptive term may be increased or decreased by up to five years pursuant~~
40 ~~to section 13-702, subsections B, C and D.~~ if the person is sentenced to a
41 term of imprisonment, THE TERM OF IMPRISONMENT IS AS FOLLOWS AND the person
42 is not eligible for release from confinement on any basis except as
43 specifically authorized by section 31-233, subsection A or B until the person
44 has served the sentence imposed by the court, the person is eligible for
45 release pursuant to section 41-1604.07 or the sentence is commuted: ~~:-~~

| <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----------------|--------------------|----------------|
| 5 YEARS | 10 YEARS | 15 YEARS |

3 K. A person who is convicted of any dangerous crime against children
4 in the second degree and who has been previously convicted of one or more
5 predicate felonies is not eligible for suspension of sentence, probation,
6 pardon or release from confinement on any basis except as specifically
7 authorized by section 31-233, subsection A or B until the sentence imposed by
8 the court has been served, the person is eligible for release pursuant to
9 section 41-1604.07 or the sentence is commuted.

10 ~~K.~~ L. Section ~~13-604, subsections M and O~~ 13-704, SUBSECTION J AND
11 SECTION 13-707, SUBSECTION B apply to the determination of prior convictions.

12 ~~L.~~ M. The sentence ~~that is~~ imposed on a person by the court for a
13 dangerous crime against children under subsection D of this section ~~and that~~
14 ~~involves~~ INVOLVING child molestation or sexual abuse pursuant to subsection F
15 of this section may be served concurrently with other sentences if the
16 offense involved only one victim. The sentence imposed on a person for any
17 other dangerous crime against children in the first or second degree shall be
18 consecutive to any other sentence imposed on the person at any time,
19 including child molestation and sexual abuse of the same victim.

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

22 O. A DANGEROUS CRIME AGAINST CHILDREN IS IN THE FIRST DEGREE IF IT IS
23 A COMPLETED OFFENSE AND IS IN THE SECOND DEGREE IF IT IS A PREPARATORY
24 OFFENSE, EXCEPT ATTEMPTED FIRST DEGREE MURDER IS A DANGEROUS CRIME AGAINST
25 CHILDREN IN THE FIRST DEGREE.

26 ~~N.~~ P. For the purposes of this section:

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

29 (a) Second degree murder.

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

33 (c) Sexual assault.

34 (d) Molestation of a child.

35 (e) Sexual conduct with a minor.

36 (f) Commercial sexual exploitation of a minor.

37 (g) Sexual exploitation of a minor.

38 (h) Child abuse as prescribed in section 13-3623, subsection A,
39 paragraph 1.

40 (i) Kidnapping.

41 (j) Sexual abuse.

42 (k) Taking a child for the purpose of prostitution as prescribed in
43 section 13-3206.

44 (l) Child prostitution as prescribed in section 13-3212.

45 (m) Involving or using minors in drug offenses.

- 1 (n) Continuous sexual abuse of a child.
- 2 (o) Attempted first degree murder.
- 3 (p) Sex trafficking.
- 4 (q) Manufacturing methamphetamine under circumstances that cause
- 5 physical injury to a minor.
- 6 (r) Bestiality as prescribed in section 13-1411, subsection A,
- 7 paragraph 2.
- 8 (s) Luring a minor for sexual exploitation.

9 ~~A dangerous crime against children is in the first degree if it is a~~
10 ~~completed offense and is in the second degree if it is a preparatory offense,~~
11 ~~except attempted first degree murder is a dangerous crime against children in~~
12 ~~the first degree.~~

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

19 Sec. 30. Section 13-706, Arizona Revised Statutes, as renumbered by
20 this act, is amended to read:

21 13-706. Serious, violent or aggravated offenders; sentencing;
22 life imprisonment; definition

23 A. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN
24 TRIED AS AN ADULT AND WHO IS CONVICTED OF A SERIOUS OFFENSE, FIRST DEGREE
25 MURDER OR ANY DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705,
26 WHETHER A COMPLETED OR PREPARATORY OFFENSE, AND WHO HAS PREVIOUSLY BEEN
27 CONVICTED OF TWO OR MORE SERIOUS OFFENSES NOT COMMITTED ON THE SAME OCCASION
28 SHALL BE 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 AT LEAST TWENTY-FIVE YEARS OR THE SENTENCE IS COMMUTED.

32 ~~A-~~ B. Unless a longer term of imprisonment or death is the prescribed
33 penalty and notwithstanding any provision that establishes a shorter term of
34 imprisonment, a person who has been convicted of committing or attempting or
35 conspiring to commit any violent or aggravated felony and who has previously
36 been convicted on separate occasions of two or more violent or aggravated
37 felonies not committed on the same occasion shall be sentenced to
38 imprisonment for life and is not eligible for suspension of sentence,
39 probation, pardon or release on any basis except that the person may be
40 eligible for commutation after the person has served at least thirty-five
41 years.

42 ~~B-~~ C. In order for the penalty under subsection ~~A-~~ B of this section
43 to apply, both of the following must occur:

1 1. The aggravated or violent felonies that comprise the prior
2 convictions shall have been entered within fifteen years of the conviction
3 for the third offense, not including time spent in custody or on probation
4 for an offense or while the person is an absconder.

5 2. The sentence for the first aggravated or violent felony conviction
6 shall have been imposed before the conduct occurred that gave rise to the
7 second conviction, and the sentence for the second aggravated or violent
8 felony conviction shall have been imposed before the conduct occurred that
9 gave rise to the third conviction.

10 ~~C.~~ D. Chapter 3 of this title applies to all offenses under this
11 section.

12 ~~D.~~ E. For the purposes of this section, if a person has been
13 convicted of an offense committed in another jurisdiction that if committed
14 in this state would be a violation or attempted violation of any of the
15 offenses listed in this section and that has the same elements of an offense
16 listed in this section, the offense committed in another jurisdiction is
17 considered an offense committed in this state.

18 ~~E.~~ F. For the purposes of this section, ~~;~~:

19 1. "SERIOUS OFFENSE" MEANS ANY OF THE FOLLOWING OFFENSES IF COMMITTED
20 IN THIS STATE OR ANY OFFENSE COMMITTED OUTSIDE THIS STATE THAT IF COMMITTED
21 IN THIS STATE WOULD CONSTITUTE ONE OF THE FOLLOWING OFFENSES:

- 22 (a) FIRST DEGREE MURDER.
- 23 (b) SECOND DEGREE MURDER.
- 24 (c) MANSLAUGHTER.
- 25 (d) AGGRAVATED ASSAULT RESULTING IN SERIOUS PHYSICAL INJURY OR
26 INVOLVING THE DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR
27 DANGEROUS INSTRUMENT.
- 28 (e) SEXUAL ASSAULT.
- 29 (f) ANY DANGEROUS CRIME AGAINST CHILDREN.
- 30 (g) ARSON OF AN OCCUPIED STRUCTURE.
- 31 (h) ARMED ROBBERY.
- 32 (i) BURGLARY IN THE FIRST DEGREE.
- 33 (j) KIDNAPPING.
- 34 (k) SEXUAL CONDUCT WITH A MINOR UNDER FIFTEEN YEARS OF AGE.
- 35 (l) CHILD PROSTITUTION.

36 2. "Violent or aggravated felony" means any of the following offenses:

- 37 ~~1.~~ (a) First degree murder.
- 38 ~~2.~~ (b) Second degree murder.
- 39 ~~3.~~ (c) Aggravated assault resulting in serious physical injury or
40 involving the discharge, use or threatening exhibition of a deadly weapon or
41 dangerous instrument.
- 42 ~~4.~~ (d) Dangerous or deadly assault by prisoner.
- 43 ~~5.~~ (e) Committing assault with intent to incite to riot or
44 participate in riot.
- 45 ~~6.~~ (f) Drive by shooting.

- 1 ~~7.~~ (g) Discharging a firearm at a residential structure if the
- 2 structure is occupied.
- 3 ~~8.~~ (h) Kidnapping.
- 4 ~~9.~~ (i) Sexual conduct with a minor that is a class 2 felony.
- 5 ~~10.~~ (j) Sexual assault.
- 6 ~~11.~~ (k) Molestation of a child.
- 7 ~~12.~~ (l) Continuous sexual abuse of a child.
- 8 ~~13.~~ (m) Violent sexual assault.
- 9 ~~14.~~ (n) Burglary in the first degree committed in a residential
- 10 structure if the structure is occupied.
- 11 ~~15.~~ (o) Arson of an occupied structure.
- 12 ~~16.~~ (p) Arson of an occupied jail or prison facility.
- 13 ~~17.~~ (q) Armed robbery.
- 14 ~~18.~~ (r) Participating in or assisting a criminal syndicate or leading
- 15 or participating in a criminal street gang.
- 16 ~~19.~~ (s) Terrorism.
- 17 ~~20.~~ (t) Taking a child for the purpose of prostitution.
- 18 ~~21.~~ (u) Child prostitution.
- 19 ~~22.~~ (v) Commercial sexual exploitation of a minor.
- 20 ~~23.~~ (w) Sexual exploitation of a minor.
- 21 ~~24.~~ (x) Unlawful introduction of disease or parasite as prescribed by
- 22 section 13-2912, subsection A, paragraph 2 or 3.

23 Sec. 31. Section 13-707, Arizona Revised Statutes, is amended to read:

24 ~~13-707.~~ Misdemeanors; sentencing

25 A. A sentence of imprisonment for a misdemeanor shall be for a

26 definite term to be served other than a place within custody of the state

27 department of corrections. The court shall fix the term of imprisonment

28 within the following maximum limitations:

- 29 1. For a class 1 misdemeanor, six months.
- 30 2. For a class 2 misdemeanor, four months.
- 31 3. For a class 3 misdemeanor, thirty days.

32 B. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN

33 TRIED AS AN ADULT AND WHO STANDS CONVICTED OF ANY MISDEMEANOR OR PETTY

34 OFFENSE, OTHER THAN A TRAFFIC OFFENSE, AND WHO HAS BEEN CONVICTED OF ONE OR

35 MORE OF THE SAME MISDEMEANORS OR PETTY OFFENSES WITHIN TWO YEARS NEXT

36 PRECEDING THE DATE OF THE PRESENT OFFENSE SHALL BE SENTENCED FOR THE NEXT

37 HIGHER CLASS OF OFFENSE THAN THAT FOR WHICH THE PERSON CURRENTLY IS

38 CONVICTED. TIME SPENT INCARCERATED WITHIN THE TWO YEARS NEXT PRECEDING THE

39 DATE OF THE OFFENSE FOR WHICH A PERSON IS CURRENTLY BEING SENTENCED SHALL NOT

40 BE INCLUDED IN THE TWO YEARS REQUIRED TO BE FREE OF CONVICTIONS.

41 C. IF A PERSON IS CONVICTED OF A MISDEMEANOR OFFENSE AND THE OFFENSE

42 REQUIRES ENHANCED PUNISHMENT BECAUSE IT IS A SECOND OR SUBSEQUENT OFFENSE,

43 THE COURT SHALL DETERMINE THE EXISTENCE OF THE PREVIOUS CONVICTION. THE

44 COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION TO BE MADE IN THE SAME

45 MANNER AS THE ALLEGATION PRESCRIBED BY SECTION 28-1387, SUBSECTION A.

1 D. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE
2 JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE
3 WOULD BE PUNISHABLE AS A MISDEMEANOR OR PETTY OFFENSE IS SUBJECT TO THIS
4 SECTION. A PERSON WHO HAS BEEN CONVICTED AS AN ADULT OF AN OFFENSE
5 PUNISHABLE AS A MISDEMEANOR OR PETTY OFFENSE UNDER THE PROVISIONS OF ANY
6 PRIOR CODE IN THIS STATE IS SUBJECT TO THIS SECTION.

7 ~~B.~~ E. The court may, ~~pursuant to this section,~~ direct that ~~the~~ A
8 person WHO IS sentenced PURSUANT TO SUBSECTION A OF THIS SECTION shall not be
9 released on any basis until the sentence imposed by the court has been
10 served.

11 Sec. 32. Section 13-708, Arizona Revised Statutes, as transferred and
12 renumbered by this act, is amended to read:

13 13-708. Offenses committed while released from confinement

14 A. ~~Notwithstanding any law to the contrary,~~ A person WHO IS convicted
15 of ~~any felony~~ A DANGEROUS offense ~~involving the discharge, use or threatening~~
16 ~~exhibition of a deadly weapon or dangerous instrument or the intentional or~~
17 ~~knowing infliction on another of serious physical injury if~~ THAT IS A FELONY
18 AND THAT IS committed while the person is on probation, for a conviction of a
19 felony offense or parole, work furlough, community supervision or any other
20 release or ~~escape~~ HAS ESCAPED from confinement for conviction of a felony
21 offense shall be sentenced to imprisonment for not less than the presumptive
22 sentence authorized under this chapter and is not eligible for suspension or
23 commutation or release on any basis until the sentence imposed is served.

24 B. ~~If the person committed the~~ A PERSON WHO IS CONVICTED OF A
25 DANGEROUS offense THAT IS COMMITTED while THE PERSON IS on release or ~~escape~~
26 HAS ESCAPED from confinement for a conviction of a serious offense as defined
27 in section ~~13-604~~ 13-706, an offense resulting in serious physical injury or
28 an offense involving the use or exhibition of a deadly weapon or dangerous
29 instrument, ~~the person~~ shall be sentenced to the maximum sentence authorized
30 under this chapter and is not eligible for suspension or commutation or
31 release on any basis until the sentence imposed is served. If the court
32 finds that at least two substantial aggravating circumstances listed in
33 section ~~13-702~~ 13-701, subsection ~~C~~ D apply, the court may increase the
34 maximum sentence authorized under this chapter by up to twenty-five per cent.
35 A sentence imposed pursuant to this subsection shall revoke the convicted
36 person's release if the person was on release and shall be consecutive to any
37 other sentence from which the convicted person had been temporarily released
38 or had escaped, unless the sentence from which the convicted person had been
39 paroled or placed on probation was imposed by a jurisdiction other than this
40 state.

41 ~~B.~~ C. ~~Notwithstanding any law to the contrary,~~ A person WHO IS
42 convicted of any felony offense THAT IS not included in subsection A OR B of
43 this section ~~if~~ AND THAT IS committed while the person is on probation for a
44 conviction of a felony offense or parole, work furlough, community
45 supervision or any other release or escape from confinement for conviction of

1 a felony offense shall be sentenced to a term of not less than the
2 presumptive sentence authorized for the offense and the person is not
3 eligible for suspension of sentence, probation, pardon or release from
4 confinement on any basis except as specifically authorized by section 31-233,
5 subsection A or B until the sentence imposed by the court has been served,
6 the person is eligible for release pursuant to section 41-1604.07 or the
7 sentence is commuted. The release provisions prescribed by this section
8 shall not be substituted for any penalties required by the substantive
9 offense or provision of law that specifies a later release or completion of
10 the sentence imposed ~~prior to~~ BEFORE release. A sentence imposed pursuant to
11 this subsection shall revoke the convicted person's release if the person was
12 on release and shall be consecutive to any other sentence from which the
13 convicted person had been temporarily released or had escaped, unless the
14 sentence from which the convicted person had been paroled or placed on
15 probation was imposed by a jurisdiction other than this state. For THE
16 purposes of this subsection, "substantive offense" means the felony,
17 misdemeanor or petty offense that the trier of fact found beyond a reasonable
18 doubt the defendant committed. Substantive offense does not include
19 allegations that, if proven, would enhance the sentence of imprisonment or
20 fine to which the defendant would otherwise be subject.

21 D. A PERSON WHO IS CONVICTED OF COMMITTING ANY FELONY OFFENSE THAT IS
22 COMMITTED WHILE THE PERSON IS RELEASED ON BOND OR ON THE PERSON'S OWN
23 RECOGNIZANCE ON A SEPARATE FELONY OFFENSE OR WHILE THE PERSON IS ESCAPED FROM
24 PRECONVICTION CUSTODY FOR A SEPARATE FELONY OFFENSE SHALL BE SENTENCED TO A
25 TERM OF IMPRISONMENT TWO YEARS LONGER THAN WOULD OTHERWISE BE IMPOSED FOR THE
26 FELONY OFFENSE COMMITTED WHILE ON RELEASE. THE ADDITIONAL SENTENCE IMPOSED
27 UNDER THIS SUBSECTION IS IN ADDITION TO ANY ENHANCED PUNISHMENT THAT MAY BE
28 APPLICABLE UNDER SECTION 13-703, SECTION 13-704, SECTION 13-709.01,
29 SUBSECTION A OR SECTION 13-709.02, SUBSECTION C, THE PERSON IS NOT ELIGIBLE
30 FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON
31 ANY BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A
32 OR B, UNTIL THE TWO YEARS ARE SERVED, THE PERSON IS ELIGIBLE FOR RELEASE
33 PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED. THE PENALTIES
34 PRESCRIBED BY THIS SUBSECTION SHALL BE SUBSTITUTED FOR THE PENALTIES
35 OTHERWISE AUTHORIZED BY LAW IF THE ALLEGATION THAT THE DEFENDANT COMMITTED A
36 FELONY WHILE RELEASED ON BOND OR ON THE DEFENDANT'S OWN RECOGNIZANCE OR WHILE
37 ESCAPED FROM PRECONVICTION CUSTODY IS CHARGED IN THE INDICTMENT OR
38 INFORMATION AND ADMITTED OR FOUND BY THE COURT. THE RELEASE PROVISIONS
39 PRESCRIBED BY THIS SUBSECTION SHALL NOT BE SUBSTITUTED FOR ANY PENALTIES
40 REQUIRED BY THE SUBSTANTIVE OFFENSE OR PROVISION OF LAW THAT SPECIFIES A
41 LATER RELEASE OR COMPLETION OF THE SENTENCE IMPOSED BEFORE RELEASE. THE
42 COURT SHALL ALLOW THE ALLEGATION THAT THE PERSON COMMITTED A FELONY WHILE
43 RELEASED ON BOND OR ON THE PERSON'S OWN RECOGNIZANCE ON A SEPARATE FELONY
44 OFFENSE OR WHILE ESCAPED FROM PRECONVICTION CUSTODY ON A SEPARATE FELONY
45 OFFENSE AT ANY TIME BEFORE THE CASE IS ACTUALLY TRIED UNLESS THE ALLEGATION

1 IS FILED FEWER THAN TWENTY DAYS BEFORE THE CASE IS ACTUALLY TRIED AND THE
2 COURT FINDS ON THE RECORD THAT THE PERSON WAS IN FACT PREJUDICED BY THE
3 UNTIMELY FILING AND STATES THE REASONS FOR THESE FINDINGS. THE ALLEGATION
4 THAT THE PERSON COMMITTED A FELONY WHILE RELEASED ON BOND OR ON THE PERSON'S
5 OWN RECOGNIZANCE OR WHILE ESCAPED FROM PRECONVICTION CUSTODY SHALL NOT BE
6 READ TO THE JURY.

7 Sec. 33. Section 13-709, Arizona Revised Statutes, as transferred and
8 renumbered by this act, is amended to read:

9 13-709. Offenses committed in school safety zone; sentences;
10 definitions

11 A. Except as otherwise prescribed in section 13-3411, a person who is
12 convicted of a felony offense that is committed in a school safety zone is
13 guilty of the same class of felony that the person would otherwise be guilty
14 of if the violation had not occurred within a school safety zone, except that
15 the court may impose a sentence that is one year longer than the minimum,
16 maximum and presumptive sentence for that violation if the person is not a
17 criminal street gang member or up to five years longer than the minimum,
18 maximum and presumptive sentence for that violation if the person is a
19 criminal street gang member. The additional sentence imposed under this
20 subsection is in addition to any other enhanced punishment that may be
21 applicable under section ~~13-604~~ 13-703, SECTION 13-704, SECTION 13-706,
22 SECTION 13-708, SUBSECTION D or chapter 34 of this title.

23 B. In addition to any other penalty prescribed by this title, the
24 court may order a person who is subject to ~~the provisions of~~ subsection A of
25 this section to pay a fine of not less than two thousand dollars and not more
26 than the maximum authorized by chapter 8 of this title.

27 C. Each school district governing board or its designee, or chief
28 administrative officer in the case of a nonpublic or charter school, may
29 place and maintain permanently affixed signs that are located in a visible
30 manner at the main entrance of each school and that identify the school and
31 its accompanying grounds as a school safety zone. A school may include
32 information regarding the school safety zone boundaries on a sign that
33 identifies the area as a drug free zone and not post separate school safety
34 zone signs.

35 D. For the purposes of this section:

36 1. "School" means any public or nonpublic kindergarten program, common
37 school or high school.

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

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

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

43 (c) Any school bus.

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

1 (e) A school bus stop.

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

4 Sec. 34. Title 13, chapter 7, Arizona Revised Statutes, is amended by
5 adding sections 13-709.01, 13-709.02, 13-709.03 and 13-709.04, to read:

6 13-709.01. Special sentencing provisions: assault

7 A. A PERSON WHO IS CONVICTED OF INTENTIONALLY OR KNOWINGLY COMMITTING
8 AGGRAVATED ASSAULT ON A PEACE OFFICER WHILE THE OFFICER IS ENGAGED IN THE
9 EXECUTION OF ANY OFFICIAL DUTIES PURSUANT TO SECTION 13-1204, SUBSECTION A,
10 PARAGRAPH 1 OR 2 SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN THE
11 PRESUMPTIVE SENTENCE AUTHORIZED UNDER THIS CHAPTER AND IS NOT ELIGIBLE FOR
12 SUSPENSION OF SENTENCE, COMMUTATION OR RELEASE ON ANY BASIS UNTIL THE
13 SENTENCE IMPOSED IS SERVED.

14 B. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-1207 SHALL
15 NOT BE ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM
16 CONFINEMENT ON ANY BASIS UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN
17 SERVED OR COMMUTED. A SENTENCE IMPOSED PURSUANT TO SECTION 13-1207 SHALL BE
18 CONSECUTIVE TO ANY OTHER SENTENCE PRESENTLY BEING SERVED BY THE CONVICTED
19 PERSON.

20 C. THE SENTENCE IMPOSED FOR A VIOLATION OF SECTION 13-1212 SHALL RUN
21 CONSECUTIVELY TO ANY SENTENCE OF IMPRISONMENT FOR WHICH THE PRISONER WAS
22 CONFINED OR TO ANY TERM OF COMMUNITY SUPERVISION, PROBATION, PAROLE, WORK
23 FURLOUGH OR OTHER RELEASE FROM CONFINEMENT.

24 13-709.02. Special sentencing provisions: organized crime;
25 fraud; terrorism

26 A. IF A PERSON IS CONVICTED OF A VIOLATION OF SECTION 13-2308.01 AND
27 THE COURT FINDS AT LEAST ONE AGGRAVATING CIRCUMSTANCE LISTED IN SECTION
28 13-701, SUBSECTION D, THE COURT MAY IMPOSE A LIFE SENTENCE. IF THE COURT
29 IMPOSES A LIFE SENTENCE, THE COURT MAY ORDER THAT THE DEFENDANT NOT BE
30 RELEASED ON ANY BASIS FOR THE REMAINDER OF THE DEFENDANT'S NATURAL LIFE. IF
31 THE COURT DOES NOT SENTENCE THE DEFENDANT TO NATURAL LIFE, THE DEFENDANT
32 SHALL NOT BE RELEASED ON ANY BASIS UNTIL THE PERSON HAS SERVED TWENTY-FIVE
33 CALENDAR YEARS.

34 B. A PERSON WHO IS CONVICTED OF A KNOWING VIOLATION OF SECTION
35 13-2312, SUBSECTION C IS NOT ELIGIBLE FOR PROBATION, PARDON, SUSPENSION OF
36 SENTENCE OR RELEASE ON ANY BASIS UNTIL THE PERSON HAS SERVED THE SENTENCE
37 IMPOSED BY THE COURT OR THE SENTENCE IS COMMUTED.

38 C. A PERSON WHO IS CONVICTED OF COMMITTING ANY FELONY OFFENSE WITH THE
39 INTENT TO PROMOTE, FURTHER OR ASSIST ANY CRIMINAL CONDUCT BY A CRIMINAL
40 STREET GANG SHALL NOT BE ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION,
41 PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS AUTHORIZED BY
42 SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS
43 BEEN SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION
44 41-1604.07 OR THE SENTENCE IS COMMUTED. THE PRESUMPTIVE, MINIMUM AND MAXIMUM
45 SENTENCE FOR THE OFFENSE SHALL BE INCREASED BY THREE YEARS IF THE OFFENSE IS

1 A CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE
2 IS A CLASS 2 OR 3 FELONY. THE ADDITIONAL SENTENCE IMPOSED PURSUANT TO THIS
3 SUBSECTION IS IN ADDITION TO ANY ENHANCED SENTENCE THAT MAY BE APPLICABLE.

4 13-709.03. Special sentencing provisions: drug offenses

5 A. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-3407,
6 SUBSECTION A, PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE SHALL BE
7 SENTENCED AS FOLLOWS:

| <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----------------|--------------------|----------------|
| 5 YEARS | 10 YEARS | 15 YEARS |

10 B. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-3407,
11 SUBSECTION A, PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE AND WHO HAS
12 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SECTION 13-3407, SUBSECTION A,
13 PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE OR SECTION 13-3407.01 SHALL
14 BE SENTENCED AS FOLLOWS:

| <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
|----------------|--------------------|----------------|
| 10 YEARS | 15 YEARS | 20 YEARS |

17 C. THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCE FOR A VIOLATION OF
18 SECTION 13-3411, SUBSECTION A SHALL BE INCREASED BY ONE YEAR. A PERSON IS
19 NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM
20 CONFINEMENT ON ANY BASIS EXCEPT PURSUANT TO SECTION 31-233, SUBSECTION A OR B
21 UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED. THE
22 ADDITIONAL SENTENCE IMPOSED UNDER SECTION 13-3411, SUBSECTION B IS IN
23 ADDITION TO ANY ENHANCED PUNISHMENT THAT MAY BE APPLICABLE UNDER SECTION
24 13-703, SECTION 13-704, SECTION 13-708, SUBSECTION D OR ANY PROVISION OF
25 CHAPTER 34 OF THIS TITLE.

26 D. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTIONS A AND B OF
27 THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,
28 SUBSECTIONS D AND E.

29 13-709.04. Special sentencing provision: family offenses

30 A. IF A PERSON IS CONVICTED OF AN OFFENSE INVOLVING DOMESTIC VIOLENCE
31 AND THE VICTIM WAS PREGNANT AT THE TIME OF THE COMMISSION OF THE OFFENSE, AT
32 THE TIME OF SENTENCING THE COURT SHALL TAKE INTO CONSIDERATION THE FACT THAT
33 THE VICTIM WAS PREGNANT AND MAY INCREASE THE SENTENCE.

34 B. THE MAXIMUM SENTENCE OTHERWISE AUTHORIZED FOR A VIOLATION OF
35 SECTION 13-3601, SUBSECTION A SHALL BE INCREASED BY UP TO TWO YEARS IF THE
36 DEFENDANT COMMITTED A FELONY OFFENSE AGAINST A PREGNANT VICTIM AND KNEW THAT
37 THE VICTIM WAS PREGNANT OR IF THE DEFENDANT COMMITTED A FELONY OFFENSE
38 CAUSING PHYSICAL INJURY TO A PREGNANT VICTIM AND KNEW THAT THE VICTIM WAS
39 PREGNANT.

40 Sec. 35. Section 13-710, Arizona Revised Statutes, is amended to read:

41 13-710. Sentence for second degree murder

42 A. Except as provided in section ~~13-604, subsection S or section~~
43 ~~13-604.01~~ 13-705 OR SECTION 13-706, SUBSECTION A, a person who ~~stands~~ IS
44 convicted of second degree murder as defined by section 13-1104 shall be
45 sentenced ~~to a presumptive term of sixteen calendar years. The presumptive~~

1 ~~term imposed pursuant to this subsection may be mitigated or aggravated by up~~
2 ~~to six years pursuant to the terms of section 13-702, subsections C and D.~~
3 AS FOLLOWS:

| | | | |
|---|----------------|--------------------|----------------|
| 4 | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
| 5 | 10 YEARS | 16 YEARS | 22 YEARS |

6 B. Except as provided in section ~~13-604, subsection S or section~~
7 ~~13-604.01~~ 13-704 OR SECTION 13-706, SUBSECTION A, a person who ~~stands IS~~
8 convicted of second degree murder as defined by section 13-1104 and who has
9 previously been convicted of second degree murder or a class 2 or 3 felony
10 involving the use or exhibition of a deadly weapon or dangerous instrument or
11 the intentional or knowing infliction of serious physical injury on another
12 shall be sentenced ~~to a presumptive term of twenty calendar years. The~~
13 ~~presumptive term imposed pursuant to this subsection may be mitigated or~~
14 ~~aggravated by up to five years pursuant to the terms of section 13-702,~~
15 ~~subsection C and D.~~ AS FOLLOWS:

| | | | |
|----|----------------|--------------------|----------------|
| 16 | <u>MINIMUM</u> | <u>PRESUMPTIVE</u> | <u>MAXIMUM</u> |
| 17 | 15 YEARS | 20 YEARS | 25 YEARS |

18 C. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTIONS A AND B OF
19 THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,
20 SUBSECTIONS D AND E.

