

State of Arizona
Senate
Forty-third Legislature
Second Regular Session
1998

SENATE BILL 1278

AN ACT

AMENDING SECTION 8-230, ARIZONA REVISED STATUTES; AMENDING SECTION 8-303, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1997, CHAPTER 220, SECTION 50; AMENDING SECTIONS 13-604, 13-902, 13-1101, 13-2006, 13-2813, 13-2916, 13-3601, 13-3620, 13-3707, 13-3915, 13-3918, 13-4062, 13-4514, 28-4301, 28-4412, 31-412, 36-2281, 41-1604.11, 41-1604.13, 44-1261 AND 44-1266, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-609; AMENDING TITLE 13, CHAPTER 18, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1813; AMENDING TITLE 13, CHAPTER 30, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3018; AMENDING TITLE 13, CHAPTER 36, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3625; AMENDING TITLE 28, CHAPTER 10, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-4502; AMENDING SECTION 41-1750, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1997, CHAPTER 58, SECTION 26, CHAPTER 136, SECTION 41 AND CHAPTER 220, SECTION 88; REPEALING SECTION 13-3111, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1997, CHAPTER 222, SECTION 63; REPEALING SECTION 41-1750, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1997, CHAPTER 220, SECTION 89 AND CHAPTER 222, SECTION 73; AMENDING TITLE 44, CHAPTER 9, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1267; PROVIDING FOR CONDITIONAL ENACTMENT; RELATING TO THE CRIMINAL CODE.

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

2 Section 1. Section 8-230, Arizona Revised Statutes, is amended to
3 read:

4 8-230. Referrals; diversions; conditions; community based
5 alternative programs; definition

6 A. Except as provided in subsection B of this section, before a
7 petition is filed or an admission or adjudication hearing is held, the county

1 attorney may divert the prosecution of a juvenile who is accused of
2 committing a delinquent act or a child who is accused of committing an
3 incorrigible act to a community based alternative program or to a diversion
4 program administered by the juvenile court.

5 B. A juvenile who is a chronic felony offender as defined in section
6 13-501, who is a violent felony offender or who is alleged to have committed
7 a violation of section 28-1381 or 28-1383 is not eligible for diversion.

8 C. The county attorney has sole discretion to decide whether to divert
9 prosecution of a juvenile offender. The county attorney may designate the
10 offenses that shall be retained by the juvenile court for diversion or that
11 shall be referred directly to a community based alternative program.

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

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

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

27 1. Participation in unpaid community service work.

28 2. Participation in a counseling program approved by the court, which
29 is designed to strengthen family relationships and to prevent repetitive
30 juvenile delinquency.

31 3. Participation in an education program approved by the court, which
32 has as its goal the prevention of further delinquent behavior.

33 4. Participation in an education program approved by the court, which
34 is designed to deal with ancillary problems experienced by the juvenile, such
35 as alcohol or drug abuse.

36 5. Participation in a nonresidential program of rehabilitation or
37 supervision offered by the court, or offered by a community youth serving
38 agency and approved by the court.

39 6. Payment of restitution to the victim of the delinquent act.

40 7. Payment of a monetary assessment.

41 G. If the juvenile successfully complies with the conditions set forth
42 by the probation officer, the county attorney shall not file a petition in
43 juvenile court and the program's resolution shall not be used against the
44 juvenile in any further proceeding and is not an adjudication of

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

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

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

11 1. The juvenile's participation is voluntary.

12 2. The victim's participation is voluntary.

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

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

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

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

23 K. The participants shall determine consequences within thirty days
24 after referral to the community based alternative program, and the juvenile
25 shall complete the consequences within ninety days after the matter is
26 referred to the community based alternative program. The county attorney or
27 the juvenile probation officer may extend the time in which to complete the
28 consequences for good cause. IF THE COMMUNITY BASED ALTERNATIVE PROGRAM
29 INVOLVES A SCHOOL, THE DEADLINES FOR DETERMINATION AND COMPLETION OF
30 CONSEQUENCES SHALL BE THIRTY AND NINETY SCHOOL DAYS RESPECTIVELY.

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

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

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

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

14 O. The supreme court shall annually establish an average cost per
15 juvenile for providing diversion services in each county, based upon the
16 monies appropriated for diversion pursuant to section 8-230.01, excluding the
17 cost of juvenile intake services provided by the juvenile court, and the
18 number of juveniles diverted the previous year. Upon the county attorney's
19 certification to the supreme court of the number of juveniles diverted to a
20 county attorney community based alternative program each quarter, the annual
21 average cost per juvenile for each juvenile diverted shall be reimbursed to
22 the county attorney diversion fund established by section 11-537 out of
23 monies appropriated to the supreme court for diversion programs.

24 P. If the juvenile does not acknowledge responsibility for the
25 offense, or fails to comply with the consequences set by the community based
26 alternative program, the case shall be submitted to the county attorney for
27 review.

28 Q. After reviewing a referral, if the county attorney declines
29 prosecution, the county attorney may return the case to the juvenile
30 probation department for further action as provided in subsection F of this
31 section.

32 R. For the purposes of this section, "violent" means an offense
33 involving the discharge, use or threatening exhibition of a deadly weapon or
34 dangerous instrument or the intentional or knowing infliction of serious
35 physical injury on another person and includes an offense listed in section
36 13-501.

37 Sec. 2. Section 8-303, Arizona Revised Statutes, as amended by Laws
38 1997, chapter 220, section 50, is amended to read:

39 8-303. Taking into temporary custody; interference; release;
40 separate custody; violation; classification

41 A. Except as provided in section 8-305, a juvenile taken into
42 temporary custody shall not be detained in a police station, jail or lockup
43 where adults charged with or convicted of a crime are detained.

44 B. A child shall be taken into temporary custody:

- 1. Pursuant to an order of the juvenile court.
- 2. Pursuant to a warrant issued according to the laws of arrest.
- C. A juvenile may be taken into temporary custody:

1. By a peace officer pursuant to the laws of arrest, without a warrant, if there are reasonable grounds to believe that the juvenile has committed a delinquent act or the child is incorrigible.

2. By a peace officer if there are reasonable grounds to believe that the child has run away from the child's parents, guardian or other custodian.

- 3. By a private person as provided by section 13-3884.

D. A peace officer shall take a juvenile into temporary custody pursuant to the laws of arrest, with or without a warrant, when there are reasonable grounds to believe that either:

1. The juvenile has committed a criminal act or a delinquent act which if committed by an adult could be a felony or breach of the peace.

2. The juvenile has been apprehended in commission of a criminal ACT or A delinquent act, WHICH IF COMMITTED BY AN ADULT WOULD BE A FELONY, or in fresh pursuit.

E. A juvenile who is taken into temporary custody pursuant to subsection D of this section may be released from temporary custody only to the parents, guardian or custodian of the juvenile or to the juvenile court.

F. A person who knowingly interferes with the taking of a juvenile into temporary custody under the provisions of this section is guilty of a class 2 misdemeanor.

Sec. 3. Section 13-604, Arizona Revised Statutes, is amended to read:
 13-604. Dangerous and repetitive offenders; definitions

A. Except as provided in subsection F, G or H of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 4, 5 or 6 felony, whether a completed or preparatory offense, and who has a historical prior felony conviction shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	3 years	4.5 years	6 years
Class 5	1.5 years	2.25 years	3 years
Class 6	1 year	1.75 years	2.25 years

1 B. Except as provided in subsection I, J or K of this section or
 2 section 13-604.01, a person who is at least eighteen years of age or who has
 3 been tried as an adult and who stands convicted of a class 2 or 3 felony,
 4 whether a completed or preparatory offense, and who has a historical prior
 5 felony conviction shall be sentenced to imprisonment as prescribed in this
 6 subsection and shall not be eligible for suspension of sentence, probation,
 7 pardon or release from confinement on any basis except as specifically
 8 authorized by section 31-233, subsection A or B until the sentence imposed
 9 by the court has been served, the person is eligible for release pursuant to
 10 section 41-1604.07 or the sentence is commuted. The presumptive term may be
 11 mitigated or aggravated within the range prescribed under this subsection
 12 pursuant to the terms of section 13-702, subsections B, C and D. The terms
 13 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years

17 C. Except as provided in subsection F, G, H or S of this section or
 18 section 13-604.01, a person who is at least eighteen years of age or who has
 19 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,
 20 whether a completed or preparatory offense, and who has two or more
 21 historical prior felony convictions shall be sentenced to imprisonment as
 22 prescribed in this subsection and shall not be eligible for suspension of
 23 sentence, probation, pardon or release from confinement on any basis except
 24 as specifically authorized by section 31-233, subsection A or B until the
 25 sentence imposed by the court has been served, the person is eligible for
 26 release pursuant to section 41-1604.07 or the sentence is commuted. The
 27 presumptive term may be mitigated or aggravated within the range prescribed
 28 under this subsection pursuant to the terms of section 13-702, subsections
 29 B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	8 years	10 years	12 years
Class 5	4 years	5 years	6 years
Class 6	3 years	3.75 years	4.5 years

34 D. Except as provided in subsection I, J, K or S of this section or
 35 section 13-604.01, a person who is at least eighteen years of age or who has
 36 been tried as an adult and who stands convicted of a class 2 or 3 felony, and
 37 who has two or more historical prior felony convictions, shall be sentenced
 38 to imprisonment as prescribed in this subsection and shall not be eligible
 39 for suspension of sentence, probation, pardon or release from confinement on
 40 any basis except as specifically authorized by section 31-233, subsection A
 41 or B until the sentence imposed by the court has been served, the person is
 42 eligible for release pursuant to section 41-1604.07 or the sentence is
 43 commuted. The presumptive term may be mitigated or aggravated within the

1 range prescribed under this subsection pursuant to the terms of section
2 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

6 E. A person who is at least eighteen years of age or who has been
7 tried as an adult and who stands convicted of any misdemeanor or petty
8 offense, other than a traffic offense, and WHO has been convicted of one or
9 more of the same misdemeanors or petty offenses within two years next
10 preceding the date of the present offense shall be sentenced for the next
11 higher class of offense than that for which such person currently stands
12 convicted.

13 F. Except as provided in section 13-604.01, a person who is at least
14 eighteen years of age or who has been tried as an adult and who stands
15 convicted of a class 4, 5 or 6 felony involving the intentional or knowing
16 infliction of serious physical injury or the discharge, use or threatening
17 exhibition of a deadly weapon or dangerous instrument without having
18 previously been convicted of any felony shall be sentenced to imprisonment
19 as prescribed in this subsection and shall not be eligible for suspension of
20 sentence, probation, pardon or release from confinement on any basis except
21 as specifically authorized by section 31-233, subsection A or B until the
22 sentence imposed by the court has been served, the person is eligible for
23 release pursuant to section 41-1604.07 or the sentence is commuted. The
24 presumptive term may be mitigated or aggravated within the range prescribed
25 under this subsection pursuant to the terms of section 13-702, subsections
26 B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	4 years	6 years	8 years
Class 5	2 years	3 years	4 years
Class 6	1.5 years	2.25 years	3 years

31 G. Except as provided in section 13-604.01, upon conviction of a class
32 4, 5 or 6 felony involving the intentional or knowing infliction of serious
33 physical injury or the discharge, use or threatening exhibition of a deadly
34 weapon or dangerous instrument a person who has a historical prior felony
35 conviction involving the intentional or knowing infliction of serious
36 physical injury or the use or exhibition of a deadly weapon or dangerous
37 instrument shall be sentenced to imprisonment as prescribed in this
38 subsection and shall not be eligible for suspension of sentence, probation,
39 pardon or release from confinement on any basis except as specifically
40 authorized by section 31-233, subsection A or B until the sentence imposed
41 by the court has been served, the person is eligible for release pursuant to
42 section 41-1604.07 or the sentence is commuted. The presumptive term may be
43 mitigated or aggravated within the range prescribed under this subsection

1 pursuant to the terms of section 13-702, subsections B, C and D. The terms
2 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
3 Class 4	8 years	10 years	12 years
4 Class 5	4 years	5 years	6 years
5 Class 6	3 years	3.75 years	4.5 years

6 H. Except as provided in subsection S of this section or section
7 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the
8 intentional or knowing infliction of serious physical injury or the
9 discharge, use or threatening exhibition of a deadly weapon or dangerous
10 instrument a person who has two or more historical prior felony convictions
11 involving the intentional or knowing infliction of serious physical injury
12 or the use or exhibition of a deadly weapon or dangerous instrument shall be
13 sentenced to imprisonment as prescribed in this subsection and shall not be
14 eligible for suspension of sentence, probation, pardon or release from
15 confinement on any basis except as specifically authorized by section 31-233,
16 subsection A or B until the sentence imposed by the court has been served,
17 the person is eligible for release pursuant to section 41-1604.07 or the
18 sentence is commuted. The presumptive term may be mitigated or aggravated
19 within the range prescribed under this subsection pursuant to the terms of
20 section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
22 Class 4	12 years	14 years	16 years
23 Class 5	6 years	7 years	8 years
24 Class 6	4.5 years	5.25 years	6 years

25 I. Except as provided in section 13-604.01, upon a first conviction
26 of a class 2 or 3 felony involving discharge, use or threatening exhibition
27 of a deadly weapon or dangerous instrument or upon conviction of a class 2
28 or 3 felony when the intentional or knowing infliction of serious physical
29 injury upon another has occurred, the defendant shall be sentenced to
30 imprisonment as prescribed in this subsection and shall not be eligible for
31 suspension of sentence, probation, pardon or release from confinement on any
32 basis except as specifically authorized by section 31-233, subsection A or
33 B until the sentence imposed by the court has been served, the person is
34 eligible for release pursuant to section 41-1604.07 or the sentence is
35 commuted. The presumptive term may be mitigated or aggravated within the
36 range prescribed under this subsection pursuant to the terms of section
37 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
39 Class 2	7 years	10.5 years	21 years
40 Class 3	5 years	7.5 years	15 years

