

REFERENCE TITLE: **sentencing; minimum and maximum terms**

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

## **HB 2374**

Introduced by  
Representatives Ash, Court, Meyer, Miranda C, Miranda R, Patterson, Smith  
D: Carter, Fann, Seel, Senator Gray

**AN ACT**

**AMENDING SECTIONS 13-105, 13-702, 13-703, 13-705, 13-709.05 AND 13-711, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-713; AMENDING SECTIONS 13-917, 13-3405, 13-3419, 13-3553, 13-3994, 31-233, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; 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 13-105, Arizona Revised Statutes, is amended to  
3 read:  
4 13-105. Definitions  
5 In this title, unless the context otherwise requires:  
6 1. "Absconder" means a probationer who has moved from the  
7 probationer's primary residence without permission of the probation officer,  
8 who cannot be located within ninety days of the previous contact and against  
9 whom a petition to revoke has been filed in the superior court alleging that  
10 the probationer's whereabouts are unknown. A probationer is no longer deemed  
11 an absconder when the probationer is voluntarily or involuntarily returned to  
12 probation service.  
13 2. "Act" means a bodily movement.  
14 3. "Benefit" means anything of value or advantage, present or  
15 prospective.  
16 4. "Calendar year" means three hundred sixty-five days' actual time  
17 served without release, suspension or commutation of sentence, probation,  
18 pardon or parole, work furlough or release from confinement on any other  
19 basis.  
20 5. "Community supervision" means that portion of a felony sentence  
21 that is imposed by the court pursuant to section 13-603, subsection I and  
22 that is served in the community after completing a period of imprisonment or  
23 served in prison in accordance with section 41-1604.07.  
24 6. "Conduct" means an act or omission and its accompanying culpable  
25 mental state.  
26 7. "Crime" means a misdemeanor or a felony.  
27 8. "Criminal street gang" means an ongoing formal or informal  
28 association of persons in which members or associates individually or  
29 collectively engage in the commission, attempted commission, facilitation or  
30 solicitation of any felony act and that has at least one individual who is a  
31 criminal street gang member.  
32 9. "Criminal street gang member" means an individual to whom at least  
33 two of the following seven criteria that indicate criminal street gang  
34 membership apply:  
35 (a) Self-proclamation.  
36 (b) Witness testimony or official statement.  
37 (c) Written or electronic correspondence.  
38 (d) Paraphernalia or photographs.  
39 (e) Tattoos.  
40 (f) Clothing or colors.  
41 (g) Any other indicia of street gang membership.  
42 10. "Culpable mental state" means intentionally, knowingly, recklessly  
43 or with criminal negligence as those terms are defined in this paragraph:

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

4 (b) "Knowingly" means, with respect to conduct or to a circumstance  
5 described by a statute defining an offense, that a person is aware or  
6 believes that the person's conduct is of that nature or that the circumstance  
7 exists. It does not require any knowledge of the unlawfulness of the act or  
8 omission.

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

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

24 11. "Dangerous drug" means dangerous drug as defined in section  
25 13-3401.

26 12. "Dangerous instrument" means anything that under the circumstances  
27 in which it is used, attempted to be used or threatened to be used is readily  
28 capable of causing death or serious physical injury.

29 13. "Dangerous offense" means an offense involving the discharge, use  
30 or threatening exhibition of a deadly weapon or dangerous instrument or the  
31 intentional or knowing infliction of serious physical injury on another  
32 person.

33 14. "Deadly physical force" means force that is used with the purpose  
34 of causing death or serious physical injury or in the manner of its use or  
35 intended use is capable of creating a substantial risk of causing death or  
36 serious physical injury.

37 15. "Deadly weapon" means anything designed for lethal use, including a  
38 firearm.

39 16. "Economic loss" means any loss incurred by a person as a result of  
40 the commission of an offense. Economic loss includes lost interest, lost  
41 earnings and other losses that would not have been incurred but for the  
42 offense. Economic loss does not include losses incurred by the convicted  
43 person, damages for pain and suffering, punitive damages or consequential  
44 damages.

1           17. "Enterprise" includes any corporation, association, labor union or  
2 other legal entity.

3           18. "Felony" means an offense for which a sentence to a term of  
4 imprisonment in the custody of the state department of corrections is  
5 authorized by any law of this state.

6           19. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
7 rifle, shotgun or other weapon that will or is designed to or may readily be  
8 converted to expel a projectile by the action of expanding gases, except that  
9 it does not include a firearm in permanently inoperable condition.

10          20. "Government" means the state, any political subdivision of the  
11 state or any department, agency, board, commission, institution or  
12 governmental instrumentality of or within the state or political subdivision.

13          21. "Government function" means any activity that a public servant is  
14 legally authorized to undertake on behalf of a government.

15          22. "Historical prior felony conviction" means:

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

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

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

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

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

25           (v) Involved aggravated driving under the influence of intoxicating  
26 liquor or drugs.

27           (vi) Involved any dangerous crime against children as defined in  
28 section 13-705.

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

37           (i) A departure from custody or from a juvenile secure care facility,  
38 a juvenile detention facility or an adult correctional facility in which the  
39 person is held or detained, with knowledge that the departure is not  
40 permitted, or the failure to return to custody or detention following a  
41 temporary leave granted for a specific purpose or for a limited period.

42           (ii) A failure to report as ordered to custody or detention to begin  
43 serving a term of incarceration.

1 (c) Any class 4, 5 or 6 felony, except the offenses listed in  
2 subdivision (a) of this paragraph, that was committed within the five years  
3 immediately preceding the date of the present offense. Any time spent on  
4 absconder status while on probation, on escape status or incarcerated is  
5 excluded in calculating if the offense was committed within the preceding  
6 five years. If a court determines a person was not on absconder status while  
7 on probation or escape status, that time is not excluded. For the purposes  
8 of this subdivision, "escape" has the same meaning prescribed in subdivision  
9 (b) of this paragraph.

10 (d) Any felony conviction that is a third or more prior felony  
11 conviction.

12 23. "Intoxication" means any mental or physical incapacity resulting  
13 from use of drugs, toxic vapors or intoxicating liquors.

14 24. "Misdemeanor" means an offense for which a sentence to a term of  
15 imprisonment other than to the custody of the state department of corrections  
16 is authorized by any law of this state.

17 25. "Narcotic drug" means narcotic drugs as defined in section 13-3401.

18 26. "Offense" or "public offense" means conduct for which a sentence to  
19 a term of imprisonment or of a fine is provided by any law of the state in  
20 which it occurred or by any law, regulation or ordinance of a political  
21 subdivision of that state and, if the act occurred in a state other than this  
22 state, it would be so punishable under the laws, regulations or ordinances of  
23 this state or of a political subdivision of this state if the act had  
24 occurred in this state.

25 27. "Omission" means the failure to perform an act as to which a duty  
26 of performance is imposed by law.

27 28. "Peace officer" means any person vested by law with a duty to  
28 maintain public order and make arrests and includes a constable.

29 29. "Person" means a human being and, as the context requires, an  
30 enterprise, a public or private corporation, an unincorporated association, a  
31 partnership, a firm, a society, a government, a governmental authority or an  
32 individual or entity capable of holding a legal or beneficial interest in  
33 property.

34 30. "Petty offense" means an offense for which a sentence of a fine  
35 only is authorized by law.

36 31. "Physical force" means force used upon or directed toward the body  
37 of another person and includes confinement, but does not include deadly  
38 physical force.

39 32. "Physical injury" means the impairment of physical condition.

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

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

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

4           36. "PRIOR FELONY CONVICTION" MEANS ANY FELONY CONVICTION THAT IS  
5 ENTERED AS OF RECORD BEFORE THE COMMISSION OF A NEW OFFENSE.

6           ~~36.~~ 37. "Property" means anything of value, tangible or intangible.

7           ~~37.~~ 38. "Public servant":

8           (a) Means any officer or employee of any branch of government, whether  
9 elected, appointed or otherwise employed, including a peace officer, and any  
10 person participating as an advisor or consultant or otherwise in performing a  
11 governmental function.