21 Sec. 36. Repeal

22 Sections 13-711 and 13-712, Arizona Revised Statutes, are repealed.

23 Sec. 37. Title 13, Arizona Revised Statutes, is amended by adding
24 chapter 7.1, to read:

25 CHAPTER 7.1
26 CAPITAL SENTENCING

27 Sec. 38. Section 13-751, Arizona Revised Statutes, as transferred and
28 renumbered by this act, is amended to read:

29 13-751. Sentence of death or life imprisonment; aggravating and
30 mitigating circumstances; definition

31 A. If the state has filed a notice of intent to seek the death penalty
32 and the defendant is convicted of first degree murder as defined in section
33 13-1105, the defendant shall be sentenced to death or imprisonment in the
34 custody of the state department of corrections for life or natural life as
35 determined and in accordance with the procedures provided in section
36 ~~13-703.01~~ 13-752. A defendant who is sentenced to natural life is not
37 eligible for commutation, parole, work furlough, work release or release from
38 confinement on any basis. If the defendant is sentenced to life, the
39 defendant shall not be released on any basis until the completion of the
40 service of twenty-five calendar years if the murdered person was fifteen or
41 more years of age and thirty-five years if the murdered person was under
42 fifteen years of age or was an unborn child. In this section, for purposes
43 of punishment an unborn child shall be treated like a minor who is under
44 twelve years of age.

1 B. At the aggravation phase of the sentencing proceeding that is held
2 pursuant to section ~~13-703.01~~ 13-752, the admissibility of information
3 relevant to any of the aggravating circumstances set forth in subsection F of
4 this section shall be governed by the rules of evidence applicable to
5 criminal trials. The burden of establishing the existence of any of the
6 aggravating circumstances set forth in subsection F of this section is on the
7 prosecution. The prosecution must prove the existence of the aggravating
8 circumstances beyond a reasonable doubt.

9 C. At the penalty phase of the sentencing proceeding that is held
10 pursuant to section ~~13-703.01~~ 13-752, the prosecution or the defendant may
11 present any information that is relevant to any of the mitigating
12 circumstances included in subsection G of this section, regardless of its
13 admissibility under the rules governing admission of evidence at criminal
14 trials. The burden of establishing the existence of the mitigating
15 circumstances included in subsection G of this section is on the defendant.
16 The defendant must prove the existence of the mitigating circumstances by a
17 preponderance of the evidence. If the trier of fact is a jury, the jurors do
18 not have to agree unanimously that a mitigating circumstance has been proven
19 to exist. Each juror may consider any mitigating circumstance found by that
20 juror in determining the appropriate penalty.

21 D. Evidence that is admitted at the trial and that relates to any
22 aggravating or mitigating circumstances shall be deemed admitted as evidence
23 at a sentencing proceeding if the trier of fact considering that evidence is
24 the same trier of fact that determined the defendant's guilt. The
25 prosecution and the defendant shall be permitted to rebut any information
26 received at the aggravation or penalty phase of the sentencing proceeding and
27 shall be given fair opportunity to present argument as to whether the
28 information is sufficient to establish the existence of any of the
29 circumstances included in subsections F and G of this section.

30 E. In determining whether to impose a sentence of death or life
31 imprisonment, the trier of fact shall take into account the aggravating and
32 mitigating circumstances that have been proven. The trier of fact shall
33 impose a sentence of death if the trier of fact finds one or more of the
34 aggravating circumstances enumerated in subsection F of this section and then
35 determines that there are no mitigating circumstances sufficiently
36 substantial to call for leniency.

37 F. The trier of fact shall consider the following aggravating
38 circumstances in determining whether to impose a sentence of death:

39 1. The defendant has been convicted of another offense in the United
40 States for which under Arizona law a sentence of life imprisonment or death
41 was imposable.

42 2. The defendant has been or was previously convicted of a serious
43 offense, whether preparatory or completed. Convictions for serious offenses
44 committed on the same occasion as the homicide, or not committed on the same

1 occasion but consolidated for trial with the homicide, shall be treated as a
2 serious offense under this paragraph.

3 3. In the commission of the offense the defendant knowingly created a
4 grave risk of death to another person or persons in addition to the person
5 murdered during the commission of the offense.

6 4. The defendant procured the commission of the offense by payment, or
7 promise of payment, of anything of pecuniary value.

8 5. The defendant committed the offense as consideration for the
9 receipt, or in expectation of the receipt, of anything of pecuniary value.

10 6. The defendant committed the offense in an especially heinous, cruel
11 or depraved manner.

12 7. The defendant committed the offense while:

13 (a) In the custody of or on authorized or unauthorized release from
14 the state department of corrections, a law enforcement agency or a county or
15 city jail.

16 (b) On probation for a felony offense.

17 8. The defendant has been convicted of one or more other homicides, as
18 defined in section 13-1101, that were committed during the commission of the
19 offense.

20 9. The defendant was an adult at the time the offense was committed or
21 was tried as an adult and the murdered person was under fifteen years of age,
22 was an unborn child in the womb at any stage of its development or was
23 seventy years of age or older.

24 10. The murdered person was an on duty peace officer who was killed in
25 the course of performing the officer's official duties and the defendant
26 knew, or should have known, that the murdered person was a peace officer.

27 11. The defendant committed the offense with the intent to promote,
28 further or assist the objectives of a criminal street gang or criminal
29 syndicate or to join a criminal street gang or criminal syndicate.

30 12. The defendant committed the offense to prevent a person's
31 cooperation with an official law enforcement investigation, to prevent a
32 person's testimony in a court proceeding, in retaliation for a person's
33 cooperation with an official law enforcement investigation or in retaliation
34 for a person's testimony in a court proceeding.

35 13. The offense was committed in a cold, calculated manner without
36 pretense of moral or legal justification.

37 14. The defendant used a remote stun gun or an authorized remote stun
38 gun in the commission of the offense. For the purposes of this paragraph:

39 (a) "Authorized remote stun gun" means a remote stun gun that has all
40 of the following:

41 (i) An electrical discharge that is less than one hundred thousand
42 volts and less than nine joules of energy per pulse.

43 (ii) A serial or identification number on all projectiles that are
44 discharged from the remote stun gun.

1 (iii) An identification and tracking system that, on deployment of
2 remote electrodes, disperses coded material that is traceable to the
3 purchaser through records that are kept by the manufacturer on all remote
4 stun guns and all individual cartridges sold.

5 (iv) A training program that is offered by the manufacturer.

6 (b) "Remote stun gun" means an electronic device that emits an
7 electrical charge and that is designed and primarily employed to incapacitate
8 a person or animal either through contact with electrodes on the device
9 itself or remotely through wired probes that are attached to the device or
10 through a spark, plasma, ionization or other conductive means emitting from
11 the device.

12 G. The trier of fact shall consider as mitigating circumstances any
13 factors proffered by the defendant or the state that are relevant in
14 determining whether to impose a sentence less than death, including any
15 aspect of the defendant's character, propensities or record and any of the
16 circumstances of the offense, including but not limited to the following:

17 1. The defendant's capacity to appreciate the wrongfulness of his
18 conduct or to conform his conduct to the requirements of law was
19 significantly impaired, but not so impaired as to constitute a defense to
20 prosecution.

21 2. The defendant was under unusual and substantial duress, although
22 not such as to constitute a defense to prosecution.

23 3. The defendant was legally accountable for the conduct of another
24 under ~~the provisions of~~ section 13-303, but his participation was relatively
25 minor, although not so minor as to constitute a defense to prosecution.

26 4. The defendant could not reasonably have foreseen that his conduct
27 in the course of the commission of the offense for which the defendant was
28 convicted would cause, or would create a grave risk of causing, death to
29 another person.

30 5. The defendant's age.

31 H. For purposes of determining whether a conviction of any dangerous
32 crime against children is a serious offense pursuant to this section, an
33 unborn child shall be treated like a minor who is under twelve years of age.

34 I. For the purposes of this section, "serious offense" means any of
35 the following offenses if committed in this state or any offense committed
36 outside this state that if committed in this state would constitute one of
37 the following offenses:

38 1. First degree murder.

39 2. Second degree murder.

40 3. Manslaughter.

41 4. Aggravated assault resulting in serious physical injury or
42 committed by the use, threatened use or exhibition of a deadly weapon or
43 dangerous instrument.

44 5. Sexual assault.

45 6. Any dangerous crime against children.

- 1 7. Arson of an occupied structure.
- 2 8. Robbery.
- 3 9. Burglary in the first degree.
- 4 10. Kidnapping.
- 5 11. Sexual conduct with a minor under fifteen years of age.
- 6 12. Burglary in the second degree.
- 7 13. Terrorism.

8 Sec. 39. Section 13-752, Arizona Revised Statutes, as amended by Laws
9 2005, chapter 325, section 3 and as transferred and renumbered by this act,
10 is amended to read:

11 13-752. Sentences of death, life imprisonment or natural life;
12 imposition; sentencing proceedings; definitions

13 A. If the state has filed a notice of intent to seek the death penalty
14 and the defendant is convicted of first degree murder, the trier of fact at
15 the sentencing proceeding shall determine whether to impose a sentence of
16 death in accordance with the procedures provided in this section. If the
17 trier of fact determines that a sentence of death is not appropriate, or if
18 the state has not filed a notice of intent to seek the death penalty, and the
19 defendant is convicted of first degree murder, the court shall determine
20 whether to impose a sentence of life or natural life.

21 B. Before trial, the prosecution shall notice one or more of the
22 aggravating circumstances under section ~~13-703~~ 13-751, subsection F.

23 C. If the trier of fact finds the defendant guilty of first degree
24 murder, the trier of fact shall then immediately determine whether one or
25 more alleged aggravating circumstances have been proven. This proceeding is
26 the aggravation phase of the sentencing proceeding.

27 D. If the trier of fact finds that one or more of the alleged
28 aggravating circumstances have been proven, the trier of fact shall then
29 immediately determine whether the death penalty should be imposed. This
30 proceeding is the penalty phase of the sentencing proceeding.

31 E. At the aggravation phase, the trier of fact shall make a special
32 finding on whether each alleged aggravating circumstance has been proven
33 based on the evidence that was presented at the trial or at the aggravation
34 phase. If the trier of fact is a jury, a unanimous verdict is required to
35 find that the aggravating circumstance has been proven. If the trier of fact
36 unanimously finds that an aggravating circumstance has not been proven, the
37 defendant is entitled to a special finding that the aggravating circumstance
38 has not been proven. If the trier of fact unanimously finds no aggravating
39 circumstances, the court shall then determine whether to impose a sentence of
40 life or natural life on the defendant.

41 F. The penalty phase shall be held immediately after the trier of fact
42 finds at the aggravation phase that one or more of the aggravating
43 circumstances under section ~~13-703~~ 13-751, subsection F have been proven. A
44 finding by the trier of fact that any of the remaining aggravating
45 circumstances alleged has not been proven or the inability of the trier of

1 fact to agree on the issue of whether any of the remaining aggravating
2 circumstances alleged has been proven shall not prevent the holding of the
3 penalty phase.

4 G. At the penalty phase, the defendant and the state may present any
5 evidence that is relevant to the determination of whether there is mitigation
6 that is sufficiently substantial to call for leniency. In order for the
7 trier of fact to make this determination, the state may present any evidence
8 that demonstrates that the defendant should not be shown leniency.

9 H. The trier of fact shall determine unanimously whether death is the
10 appropriate sentence. If the trier of fact is a jury and the jury
11 unanimously determines that the death penalty is not appropriate, the court
12 shall determine whether to impose a sentence of life or natural life.

13 I. If the trier of fact at any prior phase of the trial is the same
14 trier of fact at the subsequent phase, any evidence that was presented at any
15 prior phase of the trial shall be deemed admitted as evidence at any
16 subsequent phase of the trial.

17 J. At the aggravation phase, if the trier of fact is a jury, the jury
18 is unable to reach a verdict on any of the alleged aggravating circumstances
19 and the jury has not found that at least one of the alleged aggravating
20 circumstances has been proven, the court shall dismiss the jury and shall
21 impanel a new jury. The new jury shall not retry the issue of the
22 defendant's guilt or the issue regarding any of the aggravating circumstances
23 that the first jury found not proved by unanimous verdict. If the new jury
24 is unable to reach a unanimous verdict, the court shall impose a sentence of
25 life or natural life on the defendant.

26 K. At the penalty phase, if the trier of fact is a jury and the jury
27 is unable to reach a verdict, the court shall dismiss the jury and shall
28 impanel a new jury. The new jury shall not retry the issue of the
29 defendant's guilt or the issue regarding any of the aggravating circumstances
30 that the first jury found by unanimous verdict to be proved or not proved.
31 If the new jury is unable to reach a unanimous verdict, the court shall
32 impose a sentence of life or natural life on the defendant.

33 L. If the jury that rendered a verdict of guilty is not the jury first
34 impaneled for the aggravation phase, the jury impaneled in the aggravation
35 phase shall not retry the issue of the defendant's guilt. If the jury
36 impaneled in the aggravation phase is unable to reach a verdict on any of the
37 alleged aggravating circumstances and the jury has not found that at least
38 one of the alleged aggravating circumstances has been proven, the court shall
39 dismiss the jury and shall impanel a new jury. The new jury shall not retry
40 the issue of the defendant's guilt or the issue regarding any of the
41 aggravating circumstances that the first jury found not proved by unanimous
42 verdict. If the new jury is unable to reach a unanimous verdict, the court
43 shall impose a sentence of life or natural life on the defendant.

1 M. Alternate jurors who are impaneled for the trial in a case in which
2 the offense is punishable by death shall not be excused from the case until
3 the completion of the sentencing proceeding.

4 N. If the sentence of a person who was sentenced to death is
5 overturned, the person shall be resentenced pursuant to this section by a
6 jury that is specifically impaneled for this purpose as if the original
7 sentencing had not occurred.

8 O. In any case that requires sentencing or resentencing in which the
9 defendant has been convicted of an offense that is punishable by death and in
10 which the trier of fact was a judge or a jury that has since been discharged,
11 the defendant shall be sentenced or resentenced pursuant to this section by a
12 jury that is specifically impaneled for this purpose.

13 P. The trier of fact shall make all factual determinations required by
14 this section or the Constitution of the United States or this state to impose
15 a death sentence. If the defendant bears the burden of proof, the issue
16 shall be determined in the penalty phase. If the state bears the burden of
17 proof, the issue shall be determined in the aggravation phase.

18 Q. If the death penalty was not alleged or was alleged but not
19 imposed, the court shall determine whether to impose a sentence of life or
20 natural life. In determining whether to impose a sentence of life or natural
21 life, the court:

22 1. May consider any evidence introduced before sentencing or at any
23 other sentencing proceeding.

24 2. Shall consider the aggravating and mitigating circumstances listed
25 in section ~~13-702~~ 13-701 and any statement made by a victim.

26 R. Subject to ~~the provisions of~~ section ~~13-703~~ 13-751, subsection B, a
27 victim has the right to be present at the aggravation phase and to present
28 any information that is relevant to the proceeding. A victim has the right
29 to be present and to present information at the penalty phase. At the
30 penalty phase, the victim may present information about the murdered person
31 and the impact of the murder on the victim and other family members and may
32 submit a victim impact statement in any format to the trier of fact.

33 S. For the purposes of this section:

34 1. "Trier of fact" means a jury unless the defendant and the state
35 waive a jury, in which case the trier of fact shall be the court.

36 2. "Victim" means the murdered person's spouse, parent, child,
37 grandparent or sibling, any other person related to the murdered person by
38 consanguinity or affinity to the second degree or any other lawful
39 representative of the murdered person, except if the spouse, parent, child,
40 grandparent, sibling, other person related to the murdered person by
41 consanguinity or affinity to the second degree or other lawful representative
42 is in custody for an offense or is the accused.

1 Sec. 40. Section 13-752, Arizona Revised Statutes, as amended by Laws
2 2005, chapter 325, section 4 and as transferred and renumbered by this act,
3 is amended to read:

4 13-752. Sentences of death, life imprisonment or natural life;
5 imposition; sentencing proceedings; definitions

6 A. If the state has filed a notice of intent to seek the death penalty
7 and the defendant is convicted of first degree murder, the trier of fact at
8 the sentencing proceeding shall determine whether to impose a sentence of
9 death in accordance with the procedures provided in this section. If the
10 trier of fact determines that a sentence of death is not appropriate, or if
11 the state has not filed a notice of intent to seek the death penalty, and the
12 defendant is convicted of first degree murder, the court shall determine
13 whether to impose a sentence of life or natural life.

14 B. Before trial, the prosecution shall notice one or more of the
15 aggravating circumstances under section ~~13-703~~ 13-751, subsection F.

16 C. If the trier of fact finds the defendant guilty of first degree
17 murder, the trier of fact shall then immediately determine whether one or
18 more alleged aggravating circumstances have been proven. This proceeding is
19 the aggravation phase of the sentencing proceeding.

20 D. If the trier of fact finds that one or more of the alleged
21 aggravating circumstances have been proven, the trier of fact shall then
22 immediately determine whether the death penalty should be imposed. This
23 proceeding is the penalty phase of the sentencing proceeding.

24 E. At the aggravation phase, the trier of fact shall make a special
25 finding on whether each alleged aggravating circumstance has been proven
26 based on the evidence that was presented at the trial or at the aggravation
27 phase. If the trier of fact is a jury, a unanimous verdict is required to
28 find that the aggravating circumstance has been proven. If the trier of fact
29 unanimously finds that an aggravating circumstance has not been proven, the
30 defendant is entitled to a special finding that the aggravating circumstance
31 has not been proven. If the trier of fact unanimously finds no aggravating
32 circumstances, the court shall then determine whether to impose a sentence of
33 life or natural life on the defendant.

34 F. The penalty phase shall be held immediately after the trier of fact
35 finds at the aggravation phase that one or more of the aggravating
36 circumstances under section ~~13-703~~ 13-751, subsection F have been proven. A
37 finding by the trier of fact that any of the remaining aggravating
38 circumstances alleged has not been proven or the inability of the trier of
39 fact to agree on the issue of whether any of the remaining aggravating
40 circumstances alleged has been proven shall not prevent the holding of the
41 penalty phase.

42 G. At the penalty phase, the defendant and the state may present any
43 evidence that is relevant to the determination of whether there is mitigation
44 that is sufficiently substantial to call for leniency. In order for the

1 trier of fact to make this determination, the state may present any evidence
2 that demonstrates that the defendant should not be shown leniency.

3 H. The trier of fact shall determine unanimously whether death is the
4 appropriate sentence. If the trier of fact is a jury and the jury
5 unanimously determines that the death penalty is not appropriate, the court
6 shall determine whether to impose a sentence of life or natural life.

7 I. If the trier of fact at any prior phase of the trial is the same
8 trier of fact at the subsequent phase, any evidence that was presented at any
9 prior phase of the trial shall be deemed admitted as evidence at any
10 subsequent phase of the trial.

11 J. At the aggravation phase, if the trier of fact is a jury, the jury
12 is unable to reach a verdict on any of the alleged aggravating circumstances
13 and the jury has not found that at least one of the alleged aggravating
14 circumstances has been proven, the court shall dismiss the jury and shall
15 impanel a new jury. The new jury shall not retry the issue of the
16 defendant's guilt or the issue regarding any of the aggravating circumstances
17 that the first jury found not proved by unanimous verdict. If the new jury
18 is unable to reach a unanimous verdict, the court shall impose a sentence of
19 life or natural life on the defendant.

20 K. At the penalty phase, if the trier of fact is a jury and the jury
21 is unable to reach a verdict, the court shall dismiss the jury and shall
22 impanel a new jury. The new jury shall not retry the issue of the
23 defendant's guilt or the issue regarding any of the aggravating circumstances
24 that the first jury found by unanimous verdict to be proved or not proved.
25 If the new jury is unable to reach a unanimous verdict, the court shall
26 impose a sentence of life or natural life on the defendant.

27 L. If the jury that rendered a verdict of guilty is not the jury first
28 impaneled for the aggravation phase, the jury impaneled in the aggravation
29 phase shall not retry the issue of the defendant's guilt. If the jury
30 impaneled in the aggravation phase is unable to reach a verdict on any of the
31 alleged aggravating circumstances and the jury has not found that at least
32 one of the alleged aggravating circumstances has been proven, the court shall
33 dismiss the jury and shall impanel a new jury. The new jury shall not retry
34 the issue of the defendant's guilt or the issue regarding any of the
35 aggravating circumstances that the first jury found not proved by unanimous
36 verdict. If the new jury is unable to reach a unanimous verdict, the court
37 shall impose a sentence of life or natural life on the defendant.

38 M. Alternate jurors who are impaneled for the trial in a case in which
39 the offense is punishable by death shall not be excused from the case until
40 the completion of the sentencing proceeding.

41 N. If the sentence of a person who was sentenced to death is
42 overturned, the person shall be resentenced pursuant to this section by a
43 jury that is specifically impaneled for this purpose as if the original
44 sentencing had not occurred.

1 O. In any case that requires sentencing or resentencing in which the
2 defendant has been convicted of an offense that is punishable by death and in
3 which the trier of fact was a judge or a jury that has since been discharged,
4 the defendant shall be sentenced or resentenced pursuant to this section by a
5 jury that is specifically impaneled for this purpose.

6 P. The trier of fact shall make all factual determinations required by
7 this section or the Constitution of the United States or this state to impose
8 a death sentence. If the defendant bears the burden of proof, the issue
9 shall be determined in the penalty phase. If the state bears the burden of
10 proof, the issue shall be determined in the aggravation phase.

11 Q. If the death penalty was not alleged or was alleged but not
12 imposed, the court shall determine whether to impose a sentence of life or
13 natural life. In determining whether to impose a sentence of life or natural
14 life, the court:

15 1. May consider any evidence introduced before sentencing or at any
16 other sentencing proceeding.

17 2. Shall consider the aggravating and mitigating circumstances listed
18 in section ~~13-702~~ 13-701 and any statement made by a victim.

19 R. Subject to ~~the provisions of~~ section ~~13-703~~ 13-751, subsection B, a
20 victim has the right to be present at the aggravation phase and to present
21 any information that is relevant to the proceeding. A victim has the right
22 to be present at the penalty phase. At the penalty phase, the victim has the
23 right to be heard pursuant to section 13-4426.

24 S. For the purposes of this section:

25 1. "Trier of fact" means a jury unless the defendant and the state
26 waive a jury, in which case the trier of fact shall be the court.

27 2. "Victim" means the murdered person's spouse, parent, child,
28 grandparent or sibling, any other person related to the murdered person by
29 consanguinity or affinity to the second degree or any other lawful
30 representative of the murdered person, except if the spouse, parent, child,
31 grandparent, sibling, other person related to the murdered person by
32 consanguinity or affinity to the second degree or other lawful representative
33 is in custody for an offense or is the accused.

34 Sec. 41. Section 13-755, Arizona Revised Statutes, as transferred and
35 renumbered by this act, is amended to read:

36 13-755. Death sentences; supreme court review

37 A. The supreme court shall review all death sentences. On review, the
38 supreme court shall independently review the trial court's findings of
39 aggravation and mitigation and the propriety of the death sentence.

40 B. If the supreme court determines that an error was made regarding a
41 finding of aggravation or mitigation, the supreme court shall independently
42 determine if the mitigation the supreme court finds is sufficiently
43 substantial to warrant leniency in light of the existing aggravation. If the
44 supreme court finds that the mitigation is not sufficiently substantial to
45 warrant leniency, the supreme court shall affirm the death sentence. If the

1 supreme court finds that the mitigation is sufficiently substantial to
2 warrant leniency, the supreme court shall impose a life sentence pursuant to
3 section ~~13-703~~ 13-751, subsection A.

4 C. The independent review required by subsection A does not preclude
5 the supreme court from remanding a case for further action if the trial court
6 erroneously excluded evidence or if the appellate record does not adequately
7 reflect the evidence presented.

8 Sec. 42. Section 13-901.01, Arizona Revised Statutes, is amended to
9 read:

10 13-901.01. Probation for persons convicted of possession or use
11 of controlled substances or drug paraphernalia;
12 treatment; prevention; education; exceptions;
13 definition

14 A. Notwithstanding any law to the contrary, any person who is
15 convicted of the personal possession or use of a controlled substance or drug
16 paraphernalia is eligible for probation. The court shall suspend the
17 imposition or execution of sentence and place the person on probation.

18 B. Any person who has been convicted of or indicted for a violent
19 crime as defined in section ~~13-604.04~~ 13-901.03 is not eligible for probation
20 as provided for in this section but instead shall be sentenced pursuant to
21 chapter 34 of this title.

22 C. Personal possession or use of a controlled substance pursuant to
23 this section shall not include possession for sale, production, manufacturing
24 or transportation for sale of any controlled substance.

25 D. If a person is convicted of personal possession or use of a
26 controlled substance or drug paraphernalia, as a condition of probation, the
27 court shall require participation in an appropriate drug treatment or
28 education program administered by a qualified agency or organization that
29 provides such programs to persons who abuse controlled substances. Each
30 person who is enrolled in a drug treatment or education program shall be
31 required to pay for participation in the program to the extent of the
32 person's financial ability.

33 E. A person who has been placed on probation pursuant to this section
34 and who is determined by the court to be in violation of probation shall have
35 new conditions of probation established by the court. The court shall select
36 the additional conditions it deems necessary, including intensified drug
37 treatment, community restitution, intensive probation, home arrest or any
38 other sanctions except that the court shall not impose a term of
39 incarceration unless the court determines that the person violated probation
40 by committing an offense listed in chapter 34 or 34.1 of this title or an act
41 in violation of an order of the court relating to drug treatment.

42 F. If a person is convicted a second time of personal possession or
43 use of a controlled substance or drug paraphernalia, the court may include
44 additional conditions of probation it deems necessary, including intensified

1 drug treatment, community restitution, intensive probation, home arrest or
2 any other action within the jurisdiction of the court.

3 G. At any time while the defendant is on probation, if after having a
4 reasonable opportunity to do so the defendant fails or refuses to participate
5 in drug treatment, the probation department or the prosecutor may petition
6 the court to revoke the defendant's probation. If the court finds that the
7 defendant refused to participate in drug treatment, the defendant shall no
8 longer be eligible for probation under this section but instead shall be
9 sentenced pursuant to chapter 34 of this title.

10 H. A person is not eligible for probation under this section but
11 instead shall be sentenced pursuant to chapter 34 of this title if the court
12 finds the person either:

13 1. Had been convicted three times of personal possession of a
14 controlled substance or drug paraphernalia.

15 2. Refused drug treatment as a term of probation.

16 3. Rejected probation.

17 4. Was convicted of the personal possession or use of a controlled
18 substance or drug paraphernalia and the offense involved methamphetamine.

19 I. Subsections G and H of this section do not prohibit the defendant
20 from being placed on probation pursuant to section 13-901 if the defendant
21 otherwise qualifies for probation under that section.

22 J. For the purposes of this section, "controlled substance" has the
23 same meaning prescribed in section 36-2501.

24 Sec. 43. Section 13-902, Arizona Revised Statutes, is amended to read:

25 13-902. Periods of probation

26 A. Unless terminated sooner, probation may continue for the following
27 periods:

28 1. For a class 2 felony, seven years.

29 2. For a class 3 felony, five years.

30 3. For a class 4 felony, four years.

31 4. For a class 5 or 6 felony, three years.

32 5. For a class 1 misdemeanor, three years.

33 6. For a class 2 misdemeanor, two years.

34 7. For a class 3 misdemeanor, one year.

35 B. Notwithstanding subsection A of this section, unless terminated
36 sooner, probation may continue for the following periods:

37 1. For a violation of section 28-1381 or 28-1382, five years.

38 2. For a violation of section 28-1383, ten years.

39 C. When the court has required, as a condition of probation, that the
40 defendant make restitution for any economic loss related to the defendant's
41 offense and that condition has not been satisfied, the court at any time
42 before the termination or expiration of probation may extend the period
43 within the following limits:

1 1. For a felony, not more than five years.

2 2. For a misdemeanor, not more than two years.

3 D. Notwithstanding any other provision of law, justice courts and
4 municipal courts may impose the probation periods specified in subsection A,
5 paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

6 E. After conviction of a felony offense or an attempt to commit any
7 offense that is included in chapter 14 or 35.1 of this title or section
8 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may
9 continue for a term of not less than the term that is specified in subsection
10 A of this section up to and including life and that the court believes is
11 appropriate for the ends of justice.

12 F. After conviction of a violation of section 13-3824, subsection A,
13 if a term of probation is imposed and the offense for which the person was
14 required to register was a felony, probation may continue for a term of not
15 less than the term that is specified in subsection A of this section up to
16 and including life and that the court believes is appropriate for the ends of
17 justice.

18 G. Beginning November 1, 2006, after conviction of a dangerous crime
19 against children as defined in section ~~13-604.01~~ 13-705, if a term of
20 probation is imposed, the court shall require global position system
21 monitoring for the duration of the term of probation.

22 Sec. 44. Section 13-905, Arizona Revised Statutes, is amended to read:
23 13-905. Restoration of civil rights; persons completing
24 probation

25 A. A person who has been convicted of two or more felonies and whose
26 period of probation has been completed may have any civil rights which were
27 lost or suspended by ~~his~~ THE felony conviction restored by the judge who
28 discharges him at the end of the term of probation.

29 B. ~~Upon~~ ON proper application, a person who has been discharged from
30 probation either ~~prior to~~ BEFORE or after adoption of this chapter may have
31 any civil rights which were lost or suspended by ~~his~~ THE felony conviction
32 restored by the superior court judge by whom the person was sentenced or ~~his~~
33 THE JUDGE'S successors in office from the county in which ~~he~~ THE PERSON was
34 originally convicted. The clerk of ~~such~~ THE superior court shall have the
35 responsibility for processing the application ~~upon~~ ON request of the person
36 involved or ~~his~~ THE PERSON'S attorney. The superior court shall ~~cause~~ SERVE
37 a copy of the application ~~to be served upon~~ ON the county attorney.

38 C. If the person was convicted of a dangerous offense under section
39 ~~13-604~~ 13-704, the person may not file for the restoration of ~~his~~ THE right
40 to possess or carry a gun or firearm. If the person was convicted of a
41 serious offense as defined in section ~~13-604~~ 13-706 the person may not file
42 for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for
43 ten years from the date of his discharge from probation. If the person was
44 convicted of any other felony offense, the person may not file for the

1 restoration of ~~his~~ THE right to possess or carry a gun or firearm for two
2 years from the date of ~~his~~ THE PERSON'S discharge from probation.

