

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

State of Arizona  
House of Representatives  
Fifty-first Legislature  
Second Regular Session  
2014

## **HB 2372**

Introduced by  
Representative Gonzales

**AN ACT**

**AMENDING SECTIONS 13-105, 13-702, 13-703, 13-705 AND 13-711, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-716; AMENDING SECTIONS 13-917, 13-1402, 13-1403, 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 a dangerous offense.
- 21           (iii) Involved the illegal control of a criminal enterprise.
- 22           (iv) Involved aggravated driving under the influence of intoxicating  
23 liquor or drugs.
- 24           (v) Involved any dangerous crime against children as defined in  
25 section 13-705.
- 26           (b) Any class 2 or 3 felony, except ~~the offenses~~ ANY OFFENSE listed in  
27 subdivision (a) of this paragraph, that was committed within the ten years  
28 immediately preceding the date of the present offense. Any time spent on  
29 absconder status while on probation, on escape status or incarcerated is  
30 excluded in calculating if the offense was committed within the preceding ten  
31 years. If a court determines a person was not on absconder status while on  
32 probation or escape status, that time is not excluded. For the purposes of  
33 this subdivision, "escape" means:
- 34           (i) A departure from custody or from a juvenile secure care facility,  
35 a juvenile detention facility or an adult correctional facility in which the  
36 person is held or detained, with knowledge that the departure is not  
37 permitted, or the failure to return to custody or detention following a  
38 temporary leave granted for a specific purpose or for a limited period.
- 39           (ii) A failure to report as ordered to custody or detention to begin  
40 serving a term of incarceration.
- 41           (c) Any class 4, 5 or 6 felony, except the offenses listed in  
42 subdivision (a) of this paragraph, that was committed within the five years  
43 immediately preceding the date of the present offense. Any time spent on  
44 absconder status while on probation, on escape status or incarcerated is  
45 excluded in calculating if the offense was committed within the preceding

1 five years. If a court determines a person was not on absconder status while  
2 on probation or escape status, that time is not excluded. For the purposes  
3 of this subdivision, "escape" has the same meaning prescribed in subdivision  
4 (b) of this paragraph.

5 (d) Any felony conviction that is a third or more prior felony  
6 conviction.

7 (e) Any offense committed outside the jurisdiction of this state that  
8 was punishable by that jurisdiction as a felony, AND that was committed  
9 within the five years immediately preceding the date of the present offense.  
10 Any time spent on absconder status while on probation, on escape status or  
11 incarcerated is excluded in calculating if the offense was committed within  
12 the preceding five years. If a court determines a person was not on  
13 absconder status while on probation or escape status, that time is not  
14 excluded. For the purposes of this subdivision, "escape" has the same  
15 meaning prescribed in subdivision (b) of this paragraph.

16 (f) Any offense committed outside the jurisdiction of this state that  
17 involved the discharge, use or threatening exhibition of a deadly weapon or  
18 dangerous instrument or the intentional or knowing infliction of death or  
19 serious physical injury AND that was punishable by that jurisdiction as a  
20 felony. A person who has been convicted of a felony weapons possession  
21 violation in any court outside the jurisdiction of this state that would not  
22 be punishable as a felony under the laws of this state is not subject to this  
23 paragraph.

24 23. "Human smuggling organization" means an ongoing formal or informal  
25 association of persons in which members or associates individually or  
26 collectively engage in the smuggling of human beings.

27 24. "Intoxication" means any mental or physical incapacity resulting  
28 from use of drugs, toxic vapors or intoxicating liquors.

29 25. "Misdemeanor" means an offense for which a sentence to a term of  
30 imprisonment other than to the custody of the state department of corrections  
31 is authorized by any law of this state.

32 26. "Narcotic drug" means narcotic drugs as defined in section 13-3401.

33 27. "Offense" or "public offense" means conduct for which a sentence to  
34 a term of imprisonment or of a fine is provided by any law of the state in  
35 which it occurred or by any law, regulation or ordinance of a political  
36 subdivision of that state and, if the act occurred in a state other than this  
37 state, it would be so punishable under the laws, regulations or ordinances of  
38 this state or of a political subdivision of this state if the act had  
39 occurred in this state.

40 28. "Omission" means the failure to perform an act as to which a duty  
41 of performance is imposed by law.

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

44 30. "Person" means a human being and, as the context requires, an  
45 enterprise, a public or private corporation, an unincorporated association, a

1 partnership, a firm, a society, a government, a governmental authority or an  
2 individual or entity capable of holding a legal or beneficial interest in  
3 property.

4 31. "Petty offense" means an offense for which a sentence of a fine  
5 only is authorized by law.

6 32. "Physical force" means force used upon or directed toward the body  
7 of another person and includes confinement, but does not include deadly  
8 physical force.

9 33. "Physical injury" means the impairment of physical condition.

10 34. "Possess" means knowingly to have physical possession or otherwise  
11 to exercise dominion or control over property.

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

14 36. "Preconviction custody" means the confinement of a person in a jail  
15 in this state or another state after the person is arrested for or charged  
16 with a felony offense.

17 37. "PRIOR FELONY CONVICTION" MEANS ANY FELONY CONVICTION THAT IS  
18 ENTERED AS OF RECORD BEFORE THE COMMISSION OF A NEW OFFENSE.