12           (b) Does not include jurors or witnesses.

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

16           ~~38.~~ 39. "Serious physical injury" includes physical injury that  
17 creates a reasonable risk of death, or that causes serious and permanent  
18 disfigurement, serious impairment of health or loss or protracted impairment  
19 of the function of any bodily organ or limb.

20           ~~39.~~ 40. "Unlawful" means contrary to law or, where the context so  
21 requires, not permitted by law.

22           ~~40.~~ 41. "Vehicle" means a device in, upon or by which any person or  
23 property is, may be or could have been transported or drawn upon a highway,  
24 waterway or airway, excepting devices moved by human power or used  
25 exclusively upon stationary rails or tracks.

26           ~~41.~~ 42. "Voluntary act" means a bodily movement performed consciously  
27 and as a result of effort and determination.

28           ~~42.~~ 43. "Voluntary intoxication" means intoxication caused by the  
29 knowing use of drugs, toxic vapors or intoxicating liquors by a person, the  
30 tendency of which to cause intoxication the person knows or ought to know,  
31 unless the person introduces them pursuant to medical advice or under such  
32 duress as would afford a defense to an offense.

33           Sec. 2. Section 13-702, Arizona Revised Statutes, is amended to read:

34           13-702. First time felony offenders; sentencing; definition

35           A. Unless a specific sentence is otherwise provided, the term of  
36 imprisonment for a first felony offense shall be the presumptive sentence  
37 determined pursuant to subsection ~~D~~ B of this section. Except for those  
38 felonies involving a dangerous offense or if a specific sentence is otherwise  
39 provided, the court may increase or reduce the presumptive sentence within  
40 the ranges set by subsection ~~D~~ B of this section. Any reduction or increase  
41 shall be based on the aggravating and mitigating circumstances listed in  
42 section 13-701, subsections D and E and shall be within the ranges prescribed  
43 in subsection ~~D~~ B of this section.

~~B. If a person is convicted of a felony without having previously been convicted of any felony and if at least two of the aggravating factors listed in section 13-701, subsection D apply, the court may increase the maximum term of imprisonment otherwise authorized for that offense to an aggravated term. If a person is convicted of a felony without having previously been convicted of any felony and if the court finds at least two mitigating factors listed in section 13-701, subsection E apply, the court may decrease the minimum term of imprisonment otherwise authorized for that offense to a mitigated term.~~

~~C. The aggravated or mitigated term imposed pursuant to subsection D of this section may be imposed only if at least two of the aggravating circumstances are found beyond a reasonable doubt to be true by the trier of fact or are admitted by the defendant, except that an aggravating circumstance under section 13-701, subsection D, paragraph 11 shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.~~

~~D.~~ B. The term of imprisonment for a presumptive, minimum, ~~OR~~ maximum, ~~mitigated or aggravated~~ sentence shall be within the range prescribed under 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>
	<u>MINIMUM</u>				<u>MAXIMUM</u>
Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
Class 3	2 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.75 years
Class 4	1 year	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.75 years
Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years
Class 6	.33 years	<del>.5 years</del>	1 year	<del>1.5 years</del>	2 years

~~E.~~ C. The court shall inform all of the parties before sentencing occurs of its intent to increase or decrease a sentence to the ~~aggravated~~ MAXIMUM or ~~mitigated~~ MINIMUM sentence pursuant ~~TO~~ this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

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

Sec. 3. Section 13-703, Arizona Revised Statutes, is amended to read:  
13-703. Repetitive offenders; sentencing

A. A person shall be sentenced as a category one repetitive offender if the person is convicted of ~~two~~ THREE felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions.

B. A person shall be sentenced as a category two repetitive offender if the person either:

1 1. Is convicted of ~~three~~ **FOUR** or more felony offenses that were not  
2 committed on the same occasion but that either are consolidated for trial  
3 purposes or are not historical prior felony convictions.

4 2. Except as provided in section 13-704 or 13-705, is at least  
5 eighteen years of age or has been tried as an adult and stands convicted of a  
6 felony and has one historical prior felony conviction.

7 C. Except as provided in section 13-704 or 13-705, a person shall be  
8 sentenced as a category three repetitive offender if the person is at least  
9 eighteen years of age or has been tried as an adult and stands convicted of a  
10 felony and has two or more historical prior felony convictions.

11 D. The presumptive term set by this section may be aggravated or  
12 mitigated within the range under this section pursuant to section 13-701,  
13 subsections C, D and E.

14 ~~E. If a person is sentenced as a category one repetitive offender  
15 pursuant to subsection A of this section and if at least two aggravating  
16 circumstances listed in section 13-701, subsection D apply or at least two  
17 mitigating circumstances listed in section 13-701, subsection E apply, the  
18 court may impose a mitigated or aggravated sentence pursuant to subsection H  
19 of this section.~~

20 ~~F. If a person is sentenced as a category two repetitive offender  
21 pursuant to subsection B, paragraph 2 of this section and if at least two  
22 aggravating circumstances listed in section 13-701, subsection D apply or at  
23 least two mitigating circumstances listed in section 13-701, subsection E  
24 apply, the court may impose a mitigated or aggravated sentence pursuant to  
25 subsection I of this section.~~

26 ~~G. If a person is sentenced as a category three repetitive offender  
27 pursuant to subsection C of this section and at least two aggravating  
28 circumstances listed in section 13-701, subsection D or at least two  
29 mitigating circumstances listed in section 13-701, subsection E apply, the  
30 court may impose a mitigated or aggravated sentence pursuant to subsection J  
31 of this section.~~

32 ~~H.~~ E. A category one repetitive offender shall be sentenced within  
33 the following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
	<u>MINIMUM</u>				<u>MAXIMUM</u>
Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.75 years
Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.75 years
Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years
Class 6	.3 years	<del>.5 years</del>	1 year	<del>1.5 years</del>	1.8 years

41 ~~I.~~ F. A category two repetitive offender shall be sentenced within  
42 the following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
	<u>MINIMUM</u>				<u>MAXIMUM</u>
Class 2	4.5 years	<del>6 years</del>	9.25 years	<del>18.5 years</del>	23.1 years
Class 3	3.3 years	<del>4.5 years</del>	6.5 years	<del>13 years</del>	16.25 years
Class 4	2.25 years	<del>3 years</del>	4.5 years	<del>6 years</del>	7.5 years
Class 5	1 year	<del>1.5 years</del>	2.25 years	<del>3 years</del>	3.75 years
Class 6	.75 years	<del>1 year</del>	1.75 years	<del>2.25 years</del>	2.75 years

~~J.~~ G. A category three repetitive offender shall be sentenced within the following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
	<u>MINIMUM</u>				<u>MAXIMUM</u>
Class 2	10.5 years	<del>14 years</del>	15.75 years	<del>28 years</del>	35 years
Class 3	7.5 years	<del>10 years</del>	11.25 years	<del>20 years</del>	25 years
Class 4	6 years	<del>8 years</del>	10 years	<del>12 years</del>	15 years
Class 5	3 years	<del>4 years</del>	5 years	<del>6 years</del>	7.5 years
Class 6	2.25 years	<del>3 years</del>	3.75 years	<del>4.5 years</del>	5.75 years

~~K. The aggravated or mitigated term imposed pursuant to subsection H, I or J of this section may be imposed only if at least two of the aggravating circumstances are found beyond a reasonable doubt to be true by the trier of fact or are admitted by the defendant, except that an aggravating circumstance under section 13-701, subsection D, paragraph 11 shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.~~

~~L.~~ H. Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for the purposes of subsection B, paragraph 2 and subsection C of this section.

~~M.~~ I. For the purposes of subsection B, paragraph 2 and subsection C of this section, a person who has been convicted in any court outside the jurisdiction of this state of an offense that if committed in this state would be punishable as a felony is subject to this section. A person who has been convicted as an adult of an offense punishable as a felony under the provisions of any prior code in this state is subject to this section.