3 Sec. 45. Section 13-906, Arizona Revised Statutes, is amended to read:
4 13-906. Applications by persons discharged from prison

5 A. ~~Upon~~ ON proper application, a person who has been convicted of two
6 or more felonies and who has received an absolute discharge from imprisonment
7 may have any civil rights which were lost or suspended by his conviction
8 restored by the superior court judge by whom the person was sentenced or ~~his~~
9 THE JUDGE'S successors in office from the county in which ~~he~~ THE PERSON was
10 originally sentenced.

11 B. A person who is subject to ~~the provisions of~~ subsection A of this
12 section may file, no sooner than two years from the date of his absolute
13 discharge, an application for restoration of civil rights that shall be
14 accompanied by a certificate of absolute discharge from the director of the
15 state department of corrections. The clerk of the superior court that
16 sentenced the applicant shall have the responsibility for processing
17 applications for restoration of civil rights upon request of the person
18 involved, ~~his~~ THE PERSON'S attorney or a representative of the state
19 department of corrections. The superior court shall ~~cause~~ SERVE a copy of
20 the application ~~to be served upon~~ ON the county attorney.

21 C. If the person was convicted of a dangerous offense under section
22 ~~13-604~~ 13-704, the person may not file for the restoration of ~~his~~ THE right
23 to possess or carry a gun or firearm. If the person was convicted of a
24 serious offense as defined in section ~~13-604~~ 13-706, the person may not file
25 for the restoration of ~~his~~ THE right to possess or carry a gun or firearm for
26 ten years from the date of his absolute discharge from imprisonment. If the
27 person was convicted of any other felony offense, the person may not file for
28 the restoration of ~~his~~ THE right to possess or carry a gun or firearm for two
29 years from the date of ~~his~~ THE PERSON'S absolute discharge from imprisonment.

30 Sec. 46. Section 13-907, Arizona Revised Statutes, is amended to read:
31 13-907. Setting aside judgment of convicted person on
32 discharge; application; release from disabilities;
33 exceptions

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

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

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

6 1. The department of transportation pursuant to section 28-3304,
7 28-3306, 28-3307, 28-3308 or 28-3319, except that the conviction may be used
8 as a conviction if ~~such~~ THE conviction would be admissible had it not been
9 set aside and may be pleaded and proved in any subsequent prosecution of such
10 person by the state or any of its subdivisions for any offense or used by the
11 department of transportation in enforcing section 28-3304, 28-3306, 28-3307,
12 28-3308 or 28-3319 as if the judgment of guilt had not been set aside.

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

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

16 1. Involving the infliction of serious physical injury.

17 2. Involving the use or exhibition of a deadly weapon or dangerous
18 instrument.

19 3. For which the person is required or ordered by the court to
20 register pursuant to section 13-3821.

21 4. For which there has been a finding of sexual motivation pursuant to
22 section 13-118.

23 5. In which the victim is a minor under fifteen years of age.

24 6. In violation of section 28-3473, any local ordinance relating to
25 stopping, standing or operation of a vehicle or title 28, chapter 3, except a
26 violation of section 28-693 or any local ordinance relating to the same
27 subject matter as section 28-693.

28 Sec. 47. Section 13-909, Arizona Revised Statutes, is amended to read:

29 13-909. Restoration of civil rights; persons completing
30 probation for federal offense

31 A. A person who has been convicted of two or more felonies and whose
32 period of probation has been completed may have any civil rights which were
33 lost or suspended by ~~his~~ THE felony conviction in a United States district
34 court restored by the presiding judge of the superior court in the county in
35 which ~~he~~ THE PERSON now resides, ~~upon~~ ON filing of an affidavit of discharge
36 from the judge who discharged him at the end of the term of probation.

37 B. ~~Upon~~ ON proper application, a person who has been discharged from
38 probation either ~~prior to~~ BEFORE or after adoption of this chapter may have
39 any civil rights which were lost or suspended by ~~his~~ THE felony conviction
40 restored by an application filed with the clerk of the superior court in the
41 county in which ~~he~~ THE PERSON now resides. The clerk of the superior court
42 shall process the application ~~upon~~ ON request of the person involved or ~~his~~
43 THE PERSON'S attorney.

1 C. If the person was convicted of an offense which would be a
2 dangerous offense under section ~~13-604~~ 13-704, the person may not file for
3 the restoration of ~~his~~ THE right to possess or carry a gun or firearm. If
4 the person was convicted of an offense which would be a serious offense as
5 defined in section ~~13-604~~ 13-706 the person may not file for the restoration
6 of ~~his~~ THE right to possess or carry a gun or firearm for ten years from the
7 date of ~~his~~ THE PERSON'S discharge from probation. If the person was
8 convicted of any other felony offense, the person may not file for the
9 restoration of his right to possess or carry a gun or firearm for two years
10 from the date of his discharge from probation.

11 Sec. 48. Section 13-910, Arizona Revised Statutes, is amended to read:
12 13-910. Applications by persons discharged from federal prison

13 A. ~~Upon~~ ON proper application, a person who has been convicted of two
14 or more felonies and who has received an absolute discharge from imprisonment
15 in a federal prison may have any civil rights which were lost or suspended by
16 ~~his~~ THE conviction restored by the presiding judge of the superior court in
17 the county in which ~~he~~ THE PERSON now resides.

18 B. A person who is subject to ~~the provisions of~~ subsection A of this
19 section may file, no sooner than two years from the date of his absolute
20 discharge, an application for restoration of civil rights that shall be
21 accompanied by a certificate of absolute discharge from the director of the
22 federal bureau of prisons, unless it is shown to be impossible to obtain such
23 certificate. Such application shall be filed with the clerk of the superior
24 court in the county in which the person now resides, and such clerk shall be
25 responsible for processing applications for restoration of civil rights upon
26 request of the person involved or ~~his~~ THE PERSON'S attorney.

27 C. If the person was convicted of an offense which would be a
28 dangerous offense under section ~~13-604~~ 13-704, the person may not file for
29 the restoration of ~~his~~ THE right to possess or carry a gun or firearm. If
30 the person was convicted of an offense which would be a serious offense as
31 defined in section ~~13-604~~ 13-706, the person may not file for the restoration
32 of ~~his~~ THE right to possess or carry a gun or firearm for ten years from the
33 date of ~~his~~ THE PERSON'S absolute discharge from imprisonment. If the person
34 was convicted of any other felony offense, the person may not file for the
35 restoration of ~~his~~ THE right to possess or carry a gun or firearm for two
36 years from the date of ~~his~~ THE PERSON'S absolute discharge from imprisonment.

37 Sec. 49. Section 13-912.01, Arizona Revised Statutes, is amended to
38 read:

39 13-912.01. Restoration of civil rights; persons adjudicated
40 delinquent

41 A. A person who was adjudicated delinquent and whose period of
42 probation has been completed may have ~~his~~ THE right to possess or carry a gun
43 or firearm restored by the judge who discharges the person at the end of ~~his~~
44 THE PERSON'S term of probation.

1 B. A person who was adjudicated delinquent and who has been discharged
2 from probation, on proper application, may have ~~his~~ THE right to carry or
3 possess a gun or firearm restored by the judge of the juvenile court in the
4 county where the person was adjudicated delinquent or ~~his~~ THE JUDGE'S
5 successors. The clerk of the superior court shall process the application on
6 the request of the person involved or the person's attorney. The applicant
7 shall serve a copy of the application on the county attorney.

8 C. If the person's adjudication was for a dangerous offense under
9 section ~~13-604~~ 13-704, a serious offense as defined in section ~~13-604~~ 13-706,
10 burglary in the first degree, burglary in the second degree or arson, the
11 person may not file for the restoration of ~~his~~ THE right to possess or carry
12 a gun or firearm until the person attains thirty years of age. If the
13 person's adjudication was for any other felony offense, the person may not
14 file for the restoration of ~~his~~ THE right to possess or carry a gun or
15 firearm for two years from the date of ~~his~~ THE PERSON'S discharge.

16 Sec. 50. Section 13-921, Arizona Revised Statutes, is amended to read:
17 ~~13-921.~~ Probation for defendants under eighteen years of age;
18 dual adult juvenile probation

19 A. The court may enter a judgment of guilt and place the defendant on
20 probation pursuant to this section if all of the following apply:

- 21 1. The defendant is under eighteen years of age at the time the
22 offense is committed.
23 2. The defendant is convicted of a felony offense.
24 3. The defendant is not sentenced to a term of imprisonment.
25 4. The defendant does not have a historical prior felony conviction ~~as~~
26 ~~defined in section 13-604.~~

27 B. If the court places a defendant on probation pursuant to this
28 section, all of the following apply:

29 1. Except as provided in paragraphs 2, 3 and 4 of this subsection, if
30 the defendant successfully completes the terms and conditions of probation,
31 the court may set aside the judgment of guilt, dismiss the information or
32 indictment, expunge the defendant's record and order the person to be
33 released from all penalties and disabilities resulting from the conviction.
34 The clerk of the court in which the conviction occurred shall notify each
35 agency to which the original conviction was reported that all penalties and
36 disabilities have been discharged and that the defendant's record has been
37 expunged.

38 2. The conviction may be used as a conviction if it would be
39 admissible pursuant to section ~~13-604~~ 13-703 OR 13-704 as if it had not been
40 set aside and the conviction may be pleaded and proved as a prior conviction
41 in any subsequent prosecution of the defendant.

1 3. The conviction is deemed to be a conviction for the purposes of
2 sections 28-3304, 28-3305, 28-3306 and 28-3320.

3 4. The defendant shall comply with sections 13-3821 and 13-3822.

4 C. A defendant who is placed on probation pursuant to this section is
5 deemed to be on adult probation.

6 D. If a defendant is placed on probation pursuant to this section, the
7 court as a condition of probation may order the defendant to participate in
8 services that are available to the juvenile court.

9 E. The court may order that a defendant who is placed on probation
10 pursuant to this section be incarcerated in a county jail at whatever time or
11 intervals, consecutive or nonconsecutive, that the court determines. The
12 incarceration shall not extend beyond the period of court ordered probation,
13 and the length of time the defendant actually spends in a county jail shall
14 not exceed one year.

15 F. In addition to the provisions of this section, the court may apply
16 any of the provisions of section 13-901.

17 Sec. 51. Section 13-1104, Arizona Revised Statutes, is amended to
18 read:

19 13-1104. Second degree murder; classification

20 A. A person commits second degree murder if without premeditation:

21 1. The person intentionally causes the death of another person,
22 including an unborn child or, as a result of intentionally causing the death
23 of another person, causes the death of an unborn child; or

24 2. Knowing that the person's conduct will cause death or serious
25 physical injury, the person causes the death of another person, including an
26 unborn child or, as a result of knowingly causing the death of another
27 person, causes the death of an unborn child; or

28 3. Under circumstances manifesting extreme indifference to human life,
29 the person recklessly engages in conduct that creates a grave risk of death
30 and thereby causes the death of another person, including an unborn child or,
31 as a result of recklessly causing the death of another person, causes the
32 death of an unborn child.

33 B. An offense under this section applies to an unborn child in the
34 womb at any stage of its development. A person may not be prosecuted under
35 this section if any of the following applies:

36 1. The person was performing an abortion for which the consent of the
37 pregnant woman, or a person authorized by law to act on the pregnant woman's
38 behalf, has been obtained or for which the consent was implied or authorized
39 by law.

40 2. The person was performing medical treatment on the pregnant woman
41 or the pregnant woman's unborn child.

1 3. The person was the unborn child's mother.

2 C. Second degree murder is a class 1 felony and is punishable as
3 provided by section ~~13-604, subsection S, section 13-604.01~~ 13-705 if the
4 victim is under fifteen years of age or is an unborn child, SECTION 13-706,
5 SUBSECTION A or section 13-710.

6 Sec. 52. Section 13-1105, Arizona Revised Statutes, is amended to
7 read:

8 13-1105. First degree murder; classification

9 A. A person commits first degree murder if:

10 1. Intending or knowing that the person's conduct will cause death,
11 the person causes the death of another person, including an unborn child,
12 with premeditation or, as a result of causing the death of another person
13 with premeditation, causes the death of an unborn child.

14 2. Acting either alone or with one or more other persons the person
15 commits or attempts to commit sexual conduct with a minor under section
16 13-1405, sexual assault under section 13-1406, molestation of a child under
17 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under
18 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under
19 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under
20 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory
21 threshold amount for each offense or combination of offenses, involving or
22 using minors in drug offenses under section 13-3409, kidnapping under section
23 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under
24 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or
25 13-1904, escape under section 13-2503 or 13-2504, child abuse under section
26 13-3623, subsection A, paragraph 1, ~~or~~ unlawful flight from a pursuing law
27 enforcement vehicle under section 28-622.01 and, in the course of and in
28 furtherance of the offense or immediate flight from the offense, the person
29 or another person causes the death of any person.

30 3. Intending or knowing that the person's conduct will cause death to
31 a law enforcement officer, the person causes the death of a law enforcement
32 officer who is in the line of duty.

33 B. Homicide, as prescribed in subsection A, paragraph 2 of this
34 section, requires no specific mental state other than what is required for
35 the commission of any of the enumerated felonies.

36 C. An offense under subsection A, paragraph 1 of this section applies
37 to an unborn child in the womb at any stage of its development. A person
38 shall not be prosecuted under subsection A, paragraph 1 of this section if
39 any of the following applies:

40 1. The person was performing an abortion for which the consent of the
41 pregnant woman, or a person authorized by law to act on the pregnant woman's
42 behalf, has been obtained or for which the consent was implied or authorized
43 by law.

44 2. The person was performing medical treatment on the pregnant woman
45 or the pregnant woman's unborn child.

1 3. The person was the unborn child's mother.

2 D. First degree murder is a class 1 felony and is punishable by death
3 or life imprisonment as provided by sections ~~13-703~~ 13-751 and ~~13-703.01~~
4 13-752.

5 Sec. 53. Section 13-1204, Arizona Revised Statutes, is amended to
6 read:

7 13-1204. Aggravated assault; classification; definition

8 A. A person commits aggravated assault if the person commits assault
9 as prescribed by section 13-1203 under any of the following circumstances:

10 1. If the person causes serious physical injury to another.

11 2. If the person uses a deadly weapon or dangerous instrument.

12 3. If the person commits the assault by any means of force that causes
13 temporary but substantial disfigurement, temporary but substantial loss or
14 impairment of any body organ or part or a fracture of any body part.

15 4. If the person commits the assault while the victim is bound or
16 otherwise physically restrained or while the victim's capacity to resist is
17 substantially impaired.

18 5. If the person commits the assault after entering the private home
19 of another with the intent to commit the assault.

20 6. If the person is eighteen years of age or older and commits the
21 assault on a child who is fifteen years of age or under.

22 7. If the person commits assault as prescribed by section 13-1203,
23 subsection A, paragraph 1 or 3 and the person is in violation of an order of
24 protection issued against the person pursuant to section 13-3602 or 13-3624.

25 8. If the person commits the assault knowing or having reason to know
26 that the victim is any of the following:

27 (a) A peace officer, or a person summoned and directed by the officer
28 while engaged in the execution of any official duties.

29 (b) A firefighter, fire investigator, fire inspector, emergency
30 medical technician or paramedic engaged in the execution of any official
31 duties, or a person summoned and directed by such individual while engaged in
32 the execution of any official duties.

33 (c) A teacher or other person employed by any school and the teacher
34 or other employee is on the grounds of a school or grounds adjacent to the
35 school or is in any part of a building or vehicle used for school purposes,
36 any teacher or school nurse visiting a private home in the course of the
37 teacher's or nurse's professional duties or any teacher engaged in any
38 authorized and organized classroom activity held on other than school
39 grounds.

40 (d) A ~~licensed~~ health care practitioner who is certified or licensed
41 pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and
42 directed by the licensed health care practitioner while engaged in the
43 person's professional duties. This subdivision does not apply if the person
44 who commits the assault is seriously mentally ill, as defined in section
45 36-550, or is afflicted with alzheimer's disease or related dementia.

1 (e) A prosecutor.

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

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

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

15 (c) Any implement that is being used by a peace officer or other
16 officer or that the officer is attempting to use, and the person knows or has
17 reason to know that the victim is a peace officer or other officer employed
18 by one of the agencies listed in paragraph 10, subdivision (a), item (i),
19 (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution
20 of any official duties. For the purposes of this ~~paragraph~~ SUBDIVISION,
21 "implement" means an object that is designed for or that is capable of
22 restraining or injuring an individual. Implement does not include handcuffs.

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

24 (a) Is imprisoned or otherwise subject to the custody of any of the
25 following:

26 (i) The state department of corrections.

27 (ii) The department of juvenile corrections.

28 (iii) A law enforcement agency.

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

31 (v) Any other entity that is contracting with the state department of
32 corrections, the department of juvenile corrections, a law enforcement
33 agency, another state, any private correctional facility, a county, a city or
34 the federal bureau of prisons or other federal agency that has responsibility
35 for sentenced or unsentenced prisoners.

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

39 B. Except pursuant to subsections C and D of this section, aggravated
40 assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9,
41 subdivision (a) of this section is a class 3 felony except if the victim is
42 under fifteen years of age in which case it is a class 2 felony punishable
43 pursuant to section ~~13-604.01~~ 13-705. Aggravated assault pursuant to
44 subsection A, paragraph 3 of this section is a class 4 felony. Aggravated
45 assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph

1 10 of this section is a class 5 felony. Aggravated assault pursuant to
2 subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of
3 this section is a class 6 felony.

4 C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of
5 this section committed on a peace officer while the officer is engaged in the
6 execution of any official duties is a class 2 felony. Aggravated assault
7 pursuant to subsection A, paragraph 3 of this section committed on a peace
8 officer while the officer is engaged in the execution of any official duties
9 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph
10 8, subdivision (a) of this section resulting in any physical injury to a
11 peace officer while the officer is engaged in the execution of any official
12 duties is a class 5 felony.

13 D. Aggravated assault pursuant to:

14 1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony
15 if committed on a prosecutor.

16 2. Subsection A, paragraph 3 of this section is a class 3 felony if
17 committed on a prosecutor.

18 3. Subsection A, paragraph 8, subdivision (e) of this section is a
19 class 5 felony if the assault results in physical injury to a prosecutor.

20 E. For the purposes of this section, "prosecutor" means a county
21 attorney, a municipal prosecutor or the attorney general and includes an
22 assistant or deputy county attorney, municipal prosecutor or attorney
23 general.

24 Sec. 54. Section 13-1207, Arizona Revised Statutes, is amended to
25 read:

26 13-1207. Prisoners who commit assault with intent to incite to
27 riot or participate in riot; classification

28 A person, while in the custody of the state department of corrections
29 or a county or city jail, who commits assault upon another person with the
30 intent to incite to riot or who participates in a riot is guilty of a class 2
31 felony ~~and shall not be eligible for suspension of sentence, probation,~~
32 ~~pardon or release from confinement on any basis until the sentence imposed by~~
33 ~~the court has been served or commuted. A sentence imposed pursuant to this~~
34 ~~section shall be consecutive to any other sentence presently being served by~~
35 ~~the convicted person~~ AND SECTION 13-709.01, SUBSECTION B APPLIES TO THE
36 SENTENCE IMPOSED.

37 Sec. 55. Section 13-1212, Arizona Revised Statutes, is amended to
38 read:

39 13-1212. Prisoner assault with bodily fluids; liability for
40 costs; classification; definition

41 A. A prisoner commits prisoner assault with bodily fluids if the
42 prisoner throws or projects any bodily fluid at or onto a correctional
43 facility employee or private prison security officer who the prisoner knows
44 or reasonably should know is an employee of a correctional facility or is a
45 private prison security officer.

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

5 C. The state department of corrections shall adopt rules for the
6 payment of costs pursuant to subsection B **OF THIS SECTION**. Monies in the
7 prisoner's trust fund or retention account established by the correctional
8 facility in which the prisoner is incarcerated may be used to pay the costs
9 pursuant to subsection B **OF THIS SECTION**.

10 D. A prisoner who violates this section is guilty of a class 6 felony
11 and the sentence imposed for a violation of this section shall run
12 consecutively ~~to any sentence of imprisonment for which the prisoner was~~
13 ~~confined or to any term of community supervision, probation, parole, work~~
14 ~~furlough or other release from confinement~~ **PURSUANT TO SECTION 13-709.01,**
15 **SUBSECTION C.**

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

18 Sec. 56. Section 13-1304, Arizona Revised Statutes, is amended to
19 read:

20 **13-1304. Kidnapping; classification; consecutive sentence**

21 A. A person commits kidnapping by knowingly restraining another person
22 with the intent to:

- 23 1. Hold the victim for ransom, as a shield or hostage; or
- 24 2. Hold the victim for involuntary servitude; or
- 25 3. Inflict death, physical injury or a sexual offense on the victim,
26 or to otherwise aid in the commission of a felony; or
- 27 4. Place the victim or a third person in reasonable apprehension of
28 imminent physical injury to the victim or ~~such~~ **THE** third person~~;~~ **OR**
- 29 5. Interfere with the performance of a governmental or political
30 function~~;~~ **OR**
- 31 6. Seize or exercise control over any airplane, train, bus, ship or
32 other vehicle.

33 B. Kidnapping is a class 2 felony unless the victim is released
34 voluntarily by the defendant without physical injury in a safe place ~~prior to~~
35 **BEFORE** arrest and ~~prior to~~ **BEFORE** accomplishing any of the further enumerated
36 offenses in subsection A of this section in which case it is a class 4
37 felony. If the victim is released pursuant to an agreement with the state
38 and without any physical injury, it is a class 3 felony. If the victim is
39 under fifteen years of age kidnapping is a class 2 felony punishable pursuant
40 to section ~~13-604.01~~ **13-705**. The sentence for kidnapping of a victim under
41 fifteen years of age shall run consecutively to any other sentence imposed on
42 the defendant and to any undischarged term of imprisonment of the defendant.

1 Sec. 57. Section 13-1307, Arizona Revised Statutes, is amended to
2 read:

3 13-1307. Sex trafficking; classification

4 A. It is unlawful for a person to knowingly recruit, entice, harbor,
5 transport, provide or obtain by any means another person who is eighteen
6 years of age or older with the intent of causing the other person to engage
7 in prostitution by force, fraud or coercion.

8 B. It is unlawful for a person to recruit, entice, harbor, transport,
9 provide or obtain by any means another person who is under eighteen years of
10 age with the intent of causing the other person to engage in prostitution.

11 C. Notwithstanding any other law, a sentence imposed on a person for a
12 violation of subsection B of this section shall be consecutive to any other
13 sentence imposed on the person at any time.

14 D. A person who violates this section is guilty of a class 2 felony,
15 except that if the offense is committed against a person who is under fifteen
16 years of age, the offense is a dangerous crime against children punishable
17 pursuant to section ~~13-604.01~~ 13-705.

18 Sec. 58. Section 13-1404, Arizona Revised Statutes, is amended to
19 read:

20 13-1404. Sexual abuse; classification

21 A. A person commits sexual abuse by intentionally or knowingly
22 engaging in sexual contact with any person WHO IS fifteen or more years of
23 age without consent of that person or with any person who is under fifteen
24 years of age if the sexual contact involves only the female breast.

25 B. Sexual abuse is a class 5 felony unless the victim is under fifteen
26 years of age in which case sexual abuse is a class 3 felony punishable
27 pursuant to section ~~13-604.01~~ 13-705.

28 Sec. 59. Section 13-1405, Arizona Revised Statutes, is amended to
29 read:

30 13-1405. Sexual conduct with a minor; classification

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

34 B. Sexual conduct with a minor who is under fifteen years of age is a
35 class 2 felony and is punishable pursuant to section ~~13-604.01~~ 13-705.
36 Sexual conduct with a minor who is at least fifteen years of age is a class 6
37 felony. Sexual conduct with a minor who is at least fifteen years of age is
38 a class 2 felony if the person is the minor's parent, stepparent, adoptive
39 parent, legal guardian or foster parent and the convicted person is not
40 eligible for suspension of sentence, probation, pardon or release from
41 confinement on any basis except as specifically authorized by section 31-233,
42 subsection A or B until the sentence imposed has been served or commuted.

1 Sec. 60. Section 13-1406, Arizona Revised Statutes, is amended to
2 read:

3 13-1406. Sexual assault; classification; increased punishment

4 A. A person commits sexual assault by intentionally or knowingly
5 engaging in sexual intercourse or oral sexual contact with any person without
6 consent of such person.

7 B. Sexual assault is a class 2 felony, and the person convicted shall
8 be sentenced pursuant to this section and the person is not eligible for
9 suspension of sentence, probation, pardon or release from confinement on any
10 basis except as specifically authorized by section 31-233, subsection A or B
11 until the sentence imposed by the court has been served or commuted. If the
12 victim is under fifteen years of age, sexual assault is punishable pursuant
13 to section ~~13-604.01~~ 13-705. The presumptive term may be aggravated or
14 mitigated within the range under this section pursuant to section ~~13-702~~
15 13-701, subsections ~~B~~, C, ~~and~~ D AND E. If the sexual assault involved the
16 intentional or knowing administration of flunitrazepam, gamma hydroxy
17 butyrate or ketamine hydrochloride without the victim's knowledge, the
18 presumptive, minimum and maximum sentence for the offense shall be increased
19 by three years. The additional sentence imposed pursuant to this subsection
20 is in addition to any enhanced sentence that may be applicable. The term for
21 a first offense is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 5.25 years | 7 years | 14 years |

24 The term for a defendant who has one historical prior felony conviction
25 is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 7 years | 10.5 years | 21 years |

28 The term for a defendant who has two or more historical prior felony
29 convictions is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 14 years | 15.75 years | 28 years |

32 C. The sentence imposed on a person for a sexual assault shall be
33 consecutive to any other sexual assault sentence imposed on the person at any
34 time.

35 D. Notwithstanding ~~sections 13-604 and 13-604.01~~ SECTION 13-703,
36 SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A AND SECTION
37 13-708, SUBSECTION D, if the sexual assault involved the intentional or
38 knowing infliction of serious physical injury, the person may be sentenced to
39 life imprisonment and is not eligible for suspension of sentence, probation,
40 pardon or release from confinement on any basis except as specifically
41 authorized by section 31-233, subsection A or B until at least twenty-five
42 years have been served or the sentence is commuted. If the person was at
43 least eighteen years of age and the victim was twelve years of age or
44 younger, the person shall be sentenced pursuant to section ~~13-604.01,~~
45 ~~subsection A~~ 13-705.

1 Sec. 61. Section 13-1410, Arizona Revised Statutes, is amended to
2 read:

3 13-1410. Molestation of a child; classification

4 A. A person commits molestation of a child by intentionally or
5 knowingly engaging in or causing a person to engage in sexual contact, except
6 sexual contact with the female breast, with a child WHO IS under fifteen
7 years of age.

8 B. Molestation of a child is a class 2 felony that is punishable
9 pursuant to section ~~13-604.01~~ 13-705.

10 Sec. 62. Section 13-1411, Arizona Revised Statutes, is amended to
11 read:

12 13-1411. Bestiality; classification; definition

13 A. A person commits bestiality by knowingly doing either of the
14 following:

15 1. Engaging in oral sexual contact, sexual contact or sexual
16 intercourse with an animal.

17 2. Causing another person to engage in oral sexual contact, sexual
18 contact or sexual intercourse with an animal.

19 B. In addition to any other penalty imposed for a violation of
20 subsection A of this section, the court may order that the convicted person
21 do any of the following:

22 1. Undergo a psychological assessment and participate in appropriate
23 counseling at the convicted person's own expense.

24 2. Reimburse an animal shelter as defined in section 11-1022 for any
25 reasonable costs incurred for the care and maintenance of any animal that was
26 taken to the animal shelter as a result of conduct proscribed by subsection A
27 of this section.

28 C. This section does not apply to:

29 1. Accepted veterinary medical practices performed by a licensed
30 veterinarian or veterinary technician.

31 2. Insemination of animals by the same species, bred for commercial
32 purposes.

33 3. Accepted animal husbandry practices that provide necessary care for
34 animals bred for commercial purposes.

35 D. Bestiality is a class 6 felony, except that bestiality pursuant to
36 subsection A, paragraph 2 of this section is a class 3 felony punishable
37 pursuant to section ~~13-604.01~~ 13-705 if the other person is a minor under
38 fifteen years of age.

39 E. For the purposes of this section, "animal" means a nonhuman mammal,
40 bird, reptile or amphibian, either dead or alive.

41 Sec. 63. Section 13-1414, Arizona Revised Statutes, is amended to
42 read:

43 13-1414. Expenses of investigation

44 Any medical expenses arising out of the need to secure evidence that a
45 person has been the victim of a dangerous crime against children as defined

1 in section ~~13-604.01~~ 13-705 or a sexual assault shall be paid by the county
2 in which the offense occurred.

3 Sec. 64. Section 13-1417, Arizona Revised Statutes, is amended to
4 read:

5 13-1417. Continuous sexual abuse of a child; classification

6 A. A person who over a period of three months or more in duration
7 engages in three or more acts in violation of section 13-1405, 13-1406 or
8 13-1410 with a child WHO IS under fourteen years of age is guilty of
9 continuous sexual abuse of a child.

10 B. Continuous sexual abuse of a child is a class 2 felony and is
11 punishable pursuant to section ~~13-604.01~~ 13-705.

12 C. To convict a person of continuous sexual abuse of a child, the
13 trier of fact shall unanimously agree that the requisite number of acts
14 occurred. The trier of fact does not need to agree on which acts constitute
15 the requisite number.