41 J. Except as provided in section 13-604.01, upon conviction of a class
42 2 or 3 felony involving the discharge, use or threatening exhibition of a
43 deadly weapon or dangerous instrument or the intentional or knowing
44

1 infliction of serious physical injury upon another, a person who has a
2 historical prior felony conviction that is a class 1, 2 or 3 felony involving
3 the use or exhibition of a deadly weapon or dangerous instrument or the
4 intentional or knowing infliction of serious physical injury on another shall
5 be sentenced to imprisonment as prescribed in this subsection and shall not
6 be eligible for suspension of sentence, probation, pardon or release from
7 confinement on any basis except as specifically authorized by section 31-233,
8 subsection A or B until the sentence imposed by the court has been served,
9 the person is eligible for release pursuant to section 41-1604.07 or the
10 sentence is commuted. The presumptive term may be mitigated or aggravated
11 within the range prescribed under this subsection pursuant to the terms of
12 section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

16 K. Except as provided in subsection S of this section or section
17 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge,
18 use or threatening exhibition of a deadly weapon or dangerous instrument or
19 the intentional or knowing infliction of serious physical injury upon
20 another, a person who has two or more historical prior felony convictions
21 that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly
22 weapon or dangerous instrument or the intentional or knowing infliction of
23 serious physical injury on another shall be sentenced to imprisonment as
24 prescribed in this subsection and shall not be eligible for suspension of
25 sentence, probation, pardon or release from confinement on any basis except
26 as specifically authorized by section 31-233, subsection A or B until the
27 sentence imposed by the court has been served, the person is eligible for
28 release pursuant to section 41-1604.07 or the sentence is commuted. The
29 presumptive term may be mitigated or aggravated within the range prescribed
30 under this subsection pursuant to the terms of section 13-702, subsections
31 B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	21 years	28 years	35 years
Class 3	15 years	20 years	25 years

35 L. For the purposes of subsections I, J and K of this section in
36 determining the applicability of the penalties provided in this section for
37 second or subsequent class 2 or 3 felonies, the conviction for any felony
38 committed prior to October 1, 1978 which, if committed after October 1, 1978,
39 could be a dangerous felony under this section may be designated by the state
40 as a prior felony.

41 M. Convictions for two or more offenses committed on the same occasion
42 shall be counted as only one conviction for purposes of this section.

43 N. A person who has been convicted in any court outside the
44 jurisdiction of this state of an offense which if committed within this state

1 would be punishable as a felony or misdemeanor is subject to the provisions
2 of this section. A person who has been convicted as an adult of an offense
3 punishable as a felony or a misdemeanor under the provisions of any prior
4 code in this state shall be subject to the provisions of this section.

5 O. Time spent incarcerated within the two years next preceding the
6 date of the offense for which a person is currently being sentenced under
7 subsection E of this section shall not be included in the two years required
8 to be free of convictions for purposes of that subsection.

9 P. The penalties prescribed by this section shall be substituted for
10 the penalties otherwise authorized by law if the previous conviction or the
11 allegation that the defendant committed a felony while released on bond or
12 on the defendant's own recognizance OR WHILE ESCAPED FROM PRECONVICTION
13 CUSTODY as provided in subsection R of this section is charged in the
14 indictment or information and admitted or found by the court or if the
15 dangerous nature of the felony is charged in the indictment or information
16 and admitted or found by the trier of fact. The release provisions
17 prescribed by this section shall not be substituted for any penalties
18 required by the substantive offense or provision of law that specifies a
19 later release or completion of the sentence imposed prior to release. The
20 court shall allow the allegation of a prior conviction, the dangerous nature
21 of the felony or the allegation that the defendant committed a felony while
22 released on bond or on the defendant's own recognizance OR WHILE ESCAPED FROM
23 PRECONVICTION CUSTODY at any time prior to the date the case is actually
24 tried unless the allegation is filed fewer than twenty days before the case
25 is actually tried and the court finds on the record that the defendant was
26 in fact prejudiced by the untimely filing and states the reasons for these
27 findings, provided that when the allegation of a prior conviction is filed,
28 the state must make available to the defendant a copy of any material or
29 information obtained concerning the prior conviction. The charge of previous
30 conviction or the allegation that the defendant committed a felony while
31 released on bond or on the defendant's own recognizance OR WHILE ESCAPED FROM
32 PRECONVICTION CUSTODY shall not be read to the jury. For the purposes of
33 this subsection, "dangerous nature of the felony" means a felony involving
34 the discharge, use or threatening exhibition of a deadly weapon or dangerous
35 instrument or the intentional or knowing infliction of serious physical
36 injury upon another.

37 Q. Intentional failure by the court to impose the mandatory sentences
38 or probation conditions provided in this title shall be deemed to be
39 malfeasance.

40 R. A person convicted of committing any felony offense, which felony
41 offense is committed while the person is released on bail or on the
42 defendant's own recognizance on a separate felony offense OR WHILE THE PERSON
43 IS ESCAPED FROM PRECONVICTION CUSTODY FOR A SEPARATE FELONY OFFENSE, shall

1 be sentenced to a term of imprisonment two years longer than would otherwise
2 be imposed for the felony offense committed while released on bond or on the
3 defendant's own recognizance OR WHILE ESCAPED FROM PRECONVICTION CUSTODY.
4 The additional sentence imposed under this subsection is in addition to any
5 enhanced punishment that may be applicable under any of the other subsections
6 of this section. The defendant is not eligible for suspension of sentence,
7 probation, pardon or release from confinement on any basis except as
8 specifically authorized by section 31-233, subsection A or B until the two
9 years are served, the person is eligible for release pursuant to section
10 41-1604.07 or the sentence is commuted.

11 S. A person who is at least eighteen years of age or who has been
12 tried as an adult and who stands convicted of a serious offense except a drug
13 offense, first degree murder or any dangerous crime against children, whether
14 a completed or preparatory offense, and who has previously been convicted of
15 two or more serious offenses not committed on the same occasion 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 less than twenty-five years or the sentence is
20 commuted.

21 T. A person convicted of committing any felony offense with the intent
22 to promote, further or assist any criminal conduct by a criminal street gang
23 shall not be eligible for suspension of sentence, probation, pardon or
24 release from confinement on any basis except as authorized by section 31-233,
25 subsection A or B until the sentence imposed by the court has been served,
26 the person is eligible for release pursuant to section 41-1604.07 or the
27 sentence is commuted. The presumptive, minimum and maximum sentence for the
28 offense shall be increased by three years. The additional sentence imposed
29 pursuant to this subsection is in addition to any enhanced sentence that may
30 be applicable.

31 U. As used in this section:

32 1. "Historical prior felony conviction" means:

33 (a) Any prior felony conviction for which the offense of conviction:

34 (i) Mandated a term of imprisonment except for a violation of chapter
35 34 of this title involving a drug below the threshold amount; or

36 (ii) Involved the intentional or knowing infliction of serious physical
37 injury; or

38 (iii) Involved the use or exhibition of a deadly weapon or dangerous
39 instrument; or

40 (iv) Involved the illegal control of a criminal enterprise; or

41 (v) Involved aggravated driving under the influence of intoxicating
42 liquor or drugs, ~~or~~ driving while under the influence of intoxicating liquor
43 or drugs with a suspended, canceled, revoked or refused driver license or

1 driving under the influence of intoxicating liquor or drugs with two or more
2 driving under the influence of intoxicating liquor or drug convictions within
3 a period of sixty months; or

4 (vi) Involved any dangerous crime against children as defined in
5 section 13-604.01.

6 (b) Any class 2 or 3 felony, except the offenses listed in subdivision
7 (a) of this paragraph, that was committed within the ten years immediately
8 preceding the date of the present offense. Any time spent incarcerated is
9 excluded in calculating if the offense was committed within the preceding ten
10 years.

11 (c) Any class 4, 5 or 6 felony, except the offenses listed in
12 subdivision (a) of this paragraph, that was committed within the five years
13 immediately preceding the date of the present offense. Any time spent
14 incarcerated is excluded in calculating if the offense was committed within
15 the preceding five years.

16 (d) Any felony conviction that is a third or more prior felony
17 conviction.

18 2. "PRECONVICTION CUSTODY" MEANS THE CONFINEMENT OF A PERSON IN A JAIL
19 IN THIS STATE OR ANOTHER STATE AFTER THE PERSON IS ARRESTED FOR OR CHARGED
20 WITH A FELONY OFFENSE.

21 ~~2-~~ 3. "Serious offense" means any of the following offenses if
22 committed in this state or any offense committed outside this state which if
23 committed in this state would constitute one of the following offenses:

24 (a) First degree murder.

25 (b) Second degree murder.

26 (c) Manslaughter.

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

30 (e) Sexual assault.

31 (f) Any dangerous crime against children.

32 (g) Arson of an occupied structure.

33 (h) Armed robbery.

34 (i) Burglary in the first degree.

35 (j) Kidnapping.

36 (k) Sexual conduct with a minor under fifteen years of age.

37 ~~3-~~ 4. "Substantive offense" means the felony, misdemeanor or petty
38 offense that the trier of fact found beyond a reasonable doubt the defendant
39 committed. Substantive offense does not include allegations that, if proven,
40 would enhance the sentence of imprisonment or fine to which the defendant
41 ~~would~~ otherwise ~~WOULD~~ be ~~exposed~~ SUBJECT.

42 Sec. 4. Title 13, chapter 6, Arizona Revised Statutes, is amended by
43 adding section 13-609, to read:

1 13-609. Offenses committed in school safety zone; sentences;
2 definitions

3 A. EXCEPT AS OTHERWISE PRESCRIBED IN SECTION 13-3411, A PERSON WHO IS
4 CONVICTED OF A FELONY OFFENSE THAT IS COMMITTED IN A SCHOOL SAFETY ZONE IS
5 GUILTY OF THE SAME CLASS OF FELONY THAT THE PERSON WOULD OTHERWISE BE GUILTY
6 OF IF THE VIOLATION HAD NOT OCCURRED WITHIN A SCHOOL SAFETY ZONE, EXCEPT THAT
7 THE COURT MAY IMPOSE A SENTENCE THAT IS ONE YEAR LONGER THAN THE MINIMUM,
8 MAXIMUM AND PRESUMPTIVE SENTENCE FOR THAT VIOLATION. THE ADDITIONAL SENTENCE
9 IMPOSED UNDER THIS SUBSECTION IS IN ADDITION TO ANY OTHER ENHANCED PUNISHMENT
10 THAT MAY BE APPLICABLE UNDER SECTION 13-604 OR OTHER PROVISIONS OF CHAPTER
11 34 OF THIS TITLE.

12 B. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY THIS TITLE, THE
13 COURT MAY ORDER A PERSON SUBJECT TO THE PROVISIONS OF SUBSECTION A OF THIS
14 SECTION TO PAY A FINE OF NOT LESS THAN TWO THOUSAND DOLLARS AND NOT MORE THAN
15 THE MAXIMUM AUTHORIZED BY CHAPTER 8 OF THIS TITLE.

16 C. EACH SCHOOL DISTRICT GOVERNING BOARD OR ITS DESIGNEE, OR CHIEF
17 ADMINISTRATIVE OFFICER IN THE CASE OF A NONPUBLIC OR CHARTER SCHOOL, MAY
18 PLACE AND MAINTAIN PERMANENTLY AFFIXED SIGNS THAT ARE LOCATED IN A VISIBLE
19 MANNER AT THE MAIN ENTRANCE OF EACH SCHOOL AND THAT IDENTIFY THE SCHOOL AND
20 ITS ACCOMPANYING GROUNDS AS A SCHOOL SAFETY ZONE. A SCHOOL MAY INCLUDE
21 INFORMATION REGARDING THE SCHOOL SAFETY ZONE BOUNDARIES ON A SIGN THAT
22 IDENTIFIES THE AREA AS A DRUG FREE ZONE AND NOT POST SEPARATE SCHOOL SAFETY
23 ZONE SIGNS.

24 D. FOR PURPOSES OF THIS SECTION:

25 1. "SCHOOL" MEANS ANY PUBLIC OR NONPUBLIC KINDERGARTEN PROGRAM, COMMON
26 SCHOOL OR HIGH SCHOOL.

27 2. "SCHOOL SAFETY ZONE" MEANS ANY OF THE FOLLOWING:

28 (a) THE AREA WITHIN THREE HUNDRED FEET OF A SCHOOL OR ITS ACCOMPANYING
29 GROUNDS.

30 (b) ANY PUBLIC PROPERTY WITHIN ONE THOUSAND FEET OF A SCHOOL OR ITS
31 ACCOMPANYING GROUNDS.

32 (c) ANY SCHOOL BUS.

33 (d) A BUS CONTRACTED TO TRANSPORT PUPILS TO ANY SCHOOL DURING THE TIME
34 WHEN THE CONTRACTED VEHICLE IS TRANSPORTING PUPILS ON BEHALF OF THE SCHOOL.

35 (e) A SCHOOL BUS STOP.

36 (f) ANY BUS STOP WHERE SCHOOL CHILDREN ARE AWAITING, BOARDING OR
37 EXITING A BUS CONTRACTED TO TRANSPORT PUPILS TO ANY SCHOOL.

38 Sec. 5. Section 13-902, Arizona Revised Statutes, is amended to read:

39 13-902. Periods of probation

40 A. Unless terminated sooner, probation may continue for the following
41 periods:

- 42 1. For a class 2 felony, seven years.
43 2. For a class 3 felony, five years.