~~N.~~ J. The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if an allegation of prior conviction is charged in the indictment or information and admitted or found by the court. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or a provision of law that specifies a later release or completion of the sentence imposed before release. The court shall allow the allegation of a prior conviction at any time before the date the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the person was in fact prejudiced by

1 the untimely filing and states the reasons for these findings. If the  
2 allegation of a prior conviction is filed, the state must make available to  
3 the person a copy of any material or information obtained concerning the  
4 prior conviction. The charge of previous conviction shall not be read to the  
5 jury. For the purposes of this subsection, "substantive offense" means the  
6 felony offense that the trier of fact found beyond a reasonable doubt the  
7 person committed. Substantive offense does not include allegations that, if  
8 proven, would enhance the sentence of imprisonment or fine to which the  
9 person otherwise would be subject.

10 ~~Q.~~ K. A person who is sentenced pursuant to this section is not  
11 eligible for suspension of sentence, probation, pardon or release from  
12 confinement on any basis, except as specifically authorized by section  
13 31-233, subsection A or B, until the sentence imposed by the court has been  
14 served, the person is eligible for release pursuant to section 41-1604.07 or  
15 the sentence is commuted.

16 ~~P.~~ L. The court shall inform all of the parties before sentencing  
17 occurs of its intent to impose ~~an aggravated~~ A MAXIMUM or ~~mitigated~~ MINIMUM  
18 sentence pursuant to subsection ~~H, I or J~~ E, F OR G of this section. If the  
19 court fails to inform the parties, a party waives its right to be informed  
20 unless the party timely objects at the time of sentencing.

21 ~~Q.~~ M. The court in imposing a sentence shall consider the evidence  
22 and opinions presented by the victim or the victim's immediate family at any  
23 aggravation or mitigation proceeding or in the presentence report.

24 Sec. 4. Section 13-705, Arizona Revised Statutes, is amended to read:

25 13-705. Dangerous crimes against children: sentences:  
26 definitions

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

36 B. Except as otherwise provided in this section, a person who is at  
37 least eighteen years of age or who has been tried as an adult and who is  
38 convicted of a dangerous crime against children in the first degree involving  
39 attempted first degree murder of a minor who is under twelve years of age,  
40 second degree murder of a minor who is under twelve years of age, sexual  
41 assault of a minor who is under twelve years of age, sexual conduct with a  
42 minor who is under twelve years of age or manufacturing methamphetamine under  
43 circumstances that cause physical injury to a minor who is under twelve years  
44 of age may be sentenced to life imprisonment and is not eligible for  
45 suspension of sentence, probation, pardon or release from confinement on any

1 basis except as specifically authorized by section 31-233, subsection A or B  
2 until the person has served thirty-five years or the sentence is commuted.  
3 If a life sentence is not imposed pursuant to this subsection, the person  
4 shall be sentenced to a term of imprisonment as follows:

5	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
6	13 years	20 years	27 years

7 C. Except as otherwise provided in this section, a person who is at  
8 least eighteen years of age or who has been tried as an adult and who is  
9 convicted of a dangerous crime against children in the first degree involving  
10 attempted first degree murder of a minor who is twelve, thirteen or fourteen  
11 years of age, second degree murder of a minor who is twelve, thirteen or  
12 fourteen years of age, sexual assault of a minor who is twelve, thirteen or  
13 fourteen years of age, taking a child for the purpose of prostitution, child  
14 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen  
15 years of age, continuous sexual abuse of a child, sex trafficking of a minor  
16 who is under fifteen years of age or manufacturing methamphetamine under  
17 circumstances that cause physical injury to a minor who is twelve, thirteen  
18 or fourteen years of age or involving or using minors in drug offenses shall  
19 be sentenced to a term of imprisonment as follows:

20	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
21	13 years	20 years	27 years

22 A person who has been previously convicted of one predicate felony shall be  
23 sentenced to a term of imprisonment as follows:

24	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
25	23 years	30 years	37 years

26 D. Except as otherwise provided in this section, a person who is at  
27 least eighteen years of age or who has been tried as an adult and who is  
28 convicted of a dangerous crime against children in the first degree involving  
29 aggravated assault, molestation of a child, commercial sexual exploitation of  
30 a minor, sexual exploitation of a minor, aggravated luring a minor for sexual  
31 exploitation, child abuse or kidnapping shall be sentenced to a term of  
32 imprisonment as follows:

33	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
34	10 years	17 years	24 years

35 A person who has been previously convicted of one predicate felony shall be  
36 sentenced to a term of imprisonment as follows:

37	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
38	21 years	28 years	35 years

39 E. Except as otherwise provided in this section, if a person is at  
40 least eighteen years of age or has been tried as an adult and is convicted of  
41 a dangerous crime against children involving luring a minor for sexual  
42 exploitation or unlawful age misrepresentation and is sentenced to a term of  
43 imprisonment, the term of imprisonment is as follows and the person is not  
44 eligible for release from confinement on any basis except as specifically  
45 authorized by section 31-233, subsection A or B until the sentence imposed by

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

3	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4	5 years	10 years	15 years

5 A person who has been previously convicted of one predicate felony shall be  
6 sentenced to a term of imprisonment as follows and the person is not eligible  
7 for suspension of sentence, probation, pardon or release from confinement on  
8 any basis except as specifically authorized by section 31-233, subsection A  
9 or B until the sentence imposed by the court has been served, the person is  
10 eligible for release pursuant to section 41-1604.07 or the sentence is  
11 commuted:

12	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13	8 years	15 years	22 years

14 F. Except as otherwise provided in this section, if a person is at  
15 least eighteen years of age or has been tried as an adult and is convicted of  
16 a dangerous crime against children involving sexual abuse or bestiality under  
17 section 13-1411, subsection A, paragraph 2 and is sentenced to a term of  
18 imprisonment, the term of imprisonment is as follows and the person is not  
19 eligible for release from confinement on any basis except as specifically  
20 authorized by section 31-233, subsection A or B until the sentence imposed by  
21 the court has been served, the person is eligible for release pursuant to  
22 section 41-1604.07 or the sentence is commuted:

23	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
24	2.5 years	5 years	7.5 years

25 A person who has been previously convicted of one predicate felony shall be  
26 sentenced to a term of imprisonment as follows and the person is not eligible  
27 for suspension of sentence, probation, pardon or release from confinement on  
28 any basis except as specifically authorized by section 31-233, subsection A  
29 or B until the sentence imposed by the court has been served, the person is  
30 eligible for release pursuant to section 41-1604.07 or the sentence is  
31 commuted:

32	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
33	8 years	15 years	22 years

34 G. The presumptive sentences prescribed in subsections B, C and D of  
35 this section or subsections E and F of this section if the person has  
36 previously been convicted of a predicate felony may be increased or decreased  
37 pursuant to section 13-701, subsections C, D and E.

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

44 I. A person who is convicted of any dangerous crime against children  
45 in the first degree pursuant to subsection C or D of this section and who has

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

7 J. Notwithstanding chapter 10 of this title, a person who is at least  
8 eighteen years of age or who has been tried as an adult and who is convicted  
9 of a dangerous crime against children in the second degree pursuant to  
10 subsection B, C or D of this section is guilty of a class 3 felony and if the  
11 person is sentenced to a term of imprisonment, the term of imprisonment is as  
12 follows and the person is not eligible for release from confinement on any  
13 basis except as specifically authorized by section 31-233, subsection A or B  
14 until the person has served the sentence imposed by the court, the person is  
15 eligible for release pursuant to section 41-1604.07 or the sentence is  
16 commuted:

17	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
18	5 years	10 years	15 years

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

26 L. Section 13-704, subsection J and section 13-707, subsection B apply  
27 to the determination of prior convictions.

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

36 N. A DANGEROUS CRIME AGAINST CHILDREN UNDER SUBSECTION D OF THIS  
37 SECTION INVOLVING SEXUAL EXPLOITATION OF A MINOR PURSUANT TO SECTION 13-3553,  
38 SUBSECTION A, PARAGRAPH 3 MAY BE SERVED CONCURRENTLY WITH OTHER SENTENCES  
39 IMPOSED AT ANY OTHER TIME.