16 D. Any other felony sexual offense involving the victim shall not be
17 charged in the same proceeding with a charge under this section unless the
18 other charged felony sexual offense occurred outside the time period charged
19 under this section or the other felony sexual offense is charged in the
20 alternative. A defendant may be charged with only one count under this
21 section unless more than one victim is involved. If more than one victim is
22 involved, a separate count may be charged for each victim.

23 Sec. 65. Section 13-1423, Arizona Revised Statutes, is amended to
24 read:

25 13-1423. Violent sexual assault; natural life sentence

26 A. A person is guilty of violent sexual assault if in the course of
27 committing an offense under section 13-1404, 13-1405, 13-1406 or 13-1410 the
28 offense involved the discharge, use or threatening exhibition of a deadly
29 weapon or dangerous instrument or involved the intentional or knowing
30 infliction of serious physical injury and the person has a historical prior
31 felony conviction for a sexual offense under this chapter or any offense
32 committed outside this state that if committed in this state would constitute
33 a sexual offense under this chapter.

34 B. Notwithstanding ~~sections 13-604 and 13-604.01~~ SECTION 13-703,
35 SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A AND SECTION
36 13-708, SUBSECTION D, a person who is guilty of a violent sexual assault
37 shall be sentenced to life imprisonment and the court shall order that the
38 person not be released on any basis for the remainder of the person's natural
39 life.

40 Sec. 66. Section 13-2308.01, Arizona Revised Statutes, is amended to
41 read:

42 13-2308.01. Terrorism; classification

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

- 45 1. Engage in an act of terrorism.

1 2. Organize, manage, direct, supervise or finance an act of terrorism.

2 3. Solicit, incite or induce others to promote or further an act of
3 terrorism.

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

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

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

15 (a) Harboring or concealing any person or property.

16 (b) Warning any person of impending discovery, apprehension,
17 prosecution or conviction. This subdivision does not apply to a warning that
18 is given in connection with an effort to bring another person into compliance
19 with the law.

20 (c) Providing any person with material support or resources or any
21 other means of avoiding discovery, apprehension, prosecution or conviction.

22 (d) Concealing or disguising the nature, location, source, ownership
23 or control of material support or resources.

24 (e) Preventing or obstructing by means of force, deception or
25 intimidation anyone from performing an act that might aid in the discovery,
26 apprehension, prosecution or conviction of any person or that might aid in
27 the prevention of an act of terrorism.

28 (f) Suppressing by any act of concealment, alteration or destruction
29 any physical evidence that might aid in the discovery, apprehension,
30 prosecution or conviction of any person or that might aid in the prevention
31 of an act of terrorism.

32 (g) Concealing the identity of any person.

33 B. This section does not apply to any person who is a member or
34 employee of the armed forces of the United States, a federal or state
35 governmental agency or any political subdivision of a state, a charitable,
36 scientific or educational institution or a private entity if both of the
37 following apply:

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

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

1 C. A violation of subsection A of this section is a class 2 felony,
2 except that if the court finds that at least one of the aggravating
3 circumstances listed in section ~~13-702~~ 13-701, subsection ~~C~~ D applies, ~~the~~
4 ~~court may impose a life sentence. If the court imposes a life sentence, the~~
5 ~~court may order that the defendant not be released on any basis for the~~
6 ~~remainder of the defendant's natural life. If the court does not sentence~~
7 ~~the defendant to natural life, the defendant shall not be released on any~~
8 ~~basis until the completion of the service of twenty five calendar years~~ THE
9 DEFENDANT SHALL BE SENTENCED PURSUANT TO SECTION 13-709.02, SUBSECTION A.

10 Sec. 67. Section 13-2312, Arizona Revised Statutes, is amended to
11 read:

12 13-2312. Illegal control of an enterprise; illegally conducting
13 an enterprise; classification

14 A. A person commits illegal control of an enterprise if such person,
15 through racketeering or its proceeds, acquires or maintains, by investment or
16 otherwise, control of any enterprise.

17 B. A person commits illegally conducting an enterprise if such person
18 is employed by or associated with any enterprise and conducts such
19 enterprise's affairs through racketeering or participates directly or
20 indirectly in the conduct of any enterprise that the person knows is being
21 conducted through racketeering.

22 C. A person violates this section if he hires, engages or uses a minor
23 for any conduct preparatory to or in completion of any offense in this
24 section.

25 D. A knowing violation of this ~~SUBSECTION A OR B OF THIS~~ section is a
26 class 3 felony, ~~except that~~. A knowing violation of subsection C ~~OF THIS~~
27 SECTION is a class 2 felony and ~~the person convicted is not eligible for~~
28 ~~probation, pardon, suspension of sentence or release on any basis until the~~
29 ~~person has served the sentence imposed by the court or the sentence is~~
30 ~~commuted~~ SECTION 13-709.02, SUBSECTION B APPLIES TO THE SENTENCE IMPOSED.

31 Sec. 68. Section 13-2411, Arizona Revised Statutes, is amended to
32 read:

33 13-2411. Impersonating a peace officer; classification;
34 definition

35 A. A person commits impersonating a peace officer if the person,
36 without lawful authority, pretends to be a peace officer and engages in any
37 conduct with the intent to induce another to submit to the person's pretended
38 authority or to rely ~~upon~~ ON the person's pretended acts.

39 B. It is not a defense to a prosecution under this section that the
40 law enforcement agency the person pretended to represent did not in fact
41 exist or that the law enforcement agency the person pretended to represent
42 did not in fact possess the authority claimed for it.

43 C. Impersonating a peace officer is a class 6 felony, except that
44 impersonating a peace officer during the commission of any of the following
45 felonies is a class 4 felony:

- 1 1. Negligent homicide.
- 2 2. Manslaughter.
- 3 3. First degree murder.
- 4 4. Second degree murder.
- 5 5. Assault.
- 6 6. Aggravated assault.
- 7 7. Sexual assault.
- 8 8. Violent sexual assault.
- 9 9. Sexual abuse.
- 10 10. Unlawfully administering intoxicating liquors, narcotic ~~drug~~ DRUGS
- 11 or dangerous ~~drug~~ DRUGS.
- 12 11. Attack by a person's vicious animal ~~pursuant to~~ AS PRESCRIBED IN
- 13 section 13-1208.
- 14 12. Drive by shooting.
- 15 13. Discharging a firearm at a structure.
- 16 14. Aggravated criminal damage.
- 17 15. Theft.
- 18 16. Theft by extortion.
- 19 17. Theft of a credit card or obtaining a credit card by fraudulent
- 20 means.
- 21 18. Misconduct involving weapons.
- 22 19. Misconduct involving explosives.
- 23 20. Depositing explosives.
- 24 21. Procuring or placing persons in a house of prostitution.
- 25 22. Dangerous crimes against children ~~pursuant to~~ AS PRESCRIBED IN
- 26 section ~~13-604.01~~ 13-705.
- 27 23. Burglary.
- 28 24. Arson.
- 29 25. Kidnapping.
- 30 26. Robbery.
- 31 D. For the purposes of this section, "peace officer" has the same
- 32 meaning prescribed in section 1-215 and includes any federal law enforcement
- 33 officer or agent who has the power to make arrests pursuant to federal law.
- 34 Sec. 69. Section 13-3107, Arizona Revised Statutes, is amended to
- 35 read:
- 36 13-3107. Unlawful discharge of firearms; exceptions;
- 37 classification; definitions
- 38 A. A person who with criminal negligence discharges a firearm within
- 39 or into the limits of any municipality is guilty of a class 6 felony.
- 40 B. Notwithstanding the fact that the offense involves the discharge of
- 41 a deadly weapon, unless ~~the A dangerous nature of the felony~~ OFFENSE is
- 42 ~~charged~~ ALLEGED and proven pursuant to section ~~13-604, subsection P~~ 13-704,
- 43 ~~SUBSECTION L, the provisions of~~ section ~~13-702, subsection G~~ apply 13-604
- 44 APPLIES to this offense.

1 C. This section does not apply if the firearm is discharged:
2 1. As allowed pursuant to ~~the provisions of~~ chapter 4 of this title.
3 2. On a properly supervised range.
4 3. In an area recommended as a hunting area by the Arizona game and
5 fish department, approved and posted as required by the chief of police, but
6 any such area may be closed when deemed unsafe by the chief of police or the
7 director of the ARIZONA game and fish department.
8 4. For the control of nuisance wildlife by permit from the Arizona
9 game and fish department or the United States fish and wildlife service.
10 5. By special permit of the chief of police of the municipality.
11 6. As required by an animal control officer in the performance of
12 duties as specified in section 9-499.04.
13 7. Using blanks.
14 8. More than one mile from any occupied structure as defined in
15 section 13-3101.
16 9. In self-defense or defense of another person against an animal
17 attack if a reasonable person would believe that deadly physical force
18 against the animal is immediately necessary and reasonable under the
19 circumstances to protect oneself or the other person.
20 D. For the purposes of this section:
21 1. "Municipality" means any city or town and includes any property
22 that is fully enclosed within the city or town.
23 2. "Properly supervised range" means a range that is ~~operated~~ ANY OF
24 THE FOLLOWING:
25 (a) OPERATED by a club affiliated with the national rifle association
26 of America, the amateur trapshooting association, the national skeet
27 association or any other nationally recognized shooting organization, or by
28 any public or private school. ~~, or~~
29 (b) Approved by any agency of the federal government, this state, ~~OR~~
30 a county or city within which the range is located. ~~or~~
31 (c) OPERATED with adult supervision for shooting air or carbon dioxide
32 gas operated guns, or for shooting in underground ranges on private or public
33 property.
34 Sec. 70. Section 13-3113, Arizona Revised Statutes, is amended to
35 read:
36 13-3113. Adjudicated delinquents; firearm possession;
37 classification
38 A person who was previously adjudicated delinquent for an offense that
39 would be a felony if committed by an adult and who possesses, uses or carries
40 a firearm within ten years from the date of his adjudication or his release
41 or escape from custody is guilty of a class 5 felony for a first offense and
42 a class 4 felony for a second or subsequent offense if the person was
43 previously adjudicated for an offense that if committed as an adult would
44 constitute:

- 1 1. Burglary in the first degree.
- 2 2. Burglary in the second degree.
- 3 3. Arson.
- 4 4. Any felony offense involving the use or threatening exhibition of a
- 5 deadly weapon or dangerous instrument.
- 6 5. A serious offense as defined in section ~~13-604~~ 13-706.

7 Sec. 71. Section 13-3206, Arizona Revised Statutes, is amended to
8 read:

9 13-3206. Taking child for purpose of prostitution;
10 classification

11 A person who takes away any minor from ~~such person's~~ THE MINOR'S
12 father, mother, guardian or other person having the legal custody of ~~such~~
13 ~~person~~ THE MINOR, for the purpose of prostitution, is guilty of a class 4
14 felony. If the minor is under fifteen years of age, taking a child for THE
15 PURPOSE OF prostitution is a class 2 felony and is punishable pursuant to
16 section ~~13-604.01~~ 13-705.

17 Sec. 72. Section 13-3212, Arizona Revised Statutes, is amended to
18 read:

19 13-3212. Child prostitution; classification; increased
20 punishment

21 A. A person commits child prostitution by knowingly:

- 22 1. Causing any minor to engage in prostitution.
- 23 2. Using any minor for the purposes of prostitution.
- 24 3. Permitting a minor who is under the person's custody or control to
- 25 engage in prostitution.
- 26 4. Receiving any benefit for or on account of procuring or placing a
- 27 minor in any place or in the charge or custody of any person for the purpose
- 28 of prostitution.
- 29 5. Receiving any benefit pursuant to an agreement to participate in
- 30 the proceeds of prostitution of a minor.
- 31 6. Financing, managing, supervising, controlling or owning, either
- 32 alone or in association with others, prostitution activity involving a minor.
- 33 7. Transporting or financing the transportation of any minor with the
- 34 intent that the minor engage in prostitution.
- 35 8. Engaging in prostitution with a minor.

36 B. Notwithstanding any other law, a sentence imposed on a person for a
37 violation of this section involving a minor who is fifteen, sixteen or
38 seventeen years of age shall be consecutive to any other sentence imposed on
39 the person at any time.

40 C. If a person is convicted of a violation of subsection A, paragraph
41 8 of this section, the victim is fifteen, sixteen or seventeen years of age
42 and the court sentences the person to a term of probation, the court shall
43 order that as an initial term of probation the person be imprisoned in the
44 county jail for not less than thirty days. This jail term of incarceration
45 shall not be deleted, deferred or otherwise suspended and shall commence on

1 the date of sentencing. This subsection does not apply to persons who are
2 sentenced to serve a period of incarceration in the state department of
3 corrections.

4 D. Child prostitution is a class 2 felony, and if the minor is under
5 fifteen years of age it is punishable pursuant to section ~~13-604.01~~ 13-705.

6 E. If the minor is fifteen, sixteen or seventeen years of age, child
7 prostitution pursuant to subsection A, paragraph 1, 2, 3, 4, 5, 6 or 7 of
8 this section is a class 2 felony, the person convicted shall be sentenced
9 pursuant to this section and the person is not eligible for suspension of
10 sentence, probation, pardon or release from confinement on any basis except
11 as specifically authorized by section 31-233, subsection A or B until the
12 sentence imposed by the court has been served or commuted. The presumptive
13 term may be aggravated or mitigated within the range under this section
14 pursuant to section ~~13-702~~ 13-701, subsections ~~B, C, and D~~ AND E. The terms
15 are as follows:

16 1. The term for a first offense is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 7 years | 10.5 years | 21 years |

19 2. The term for a defendant who has one historical prior felony
20 conviction is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 14 years | 15.75 years | 28 years |

23 3. The term for a defendant who has two or more historical prior
24 felony convictions is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 21 years | 28 years | 35 years |

27 Sec. 73. Section 13-3407, Arizona Revised Statutes, is amended to
28 read:

29 13-3407. Possession, use, administration, acquisition, sale,
30 manufacture or transportation of dangerous drugs:
31 classification

32 A. A person shall not knowingly:

- 33 1. Possess or use a dangerous drug.
- 34 2. Possess a dangerous drug for sale.
- 35 3. Possess equipment or chemicals, or both, for the purpose of
36 manufacturing a dangerous drug.
- 37 4. Manufacture a dangerous drug.
- 38 5. Administer a dangerous drug to another person.
- 39 6. Obtain or procure the administration of a dangerous drug by fraud,
40 deceit, misrepresentation or subterfuge.
- 41 7. Transport for sale, import into this state or offer to transport
42 for sale or import into this state, sell, transfer or offer to sell or
43 transfer a dangerous drug.

1 B. A person who violates:
2 1. Subsection A, paragraph 1 of this section is guilty of a class 4
3 felony. Unless the drug involved is lysergic acid diethylamide,
4 methamphetamine, amphetamine or phencyclidine or the person was previously
5 convicted of a felony offense or a violation of this section or section
6 13-3408, the court on motion of the state, considering the nature and
7 circumstances of the offense, for a person not previously convicted of any
8 felony offense or a violation of this section or section 13-3408 may enter
9 judgment of conviction for a class 1 misdemeanor and make disposition
10 accordingly or may place the defendant on probation in accordance with
11 chapter 9 of this title and refrain from designating the offense as a felony
12 or misdemeanor until the probation is successfully terminated. The offense
13 shall be treated as a felony for all purposes until the court enters an order
14 designating the offense a misdemeanor.
15 2. Subsection A, paragraph 2 of this section is guilty of a class 2
16 felony.
17 3. Subsection A, paragraph 3 of this section is guilty of a class 3
18 felony, except that if the offense involved methamphetamine, the person is
19 guilty of a class 2 felony.
20 4. Subsection A, paragraph 4 of this section is guilty of a class 2
21 felony.
22 5. Subsection A, paragraph 5 of this section is guilty of a class 2
23 felony.
24 6. Subsection A, paragraph 6 of this section is guilty of a class 3
25 felony.
26 7. Subsection A, paragraph 7 of this section is guilty of a class 2
27 felony.
28 C. Except as provided in subsection E of this section, a person who is
29 convicted of a violation of subsection A, paragraph 1, 3 or 6 and who has not
30 previously been convicted of any felony or who has not been sentenced
31 pursuant to section ~~13-604~~ 13-703, SECTION 13-704, SECTION 13-706, SUBSECTION
32 A, SECTION 13-708, SUBSECTION D or any other law making the convicted person
33 ineligible for probation is eligible for probation.
34 D. Except as provided in subsection E of this section, if the
35 aggregate amount of dangerous drugs involved in one offense or all of the
36 offenses that are consolidated for trial equals or exceeds the statutory
37 threshold amount, a person who is convicted of a violation of subsection A,
38 paragraph 2, 5 or 7 of this section is not eligible for suspension of
39 sentence, probation, pardon or release from confinement on any basis until
40 the person has served the sentence imposed by the court, the person is
41 eligible for release pursuant to section 41-1604.07 or the sentence is
42 commuted.

1 E. If the person is convicted of a violation of subsection A,
2 paragraph 2, 3, 4 or 7 of this section and the drug involved is
3 methamphetamine, the person shall be sentenced pursuant to section ~~13-712~~
4 **13-709.03, SUBSECTIONS A OR B.**

5 F. A person who is convicted of a violation of subsection A, paragraph
6 4 of this section or subsection A, paragraph 2, 3 or 7 of this section
7 involving methamphetamine is not eligible for suspension of sentence,
8 probation, pardon or release from confinement on any basis until the person
9 has served the sentence imposed by the court, the person is eligible for
10 release pursuant to section 41-1604.07 or the sentence is commuted.

11 G. If a person is convicted of a violation of subsection A, paragraph
12 5 of this section, if the drug is administered without the other person's
13 consent, if the other person is under eighteen years of age and if the drug
14 is flunitrazepam, gamma hydroxy butrate or ketamine hydrochloride, the
15 convicted person is not eligible for suspension of sentence, probation,
16 pardon or release from confinement on any basis until the person has served
17 the sentence imposed by the court, the person is eligible for release
18 pursuant to section 41-1604.07 or the sentence is commuted.

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

26 I. A person who is convicted of a violation of ~~a provision of~~ this
27 section for which probation or release before the expiration of the sentence
28 imposed by the court is authorized is prohibited from using any marijuana,
29 dangerous drug, narcotic drug or prescription-only drug except as lawfully
30 administered by a health care practitioner and as a condition of any
31 probation or release shall be required to submit to drug testing administered
32 under the supervision of the probation department of the county or the state
33 department of corrections, as appropriate, during the duration of the term of
34 probation or before the expiration of the sentence imposed.

35 J. If a person who is convicted of a violation of ~~a provision of~~ this
36 section is granted probation, the court shall order that as a condition of
37 probation the person perform not less than three hundred sixty hours of
38 community restitution with an agency or organization ~~providing~~ **THAT PROVIDES**
39 counseling, rehabilitation or treatment for alcohol or drug abuse, an agency
40 or organization that provides medical treatment to persons who abuse
41 controlled substances, an agency or organization that serves persons who are
42 victims of crime or any other appropriate agency or organization.

1 C. A person who is convicted of a violation of subsection A, paragraph
2 1, 3 or 6 of this section and who has not previously been convicted of any
3 felony or who has not been sentenced pursuant to section ~~13-604~~ 13-703,
4 SECTION 13-704, SUBSECTION A, B, C, D OR E, SECTION 13-706, SUBSECTION A,
5 SECTION 13-708, SUBSECTION D or any other provision of law making the
6 convicted person ineligible for probation is eligible for probation.

7 D. If the aggregate amount of narcotic drugs involved in one offense
8 or all of the offenses that are consolidated for trial equals or exceeds the
9 statutory threshold amount, a person who is convicted of a violation of
10 subsection A, paragraph 2, 5 or 7 of this section is not eligible for
11 suspension of sentence, probation, pardon or release from confinement on any
12 basis until the person has served the sentence imposed by the court, the
13 person is eligible for release pursuant to section 41-1604.07 or the sentence
14 is commuted.

15 E. A person who is convicted of a violation of subsection A, paragraph
16 4 of this section is not eligible for suspension of sentence, probation,
17 pardon or release from confinement on any basis until the person has served
18 the sentence imposed by the court, the person is eligible for release
19 pursuant to section 41-1604.07 or the sentence is commuted.

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

27 G. A person who is convicted of a violation of ~~a provision of~~ this
28 section for which probation or release before the expiration of the sentence
29 imposed by the court is authorized is prohibited from using any marijuana,
30 dangerous drug, narcotic drug or prescription-only drug except as lawfully
31 administered by a health care practitioner and as a condition of any
32 probation or release shall be required to submit to drug testing administered
33 under the supervision of the probation department of the county or the state
34 department of corrections, as appropriate, during the duration of the term of
35 probation or before the expiration of the sentence imposed.

36 H. If a person who is convicted of a violation of this section is
37 granted probation, the court shall order that as a condition of probation the
38 person perform not less than three hundred sixty hours of community
39 restitution with an agency or organization that provides counseling,
40 rehabilitation or treatment for alcohol or drug abuse, an agency or
41 organization that provides medical treatment to persons who abuse controlled
42 substances, an agency or organization that serves persons who are victims of
43 crime or any other appropriate agency or organization.

1 ~~until the sentence imposed by the court has been served or commuted. The~~
2 ~~additional sentence imposed under this subsection is in addition to any~~
3 ~~enhanced punishment that may be applicable under section 13-604 or other~~
4 ~~provisions of this chapter~~ AND SECTION 13-709.03, SUBSECTION C APPLIES TO THE
5 SENTENCE IMPOSED.

6 C. In addition to any other penalty prescribed by this title, the
7 court shall order a person WHO IS convicted of a violation of this section to
8 pay a fine of not less than two thousand dollars or three times the value as
9 determined by the court of the drugs involved in or giving rise to the
10 charge, whichever is greater, and not more than the maximum authorized by
11 chapter 8 of this title. A judge shall not suspend any part or all of the
12 imposition of any fine required by this subsection.

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

18 E. The drug free school zone map prepared pursuant to title 15 shall
19 constitute an official record as to the location and boundaries of each drug
20 free school zone. The school district's governing board or its designee, or
21 the chief administrative officer in the case of any nonpublic school, shall
22 promptly notify the county attorney of any changes in the location and
23 boundaries of any school property and shall file with the county recorder the
24 original map prepared pursuant to title 15.

25 F. All school personnel who observe a violation of this section shall
26 immediately report the violation to a school administrator. The
27 administrator shall immediately report the violation to a peace officer. It
28 is unlawful for any school personnel or school administrator to fail to
29 report a violation as prescribed in this section.

30 G. School personnel having custody or control of school records of a
31 student involved in an alleged violation of this section shall make the
32 records available to a peace officer upon written request signed by a
33 magistrate. Records disclosed pursuant to this subsection are confidential
34 and may be used only in a judicial or administrative proceeding. A person
35 furnishing records required under this subsection or a person participating
36 in a judicial or administrative proceeding or investigation resulting from
37 the furnishing of records required under this subsection is immune from civil
38 or criminal liability by reason of such action unless the person acted with
39 malice.

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

1 I. For THE purposes of this section:

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

6 2. "School" means any public or nonpublic kindergarten program, common
7 school or high school.

8 Sec. 78. Section 13-3419, Arizona Revised Statutes, is amended to
9 read:

10 13-3419. Multiple drug offenses not committed on the same
11 occasion; sentencing

12 A. Except for a person convicted of possession offenses pursuant to
13 section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A,
14 paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is
15 convicted of two or more offenses under this chapter that were not committed
16 on the same occasion but that either are consolidated for trial purposes or
17 are not historical prior felony convictions ~~as defined in section 13-604~~
18 shall be sentenced for the second or subsequent offense pursuant to this
19 section. The person shall not be eligible for suspension of sentence,
20 probation, pardon or release from confinement on any basis except as
21 specifically authorized by section 31-233, subsection A or B until the
22 sentence imposed by the court has been served, the person is eligible for
23 release pursuant to section 41-1604.07 or the sentence is commuted, except
24 that a person sentenced pursuant to paragraph 1 of this subsection shall be
25 eligible for probation. The presumptive term for paragraph 1, 2, 3 or 4 of
26 this subsection may be aggravated within the range under this section
27 pursuant to section ~~13-702~~ 13-701, subsections ~~B,~~ C and D. The presumptive
28 term for paragraph 1, 2 or 3 of this subsection may be mitigated within the
29 range under this section pursuant to section ~~13-702~~ 13-701, subsections ~~B,~~ C
30 and ~~D~~ E. The terms are as follows:

31 1. For two offenses for which the aggregate amount of drugs involved
32 in one offense or both of the offenses is less than the statutory threshold
33 amount for the second offense:

| <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---------------|----------------|--------------------|----------------|
| 34 Class 2 | 4 years | 5 years | 10 years |
| 35 Class 3 | 2.5 years | 3.5 years | 7 years |
| 36 Class 4 | 1.5 years | 2.5 years | 3 years |
| 37 Class 5 | .75 years | 1.5 years | 2 years |

38 2. For three or more offenses for which the aggregate amount of drugs
39 involved in one offense or all of the offenses is less than the statutory
40 threshold amount for any offense subsequent to the second offense:
41

| | <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|---|---------------|----------------|--------------------|----------------|
| 1 | | | | |
| 2 | Class 2 | 4 years | 5 years | 10 years |
| 3 | Class 3 | 2.5 years | 3.5 years | 7 years |
| 4 | Class 4 | 1.5 years | 2.5 years | 3 years |
| 5 | Class 5 | .75 years | 1.5 years | 2 years |

6 3. For two offenses for which the aggregate amount of drugs involved
7 in one offense or all of the offenses equals or exceeds the statutory
8 threshold amount for the second offense:

| | <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----|---------------|-------------------------------|--------------------|----------------|
| 9 | | | | |
| 10 | Class 2 | 4 years | 5 years | 10 years |
| 11 | Class 3 | 2.5 years | 3.5 years | 7 years |
| 12 | Class 4 | 1.5 years | 2.5 years | 3 years |
| 13 | Class 5 | 9 months .75 YEARS | 1.5 years | 2 years |

14 4. For three or more offenses for which the aggregate amount of drugs
15 involved in one offense or all of the offenses equals or exceeds the
16 statutory threshold amount for any offense subsequent to the second offense:

| | <u>Felony</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----|---------------|-------------------------------|--------------------|----------------|
| 17 | | | | |
| 18 | Class 2 | 4 years | 7 years | 12 years |
| 19 | Class 3 | 2.5 years | 5 years | 9 years |
| 20 | Class 4 | 1.5 years | 3 years | 5 years |
| 21 | Class 5 | 9 months .75 YEARS | 2.5 years | 4 years |

22 B. For offenders WHO ARE sentenced pursuant to subsection A,
23 ~~paragraphs 1 through 4~~ of this section the court may increase the maximum
24 sentence otherwise authorized by up to twenty-five per cent.

25 C. For offenders WHO ARE sentenced pursuant to subsection A, paragraph
26 1, 2 or 3 of this section the court may decrease the minimum sentence
27 otherwise authorized by up to twenty-five per cent.

28 D. If the court increases or decreases a sentence pursuant to this
29 section, the court shall state on the record the reasons for the increase or
30 decrease.

31 E. The court shall inform all of the parties before the sentencing
32 occurs of its intent to increase or decrease a sentence pursuant to this
33 section. If the court fails to inform the parties, a party waives its right
34 to be informed unless the party timely objects at the time of sentencing.

35 Sec. 79. Section 13-3422, Arizona Revised Statutes, is amended to
36 read:

37 13-3422. Drug court program; establishment; participation

38 A. The presiding judge of the superior court in each county may
39 establish a drug court program as defined in section 13-3401.

40 B. Cases assigned to the drug court program may consist of defendants
41 who are drug dependent persons and who are charged with a probation eligible
42 offense under this chapter, including preparatory offenses.

43 C. A defendant may be admitted into the drug court program prior to a
44 guilty plea or a trial only on the agreement of the court and the prosecutor.

1 D. A defendant is not eligible for entry into the drug court program
2 pursuant to subsections F and H of this section if any of the following
3 applies:

4 1. The defendant has been convicted of a serious offense as defined in
5 section ~~13-604~~ 13-706.

6 2. The defendant has been convicted of an offense under chapter 14 of
7 this title.

8 3. The defendant has been convicted of ~~an~~ A DANGEROUS offense
9 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~
10 ~~dangerous instrument or the intentional or knowing infliction of serious~~
11 ~~physical injury.~~

12 4. The defendant has completed or previously been terminated from a
13 drug court program other than a juvenile drug court program.

14 5. The defendant has completed or previously been terminated from a
15 drug diversion program other than a juvenile drug diversion program for an
16 offense in violation of this chapter.

17 E. For the purposes of subsection D of this section, the age of the
18 conviction does not matter.

19 F. Notwithstanding any law to the contrary, if a defendant who is
20 assigned to the drug court program is subsequently found guilty of the
21 offense and probation is otherwise available, the court, without entering a
22 judgment of guilt and with the concurrence of the defendant, may defer
23 further proceedings and place the defendant on probation. The terms and
24 conditions of probation shall provide for the treatment of the drug dependent
25 person and shall include any other conditions and requirements that the court
26 deems appropriate, including the imposition of a fine, payment of fees and
27 any other terms and conditions as provided by law which are not in violation
28 of section 13-901.01.

29 G. If the defendant is placed on probation pursuant to subsection F of
30 this section and the defendant violates a term or condition of probation, the
31 court may terminate the defendant's participation in the drug court program,
32 enter an adjudication of guilt and revoke the defendant's probation.

33 H. If the defendant is convicted of an offense listed in subsection I
34 of this section and is placed on probation pursuant to subsection F of this
35 section, on fulfillment of the terms and conditions of probation, the court
36 may discharge the defendant and dismiss the proceedings against the defendant
37 or may dispose of the case as provided by law.

38 I. A defendant is eligible for dismissal of proceedings as provided in
39 subsection H of this section if the defendant is convicted of any of the
40 following offenses:

41 1. Possession or use of marijuana in violation of section 13-3405,
42 subsection A, paragraph 1.