19 ~~37.~~ 38. "Property" means anything of value, tangible or intangible.

20 ~~38.~~ 39. "Public servant":

21 (a) Means any officer or employee of any branch of government, whether  
22 elected, appointed or otherwise employed, including a peace officer, and any  
23 person participating as an advisor or consultant or otherwise in performing a  
24 governmental function.

25 (b) Does not include jurors or witnesses.

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

29 ~~39.~~ 40. "Serious physical injury" includes physical injury that  
30 creates a reasonable risk of death, or that causes serious and permanent  
31 disfigurement, serious impairment of health or loss or protracted impairment  
32 of the function of any bodily organ or limb.

33 ~~40.~~ 41. "Unlawful" means contrary to law or, where the context so  
34 requires, not permitted by law.

35 ~~41.~~ 42. "Vehicle" means a device in, upon or by which any person or  
36 property is, may be or could have been transported or drawn upon a highway,  
37 waterway or airway, excepting devices moved by human power or used  
38 exclusively upon stationary rails or tracks.

39 ~~42.~~ 43. "Voluntary act" means a bodily movement performed consciously  
40 and as a result of effort and determination.

41 ~~43.~~ 44. "Voluntary intoxication" means intoxication caused by the  
42 knowing use of drugs, toxic vapors or intoxicating liquors by a person, the  
43 tendency of which to cause intoxication the person knows or ought to know,  
44 unless the person introduces them pursuant to medical advice or under such  
45 duress as would afford a defense to an offense.

1 Sec. 2. Section 13-702, Arizona Revised Statutes, is amended to read:  
2 13-702. First time felony offenders: sentencing: definition

3 A. Unless a specific sentence is otherwise provided, the term of  
4 imprisonment for a first felony offense shall be the presumptive sentence  
5 determined pursuant to subsection ~~D~~ B of this section. Except for those  
6 felonies involving a dangerous offense or if a specific sentence is otherwise  
7 provided, the court may increase or reduce the presumptive sentence within  
8 the ranges set by subsection ~~D~~ B of this section. Any reduction or increase  
9 shall be based on the aggravating and mitigating circumstances listed in  
10 section 13-701, subsections D and E and shall be within the ranges prescribed  
11 in subsection ~~D~~ B of this section.

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

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

31 ~~D~~ B. The term of imprisonment for a presumptive, minimum, ~~OR~~  
32 maximum, ~~mitigated or aggravated~~ sentence shall be within the range  
33 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

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

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

4 Sec. 3. Section 13-703, Arizona Revised Statutes, is amended to read:

5 13-703. Repetitive offenders; sentencing

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

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

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

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

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

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

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

31 ~~F. If a person is sentenced as a category two repetitive offender  
32 pursuant to subsection B of this section and if at least two aggravating  
33 circumstances listed in section 13-701, subsection D apply or at least two  
34 mitigating circumstances listed in section 13-701, subsection E apply, the  
35 court may impose a mitigated or aggravated sentence pursuant to subsection I  
36 of this section.~~

37 ~~G. If a person is sentenced as a category three repetitive offender  
38 pursuant to subsection C of this section and at least two aggravating  
39 circumstances listed in section 13-701, subsection D or at least two  
40 mitigating circumstances listed in section 13-701, subsection E apply, the  
41 court may impose a mitigated or aggravated sentence pursuant to subsection J  
42 of this section.~~

43 ~~H.~~ E. A category one repetitive offender shall be sentenced within  
44 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	2 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.75 years
Class 4	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	.25 years	<del>.5 years</del>	1 year	<del>1.5 years</del>	2 years

~~I.~~ F. A category two 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	4.5 years	<del>6 years</del>	9.25 years	<del>18.5 years</del>	23 years
Class 3	3.25 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 was punishable by that jurisdiction 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 or the jurisdiction in which the offense was committed is subject to this section. A person who has been

1 convicted of a felony weapons possession violation in any court outside the  
2 jurisdiction of this state that would not be punishable as a felony under the  
3 laws of this state is not subject to this section.

4 ~~N.~~ J. The penalties prescribed by this section shall be substituted  
5 for the penalties otherwise authorized by law if an allegation of prior  
6 conviction is charged in the indictment or information and admitted or found  
7 by the court. The release provisions prescribed by this section shall not be  
8 substituted for any penalties required by the substantive offense or a  
9 provision of law that specifies a later release or completion of the sentence  
10 imposed before release. The court shall allow the allegation of a prior  
11 conviction at any time before the date the case is actually tried unless the  
12 allegation is filed fewer than twenty days before the case is actually tried  
13 and the court finds on the record that the person was in fact prejudiced by  
14 the untimely filing and states the reasons for these findings. If the  
15 allegation of a prior conviction is filed, the state must make available to  
16 the person a copy of any material or information obtained concerning the  
17 prior conviction. The charge of previous conviction shall not be read to the  
18 jury. For the purposes of this subsection, "substantive offense" means the  
19 felony offense that the trier of fact found beyond a reasonable doubt the  
20 person committed. Substantive offense does not include allegations that, if  
21 proven, would enhance the sentence of imprisonment or fine to which the  
22 person otherwise would be subject.