- 1 3. For a class 4 felony, four years.
- 2 4. For a class 5 or 6 felony, three years.
- 3 5. For a class 1 misdemeanor, three years.
- 4 6. For a class 2 misdemeanor, two years.
- 5 7. For a class 3 misdemeanor, one year.

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

- 8 1. For a violation of section 28-1381, five years.
- 9 2. For a violation of section 28-1383, ten years.

10 C. When the court has required, as a condition of probation, that the
11 defendant make restitution for any economic loss related to the defendant's
12 offense and that condition has not been satisfied, the court at any time
13 prior to the termination or expiration of probation may extend the period
14 within the following limits:

- 15 1. For a felony, not more than three years.
- 16 2. For a misdemeanor, not more than one year.

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

20 E. After conviction of a felony offense or an attempt to commit any
21 offense that is included in chapter 14 or 35.1 of this title or section
22 [13-2923 OR 13-3623](#), if probation is available, probation may continue for a
23 term not less than the term that is specified in subsection A of this section
24 up to and including life and that the court believes is appropriate for the
25 ends of justice.

26 Sec. 6. Section 13-1101, Arizona Revised Statutes, is amended to read:
27 [13-1101. Definitions](#)

28 In this chapter, unless the context otherwise requires:

29 1. "Premeditation" means that the defendant acts with either the
30 intention or the knowledge that he will kill another human being, when such
31 intention or knowledge precedes the killing by ~~a~~ ANY length of time to
32 permit reflection. [PROOF OF ACTUAL REFLECTION IS NOT REQUIRED, BUT](#) an act
33 is not done with premeditation if it is the instant effect of a sudden
34 quarrel or heat of passion.

35 2. "Homicide" means first degree murder, second degree murder,
36 manslaughter or negligent homicide.

37 3. "Person" means a human being.

38 4. "Adequate provocation" means conduct or circumstances sufficient
39 to deprive a reasonable person of self-control.

40 Sec. 7. Title 13, chapter 18, Arizona Revised Statutes, is amended by
41 adding section 13-1813, to read:

42 [13-1813. Unlawful failure to return a motor vehicle subject to](#)
43 [a security interest; notice; classification](#)

1 A. A PERSON COMMITS UNLAWFUL FAILURE TO RETURN A MOTOR VEHICLE SUBJECT
2 TO A SECURITY INTEREST IF ALL OF THE FOLLOWING APPLY:

3 1. THE PERSON FAILS TO MAKE A PAYMENT ON THE LIEN FOR MORE THAN NINETY
4 DAYS.

5 2. THE SECURED CREDITOR NOTIFIES THE OWNER IN WRITING, BY CERTIFIED
6 MAIL RETURN RECEIPT REQUESTED, THAT THE OWNER IS NINETY DAYS LATE IN MAKING
7 A PAYMENT AND IS IN DEFAULT. THE NOTICE SHALL INCLUDE THE FOLLOWING:

8 (a) A STATEMENT STATING:

9 "YOU ARE NOW IN DEFAULT ON LOAN AGREEMENT #_____. IF
10 YOU FAIL TO RETURN THE _____ (YEAR OF VEHICLE,
11 MAKE, MODEL) WITHIN THIRTY DAYS YOU WILL BE SUBJECT TO CRIMINAL
12 PROSECUTION."

13 (b) THE BUSINESS ADDRESS AND HOURS OF OPERATION FOR RETURN OF THE
14 VEHICLE.

15 (c) THE MAXIMUM PENALTIES FOR UNLAWFUL FAILURE TO RETURN A MOTOR
16 VEHICLE SUBJECT TO A SECURITY INTEREST.

17 3. THE OWNER FAILS TO CURE THE DEFAULT WITHIN THIRTY DAYS.

18 4. WITH THE INTENT TO HINDER OR PREVENT THE ENFORCEMENT OF THE SECURED
19 CREDITOR'S SECURITY INTEREST, THE OWNER KNOWINGLY FAILS TO DO EITHER OF THE
20 FOLLOWING:

21 (a) RETURN THE MOTOR VEHICLE TO THE SECURED CREDITOR.

22 (b) ALLOW THE SECURED CREDITOR TO TAKE POSSESSION OF THE MOTOR
23 VEHICLE.

24 B. THE ORIGINAL CONTRACT CREATING THE SECURITY INTEREST IN THE MOTOR
25 VEHICLE SHALL CONTAIN THE FOLLOWING INFORMATION:

26 1. A STATEMENT THAT IT IS UNLAWFUL TO FAIL TO RETURN A MOTOR VEHICLE
27 SUBJECT TO A SECURITY INTEREST WITHIN THIRTY DAYS AFTER RECEIVING NOTICE OF
28 DEFAULT.

29 2. A STATEMENT THAT NOTICE OF DEFAULT WILL BE MAILED TO THE ADDRESS
30 ON THE LOAN AGREEMENT AND THAT IT IS THE RESPONSIBILITY OF THE OWNER TO KEEP
31 THE LISTED ADDRESS CURRENT.

32 3. THE MAXIMUM PENALTY FOR UNLAWFUL FAILURE TO RETURN A MOTOR VEHICLE
33 SUBJECT TO A SECURITY INTEREST.

34 C. IT IS A DEFENSE TO PROSECUTION UNDER THIS SECTION THAT:

35 1. THE OWNER WAS PHYSICALLY INCAPACITATED AND UNABLE TO REQUEST OR
36 OBTAIN PERMISSION OF THE SECURED CREDITOR TO RETAIN THE MOTOR VEHICLE.

37 2. THE MOTOR VEHICLE ITSELF WAS IN A CONDITION, THROUGH NO INTENTIONAL
38 FAULT OF THE DEFENDANT, THAT IT COULD NOT BE RETURNED TO THE SECURED CREDITOR
39 WITHIN THE SPECIFIED TIME.

40 3. THE OWNER HAS A SECURITY INTEREST PURSUANT TO SECTION 47-2711,
41 SUBSECTION C.

1 D. IF A LAW ENFORCEMENT AGENCY SEIZES THE VEHICLE, THE SECURED
2 CREDITOR SHALL BE RESPONSIBLE FOR ALL TOWING, STORAGE AND RELATED FEES OR
3 CHARGES.

4 E. A VEHICLE THAT IS NOT RETURNED PURSUANT TO THIS SECTION IS A STOLEN
5 VEHICLE FOR PURPOSES OF SECTION 28-4845.

6 F. UNLAWFUL FAILURE TO RETURN A MOTOR VEHICLE SUBJECT TO A PROPERTY
7 INTEREST IS A CLASS 6 FELONY.

8 Sec. 8. Section 13-2006, Arizona Revised Statutes, is amended to read:
9 13-2006. Criminal impersonation; classification

10 A. A person commits criminal impersonation by:

11 1. Assuming a false identity with the intent to defraud another; or

12 2. Pretending to be a representative of some person or organization
13 with the intent to defraud; or

14 3. Pretending to be, or assuming a false identity of, an employee or
15 a representative of some person or organization with the intent to induce
16 another person to provide or allow access to property. **THIS PARAGRAPH DOES
17 NOT APPLY TO PEACE OFFICERS IN THE PERFORMANCE OF THEIR DUTIES.**

18 B. Criminal impersonation is a class 6 felony.

19 Sec. 9. Section 13-2813, Arizona Revised Statutes, is amended to read:
20 13-2813. Unlawful disclosure of an indictment, information or

21 complaint; classification

22 A. A person commits unlawful disclosure of an indictment, information
23 or complaint if, except in the proper discharge of his official duties or as
24 authorized by the court, such person knowingly discloses the fact that an
25 indictment, information or complaint has been found or filed before the
26 accused person is in custody or has been served with a summons.

27 **B. THIS SECTION DOES NOT APPLY TO OFFENSES THAT ARE CREATED BY CITY
28 OR COUNTY ORDINANCE.**

29 ~~B.~~ C. Unlawful disclosure of an indictment, information or complaint
30 is a class 1 misdemeanor.

31 Sec. 10. Section 13-2916, Arizona Revised Statutes, is amended to
32 read:

33 13-2916. Use of telephone to terrify, intimidate, threaten,
34 harass, annoy or offend; classification

35 A. It ~~shall be~~ **IS** unlawful for any person, with intent to terrify,
36 intimidate, threaten, harass, annoy or offend, to use a telephone and use any
37 obscene, lewd or profane language or suggest any lewd or lascivious act, or
38 threaten to inflict ~~injury or~~ physical harm to the person or property of any
39 person. It ~~shall~~ **IS** also ~~be~~ unlawful to ~~extort money or other thing of value~~
40 ~~from any person, or to~~ otherwise disturb by repeated anonymous telephone
41 calls the peace, quiet or right of privacy of any person at the place where
42 the telephone call or calls were received.

1 ~~B. The use of obscene, lewd or profane language or the making of a~~
2 ~~threat or statement as set forth in this section shall be prima facie~~
3 ~~evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.~~

4 ~~C.~~ B. Any offense committed by use of a telephone as set forth in
5 this section shall be IS deemed to have been committed at either the place
6 where the telephone call or calls originated or at the place where the
7 telephone call or calls were received.

8 ~~D.~~ C. Any person who violates the provisions of this section is
9 guilty of a class 1 misdemeanor.

10 Sec. 11. Title 13, chapter 30, Arizona Revised Statutes, is amended
11 by adding section 13-3018, to read:

12 13-3018. Surreptitious photographing, videotaping, filming or
13 digitally recording; exemptions; violation;
14 classification; definitions

15 A. IT IS UNLAWFUL FOR ANY PERSON TO KNOWINGLY PHOTOGRAPH, VIDEOTAPE,
16 FILM, DIGITALLY RECORD OR BY ANY OTHER MEANS SECRETLY VIEW OR RECORD ANOTHER
17 PERSON WITHOUT THAT PERSON'S CONSENT UNDER BOTH OF THE FOLLOWING
18 CIRCUMSTANCES:

19 1. IN A RESTROOM, BATHROOM, LOCKER ROOM, BEDROOM OR OTHER LOCATION
20 WHERE THE PERSON HAS A REASONABLE EXPECTATION OF PRIVACY.

21 2. WHILE THE PERSON IS URINATING, DEFECATING, DRESSING, UNDESSING,
22 NUDE OR INVOLVED IN SEXUAL INTERCOURSE OR SEXUAL CONTACT.

23 B. IT IS UNLAWFUL TO DISCLOSE, DISPLAY, DISTRIBUTE OR PUBLISH A
24 PHOTOGRAPH, VIDEOTAPE, FILM OR DIGITAL RECORDING MADE IN VIOLATION OF
25 SUBSECTION A OF THIS SECTION WITHOUT THE CONSENT OF THE PERSON DEPICTED.

26 C. THIS SECTION DOES NOT APPLY TO:

27 1. PHOTOGRAPHING, VIDEOTAPING, FILMING OR DIGITALLY RECORDING FOR
28 SECURITY PURPOSES WHERE NOTICE OF THE USE OF PHOTOGRAPHING, VIDEOTAPING,
29 FILMING OR DIGITAL RECORDING EQUIPMENT IS CLEARLY POSTED IN THE LOCATION;

30 2. PHOTOGRAPHING, VIDEOTAPING, FILMING OR DIGITALLY RECORDING BY
31 CORRECTIONAL OFFICIALS FOR SECURITY REASONS OR IN CONNECTION WITH THE
32 INVESTIGATION OF ALLEGED MISCONDUCT OF PERSONS ON THE PREMISES OF A JAIL OR
33 PRISON; OR

34 3. PHOTOGRAPHING, VIDEOTAPING, FILMING OR DIGITALLY RECORDING BY LAW
35 ENFORCEMENT OFFICERS PURSUANT TO AN INVESTIGATION, WHICH IS OTHERWISE LAWFUL.

36 D. VIOLATION OF SUBSECTION A OR B OF THIS SECTION IS A CLASS 5 FELONY.

37 E. FOR PURPOSES OF THIS SECTION "SEXUAL CONTACT" AND "SEXUAL
38 INTERCOURSE" HAVE THE SAME MEANING AS PRESCRIBED IN SECTION 13-1401.

39 Sec. 12. Repeal

40 Section 13-3111, Arizona Revised Statutes, as amended by Laws 1997,
41 chapter 222, section 63, is repealed.

42 Sec. 13. Section 13-3601, Arizona Revised Statutes, is amended to
43 read:

1 13-3601. Domestic violence; definition; classification;
2 sentencing option; arrest and procedure for
3 violation; weapon seizure; notice; report; diversion

4 A. "Domestic violence" means any act which is a dangerous crime
5 against children as defined in section 13-604.01 or an offense defined in
6 section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through
7 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph
8 1, 2, 3, 6 or section 13-2916 or section 13-2921, 13-2923 or 13-3623, **IF ANY**
9 **OF THE FOLLOWING APPLY:**

10 1. ~~The victim;~~ THE RELATIONSHIP BETWEEN THE VICTIM AND THE DEFENDANT
11 IS ONE OF MARRIAGE OR FORMER MARRIAGE OR OF PERSONS OF THE OPPOSITE SEX
12 RESIDING OR HAVING RESIDED IN THE SAME HOUSEHOLD.

13 2. THE VICTIM AND THE DEFENDANT HAVE A CHILD IN COMMON.

14 3. THE VICTIM OR THE DEFENDANT IS PREGNANT BY THE OTHER PARTY.