43 2. Possession or use of a prescription-only drug in violation of
44 section 13-3406, subsection A, paragraph 1.

1 4. The victim is related to the defendant or the defendant's spouse by
2 blood or court order as a parent, grandparent, child, grandchild, brother or
3 sister or by marriage as a parent-in-law, grandparent-in-law, stepparent,
4 step-grandparent, stepchild, step-grandchild, brother-in-law or
5 sister-in-law.

6 5. The victim is a child who resides or has resided in the same
7 household as the defendant and is related by blood to a former spouse of the
8 defendant or to a person who resides or who has resided in the same household
9 as the defendant.

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

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

41 D. If a firearm is seized pursuant to subsection C of this section,
42 the peace officer shall give the owner or possessor of the firearm a receipt
43 for each seized firearm. The receipt shall indicate the identification or
44 serial number or other identifying characteristic of each seized firearm.

1 Each seized firearm shall be held for at least seventy-two hours by the law
2 enforcement agency that seized the firearm.

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

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

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

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

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

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

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

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

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

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

3 L. An offense that is included in domestic violence carries the
4 classification prescribed in the section of this title in which the offense
5 is classified. If the defendant committed a felony offense listed in
6 subsection A of this section against a pregnant victim and knew that the
7 victim was pregnant or if the defendant committed a felony offense causing
8 physical injury to a pregnant victim and knew that the victim was pregnant,
9 the ~~maximum sentence otherwise authorized shall be increased by up to two~~
10 ~~years~~ SECTION 13-709.04, SUBSECTION B APPLIES TO THE SENTENCE IMPOSED.

11 M. If the defendant is found guilty of a first offense included in
12 domestic violence, the court shall provide the following written notice to
13 the defendant:

14 You have been convicted of an offense included in domestic
15 violence. You are now on notice that:

16 1. If you are convicted of a second offense included in
17 domestic violence, you may be placed on supervised probation and
18 may be incarcerated as a condition of probation.

19 2. A third or subsequent charge may be filed as a felony
20 and a conviction for that offense shall result in a term of
21 incarceration.

22 N. The failure or inability of the court to provide the notice
23 required under subsection M of this section does not preclude the use of the
24 prior convictions for any purpose otherwise permitted.

25 Sec. 84. Section 13-3623, Arizona Revised Statutes, is amended to
26 read:

27 13-3623. Child or vulnerable adult abuse; emotional abuse;
28 classification; exceptions; definitions

29 A. Under circumstances likely to produce death or serious physical
30 injury, any person who causes a child or vulnerable adult to suffer physical
31 injury or, having the care or custody of a child or vulnerable adult, who
32 causes or permits the person or health of the child or vulnerable adult to be
33 injured or who causes or permits a child or vulnerable adult to be placed in
34 a situation where the person or health of the child or vulnerable adult is
35 endangered is guilty of an offense as follows:

36 1. If done intentionally or knowingly, the offense is a class 2 felony
37 and if the victim is under fifteen years of age it is punishable pursuant to
38 section ~~13-604.01~~ 13-705.

39 2. If done recklessly, the offense is a class 3 felony.

40 3. If done with criminal negligence, the offense is a class 4 felony.

41 B. Under circumstances other than those likely to produce death or
42 serious physical injury to a child or vulnerable adult, any person who causes
43 a child or vulnerable adult to suffer physical injury or abuse or, having the
44 care or custody of a child or vulnerable adult, who causes or permits the
45 person or health of the child or vulnerable adult to be injured or who causes

1 or permits a child or vulnerable adult to be placed in a situation where the
2 person or health of the child or vulnerable adult is endangered is guilty of
3 an offense as follows:

4 1. If done intentionally or knowingly, the offense is a class 4
5 felony.

6 2. If done recklessly, the offense is a class 5 felony.

7 3. If done with criminal negligence, the offense is a class 6 felony.

8 C. For the purposes of subsections A and B of this section, the terms
9 endangered and abuse include but are not limited to circumstances in which a
10 child or vulnerable adult is permitted to enter or remain in any structure or
11 vehicle in which volatile, toxic or flammable chemicals are found or
12 equipment is possessed by any person for the purpose of manufacturing a
13 dangerous drug in violation of section 13-3407, subsection A, ~~paragraphs~~
14 ~~PARAGRAPH~~ 3 or 4. Notwithstanding any other provision of this section, a
15 violation committed under the circumstances described in this subsection does
16 not require that a person have care or custody of the child or vulnerable
17 adult.

18 D. A person who intentionally or knowingly engages in emotional abuse
19 of a vulnerable adult who is a patient or resident in any setting in which
20 health care, health-related services or assistance with one or more of the
21 activities of daily living is provided or, having the care or custody of a
22 vulnerable adult, who intentionally or knowingly subjects or permits the
23 vulnerable adult to be subjected to emotional abuse is guilty of a class 6
24 felony.

25 E. This section does not apply to:

26 1. A health care provider as defined in section 36-3201 who permits a
27 patient to die or the patient's condition to deteriorate by not providing
28 health care if that patient refuses that care directly or indirectly through
29 a health care directive as defined in section 36-3201, through a surrogate
30 pursuant to section 36-3231 or through a court appointed guardian as provided
31 for in title 14, chapter 5, article 3.

32 2. A vulnerable adult who is being furnished spiritual treatment
33 through prayer alone and who would not otherwise be considered to be abused,
34 neglected or endangered if medical treatment were being furnished.

35 F. For the purposes of this section:

36 1. "Abuse", when used in reference to a child, means abuse as defined
37 in section 8-201, except for those acts in the definition that are declared
38 unlawful by another statute of this title and, when used in reference to a
39 vulnerable adult, means:

40 (a) Intentional infliction of physical harm.

41 (b) Injury caused by criminally negligent acts or omissions.

42 (c) Unlawful imprisonment, as described in section 13-1303.

43 (d) Sexual abuse or sexual assault.

1 2. "Child" means an individual who is under eighteen years of age.

2 3. "Emotional abuse" means a pattern of ridiculing or demeaning a
3 vulnerable adult, making derogatory remarks to a vulnerable adult, verbally
4 harassing a vulnerable adult or threatening to inflict physical or emotional
5 harm on a vulnerable adult.

6 4. "Physical injury" means the impairment of physical condition and
7 includes any skin bruising, pressure sores, bleeding, failure to thrive,
8 malnutrition, dehydration, burns, fracture of any bone, subdural hematoma,
9 soft tissue swelling, injury to any internal organ or any physical condition
10 that imperils health or welfare.

11 5. "Serious physical injury" means physical injury that creates a
12 reasonable risk of death or that causes serious or permanent disfigurement,
13 serious impairment of health or loss or protracted impairment of the function
14 of any bodily organ or limb.

15 6. "Vulnerable adult" means an individual who is eighteen years of age
16 or older and who is unable to protect himself from abuse, neglect or
17 exploitation by others because of a mental or physical impairment.

18 Sec. 85. Section 13-3716, Arizona Revised Statutes, is amended to
19 read:

20 13-3716. Unlawful failure to give notice of conviction of
21 dangerous crime against children or child abuse;
22 classification

23 A. It is unlawful for a person who has been convicted of a dangerous
24 crime against children as defined in section ~~13-604.01~~ 13-705 or child abuse
25 pursuant to section 13-3623, subsection A or subsection B, paragraph 1 to
26 fail to give notice of the fact of the conviction to a business institution
27 or organization when applying for employment or volunteering for service with
28 any business institution or organization that sponsors any activity in which
29 adults supervise children. For the purposes of this ~~section~~ SUBSECTION,
30 business institutions or organizations include schools, preschools, child
31 care providers and youth organizations.

32 B. A person who violates this section is guilty of a class 5 felony.

33 Sec. 86. Section 13-3727, Arizona Revised Statutes, is amended to
34 read:

35 13-3727. Unlawful residency; persons convicted of criminal
36 offenses; exceptions; preemption; classification

37 A. It is unlawful for a person who has been convicted of a dangerous
38 crime against children as defined in section ~~13-604.01~~ 13-705, who is
39 required to register pursuant to section 13-3821 and who is classified as a
40 level three offender pursuant to sections 13-3825 and 13-3826 to reside
41 within one thousand feet of the real property comprising any of the
42 following:

43 1. A private school, as defined in section 15-101, or a public school
44 that provides instruction in kindergarten programs and any combination of
45 kindergarten programs and grades one through eight.

1 2. A private school, as defined in section 15-101, or a public school
2 that provides instruction in any combination of grades nine through twelve.

3 3. A child care facility as defined in section 36-881.

4 B. This section does not apply to any of the following:

5 1. A person who establishes the person's residence before ~~the~~
6 ~~effective date of this section~~ SEPTEMBER 19, 2007 or before a new school or
7 child care facility is located.

8 2. A person who is a minor.

9 3. A person who is currently serving a term of probation.

10 4. A person who has had the person's civil rights restored pursuant to
11 chapter 9 of this title.

12 5. A person who has not been convicted of a subsequent offense in the
13 previous ten years, excluding any time the person was incarcerated in any
14 federal, state, county or local jail or prison facility.

15 C. Notwithstanding any other law and as a matter of statewide concern,
16 a county, city or town shall not enact an ordinance that provides for
17 distance restrictions greater than those found in this section.

18 D. A person who violates this section is guilty of a class 1
19 misdemeanor.

20 Sec. 87. Section 13-3821, Arizona Revised Statutes, is amended to
21 read:

22 13-3821. Persons required to register; procedure;
23 identification card; assessment; definitions

24 A. A person who has been convicted of a violation or attempted
25 violation of any of the following offenses or who has been convicted of an
26 offense committed in another jurisdiction that if committed in this state
27 would be a violation or attempted violation of any of the following offenses
28 or an offense that was in effect before September 1, 1978 and that, if
29 committed on or after September 1, 1978, has the same elements of an offense
30 listed in this section or who is required to register by the convicting
31 jurisdiction, within ten days after the conviction or within ten days after
32 entering and remaining in any county of this state, shall register with the
33 sheriff of that county:

34 1. Unlawful imprisonment pursuant to section 13-1303 if the victim is
35 under eighteen years of age and the unlawful imprisonment was not committed
36 by the child's parent.

37 2. Kidnapping pursuant to section 13-1304 if the victim is under
38 eighteen years of age and the kidnapping was not committed by the child's
39 parent.

40 3. Sexual abuse pursuant to section 13-1404 if the victim is under
41 eighteen years of age.

42 4. Sexual conduct with a minor pursuant to section 13-1405.

43 5. Sexual assault pursuant to section 13-1406.

44 6. Sexual assault of a spouse if the offense was committed before
45 August 12, 2005.

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

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

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

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

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

16 H. The court may order the suspension or termination of any duty to
17 register under this section after a hearing held pursuant to section 13-923.

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

38 J. On the person's initial registration and every year after the
39 person's initial registration, the person shall confirm any required online
40 identifier and the name of any website or internet communication service
41 where the identifier is being used, ~~the person~~ shall obtain a new
42 nonoperating identification license or a driver license from the motor
43 vehicle division in the department of transportation and shall carry a valid
44 nonoperating identification license or a driver license. Notwithstanding
45 sections 28-3165 and 28-3171, the license is valid for one year from the date

1 of issuance, and the person shall submit to the department of transportation
2 proof of the person's address and place of residence. The motor vehicle
3 division shall annually update the person's address and photograph and shall
4 make a copy of the photograph available to the department of public safety or
5 to any law enforcement agency. The motor vehicle division shall provide to
6 the department of public safety daily address updates for persons required to
7 register pursuant to this section.

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

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

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

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

41 O. At the time of registering, the sheriff shall secure a sufficient
42 sample of blood or other bodily substances for deoxyribonucleic acid testing
43 and extraction from a person who has been convicted of an offense committed
44 in another jurisdiction that if committed in this state would be a violation
45 or attempted violation of any of the offenses listed in subsection A of this

1 section or an offense that was in effect before September 1, 1978 and that,
2 if committed on or after September 1, 1978, has the same elements of an
3 offense listed in subsection A of this section or who is required to register
4 by the convicting jurisdiction. The sheriff shall transmit the sample to the
5 department of public safety.

6 P. Any person WHO IS required to register under subsection A of this
7 section shall register ~~their~~ THE PERSON'S required online identifier and the
8 name of any website or internet communication service where the identifier is
9 being used or ~~intends to use the identifier~~ IS INTENDED TO BE USED with the
10 sheriff from and after December 31, 2007, regardless of whether the person
11 was required to register an identifier at the time of ~~their~~ THE PERSON'S
12 initial registration under this section.

13 Q. ON CONVICTION OF ANY OFFENSE FOR WHICH A PERSON IS REQUIRED TO
14 REGISTER PURSUANT TO THIS SECTION, IN ADDITION TO ANY OTHER PENALTY
15 PRESCRIBED BY LAW, THE COURT SHALL ORDER THE PERSON TO PAY AN ADDITIONAL
16 ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS. THIS ASSESSMENT IS NOT SUBJECT TO
17 ANY SURCHARGE. THE COURT SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS
18 SECTION TO THE COUNTY TREASURER. THE COUNTY TREASURER SHALL TRANSMIT THE
19 MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT
20 THE MONIES RECEIVED IN THE SEX OFFENDER MONITORING FUND ESTABLISHED BY
21 SECTION 13-3828. NOTWITHSTANDING ANY OTHER LAW, THE COURT SHALL NOT WAIVE
22 THE ASSESSMENT IMPOSED PURSUANT TO THIS SECTION.

23 ~~Q.~~ R. For the purposes of this section:

- 24 1. "Address" means the location at which the person receives mail.
- 25 2. "Required online identifier" means any electronic e-mail address
26 information or instant message, chat, social networking or other similar
27 internet communication name, but does not include A social security number,
28 date of birth, or pin number.
- 29 3. "Residence" means the person's dwelling place, whether permanent or
30 temporary.

31 Sec. 88. Section 13-3824, Arizona Revised Statutes, is amended to
32 read:

33 13-3824. Violation; classification; assessment

34 A. A person who is subject to registration under this article and who
35 fails to comply with the requirements of this article is guilty of a class 4
36 felony.

37 B. Notwithstanding subsection A of this section, a person who fails to
38 comply with section 13-3821, subsection ~~I~~ J is guilty of a class 6 felony
39 and, in addition to any other penalty prescribed by law, the court shall
40 order the person to pay an additional assessment of two hundred fifty
41 dollars. This assessment is not subject to any surcharge. The court shall
42 transmit the monies received pursuant to this subsection to the county
43 treasurer. The county treasurer shall transmit the monies received to the
44 state treasurer. The state treasurer shall deposit the monies received in
45 the sex offender monitoring fund established by section 13-3828.

1 Notwithstanding any other law, the court shall not waive the assessment
2 imposed pursuant to this subsection.

3 Sec. 89. Section 13-3828, Arizona Revised Statutes, is amended to
4 read:

5 13-3828. Sex offender monitoring fund

6 The sex offender monitoring fund is established consisting of monies
7 collected from assessments pursuant to sections ~~13-119~~ 13-3821 and 13-3824.
8 The department of public safety shall administer the fund. Monies in the
9 fund are subject to legislative appropriation.

10 Sec. 90. Section 13-3994, Arizona Revised Statutes, is amended to
11 read:

12 13-3994. Commitment; hearing; jurisdiction; definition

13 A. A person who is found guilty except insane pursuant to section
14 13-502 shall be committed to a secure state mental health facility under the
15 department of health services for a period of treatment.

16 B. If the criminal act of the person committed pursuant to subsection
17 A of this section did not cause the death or serious physical injury of or
18 the threat of death or serious physical injury to another person, the court
19 shall set a hearing date within seventy-five days after the person's
20 commitment to determine if the person is entitled to release from confinement
21 or if the person meets the standards for civil commitment pursuant to title
22 36, chapter 5. The court shall notify the medical director of the mental
23 health facility, the attorney general, the county attorney, the victim and
24 the attorney representing the person, if any, of the date of the hearing.
25 Fourteen days before the hearing the director of the mental health facility
26 shall submit to the court a report addressing the person's mental health and
27 dangerousness.

28 C. At a hearing held pursuant to subsection B of this section:

29 1. If the person proves by clear and convincing evidence that the
30 person no longer suffers from a mental disease or defect and is not
31 dangerous, the court shall order the person's release and the person's
32 commitment ordered pursuant to section 13-502, subsection D shall terminate.
33 Before determining to release a person pursuant to this paragraph, the court
34 shall consider the entire criminal history of the person and shall not order
35 the person's release if the court determines that the person has a propensity
36 to reoffend.

37 2. If the court finds that the person still suffers from a mental
38 disease or defect, may present a threat of danger to self or others, is
39 gravely disabled, is persistently or acutely disabled or has a propensity to
40 reoffend, it shall order the county attorney to institute civil commitment
41 proceedings pursuant to title 36 and the person's commitment ordered pursuant
42 to section 13-502, subsection D shall terminate.

43 D. If the court finds that the criminal act of the person committed
44 pursuant to subsection A of this section caused the death or serious physical
45 injury of or the threat of death or serious physical injury to another

1 person, the court shall place the person under the jurisdiction of the
2 psychiatric security review board. The court shall state the beginning date,
3 length and ending date of the board's jurisdiction over the person. The
4 length of the board's jurisdiction over the person is equal to the sentence
5 the person could have received pursuant to ~~section 13-703, subsection A or~~
6 section 13-707 or SECTION 13-751, SUBSECTION A OR the presumptive sentence
7 the defendant could have received pursuant to section ~~13-604, section~~
8 ~~13-604.01, section 13-701~~ 13-702, subsection ~~C~~ D, SECTION 13-703, SECTION
9 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A, section 13-710 or
10 section 13-1406. In making this determination the court shall not consider
11 the sentence enhancements for prior convictions under section ~~13-604~~ 13-703
12 OR 13-704. The court shall retain jurisdiction of all matters that are not
13 specifically delegated to the psychiatric security review board for the
14 duration of the presumptive sentence.

15 E. A person who is placed under the jurisdiction of the psychiatric
16 security review board pursuant to subsection D of this section is not
17 eligible for discharge from the board's jurisdiction until the board's
18 jurisdiction over the person expires.

19 F. A person who is placed under the jurisdiction of the psychiatric
20 security review board pursuant to subsection D of this section is not
21 entitled to a hearing before the board earlier than one hundred twenty days
22 after the person's initial commitment. A request for a subsequent release
23 hearing may be made pursuant to subsection H of this section. After the
24 hearing, the board may take one of the following actions:

25 1. If the psychiatric security review board finds that the person
26 still suffers from a mental disease or defect and is dangerous, the board
27 shall order that the person remain committed at the secure state mental
28 health facility.

29 2. If the person proves by clear and convincing evidence that the
30 person no longer suffers from a mental disease or defect and is not
31 dangerous, the psychiatric security review board shall order the person's
32 release. The person shall remain under the jurisdiction of the board.
33 Before determining to release a person pursuant to this paragraph, the board
34 shall consider the entire criminal history of the person and shall not order
35 the person's release if the board determines that the person has a propensity
36 to reoffend.

37 3. If the psychiatric security review board finds that the person
38 still suffers from a mental disease or defect or that the mental disease or
39 defect is in stable remission but the person is no longer dangerous, the
40 board shall order the person's conditional release. The person shall remain
41 under the board's jurisdiction. The board in conjunction with the state
42 mental health facility and behavioral health community providers shall
43 specify the conditions of the person's release. The board shall continue to
44 monitor and supervise a person who is released conditionally. Before the

1 conditional release of a person, a supervised treatment plan shall be in
2 place, including the necessary funding to implement the plan.

3 4. If the person is sentenced pursuant to section ~~13-604, subsection~~
4 ~~F, G, H, I, J or K~~ 13-704, SUBSECTION A, B, C, D OR E and the psychiatric
5 security review board finds that the person no longer needs ongoing treatment
6 for a mental disease and the person is dangerous or has a propensity to
7 reoffend, the board shall order the person to be transferred to the state
8 department of corrections for the remainder of the sentence imposed pursuant
9 to section 13-502, subsection D. The board shall consider the safety and
10 protection of the public.

11 G. Within twenty days after the psychiatric security review board
12 orders a person to be transferred to the state department of corrections, the
13 person may file a petition for a judicial determination. The person shall
14 serve a copy of the request on the attorney general. If the person files a
15 petition for a judicial determination, the person shall remain in a state
16 mental health facility pending the result of the judicial determination. The
17 person requesting the judicial determination has the burden of proving the
18 issues by clear and convincing evidence. The judicial determination is
19 limited to the following issues:

20 1. Whether the person no longer needs ongoing treatment for a mental
21 disease.

22 2. Whether the person is dangerous or has a propensity to reoffend.

23 H. A person who is placed under the jurisdiction of the psychiatric
24 security review board pursuant to subsection D of this section may not seek a
25 new release hearing earlier than twenty months after a prior release hearing,
26 except that the medical director of the state mental health facility may
27 request a new release hearing for a person under the jurisdiction of the
28 psychiatric security review board at any time. The person shall not be held
29 in confinement for more than two years without a hearing before the board to
30 determine if the person should be released or conditionally released.

31 I. At any hearing for release or conditional release pursuant to this
32 section:

33 1. Public safety and protection are primary.

34 2. The applicant has the burden of proof by clear and convincing
35 evidence.

36 J. At least fifteen days before a hearing is scheduled to consider a
37 person's release, or before the expiration of the board's jurisdiction over
38 the person, the state mental health facility or supervising agency shall
39 submit to the psychiatric security review board a report on the person's
40 mental health. The psychiatric security review board shall determine whether
41 to release the person or to order the county attorney to institute civil
42 commitment proceedings pursuant to title 36.

43 K. The procedures for civil commitment govern the continued commitment
44 of the person after the expiration of the jurisdiction of the psychiatric
45 security review board.

1 L. Before a person is released or conditionally released, at least
2 three of the five psychiatric security review board members shall vote for
3 the release or conditional release.

4 M. If at any time while the person remains under the jurisdiction of
5 the psychiatric security review board it appears to the board, the chairman
6 or vice-chairman of the board or the medical director of the state mental
7 health facility that the person has failed to comply with the terms of the
8 person's conditional release or that the mental health of the person has
9 deteriorated, the board or the chairman or vice-chairman of the board for
10 good cause or the medical director of the state mental health facility may
11 order that the person be returned to a secure state mental health facility
12 for evaluation or treatment. A written order of the board, the chairman or
13 vice-chairman of the board or the medical director is sufficient warrant for
14 any law enforcement officer to take the person into custody and to transport
15 the person accordingly. Any sheriff or other peace officer shall execute the
16 order and shall immediately notify the board of the person's return to the
17 facility. Within twenty days after the person's return to a secure state
18 mental health facility the board shall conduct a hearing and shall give
19 notice within five days before the hearing of the time and place of the
20 hearing to the person, the victim, the attorney representing the person, the
21 county attorney and the attorney general.

22 N. The director of a facility that is providing treatment to a person
23 on conditional release or any other person who is responsible for the
24 supervision of the person may take the person or request that the person be
25 taken into custody if there is reasonable cause to believe that the person's
26 mental health has deteriorated to the point that the person's conditional
27 release should be revoked and that the person is in need of immediate care,
28 custody or treatment or that deterioration is likely because of noncompliance
29 with a treatment program. A person who is taken into custody pursuant to
30 this subsection shall be transported immediately to a secure state mental
31 health facility and shall have the same rights as any person appearing before
32 the psychiatric security review board.

33 O. Before the initial hearing or any other hearing before the
34 psychiatric security review board on the release or conditional release of
35 the person, the person, the attorney who is representing the person and the
36 attorney general or county attorney who is representing the state may choose
37 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a
38 psychologist licensed pursuant to title 32, chapter 19.1 to examine the
39 person. All costs in connection with the examination shall be approved and
40 paid by the county of the sentencing court. The written examination results
41 shall be filed with the board and shall include an opinion as to:

- 42 1. The mental condition of the person.
- 43 2. Whether the person is dangerous.

1 P. Notwithstanding subsection 0 of this section, the board or the
2 chairman of the board for good cause may order an independent mental health
3 evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17
4 or a psychologist licensed pursuant to title 32, chapter 19.1. The written
5 examination results shall be filed with the board pursuant to subsection 0 of
6 this section.

7 Q. If a person is found guilty except insane pursuant to section
8 13-502, the department of health services shall assume custody of the person
9 within ten days after receiving the order committing the person pursuant to
10 subsection A of this section. The Arizona state hospital shall collect
11 census data for guilty except insane treatment programs to establish maximum
12 capacity and the allocation formula required pursuant to section 36-206,
13 subsection D. If the Arizona state hospital reaches its funded capacity for
14 forensic programs, the department of health services may defer the admission
15 of the person found guilty except insane for up to an additional twenty days.
16 The department of health services shall reimburse the county for the actual
17 costs of each day the admission is deferred. If the department of health
18 services is not able to admit the person found guilty except insane at the
19 conclusion of the twenty day deferral period, the department of health
20 services shall notify the sentencing court, the prosecutor and the defense
21 counsel of this fact. On receipt of this notification, the prosecutor or the
22 person's defense counsel may request a hearing to determine the likely length
23 of time admission will continue to be deferred and whether any other action
24 should be taken. On receipt of the request for hearing, the court shall set
25 a hearing within ten days.

26 R. For the purposes of this section, "state mental health facility"
27 means a secure state mental health facility under the department of health
28 services.

29 Sec. 91. Section 13-4032, Arizona Revised Statutes, is amended to
30 read:

31 13-4032. Appeal by state

32 An appeal may be taken by the state from:

- 33 1. An order dismissing an indictment, information or complaint or
34 count of an indictment, information or complaint.
- 35 2. An order granting a new trial.
- 36 3. A ruling on a question of law adverse to the state when the
37 defendant was convicted and appeals from the judgment.
- 38 4. An order made after judgment affecting the substantial rights of
39 the state or a victim, except that the state shall only take an appeal on an
40 order affecting the substantial rights of a victim at the victim's request.
- 41 5. A sentence on the grounds that it is illegal, or if the sentence
42 imposed is other than the presumptive sentence authorized by section ~~13-604~~
43 ~~or 13-701~~ 13-702, SECTION 13-703, SECTION 13-704 OR SECTION 13-706,
44 SUBSECTION A.

1 6. An order granting a motion to suppress the use of evidence.

2 7. A judgment of acquittal of one or more offenses charged in an
3 indictment, information or complaint or count of an indictment, information
4 or complaint that is entered after a verdict of guilty on the offense or
5 offenses.

6 Sec. 92. Section 13-4062, Arizona Revised Statutes, is amended to
7 read:

8 13-4062. Anti-marital fact privilege; other privileged
9 communications

10 A person shall not be examined as a witness in the following cases:

11 1. A husband for or against his wife without her consent, nor a wife
12 for or against her husband without his consent, as to events occurring during
13 the marriage, nor can either, during the marriage or afterwards, without
14 consent of the other, be examined as to any communication made by one to the
15 other during the marriage. These exceptions do not apply in a criminal
16 action or proceeding for a crime committed by the husband against the wife,
17 or by the wife against the husband, nor in a criminal action or proceeding
18 against the husband for abandonment, failure to support or provide for or
19 failure or neglect to furnish the necessities of life to the wife or the
20 minor children. Either spouse, at his or her request, but not otherwise, may
21 be examined as a witness for or against the other in a prosecution for an
22 offense listed in section ~~13-604~~ 13-706, subsection ~~W~~ F, paragraph ~~4~~ 1, for
23 bigamy or adultery, committed by either spouse, or for sexual assault
24 committed by the husband.

25 2. An attorney, without consent of the attorney's client, as to any
26 communication made by the client to the attorney, or the attorney's advice
27 given in the course of professional employment.

28 3. A clergyman or priest, without consent of the person making the
29 confession, as to any confession made to the clergyman or priest in his
30 professional character in the course of discipline enjoined by the church to
31 which the clergyman or priest belongs.

32 4. A physician or surgeon, without consent of the physician's or
33 surgeon's patient, as to any information acquired in attending the patient
34 which was necessary to enable the physician or surgeon to prescribe or act
35 for the patient.

36 Sec. 93. Section 13-4501, Arizona Revised Statutes, is amended to
37 read:

38 13-4501. Definitions

39 In this chapter, unless the context otherwise requires:

40 1. "Clinical liaison" means a mental health expert or any other
41 individual who has experience and training in mental health or developmental
42 disabilities and who is qualified and appointed by the court to aid in
43 coordinating the treatment or training of individuals who are found
44 incompetent to stand trial. If mental retardation is an issue, the clinical
45 liaison shall be an expert in mental retardation.

1 2. "Incompetent to stand trial" means that as a result of a mental
2 illness, defect or disability a defendant is unable to understand the nature
3 and object of the proceeding or to assist in the defendant's defense. In the
4 case of a person under ~~the age of~~ eighteen years of age when the issue of
5 competency is raised, incompetent to stand trial also means a person who does
6 not have sufficient present ability to consult with the person's lawyer with
7 a reasonable degree of rational understanding or who does not have a rational
8 and factual understanding of the proceedings against the person. The
9 presence of a mental illness, defect or disability alone is not grounds for
10 finding a defendant incompetent to stand trial.

11 3. "Mental health expert" means a physician who is licensed pursuant
12 to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to
13 title 32, chapter 19.1 and who is:

14 (a) Familiar with this state's competency standards and statutes.

15 (b) Familiar with the treatment, training and restoration programs
16 that are available in this state.

17 (c) Certified by the court as meeting court developed guidelines using
18 recognized programs or standards.

19 4. "Mental illness, defect or disability" means a psychiatric or
20 neurological disorder that is evidenced by behavioral or emotional symptoms,
21 including congenital mental conditions, conditions resulting from injury or
22 disease and developmental disabilities as defined in section 36-551.

23 5. "Threat to public safety" means charged with the commission of any
24 of the following:

25 (a) A crime involving the discharge, use or threatening exhibition of
26 a deadly weapon or dangerous instrument or the infliction of physical injury
27 on another person.