40 ~~N-~~ O. In this section, for purposes of punishment an unborn child  
41 shall be treated like a minor who is under twelve years of age.

42 ~~O-~~ P. A dangerous crime against children is in the first degree if it  
43 is a completed offense and is in the second degree if it is a preparatory  
44 offense, except attempted first degree murder is a dangerous crime against  
45 children in the first degree.

1           ~~P.~~ Q. For the purposes of this section:  
2           1. "Dangerous crime against children" means any of the following that  
3 is committed against a minor who is under fifteen years of age:  
4           (a) Second degree murder.  
5           (b) Aggravated assault resulting in serious physical injury or  
6 involving the discharge, use or threatening exhibition of a deadly weapon or  
7 dangerous instrument.  
8           (c) Sexual assault.  
9           (d) Molestation of a child.  
10           (e) Sexual conduct with a minor.  
11           (f) Commercial sexual exploitation of a minor.  
12           (g) Sexual exploitation of a minor.  
13           (h) Child abuse as prescribed in section 13-3623, subsection A,  
14 paragraph 1.  
15           (i) Kidnapping.  
16           (j) Sexual abuse.  
17           (k) Taking a child for the purpose of prostitution as prescribed in  
18 section 13-3206.  
19           (l) Child prostitution as prescribed in section 13-3212.  
20           (m) Involving or using minors in drug offenses.  
21           (n) Continuous sexual abuse of a child.  
22           (o) Attempted first degree murder.  
23           (p) Sex trafficking.  
24           (q) Manufacturing methamphetamine under circumstances that cause  
25 physical injury to a minor.  
26           (r) Bestiality as prescribed in section 13-1411, subsection A,  
27 paragraph 2.  
28           (s) Luring a minor for sexual exploitation.  
29           (t) Aggravated luring a minor for sexual exploitation.  
30           (u) Unlawful age misrepresentation.  
31           2. "Predicate felony" means any felony involving child abuse pursuant  
32 to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct  
33 involving the intentional or knowing infliction of serious physical injury or  
34 the discharge, use or threatening exhibition of a deadly weapon or dangerous  
35 instrument, or a dangerous crime against children in the first or second  
36 degree.  
37           Sec. 5. Section 13-709.05, Arizona Revised Statutes, is amended to  
38 read:  
39           13-709.05. Special sentencing provisions; sexual offenses  
40           A. A person who is convicted of a felony violation of section 13-1402  
41 or 13-1403 and who has two or more historical prior felony convictions for a  
42 violation of section 13-1402 or 13-1403 involving indecent exposure or public  
43 sexual indecency to a minor who is under fifteen years of age shall be  
44 sentenced to a term of imprisonment as follows:

1	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
2	<u>MINIMUM</u>				<u>MAXIMUM</u>
3	6 years	<del>8 years</del>	10 years	<del>12 years</del>	15 years

4 B. The presumptive term imposed pursuant to this section may be  
5 mitigated or aggravated pursuant to section 13-701, subsections D and E.

6 Sec. 6. Section 13-711, Arizona Revised Statutes, is amended to read:  
7 13-711. Consecutive terms of imprisonment

8 A. Except as otherwise provided by law, if multiple sentences of  
9 imprisonment are imposed on a person at the same time, ~~the sentence or~~  
10 ~~sentences imposed by~~ the court shall DETERMINE IF THE SENTENCES run  
11 consecutively ~~unless the court expressly directs otherwise, in which case OR~~  
12 CONCURRENTLY. The court shall set forth on the record the reason for its  
13 sentence.

14 B. Notwithstanding subsection A, if a person is subject to an  
15 undischarged term of imprisonment and is sentenced to an additional term of  
16 imprisonment for a felony offense that is committed while the person is under  
17 the jurisdiction of the state department of corrections, the sentence imposed  
18 by the court shall run consecutively to the undischarged term of  
19 imprisonment.

20 Sec. 7. Title 13, chapter 7, Arizona Revised Statutes, is amended by  
21 adding section 13-713, to read:

22 13-713. Probation revocation; imprisonment; drug offenses  
23 NOTWITHSTANDING SECTION 13-702, IF A PERSON IS PLACED ON PROBATION FOR  
24 AN OFFENSE LISTED IN CHAPTER 34 OF THIS TITLE AND THE PERSON'S PROBATION IS  
25 REVOKED FOR A VIOLATION NOT INVOLVING A CRIMINAL OFFENSE, THE COURT MAY  
26 IMPOSE A MINIMUM TERM OF IMPRISONMENT OF ONE YEAR OR THE MINIMUM TERM  
27 APPLICABLE TO THAT OFFENSE, WHICHEVER IS SHORTER.

28 Sec. 8. Section 13-917, Arizona Revised Statutes, is amended to read:  
29 13-917. Modification of supervision

30 A. The adult probation officer shall periodically examine the needs of  
31 each person granted intensive probation and the risks of modifying the level  
32 of supervision of the person. The court may at any time modify the level of  
33 supervision of a person granted intensive probation, ~~or~~ may transfer the  
34 person to supervised probation or MAY terminate the period of intensive  
35 probation pursuant to section 13-901, subsection E.

36 B. The court may issue a warrant for the arrest of a person granted  
37 intensive probation. If the person commits an additional offense or violates  
38 a condition of probation, the court ~~may revoke intensive probation at any~~  
39 ~~time before the expiration or termination of the period of intensive~~  
40 ~~probation. If a petition to revoke the period of intensive probation is~~  
41 ~~filed and the court finds that the person has committed an additional felony~~  
42 ~~offense or has violated a condition of intensive probation which poses a~~  
43 ~~serious threat or danger to the community, the court shall revoke the period~~  
44 ~~of intensive probation and impose a term of imprisonment as authorized by~~  
45 ~~law. If the court finds that the person has violated any other condition of~~

1 ~~intensive probation, it~~ shall modify the conditions of intensive probation as  
2 appropriate or shall revoke the period of intensive probation and impose a  
3 term of imprisonment as authorized by law.

4 C. The court shall notify the prosecuting attorney, and the victim on  
5 request, of any proposed modification of a person's intensive probation if  
6 that modification will substantially affect the person's contact with or  
7 safety of the victim or if the modification involves restitution or  
8 incarceration status.

9 Sec. 9. Section 13-3405, Arizona Revised Statutes, is amended to read:

10 13-3405. Possession, use, production, sale or transportation of  
11 marijuana; classification

12 A. A person shall not knowingly:

- 13 1. Possess or use marijuana.
- 14 2. Possess marijuana for sale.
- 15 3. Produce marijuana.

16 4. Transport for sale, import into this state or offer to transport  
17 for sale or import into this state, sell, transfer or offer to sell or  
18 transfer marijuana.

19 B. A person who violates:

20 1. Subsection A, paragraph 1 of this section involving an amount of  
21 marijuana not possessed for sale having a weight of less than two pounds is  
22 guilty of a class 6 felony.

23 2. Subsection A, paragraph 1 of this section involving an amount of  
24 marijuana not possessed for sale having a weight of at least two pounds but  
25 less than four pounds is guilty of a class 5 felony.

26 3. Subsection A, paragraph 1 of this section involving an amount of  
27 marijuana not possessed for sale having a weight of four pounds or more is  
28 guilty of a class 4 felony.

29 4. Subsection A, paragraph 2 of this section involving an amount of  
30 marijuana having a weight of less than two pounds is guilty of a class 4  
31 felony.

32 5. Subsection A, paragraph 2 of this section involving an amount of  
33 marijuana having a weight of at least two pounds but not more than four  
34 pounds is guilty of a class 3 felony.

35 6. Subsection A, paragraph 2 of this section involving an amount of  
36 marijuana having a weight of more than four pounds is guilty of a class 2  
37 felony.

38 7. Subsection A, paragraph 3 of this section involving an amount of  
39 marijuana having a weight of less than two pounds is guilty of a class 5  
40 felony.