15 ~~(a) Is the spouse or former spouse of the defendant.~~

16 ~~(b) Is the parent of a child of the defendant.~~

17 ~~(c) Is pregnant by the defendant.~~

18 ~~(d) Resides or resided in the same household and is the opposite sex~~
19 ~~of the defendant.~~

20 ~~2-~~ 4. The victim is related to the defendant or the defendant's
21 spouse by blood as a parent, grandparent, child, grandchild, brother or
22 sister or by marriage as a parent-in-law, grandparent-in-law, step-child,
23 step-grandchild, brother-in-law or sister-in-law.

24 B. A peace officer may, with or without a warrant, arrest a person if
25 the officer has probable cause to believe that domestic violence has been
26 committed and the officer has probable cause to believe that the person to
27 be arrested has committed the offense, whether such offense is a felony or
28 a misdemeanor and whether such offense was committed within or without the
29 presence of the peace officer. In cases of domestic violence involving the
30 infliction of physical injury or involving the discharge, use or threatening
31 exhibition of a deadly weapon or dangerous instrument, the peace officer
32 shall arrest a person, with or without a warrant, if the officer has probable
33 cause to believe that the offense has been committed and the officer has
34 probable cause to believe that the person to be arrested has committed the
35 offense, whether such offense was committed within or without the presence
36 of the peace officer, unless the officer has reasonable grounds to believe
37 that the circumstances at the time are such that the victim will be protected
38 from further injury. Failure to make an arrest does not give rise to civil
39 liability except pursuant to section 12-820.02. In order to arrest both
40 parties, the peace officer shall have probable cause to believe that both
41 parties independently have committed an act of domestic violence. An act of
42 self-defense that is justified under chapter 4 of this title is not deemed
43 to be an act of domestic violence. The release procedures available under

1 section 13-3883, subsection A, paragraph 4 and section 13-3903 are not
2 applicable to arrests made pursuant to this subsection.

3 C. A peace officer may question the persons who are present to
4 determine if a firearm is present on the premises. On learning or observing
5 that a firearm is present on the premises, the peace officer may temporarily
6 seize the firearm if the firearm is in plain view or was found pursuant to
7 a consent to search and if the officer reasonably believes that the firearm
8 would expose the victim or another person in the household to a risk of
9 serious bodily injury or death. A firearm owned or possessed by the victim
10 shall not be seized unless there is probable cause to believe that both
11 parties independently have committed an act of domestic violence.

12 D. If a firearm is seized pursuant to subsection C of this section,
13 the peace officer shall give the owner or possessor of the firearm a receipt
14 for each seized firearm. The receipt shall indicate the identification or
15 serial number or other identifying characteristic of each seized firearm.
16 Each seized firearm shall be held for at least seventy-two hours by the law
17 enforcement agency that seized the firearm.

18 E. If a firearm is seized pursuant to subsection C of this section,
19 the victim shall be notified by a peace officer before the firearm is
20 released from temporary custody.

21 F. If there is reasonable cause to believe that returning a firearm
22 to the owner or possessor may endanger the victim, the person who reported
23 the assault or threat or another person in the household, the prosecutor
24 shall file a notice of intent to retain the firearm in the appropriate
25 superior, justice or municipal court. The prosecutor shall serve notice on
26 the owner or possessor of the firearm by certified mail. The notice shall
27 state that the firearm will be retained for not more than six months
28 following the date of seizure. On receipt of the notice, the owner or
29 possessor may request a hearing for the return of the firearm, to dispute the
30 grounds for seizure or to request an earlier return date. The court shall
31 hold the hearing within ten days after receiving the owner's or possessor's
32 request for a hearing. At the hearing, unless the court determines that the
33 return of the firearm may endanger the victim, the person who reported the
34 assault or threat or another person in the household, the court shall order
35 the return of the firearm to the owner or possessor.

36 G. A peace officer is not liable for any act or omission in the good
37 faith exercise of the officer's duties under subsections C, D, E and F of
38 this section.

39 H. Each indictment, information, complaint, summons or warrant that
40 is issued and that involves domestic violence shall state that the offense
41 involved domestic violence and shall be designated by the letters DV. A
42 domestic violence charge shall not be dismissed or a domestic violence
43 conviction shall not be set aside for failure to comply with this subsection.

1 I. A person arrested pursuant to subsection B of this section may be
2 released from custody in accordance with the Arizona rules of criminal
3 procedure or other applicable statute. Any order for release, with or
4 without an appearance bond, shall include pretrial release conditions
5 necessary to provide for the protection of the alleged victim and other
6 specifically designated persons and may provide for additional conditions
7 which the court deems appropriate, including participation in any counseling
8 programs available to the defendant.

9 J. When a peace officer responds to a call alleging that domestic
10 violence has been or may be committed, the officer shall inform in writing
11 any alleged or potential victim of the procedures and resources available for
12 the protection of such victim including:

13 1. An order of protection pursuant to section 13-3602, an injunction
14 pursuant to section 25-315 and an injunction against harassment pursuant to
15 section 12-1809.

16 2. The emergency telephone number for the local police agency.

17 3. Telephone numbers for emergency services in the local community.

18 K. A peace officer is not civilly liable for noncompliance with
19 subsection J of this section.

20 L. An offense included in domestic violence carries the classification
21 prescribed in the section of this title in which the offense is classified.

22 M. If the defendant is found guilty of an offense included in domestic
23 violence and if probation is otherwise available for such offense, the court
24 may, without entering a judgment of guilt and with the consent of the
25 defendant, defer further proceedings and place the defendant on probation or
26 intensive probation as provided in this subsection. The terms and conditions
27 of probation or intensive probation shall include those necessary to provide
28 for the protection of the alleged victim and other specifically designated
29 persons and additional conditions and requirements which the court deems
30 appropriate, including imposition of a fine, incarceration of the defendant
31 in a county jail, payment of restitution, completion of a domestic violence
32 offender treatment program that is provided by a facility approved by the
33 department of health services or a probation department or any other
34 counseling or diversionary programs that do not involve domestic violence and
35 that are available to the defendant. On violation of a term or condition of
36 probation or intensive probation, the court may enter an adjudication of
37 guilt and proceed as otherwise provided for revocation of probation. On
38 fulfillment of the terms and conditions of probation or intensive probation,
39 the court shall discharge the defendant and dismiss the proceedings against
40 the defendant. This subsection does not apply in any case in which the
41 defendant has previously been found guilty under this section, or in which
42 charges under this section have previously been dismissed in accordance with
43 this subsection.

1 Sec. 14. Section 13-3620, Arizona Revised Statutes, is amended to
2 read:

3 13-3620. Duty and authorization to report nonaccidental
4 injuries, physical neglect and denial or deprivation
5 of necessary medical or surgical care or nourishment
6 of minors; duty to make medical records available;
7 exception; violation; classification

8 A. Any physician, hospital intern or resident, surgeon, dentist,
9 osteopath, chiropractor, podiatrist, county medical examiner, nurse,
10 psychologist, school personnel, social worker, peace officer, parent,
11 counselor, clergyman or priest or any other person having responsibility for
12 the care or treatment of children whose observation or examination of any
13 minor discloses reasonable grounds to believe that a minor is or has been the
14 victim of injury, sexual abuse pursuant to section 13-1404, sexual conduct
15 with a minor pursuant to section 13-1405, sexual assault pursuant to section
16 13-1406, molestation of a child pursuant to section 13-1410, commercial
17 sexual exploitation of a minor pursuant to section 13-3552, sexual
18 exploitation of a minor pursuant to section 13-3553, incest pursuant to
19 section 13-3608 or child prostitution pursuant to section 13-3212, death,
20 abuse pursuant to section 8-201, or physical neglect which appears to have
21 been inflicted ~~upon such~~ ON THAT minor by other than accidental means or
22 which is not explained by the available medical history as being accidental
23 in nature or who has reasonable grounds to believe there has been a denial
24 or deprivation of necessary medical treatment or surgical care or nourishment
25 with the intent to cause or allow the death of an infant LESS THAN ONE YEAR
26 OF AGE protected under section 36-2281 shall immediately report or cause
27 reports to be made of ~~such~~ THIS information to a peace officer or to ~~the~~
28 child protective services ~~of~~ IN the department of economic security. A
29 clergyman or priest who has received a confidential communication or a
30 confession in ~~his~~ THAT PERSON'S role as a clergyman or a priest in the course
31 of the discipline enjoined by the church to which ~~he~~ THE CLERGYMAN OR PRIEST
32 belongs may withhold reporting of the communication or confession if the
33 clergyman or priest determines that it is reasonable and necessary within the
34 concepts of the religion. This exemption applies only to the communication
35 or confession and not to personal observations the clergyman or priest may
36 otherwise make of the minor. ~~No~~ A report is NOT required under this section
37 for conduct prescribed by sections 13-1404 and 13-1405 if the conduct
38 involves only minors age fourteen, fifteen, sixteen or seventeen and there
39 is nothing to indicate that the conduct is other than consensual. ~~Such~~
40 Reports shall be made forthwith by telephone or in person forthwith and shall
41 be followed by a written report within seventy-two hours. ~~Such~~ THE reports
42 shall contain:

1 1. The names and addresses of the minor and ~~his~~ THE MINOR'S parents
2 or person or persons having custody of ~~such~~ THE minor, if known.

3 2. The minor's age and the nature and extent of ~~his~~ THE MINOR'S
4 injuries or physical neglect, including any evidence of previous injuries or
5 physical neglect.

6 3. Any other information that ~~such~~ THE person believes might be
7 helpful in establishing the cause of the injury or physical neglect.

8 B. A HEALTH CARE PROFESSIONAL WHO IS REGULATED PURSUANT TO TITLE 32
9 AND WHOSE ROUTINE NEWBORN PHYSICAL ASSESSMENT OF A NEWBORN INFANT'S HEALTH
10 STATUS OR WHOSE NOTIFICATION OF POSITIVE TOXICOLOGY SCREENS OF A NEWBORN
11 INFANT GIVES THE PROFESSIONAL REASONABLE GROUNDS TO BELIEVE THAT THE NEWBORN
12 INFANT MAY BE AFFECTED BY THE PRESENCE OF ALCOHOL OR A SUBSTANCE PROHIBITED
13 BY CHAPTER 34 OF THIS TITLE SHALL IMMEDIATELY REPORT THIS INFORMATION, OR
14 CAUSE A REPORT TO BE MADE TO CHILD PROTECTIVE SERVICES IN THE DEPARTMENT OF
15 ECONOMIC SECURITY. FOR THE PURPOSES OF THIS SUBSECTION "NEWBORN INFANT"
16 MEANS AN INFANT WHO IS UNDER THIRTY DAYS OF AGE.

17 ~~B-~~ C. Any person other than one required to report or cause reports
18 to be made in subsection A of this section who has reasonable grounds to
19 believe that a minor is or has been a victim of abuse or neglect may report
20 the information to a peace officer or to ~~the~~ child protective services ~~of~~ IN
21 the department of economic security.

22 ~~C-~~ D. A person having custody or control of medical records of a
23 minor for whom a report is required or authorized under this section shall
24 make ~~such~~ THE records, or a copy of ~~such~~ THE records, available to a peace
25 officer or child protective services worker investigating the minor's neglect
26 or abuse on written request for the records signed by the peace officer or
27 child protective services worker. Records disclosed pursuant to this
28 subsection are confidential and may be used only in a judicial or
29 administrative proceeding or investigation resulting from a report required
30 or authorized under this section.

31 ~~D-~~ E. When such telephone or in-person reports are received by the
32 peace officer, they shall immediately notify ~~the~~ child protective services
33 ~~of~~ IN the department of economic security and make ~~such~~ THE information
34 available to them. Notwithstanding any other statute, when ~~the~~ child
35 protective services receives these reports by telephone or in person, it
36 shall immediately notify a peace officer in the appropriate jurisdiction.

37 ~~E-~~ F. Any person required to receive reports pursuant to subsection
38 A of this section may take or cause to be taken photographs of the child and
39 the vicinity involved. Medical examinations including, but not limited to,
40 radiological examinations of the involved child may be performed.

41 ~~F-~~ G. A person furnishing a report, information or records required
42 or authorized under this section, or a person participating in a judicial or
43 administrative proceeding or investigation resulting from a report,

1 information or records required or authorized under this section, shall be
2 immune from any civil or criminal liability by reason of such action unless
3 ~~such~~ THE person acted with malice or unless ~~such~~ THE person has been charged
4 with or is suspected of abusing or neglecting the child or children in
5 question. Except as provided in subsection ~~G~~ H of this section, the
6 physician-patient privilege, the husband-wife privilege or any privilege
7 except the attorney-client privilege, provided for by professions such as the
8 practice of social work or nursing covered by law or a code of ethics
9 regarding practitioner-client confidences, both as they relate to the
10 competency of the witness and to the exclusion of confidential
11 communications, shall not pertain in any civil or criminal litigation or
12 administrative proceeding in which a child's neglect, dependency, abuse or
13 abandonment is an issue nor in any judicial or administrative proceeding
14 resulting from a report, information or records submitted pursuant to this
15 section nor in any investigation of a child's neglect or abuse conducted by
16 a peace officer or ~~the~~ child protective services ~~of~~ IN the department of
17 economic security.

18 ~~G~~ H. In any civil or criminal litigation in which a child's neglect,
19 dependency, abuse or abandonment is an issue, a clergyman or priest shall
20 not, without his consent, be examined as a witness concerning any confession
21 made to him in his role as a clergyman or a priest in the course of the
22 discipline enjoined by the church to which he belongs. Nothing in this
23 subsection discharges a clergyman or priest from the duty to report pursuant
24 to subsection A of this section.

25 ~~H~~ I. If psychiatric records are requested pursuant to subsection ~~C~~
26 D of this section, the custodian of the records shall notify the attending
27 psychiatrist, who may excise from the records, before they are made
28 available:

29 1. Personal information about individuals other than the patient.