23 ~~Q.~~ K. A person who is sentenced pursuant to this section is not  
24 eligible for suspension of sentence, probation, pardon or release from  
25 confinement on any basis, except as specifically authorized by section  
26 31-233, subsection A or B, until the sentence imposed by the court has been  
27 served, the person is eligible for release pursuant to section 41-1604.07 or  
28 the sentence is commuted.

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

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

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

38 13-705. Dangerous crimes against children; sentences;  
39 definitions

40 A. A person who is at least eighteen years of age and who is convicted  
41 of a dangerous crime against children in the first degree involving sexual  
42 assault of a minor who is twelve years of age or younger or sexual conduct  
43 with a minor who is twelve years of age or younger shall be sentenced to life  
44 imprisonment and is not eligible for suspension of sentence, probation,  
45 pardon or release from confinement on any basis except as specifically

1 authorized by section 31-233, subsection A or B until the person has served  
2 thirty-five years or the sentence is commuted. This subsection does not  
3 apply to masturbatory contact.

4 B. Except as otherwise provided in this section, a person who is at  
5 least eighteen years of age or who has been tried as an adult and who is  
6 convicted of a dangerous crime against children in the first degree involving  
7 attempted first degree murder of a minor who is under twelve years of age,  
8 second degree murder of a minor who is under twelve years of age, sexual  
9 assault of a minor who is under twelve years of age, sexual conduct with a  
10 minor who is under twelve years of age or manufacturing methamphetamine under  
11 circumstances that cause physical injury to a minor who is under twelve years  
12 of age may be sentenced to life imprisonment and is not eligible for  
13 suspension of sentence, probation, pardon or release from confinement on any  
14 basis except as specifically authorized by section 31-233, subsection A or B  
15 until the person has served thirty-five years or the sentence is commuted.  
16 If a life sentence is not imposed pursuant to this subsection, the person  
17 shall be sentenced to a term of imprisonment as follows:

18	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
19	13 years	20 years	27 years

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

33	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
34	13 years	20 years	27 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	23 years	30 years	37 years

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

1	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
2	10 years	17 years	24 years

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

5	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
6	21 years	28 years	35 years

7 E. Except as otherwise provided in this section, if a person is at  
8 least eighteen years of age or has been tried as an adult and is convicted of  
9 a dangerous crime against children involving luring a minor for sexual  
10 exploitation or unlawful age misrepresentation and is sentenced to a term of  
11 imprisonment, the term of imprisonment is as follows and the person is not  
12 eligible for release from confinement on any basis except as specifically  
13 authorized by section 31-233, subsection A or B until the sentence imposed by  
14 the court has been served, the person is eligible for release pursuant to  
15 section 41-1604.07 or the sentence is commuted:

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

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

25	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
26	8 years	15 years	22 years

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

36	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
37	2.5 years	5 years	7.5 years

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

1	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
2	8 years	15 years	22 years

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

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

13 I. A person who is convicted of any dangerous crime against children  
14 in the first degree pursuant to subsection C or D of this section and who has  
15 been previously convicted of two or more predicate felonies shall be  
16 sentenced to life imprisonment and is not eligible for suspension of  
17 sentence, probation, pardon or release from confinement on any basis except  
18 as specifically authorized by section 31-233, subsection A or B until the  
19 person has served not fewer than thirty-five years or the sentence is  
20 commuted.

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

31	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
32	5 years	10 years	15 years

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

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

42 M. The sentence imposed on a person by the court for a dangerous crime  
43 against children under subsection D of this section involving child  
44 molestation or sexual abuse ~~pursuant to~~ UNDER subsection F of this section  
45 may be served concurrently with other sentences if the offense involved only

1 one victim. The sentence imposed on a person for any other dangerous crime  
2 against children in the first or second degree shall be consecutive to any  
3 other sentence imposed on the person at any time, including child molestation  
4 and sexual abuse of the same victim.

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

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

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

15 ~~P.~~ Q. For the purposes of this section:

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

18 (a) Second degree murder.

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

22 (c) Sexual assault.

23 (d) Molestation of a child.

24 (e) Sexual conduct with a minor.

25 (f) Commercial sexual exploitation of a minor.

26 (g) Sexual exploitation of a minor.

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

29 (i) Kidnapping.

30 (j) Sexual abuse.

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

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

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

35 (n) Continuous sexual abuse of a child.

36 (o) Attempted first degree murder.

37 (p) Sex trafficking.

38 (q) Manufacturing methamphetamine under circumstances that cause  
39 physical injury to a minor.

40 (r) Bestiality as prescribed in section 13-1411, subsection A,  
41 paragraph 2.

42 (s) Luring a minor for sexual exploitation.

43 (t) Aggravated luring a minor for sexual exploitation.

44 (u) Unlawful age misrepresentation.

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

7           Sec. 5. Section 13-711, Arizona Revised Statutes, is amended to read:

8           13-711. Consecutive terms of imprisonment

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

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

21           Sec. 6. Title 13, chapter 7, Arizona Revised Statutes, is amended by  
22 adding section 13-716, to read:

23           13-716. Probation revocation; imprisonment; drug offenses

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

29           Sec. 7. Section 13-917, Arizona Revised Statutes, is amended to read:

30           13-917. Modification of supervision

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

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

1 ~~law. If the court finds that the person has violated any other condition of~~  
2 ~~intensive probation, it~~ shall modify the conditions of intensive probation as  
3 appropriate or shall revoke the period of intensive probation and impose a  
4 term of imprisonment as authorized by law.