41 8. Subsection A, paragraph 3 of this section involving an amount of  
42 marijuana having a weight of at least two pounds but not more than four  
43 pounds is guilty of a class 4 felony.

1           9. Subsection A, paragraph 3 of this section involving an amount of  
2 marijuana having a weight of more than four pounds is guilty of a class 3  
3 felony.

4           10. Subsection A, paragraph 4 of this section involving an amount of  
5 marijuana having a weight of less than two pounds is guilty of a class 3  
6 felony.

7           11. Subsection A, paragraph 4 of this section involving an amount of  
8 marijuana having a weight of two pounds or more is guilty of a class 2  
9 felony.

10          C. If the aggregate amount of marijuana involved in one offense or all  
11 of the offenses that are consolidated for trial equals or exceeds the  
12 statutory threshold amount, a person who is sentenced pursuant to subsection  
13 B, paragraph ~~5~~, 6, ~~8~~, 9 or 11 of this section is not eligible for suspension  
14 of sentence, probation, pardon or release from confinement on any basis until  
15 the person has served the sentence imposed by the court, the person is  
16 eligible for release pursuant to section 41-1604.07 or the sentence is  
17 commuted.

18          D. In addition to any other penalty prescribed by this title, the  
19 court shall order a person who is convicted of a violation of any provision  
20 of this section to pay a fine of not less than seven hundred fifty dollars or  
21 three times the value as determined by the court of the marijuana involved in  
22 or giving rise to the charge, whichever is greater, and not more than the  
23 maximum authorized by chapter 8 of this title. A judge shall not suspend any  
24 part or all of the imposition of any fine required by this subsection.

25          E. A person who is convicted of a felony violation of any provision of  
26 this section for which probation or release before the expiration of the  
27 sentence imposed by the court is authorized is prohibited from using any  
28 marijuana, dangerous drug or narcotic drug except as lawfully administered by  
29 a practitioner and as a condition of any probation or release shall be  
30 required to submit to drug testing administered under the supervision of the  
31 probation department of the county or the state department of corrections as  
32 appropriate during the duration of the term of probation or before the  
33 expiration of the sentence imposed.

34          F. If the aggregate amount of marijuana involved in one offense or all  
35 of the offenses that are consolidated for trial is less than the statutory  
36 threshold amount, a person who is sentenced pursuant to subsection B,  
37 paragraph 4, 7 or 10 and who is granted probation by the court shall be  
38 ordered by the court that as a condition of probation the person perform not  
39 less than two hundred forty hours of community restitution with an agency or  
40 organization providing counseling, rehabilitation or treatment for alcohol or  
41 drug abuse, an agency or organization that provides medical treatment to  
42 persons who abuse controlled substances, an agency or organization that  
43 serves persons who are victims of crime or any other appropriate agency or  
44 organization.

1 G. If a person who is sentenced pursuant to subsection B, paragraph 1,  
2 2 or 3 of this section is granted probation for a felony violation of this  
3 section, the court shall order that as a condition of probation the person  
4 perform not less than twenty-four hours of community restitution with an  
5 agency or organization providing counseling, rehabilitation or treatment for  
6 alcohol or drug abuse, an agency or organization that provides medical  
7 treatment to persons who abuse controlled substances, an agency or  
8 organization that serves persons who are victims of crime or any other  
9 appropriate agency or organization.

10 H. If a person is granted probation for a misdemeanor violation of  
11 this section, the court shall order as a condition of probation that the  
12 person attend eight hours of instruction on the nature and harmful effects of  
13 narcotic drugs, marijuana and other dangerous drugs on the human system, and  
14 on the laws related to the control of these substances, or perform  
15 twenty-four hours of community restitution.

16 Sec. 10. Section 13-3419, Arizona Revised Statutes, is amended to  
17 read:

18 13-3419. Multiple drug offenses not committed on the same  
19 occasion; sentencing

20 A. Except for a person convicted of possession offenses pursuant to  
21 section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A,  
22 paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is  
23 convicted of two or more offenses under this chapter that were not committed  
24 on the same occasion but that either are consolidated for trial purposes or  
25 are not historical prior felony convictions shall be sentenced for the second  
26 or subsequent offense pursuant to this section. The person shall not be  
27 eligible for suspension of sentence, probation, pardon or release from  
28 confinement on any basis except as specifically authorized by section 31-233,  
29 subsection A or B until the sentence imposed by the court has been served,  
30 the person is eligible for release pursuant to section 41-1604.07 or the  
31 sentence is commuted, except that a person sentenced pursuant to paragraph 1  
32 of this subsection shall be eligible for probation. The presumptive term for  
33 paragraph 1, 2, 3 or 4 of this subsection may be aggravated under this  
34 section pursuant to section 13-701, subsections C and D. The presumptive  
35 term for paragraph 1, 2 or 3 of this subsection may be mitigated within the  
36 range under this section pursuant to section 13-701, subsections C and E.  
37 The terms are as follows:

38 1. For two offenses for which the aggregate amount of drugs involved  
39 in one offense or both of the offenses is less than the statutory threshold  
40 amount for the second offense:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
	<u>MINIMUM</u>				<u>MAXIMUM</u>
41 Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
42 Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.7 years

1	Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.7 years
2	Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years
3	2. For three or more offenses for which the aggregate amount of drugs					
4	involved in one offense or all of the offenses is less than the statutory					
5	threshold amount for any offense subsequent to the second offense:					
6	<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
7		<u>MINIMUM</u>				<u>MAXIMUM</u>
8	Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
9	Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.7 years
10	Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.7 years
11	Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years

12 3. For two offenses for which the aggregate amount of drugs involved  
 13 in one offense or all of the offenses equals or exceeds the statutory  
 14 threshold amount for the second offense:

15	<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
16		<u>MINIMUM</u>				<u>MAXIMUM</u>
17	Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
18	Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.7 years
19	Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.7 years
20	Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years

21 4. For three or more offenses for which the aggregate amount of drugs  
 22 involved in one offense or all of the offenses equals or exceeds the  
 23 statutory threshold amount for any offense subsequent to the second offense:

24	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
25					<u>MAXIMUM</u>
26	Class 2	4 years	7 years	<del>12 years</del>	15 years
27	Class 3	2.5 years	5 years	<del>9 years</del>	11.2 years
28	Class 4	1.5 years	3 years	<del>5 years</del>	6.2 years
29	Class 5	.75 years	2.5 years	<del>4 years</del>	5 years

30 B. If the court increases or decreases a sentence pursuant to this  
 31 section, the court shall state on the record the reasons for the increase or  
 32 decrease.

33 C. The court shall inform all of the parties before the sentencing  
 34 occurs of its intent to increase or decrease a sentence pursuant to this  
 35 section. If the court fails to inform the parties, a party waives its right  
 36 to be informed unless the party timely objects at the time of sentencing.

37 Sec. 11. Section 13-3553, Arizona Revised Statutes, is amended to  
 38 read:

39 13-3553. Sexual exploitation of a minor; evidence;  
 40 classification

41 A. A person commits sexual exploitation of a minor by knowingly:  
 42 1. Recording, filming, photographing, developing or duplicating any  
 43 visual depiction in which a minor is engaged in exploitive exhibition or  
 44 other sexual conduct.

1           2. Distributing, transporting, exhibiting, receiving, selling,  
2 purchasing, electronically transmitting, ~~possessing~~ or exchanging any visual  
3 depiction in which a minor is engaged in exploitive exhibition or other  
4 sexual conduct.

5           3. POSSESSING ANY VISUAL DEPICTION IN WHICH A MINOR IS ENGAGED IN  
6 EXPLOITIVE EXHIBITION OR OTHER SEXUAL CONDUCT.

7           B. If any visual depiction of sexual exploitation of a minor is  
8 admitted into evidence, the court shall seal that evidence at the conclusion  
9 of any grand jury proceeding, hearing or trial.

10          C. Sexual exploitation of a minor is a class 2 felony and if the minor  
11 is under fifteen years of age it is punishable pursuant to section 13-705.

