

REFERENCE TITLE: **peace officers; unlawful sexual conduct**

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

# **HB 2378**

Introduced by  
Representative Borrelli

**AN ACT**

**AMENDING SECTION 13-705, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1412; RELATING TO SEXUAL OFFENSES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-705, Arizona Revised Statutes, is amended to  
3 read:

4 13-705. Dangerous crimes against children: sentences:  
5 definitions

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

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

29	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
30	13 years	20 years	27 years

31 C. Except as otherwise provided in this section, a person who is at  
32 least eighteen years of age or who has been tried as an adult and who is  
33 convicted of a dangerous crime against children in the first degree involving  
34 attempted first degree murder of a minor who is twelve, thirteen or fourteen  
35 years of age, second degree murder of a minor who is twelve, thirteen or  
36 fourteen years of age, sexual assault of a minor who is twelve, thirteen or  
37 fourteen years of age, taking a child for the purpose of prostitution, child  
38 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen  
39 years of age, continuous sexual abuse of a child, sex trafficking of a minor  
40 who is under fifteen years of age, UNLAWFUL SEXUAL CONDUCT PURSUANT TO  
41 SECTION 13-1412 or manufacturing methamphetamine under circumstances that  
42 cause physical injury to a minor who is twelve, thirteen or fourteen years of  
43 age or involving or using minors in drug offenses shall be sentenced to a  
44 term of imprisonment as follows:

1	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
2	13 years	20 years	27 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	23 years	30 years	37 years

7 D. Except as otherwise provided in this section, a person who is at  
8 least eighteen years of age or who has been tried as an adult and who is  
9 convicted of a dangerous crime against children in the first degree involving  
10 aggravated assault, unlawful mutilation, molestation of a child, commercial  
11 sexual exploitation of a minor, sexual exploitation of a minor, aggravated  
12 luring a minor for sexual exploitation, child abuse or kidnapping shall be  
13 sentenced to a term of imprisonment as follows:

14	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
15	10 years	17 years	24 years

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

18	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
19	21 years	28 years	35 years

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

29	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
30	5 years	10 years	15 years

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

38	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
39	8 years	15 years	22 years

40 F. Except as otherwise provided in this section, if a person is at  
41 least eighteen years of age or has been tried as an adult and is convicted of  
42 a dangerous crime against children involving sexual abuse or bestiality under  
43 section 13-1411, subsection A, paragraph 2 and is sentenced to a term of  
44 imprisonment, the term of imprisonment is as follows and the person is not  
45 eligible for release from confinement on any basis except as specifically

1 authorized by section 31-233, subsection A or B until the sentence imposed by  
2 the court has been served, the person is eligible for release pursuant to  
3 section 41-1604.07 or the sentence is commuted:

4	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5	2.5 years	5 years	7.5 years

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

13	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
14	8 years	15 years	22 years

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

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

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

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

43	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
44	5 years	10 years	15 years

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

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

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

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

20 O. A dangerous crime against children is in the first degree if it is  
21 a completed offense and is in the second degree if it is a preparatory  
22 offense, except attempted first degree murder is a dangerous crime against  
23 children in the first degree.

24 P. For the purposes of this section:

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

27 (a) Second degree murder.

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

31 (c) Sexual assault.

32 (d) Molestation of a child.

33 (e) Sexual conduct with a minor.

34 (f) Commercial sexual exploitation of a minor.

35 (g) Sexual exploitation of a minor.

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

38 (i) Kidnapping.

39 (j) Sexual abuse.

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

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

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

44 (n) Continuous sexual abuse of a child.

- 1 (o) Attempted first degree murder.
- 2 (p) Sex trafficking.
- 3 (q) Manufacturing methamphetamine under circumstances that cause
- 4 physical injury to a minor.
- 5 (r) Bestiality as prescribed in section 13-1411, subsection A,
- 6 paragraph 2.
- 7 (s) Luring a minor for sexual exploitation.
- 8 (t) Aggravated luring a minor for sexual exploitation.
- 9 (u) Unlawful age misrepresentation.
- 10 (v) Unlawful mutilation.
- 11 (w) UNLAWFUL SEXUAL CONDUCT AS PRESCRIBED IN SECTION 13-1412.

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

18 Sec. 2. Title 13, chapter 14, Arizona Revised Statutes, is amended by  
 19 adding section 13-1412, to read:

20 13-1412. Unlawful sexual conduct; peace officers;  
 21 classification; definitions

22 A. A PEACE OFFICER COMMITS UNLAWFUL SEXUAL CONDUCT BY KNOWINGLY  
 23 ENGAGING IN SEXUAL CONTACT, ORAL SEXUAL CONTACT OR SEXUAL INTERCOURSE WITH  
 24 ANY PERSON WHO IS IN THE OFFICER'S CUSTODY OR A PERSON WHO THE OFFICER KNOWS  
 25 OR HAS REASON TO KNOW IS THE SUBJECT OF AN INVESTIGATION.

26 B. UNLAWFUL SEXUAL CONDUCT WITH A VICTIM WHO IS UNDER FIFTEEN YEARS OF  
 27 AGE IS A CLASS 2 FELONY PUNISHABLE PURSUANT TO SECTION 13-705. UNLAWFUL  
 28 SEXUAL CONDUCT WITH A VICTIM WHO IS AT LEAST FIFTEEN YEARS OF AGE BUT LESS  
 29 THAN EIGHTEEN YEARS OF AGE IS A CLASS 3 FELONY. ALL OTHER UNLAWFUL SEXUAL  
 30 CONDUCT IS A CLASS 5 FELONY.

31 C. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

- 32 1. AN ACT DONE PURSUANT TO A LAWFUL SEARCH.
- 33 2. AN OFFICER WHO IS MARRIED TO OR WHO IS IN A ROMANTIC OR SEXUAL  
 34 RELATIONSHIP WITH THE PERSON AT THE TIME OF THE ARREST OR INVESTIGATION. THE  
 35 FOLLOWING FACTORS MAY BE CONSIDERED IN DETERMINING WHETHER THE RELATIONSHIP  
 36 BETWEEN THE VICTIM AND THE DEFENDANT IS CURRENTLY A ROMANTIC OR SEXUAL  
 37 RELATIONSHIP:

- 38 (a) THE TYPE OF RELATIONSHIP.
- 39 (b) THE LENGTH OF THE RELATIONSHIP.
- 40 (c) THE FREQUENCY OF THE INTERACTION BETWEEN THE VICTIM AND THE  
 41 DEFENDANT.
- 42 (d) IF THE RELATIONSHIP HAS TERMINATED, THE LENGTH OF TIME SINCE THE  
 43 TERMINATION.

1 D. FOR THE PURPOSES OF THIS SECTION:

2 1. "CUSTODY" INCLUDES THE IMPOSITION OF ACTUAL OR CONSTRUCTIVE  
3 RESTRAINT PURSUANT TO AN ON-SITE ARREST, A COURT ORDER OR ANY CONTACT IN  
4 WHICH A REASONABLE PERSON WOULD NOT FEEL FREE TO LEAVE. CUSTODY DOES NOT  
5 INCLUDE DETENTION IN A CORRECTIONAL FACILITY, A JUVENILE DETENTION FACILITY  
6 OR A STATE HOSPITAL.

7 2. "PEACE OFFICER" HAS THE SAME MEANING PRESCRIBED IN SECTION 1-215  
8 BUT DOES NOT INCLUDE ADULT OR JUVENILE CORRECTIONS OR DETENTION OFFICERS.