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

10 Sec. 8. Section 13-1402, Arizona Revised Statutes, is amended to read:

11 13-1402. Indecent exposure; exception; classification

12 A. A person commits indecent exposure if he or she exposes his or her  
13 genitals or anus or she exposes the areola or nipple of her breast or breasts  
14 and another person is present, and the defendant is reckless about whether  
15 the other person, as a reasonable person, would be offended or alarmed by the  
16 act.

17 B. Indecent exposure does not include an act of breast-feeding by a  
18 mother.

19 C. Indecent exposure to a person who is fifteen or more years of age  
20 is a class 1 misdemeanor, except that it is a class 6 felony if the defendant  
21 has two or more prior convictions for a violation of this section or has one  
22 or more prior convictions for a violation of section 13-1406. Indecent  
23 exposure to a person who is under fifteen years of age is a class 6 felony.

24 D. A person who is convicted of a felony violation of this section and  
25 who has two or more historical prior felony convictions for a violation of  
26 this section or section 13-1403 involving indecent exposure or public sexual  
27 indecency to a minor who is under fifteen years of age is guilty of a class 3  
28 felony and shall be sentenced to a term of imprisonment as follows:

29	<del>Mitigated</del>	<del>Minimum</del>	<u>Presumptive</u>	<del>Maximum</del>	<del>Aggravated</del>
30	<u>MINIMUM</u>				<u>MAXIMUM</u>
31	6 years	<del>8 years</del>	10 years	<del>12 years</del>	15 years

32 E. The presumptive term imposed pursuant to subsection D of this  
33 section may be mitigated or aggravated pursuant to section 13-701,  
34 subsections D and E.

35 Sec. 9. Section 13-1403, Arizona Revised Statutes, is amended to read:

36 13-1403. Public sexual indecency; public sexual indecency to a  
37 minor; classification

38 A. A person commits public sexual indecency by intentionally or  
39 knowingly engaging in any of the following acts, if another person is  
40 present, and the defendant is reckless about whether such other person, as a  
41 reasonable person, would be offended or alarmed by the act:

- 42 1. An act of sexual contact.
- 43 2. An act of oral sexual contact.
- 44 3. An act of sexual intercourse.
- 45 4. An act of bestiality.

1 B. A person commits public sexual indecency to a minor if the person  
2 intentionally or knowingly engages in any of the acts listed in subsection A  
3 of this section and such person is reckless about whether a minor who is  
4 under fifteen years of age is present.

5 C. Public sexual indecency is a class 1 misdemeanor. Public sexual  
6 indecency to a minor is a class 5 felony.

7 D. A person who is convicted of a felony violation of this section and  
8 who has two or more historical prior felony convictions for a violation of  
9 this section or section 13-1402 involving indecent exposure or public sexual  
10 indecency to a minor who is under fifteen years of age shall be sentenced to  
11 a term of imprisonment as follows:

12	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
13	<u>MINIMUM</u>				<u>MAXIMUM</u>
14	6 years	<del>8 years</del>	10 years	<del>12 years</del>	15 years

15 E. The presumptive term imposed pursuant to subsection D of this  
16 section may be mitigated or aggravated pursuant to section 13-701,  
17 subsections D and E.

18 Sec. 10. Section 13-3405, Arizona Revised Statutes, is amended to  
19 read:

20 13-3405. Possession, use, production, sale or transportation of  
21 marijuana; classification

22 A. A person shall not knowingly:

- 23 1. Possess or use marijuana.
- 24 2. Possess marijuana for sale.
- 25 3. Produce marijuana.
- 26 4. Transport for sale, import into this state or offer to transport
- 27 for sale or import into this state, sell, transfer or offer to sell or
- 28 transfer marijuana.

29 B. A person who violates:

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

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

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

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

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

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

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

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

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

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

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

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

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

34          E. A person who is convicted of a felony violation of any provision of  
35 this section for which probation or release before the expiration of the  
36 sentence imposed by the court is authorized is prohibited from using any  
37 marijuana, dangerous drug or narcotic drug except as lawfully administered by  
38 a practitioner and as a condition of any probation or release shall be  
39 required to submit to drug testing administered under the supervision of the  
40 probation department of the county or the state department of corrections as  
41 appropriate during the duration of the term of probation or before the  
42 expiration of the sentence imposed.

43          F. If the aggregate amount of marijuana involved in one offense or all  
44 of the offenses that are consolidated for trial is less than the statutory  
45 threshold amount, a person who is sentenced pursuant to subsection B,

1 paragraph 4, 7 or 10 and who is granted probation by the court shall be  
2 ordered by the court that as a condition of probation the person perform not  
3 less than two hundred forty hours of community restitution with an agency or  
4 organization providing counseling, rehabilitation or treatment for alcohol or  
5 drug abuse, an agency or organization that provides medical treatment to  
6 persons who abuse controlled substances, an agency or organization that  
7 serves persons who are victims of crime or any other appropriate agency or  
8 organization.