12          Sec. 12. Section 13-3994, Arizona Revised Statutes, is amended to  
13 read:

14           13-3994. Commitment; hearing; jurisdiction; definition

15          A. A person who is found guilty except insane pursuant to section  
16 13-502 shall be committed to a secure state mental health facility under the  
17 department of health services for a period of treatment.

18          B. If the criminal act of the person committed pursuant to subsection  
19 A of this section did not cause the death or serious physical injury of or  
20 the threat of death or serious physical injury to another person, the court  
21 shall set a hearing date within seventy-five days after the person's  
22 commitment to determine if the person is entitled to release from confinement  
23 or if the person meets the standards for civil commitment pursuant to title  
24 36, chapter 5. The court shall notify the medical director of the mental  
25 health facility, the attorney general, the county attorney, the victim and  
26 the attorney representing the person, if any, of the date of the hearing.  
27 Fourteen days before the hearing the director of the mental health facility  
28 shall submit to the court a report addressing the person's mental health and  
29 dangerousness.

30          C. At a hearing held pursuant to subsection B of this section:

31           1. If the person proves by clear and convincing evidence that the  
32 person no longer suffers from a mental disease or defect and is not  
33 dangerous, the court shall order the person's release and the person's  
34 commitment ordered pursuant to section 13-502, subsection D shall terminate.  
35 Before determining to release a person pursuant to this paragraph, the court  
36 shall consider the entire criminal history of the person and shall not order  
37 the person's release if the court determines that the person has a propensity  
38 to reoffend.

39           2. If the court finds that the person still suffers from a mental  
40 disease or defect, may present a threat of danger to self or others, is  
41 gravely disabled, is persistently or acutely disabled or has a propensity to  
42 reoffend, it shall order the county attorney to institute civil commitment  
43 proceedings pursuant to title 36 and the person's commitment ordered pursuant  
44 to section 13-502, subsection D shall terminate.

1           D. If the court finds that the criminal act of the person committed  
2 pursuant to subsection A of this section caused the death or serious physical  
3 injury of or the threat of death or serious physical injury to another  
4 person, the court shall place the person under the jurisdiction of the  
5 psychiatric security review board. The court shall state the beginning date,  
6 length and ending date of the board's jurisdiction over the person. The  
7 length of the board's jurisdiction over the person is equal to the sentence  
8 the person could have received pursuant to section 13-707 or section 13-751,  
9 subsection A or the presumptive sentence the defendant could have received  
10 pursuant to section 13-702, subsection ~~D~~ B, section 13-703, section 13-704,  
11 section 13-705, section 13-706, subsection A, section 13-710 or section  
12 13-1406. In making this determination the court shall not consider the  
13 sentence enhancements for prior convictions under section 13-703 or 13-704.  
14 The court shall retain jurisdiction of all matters that are not specifically  
15 delegated to the psychiatric security review board for the duration of the  
16 presumptive sentence.

17           E. A person who is placed under the jurisdiction of the psychiatric  
18 security review board pursuant to subsection D of this section is not  
19 eligible for discharge from the board's jurisdiction until the board's  
20 jurisdiction over the person expires.

21           F. A person who is placed under the jurisdiction of the psychiatric  
22 security review board pursuant to subsection D of this section is not  
23 entitled to a hearing before the board earlier than one hundred twenty days  
24 after the person's initial commitment. A request for a subsequent release  
25 hearing may be made pursuant to subsection H of this section. After the  
26 hearing, the board may take one of the following actions:

27           1. If the psychiatric security review board finds that the person  
28 still suffers from a mental disease or defect and is dangerous, the board  
29 shall order that the person remain committed at the secure state mental  
30 health facility.

31           2. If the person proves by clear and convincing evidence that the  
32 person no longer suffers from a mental disease or defect and is not  
33 dangerous, the psychiatric security review board shall order the person's  
34 release. The person shall remain under the jurisdiction of the board.  
35 Before determining to release a person pursuant to this paragraph, the board  
36 shall consider the entire criminal history of the person and shall not order  
37 the person's release if the board determines that the person has a propensity  
38 to reoffend.

39           3. If the psychiatric security review board finds that the person  
40 still suffers from a mental disease or defect or that the mental disease or  
41 defect is in stable remission but the person is no longer dangerous, the  
42 board shall order the person's conditional release. The person shall remain  
43 under the board's jurisdiction. The board in conjunction with the state  
44 mental health facility and behavioral health community providers shall  
45 specify the conditions of the person's release. The board shall continue to

1 monitor and supervise a person who is released conditionally. Before the  
2 conditional release of a person, a supervised treatment plan shall be in  
3 place, including the necessary funding to implement the plan.

4 4. If the person is sentenced pursuant to section 13-704, section  
5 13-710 or section 13-751, subsection A and the psychiatric security review  
6 board finds that the person no longer needs ongoing treatment for a mental  
7 disease and the person is dangerous or has a propensity to reoffend, the  
8 board shall order the person to be transferred to the state department of  
9 corrections for the remainder of the sentence imposed pursuant to section  
10 13-502, subsection D. The board shall consider the safety and protection of  
11 the public.

12 G. Within twenty days after the psychiatric security review board  
13 orders a person to be transferred to the state department of corrections, the  
14 person may file a petition for a judicial determination. The person shall  
15 serve a copy of the request on the attorney general. If the person files a  
16 petition for a judicial determination, the person shall remain in a state  
17 mental health facility pending the result of the judicial determination. The  
18 person requesting the judicial determination has the burden of proving the  
19 issues by clear and convincing evidence. The judicial determination is  
20 limited to the following issues:

21 1. Whether the person no longer needs ongoing treatment for a mental  
22 disease.

23 2. Whether the person is dangerous or has a propensity to reoffend.

24 H. A person who is placed under the jurisdiction of the psychiatric  
25 security review board pursuant to subsection D of this section may not seek a  
26 new release hearing earlier than twenty months after a prior release hearing,  
27 except that the medical director of the state mental health facility may  
28 request a new release hearing for a person under the jurisdiction of the  
29 psychiatric security review board at any time. The person shall not be held  
30 in confinement for more than two years without a hearing before the board to  
31 determine if the person should be released or conditionally released.

32 I. At any hearing for release or conditional release pursuant to this  
33 section:

34 1. Public safety and protection are primary.

35 2. The applicant has the burden of proof by clear and convincing  
36 evidence.

37 J. At least fifteen days before a hearing is scheduled to consider a  
38 person's release, or before the expiration of the board's jurisdiction over  
39 the person, the state mental health facility or supervising agency shall  
40 submit to the psychiatric security review board a report on the person's  
41 mental health. The psychiatric security review board shall determine whether  
42 to release the person or to order the county attorney to institute civil  
43 commitment proceedings pursuant to title 36.

1 K. The procedures for civil commitment govern the continued commitment  
2 of the person after the expiration of the jurisdiction of the psychiatric  
3 security review board.

4 L. Before a person is released or conditionally released, at least  
5 three of the five psychiatric security review board members shall vote for  
6 the release or conditional release.

7 M. If at any time while the person remains under the jurisdiction of  
8 the psychiatric security review board it appears to the board, the chairman  
9 or vice-chairman of the board or the medical director of the state mental  
10 health facility that the person has failed to comply with the terms of the  
11 person's conditional release or that the mental health of the person has  
12 deteriorated, the board or the chairman or vice-chairman of the board for  
13 good cause or the medical director of the state mental health facility may  
14 order that the person be returned to a secure state mental health facility  
15 for evaluation or treatment. A written order of the board, the chairman or  
16 vice-chairman of the board or the medical director is sufficient warrant for  
17 any law enforcement officer to take the person into custody and to transport  
18 the person accordingly. Any sheriff or other peace officer shall execute the  
19 order and shall immediately notify the board of the person's return to the  
20 facility. Within twenty days after the person's return to a secure state  
21 mental health facility the board shall conduct a hearing and shall give  
22 notice within five days before the hearing of the time and place of the  
23 hearing to the person, the victim, the attorney representing the person, the  
24 county attorney and the attorney general.