30 2. Information regarding specific diagnosis or treatment of a
31 psychiatric condition, if the attending psychiatrist certifies in writing
32 that release of the information would be detrimental to the patient's health
33 or treatment.

34 ~~I~~ J. If any portion of a psychiatric record is excised pursuant to
35 subsection ~~H~~ I of this section, a court, upon application of a peace officer
36 or child protective services worker, may order that the entire record or any
37 portion of ~~such~~ THE record containing information relevant to the reported
38 abuse or neglect be made available to the peace officer or child protective
39 services worker investigating the abuse or neglect.

40 ~~J~~ K. A person who violates any provision of this section is guilty
41 of a class 1 misdemeanor.

42 Sec. 15. Title 13, chapter 36, Arizona Revised Statutes, is amended
43 by adding section 13-3625, to read:

1 13-3625. Unlawful sale or purchase of children; classification

2 A. EXCEPT FOR ADOPTIONS PURSUANT TO TITLE 8, CHAPTER 1 AND
3 GUARDIANSHIPS PURSUANT TO TITLE 14, CHAPTER 5, A PERSON SHALL NOT SELL OR
4 OFFER TO SELL A CHILD FOR MONEY OR OTHER VALUABLE CONSIDERATION AND SHALL NOT
5 PURCHASE OR OFFER TO PURCHASE A CHILD IN EXCHANGE FOR MONEY OR OTHER VALUABLE
6 CONSIDERATION.

7 B. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 5 FELONY.

8 Sec. 16. Section 13-3707, Arizona Revised Statutes, is amended to
9 read:

10 13-3707. Telecommunication fraud; classification; definitions

11 A. A person commits telecommunication fraud if ~~such~~ THE person DOES
12 ANY OF THE FOLLOWING:

13 1. With the intent to defraud another of the lawful charge ~~therefor~~
14 FOR TELECOMMUNICATION SERVICE, obtains or attempts to obtain any
15 telecommunication service by charging or attempting to charge such service
16 to an existing telephone number or credit card number without the authority
17 of the person to whom issued or the subscriber thereto or the lawful holder
18 thereof, or to a nonexistent, counterfeit, revoked or canceled credit card
19 number, or by any method of code calling, or by installing, rearranging, or
20 tampering with any facility or equipment, or by the use of any other
21 fraudulent means, method, trick or device. ~~;~~~~or~~

22 2. Sells, rents, lends, gives or otherwise transfers or discloses or
23 attempts to transfer or disclose to another, or offers or advertises for sale
24 or rental, the number or code of an existing, canceled, revoked or
25 nonexistent telephone number or credit card number or method of numbering or
26 coding which is employed in the issuance of telephone numbers, ACCOUNT
27 IDENTIFICATION CODES or credit card numbers with intent that the same be used
28 or employed to evade a lawful charge for any telecommunication service. ~~;~~~~or~~

29 3. ~~Intentionally~~ KNOWINGLY makes, constructs, manufactures,
30 fabricates, erects, assembles or possesses any instrument, apparatus,
31 equipment or device, or any part thereof, designed, adapted or which can be
32 used:

33 (a) To obtain telecommunication service by fraud in violation of
34 subsection A of this section; or

35 (b) To conceal from any supplier of telecommunication service or from
36 any lawful authority the existence or place of origin or of destination of
37 any telecommunication IN ORDER TO OBTAIN TELECOMMUNICATION SERVICE BY FRAUD
38 IN VIOLATION OF SUBSECTION A OF THIS SECTION. ~~;~~~~or~~

39 4. KNOWINGLY sells, rents, lends, gives, or otherwise transfers or
40 discloses or attempts to transfer or disclose to another, or offers or
41 advertises for sale or rental, any instrument, apparatus, equipment or device
42 described in paragraph 3 of this subsection, or plans, specifications or
43 instructions for making or assembling the same with the intent to use or

1 employ such instrument, apparatus, equipment or device, or any part thereof,
2 or to allow the same to be used or employed, for a purpose described in
3 paragraph 3 of this subsection, or that the plans, specifications or
4 instructions are intended to be used for making or assembling such
5 instrument, apparatus, equipment or device, or any part thereof.

6 ~~B. Telecommunication fraud with a value of twenty-five thousand
7 dollars or more is a class 4 felony. Telecommunication fraud with a value
8 of at least three thousand dollars but less than twenty-five thousand dollars
9 is a class 5 felony. Telecommunication fraud with a value of at least two
10 thousand dollars but less than three thousand dollars is a class 6 felony.
11 Telecommunication fraud with a value of less than two thousand dollars is a
12 class 1 misdemeanor.~~

13 ~~C. A person who is convicted of a violation of this section that
14 involves an amount of at least one hundred thousand dollars is not eligible
15 for suspension of sentence, probation, pardon or release from confinement on
16 any basis except pursuant to section 31-233, subsection A or B until the
17 sentence imposed by the court has been served, the person is eligible for
18 release pursuant to section 41-1604.07 or the sentence is commuted.~~

19 B. SUBSECTION A, PARAGRAPH 3 OF THIS SECTION DOES NOT PROHIBIT THE USE
20 OR POSSESSION OF ANY INSTRUMENT, APPARATUS, EQUIPMENT OR DEVICE BY EITHER OF
21 THE FOLLOWING:

22 1. LAW ENFORCEMENT OFFICERS WHO ARE ACTING IN THEIR OFFICIAL CAPACITY
23 WITHIN THE SCOPE OF THEIR AUTHORITY AND IN THE LINE OF DUTY.

24 2. EMPLOYEES OR AGENTS OF COMMUNICATION SERVICE PROVIDERS AS DEFINED
25 IN SECTION 13-3004 WHO ARE ACTING IN THEIR OFFICIAL CAPACITY WITHIN THE SCOPE
26 OF THEIR EMPLOYMENT FOR THE PURPOSE OF PROTECTING THE PROPERTY OR LEGAL
27 RIGHTS OF THE PROVIDER.

28 ~~D.~~ C. As used in this section:

29 1. "Telecommunication services" includes telephone and telegraph
30 services and all other services involving the transmission of information by
31 wire, radio, cellular, WIRELESS TRANSMISSION or similar means. This section
32 applies when the telecommunication service originates or terminates or both
33 originates and terminates in this state.

34 2. "Credit card number" means the card number appearing on a credit
35 card or telephone calling card which is an identification card or plate
36 issued to a person by any supplier of telecommunication service and which
37 permits the person to whom the card has been issued to obtain
38 telecommunication service.

39 D. TELECOMMUNICATIONS FRAUD IS A CLASS 3 FELONY.

40 Sec. 17. Section 13-3915, Arizona Revised Statutes, is amended to
41 read:

42 13-3915. Issuance; form of warrant; duplicate original warrant;
43 telefacsimile

1 A. If the magistrate is satisfied that probable cause for the issuance
2 of the warrant exists, ~~he~~ THE MAGISTRATE shall issue a search warrant
3 commanding a search by any peace officer of the person or place specified,
4 for the items described.

5 B. The warrant shall be in substantially the following form:

6 ~~"~~County of _____, state of Arizona.

7 To any peace officer in the state of Arizona:

8 Proof by affidavit having been this day made before me by
9 (naming every person whose affidavit has been taken) there is
10 probable cause for believing that (stating the grounds of the
11 application) according to section 13-3912, you are therefore
12 commanded in the daytime (or in the night, as the case may be,
13 according to section 13-3917), ~~to~~ to make a search of (naming
14 persons, buildings, premises or vehicles, describing each with
15 reasonable particularity) for the following property, persons or
16 things: (describing such with reasonable particularity), and if
17 you find such or any part thereof, to retain such in your
18 custody subject to section 13-3920.

19 Given under my hand or direction and dated ~~this~~
20 _____ day of _____, 19____ (judge, justice
21 of the peace or magistrate.)"~~—~~

22 C. The magistrate may orally authorize a peace officer to sign the
23 magistrate's name on a search warrant if the peace officer applying for the
24 warrant is not in the actual physical presence of the magistrate. This
25 warrant shall be called a duplicate original search warrant and shall be
26 deemed a search warrant for the purposes of this chapter. In such cases, the
27 magistrate shall cause to be made an original warrant and shall enter the
28 exact time of issuance of the duplicate original warrant on the face of the
29 original warrant. Upon the return of the duplicate original warrant, the
30 magistrate shall ~~cause~~ FILE the original warrant and the duplicate original
31 warrant ~~to be filed~~ as provided ~~for~~ in section 13-3923.

32 D. A MAGISTRATE MAY AFFIX THE MAGISTRATE'S SIGNATURE ON A
33 TELEFACSIMILE OF AN ORIGINAL WARRANT. THE TELEFACSIMILE OF THE ORIGINAL
34 WARRANT IS DEEMED TO BE A SEARCH WARRANT FOR THE PURPOSES OF THIS CHAPTER.
35 ON RETURN OF THE TELEFACSIMILE OF THE ORIGINAL WARRANT, THE MAGISTRATE SHALL
36 FILE THE ORIGINAL WARRANT AND THE TELEFACSIMILE OF THE ORIGINAL WARRANT AS
37 PROVIDED IN SECTION 13-3923.

38 Sec. 18. Section 13-3918, Arizona Revised Statutes, is amended to
39 read:

40 13-3918. Time of execution and return

41 A. A search warrant shall be executed and returned to the issuing
42 magistrate within five days after its date. Upon expiration of that time,
43 the warrant, unless IT IS executed OR UNLESS THE TIME IS EXTENDED BY A

1 MAGISTRATE, is void. THE TIME FOR EXECUTION AND RETURN OF THE WARRANT MAY
2 BE EXTENDED FOR NO LONGER THAN FIVE DAYS. The documents and records of the
3 court relating to the search warrant need not be open to the public until the
4 execution and return of the warrant or the expiration of the five day period
5 after issuance. Thereafter, if the warrant has been served, such documents
6 and records shall be open to the public as a judicial record.

7 B. If a duplicate original search warrant has been executed, the peace
8 officer who executed the warrant shall enter the exact time of its execution
9 on its face.

10 Sec. 19. Section 13-4062, Arizona Revised Statutes, is amended to
11 read:

12 13-4062. Anti-marital fact privilege; other privileged
13 communications

14 A person shall not be examined as a witness in the following cases:

15 1. A husband for or against his wife without her consent, nor a wife
16 for or against her husband without his consent, as to events occurring during
17 the marriage, nor can either, during the marriage or afterwards, ~~be,~~ without
18 consent of the other, ~~BE~~ examined as to any communication made by one to the
19 other during the marriage. These exceptions do not apply in a criminal
20 action or proceeding for a crime committed by the husband against the wife,
21 or by the wife against the husband, nor in a criminal action or proceeding
22 against the husband for abandonment, failure to support or provide for or
23 failure or neglect to furnish the necessities of life to the wife or the
24 minor children. Either spouse may, at his or her request, but not otherwise,
25 be examined as a witness for or against the other in a prosecution ~~FOR AN~~
26 ~~OFFENSE LISTED IN SECTION 13-604, SUBSECTION U, PARAGRAPH 2,~~ for bigamy or
27 adultery, committed by either spouse, or for ~~rape, seduction, SEXUAL ASSAULT~~
28 the crime against nature or any similar offense, committed by the husband.

29 2. An attorney, without consent of ~~his~~ THE ATTORNEY'S client, as to
30 any communication made by the client to ~~him~~ THE ATTORNEY, or ~~his~~ THE
31 ATTORNEY'S advice given ~~thereon~~ in the course of professional employment.

32 3. A clergyman or priest, without consent of the person making the
33 confession, as to any confession made to ~~him~~ THE CLERGYMAN OR PRIEST in his
34 professional character in the course of discipline enjoined by the church to
35 which ~~he~~ THE CLERGYMAN OR PRIEST belongs.

36 4. A physician or surgeon, without consent of ~~his~~ THE PHYSICIAN'S OR
37 SURGEON'S patient, as to any information acquired in attending the patient
38 which was necessary to enable ~~him~~ THE PHYSICIAN OR SURGEON to prescribe or
39 act for the patient.

40 Sec. 20. Section 13-4514, Arizona Revised Statutes, is amended to
41 read:

42 13-4514. Progress reports; rehearings

1 A. The person who supervises the treatment of a defendant who has been
2 ordered to undergo treatment pursuant to section 13-4512 shall submit a
3 written report to the court which shall make the report available to the
4 prosecutor, the defense attorney and the clinical liaison as follows:

5 1. For inpatient treatment, after the first one hundred twenty days
6 of the original treatment order and after each one hundred eighty days of
7 treatment thereafter.

8 2. For outpatient treatment, every sixty days.

9 3. Whenever the person believes the defendant is competent to stand
10 trial.

11 4. Whenever the person believes that there is no substantial
12 probability that the defendant will regain competency within twenty-one
13 months after the date of the original finding of incompetency.

14 5. Fourteen days before the expiration of the maximum time that an
15 order issued pursuant to section 13-4512 or this section is in effect.

16 B. The report shall include the examiner's findings and the
17 information required under section 13-4509. If the report states that the
18 defendant remains incompetent, the report shall state the likelihood that the
19 defendant will regain competency, an estimated time period for the
20 restoration of competency and recommendations for treatment modification, if
21 necessary. If the report states that the defendant has regained competency,
22 the report shall state the effect, if any, of any limitations that are
23 imposed by any medications used in the effort to restore the defendant's
24 competency.

25 C. The court shall hold a hearing to determine the defendant's
26 progress towards regaining competency as follows:

27 1. On the court's own motion.