9 G. If a person who is sentenced pursuant to subsection B, paragraph 1,  
10 2 or 3 of this section is granted probation for a felony violation of this  
11 section, the court shall order that as a condition of probation the person  
12 perform not less than twenty-four hours of community restitution with an  
13 agency or organization providing counseling, rehabilitation or treatment for  
14 alcohol or drug abuse, an agency or organization that provides medical  
15 treatment to persons who abuse controlled substances, an agency or  
16 organization that serves persons who are victims of crime or any other  
17 appropriate agency or organization.

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

24 Sec. 11. Section 13-3419, Arizona Revised Statutes, is amended to  
25 read:

26 13-3419. Multiple drug offenses not committed on the same  
27 occasion; sentencing

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

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

4 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
5	<u>MINIMUM</u>				<u>MAXIMUM</u>
6 Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
7 Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.7 years
8 Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.7 years
9 Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years

10 2. For three or more offenses for which the aggregate amount of drugs  
 11 involved in one offense or all of the offenses is less than the statutory  
 12 threshold amount for any offense subsequent to the second offense:

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

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

22 <u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
23	<u>MINIMUM</u>				<u>MAXIMUM</u>
24 Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
25 Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.7 years
26 Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.7 years
27 Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years

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

31 <u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
32				<u>MAXIMUM</u>
33 Class 2	4 years	7 years	<del>12 years</del>	15 years
34 Class 3	2.5 years	5 years	<del>9 years</del>	11.2 years
35 Class 4	1.5 years	3 years	<del>5 years</del>	6.2 years
36 Class 5	.75 years	2.5 years	<del>4 years</del>	5 years

37 B. If the court increases or decreases a sentence pursuant to this  
 38 section, the court shall state on the record the reasons for the increase or  
 39 decrease.

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



1 the person's release if the court determines that the person has a propensity  
2 to reoffend.

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

9 D. If the court finds that the criminal act of the person committed  
10 pursuant to subsection A of this section caused the death or serious physical  
11 injury of or the threat of death or serious physical injury to another  
12 person, the court shall place the person under the jurisdiction of the  
13 psychiatric security review board. The court shall state the beginning date,  
14 length and ending date of the board's jurisdiction over the person. The  
15 length of the board's jurisdiction over the person is equal to the sentence  
16 the person could have received pursuant to section 13-707 or section 13-751,  
17 subsection A or the presumptive sentence the defendant could have received  
18 pursuant to section 13-702, subsection ~~D~~ B, section 13-703, section 13-704,  
19 section 13-705, section 13-706, subsection A, section 13-710 or section  
20 13-1406. In making this determination the court shall not consider the  
21 sentence enhancements for prior convictions under section 13-703 or 13-704.  
22 The court shall retain jurisdiction of all matters that are not specifically  
23 delegated to the psychiatric security review board for the duration of the  
24 presumptive sentence.

25 E. A person who is placed under the jurisdiction of the psychiatric  
26 security review board pursuant to subsection D of this section is not  
27 eligible for discharge from the board's jurisdiction until the board's  
28 jurisdiction over the person expires.

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

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

39 2. If the person proves by clear and convincing evidence that the  
40 person no longer suffers from a mental disease or defect and is not  
41 dangerous, the psychiatric security review board shall order the person's  
42 release. The person shall remain under the jurisdiction of the board.  
43 Before determining to release a person pursuant to this paragraph, the board  
44 shall consider the entire criminal history of the person and shall not order

1 the person's release if the board determines that the person has a propensity  
2 to reoffend.

3 3. If the psychiatric security review board finds that the person  
4 still suffers from a mental disease or defect or that the mental disease or  
5 defect is in stable remission but the person is no longer dangerous, the  
6 board shall order the person's conditional release. The person shall remain  
7 under the board's jurisdiction. The board in conjunction with the state  
8 mental health facility and behavioral health community providers shall  
9 specify the conditions of the person's release. The board shall continue to  
10 monitor and supervise a person who is released conditionally. Before the  
11 conditional release of a person, a supervised treatment plan shall be in  
12 place, including the necessary funding to implement the plan.

13 4. If the person is sentenced pursuant to section 13-704, section  
14 13-710 or section 13-751, subsection A and the psychiatric security review  
15 board finds that the person no longer needs ongoing treatment for a mental  
16 disease and the person is dangerous or has a propensity to reoffend, the  
17 board shall order the person to be transferred to the state department of  
18 corrections for the remainder of the sentence imposed pursuant to section  
19 13-502, subsection D. The board shall consider the safety and protection of  
20 the public.

21 G. Within twenty days after the psychiatric security review board  
22 orders a person to be transferred to the state department of corrections, the  
23 person may file a petition for a judicial determination. The person shall  
24 serve a copy of the request on the attorney general. If the person files a  
25 petition for a judicial determination, the person shall remain in a state  
26 mental health facility pending the result of the judicial determination. The  
27 person requesting the judicial determination has the burden of proving the  
28 issues by clear and convincing evidence. The judicial determination is  
29 limited to the following issues:

30 1. Whether the person no longer needs ongoing treatment for a mental  
31 disease.

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

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

41 I. At any hearing for release or conditional release pursuant to this  
42 section:

43 1. Public safety and protection are primary.