25 N. The director of a facility that is providing treatment to a person  
26 on conditional release or any other person who is responsible for the  
27 supervision of the person may take the person or request that the person be  
28 taken into custody if there is reasonable cause to believe that the person's  
29 mental health has deteriorated to the point that the person's conditional  
30 release should be revoked and that the person is in need of immediate care,  
31 custody or treatment or that deterioration is likely because of noncompliance  
32 with a treatment program. A person who is taken into custody pursuant to  
33 this subsection shall be transported immediately to a secure state mental  
34 health facility and shall have the same rights as any person appearing before  
35 the psychiatric security review board.

36 O. Before the initial hearing or any other hearing before the  
37 psychiatric security review board on the release or conditional release of  
38 the person, the person, the attorney who is representing the person and the  
39 attorney general or county attorney who is representing the state may choose  
40 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a  
41 psychologist licensed pursuant to title 32, chapter 19.1 to examine the  
42 person. All costs in connection with the examination shall be approved and  
43 paid by the county of the sentencing court. The written examination results  
44 shall be filed with the board and shall include an opinion as to:

1           1. The mental condition of the person.

2           2. Whether the person is dangerous.

3           P. Notwithstanding subsection 0 of this section, the board or the  
4 chairman of the board for good cause may order an independent mental health  
5 evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17  
6 or a psychologist licensed pursuant to title 32, chapter 19.1. The written  
7 examination results shall be filed with the board pursuant to subsection 0 of  
8 this section.

9           Q. If a person is found guilty except insane pursuant to section  
10 13-502, the department of health services shall assume custody of the person  
11 within ten days after receiving the order committing the person pursuant to  
12 subsection A of this section. The Arizona state hospital shall collect  
13 census data for guilty except insane treatment programs to establish maximum  
14 capacity and the allocation formula required pursuant to section 36-206,  
15 subsection D. If the Arizona state hospital reaches its funded capacity for  
16 forensic programs, the department of health services may defer the admission  
17 of the person found guilty except insane for up to an additional twenty days.  
18 The department of health services shall reimburse the county for the actual  
19 costs of each day the admission is deferred. If the department of health  
20 services is not able to admit the person found guilty except insane at the  
21 conclusion of the twenty day deferral period, the department of health  
22 services shall notify the sentencing court, the prosecutor and the defense  
23 counsel of this fact. On receipt of this notification, the prosecutor or the  
24 person's defense counsel may request a hearing to determine the likely length  
25 of time admission will continue to be deferred and whether any other action  
26 should be taken. On receipt of the request for hearing, the court shall set  
27 a hearing within ten days.

28           R. For the purposes of this section, "state mental health facility"  
29 means a secure state mental health facility under the department of health  
30 services.

31           Sec. 13. Section 31-233, Arizona Revised Statutes, is amended to read:  
32           31-233. Order for removal; purposes; duration; failure to  
33           return; classification

34           A. The director may authorize the temporary removal under custody from  
35 prison or any other institution for the detention of adults under the  
36 jurisdiction of the department of any inmate for the purpose of employing the  
37 inmate in any work directly connected with the administration, management or  
38 maintenance of the prison or institution in which the inmate is confined, for  
39 purposes of cooperating voluntarily in medical research that cannot be  
40 performed at the prison or institution, or for participating in community  
41 action activities directed toward delinquency prevention and community  
42 betterment programs. The removal shall not be for a period longer than one  
43 day.

44           B. Under specific rules established by the director for the selection  
45 of inmates, the director may also authorize furlough, temporary removal or

1 temporary release of any inmate for compassionate leave, for the purpose of  
2 furnishing to the inmate medical treatment not available at the prison or  
3 institution, for purposes preparatory to a return to the community ~~within~~  
4 ~~ninety days of the inmate's release date~~ AS PROVIDED IN SUBSECTION C OF THIS  
5 SECTION or for disaster aid, including local mutual aid and state  
6 emergencies. When an inmate is temporarily removed or temporarily released  
7 for a purpose preparatory to A return to the community or for compassionate  
8 leave, the director may require the inmate to reimburse the state, in whole  
9 or part, for expenses incurred by the state in connection with the inmate's  
10 temporary removal or release.

11 C. A FURLOUGH, TEMPORARY REMOVAL OR RELEASE OF AN INMATE FOR PURPOSES  
12 PREPARATORY TO A RETURN TO THE COMMUNITY PURSUANT TO SUBSECTION B OF THIS  
13 SECTION SHALL BE AS FOLLOWS:

14 1. WITHIN NINETY DAYS OF THE INMATE'S RELEASE DATE IF THE INMATE WAS  
15 SENTENCED FOR A SERIOUS OFFENSE OR A VIOLENT OR AGGRAVATED FELONY AS DEFINED  
16 IN SECTION 13-706.

17 2. WITHIN ONE HUNDRED EIGHTY DAYS OF THE INMATE'S RELEASE DATE IF THE  
18 INMATE WAS SENTENCED FOR AN OFFENSE NOT LISTED IN PARAGRAPH 1.

19 ~~C.~~ D. Except if community supervision is waived pursuant to section  
20 13-603, subsection K, the department shall add the amount of time the  
21 director approves for the inmate's temporary release to the inmate's term of  
22 community supervision imposed by the court pursuant to section 13-603. While  
23 the person is on temporary release the person is not on inmate status and is  
24 under the jurisdiction of the department until the terms of community  
25 supervision are met.

26 ~~D.~~ E. Any inmate who knowingly fails to return from furlough,  
27 temporary removal or temporary release granted under this section is guilty  
28 of a class 5 felony.

29 Sec. 14. Section 31-412, Arizona Revised Statutes, is amended to read:  
30 31-412. Criteria for release on parole; release; custody of  
31 parolee; definition

32 A. If a prisoner is certified as eligible for parole pursuant to  
33 section 41-1604.09 the board of executive clemency shall authorize the  
34 release of the applicant on parole if the applicant has reached the  
35 applicant's earliest parole eligibility date pursuant to section 41-1604.09,  
36 subsection D and it appears to the board, in its sole discretion, that there  
37 is a substantial probability that the applicant will remain at liberty  
38 without violating the law and that the release is in the best interests of  
39 the state. The applicant shall thereupon be allowed to go on parole in the  
40 legal custody and under the control of the state department of corrections,  
41 until the board revokes the parole or grants an absolute discharge from  
42 parole or until the prisoner reaches the prisoner's individual earned release  
43 credit date pursuant to section 41-1604.10. When the prisoner reaches the  
44 prisoner's individual earned release credit date the prisoner's parole shall

1 be terminated and the prisoner shall no longer be under the authority of the  
2 board but shall be subject to revocation under section 41-1604.10.

3 B. Notwithstanding subsection A of this section, the director of the  
4 state department of corrections may certify as eligible for parole any  
5 prisoner, regardless of the classification of the prisoner, who has reached  
6 the prisoner's parole eligibility date pursuant to section 41-1604.09,  
7 subsection D, unless an increased term has been imposed pursuant to section  
8 41-1604.09, subsection F, for the sole purpose of parole to the custody of  
9 any other jurisdiction to serve a term of imprisonment imposed by the other  
10 jurisdiction or to stand trial on criminal charges in the other jurisdiction  
11 or for the sole purpose of parole to the custody of the state department of  
12 corrections to serve any consecutive term imposed on the prisoner. On review  
13 of an application for parole pursuant to this subsection the board may  
14 authorize parole if, in its discretion, parole appears to be in the best  
15 interests of the state.

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

21 1. A majority affirmative vote if four or more members consider the  
22 action.

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

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

27 D. The board, as a condition of parole, shall order a prisoner to make  
28 any court-ordered restitution.

29 E. Payment of restitution by the prisoner in accordance with  
30 subsection D of this section shall be made through the clerk of the superior  
31 court in the county in which the prisoner was sentenced for the offense for  
32 which the prisoner has been imprisoned in the same manner as restitution is  
33 paid as a condition of probation. The clerk of the superior court shall  
34 report to the board monthly whether or not restitution has been paid for that  
35 month by the prisoner.