28 (b) A dangerous crime against children pursuant to section ~~13-604.01~~
29 ~~13-705~~.

30 (c) Two or more nondangerous felonies within a period of twenty-four
31 months.

32 Sec. 94. Section 13-4511, Arizona Revised Statutes, is amended to
33 read:

34 13-4511. Competency to refuse treatment; length of sentence

35 If the court finds that a defendant is incompetent to stand trial, the
36 court shall determine:

37 1. If the defendant is incompetent to refuse treatment, including
38 medication, and should be subject to involuntary treatment.

39 2. The maximum sentence the defendant could have received pursuant to
40 section ~~13-604, 13-604.01~~, 13-702, SECTION 13-703, SECTION 13-704, SUBSECTION
41 A, B, C, D OR E, SECTION 13-705, SECTION 13-706, SUBSECTION A, SECTION
42 13-707, SECTION 13-708, SUBSECTION D, SECTION 13-710 or SECTION 13-1406 or
43 the sentence the defendant could have received pursuant to section ~~13-703~~
44 ~~13-751~~, subsection A or any section for which a specific sentence is
45 authorized. In making this determination the court shall not consider the

1 sentence enhancements for prior convictions under section ~~13-604~~ 13-703 OR
2 13-704.

3 Sec. 95. Section 13-4515, Arizona Revised Statutes, is amended to
4 read:

5 13-4515. Duration of order; notice of dismissed charge or
6 voided order; petitions

7 A. An order or combination of orders that is issued pursuant to
8 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
9 months or the maximum possible sentence the defendant could have received
10 pursuant to section ~~13-604, 13-604.01,~~ 13-702, SECTION 13-703, SECTION
11 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A, SECTION 13-708,
12 SUBSECTION D OR SECTION 13-751 or any section for which a specific sentence
13 is authorized, whichever is less. In making this determination the court
14 shall not consider the sentence enhancements under section ~~13-604~~ 13-703 OR
15 13-704 for prior convictions.

16 B. The court shall notify the prosecutor, the defense attorney, the
17 medical supervisor and the treating facility if the charges against the
18 defendant are dismissed or if an order is voided by the court. No charges
19 shall be dismissed without a hearing prior to the dismissal.

20 C. If a defendant is discharged or released on the expiration of an
21 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
22 supervisor may file a petition stating that the defendant requires further
23 treatment pursuant to title 36, chapter 5, ~~or~~ or appointment of a guardian
24 pursuant to title 14.

25 Sec. 96. Section 15-341, Arizona Revised Statutes, is amended to read:
26 15-341. General powers and duties; immunity; delegation

27 A. The governing board shall:

28 1. Prescribe and enforce policies and procedures for the governance of
29 the schools, not inconsistent with law or rules prescribed by the state board
30 of education.

31 2. Maintain the schools established by it for the attendance of each
32 pupil for a period of not less than one hundred seventy-five school days or
33 two hundred school days, as applicable, or its equivalent as approved by the
34 superintendent of public instruction for a school district operating on a
35 year-round operation basis, to offer an educational program on the basis of a
36 four day school week or to offer an alternative kindergarten program on the
37 basis of a three day school week, in each school year, and if the funds of
38 the district are sufficient, for a longer period, and as far as practicable
39 with equal rights and privileges.

40 3. Exclude from schools all books, publications, papers or audiovisual
41 materials of a sectarian, partisan or denominational character.

42 4. Manage and control the school property within its district.

43 5. Acquire school furniture, apparatus, equipment, library books and
44 supplies for the use of the schools.

1 6. Prescribe the curricula and criteria for the promotion and
2 graduation of pupils as provided in sections 15-701 and 15-701.01.

3 7. Furnish, repair and insure, at full insurable value, the school
4 property of the district.

5 8. Construct school buildings on approval by a vote of the district
6 electors.

7 9. Make in the name of the district conveyances of property belonging
8 to the district and sold by the board.

9 10. Purchase school sites when authorized by a vote of the district at
10 an election conducted as nearly as practicable in the same manner as the
11 election provided in section 15-481 and held on a date prescribed in section
12 15-491, subsection E, but such authorization shall not necessarily specify
13 the site to be purchased and such authorization shall not be necessary to
14 exchange unimproved property as provided in section 15-342, paragraph 23.

15 11. Construct, improve and furnish buildings used for school purposes
16 when such buildings or premises are leased from the national park service.

17 12. Purchase school sites or construct, improve and furnish school
18 buildings from the proceeds of the sale of school property only on approval
19 by a vote of the district electors.

20 13. Hold pupils to strict account for disorderly conduct on school
21 property.

22 14. Discipline students for disorderly conduct on the way to and from
23 school.

24 15. Except as provided in section 15-1224, deposit all monies received
25 by the district as gifts, grants and devises with the county treasurer who
26 shall credit the deposits as designated in the uniform system of financial
27 records. If not inconsistent with the terms of the gifts, grants and devises
28 given, any balance remaining after expenditures for the intended purpose of
29 the monies have been made shall be used for reduction of school district
30 taxes for the budget year, except that in the case of accommodation schools
31 the county treasurer shall carry the balance forward for use by the county
32 school superintendent for accommodation schools for the budget year.

33 16. Provide that, if a parent or legal guardian chooses not to accept a
34 decision of the teacher as provided in section 15-521, paragraph 3, the
35 parent or legal guardian may request in writing that the governing board
36 review the teacher's decision. Nothing in this paragraph shall be construed
37 to release school districts from any liability relating to a child's
38 promotion or retention.

39 17. Provide for adequate supervision over pupils in instructional and
40 noninstructional activities by certificated or noncertificated personnel.

41 18. Use school monies received from the state and county school
42 apportionment exclusively for payment of salaries of teachers and other
43 employees and contingent expenses of the district.

1 19. Make an annual report to the county school superintendent on or
2 before October 1 each year in the manner and form and on the blanks
3 prescribed by the superintendent of public instruction or county school
4 superintendent. The board shall also make reports directly to the county
5 school superintendent or the superintendent of public instruction whenever
6 required.

7 20. Deposit all monies received by school districts other than student
8 activities monies or monies from auxiliary operations as provided in sections
9 15-1125 and 15-1126 with the county treasurer to the credit of the school
10 district except as provided in paragraph 21 of this subsection and sections
11 15-1223 and 15-1224, and the board shall expend the monies as provided by law
12 for other school funds.

13 21. Establish a bank account in which the board during a month may
14 deposit miscellaneous monies received directly by the district. The board
15 shall remit monies deposited in the bank account at least monthly to the
16 county treasurer for deposit as provided in paragraph 20 of this subsection
17 and in accordance with the uniform system of financial records.

18 22. Employ an attorney admitted to practice in this state whose
19 principal practice is in the area of commercial real estate, or a real estate
20 broker who is licensed by this state and who is employed by a reputable
21 commercial real estate company, to negotiate a lease of five or more years
22 for the school district if the governing board decides to enter into a lease
23 of five or more years as lessor of school buildings or grounds as provided in
24 section 15-342, paragraph 7 or 10. Any lease of five or more years
25 negotiated pursuant to this paragraph shall provide that the lessee is
26 responsible for payment of property taxes pursuant to the requirements of
27 section 42-11104.

28 23. Prescribe and enforce policies and procedures for disciplinary
29 action against a teacher who engages in conduct that is a violation of the
30 policies of the governing board but that is not cause for dismissal of the
31 teacher or for revocation of the certificate of the teacher. Disciplinary
32 action may include suspension without pay for a period of time not to exceed
33 ten school days. Disciplinary action shall not include suspension with pay
34 or suspension without pay for a period of time longer than ten school days.
35 The procedures shall include notice, hearing and appeal provisions for
36 violations that are cause for disciplinary action. The governing board may
37 designate a person or persons to act on behalf of the board on these matters.

38 24. Prescribe and enforce policies and procedures for disciplinary
39 action against an administrator who engages in conduct that is a violation of
40 the policies of the governing board regarding duties of administrators but
41 that is not cause for dismissal of the administrator or for revocation of the
42 certificate of the administrator. Disciplinary action may include suspension
43 without pay for a period of time not to exceed ten school days. Disciplinary
44 action shall not include suspension with pay or suspension without pay for a
45 period of time longer than ten school days. The procedures shall include

1 notice, hearing and appeal provisions for violations that are cause for
2 disciplinary action. The governing board may designate a person or persons
3 to act on behalf of the board on these matters. For violations that are
4 cause for dismissal, the provisions of notice, hearing and appeal in chapter
5 5, article 3 of this title shall apply. The filing of a timely request for a
6 hearing suspends the imposition of a suspension without pay or a dismissal
7 pending completion of the hearing.

8 25. Notwithstanding section 13-3108, prescribe and enforce policies and
9 procedures that prohibit a person from carrying or possessing a weapon on
10 school grounds unless the person is a peace officer or has obtained specific
11 authorization from the school administrator.

12 26. Prescribe and enforce policies and procedures relating to the
13 health and safety of all pupils participating in district sponsored practice
14 sessions, games or other interscholastic athletic activities, including the
15 provision of water.

16 27. Prescribe and enforce policies and procedures regarding the smoking
17 of tobacco within school buildings. The policies and procedures shall be
18 adopted in consultation with school district personnel and members of the
19 community and shall state whether smoking is prohibited in school buildings.
20 If smoking in school buildings is not prohibited, the policies and procedures
21 shall clearly state the conditions and circumstances under which smoking is
22 permitted, those areas in a school building that may be designated as smoking
23 areas and those areas in a school building that may not be designated as
24 smoking areas.

25 28. Establish an assessment, data gathering and reporting system as
26 prescribed in chapter 7, article 3 of this title.

27 29. Provide special education programs and related services pursuant to
28 section 15-764, subsection A to all children with disabilities as defined in
29 section 15-761.

30 30. Administer competency tests prescribed by the state board of
31 education for the graduation of pupils from high school.

32 31. Secure insurance coverage for all construction projects for
33 purposes of general liability, property damage and workers' compensation and
34 secure performance and payment bonds for all construction projects.

35 32. Keep on file the resumes of all current and former employees who
36 provide instruction to pupils at a school. Resumes shall include an
37 individual's educational and teaching background and experience in a
38 particular academic content subject area. A school district shall inform
39 parents and guardians of the availability of the resume information and shall
40 make the resume information available for inspection on request of parents
41 and guardians of pupils enrolled at a school. Nothing in this paragraph
42 shall be construed to require any school to release personally identifiable
43 information in relation to any teacher or employee including the teacher's or
44 employee's address, salary, social security number or telephone number.

1 33. Report to local law enforcement agencies any suspected crime
2 against a person or property that is a serious offense as defined in section
3 ~~13-604~~ 13-706 or that involves a deadly weapon or dangerous instrument or
4 serious physical injury and any conduct that poses a threat of death or
5 serious physical injury to employees, students or anyone on the property of
6 the school. This paragraph does not limit or preclude the reporting by a
7 school district or an employee of a school district of suspected crimes other
8 than those required to be reported by this paragraph. For the purposes of
9 this paragraph, "dangerous instrument", "deadly weapon" and "serious physical
10 injury" have the same ~~meaning~~ MEANINGS prescribed in section 13-105.

11 34. In conjunction with local law enforcement agencies and local
12 medical facilities, develop an emergency response plan for each school in the
13 school district in accordance with minimum standards developed jointly by the
14 department of education and the division of emergency management within the
15 department of emergency and military affairs.

16 35. Annually assign at least one school district employee to
17 participate in a multihazard crisis training program developed or selected by
18 the governing board.

19 36. Provide written notice to the parents or guardians of all students
20 affected in the school district at least thirty days prior to a public
21 meeting to discuss closing a school within the school district. The notice
22 shall include the reasons for the proposed closure and the time and place of
23 the meeting. The governing board shall fix a time for a public meeting on
24 the proposed closure no less than thirty days before voting in a public
25 meeting to close the school. The school district governing board shall give
26 notice of the time and place of the meeting. At the time and place
27 designated in the notice, the school district governing board shall hear
28 reasons for or against closing the school. The school district governing
29 board is exempt from this paragraph if it is determined by the governing
30 board that the school shall be closed because it poses a danger to the health
31 or safety of the pupils or employees of the school.

32 37. Incorporate instruction on Native American history into appropriate
33 existing curricula.

34 38. Prescribe and enforce policies and procedures allowing pupils who
35 have been diagnosed with anaphylaxis by a health care provider licensed
36 pursuant to title 32, chapter 13, 14, 17 or 25 or by a registered nurse
37 practitioner licensed and certified pursuant to title 32, chapter 15 to carry
38 and self-administer emergency medications including auto-injectable
39 epinephrine while at school and at school sponsored activities. The pupil's
40 name on the prescription label on the medication container or on the
41 medication device and annual written documentation from the pupil's parent or
42 guardian to the school that authorizes possession and self-administration is
43 sufficient proof that the pupil is entitled to the possession and
44 self-administration of the medication. The policies shall require a pupil
45 who uses auto-injectable epinephrine while at school and at school sponsored

1 activities to notify the nurse or the designated school staff person of the
2 use of the medication as soon as practicable. A school district and its
3 employees are immune from civil liability with respect to all decisions made
4 and actions taken that are based on good faith implementation of the
5 requirements of this paragraph, except in cases of wanton or wilful neglect.

6 39. Allow the possession and self-administration of prescription
7 medication for breathing disorders in handheld inhaler devices, by pupils who
8 have been prescribed that medication by a health care professional licensed
9 pursuant to title 32. The pupil's name on the prescription label on the
10 medication container or on the handheld inhaler device and annual written
11 documentation from the pupil's parent or guardian to the school that
12 authorizes possession and self-administration shall be sufficient proof that
13 the pupil is entitled to the possession and self-administration of the
14 medication. A school district and its employees are immune from civil
15 liability with respect to all decisions made and actions taken that are based
16 on a good faith implementation of the requirements of this paragraph.

17 40. Prescribe and enforce policies and procedures to prohibit pupils
18 from harassing, intimidating and bullying other pupils on school grounds, on
19 school property, on school buses, at school bus stops and at school sponsored
20 events and activities that include the following components:

21 (a) A procedure for pupils to confidentially report to school
22 officials incidents of harassment, intimidation or bullying.

23 (b) A procedure for parents and guardians of pupils to submit written
24 reports to school officials of suspected incidents of harassment,
25 intimidation or bullying.

26 (c) A requirement that school district employees report suspected
27 incidents of harassment, intimidation or bullying to the appropriate school
28 official.

29 (d) A formal process for the documentation of reported incidents of
30 harassment, intimidation or bullying, except that no documentation shall be
31 maintained unless the harassment, intimidation or bullying has been proven.

32 (e) A formal process for the investigation by the appropriate school
33 officials of suspected incidents of harassment, intimidation or bullying.

34 (f) Disciplinary procedures for pupils who have admitted or been found
35 to have committed incidents of harassment, intimidation or bullying.

36 (g) A procedure that sets forth consequences for submitting false
37 reports of incidents of harassment, intimidation or bullying.

38 41. Prescribe and enforce policies and procedures regarding changing or
39 adopting attendance boundaries that include the following components:

40 (a) A procedure for holding public meetings to discuss attendance
41 boundary changes or adoptions that allows public comments.

42 (b) A procedure to notify the parents or guardians of the students
43 affected.

44 (c) A procedure to notify the residents of the households affected by
45 the attendance boundary changes.

1 (d) A process for placing public meeting notices and proposed maps on
2 the school district's website for public review, if the school district
3 maintains a website.

4 (e) A formal process for presenting the attendance boundaries of the
5 affected area in public meetings that allows public comments.

6 (f) A formal process for notifying the residents and parents or
7 guardians of the affected area as to the decision of the governing board on
8 the school district's website, if the school district maintains a website.

9 (g) A formal process for updating attendance boundaries on the school
10 district's website within ninety days of an adopted boundary change. The
11 school district shall send a direct link to the school district's attendance
12 boundaries website to the department of real estate.

13 (h) If the land that a school was built on was donated within the past
14 five years, a formal process to notify the entity ~~who~~ THAT donated the land
15 affected by the decision of the governing board.

16 B. Notwithstanding subsection A, paragraphs 8, 10 and 12 of this
17 section, the county school superintendent may construct, improve and furnish
18 school buildings or purchase or sell school sites in the conduct of an
19 accommodation school.

20 C. If any school district acquires real or personal property, whether
21 by purchase, exchange, condemnation, gift or otherwise, the governing board
22 shall pay to the county treasurer any taxes on the property that were unpaid
23 as of the date of acquisition, including penalties and interest. The lien
24 for unpaid delinquent taxes, penalties and interest on property acquired by a
25 school district:

26 1. Is not abated, extinguished, discharged or merged in the title to
27 the property.

28 2. Is enforceable in the same manner as other delinquent tax liens.

29 D. The governing board may not locate a school on property that is
30 less than one-fourth mile from agricultural land regulated pursuant to
31 section 3-365, except that the owner of the agricultural land may agree to
32 comply with the buffer zone requirements of section 3-365. If the owner
33 agrees in writing to comply with the buffer zone requirements and records the
34 agreement in the office of the county recorder as a restrictive covenant
35 running with the title to the land, the school district may locate a school
36 within the affected buffer zone. The agreement may include any stipulations
37 regarding the school, including conditions for future expansion of the school
38 and changes in the operational status of the school that will result in a
39 breach of the agreement.

40 E. A school district, its governing board members, its school council
41 members and its employees are immune from civil liability for the
42 consequences of adoption and implementation of policies and procedures
43 pursuant to subsection A of this section and section 15-342. This waiver
44 does not apply if the school district, its governing board members, its

1 school council members or its employees are guilty of gross negligence or
2 intentional misconduct.

3 F. A governing board may delegate in writing to a superintendent,
4 principal or head teacher the authority to prescribe procedures that are
5 consistent with the governing board's policies.

6 G. Notwithstanding any other provision of this title, a school
7 district governing board shall not take any action that would result in an
8 immediate reduction or a reduction within three years of pupil square footage
9 that would cause the school district to fall below the minimum adequate gross
10 square footage requirements prescribed in section 15-2011, subsection C,
11 unless the governing board notifies the school facilities board established
12 by section 15-2001 of the proposed action and receives written approval from
13 the school facilities board to take the action. A reduction includes an
14 increase in administrative space that results in a reduction of pupil square
15 footage or sale of school sites or buildings, or both. A reduction includes
16 a reconfiguration of grades that results in a reduction of pupil square
17 footage of any grade level. This subsection does not apply to temporary
18 reconfiguration of grades to accommodate new school construction if the
19 temporary reconfiguration does not exceed one year. The sale of equipment
20 that results in an immediate reduction or a reduction within three years that
21 falls below the equipment requirements prescribed in section 15-2011,
22 subsection B is subject to commensurate withholding of school district
23 capital outlay revenue limit monies pursuant to the direction of the school
24 facilities board. Except as provided in section 15-342, paragraph 10,
25 proceeds from the sale of school sites, buildings or other equipment shall be
26 deposited in the school plant fund as provided in section 15-1102.

27 H. Subsections C through G of this section apply to a county board of
28 supervisors and a county school superintendent when operating and
29 administering an accommodation school.

30 I. Until the state board of education and the auditor general adopt
31 rules pursuant to section 15-213, subsection I, a school district may procure
32 construction services, including services for new school construction
33 pursuant to section 15-2041, by the construction-manager-at-risk,
34 design-build and job-order-contracting methods of project delivery as
35 provided in title 41, chapter 23, except that the rules adopted by the
36 director of the department of administration do not apply to procurements
37 pursuant to this subsection. Any procurement commenced pursuant to this
38 subsection may be completed pursuant to this subsection.

39 Sec. 97. Section 15-512, Arizona Revised Statutes, is amended to read:

40 15-512. Noncertificated personnel; fingerprinting personnel;
41 background investigations; affidavit; civil immunity;
42 violation; classification; definition

43 A. Noncertificated personnel and personnel who are not paid employees
44 of the school district and who are not either the parent or the guardian of a
45 pupil who attends school in the school district but who are required or

1 allowed to provide services directly to pupils without the supervision of a
2 certificated employee and who are initially hired by a school district after
3 January 1, 1990 shall be fingerprinted as a condition of employment except
4 for personnel who are required as a condition of licensing to be
5 fingerprinted if the license is required for employment or for personnel who
6 were previously employed by a school district and who reestablished
7 employment with that district within one year after the date that the
8 employee terminated employment with the district. A school district may
9 release the results of a background check to another school district for
10 employment purposes. The employee's fingerprints and the form prescribed in
11 subsection D of this section shall be submitted to the school district within
12 twenty days after the date an employee begins work. A school district may
13 terminate an employee if the information on the form provided under
14 subsection D of this section is inconsistent with the information received
15 from the fingerprint check. The school district shall develop procedures for
16 fingerprinting employees. For the purposes of this subsection, "supervision"
17 means under the direction of and, except for brief periods of time during a
18 school day or a school activity, within sight of a certificated employee when
19 providing direct services to pupils.

20 B. Fingerprint checks shall be conducted pursuant to section 41-1750,
21 subsection G.

22 C. The school district shall assume the costs of fingerprint checks
23 and may charge these costs to its fingerprinted employee, except that the
24 school district may not charge the costs of the fingerprint check to
25 personnel of the school district who are not paid employees. The fees charged
26 for fingerprinting shall be deposited with the county treasurer who shall
27 credit the deposit to the fingerprint fund of the school district. The costs
28 charged to a fingerprinted employee are limited to and the proceeds in the
29 fund may only be applied to the actual costs, including personnel costs,
30 incurred as a result of the fingerprint checks. The fingerprint fund is a
31 continuing fund which is not subject to reversion.

32 D. Personnel required to be fingerprinted as prescribed in subsection
33 A of this section shall certify on forms that are provided by the school and
34 notarized whether they are awaiting trial on or have ever been convicted of
35 or admitted in open court or pursuant to a plea agreement committing any of
36 the following criminal offenses in this state or similar offenses in another
37 jurisdiction:

- 38 1. Sexual abuse of a minor.
- 39 2. Incest.
- 40 3. First or second degree murder.
- 41 4. Kidnapping.
- 42 5. Arson.
- 43 6. Sexual assault.
- 44 7. Sexual exploitation of a minor.

- 1 8. Felony offenses involving contributing to the delinquency of a
2 minor.
- 3 9. Commercial sexual exploitation of a minor.
- 4 10. Felony offenses involving sale, distribution or transportation of,
5 offer to sell, transport, or distribute or conspiracy to sell, transport or
6 distribute marijuana or dangerous or narcotic drugs.
- 7 11. Felony offenses involving the possession or use of marijuana,
8 dangerous drugs or narcotic drugs.
- 9 12. Misdemeanor offenses involving the possession or use of marijuana
10 or dangerous drugs.
- 11 13. Burglary in the first degree.
- 12 14. Burglary in the second or third degree.
- 13 15. Aggravated or armed robbery.
- 14 16. Robbery.
- 15 17. A dangerous crime against children as defined in section ~~13-604.01~~
16 ~~13-705~~.
- 17 18. Child abuse.
- 18 19. Sexual conduct with a minor.
- 19 20. Molestation of a child.
- 20 21. Manslaughter.
- 21 22. Aggravated assault.
- 22 23. Assault.
- 23 24. Exploitation of minors involving drug offenses.
- 24 E. A school district may refuse to hire or may review or terminate
25 personnel who have been convicted of or admitted committing any of the
26 criminal offenses prescribed in subsection D of this section or of a similar
27 offense in another jurisdiction. A school district which is considering
28 terminating an employee pursuant to ~~the provisions of~~ this subsection shall
29 hold a hearing to determine whether a person already employed shall be
30 terminated. In conducting a review, the governing board shall utilize the
31 guidelines, including the list of offenses that are not subject to review, as
32 prescribed by the state board of education pursuant to section 15-534,
33 subsection C. In considering whether to hire or terminate the employment of
34 a person the governing board shall take into account the following factors:
35 1. The nature of the crime and the potential for crimes against
36 children.
- 37 2. Offenses committed as a minor for which proceedings were held under
38 the jurisdiction of a juvenile or an adult court.
- 39 3. Offenses that have been expunged by a court of competent
40 jurisdiction, if the person has been pardoned or if the person's sentence has
41 been commuted.
- 42 4. The employment record of the person since the commission of the
43 crime if the crime was committed more than ten years before the governing
44 board's consideration of whether to hire or terminate the person.

1 5. The reliability of the evidence of an admission of a crime unless
2 made under oath in a court of competent jurisdiction.

3 F. Before employment with the school district, the district shall make
4 documented, good faith efforts to contact previous employers of a person to
5 obtain information and recommendations which may be relevant to a person's
6 fitness for employment. A governing board shall adopt procedures for
7 conducting background investigations required by this subsection, including
8 one or more standard forms for use by school district officials to document
9 their efforts to obtain information from previous employers. A school
10 district may provide information received as a result of a background
11 investigation required by this section to any other school district, to any
12 other public school and to any public entity that agrees pursuant to a
13 contract or intergovernmental agreement to perform background investigations
14 for school districts or other public schools. School districts and other
15 public schools may enter into intergovernmental agreements pursuant to
16 section 11-952 and cooperative purchasing agreements pursuant to rules
17 adopted in accordance with section 15-213 for the purposes of performing or
18 contracting for the performance of background investigations and for sharing
19 the results of background investigations required by this subsection.
20 Information obtained about an employee or applicant for employment by any
21 school district or other public school in the performance of a background
22 investigation may be retained by that school district or the other public
23 school or by any public entity that agrees pursuant to contract to perform
24 background investigations for school districts or other public schools and
25 may be provided to any school district or other public school that is
26 performing a background investigation required by this subsection.

27 G. A school district may fingerprint any other employee of the
28 district, whether paid or not, or any other applicant for employment with the
29 school district not otherwise required by this section to be fingerprinted on
30 the condition that the school district may not charge the costs of the
31 fingerprint check to the fingerprinted applicant or nonpaid employee.

32 H. Subsection A of this section does not apply to a person who
33 provides instruction or other education services to a pupil, with the written
34 consent of the parent or guardian of the pupil, under a work release program,
35 advance placement course or other education program that occurs off school
36 property.

37 I. Public entities that agree pursuant to contract to perform
38 background investigations, public schools, the department of education and
39 previous employers who provide information pursuant to this section are
40 immune from civil liability unless the information provided is false and is
41 acted on by the school district to the harm of the employee and the public
42 entity, the public school, the previous employer or the department of
43 education knows the information is false or acts with reckless disregard of
44 the information's truth or falsity. A school district which relies on
45 information obtained pursuant to this section in making employment decisions

1 is immune from civil liability for use of the information unless the
2 information obtained is false and the school district knows the information
3 is false or acts with reckless disregard of the information's truth or
4 falsity.

5 J. The superintendent of a school district or chief administrator of a
6 charter school or the person's designee who is responsible for implementing
7 the governing board's policy regarding background investigations required by
8 subsection F of this section and who fails to carry out that responsibility
9 is guilty of unprofessional conduct and shall be subject to disciplinary
10 action by the state board.

11 K. A school district may hire noncertificated personnel before
12 receiving the results of the fingerprint check but may terminate employment
13 if the information on the form provided in subsection D of this section is
14 inconsistent with the information received from the fingerprint check. In
15 addition to any other conditions or requirements deemed necessary by the
16 superintendent of public instruction to protect the health and safety of
17 pupils, noncertificated personnel who are required or allowed unsupervised
18 contact with pupils may be hired by school districts before the results of a
19 fingerprint check are received if all of the following conditions are met:

20 1. The school district that is seeking to hire the applicant shall
21 document in the applicant's file the necessity for hiring and placement of
22 the applicant before a fingerprint check could be completed.

23 2. The school district that is seeking to hire the applicant shall do
24 all of the following:

25 (a) Ensure that the department of public safety completes a statewide
26 criminal history information check on the applicant. A statewide criminal
27 history information check shall be completed by the department of public
28 safety every one hundred twenty days until the date that the fingerprint
29 check is completed.

30 (b) Obtain references from the applicant's current employer and two
31 most recent previous employers except for applicants who have been employed
32 for at least five years by the applicant's most recent employer.

33 (c) Provide general supervision of the applicant until the date that
34 the fingerprint check is completed.

35 (d) Report to the superintendent of public instruction on June 30 and
36 December 31 the number of applicants hired ~~prior to~~ BEFORE the completion of
37 a fingerprint check. In addition, the school district shall report the
38 number of applicants for whom fingerprint checks were not received after one
39 hundred twenty days and after one hundred seventy-five days of hire.

40 L. Notwithstanding any other law, this section does not apply to
41 pupils who attend school in a school district and who are also employed by a
42 school district.

43 M. A person who makes a false statement, representation or
44 certification in any application for employment with the school district is
45 guilty of a class 3 misdemeanor.

1 N. For the purpose of this section, "background investigation" means
2 any communication with an employee's or applicant's former employer that
3 concerns the education, training, experience, qualifications and job
4 performance of the employee or applicant and that is used for the purpose of
5 evaluating the employee or applicant for employment. Background
6 investigation does not include the results of any state or federal criminal
7 history records check.

8 Sec. 98. Section 15-550, Arizona Revised Statutes, is amended to read:
9 15-550. Conviction as unprofessional conduct; penalty

10 A. A teacher who has been convicted of a dangerous crime against
11 children as defined in section ~~13-604.01~~ 13-705 or has been convicted of a
12 violation of section 13-1404 or 13-1406 in which the victim was a minor or
13 section 13-1405 or an act committed in another state or territory which if
14 committed in this state would have been a dangerous crime against children or
15 a violation of section 13-1404 OR 13-1406 in which the victim was a minor or
16 a violation of section 13-1405 ~~or 13-1406~~ is guilty of unprofessional conduct
17 and the teacher's certificate shall be revoked permanently immediately on
18 notification of conviction by the clerk of the court or the magistrate.