44 2. The applicant has the burden of proof by clear and convincing  
45 evidence.

1 J. At least fifteen days before a hearing is scheduled to consider a  
2 person's release, or before the expiration of the board's jurisdiction over  
3 the person, the state mental health facility or supervising agency shall  
4 submit to the psychiatric security review board a report on the person's  
5 mental health. The psychiatric security review board shall determine whether  
6 to release the person or to order the county attorney to institute civil  
7 commitment proceedings pursuant to title 36.

8 K. The procedures for civil commitment govern the continued commitment  
9 of the person after the expiration of the jurisdiction of the psychiatric  
10 security review board.

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

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

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

43 O. Before the initial hearing or any other hearing before the  
44 psychiatric security review board on the release or conditional release of  
45 the person, the person, the attorney who is representing the person and the

1 attorney general or county attorney who is representing the state may choose  
2 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a  
3 psychologist licensed pursuant to title 32, chapter 19.1 to examine the  
4 person. All costs in connection with the examination shall be approved and  
5 paid by the county of the sentencing court. The written examination results  
6 shall be filed with the board and shall include an opinion as to:

- 7 1. The mental condition of the person.
- 8 2. Whether the person is dangerous.

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

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

34 R. For the purposes of this section, "state mental health facility"  
35 means a secure state mental health facility under the department of health  
36 services.

37 Sec. 14. Section 31-233, Arizona Revised Statutes, is amended to read:  
38 31-233. Order for removal; purposes; duration; continuous  
39 alcohol monitoring program; failure to return;  
40 classification

41 A. The director may authorize the temporary removal under custody from  
42 prison or any other institution for the detention of adults under the  
43 jurisdiction of the department of any inmate for the purpose of employing the  
44 inmate in any work directly connected with the administration, management or  
45 maintenance of the prison or institution in which the inmate is confined, for

1 purposes of cooperating voluntarily in medical research that cannot be  
2 performed at the prison or institution, or for participating in community  
3 action activities directed toward delinquency prevention and community  
4 betterment programs. The removal shall not be for a period longer than one  
5 day.

6 B. Under specific rules established by the director for the selection  
7 of inmates, the director may also authorize furlough, temporary removal or  
8 temporary release of any inmate for compassionate leave, for the purpose of  
9 furnishing to the inmate medical treatment not available at the prison or  
10 institution, for purposes preparatory to a return to the community ~~within~~  
11 ~~ninety days of the inmate's release date~~ AS PROVIDED IN SUBSECTION C OF THIS  
12 SECTION or for disaster aid, including local mutual aid and state  
13 emergencies. When an inmate is temporarily removed or temporarily released  
14 for a purpose preparatory to A return to the community or for compassionate  
15 leave, the director may require the inmate to reimburse the state, in whole  
16 or part, for expenses incurred by the state in connection with the inmate's  
17 temporary removal or release.

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

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

24 2. WITHIN ONE HUNDRED EIGHTY DAYS OF THE INMATE'S RELEASE DATE IF THE  
25 INMATE WAS SENTENCED FOR AN OFFENSE NOT LISTED IN PARAGRAPH 1 OF THIS  
26 SUBSECTION.

27 ~~D.~~ D. Under specific rules established by the director for the  
28 selection of inmates, the director also may authorize release under a  
29 continuous alcohol monitoring program for any inmate who is sentenced  
30 pursuant to section 28-1383, subsection D or E and who is placed on  
31 probation. The director may require an inmate who is released under a  
32 continuous alcohol monitoring program to reimburse the state, in whole or  
33 part, for expenses incurred by the state in connection with the inmate's  
34 release.

35 ~~D.~~ E. An inmate who is released under a continuous alcohol monitoring  
36 program shall meet the following program eligibility requirements:

37 1. Serve an initial minimum term of twenty per cent of the inmate's  
38 term of incarceration.

39 2. Maintain compliance during the period of monitoring with all of the  
40 following requirements:

41 (a) At a minimum, once a day testing for the use of alcoholic  
42 beverages or drugs by a scientific method that is chosen by the director.

43 (b) Participation in an alcohol or drug program, or both. These  
44 programs shall be accredited by the department of health services.

1 (c) Prohibition of association with any person who is determined to be  
2 detrimental to the inmate's successful participation in the program.

3 (d) All other provisions of the inmate's sentence.

4 3. Any additional eligibility criteria that the director may impose.

5 ~~F.~~ F. Except if community supervision is waived pursuant to section  
6 13-603, subsection K, the department shall add the amount of time the  
7 director approves for the inmate's temporary release to the inmate's term of  
8 community supervision imposed by the court pursuant to section 13-603. While  
9 the person is on temporary release the person is not on inmate status and is  
10 under the jurisdiction of the department until the terms of community  
11 supervision are met.

12 ~~F.~~ G. Any inmate who knowingly fails to return from furlough,  
13 temporary removal or temporary release granted under this section is guilty  
14 of a class 5 felony.