28 2. On receipt of a report that is submitted by the treating facility
29 pursuant to subsection A, paragraph 3, 4 or 5 of this section.

30 D. If at the hearing the court finds that the defendant has regained
31 competency, the defendant shall be returned to the court and the proceedings
32 against the defendant shall continue without delay. **THE COURT MAY ORDER
33 CONTINUED INVOLUNTARY MEDICATION PURSUANT TO SECTION 13-4511 PENDING FINAL
34 DISPOSITION OF THIS CASE IN THE TRIAL COURT IF THE COURT FINDS THAT THERE IS
35 NOT A LESS INTRUSIVE ALTERNATIVE, THE MEDICATION WAS MEDICALLY APPROPRIATE
36 AND THAT IT IS ESSENTIAL FOR THE SAKE OF THE DEFENDANT'S SAFETY OR THE SAFETY
37 OF OTHERS.**

38 E. If at the hearing the court finds that the defendant is incompetent
39 to stand trial but that there is a substantial probability that the defendant
40 will regain competency within the foreseeable future, the court shall renew
41 and, if appropriate, modify the treatment order for not more than an
42 additional one hundred eighty days. The court may make this determination
43 without a formal hearing if all of the parties agree.

1 F. If at the hearing the court finds that the defendant is incompetent
2 to stand trial and that there is not a substantial probability that the
3 defendant will regain competency within twenty-one months after the date of
4 the original finding of incompetency, the court shall proceed pursuant to
5 section 13-4517.

6 Sec. 21. Section 28-4301, Arizona Revised Statutes, is amended to
7 read:

8 28-4301. Definitions

9 In this chapter, unless the context otherwise requires:

10 1. "Automotive recycler" means a person who is engaged in the business
11 of buying or acquiring a motor vehicle solely for the purpose of dismantling,
12 selling or otherwise disposing of the parts or accessories and who dismantles
13 six or more vehicles in a calendar year.

14 2. "Branch license" means a license that is issued by the director to
15 a licensed motor vehicle dealer and that permits the licensee to sell motor
16 vehicles from an established place of business within the same county but
17 other than the original or principal place of business for which the license
18 was issued.

19 3. "Broker" means a person who for any fee, commission or other
20 valuable consideration offers to provide, provides or represents that the
21 person will provide a service of arranging or assisting in effecting the
22 purchase of a motor vehicle and who is not:

23 (a) A new motor vehicle dealer or an employee or agent of a new motor
24 vehicle dealer.

25 (b) A used motor vehicle dealer or an employee or agent of a used
26 motor vehicle dealer.

27 (c) A manufacturer or employee or agent of a manufacturer.

28 (d) An auctioneer or engaged in the auto auction business.

29 (e) A wholesale motor vehicle dealer.

30 4. "Community" means the relevant market area. For the purposes of
31 this paragraph, "relevant market area" means the incorporated city or town
32 in which the franchise is located.

33 5. "Distributor" means a person who either:

34 (a) Sells or distributes new motor vehicles to new motor vehicle
35 dealers in this state.

36 (b) Maintains distributor representatives in this state.

37 6. "Distributor branch" means a branch office maintained or availed
38 of by a distributor for either:

39 (a) The sale of new motor vehicles to new motor vehicle dealers in
40 this state.

41 (b) Directing or supervising its representatives in this state.

42 7. "Established place of business":

43 (a) Means a permanent enclosed building or structure that is owned
44 either in fee or leased with sufficient space to display two or more motor

1 vehicles of a kind and type that the dealer is licensed to sell and that is
2 devoted principally to the use of a motor vehicle dealer in the conduct of
3 the business of the dealer.

4 (b) In the case of a used motor vehicle dealer, trailer dealer or
5 semitrailer dealer:

6 (i) Need not be a permanent building or structure or part of a
7 permanent building or structure.

8 (ii) May be a vacant lot or part of a vacant lot.

9 (iii) Does not mean or include a residence, tent, temporary stand or
10 temporary quarters or permanent quarters occupied pursuant to a temporary
11 arrangement.

12 (c) In the case of an automotive recycler, means a permanent site or
13 location at which the business of an automotive recycler is or will be
14 conducted.

15 8. "Exhibitor" means a manufacturer of new motor homes that exhibits
16 new motor homes at a special event.

17 9. "Factory branch" means a branch office maintained or availed of by
18 a manufacturer for either:

1 (a) The sale of new motor vehicles to distributors or the sale of new
2 motor vehicles to new motor vehicle dealers in this state.

3 (b) Directing or supervising its representatives in this state.

4 10. "Financial institution" means a bank, trust company, savings and
5 loan association, credit union, consumer lender, international banking
6 facility or holding company that is licensed, regulated or insured by the
7 state banking department, the federal deposit insurance corporation, the
8 office of thrift supervision, the comptroller of the currency, the national
9 credit union share insurance fund or the national credit union
10 administration.

11 11. "Franchise" means a contract between two or more persons if all of
12 the following conditions are included:

13 (a) A commercial relationship of definite duration or continuing
14 indefinite duration is involved.

15 (b) The franchisee is granted the right to offer, sell and service in
16 this state new motor vehicles manufactured or distributed by the franchisor.

17 (c) The franchisee, as a separate business, constitutes a component
18 of the franchisor's distribution system.

19 (d) The operation of the franchisee's business is substantially
20 associated with the franchisor's trademark, service mark, trade name,
21 advertising or other commercial symbol designating the franchisor.

22 (e) The operation of the franchisee's business is substantially
23 reliant on the franchisor for the continued supply of new motor vehicles,
24 parts and accessories.

25 12. "Franchisee" means a person who both:

26 (a) Receives new motor vehicles from the franchisor under a franchise.

27 (b) Offers and sells to and services new motor vehicles for the
28 general public.

29 13. "Franchisor" means a person who both:

30 (a) Manufactures or distributes new motor vehicles.

31 (b) May enter into a franchise.

32 14. "Importer" means a person who transports or arranges for the
33 transportation of a foreign manufactured new motor vehicle into the United
34 States for sale in this state.

35 15. "Major component part" includes a motor vehicle or vehicle part
36 that the manufacturer has assigned any factory, motor, serial or other
37 identification number or mark.

38 16. "Manufacturer" means any person who either:

39 (a) Manufactures or assembles new motor vehicles.

40 (b) Manufactures or installs on previously assembled truck chassis
41 special bodies or equipment that when installed forms an integral part of the
42 new motor vehicle and that constitutes a major manufacturing alteration,
43 excluding the installation of a camper on a pickup truck.

1 17. "Mobile medical clinic" means a motor vehicle retrofitted for
2 exclusive use as a medical office or clinic for medical services regulated
3 under title 32.

4 18. "Motor home" means a motor vehicle that is primarily designed as
5 temporary living quarters and that:

6 (a) Is built onto as an integral part of, or is permanently attached
7 to, a motor vehicle chassis.

8 (b) Contains at least four of the following independent life support
9 systems if each is permanently installed and designed to be removed only for
10 purposes of repair or replacement:

11 (i) A cooking facility with an on board fuel source.

12 (ii) A gas or electric refrigerator.

13 (iii) A toilet with exterior evacuation.

14 (iv) A heating or air conditioning system with an on board power or
15 fuel source separate from the vehicle engine.

16 (v) A potable water supply system that includes at least a sink, a
17 faucet and a water tank with an exterior service supply connection.

18 (vi) A 110-125 volt electric power supply.

19 19. "Motor vehicle" means an automobile, motor bus, motorcycle, truck
20 or truck tractor or any other self-propelled vehicle, trailer or semitrailer.

21 20. "Motor vehicle dealer" means a new motor vehicle dealer, a used
22 motor vehicle dealer, a broker or a wholesale motor vehicle auction dealer,
23 excluding a person who comes into possession of a motor vehicle as an
24 incident to the person's regular business and who sells or exchanges the
25 motor vehicle.

26 21. "New house trailer dealer" means a person who buys, sells,
27 exchanges or offers or attempts to negotiate a sale or exchange of an
28 interest in, or who is engaged in the business of selling, new house trailers
29 or used house trailers taken in trade on new house trailers. For the
30 purposes of this paragraph, "house trailer" means a vehicle, other than a
31 motor vehicle, that is built on a chassis designed for being drawn on the
32 highways by a motor vehicle and that is designed for human habitation.

33 22. "New motor vehicle" means a motor vehicle, other than a used motor
34 vehicle, that is held either for:

35 (a) Sale by the franchisee who first acquired the vehicle from the
36 manufacturer or distributor of the vehicle.

37 (b) Sale by another franchisee of the same line-make.

38 23. "New motor vehicle dealer" means a person who buys, sells,
39 exchanges or offers or attempts to negotiate a sale or exchange of an
40 interest in, or who is engaged in the business of selling, new motor vehicles
41 or used motor vehicles taken in trade on new motor vehicles or used vehicles
42 purchased for resale.

43 24. "Off-premises display and sales" means a promotion or sale of motor
44 vehicles for a period of time as specified by the director that both:

1 (a) Is sponsored by a licensed motor vehicle dealer, the licensed
2 motor vehicle dealer's agents or the manufacturer.

3 (b) Takes place at a location within the same county but not at the
4 licensee's established place of business.

5 25. "Off-premises exhibition" means the exhibition of a motor vehicle
6 for a period of time as specified by the director at a location within the
7 same county but not at the established place of business of a licensed motor
8 vehicle dealer and at which a solicitation or sale does not occur.

9 26. "Provisional automotive recycler's license" means a license that
10 both:

11 (a) Is issued by the department only in conjunction with an
12 application for an automotive recycler's license.

13 (b) Permits the applicant or applicants to conduct the business of an
14 automotive recycler regulated by this chapter pending completion of the
15 criminal history record check pursuant to section 28-4364.

16 27. "Provisional dealer's license" means a license that both:

17 (a) Is issued by the department only in conjunction with an
18 application for a dealer's license.

19 (b) Permits the applicant or applicants to conduct the business of a
20 motor vehicle dealer regulated by this chapter pending completion of the
21 criminal history record check pursuant to section 28-4364.

22 28. "Special event" means an exhibition of new motor homes by a motor
23 vehicle dealer licensed to sell new motor homes or an exhibitor for a period
24 of time specified by the director at a location in this state other than the
25 licensee's or exhibitor's established place of business.

26 29. "Used motor vehicle" means a motor vehicle that has been sold,
27 bargained, exchanged or given away or the title to the motor vehicle has been
28 transferred from the person who first acquired the vehicle from the
29 manufacturer, or importer, dealer or agent of the manufacturer or importer,
30 and that has been placed in bona fide consumer use. For the purposes of this
31 paragraph, "bona fide consumer use" means actual operation by an owner who
32 acquired a new motor vehicle both:

33 (a) For use in the owner's business or for pleasure or otherwise.

34 (b) For which a certificate of title has been issued or that has been
35 registered as provided by law.

36 30. "Used motor vehicle dealer" means a person, other than a new motor
37 vehicle dealer, who buys, sells, exchanges or offers or attempts to negotiate
38 a sale or exchange of an interest in, or who is engaged in the business of
39 selling, ~~six~~ **FOUR** or more used motor vehicles during a calendar year. **USED**
40 **MOTOR VEHICLE DEALER DOES NOT INCLUDE A PERSON WHO BUYS, SELLS, EXCHANGES OR**
41 **OFFERS OR ATTEMPTS TO NEGOTIATE A SALE OF OR EXCHANGE AN INTEREST IN A**
42 **CLASSIC CAR AS DEFINED IN SECTION 28-2483 OR A HISTORIC VEHICLE AS DEFINED**
43 **IN SECTION 28-2484.**

1 31. "Wholesale motor vehicle auction dealer" means a person who both:
2 (a) Is in the business of providing auction services solely in
3 wholesale transactions to motor vehicle dealers licensed by this state or any
4 other jurisdiction.

5 (b) Does not buy, sell or own the motor vehicles the auction dealer
6 auctions in the ordinary course of business.

7 32. "Wholesale motor vehicle dealer" means a person who sells used
8 motor vehicles only to licensed motor vehicle dealers.

9 33. "Zone" means the geographic marketing area or district designated
10 by the franchisor and serviced by the franchisor's factory or distributor
11 branch.

12 Sec. 22. Section 28-4412, Arizona Revised Statutes, is amended to
13 read:

14 28-4412. Guaranty disclosure; used motor vehicles; definition

15 A. Before the consummation of the sale of a used motor vehicle, a
16 motor vehicle dealer shall:

17 1. Provide each purchaser with a written statement that:

18 (a) Indicates whether or not an express warranty or guaranty is
19 associated with the used motor vehicle.

20 (b) Is distinguished from the body of the sales agreement through the
21 use of either bold-faced type or bold-faced type of a color other than that
22 used in the body of the agreement.

23 (c) States "as is -- not expressly warranted or guaranteed", if the
24 used motor vehicle to be sold is not expressly warranted or guaranteed.

25 (d) Explicitly states the nature and extent of the express warranty
26 or guaranty, if the used motor vehicle to be sold is expressly warranted or
27 guaranteed.

28 (e) States "as is -- not guaranteed to pass vehicle emissions
29 inspection. Vehicle not eligible for certificate of waiver and must be
30 repaired to meet emissions standards", if the used motor vehicle is a
31 disabled vehicle that is offered for sale at a wholesale public auction with
32 an auctioneer who is a licensed used motor vehicle dealer and if the vehicle
33 does not comply with the requirements prescribed in section 49-542.

34 2. Direct the purchaser's attention to the written statement.