19 B. A teacher who has been convicted of a preparatory offense as
20 prescribed in section 13-1001 of any of the offenses prescribed in subsection
21 A of this section or any crime that requires the teacher to register as a sex
22 offender is guilty of unprofessional conduct and the teacher's certificate
23 shall be permanently revoked on notification of the conviction by a court of
24 competent jurisdiction.

25 Sec. 99. Section 20-448, Arizona Revised Statutes, is amended to read:
26 20-448. Unfair discrimination; definitions

27 A. A person shall not make or permit any unfair discrimination between
28 individuals of the same class and equal expectation of life in the rates
29 charged for any contract of life insurance or of life annuity or in the
30 dividends or other benefits payable or in any other of the terms and
31 conditions of the contract.

32 B. A person shall not make or permit any unfair discrimination
33 respecting hemophiliacs or between individuals of the same class and of
34 essentially the same hazard in the amount of premium, policy fees or rates
35 charged for any policy or contract of disability insurance or in the benefits
36 payable or in any of the terms or conditions of the contract, or in any other
37 manner whatever. The provisions of this subsection regarding hemophiliacs do
38 not apply to any policy or subscription contract which provides only benefits
39 for specific diseases or for accidental injuries or which provides only
40 indemnity for blood transfusion services or replacement of whole blood
41 products, fractions or derivatives.

42 C. As to kinds of insurance other than life and disability, a person
43 shall not make or permit any unfair discrimination in favor of particular
44 persons or between insureds or subjects of insurance having substantially
45 like insuring, risk and exposure factors, or expense elements, in the terms

1 or conditions of any insurance contract, or in the rate or amount of premium
2 charged.

3 D. An insurer shall not refuse to consider an application for life or
4 disability insurance on the basis of a genetic condition, developmental delay
5 or developmental disability.

6 E. The rejection of an application or the determining of rates, terms
7 or conditions of a life or disability insurance contract on the basis of a
8 genetic condition, developmental delay or developmental disability
9 constitutes unfair discrimination, unless the applicant's medical condition
10 and history and either claims experience or actuarial projections establish
11 that substantial differences in claims are likely to result from the genetic
12 condition, developmental delay or developmental disability.

13 F. In addition to the provisions in subsection E of this section, the
14 rejection of an application or the determination of rates, terms or
15 conditions of a disability insurance contract on the basis of a genetic
16 condition constitutes unfair discrimination in the absence of a diagnosis of
17 the condition related to information obtained as a result of a genetic test.

18 G. An insurer that offers life, disability, property or liability
19 insurance contracts shall not deny a claim incurred or deny, refuse, refuse
20 to renew, restrict, cancel, exclude or limit coverage or charge a different
21 rate for the same coverage solely on the basis that the insured or proposed
22 insured is or has been a victim of domestic violence or is an entity or
23 individual that provides counseling, shelter, protection or other services to
24 victims of domestic violence. If an insurer that offers life, disability,
25 property or liability insurance contracts denies a claim incurred or denies,
26 refuses, refuses to renew, restricts, cancels, excludes or limits coverage or
27 charges a different rate for the same coverage on the basis of a mental or
28 physical condition and the insured or the proposed insured is or has been a
29 victim of domestic violence, the insurer shall submit a written explanation
30 to the insured or proposed insured of the reasons for the insurer's actions,
31 in accordance with section 20-2110. The fact that an insured or proposed
32 insured is or has been the victim of domestic violence is not a mental or
33 physical condition. Nothing contained in this subsection is intended to
34 provide any private right or cause of action to or on behalf of any applicant
35 or insured. It is the specific intent of this subsection to provide solely
36 an administrative remedy to the director for any violation of this section.
37 Nothing in this subsection prevents an insurer from refusing to issue a life
38 insurance policy insuring a person who has been the victim of domestic
39 violence if either of the following is true:

40 1. The family or household member who commits the act of domestic
41 violence is the applicant for or prospective owner of the policy or would be
42 the beneficiary of the policy and any of the following is true:

43 (a) The applicant or prospective beneficiary of the policy is known,
44 on the basis of police or court records, to have committed an act of domestic
45 violence.

1 (b) The insurer has knowledge of an arrest or conviction for a
2 domestic violence related offense by the family or household member.

3 (c) The insurance company has other reasonable grounds to believe, and
4 those grounds are corroborated, that the applicant or proposed beneficiary of
5 a policy is a family or household member committing acts of domestic
6 violence.

7 2. The applicant or prospective owner of the policy lacks an insurable
8 interest in the insured.

9 H. Nothing in subsection G of this section prevents an insurer that:

10 1. Offers life or disability insurance contracts from underwriting
11 coverage on the basis of an insured's or proposed insured's mental or
12 physical condition if the underwriting:

13 (a) Does not consider whether or not the mental or physical condition
14 was caused by an act of domestic violence.

15 (b) Is the same for an insured or proposed insured who is not the
16 victim of domestic violence as it is for an insured or proposed insured who
17 is the victim of domestic violence.

18 (c) Does not violate any other rule or law.

19 2. Offers property or liability insurance contracts from underwriting
20 coverage on the basis of the insured's claims history or characteristics of
21 the insured's property and using rating criteria consistent with section
22 20-384.

23 I. Any determination made pursuant to section 20-2537 by the external
24 independent review organization shall not be considered in connection with
25 the evaluation of whether any person subject to this article has complied
26 with this section.

27 J. A property or liability insurer may exclude coverage for losses
28 caused by an insured's intentional or fraudulent act. The exclusion shall
29 not deny an insured's otherwise covered property loss if the property loss is
30 caused by an act of domestic violence by another insured under the policy and
31 the insured who claims the property loss cooperates in any investigation
32 relating to the loss and did not cooperate in or contribute to the creation
33 of the property loss. The insurer may apply reasonable standards of proof
34 for claims filed under this subsection. The insurer may limit the payment to
35 the insured's insurable interest in the property minus any payment made to
36 any mortgagee or other party with a secured interest in the property. This
37 subsection does not require an insurer to pay any amount that is more than
38 the amount of the loss or property coverage limits. An insurer who pays a
39 claim under this subsection has the right of subrogation against any person
40 except the victim of the domestic violence.

1 K. All insurers shall adopt and adhere to written policies that are
2 consistent with ~~title 20,~~ chapter 11 OF THIS TITLE and that specify the
3 procedures to be followed by employees, contractors, producers, agents and
4 brokers to ensure the privacy of and to help protect the safety of a victim
5 of domestic violence when taking an application, investigating a claim,
6 pursuing subrogation or taking any other action relating to a policy or claim
7 involving a victim of domestic violence. Insurers shall distribute the
8 written policies to employees, contractors, producers, agents and brokers who
9 have access to personal or privileged information regarding domestic
10 violence.

11 L. For the purposes of this section:

12 1. "Developmental delay" means a delay of at least one and one-half
13 standard deviations from the norm.

14 2. "Developmental disability" has the same meaning prescribed in
15 section 36-551.

16 3. "Domestic violence" means any act that is a dangerous crime against
17 children as defined in section ~~13-604.01~~ 13-705 or an offense defined in
18 section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through
19 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph
20 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923 or
21 13-3623, if any of the following applies:

22 (a) The relationship between the victim and the defendant is one of
23 marriage or former marriage or of persons residing or having resided in the
24 same household.

25 (b) The victim and the defendant have a child in common.

26 (c) The victim or the defendant is pregnant by the other party.

27 (d) The victim is related to the defendant or the defendant's spouse
28 by blood or court order as a parent, grandparent, child, grandchild, brother
29 or sister, or by marriage as a parent-in-law, grandparent-in-law, stepparent,
30 step-grandparent, stepchild, step-grandchild, brother-in-law or
31 sister-in-law.

32 (e) The victim is a child who resides or has resided in the same
33 household as the defendant and is related by blood to a former spouse of the
34 defendant or to a person who resides or has resided in the same household as
35 the defendant.

36 4. "Gene products" means gene fragments, nucleic acids or proteins
37 derived from deoxyribonucleic acids that would be a reflection of or indicate
38 DNA sequence information.

39 5. "Genetic condition" means a specific chromosomal or single-gene
40 genetic condition.

41 6. "Genetic test" means an analysis of an individual's DNA, gene
42 products or chromosomes that indicates a propensity for or susceptibility to
43 illness, disease, impairment or other disorders, whether physical or mental,
44 or that demonstrates genetic or chromosomal damage due to environmental
45 factors, or carrier status for a disease or disorder.

1 Sec. 100. Section 25-411, Arizona Revised Statutes, is amended to
2 read:

3 25-411. Modification of custody decree; affidavit; contents

4 A. A person shall not make a motion to modify a custody decree earlier
5 than one year after its date, unless the court permits it to be made on the
6 basis of affidavits that there is reason to believe the child's present
7 environment may seriously endanger the child's physical, mental, moral or
8 emotional health. At any time after a joint custody order is entered, a
9 parent may petition the court for modification of the order on the basis of
10 evidence that domestic violence involving a violation of section 13-1201 or
11 13-1204, spousal abuse or child abuse occurred since the entry of the joint
12 custody order. Six months after a joint custody order is entered, a parent
13 may petition the court for modification of the order based on the failure of
14 the other parent to comply with the provisions of the order. A motion or
15 petition to modify a custody order shall meet the requirements of this
16 section. Except as otherwise provided in subsection B of this section, if a
17 custodial parent is a member of the United States armed forces, the court
18 shall consider the terms of that parent's military family care plan to
19 determine what is in the child's best interest during the custodial parent's
20 military deployment.

21 B. For the purposes of a motion to modify a custody decree, the
22 military deployment of a custodial parent who is a member of the United
23 States armed forces is not a change in circumstances that materially affects
24 the welfare of the child if the custodial parent has filed a military family
25 care plan with the court at a previous custody proceeding and if the military
26 deployment is less than six months.

27 C. A custody decree or order that a court enters in contemplation of
28 or during the military deployment of a custodial parent outside of the
29 continental United States shall specifically reference the deployment and
30 include provisions governing the custody of the minor child after the
31 deployment ends. Either parent may file a petition with the court after the
32 deployment ends to modify the decree or order, in compliance with subsection
33 F of this section. The court shall hold a hearing or conference on the
34 petition within thirty days after the petition is filed.

35 D. The court may modify an order granting or denying parenting time
36 rights whenever modification would serve the best interest of the child, but
37 the court shall not restrict a parent's parenting time rights unless it finds
38 that the parenting time would endanger seriously the child's physical,
39 mental, moral or emotional health.

40 E. If after a custody or parenting time order is in effect one of the
41 parents is charged with a dangerous crime against children as defined in
42 section ~~13-604.01~~ 13-705, child molestation as defined in section 13-1410 or
43 an act of domestic violence as prescribed in section 13-3601 in which the
44 victim is a minor, the other parent may petition the court for an expedited

1 hearing. Pending the expedited hearing, the court may suspend parenting time
2 or change custody ex parte.

3 F. To modify any type of custody order a person shall submit an
4 affidavit or verified petition setting forth detailed facts supporting the
5 requested modification and shall give notice, together with a copy of the
6 affidavit or verified petition, to other parties to the proceeding, who may
7 file opposing affidavits. The court shall deny the motion unless it finds
8 that adequate cause for hearing the motion is established by the pleadings,
9 in which case it shall set a date for hearing on why the requested
10 modification should not be granted.

11 G. The court shall assess attorney fees and costs against a party
12 seeking modification if the court finds that the modification action is
13 vexatious and constitutes harassment.

14 H. Subsection ~~E~~ F of this section does not apply if the requested
15 relief is for the modification or clarification of visitation and not for a
16 change of joint custody, joint legal custody, joint physical custody or sole
17 custody.

18 Sec. 101. Section 31-281, Arizona Revised Statutes, is amended to
19 read:

20 31-281. Transition program; drug offenders; report

21 A. The department shall establish a transition program. The
22 department shall contract with any private or nonprofit entity to provide
23 eligible inmates with transition services and shall procure transition
24 services pursuant to title 41, chapter 23.

25 B. The director shall adopt rules to implement this article. The
26 rules shall include:

27 1. Eligibility criteria for receiving the contracted entity's
28 transition services. To be eligible, at a minimum, an inmate shall:

29 (a) Be convicted of a violation of title 13, chapter 34, except that
30 an inmate who was convicted of a violation of title 13, chapter 14 or 17 or
31 an offense involving death or physical injury or the use of a deadly weapon
32 or dangerous instrument is not eligible to participate in the transition
33 program.

34 (b) Be classified by the state department of corrections as a low risk
35 to the community.

36 (c) Not have been convicted of a violent crime as defined in section
37 ~~13-604.04~~ 13-901.03.

38 (d) Have a nonviolent risk score as determined by the department.

39 (e) Not have any felony detainers.

40 (f) Agree in writing to provide specific information after the inmate
41 is released. The department shall use the information to prepare the report
42 prescribed by subsection D, paragraph 3 of this section.

43 (g) Have made satisfactory progress on the inmate's individualized
44 corrections plan as determined by the department.

1 (h) Have maintained civil behavior while incarcerated as determined by
2 the department.

3 (i) Be current on restitution payments pursuant to section 31-254.

4 (j) Have a need and ability to benefit from the program as determined
5 by the department.

6 2. A requirement that the contracted entity train mentors or certify
7 that mentors are trained.

8 3. The services that may be offered to an inmate.

9 4. The criteria for inmates to participate in a three month early
10 release program. Inmates are not required to receive an early release.

11 5. A requirement that an inmate may be released pursuant to this
12 article only after the victim has been provided notice and an opportunity to
13 be heard. The department shall provide notice to a victim who has provided a
14 current address or other contact information. The notice shall inform the
15 victim of the opportunity to be heard on the early release. Any objection to
16 the inmate's early release must be made within twenty days after the
17 department has mailed the notice to the victim.

18 C. In awarding contracts under this section the department shall
19 comply with section 41-3751.

20 D. The department shall:

21 1. Conduct an annual study to determine the recidivism rate of persons
22 who receive the contracted entity's services pursuant to this article.

23 2. Evaluate the inmate and shall provide the information to the
24 contracted entity. The contracted entity shall make the final determination
25 of program eligibility.

26 3. Submit a written report to the governor, the president of the
27 senate and the speaker of the house of representatives on or before July 31
28 of each year and provide a copy of this report to the secretary of state and
29 the director of the Arizona state library, archives and public records. The
30 report shall contain the following information:

31 (a) The recidivism rate of persons who receive services pursuant to
32 this article.

33 (b) The number of persons who received services pursuant to this
34 article.

35 (c) The number of persons who were not provided services pursuant to
36 this article and who were on a list waiting to receive services.

37 (d) The types of services provided.

38 (e) The number of persons who received each type of service provided.

39 Sec. 102. Section 31-403, Arizona Revised Statutes, is amended to
40 read:

41 31-403. Commutation; restrictions on consideration

42 A. A person who is otherwise eligible for commutation and who is
43 denied a commutation of sentence recommendation shall not petition or be
44 considered by the board for commutation of that sentence for a period of five
45 years following the date of the board's denial of the commutation

1 recommendation if the offense for which the commutation recommendation was
2 denied involved any of the following:

- 3 1. Death in violation of section 13-1104 or 13-1105.
- 4 2. Serious physical injury if the person was sentenced pursuant to
5 section ~~13-604~~ 13-704.
- 6 3. A dangerous crime against children as defined in section ~~13-604.01~~
7 13-705.
- 8 4. A felony offense in violation of title 13, chapter 14 or 35.1.

9 B. Notwithstanding subsection A, paragraph 2 of this section, if, in
10 its sole discretion, the board determines that the person committed an
11 offense that involved serious physical injury as defined in section 13-105
12 and that the person was not sentenced pursuant to section ~~13-604~~ 13-704, the
13 board may order that the person shall not petition or be considered by the
14 board for commutation of that sentence for a period of five years following
15 the date of the board's denial of the commutation recommendation.

16 C. Notwithstanding subsection A or B of this section, the board, at
17 the time of denial, may lengthen the five year period of time prescribed in
18 subsection A or B of this section to a period of up to ten years, except that
19 if the offense for which commutation was denied involved a violation of an
20 offense listed in subsection A, paragraph 1 of this section, the board may
21 lengthen the period of time to a period of time that is greater than ten
22 years and that is specified by the board by one of the following votes:

- 23 1. A majority affirmative vote if four or more members consider the
24 action.
- 25 2. A unanimous affirmative vote if three members consider the action.
- 26 3. A unanimous affirmative vote if two members consider the action
27 pursuant to section 31-401, subsection I and the chairman concurs after
28 reviewing the information considered by the two members. If the chairman is
29 one of the two members constituting a two member quorum under section 31-401,
30 subsection I, and both the chairman and the other member vote to lengthen the
31 five year period to a period of time greater than ten years, no further
32 action shall be taken and the decision on whether to lengthen the five year
33 period shall be considered by the board at a meeting at which at least three
34 members are present and voting.

35 D. The board may waive the provisions of subsections A, B and C of
36 this section if any of the following applies:

- 37 1. The person is in imminent danger of death due to a medical
38 condition, as determined by the board.
- 39 2. The person is the subject of a warrant of execution.
- 40 3. The sentence for which commutation is sought is the subject of a
41 special order issued by the court pursuant to section 13-603, subsection L.

42 E. This section applies only to offenses that are committed on or
43 after ~~the effective date of this section~~ JANUARY 1, 2006.

1 Sec. 103. Section 31-412, Arizona Revised Statutes, is amended to
2 read:

3 31-412. Criteria for release on parole; release; custody of
4 parolee; definition

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

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

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

38 1. A majority affirmative vote if four or more members consider the
39 action.

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

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

44 D. The board, as a condition of parole, shall order a prisoner to make
45 any court-ordered restitution.

1 E. Payment of restitution by the prisoner in accordance with
2 subsection D of this section shall be made through the clerk of the superior
3 court in the county in which the prisoner was sentenced for the offense for
4 which the prisoner has been imprisoned in the same manner as restitution is
5 paid as a condition of probation. The clerk of the superior court shall
6 report to the board monthly whether or not restitution has been paid for that
7 month by the prisoner.

8 F. The board shall not disclose the address of the victim or the
9 victim's immediate family to any party without the written consent of the
10 victim or the victim's family.

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

13 1. A serious offense as defined in section ~~13-604~~ 13-706, subsection
14 ~~W- F~~, paragraph ~~4- 1~~, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j)
15 or (k).

16 2. A dangerous crime against children as defined in section ~~13-604.01~~
17 13-705. The citation of section ~~13-604.01~~ 13-705 is not a necessary element
18 for a serious offense designation.

19 3. A conviction under a prior criminal code for any offense that
20 possesses reasonably equivalent offense elements as the offense elements that
21 are listed under section ~~13-604, subsection W, paragraph 4 and section~~
22 ~~13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR
23 SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

24 Sec. 104. Section 41-1604.08, Arizona Revised Statutes, is amended to
25 read:

26 41-1604.08. Global position system monitoring

27 A. The department shall assign any person who is in the custody of the
28 department and who was convicted of a violation of section ~~13-604.01~~ 13-705
29 to a global position monitoring system on the person's release on parole,
30 community supervision, work release or other conditional or temporary
31 release.

32 B. The department may enter into a contract for the provision of
33 global position monitoring services.

34 Sec. 105. Section 41-1604.10, Arizona Revised Statutes, is amended to
35 read:

36 41-1604.10. Earned release credits; forfeiture; restoration;
37 applicability

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

40 1. If sentenced upon a first conviction other than pursuant to section
41 ~~13-703~~ 13-751 or other than for a felony involving the use or exhibition of a
42 deadly weapon or dangerous instrument or the intentional or knowing
43 infliction of serious physical injury upon another, every two days served
44 within class one shall be counted as an earned release credit of one day.

1 2. If sentenced pursuant to the ~~provisions of~~ section ~~13-604,~~
2 ~~subsection A~~ 13-703, SUBSECTION B, PARAGRAPH 2, or upon first conviction of a
3 class 4, 5 or 6 felony involving the use or exhibition of a deadly weapon or
4 dangerous instrument or the intentional or knowing infliction of serious
5 physical injury or any other provisions of law which prohibits release on any
6 basis until serving not less than one-half the sentence imposed by the court,
7 every two days served within class one shall be counted as an earned release
8 credit of one day.

9 3. If sentenced ~~according~~ PURSUANT to any other ~~of the provisions~~
10 PROVISION of section ~~13-604~~ 13-703, SECTION 13-704, SUBSECTION A, B, C, D OR
11 E, SECTION 13-706, SUBSECTION A OR SECTION 13-708, SUBSECTION D or any other
12 provision of law which prohibits release on any basis until serving not less
13 than two-thirds the sentence imposed by the court, every three days served
14 within class one shall be counted as an earned release credit of one day.

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

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

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

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

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

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

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

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

30 Sec. 106. Section 41-1604.11, Arizona Revised Statutes, is amended to
31 read:

32 41-1604.11. Order for removal; purposes; duration; work
33 furlough; notice; failure to return;
34 classification; applicability; definition

35 A. The director of the state department of corrections may authorize
36 the temporary removal under custody from prison or any other institution for
37 the detention of adults under the jurisdiction of the state department of
38 corrections of any inmate for the purpose of employing that inmate in any
39 work directly connected with the administration, management or maintenance of
40 the prison or institution in which the inmate is confined, for purposes of
41 cooperating voluntarily in medical research that cannot be performed at the
42 prison or institution, or for participating in community action activities
43 directed toward delinquency prevention and community betterment programs.
44 The removal shall not be for a period longer than one day.

1 B. Under specific rules established by the director for the selection
2 of inmates, the director may also authorize furlough, temporary removal or
3 temporary release of any inmate for compassionate leave, for the purpose of
4 furnishing to the inmate medical treatment not available at the prison or
5 institution, for purposes preparatory to a return to the community within
6 ninety days of the inmate's release date or for disaster aid, including local
7 mutual aid and state emergencies. When an inmate is temporarily removed or
8 temporarily released for a purpose preparatory to return to the community or
9 for compassionate leave, the director may require the inmate to reimburse the
10 state, in whole or part, for expenses incurred by the state in connection
11 with the temporary removal or release.

12 C. The board of executive clemency, under specific rules established
13 for the selection of inmates, if it appears to the board, in its sole
14 discretion, that there is a substantial probability that the inmate will
15 remain at liberty without violating the law and that the release is in the
16 best interests of the state, may authorize the release of an inmate on work
17 furlough if the inmate has served not less than six months of the sentence
18 imposed by the court, is within twelve months of the inmate's parole
19 eligibility date and has not been convicted of a sexual offense. The
20 director shall provide information as the board requests concerning any
21 inmate eligible for release on work furlough. The inmate shall not be
22 released on work furlough unless the release is approved by the board.

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

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

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

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

36 E. Before holding a hearing on the work furlough under consideration,
37 the board, on request, shall notify and afford an opportunity to be heard to
38 the presiding judge of the superior court in the county in which the inmate
39 requesting a work furlough was sentenced, the prosecuting attorney, the
40 director of the arresting law enforcement agency and the victim of the
41 offense for which the inmate is incarcerated. The notice shall state the
42 name of the inmate requesting the work furlough, the offense for which the
43 inmate was sentenced, the length of the sentence and the date of admission to
44 the custody of the state department of corrections. The notice to the victim
45 shall also inform the victim of the victim's right to be present and submit a

1 written report to the board expressing the victim's opinion concerning the
2 inmate's release. No hearing concerning work furlough shall be held until
3 fifteen days after the date of giving the notice. On mailing the notice, the
4 board shall file a hard copy of the notice as evidence that notification was
5 sent.

6 F. The board shall require that every inmate released on work furlough
7 comply with the terms and conditions of release as the board may impose,
8 including that the inmate be gainfully employed while on work furlough and
9 that the inmate make restitution to the victim of the offense for which the
10 inmate was incarcerated.

11 G. If the board finds that an inmate has failed to comply with the
12 terms and conditions of release or that the best interests of this state
13 would be served by revocation of an inmate's work furlough, the board may
14 issue a warrant for retaking the inmate before the expiration of the inmate's
15 maximum sentence. After return of the inmate, the board may revoke the
16 inmate's work furlough after the inmate has been given an opportunity to be
17 heard.

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

21 I. The director shall transmit a monthly report containing the name,
22 date of birth, offense for which the inmate was sentenced, length of the
23 sentence and date of admission to the state department of corrections of each
24 inmate on work furlough or home arrest to the chairperson of the house of
25 representatives judiciary committee or its successor committee and the
26 chairperson of the senate judiciary committee or its successor committee.
27 The director shall also submit a report containing this information for any
28 inmate released on work furlough or home arrest within a jurisdiction to the
29 county attorney, sheriff and chief of police for the jurisdiction in which
30 the inmate is released on work furlough or home arrest.

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

34 K. At any given time if the director declares there is a shortage of
35 beds available for inmates within the state department of corrections, the
36 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
37 suspended for any inmate who has served not less than six months of the
38 sentence imposed by the court, who has not been previously convicted of a
39 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
40 a sexual offense, the use or exhibition of a deadly weapon or dangerous
41 instrument or the infliction of serious physical injury pursuant to section
42 ~~13-604~~ 13-704, and the inmate shall be continuously eligible for parole, home
43 arrest or work furlough.

1 L. Prisoners who have served at least one calendar year and who are
2 serving a sentence for conviction of a crime committed on or after October 1,
3 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02
4 or 36-1002.03, and who are sentenced to the custody of the state department
5 of corrections, may be temporarily released, according to the rules of the
6 department, at the discretion of the director, one hundred eighty calendar
7 days prior to expiration of the term imposed and shall remain under the
8 control of the state department of corrections until expiration of the
9 maximum sentence specified. If an offender released under this section or
10 pursuant to section 31-411, subsection B violates the rules, the offender may
11 be returned to custody and shall be classified to a parole class as provided
12 by the rules of the department.

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

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

17 1. A serious offense as defined in section ~~13-604~~ 13-706, subsection
18 ~~W~~ F, paragraph ~~4~~ 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j)
19 or (k).

20 2. A dangerous crime against children as defined in section ~~13-604.01~~
21 13-705. The citation of section ~~13-604.01~~ 13-705 is not a necessary element
22 for a serious offense designation.

23 3. A conviction under a prior criminal code for any offense that
24 possesses reasonably equivalent offense elements as the offense elements that
25 are listed under section ~~13-604, subsection W, paragraph 4 or section~~
26 ~~13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR
27 SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

28 Sec. 107. Section 41-1604.13, Arizona Revised Statutes, is amended to
29 read:

30 41-1604.13. Home arrest; eligibility; victim notification;
31 conditions; applicability; definitions

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

34 1. Meets the following criteria:

35 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
36 the intentional or knowing infliction of serious physical injury or the use
37 or exhibition of a deadly weapon or dangerous instrument.

38 (b) Was not convicted of a sexual offense.

39 (c) Has not previously been convicted of any felony.

40 2. Violated parole by the commission of a technical violation that was
41 not chargeable or indictable as a criminal offense.

42 3. Is eligible for work furlough.

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

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

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

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

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

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

24 D. Home arrest is conditioned on the following:

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

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

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

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

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

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

39 7. Compliance with all other conditions of supervision.

40 E. Before holding a hearing on home arrest, the board on request shall
41 notify and afford an opportunity to be heard to the presiding judge of the
42 superior court in the county in which the inmate requesting home arrest was
43 sentenced, the prosecuting attorney and the director of the arresting law
44 enforcement agency. The board shall notify the victim of the offense for
45 which the inmate is incarcerated. The notice shall state the name of the

1 inmate requesting home arrest, the offense for which the inmate was
2 sentenced, the length of the sentence and the date of admission to the
3 custody of the state department of corrections. The notice to the victim
4 shall also inform the victim of the victim's right to be present and to
5 submit a written report to the board expressing the victim's opinion
6 concerning the inmate's release. No hearing concerning home arrest may be
7 held until fifteen days after the date of giving the notice. On mailing the
8 notice, the board shall file a hard copy of the notice as evidence that
9 notification was sent.

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

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

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

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

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

25 K. For the purposes of this section: ~~—~~

26 1. "DANGEROUS OFFENSE" HAS THE SAME MEANING PRESCRIBED IN SECTION
27 13-105.

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

29 ~~1-~~ (a) A serious offense as defined in section ~~13-604~~ 13-706,
30 subsection ~~W-~~ F, paragraph ~~4-~~ 1, subdivision (a), (b), (c), (d), (e), (g),
31 (h), (i), (j) or (k).

32 ~~2-~~ (b) A dangerous crime against children as defined in section
33 ~~13-604.01~~ 13-705. The citation of section ~~13-604.01~~ 13-705 is not a necessary
34 element for a serious offense designation.

35 ~~3-~~ (c) A conviction under a prior criminal code for any offense that
36 possesses reasonably equivalent offense elements as the offense elements that
37 are listed under section ~~13-604, subsection W, paragraph 4 and section~~
38 ~~13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR
39 SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

40 Sec. 108. Section 41-1604.14, Arizona Revised Statutes, is amended to
41 read:

42 41-1604.14. Release of prisoners with detainees; eligibility;
43 revocation of release

44 A. Notwithstanding any law to the contrary, the director may release a
45 prisoner to the custody and control of the United States immigration and

1 ~~naturalization—service~~ CUSTOMS ENFORCEMENT if all of the following
2 requirements are satisfied:

3 1. The department receives an order of deportation for the prisoner
4 from the United States immigration and naturalization service.

5 2. The prisoner has served at least one-half of the sentence imposed
6 by the court.

7 3. The prisoner was convicted of a class 3, 4, 5 or 6 felony offense.

8 4. The prisoner was not convicted of an offense under title 13,
9 chapter 11.

10 5. The prisoner was not convicted of a sexual offense pursuant to
11 ~~sections~~ SECTION 13-1404, 13-1405, 13-1406 or 13-1410.