15 Sec. 15. Section 31-412, Arizona Revised Statutes, is amended to read:

16 31-412. Criteria for release on parole; release; custody of  
17 parolee; definition

18 A. If a prisoner is certified as eligible for parole pursuant to  
19 section 41-1604.09 the board of executive clemency shall authorize the  
20 release of the applicant on parole if the applicant has reached the  
21 applicant's earliest parole eligibility date pursuant to section 41-1604.09,  
22 subsection D and it appears to the board, in its sole discretion, that there  
23 is a substantial probability that the applicant will remain at liberty  
24 without violating the law and that the release is in the best interests of  
25 the state. The applicant shall thereupon be allowed to go on parole in the  
26 legal custody and under the control of the state department of corrections,  
27 until the board revokes the parole or grants an absolute discharge from  
28 parole or until the prisoner reaches the prisoner's individual earned release  
29 credit date pursuant to section 41-1604.10. When the prisoner reaches the  
30 prisoner's individual earned release credit date the prisoner's parole shall  
31 be terminated and the prisoner shall no longer be under the authority of the  
32 board but shall be subject to revocation under section 41-1604.10.

33 B. Notwithstanding subsection A of this section, the director of the  
34 state department of corrections may certify as eligible for parole any  
35 prisoner, regardless of the classification of the prisoner, who has reached  
36 the prisoner's parole eligibility date pursuant to section 41-1604.09,  
37 subsection D, unless an increased term has been imposed pursuant to section  
38 41-1604.09, subsection F, for the sole purpose of parole to the custody of  
39 any other jurisdiction to serve a term of imprisonment imposed by the other  
40 jurisdiction or to stand trial on criminal charges in the other jurisdiction  
41 or for the sole purpose of parole to the custody of the state department of  
42 corrections to serve any consecutive term imposed on the prisoner. On review  
43 of an application for parole pursuant to this subsection the board may  
44 authorize parole if, in its discretion, parole appears to be in the best  
45 interests of the state.

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

6 1. A majority affirmative vote if four or more members consider the  
7 action.

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

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

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

14 E. Payment of restitution by the prisoner in accordance with  
15 subsection D of this section shall be made through the clerk of the superior  
16 court in the county in which the prisoner was sentenced for the offense for  
17 which the prisoner has been imprisoned in the same manner as restitution is  
18 paid as a condition of probation. The clerk of the superior court shall  
19 report to the board monthly whether or not restitution has been paid for that  
20 month by the prisoner.

21 F. The board shall not disclose the address of the victim or the  
22 victim's immediate family to any party without the written consent of the  
23 victim or the victim's family.

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

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

28 2. A dangerous crime against children as defined in section  
29 13-705. The citation of section 13-705 is not a necessary element for a  
30 serious offense designation.

31 3. A conviction under a prior criminal code for any offense that  
32 possesses reasonably equivalent offense elements as the offense elements that  
33 are listed under section 13-705, subsection ~~P~~ Q, paragraph 1 or section  
34 13-706, subsection F, paragraph 1.

35 Sec. 16. Section 41-1604.11, Arizona Revised Statutes, is amended to  
36 read:

37 41-1604.11. Order for removal; purposes; duration; work  
38 furlough; notice; failure to return;  
39 classification; applicability; definition

40 A. The director of the state department of corrections may authorize  
41 the temporary removal under custody from prison or any other institution for  
42 the detention of adults under the jurisdiction of the state department of  
43 corrections of any inmate for the purpose of employing that inmate in any  
44 work directly connected with the administration, management or maintenance of  
45 the prison or institution in which the inmate is confined, for purposes of

1 cooperating voluntarily in medical research that cannot be performed at the  
2 prison or institution, or for participating in community action activities  
3 directed toward delinquency prevention and community betterment programs.  
4 The removal shall not be for a period longer than one day.

5 B. Under specific rules established by the director for the selection  
6 of inmates, the director may also authorize furlough, temporary removal or  
7 temporary release of any inmate for compassionate leave, for the purpose of  
8 furnishing to the inmate medical treatment not available at the prison or  
9 institution, for purposes preparatory to a return to the community within  
10 ninety days of the inmate's release date or for disaster aid, including local  
11 mutual aid and state emergencies. When an inmate is temporarily removed or  
12 temporarily released for a purpose preparatory to return to the community or  
13 for compassionate leave, the director may require the inmate to reimburse the  
14 state, in whole or part, for expenses incurred by the state in connection  
15 with the temporary removal or release.

16 C. The board of executive clemency, under specific rules established  
17 for the selection of inmates, if it appears to the board, in its sole  
18 discretion, that there is a substantial probability that the inmate will  
19 remain at liberty without violating the law and that the release is in the  
20 best interests of the state, may authorize the release of an inmate on work  
21 furlough if the inmate has served not less than six months of the sentence  
22 imposed by the court, is within twelve months of the inmate's parole  
23 eligibility date and has not been convicted of a sexual offense. The  
24 director shall provide information as the board requests concerning any  
25 inmate eligible for release on work furlough. The inmate shall not be  
26 released on work furlough unless the release is approved by the board.