36 F. The board shall not disclose the address of the victim or the  
37 victim's immediate family to any party without the written consent of the  
38 victim or the victim's family.

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

41 1. A serious offense as defined in section 13-706, subsection F,  
42 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

43 2. A dangerous crime against children as defined in section  
44 13-705. The citation of section 13-705 is not a necessary element for a  
45 serious offense designation.

1           3. A conviction under a prior criminal code for any offense that  
2 possesses reasonably equivalent offense elements as the offense elements that  
3 are listed under section 13-705, subsection ~~P~~ Q, paragraph 1 or section  
4 13-706, subsection F, paragraph 1.

5           Sec. 15. Section 41-1604.11, Arizona Revised Statutes, is amended to  
6 read:

7           41-1604.11. Order for removal; purposes; duration; work  
8 furlough; notice; failure to return;  
9 classification; applicability; definition

10           A. The director of the state department of corrections may authorize  
11 the temporary removal under custody from prison or any other institution for  
12 the detention of adults under the jurisdiction of the state department of  
13 corrections of any inmate for the purpose of employing that inmate in any  
14 work directly connected with the administration, management or maintenance of  
15 the prison or institution in which the inmate is confined, for purposes of  
16 cooperating voluntarily in medical research that cannot be performed at the  
17 prison or institution, or for participating in community action activities  
18 directed toward delinquency prevention and community betterment programs.  
19 The removal shall not be for a period longer than one day.

20           B. Under specific rules established by the director for the selection  
21 of inmates, the director may also authorize furlough, temporary removal or  
22 temporary release of any inmate for compassionate leave, for the purpose of  
23 furnishing to the inmate medical treatment not available at the prison or  
24 institution, for purposes preparatory to a return to the community within  
25 ninety days of the inmate's release date or for disaster aid, including local  
26 mutual aid and state emergencies. When an inmate is temporarily removed or  
27 temporarily released for a purpose preparatory to return to the community or  
28 for compassionate leave, the director may require the inmate to reimburse the  
29 state, in whole or part, for expenses incurred by the state in connection  
30 with the temporary removal or release.

31           C. The board of executive clemency, under specific rules established  
32 for the selection of inmates, if it appears to the board, in its sole  
33 discretion, that there is a substantial probability that the inmate will  
34 remain at liberty without violating the law and that the release is in the  
35 best interests of the state, may authorize the release of an inmate on work  
36 furlough if the inmate has served not less than six months of the sentence  
37 imposed by the court, is within twelve months of the inmate's parole  
38 eligibility date and has not been convicted of a sexual offense. The  
39 director shall provide information as the board requests concerning any  
40 inmate eligible for release on work furlough. The inmate shall not be  
41 released on work furlough unless the release is approved by the board.

42           D. An inmate who is otherwise eligible for work furlough pursuant to  
43 subsection C of this section, who is not on home arrest and who is currently  
44 serving a sentence for a conviction of a serious offense or conspiracy to

1 commit or attempt to commit a serious offense shall not be granted work  
2 furlough except by one of the following votes:

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

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

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

11 E. Before holding a hearing on the work furlough under consideration,  
12 the board, on request, shall notify and afford an opportunity to be heard to  
13 the presiding judge of the superior court in the county in which the inmate  
14 requesting a work furlough was sentenced, the prosecuting attorney, the  
15 director of the arresting law enforcement agency and the victim of the  
16 offense for which the inmate is incarcerated. The notice shall state the  
17 name of the inmate requesting the work furlough, the offense for which the  
18 inmate was sentenced, the length of the sentence and the date of admission to  
19 the custody of the state department of corrections. The notice to the victim  
20 shall also inform the victim of the victim's right to be present and submit a  
21 written report to the board expressing the victim's opinion concerning the  
22 inmate's release. No hearing concerning work furlough shall be held until  
23 fifteen days after the date of giving the notice. On mailing the notice, the  
24 board shall file a hard copy of the notice as evidence that notification was  
25 sent.

26 F. The board shall require that every inmate released on work furlough  
27 comply with the terms and conditions of release as the board may impose,  
28 including that the inmate be gainfully employed while on work furlough and  
29 that the inmate make restitution to the victim of the offense for which the  
30 inmate was incarcerated.

31 G. If the board finds that an inmate has failed to comply with the  
32 terms and conditions of release or that the best interests of this state  
33 would be served by revocation of an inmate's work furlough, the board may  
34 issue a warrant for retaking the inmate before the expiration of the inmate's  
35 maximum sentence. After return of the inmate, the board may revoke the  
36 inmate's work furlough after the inmate has been given an opportunity to be  
37 heard.

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

41 I. The director shall transmit a monthly report containing the name,  
42 date of birth, offense for which the inmate was sentenced, length of the  
43 sentence and date of admission to the state department of corrections of each  
44 inmate on work furlough or home arrest to the chairperson of the house of  
45 representatives judiciary committee or its successor committee and the

1 chairperson of the senate judiciary committee or its successor committee.  
2 The director shall also submit a report containing this information for any  
3 inmate released on work furlough or home arrest within a jurisdiction to the  
4 county attorney, sheriff and chief of police for the jurisdiction in which  
5 the inmate is released on work furlough or home arrest.

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

9 K. At any given time if the director declares there is a shortage of  
10 beds available for inmates within the state department of corrections, the  
11 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be  
12 suspended for any inmate who has served not less than six months of the  
13 sentence imposed by the court, who has not been previously convicted of a  
14 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving  
15 a sexual offense, the use or exhibition of a deadly weapon or dangerous  
16 instrument or the infliction of serious physical injury pursuant to section  
17 13-704, and the inmate shall be continuously eligible for parole, home arrest  
18 or work furlough.

19 L. Prisoners who have served at least one calendar year and who are  
20 serving a sentence for conviction of a crime committed on or after October 1,  
21 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02  
22 or 36-1002.03, and who are sentenced to the custody of the state department  
23 of corrections, may be temporarily released, according to the rules of the  
24 department, at the discretion of the director, one hundred eighty calendar  
25 days prior to expiration of the term imposed and shall remain under the  
26 control of the state department of corrections until expiration of the  
27 maximum sentence specified. If an offender released under this section or  
28 pursuant to section 31-411, subsection B violates the rules, the offender may  
29 be returned to custody and shall be classified to a parole class as provided  
30 by the rules of the department.

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

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

35 1. A serious offense as defined in section 13-706, subsection F,  
36 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

37 2. A dangerous crime against children as defined in section 13-705.  
38 The citation of section 13-705 is not a necessary element for a serious  
39 offense designation.

40 3. A conviction under a prior criminal code for any offense that  
41 possesses reasonably equivalent offense elements as the offense elements that  
42 are listed under section 13-705, subsection ~~P~~ Q, paragraph 1 or section  
43 13-706, subsection F, paragraph 1.



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

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

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

11           7. Compliance with all other conditions of supervision.

12           8. Payment of a monthly home arrest supervision fee of at least  
13 sixty-five dollars unless, after determining the inability of the inmate to  
14 pay the fee, the department requires payment of a lesser amount. The  
15 supervising corrections officer shall monitor the collection of the fee.  
16 Monies collected shall be deposited, pursuant to sections 35-146 and 35-147,  
17 in the community corrections enhancement fund established by section 31-418.

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

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

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

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

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

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

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

5 1. A serious offense as defined in section 13-706, subsection F,  
6 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

7 2. A dangerous crime against children as defined in section 13-705.  
8 The citation of section 13-705 is not a necessary element for a serious  
9 offense designation.

10 3. A conviction under a prior criminal code for any offense that  
11 possesses reasonably equivalent offense elements as the offense elements that  
12 are listed under section 13-705, subsection ~~P~~ Q, paragraph 1 or section  
13 13-706, subsection F, paragraph 1.