35 B. This section does not negate any implied warranties otherwise
36 applicable to the sale of a used motor vehicle, **INCLUDING THE IMPLIED**
37 **WARRANTY OF MERCHANTABILITY DESCRIBED IN SECTION 44-1267.**

38 **C. UNLESS THE SELLER IS A LICENSED USED MOTOR VEHICLE DEALER, BEFORE**
39 **THE SELLER ATTEMPTS TO SELL A MOTOR VEHICLE THE SELLER SHALL POSSESS THE**
40 **TITLE TO THE MOTOR VEHICLE AND THE TITLE SHALL BE IN THE SELLER'S NAME.**

41 **~~C.~~ D.** For the purposes of this section, "disabled vehicle" means a
42 motor vehicle that cannot operate on its own motive power.

S.B. 1278

1 Sec. 23. Title 28, chapter 10, article 6, Arizona Revised Statutes,
2 is amended by adding section 28-4502, to read:

1 28-4502. Used motor vehicle dealer; violation; classification

2 IN ADDITION TO THE PENALTIES PROVIDED IN SECTIONS 28-4499, 28-4500 AND
3 28-4501, A PERSON WHO ACTS AS A USED MOTOR VEHICLE DEALER IN VIOLATION OF THE
4 LICENSING PROVISIONS OF THIS CHAPTER IS GUILTY OF A CLASS 1 MISDEMEANOR.

5 Sec. 24. Section 31-412, Arizona Revised Statutes, is amended to read:

6 31-412. Criteria for release on parole; release; custody of
7 parolee; definition

8 A. If a prisoner is certified as eligible for parole pursuant to the
9 provisions of section 41-1604.09 the board of executive clemency shall
10 authorize the release of the applicant upon parole if the applicant has
11 reached the applicant's earliest parole eligibility date pursuant to section
12 41-1604.09, subsection D, ~~and~~ and it appears to the board, in its sole
13 discretion, that there is a substantial probability that the applicant will
14 remain at liberty without violating the law and that the release is in the
15 best interests of the state. The applicant shall thereupon be allowed to go
16 upon parole in the legal custody and under THE control of the state
17 department of corrections, until the board revokes the parole or grants an
18 absolute discharge from parole or until the prisoner reaches the prisoner's
19 individual earned release credit date pursuant to section 41-1604.10. When
20 the prisoner reaches the prisoner's individual earned release credit date the
21 prisoner's parole shall be terminated and the prisoner shall no longer be
22 under the authority of the board but shall be subject to revocation under
23 section 41-1604.10.

24 B. Notwithstanding the provisions of subsection A of this section, the
25 director of the state department of corrections may certify as eligible for
26 parole any prisoner, regardless of the classification of the prisoner, who
27 has reached the prisoner's parole eligibility date pursuant to section
28 41-1604.09, subsection D, unless an increased term has been imposed pursuant
29 to section 41-1604.09, subsection F, for the sole purpose of parole to the
30 custody of any other jurisdiction to serve a term of imprisonment imposed by
31 the other jurisdiction or to stand trial on criminal charges in the other
32 jurisdiction or for the sole purpose of parole to the custody of the state
33 department of corrections to serve any consecutive term imposed on the
34 prisoner. Upon review of an application for parole pursuant to the
35 provisions of this subsection the board may authorize parole if, in its
36 discretion, parole appears to be in the best interests of the state.

37 C. An inmate who is otherwise eligible for parole, who is not on home
38 arrest or work furlough and who is currently serving a sentence for a
39 conviction of a serious offense or conspiracy to commit or attempt to commit
40 a serious offense shall not be granted parole or absolute discharge from
41 imprisonment except by one of the following votes:

42 1. A majority affirmative vote if four or more members consider the
43 action.

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

2 3. A unanimous affirmative vote if two members consider the action
3 pursuant to section 31-401, subsection I, paragraph 2 and the chairman
4 concurs after reviewing the information considered by the two members.

5 D. The board shall as a condition of parole order a prisoner to make
6 any court-ordered restitution.

7 E. Payment of restitution by the prisoner in accordance with the
8 provisions of subsection D of this section shall be made through the clerk
9 of the superior court in the county in which the prisoner was sentenced for
10 the offense for which the prisoner has been imprisoned in the same manner as
11 restitution is paid as a condition of probation. The clerk of the superior
12 court shall report to the board monthly whether or not restitution has been
13 paid for that month by the prisoner.

14 F. The board shall not disclose the address of the victim or the
15 victim's immediate family to any party without the written consent of the
16 victim or the victim's family.

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

19 1. A serious offense as defined in section 13-604, subsection U,
20 paragraph ~~2~~ 3, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or
21 (k).

22 2. A dangerous crime against children as defined in section 13-604.01.
23 The citation of section 13-604.01 is not a necessary element for a serious
24 offense designation.

25 3. A conviction under a prior criminal code for any offense that
26 possesses reasonably equivalent offense elements as the offense elements that
27 are listed under section 13-604, subsection U, paragraph ~~2~~ 3 and section
28 13-604.01, subsection K, paragraph 1.

29 Sec. 25. Section 36-2281, Arizona Revised Statutes, is amended to
30 read:

31 36-2281. Infants; nutritional and medical denial or deprivation
32 prohibited; definition

33 A. A person shall not deny or deprive ~~a newborn~~ AN infant of
34 nourishment with the intent to cause or allow the death of the infant for any
35 reason including:

36 1. The infant was born with a handicap.

37 2. The infant is not wanted by the parent, parents or guardian.

38 3. The ~~child~~ INFANT is born alive by natural or artificial means.

39 B. A person shall not deprive an infant of necessary lifesaving
40 medical treatment or surgical care.

41 C. This section shall not be construed to prevent an infant's parent,
42 parents or guardian from refusing to give consent to medical treatment or

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1 surgical care which is not medically necessary, including care or treatment
2 which either:

1 1. Is not necessary to save the life of the infant.

2 2. Has a potential risk to the infant's life or health that outweighs
3 the potential benefit to the infant of the treatment or care.

4 3. Is futile treatment or treatment that will do no more than
5 temporarily prolong the act of dying when death is imminent.

6 D. In determining whether any of the possible medical treatments will
7 be medically necessary for an infant, reasonable medical judgments in
8 selecting among alternative courses of treatment shall be respected.

9 E. In this article ~~and section 13-3620~~, "infant" means a ~~newborn~~ child
10 less than one year of age.

11 Sec. 26. Section 41-1604.11, Arizona Revised Statutes, is amended to
12 read:

13 41-1604.11. Order for removal; purposes; duration; work
14 furlough; notice; failure to return;
15 classification; applicability; definition

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

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

37 C. The board of executive clemency, under specific rules established
38 for the selection of inmates, if it appears to the board, in its sole
39 discretion, that there is a substantial probability that the inmate will
40 remain at liberty without violating the law and that the release is in the
41 best interests of the state, may authorize the release of an inmate on work
42 furlough if the inmate has served not less than six months of the sentence
43 imposed by the court, is within twelve months of the inmate's parole
44 eligibility date and has not been convicted of a sexual offense. The

1 director shall provide information as the board requests concerning any
2 inmate eligible for release on work furlough. The inmate shall not be
3 released on work furlough unless the release is approved by the board.

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

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

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

13 3. A unanimous affirmative vote if two members of the board of
14 executive clemency consider the action pursuant to section 31-401, subsection
15 I, paragraph 2 and the chairman of the board concurs after reviewing the
16 information considered by the two members.

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

32 F. The board shall require that every inmate released on work furlough
33 comply with the terms and conditions of release as the board may impose,
34 including that the inmate be gainfully employed while on work furlough and
35 that the inmate make restitution to the victim of the offense for which the
36 inmate was incarcerated.

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

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

4 I. The director shall transmit a monthly report containing the name,
5 date of birth, offense for which the inmate was sentenced, length of the
6 sentence and date of admission to the state department of corrections of each
7 person on work furlough or home arrest to the chairperson of the house of
8 representatives judiciary committee or its successor committee and the
9 chairperson of the senate judiciary committee or its successor committee. The
10 director shall also submit a report containing this information for any
11 person released on work furlough or home arrest within a jurisdiction to the
12 county attorney, sheriff and chief of police for the jurisdiction in which
13 the inmate is released on work furlough or home arrest.

14 J. Any inmate who knowingly fails to return from furlough, home
15 arrest, work furlough or temporary removal or temporary release granted under
16 the provisions of this section is guilty of a class 5 felony.

17 K. At any given time if the director declares there is a shortage of
18 beds available for inmates within the state department of corrections, the
19 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
20 suspended for any inmate who has served not less than six months of the
21 sentence imposed by the court, who has not been previously convicted of a
22 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
23 a sexual offense, the use or exhibition of a deadly weapon or dangerous
24 instrument or the infliction of serious physical injury pursuant to section
25 13-604, and the inmate shall be continuously eligible for parole, home arrest
26 or work furlough.

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

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

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

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

3 3. A unanimous affirmative vote if two members of the board of
4 executive clemency consider the action pursuant to section 31-401, subsection
5 I, paragraph 2 and the chairman of the board concurs after reviewing the
6 information considered by the two members.

7 D. Home arrest is conditioned on the following:

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

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

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

12 4. Payment of the electronic monitoring fee in an amount determined
13 by the board of not less than one dollar per day and not more than the total
14 cost of the electronic monitoring unless, after determining the inability of
15 the prisoner to pay the fee, the board requires payment of a lesser amount.
16 The fees collected shall be returned to the department's home arrest program
17 to offset operational costs of the program.

18 5. Remaining at the prisoner's place of residence at all times except
19 for movement out of the residence according to mandated conditions.

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

22 7. Compliance with all other conditions of supervision.

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

38 F. A prisoner placed on home arrest is on inmate status, is subject
39 to all the limitations of rights and movement and is entitled only to due
40 process rights of return.

41 G. If the person violates a condition of home arrest which poses any
42 threat or danger to the community, or commits an additional felony offense,
43 the board shall revoke the home arrest and return the person to the custody

1 of the state department of corrections to complete the term of imprisonment
2 as authorized by law.

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

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

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

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

12 1. A serious offense as defined in section 13-604, subsection U,
13 paragraph ~~2- 3~~, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or
14 (k).

15 2. A dangerous crime against children as defined in section 13-604.01.
16 The citation of section 13-604.01 is not a necessary element for a serious
17 offense designation.

18 3. A conviction under a prior criminal code for any offense that
19 possesses reasonably equivalent offense elements as the offense elements that
20 are listed under section 13-604, subsection U, paragraph ~~2- 3~~ and section
21 13-604.01, subsection K, paragraph 1.

22 Sec. 28. Section 41-1750, Arizona Revised Statutes, as amended by Laws
23 1997, chapter 58, section 26, chapter 136, section 41 and chapter 220,
24 section 88, is amended to read:

25 41-1750. Central state repository; department of public safety;
26 duties; funds; accounts; violation; classification;
27 definitions

28 A. Notwithstanding section 41-2205, the department is responsible for
29 the effective operation of the central state repository in order to collect,
30 store and disseminate complete and accurate Arizona criminal history records
31 and related criminal justice information. The department shall:

32 1. Procure from all criminal justice agencies in this state accurate
33 and complete personal identification data, fingerprints, charges, **PROCESS**
34 **CONTROL NUMBERS** and dispositions and such other information as may be
35 pertinent to all persons who have been **CHARGED WITH**, arrested for, ~~or~~
36 convicted of **OR SUMMONED TO COURT AS A CRIMINAL DEFENDANT FOR** a felony
37 **OFFENSE** or ~~misdemeanor offense, except offenses for which incarceration or~~
38 ~~fingerprinting of the person did not occur~~ **AN OFFENSE INVOLVING DOMESTIC**
39 **VIOLENCE AS DEFINED IN SECTION 13-3601 OR A VIOLATION OF TITLE 13, CHAPTER**
40 **14 OR TITLE 28, CHAPTER 4.**

41 2. Collect information concerning the number and nature of offenses
42 known to have been committed in this state and of the legal steps taken in
43 connection with these offenses, such other information that is useful in the

1 study of crime and in the administration of criminal justice and all other
2 information deemed necessary to operate the statewide uniform crime reporting
3 program and to cooperate with the federal government uniform crime reporting
4 program.

5 3. Collect information concerning criminal offenses that manifest
6 evidence of prejudice based on race, color, religion, national origin, sexual
7 orientation, gender or disability.

8 4. Cooperate with the central state repositories in other states and
9 with the appropriate agency of the federal government in the exchange of
10 information pertinent to violators of the law.

11 5. Ensure the rapid exchange of information concerning the commission
12 of crime and the detection of violators of the law among the criminal justice
13 agencies of other states and of the federal government.

14 6. Furnish assistance to peace officers throughout this state in crime
15 scene investigation for the detection of latent fingerprints and in the
16 comparison of latent fingerprints.

17 7. Conduct periodic operational audits of the central state repository
18 and of a representative sample of other agencies that contribute records to
19 or receive criminal justice information from the central state repository
20 or through the Arizona criminal justice information system.

21 8. Establish and enforce the necessary physical and system safeguards
22 to ensure that the criminal justice information maintained and disseminated
23 by the central state repository or through the Arizona criminal justice
24 information system is appropriately protected from unauthorized inquiry,
25 modification, destruction or dissemination as required by this section.

26 9. Aid and encourage coordination and cooperation among criminal
27 justice agencies through the statewide and interstate exchange of criminal
28 justice information.

29 10. Provide training and proficiency testing on the use of criminal
30 justice information to agencies receiving information from the central state
31 repository or through the Arizona criminal justice information system.

32 11. Operate and maintain the Arizona automated fingerprint
33 identification system established pursuant to section 41-2411.

34 B. The director may establish guidelines for the submission and
35 retention of criminal justice information as deemed useful for the study or
36 prevention of crime and for the administration of criminal justice.