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

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

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

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

40 E. Before holding a hearing on the work furlough under consideration,  
41 the board, on request, shall notify and afford an opportunity to be heard to  
42 the presiding judge of the superior court in the county in which the inmate  
43 requesting a work furlough was sentenced, the prosecuting attorney, the  
44 director of the arresting law enforcement agency and the victim of the  
45 offense for which the inmate is incarcerated. The notice shall state the

1 name of the inmate requesting the work furlough, the offense for which the  
 2 inmate was sentenced, the length of the sentence and the date of admission to  
 3 the 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 submit a  
 5 written report to the board expressing the victim's opinion concerning the  
 6 inmate's release. No hearing concerning work furlough shall be held until  
 7 fifteen days after the date of giving the notice. On mailing the notice, the  
 8 board shall file a hard copy of the notice as evidence that notification was  
 9 sent.

10 F. The board shall require that every inmate released on work furlough  
 11 comply with the terms and conditions of release as the board may impose,  
 12 including that the inmate be gainfully employed while on work furlough and  
 13 that the inmate make restitution to the victim of the offense for which the  
 14 inmate was incarcerated.

15 G. If the board finds that an inmate has failed to comply with the  
 16 terms and conditions of release or that the best interests of this state  
 17 would be served by revocation of an inmate's work furlough, the board may  
 18 issue a warrant for retaking the inmate before the expiration of the inmate's  
 19 maximum sentence. After return of the inmate, the board may revoke the  
 20 inmate's work furlough after the inmate has been given an opportunity to be  
 21 heard.

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

25 I. The director shall transmit a monthly report containing the name,  
 26 date of birth, offense for which the inmate was sentenced, length of the  
 27 sentence and date of admission to the state department of corrections of each  
 28 inmate on work furlough or home arrest to the chairperson of the house of  
 29 representatives judiciary committee or its successor committee and the  
 30 chairperson of the senate judiciary committee or its successor committee.  
 31 The director shall also submit a report containing this information for any  
 32 inmate released on work furlough or home arrest within a jurisdiction to the  
 33 county attorney, sheriff and chief of police for the jurisdiction in which  
 34 the inmate is released on work furlough or home arrest.

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

38 K. At any given time if the director declares there is a shortage of  
 39 beds available for inmates within the state department of corrections, the  
 40 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be  
 41 suspended for any inmate who has served not less than six months of the  
 42 sentence imposed by the court, who has not been previously convicted of a  
 43 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving  
 44 a sexual offense, the use or exhibition of a deadly weapon or dangerous  
 45 instrument or the infliction of serious physical injury pursuant to section

1 13-704, and the inmate shall be continuously eligible for parole, home arrest  
2 or work furlough.

3 L. Prisoners who have served at least one calendar year and who are  
4 serving a sentence for conviction of a crime committed on or after October 1,  
5 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02  
6 or 36-1002.03, and who are sentenced to the custody of the state department  
7 of corrections, may be temporarily released, according to the rules of the  
8 department, at the discretion of the director, one hundred eighty calendar  
9 days prior to expiration of the term imposed and shall remain under the  
10 control of the state department of corrections until expiration of the  
11 maximum sentence specified. If an offender released under this section or  
12 pursuant to section 31-411, subsection B violates the rules, the offender may  
13 be returned to custody and shall be classified to a parole class as provided  
14 by the rules of the department.

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

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

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

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

24 3. A conviction under a prior criminal code for any offense that  
25 possesses reasonably equivalent offense elements as the offense elements that  
26 are listed under section 13-705, subsection ~~P~~ Q, paragraph 1 or section  
27 13-706, subsection F, paragraph 1.

28 Sec. 17. 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 a dangerous offense.

37 (b) Was not convicted of a sexual offense.

38 (c) Has not previously been convicted of any felony.

39 2. Violated parole by the commission of a technical violation that was  
40 not chargeable or indictable as a criminal offense.

41 3. Is eligible for work furlough.

42 4. Is eligible for parole pursuant to section 31-412, subsection A.

43 B. The board of executive clemency shall determine which inmates are  
44 released to the home arrest program based on the criteria in subsection A of  
45 this section and based on a determination that there is a substantial

1 probability that the inmate will remain at liberty without violating the law  
2 and that the release is in the best interests of the state after considering  
3 the offense for which the inmate is presently incarcerated, the prior record  
4 of the inmate, the conduct of the inmate while incarcerated and any other  
5 information concerning the inmate that is in the possession of the state  
6 department of corrections, including any presentence report. The board  
7 maintains the responsibility of revocation as applicable to all parolees.

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

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

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

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

21 D. Home arrest is conditioned on the following:

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

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

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

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

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

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

36 7. Compliance with all other conditions of supervision.

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

43 9. Payment of a drug testing fee in an amount to be determined by the  
44 board and not to exceed the costs of the drug testing program. The fees

1 collected pursuant to this paragraph by the department may only be used to  
2 offset the costs of the drug testing program.

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

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

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

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

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

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

33 K. For the purposes of this section:

34 1. "Dangerous offense" has the same meaning prescribed in section  
35 13-105.

36 2. "Serious offense" includes any of the following:

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

39 (b) A dangerous crime against children as defined in section 13-705.  
40 The citation of section 13-705 is not a necessary element for a serious  
41 offense designation.

42 (c) A conviction under a prior criminal code for any offense that  
43 possesses reasonably equivalent offense elements as the offense elements that  
44 are listed under section 13-705, subsection ~~P~~ Q, paragraph 1 or section  
45 13-706, subsection F, paragraph 1.