12 6. The prisoner was not sentenced pursuant to section ~~13-604~~ 13-703,
13 SECTION 13-704, SUBSECTION A, B, C, D OR E, SECTION 13-706, SUBSECTION A OR
14 SECTION 13-708, SUBSECTION D.

15 B. If a prisoner who is released pursuant to this section returns
16 illegally to the United States, on notification from any federal or state law
17 enforcement agency that the prisoner is in custody, the director shall revoke
18 the prisoner's release. The prisoner shall not be eligible for parole,
19 community supervision or any other release from confinement until the
20 remainder of the sentence of imprisonment is served, except pursuant to
21 section 31-233, subsection A or B.

22 Sec. 109. Section 41-1604.15, Arizona Revised Statutes, is amended to
23 read:

24 41-1604.15. Probation or other release noneligibility; violent
25 crime; under the influence of marijuana, a
26 dangerous drug or a narcotic drug

27 Notwithstanding any law to the contrary, any person who is convicted of
28 a violent crime as defined in section ~~13-604.04~~ 13-901.03 that is committed
29 while the person is under the influence of marijuana, a dangerous drug or a
30 narcotic drug as defined in section 13-3401 is not eligible for probation or
31 release on any basis until the entire sentence has been served. Pursuant to
32 section 41-1604.07, the director shall include any such person in a
33 noneligible earned release credit class and the prisoner is not eligible for
34 placement in an eligible earned release credit class.

35 Sec. 110. Section 41-1604.16, Arizona Revised Statutes, is amended to
36 read:

37 41-1604.16. Parole or community supervision eligibility for
38 persons previously convicted of possession or use
39 of marijuana, a dangerous drug or a narcotic drug

40 A. Notwithstanding any law to the contrary, if a prisoner has been
41 convicted of the possession or use of marijuana pursuant to section 13-3405,
42 subsection A, paragraph 1, possession or use of a dangerous drug pursuant to
43 section 13-3407, subsection A, paragraph 1 or possession or use of a narcotic
44 drug pursuant to section 13-3408, subsection A, paragraph 1 and the prisoner
45 is not concurrently serving another sentence, the prisoner is eligible for

1 parole or if the offense for which the prisoner was incarcerated was
2 committed on or after January 1, 1994, the prisoner is eligible for community
3 supervision.

4 B. Any person who has previously been convicted of a violent crime as
5 defined in section ~~13-604.04~~ 13-901.03 or who has previously been convicted
6 and sentenced in any jurisdiction in the United States of any felony offense
7 is not eligible for parole or community supervision pursuant to this section.
8 If the department is unable to determine if a person has a prior felony
9 conviction, the department shall refer the inmate record to the sentencing
10 court. The sentencing court shall determine if the person has a prior felony
11 conviction. For the purposes of this subsection, the age of the conviction
12 does not matter.

13 C. On or before June 3, 1997, the director of the state department of
14 corrections shall prepare a list that identifies each person who is eligible
15 for parole or community supervision pursuant to this section and shall
16 deliver the list to the board of executive clemency.

17 D. An offense THAT IS committed in another jurisdiction AND THAT IS
18 not classified as a felony in Arizona is not a felony offense for purposes of
19 this section.

20 Sec. 111. Section 41-1609.05, Arizona Revised Statutes, is amended to
21 read:

22 41-1609.05. Community accountability pilot program; fund;
23 program termination; definition

24 A. The department shall contract with an experienced private or
25 nonprofit entity to operate a community accountability pilot program to
26 provide eligible inmates with supervision and treatment services. The
27 department shall procure community accountability services pursuant to
28 chapter 23 of this title.

29 B. Inmates enrolled in the program may be removed by the director
30 pursuant to subsection E of this section.

31 C. The goals of the community accountability pilot program include:

- 32 1. Reducing recidivism.
- 33 2. Providing treatment and rehabilitation services based on the
34 inmate's risk for recidivism and need for treatment.
- 35 3. Providing supervision through electronic monitoring based on the
36 inmate's risk for recidivism and need for supervision.
- 37 4. Preparing eligible inmates for independent living following
38 community supervision.
- 39 5. Enhancing public safety.

40 D. The community accountability pilot program may provide services to
41 eligible inmates that are designed to lower recidivism rates, including the
42 following community based services:

- 43 1. Substance abuse education and treatment.
- 44 2. Random mandatory drug testing.

1 3. Electronic monitoring, remote alcohol testing, global positioning
2 system tracking and voice identification community tracking.

3 4. Life skills programming.

4 5. Employment preparation.

5 6. Anger management.

6 7. Parenting skills, family orientation and family reunification.

7 8. Cognitive skills training.

8 9. General equivalency diplomas and adult basic education.

9 10. Housing assistance.

10 11. Health care and stress management.

11 12. Transportation planning.

12 13. Group and individual counseling.

13 E. The director shall identify inmates who are eligible for the
14 community accountability pilot program and shall determine all supervision,
15 admission and termination requirements. The director may remove an inmate
16 from the program. The director may order an eligible inmate to participate
17 in the program in lieu of parole or community supervision revocation or if
18 the inmate is at risk of violating or revocation of parole or community
19 supervision.

20 F. The contracting entity shall operate the program, including the
21 management of any facility and its staff, the design of the program and the
22 installation and maintenance of all equipment necessary for operation of any
23 facility. Facilities that are established and operated under the pilot
24 program shall be known as community accountability reporting centers. The
25 contracting entity shall use existing risk assessment scores utilized by the
26 department to establish treatment services based on the inmate's risk and
27 need. Case managers shall provide monthly reports to the eligible inmate's
28 supervising officer, except that a violation shall be reported within
29 twenty-four hours.

30 G. After an eligible inmate has been in the program for sixty days or
31 more, the department may require as a condition of program participation that
32 the eligible inmate pay a supervision fee, unless the inmate is determined to
33 be indigent. The case manager shall monitor the collection of the fee.
34 Monies collected pursuant to this subsection shall be deposited, pursuant to
35 sections 35-146 and 35-147, in the community accountability fund established
36 pursuant to subsection H of this section.

37 H. The community accountability fund is established consisting of fees
38 collected pursuant to subsection G of this section. The director shall
39 administer the fund for the purposes of this section. Monies in this fund
40 are continuously appropriated.

41 I. During each year of operation of the pilot program, the contracting
42 entity shall provide monthly reports to the department and the joint
43 legislative budget committee.

44 J. The pilot program established by this section ends on July 1, 2012
45 pursuant to section 41-3102.

1 K. For the purposes of this section, "eligible inmate" means an inmate
2 who is on community supervision or who is eligible for community supervision
3 and who has not been convicted of a violent crime as defined in section
4 ~~13-604.04~~ 13-901.03, a dangerous crime against children as defined in section
5 ~~13-604.01~~ 13-705 or a sexual offense pursuant to title 13, chapter 14 or
6 35.1.

7 Sec. 112. Section 41-1758.03, Arizona Revised Statutes, is amended to
8 read:

9 41-1758.03. Fingerprint clearance cards; issuance; immunity

10 A. On receiving the state and federal criminal history record of a
11 person, the division shall compare the record with the list of criminal
12 offenses that preclude the person from receiving a fingerprint clearance
13 card. If the person's criminal history record does not contain any of the
14 offenses listed in subsections B and C of this section, the division shall
15 issue the person a fingerprint clearance card.

16 B. A person who is subject to registration as a sex offender in this
17 state or any other jurisdiction or who is awaiting trial on or who has been
18 convicted of committing or attempting, soliciting, facilitating or conspiring
19 to commit one or more of the following offenses in this state or the same or
20 similar offenses in another state or jurisdiction is precluded from receiving
21 a fingerprint clearance card:

- 22 1. Sexual abuse of a vulnerable adult.
- 23 2. Incest.
- 24 3. First or second degree murder.
- 25 4. Sexual assault.
- 26 5. Sexual exploitation of a minor.
- 27 6. Sexual exploitation of a vulnerable adult.
- 28 7. Commercial sexual exploitation of a minor.
- 29 8. Commercial sexual exploitation of a vulnerable adult.
- 30 9. Child prostitution as prescribed in section 13-3212.
- 31 10. Child abuse.
- 32 11. Abuse of a vulnerable adult.
- 33 12. Sexual conduct with a minor.
- 34 13. Molestation of a child.
- 35 14. Molestation of a vulnerable adult.
- 36 15. A dangerous crime against children as defined in ~~13-604.01~~ SECTION
37 13-705.
- 38 16. Exploitation of minors involving drug offenses.
- 39 17. Taking a child for the purposes of prostitution as prescribed in
40 section 13-3206.
- 41 18. Neglect or abuse of a vulnerable adult.
- 42 19. Sex trafficking.
- 43 20. Sexual abuse.
- 44 21. Production, publication, sale, possession and presentation of
45 obscene items as prescribed in section 13-3502.

- 1 22. Furnishing harmful items to minors as prescribed in section
- 2 13-3506.
- 3 23. Furnishing harmful items to minors by internet activity as
- 4 prescribed in section 13-3506.01.
- 5 24. Obscene or indecent telephone communications to minors for
- 6 commercial purposes as prescribed in section 13-3512.
- 7 25. Luring a minor for sexual exploitation.
- 8 26. Enticement of persons for purposes of prostitution.
- 9 27. Procurement by false pretenses of person for purposes of
- 10 prostitution.
- 11 28. Procuring or placing persons in a house of prostitution.
- 12 29. Receiving earnings of a prostitute.
- 13 30. Causing one's spouse to become a prostitute.
- 14 31. Detention of persons in a house of prostitution for debt.
- 15 32. Keeping or residing in a house of prostitution or employment in
- 16 prostitution.
- 17 33. Pandering.
- 18 34. Transporting persons for the purpose of prostitution, polygamy and
- 19 concubinage.
- 20 35. Portraying adult as a minor as prescribed in section 13-3555.
- 21 36. Admitting minors to public displays of sexual conduct as prescribed
- 22 in section 13-3558.
- 23 C. A person who is awaiting trial on or who has been convicted of
- 24 committing or attempting, soliciting, facilitating or conspiring to commit
- 25 one or more of the following offenses in this state or the same or similar
- 26 offenses in another state or jurisdiction is precluded from receiving a
- 27 fingerprint clearance card, except that the person may petition the board of
- 28 fingerprinting for a good cause exception pursuant to section 41-619.55:
- 29 1. Manslaughter.
- 30 2. Endangerment.
- 31 3. Threatening or intimidating.
- 32 4. Assault.
- 33 5. Unlawfully administering intoxicating liquors, narcotic drugs or
- 34 dangerous drugs.
- 35 6. Assault by vicious animals.
- 36 7. Drive by shooting.
- 37 8. Assaults on officers or fire fighters.
- 38 9. Discharging a firearm at a structure.
- 39 10. Indecent exposure.
- 40 11. Public sexual indecency.
- 41 12. Aggravated criminal damage.
- 42 13. Theft.
- 43 14. Theft by extortion.
- 44 15. Shoplifting.
- 45 16. Forgery.

- 1 17. Criminal possession of a forgery device.
- 2 18. Obtaining a signature by deception.
- 3 19. Criminal impersonation.
- 4 20. Theft of a credit card or obtaining a credit card by fraudulent
- 5 means.
- 6 21. Receipt of anything of value obtained by fraudulent use of a credit
- 7 card.
- 8 22. Forgery of a credit card.
- 9 23. Fraudulent use of a credit card.
- 10 24. Possession of any machinery, plate or other contrivance or
- 11 incomplete credit card.
- 12 25. False statement as to financial condition or identity to obtain a
- 13 credit card.
- 14 26. Fraud by persons authorized to provide goods or services.
- 15 27. Credit card transaction record theft.
- 16 28. Misconduct involving weapons.
- 17 29. Misconduct involving explosives.
- 18 30. Depositing explosives.
- 19 31. Misconduct involving simulated explosive devices.
- 20 32. Concealed weapon violation.
- 21 33. Possession and sale of peyote.
- 22 34. Possession and sale of a vapor-releasing substance containing a
- 23 toxic substance.
- 24 35. Sale of precursor chemicals.
- 25 36. Possession, use or sale of marijuana, dangerous drugs or narcotic
- 26 drugs.
- 27 37. Manufacture or distribution of an imitation controlled substance.
- 28 38. Manufacture or distribution of an imitation prescription-only drug.
- 29 39. Manufacture or distribution of an imitation over-the-counter drug.
- 30 40. Possession or possession with intent to use an imitation controlled
- 31 substance.
- 32 41. Possession or possession with intent to use an imitation
- 33 prescription-only drug.
- 34 42. Possession or possession with intent to use an imitation
- 35 over-the-counter drug.
- 36 43. Manufacture of certain substances and drugs by certain means.
- 37 44. Adding poison or other harmful substance to food, drink or
- 38 medicine.
- 39 45. A criminal offense involving criminal trespass and burglary under
- 40 title 13, chapter 15.
- 41 46. A criminal offense under title 13, chapter 23.
- 42 47. Child neglect.
- 43 48. Misdemeanor offenses involving contributing to the delinquency of a
- 44 minor.
- 45 49. Offenses involving domestic violence.

- 1 50. Arson.
- 2 51. Kidnapping.
- 3 52. Felony offenses involving sale, distribution or transportation of,
- 4 offer to sell, transport or distribute or conspiracy to sell, transport or
- 5 distribute marijuana, dangerous drugs or narcotic drugs.
- 6 53. Robbery.
- 7 54. Aggravated assault.
- 8 55. Felony offenses involving contributing to the delinquency of a
- 9 minor.
- 10 56. Negligent homicide.
- 11 57. Criminal damage.
- 12 58. Misappropriation of charter school monies as prescribed in section
- 13 13-1818.
- 14 59. Taking identity of another person or entity.
- 15 60. Aggravated taking identity of another person or entity.
- 16 61. Trafficking in the identity of another person or entity.
- 17 62. Cruelty to animals.
- 18 63. Prostitution.
- 19 64. Sale or distribution of material harmful to minors through vending
- 20 machines as prescribed in section 13-3513.
- 21 65. Welfare fraud.
- 22 D. A person who is awaiting trial on or who has been convicted of
- 23 committing or attempting or conspiring to commit a violation of section
- 24 28-1381, 28-1382 or 28-1383 in this state or the same or similar offense in
- 25 another state or jurisdiction within five years from the date of applying for
- 26 a fingerprint clearance card is precluded from driving any vehicle to
- 27 transport employees or clients of the employing agency as part of the
- 28 person's employment. The division shall place a notation on the fingerprint
- 29 clearance card that indicates this driving restriction. This subsection does
- 30 not preclude a person from driving a vehicle alone as part of the person's
- 31 employment.
- 32 E. Notwithstanding subsection C of this section, on receiving written
- 33 notice from the board of fingerprinting that a good cause exception was
- 34 granted pursuant to section 41-619.55, the division shall issue a fingerprint
- 35 clearance card to the person.
- 36 F. If the division denies a person's application for a fingerprint
- 37 clearance card pursuant to subsection C of this section and a good cause
- 38 exception is requested pursuant to section 41-619.55, the division shall
- 39 release, on request by the board of fingerprinting, the person's criminal
- 40 history record to the board of fingerprinting.
- 41 G. A person shall be granted a fingerprint clearance card if either of
- 42 the following applies:
- 43 1. An agency granted a good cause exception before August 16, 1999 and
- 44 no new precluding offense is identified. The fingerprint clearance card
- 45 shall specify only the program that granted the good cause exception. On the

1 request of the applicant, the agency that granted the prior good cause
2 exception shall notify the division in writing of the date on which the prior
3 good cause exception was granted and the date of the conviction and the name
4 of the offense for which the good cause exception was granted.

5 2. The board granted a good cause exception and no new precluding
6 offense is identified. The fingerprint clearance card shall specify the
7 programs for which the board granted the good cause exception.

8 H. The licensee or contract provider shall assume the costs of
9 fingerprint checks and may charge these costs to persons required to be
10 fingerprinted.

11 I. A person who is under eighteen years of age or who is at least
12 ninety-nine years of age is exempt from the fingerprint clearance card
13 requirements of this section. At all times the person shall be under the
14 direct visual supervision of personnel who have valid fingerprint clearance
15 cards.

16 J. The division may conduct periodic state criminal history records
17 checks for the purpose of updating the clearance status of current
18 fingerprint clearance card holders and may notify the board of fingerprinting
19 and the agency employing the person of the results of the records check.

20 K. The division shall revoke a person's fingerprint clearance card on
21 receipt of a written request for revocation from the board of fingerprinting
22 pursuant to section 41-619.55.

23 L. The division shall not issue a fingerprint clearance card to a
24 person if the division cannot determine, within thirty business days after
25 receipt of the person's state and federal criminal history record
26 information, whether the person is awaiting trial on or has been convicted of
27 committing any of the offenses listed in subsection B or C of this section.
28 If the division is unable to make the determination required by this section
29 and does not issue a fingerprint clearance card to a person, the person may
30 request a good cause exception pursuant to section 41-619.55.

31 M. Except as provided in subsection N of this section, if after
32 conducting a state and federal criminal history record check the division
33 determines that it is not authorized to issue a fingerprint clearance card to
34 a person, the division shall notify the agency that licenses or employs the
35 person that the division is not authorized to issue a fingerprint clearance
36 card. This notice shall include the criminal history information on which
37 the denial was based. This criminal history information is subject to
38 dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

39 N. If, after conducting a state and federal criminal history record
40 check on a person who requests a fingerprint clearance card pursuant to
41 section 15-1881, the division determines that it is not authorized to issue a
42 fingerprint clearance card to the person, the division shall not notify the
43 agency. The division shall notify the person who requested the card that the
44 division is not authorized to issue a fingerprint clearance card.

- 1 (i) Commercial sexual exploitation of a minor.
2 (j) Felony offenses involving sale, distribution or transportation of,
3 offer to sell, transport or distribute or conspiracy to sell, transport or
4 distribute marijuana, dangerous drugs or narcotic drugs.
5 (k) Felony offenses involving the possession or use of marijuana,
6 dangerous drugs or narcotic drugs.
7 (l) Burglary.
8 (m) Aggravated or armed robbery.
9 (n) Robbery.
10 (o) A dangerous crime against children as defined in section ~~13-604.01~~
11 ~~13-705~~.
12 (p) Child abuse.
13 (q) Sexual conduct with a minor.
14 (r) Molestation of a child.
15 (s) Manslaughter.
16 (t) Assault or aggravated assault.
17 (u) Exploitation of minors involving drug offenses.
18 (v) A violation of section 28-1381, 28-1382 or 28-1383.
19 (w) Offenses involving domestic violence.
20 2. They are parents or guardians of a child adjudicated to be a
21 dependent child as defined in section 8-201.
22 3. They have been denied a license to operate a child care facility
23 for cause in this state or another state or had a license or certificate to
24 operate a child care facility revoked.
25 E. The notarized forms are confidential.
26 F. Each applicant for registration shall not have been the subject of
27 an investigation where a report of child abuse or neglect has been
28 substantiated.
29 G. Each applicant shall maintain current training and certification in
30 first aid and infant and child cardiopulmonary resuscitation.
31 H. The applicant shall enclose any pool on the applicant's premises
32 pursuant to section 36-1681, subsections A, B and C.
33 I. The applicant shall separately store firearms and ammunition under
34 lock and key or combination lock.
35 J. The department shall adopt rules to carry out this section.
36 K. The director shall charge a fee for processing the fingerprint
37 information required pursuant to this section.
38 L. Any obligation or liability under this section is governed by the
39 provisions of section 41-1967, subsections F, G and H.
40 M. For the purposes of this section, "child care provider" means a
41 registered child care home provider pursuant to subsection A of this section.

1 Sec. 114. Section 41-2814, Arizona Revised Statutes, is amended to
2 read:

3 41-2814. Fingerprinting personnel; exception; violation;
4 classification; definition

5 A. All employees of the department and all contract service providers
6 that provide services primarily on department premises shall be
7 fingerprinted. These individuals shall submit fingerprints and the form
8 prescribed in subsection F of this section within seven days after the date
9 of employment. Employment with the department is conditioned on the results
10 of the fingerprint check. Fingerprint checks shall be conducted pursuant to
11 section 41-1750, subsection G, paragraph 1.

12 B. Except as provided in subsection A of this section, a paid or
13 unpaid employee of a licensee or contract provider who has direct contact
14 with committed youth shall have a valid fingerprint clearance card issued
15 pursuant to chapter 12, article 3.1 of this title or shall apply for a
16 fingerprint clearance card within seven days of beginning employment.

17 C. A service contract or license with any contract provider or
18 licensee that involves the employment of persons who have direct contact with
19 committed youth shall provide that the contract or license may be canceled or
20 terminated immediately if a person certifies pursuant to subsection F of this
21 section that the person is awaiting trial on or has been convicted of any of
22 the offenses listed in subsection F of this section in this jurisdiction or
23 acts committed in another jurisdiction that would be offenses in this
24 jurisdiction or if the person does not possess or is denied issuance of a
25 valid fingerprint clearance card.

26 D. A contract provider or licensee may avoid cancellation or
27 termination of the contract or license under subsection C of this section if
28 a person who does not possess or has been denied issuance of a valid
29 fingerprint clearance card or who certifies pursuant to subsection F of this
30 section that the person has been convicted of or is awaiting trial on any of
31 the offenses listed in subsection F, paragraphs 1, 2, 3, 6, 7, 9, 15 through
32 18 and 21 of this section is immediately prohibited from employment or
33 service with the contract provider or licensee in any capacity requiring or
34 allowing direct contact with committed youth.

35 E. A contract provider or licensee may avoid cancellation or
36 termination of the contract or license under subsection C of this section if
37 a person who does not possess or has been denied issuance of a valid
38 fingerprint clearance card or who certifies pursuant to subsection F of this
39 section that the person has been convicted of or is awaiting trial on any of
40 the offenses listed in subsection F, paragraphs 4, 5, 8, 10 through 14, 19,
41 20, 22 and 23 of this section is immediately prohibited from employment or
42 service with the contract provider or licensee in any capacity requiring or
43 allowing direct contact with committed youth unless the employee is granted a
44 good cause exception pursuant to section 41-619.55.

1 F. Personnel who are employed by the department and contract personnel
2 who have direct contact with committed youth shall certify on forms provided
3 by the department and notarized whether they are awaiting trial on or have
4 ever been convicted of or committed any of the following criminal offenses in
5 this state or similar offenses in another state or jurisdiction:

- 6 1. Sexual abuse of a minor.
- 7 2. Incest.
- 8 3. First or second degree murder.
- 9 4. Kidnapping.
- 10 5. Arson.
- 11 6. Sexual assault.
- 12 7. Sexual exploitation of a minor.
- 13 8. Felony offenses involving contributing to the delinquency of a
14 minor.
- 15 9. Commercial sexual exploitation of a minor.
- 16 10. Felony offenses involving sale, distribution or transportation of,
17 offer to sell, transport or distribute or conspiracy to sell, transport or
18 distribute marijuana, dangerous drugs or narcotic drugs.
- 19 11. Felony offenses involving the possession or use of marijuana,
20 dangerous drugs or narcotic drugs.
- 21 12. Burglary.
- 22 13. Aggravated or armed robbery.
- 23 14. Robbery.
- 24 15. A dangerous crime against children as defined in section ~~13-604.01~~
25 [13-705](#).
- 26 16. Child abuse.
- 27 17. Sexual conduct with a minor.
- 28 18. Molestation of a child.
- 29 19. Manslaughter.
- 30 20. Assault or aggravated assault.
- 31 21. Exploitation of minors involving drug offenses.
- 32 22. A violation of section 28-1381, 28-1382 or 28-1383.
- 33 23. Offenses involving domestic violence.

34 G. The department shall make documented, good faith efforts to contact
35 previous employers of personnel to obtain information or recommendations that
36 may be relevant to an individual's fitness for employment.

37 H. Hospital employees, licensed medical personnel, staff and
38 volunteers who provide services to juveniles in a health care facility
39 located outside the secure care facility and who are under the direct visual
40 supervision as is medically reasonable of the department's employees or the
41 department's contracted security employees are exempt from the requirements
42 of this section.

1 I. The department of juvenile corrections shall notify the department
2 of public safety if the department of juvenile corrections receives credible
3 evidence that a person who possesses a valid fingerprint clearance card
4 either:

5 1. Is arrested for or charged with an offense listed in section
6 41-1758.03, subsection B.

7 2. Falsified information on the form required by subsection F of this
8 section.

9 J. A person who makes a false statement, representation or
10 certification in an application for employment with the department is guilty
11 of a class 3 misdemeanor.

12 K. For the purposes of this section, "employee" means paid and unpaid
13 personnel who have direct contact with committed youth.

14 Sec. 115. Section 46-321, Arizona Revised Statutes, is amended to
15 read:

16 46-321. Fingerprinting; affidavit

17 A. Sponsors, except military bases and federally recognized Indian
18 tribes, receiving federal child care food program monies from the department
19 of education shall register with the department of education in order to
20 receive those monies, unless they are public schools, child care facilities
21 licensed by the department of health services or child care homes certified
22 by the department of economic security.

23 B. Sponsors, except military bases and federally recognized Indian
24 tribes, receiving federal child care food program monies as provided in
25 subsection A of this section shall require all child care providers to submit
26 the form prescribed in subsection F of this section to the department of
27 education and to have valid fingerprint clearance cards issued pursuant to
28 title 41, chapter 12, article 3.1 or to apply for a fingerprint clearance
29 card within seven working days of employment before they receive any of those
30 monies.

31 C. Sponsors that are federally recognized Indian tribes or military
32 bases may submit and the department shall accept certifications that state
33 that any child care personnel who is employed or who will be employed during
34 the contract term has not been convicted of, has not admitted to or is not
35 awaiting trial on any of the offenses listed in subsection F of this section
36 or is not the parent or guardian of a child adjudicated to be a dependent
37 child as defined in section 8-201 or the parent or guardian of a child
38 adjudicated a dependent child under similar provisions in another state or
39 jurisdiction.

40 D. Sponsors that are federally recognized Indian tribes or military
41 bases may submit and the department shall accept certifications that state
42 that good faith efforts have been made to contact previous employers of
43 tribal and military child care personnel.

1 E. The department of education shall charge sponsors receiving federal
2 child care food program monies as provided in subsection A of this section
3 for the costs of their fingerprint checks.

4 F. Sponsors receiving federal child care food program monies as
5 provided in subsection A of this section shall require all child care
6 personnel to certify on forms that are provided by the department of
7 education and notarized that:

8 1. They are not awaiting trial on and have never been convicted of or
9 admitted committing any of the following criminal offenses in this state or
10 similar offenses in another state or jurisdiction:

- 11 (a) Sexual abuse of a minor.
- 12 (b) Incest.
- 13 (c) First or second degree murder.
- 14 (d) Kidnapping.
- 15 (e) Arson.
- 16 (f) Sexual assault.
- 17 (g) Sexual exploitation of a minor.
- 18 (h) Felony offenses involving contributing to the delinquency of a
19 minor.
- 20 (i) Commercial sexual exploitation of a minor.
- 21 (j) Felony offenses involving sale, distribution or transportation of,
22 offer to sell, transport or distribute or conspiracy to sell, transport or
23 distribute marijuana, dangerous drugs or narcotic drugs.
- 24 (k) Felony offenses involving the possession or use of marijuana,
25 dangerous drugs or narcotic drugs.
- 26 (l) Burglary.
- 27 (m) Aggravated or armed robbery.
- 28 (n) Robbery.
- 29 (o) A dangerous crime against children as defined in section ~~13-604.01~~
30 [13-705](#).
- 31 (p) Child abuse.
- 32 (q) Sexual conduct with a minor.
- 33 (r) Molestation of a child.
- 34 (s) Manslaughter.
- 35 (t) Assault or aggravated assault.
- 36 (u) Exploitation of minors involving drug offenses.
- 37 (v) A violation of section 28-1381, 28-1382 or 28-1383.
- 38 (w) Offenses involving domestic violence.

39 2. They are not parents or guardians of a child adjudicated to be a
40 dependent child as defined in section 8-201.

41 3. They have not been denied a license to operate a facility for the
42 care of children for cause in this state or another state or had a license or
43 certificate to operate such a facility revoked.

1 G. Sponsors shall make documented, good faith efforts to contact
2 previous employers of child care personnel who receive federal child care
3 food program monies as provided in subsection A of this section to obtain
4 information or recommendations that may be relevant to an individual's
5 fitness for child care.

6 H. The notarized forms are confidential.

7 I. The state board of education shall notify the department of public
8 safety if the state board of education receives credible evidence that any
9 child care provider who possesses a valid fingerprint clearance card either:

10 1. Is arrested for or charged with an offense listed in section
11 41-1758.03, subsection B.

12 2. Falsified information on the form required by subsection F of this
13 section.

14 Sec. 116. Laws 2003, chapter 255, section 8 is amended to read:

15 Sec. 8. Conditional enactment

16 A. The following do not become effective unless on or before June 30,
17 2013 the Arizona supreme court or the supreme court of the United States
18 rules that it is constitutional for a crime victim in a capital case to make
19 a sentencing recommendation:

20 1. Section ~~13-703.01~~ 13-752, Arizona Revised Statutes, as amended by
21 ~~section 3 of this act~~ LAWS 2005, CHAPTER 325, SECTION 4, AS TRANSFERRED AND
22 RENUMBERED BY SECTION 27 OF THIS ACT AND AS AMENDED BY SECTION 41 OF THIS
23 ACT.

24 2. LAWS 2003, CHAPTER 255, section 4 ~~of this act~~.

25 3. Section 13-4426, Arizona Revised Statutes, ~~as added by this act~~.

26 B. The attorney general shall notify in writing the director of the
27 Arizona legislative council of the date on which the condition is met or if
28 the condition is not met.

29 Sec. 117. Effective date

30 Except as provided by Laws 2003, chapter 255, section 8, as amended by
31 this act, this act is effective from and after December 31, 2008.