37 C. The chief officers of criminal justice agencies of this state or
38 its political subdivisions shall provide to the central state repository
39 fingerprints and information concerning personal identification data,
40 descriptions, crimes for which persons are arrested, **PROCESS CONTROL NUMBERS**
41 and dispositions and such other information as may be pertinent to all
42 persons who have been **CHARGED WITH**, arrested for, ~~or~~ convicted of **OR SUMMONED**
43 **TO COURT AS CRIMINAL DEFENDANTS FOR** felony ~~or misdemeanor~~ offenses **OR**

1 OFFENSES INVOLVING DOMESTIC VIOLENCE AS DEFINED IN SECTION 13-3601 OR
2 VIOLATIONS OF TITLE 13, CHAPTER 14, OR TITLE 28, CHAPTER 4 that have occurred
3 in this state, ~~except if the arrestee was not incarcerated or fingerprinted~~
4 ~~as a result of the charge.~~

5 D. The chief officers of law enforcement agencies of this state or its
6 political subdivisions shall provide to the central state repository such
7 information as necessary to operate the statewide uniform crime reporting
8 program and to cooperate with the federal government uniform crime reporting
9 program.

10 E. The chief officers of criminal justice agencies of this state or
11 its political subdivisions shall comply with the training and proficiency
12 testing guidelines as required by the department to comply with the federal
13 national crime information center mandates.

14 F. The chief officers of criminal justice agencies of this state or
15 its political subdivisions also shall provide to the criminal identification
16 section information concerning crimes that manifest evidence of prejudice
17 based on race, color, religion, national origin, sexual orientation, gender
18 or disability.

19 G. The director shall authorize the exchange of criminal justice
20 information between the central state repository, or through the Arizona
21 criminal justice information system, whether directly or through any
22 intermediary, only as follows:

23 1. With criminal justice agencies of the federal government, Indian
24 tribes, this state or its political subdivisions and other states, upon
25 request by the chief officers of such agencies or their designated
26 representatives, specifically for the purposes of the administration of
27 criminal justice and for evaluating the fitness of current and prospective
28 criminal justice employees.

29 2. With any noncriminal justice agency pursuant to a statute,
30 ordinance or executive order that specifically authorizes the noncriminal
31 justice agency to receive criminal history record information for the purpose
32 of evaluating the fitness of current or prospective licensees, employees,
33 contract employees or volunteers, on submission of the subject's fingerprints
34 and the prescribed fee. Each statute, ordinance, or executive order that
35 authorizes noncriminal justice agencies to receive criminal history record
36 information for these purposes shall identify the specific categories of
37 licensees, employees, contract employees or volunteers, and shall require
38 that fingerprints of the specified individuals be submitted in conjunction
39 with such requests for criminal history record information.

40 3. With any individual for any lawful purpose on submission of the
41 subject of record's fingerprints and the prescribed fee.

42 4. With the governor, if the governor elects to become actively
43 involved in the investigation of criminal activity or the administration of

1 criminal justice in accordance with the governor's constitutional duty to
2 ensure that the laws are faithfully executed or as needed to carry out the
3 other responsibilities of the governor's office.

4 5. With regional computer centers that maintain authorized
5 computer-to-computer interfaces with the department, that are criminal
6 justice agencies or under the management control of a criminal justice agency
7 and that are established by a statute, ordinance or executive order to
8 provide automated data processing services to criminal justice agencies
9 specifically for the purposes of the administration of criminal justice or
10 evaluating the fitness of regional computer center employees who have access
11 to the Arizona criminal justice information system and the national crime
12 information center system.

13 6. With an individual who asserts a belief that criminal history
14 record information relating to the individual is maintained by an agency or
15 in an information system in this state that is subject to the provisions of
16 this section. On submission of fingerprints, the individual may review this
17 information for the purpose of determining its accuracy and completeness by
18 making application to the agency operating the system. Rules adopted under
19 this section shall include provisions for administrative review and necessary
20 correction of any inaccurate or incomplete information. The review and
21 challenge process authorized by this paragraph is limited to criminal history
22 record information.

23 7. With individuals and agencies pursuant to a specific agreement with
24 a criminal justice agency to provide services required for the administration
25 of criminal justice pursuant to that agreement if the agreement specifically
26 authorizes access to data, limits the use of data to purposes for which given
27 and ensures the security and confidentiality of the data consistent with the
28 provisions of this section.

29 8. With individuals and agencies for the express purpose of research,
30 evaluative or statistical activities pursuant to an agreement with a criminal
31 justice agency if the agreement specifically authorizes access to data,
32 limits the use of data to research, evaluative or statistical purposes and
33 ensures the confidentiality and security of the data consistent with the
34 provisions of this section.

35 9. With the auditor general for audit purposes.

36 10. With central state repositories of other states for noncriminal
37 justice purposes for dissemination in accordance with the laws of those
38 states.

39 11. On submission of the fingerprint card, with the department of
40 economic security to provide criminal history record information on
41 prospective adoptive parents for the purpose of conducting the preadoption
42 certification investigation under title 8, chapter 1, article 1 if the
43 department of economic security is conducting the investigation, or with an
44 agency or a person appointed by the court, if the agency or person is

1 conducting the investigation. Information received under this paragraph
2 shall only be used for the purposes of the preadoption certification
3 investigation.

4 12. With the department of economic security and the superior court for
5 the purpose of evaluating the fitness of custodians or prospective custodians
6 of juveniles including parents, relatives and prospective guardians.
7 Information received under this paragraph shall only be used for the purposes
8 of that evaluation. The information shall be provided on submission of
9 either:

10 (a) The fingerprint card.

11 (b) The name, date of birth and social security number of the person.

12 13. On submission of a fingerprint card, provide criminal history
13 record information to the superior court for the purpose of evaluating the
14 fitness of investigators appointed under section 14-5303 or 14-5407, or
15 guardians appointed under section 14-5206.

16 14. With the supreme court to provide criminal history record
17 information on prospective private fiduciaries pursuant to section 14-5651.

18 15. On submission of the fingerprint card, provide criminal history
19 record information to the Arizona peace officer standards and training board
20 or a board certified law enforcement academy to evaluate the fitness of
21 prospective cadets.

22 H. The director shall adopt rules necessary to execute the provisions
23 of this section.

24 I. The director, in the manner prescribed by law, shall remove and
25 destroy records that the director determines are no longer of value in the
26 detection or prevention of crime.

27 J. The director shall establish a fee in an amount necessary to cover
28 the cost of federal noncriminal justice fingerprint processing for criminal
29 history record information checks that are authorized by law for noncriminal
30 justice employment, licensing or other lawful purposes. An additional fee
31 may be charged by the department for state noncriminal justice fingerprint
32 processing. Fingerprint cards submitted by local, state and federal
33 noncriminal justice agencies are exempt from this additional fee provision.

34 K. The director shall establish a fee in an amount necessary to cover
35 the cost of processing copies of department reports, eight by ten inch black
36 and white photographs or eight by ten inch color photographs of traffic
37 accident scenes.

38 L. Except as provided in subsection O of this section, each agency
39 authorized by this section may charge a fee, in addition to any other fees
40 prescribed by law, in an amount necessary to cover the cost of state and
41 federal noncriminal justice fingerprint processing for criminal history
42 record information checks that are authorized by law for noncriminal justice
43 employment, licensing or other lawful purposes. If a person must be
44 fingerprinted by two or more state agencies or departments pursuant to

1 section 8-105, ~~8-230.01~~ 8-322, 36-425.03, 36-594, 36-883.02, 36-897.03,
2 41-1964, 41-2814, 46-141 or 46-321, one set of fingerprints may be submitted
3 to the department of public safety. The fees prescribed by this section for
4 submission with one set of fingerprints shall be submitted to the department
5 of public safety with the fingerprint card. The fingerprint card shall list
6 each state agency or department requiring fingerprinting and shall cite the
7 statute authorizing the fingerprinting for each agency or department. The
8 department of public safety shall provide the criminal history record
9 information to each agency or department listed on the card.

10 M. A fingerprint account within the records processing fund is
11 established for the purpose of separately accounting for the collection and
12 payment of fees for noncriminal justice fingerprint processing by the
13 department. Monies collected for this purpose shall be credited to the
14 account and payments by the department to the United States for federal
15 noncriminal justice fingerprint processing shall be charged against the
16 account. Monies in the account not required for payment to the United States
17 shall be used by the department in support of the department's noncriminal
18 justice fingerprint processing duties. At the end of each fiscal year, any
19 balance in the account not required for payment to the United States or to
20 support the department's noncriminal justice fingerprint processing duties
21 reverts to the state general fund.

22 N. A records processing fund is established for the purpose of
23 separately accounting for the collection and payment of fees for department
24 reports and photographs of traffic accident scenes processed by the
25 department. Monies collected for this purpose shall be credited to the fund
26 and shall be used by the department in support of functions related to
27 providing copies of department reports and photographs. At the end of each
28 fiscal year, any balance in the fund not required for support of the
29 functions related to providing copies of department reports and photographs
30 reverts to the state general fund.

31 O. The department of economic security may pay from appropriated
32 monies the cost of federal fingerprint processing or federal criminal history
33 record information checks that are authorized by law for employees and
34 volunteers of the department, guardians pursuant to section 46-134,
35 subsection A, paragraph 15, the licensing of foster parents or the
36 certification of adoptive parents.

37 P. The director shall adopt rules that provide for:

- 38 1. The collection and disposition of fees pursuant to this section.
- 39 2. The refusal of service to those agencies that are delinquent in
40 paying these fees.

41 Q. The director shall ensure that the following limitations are
42 observed regarding dissemination of criminal justice information obtained

1 from the central state repository or through the Arizona criminal justice
2 information system:

3 1. Any criminal justice agency that obtains criminal justice
4 information from the central state repository or through the Arizona criminal
5 justice information system assumes responsibility for the security of the
6 information and shall not secondarily disseminate this information to any
7 individual or agency not authorized to receive this information directly from
8 the central state repository or originating agency.

9 2. Dissemination to an authorized agency or individual may be
10 accomplished by a criminal justice agency only if the dissemination is for
11 criminal justice purposes in connection with the prescribed duties of the
12 agency and not in violation of this section.

13 3. Criminal history record information disseminated to noncriminal
14 justice agencies or to individuals shall be used only for the purposes for
15 which it was given. Secondary dissemination is prohibited unless otherwise
16 authorized by law.

17 4. The existence or nonexistence of criminal history record
18 information shall not be confirmed to any individual or agency not authorized
19 to receive the information itself.

20 5. Criminal history record information to be released for noncriminal
21 justice purposes to agencies of other states shall only be released to the
22 central state repositories of those states for dissemination in accordance
23 with the laws of those states.

24 6. Criminal history record information shall be released to
25 noncriminal justice agencies of the federal government pursuant to the terms
26 of the federal security clearance information act (P.L. 99-169).

27 R. This section and the rules adopted under this section apply to all
28 agencies and individuals collecting, storing or disseminating criminal
29 justice information processed by manual or automated operations if the
30 collection, storage or dissemination is funded in whole or in part with
31 monies made available by the law enforcement assistance administration after
32 July 1, 1973, pursuant to title I of the crime control act of 1973, and to
33 all agencies that interact with or receive criminal justice information from
34 or through the central state repository and through the Arizona criminal
35 justice information system.

36 S. This section does not apply to criminal history record information
37 contained in:

38 1. Posters, arrest warrants, announcements or lists for identifying
39 or apprehending fugitives or wanted persons.

40 2. Original records of entry such as police blotters maintained by
41 criminal justice agencies, compiled chronologically and required by law or
42 long-standing custom to be made public if these records are organized on a
43 chronological basis.

1 3. Transcripts or records of judicial proceedings if released by a
2 court or legislative or administrative proceedings.

3 4. Announcements of executive clemency or pardon.

4 5. Computer data bases other than the Arizona criminal justice
5 information system, which are specifically designed for community
6 notification of an offender's presence in the community pursuant to section
7 13-3825.

8 T. Nothing in this section prevents a criminal justice agency from
9 disclosing to the public criminal history record information that is
10 reasonably contemporaneous to the event for which an individual is currently
11 within the criminal justice system, including information noted on traffic
12 accident reports concerning citations, blood alcohol tests, intoxilyzer tests
13 or arrests made in connection with the traffic accident being investigated.

14 U. In order to ensure that complete and accurate criminal history
15 record information is maintained and disseminated by the central state
16 repository:

17 1. The arresting authority shall take legible fingerprints of all
18 persons arrested for offenses specified in subsection C of this section and,
19 within ten days of the arrest, the arresting authority shall forward the
20 fingerprints to the department in the manner or form required by the
21 department. **ON THE ISSUANCE AND SERVICE OF A SUMMONS FOR A DEFENDANT WHO IS
22 CHARGED WITH A FELONY OFFENSE, A VIOLATION OF TITLE 13, CHAPTER 14 OR TITLE
23 28, CHAPTER 4 OR A DOMESTIC VIOLENCE OFFENSE AS DEFINED IN SECTION 13-3601,
24 THE COURT SHALL ORDER THAT THE DEFENDANT BE FINGERPRINTED BY THE APPROPRIATE
25 LAW ENFORCEMENT AGENCY AND THAT THE DEFENDANT APPEAR AT A DESIGNATED TIME AND
26 PLACE FOR FINGERPRINTING. AT THE INITIAL APPEARANCE OR ON THE ARRAIGNMENT OF
27 A SUMMONED DEFENDANT WHO IS CHARGED WITH A FELONY OFFENSE, A VIOLATION OF
28 TITLE 13, CHAPTER 14 OR TITLE 28, CHAPTER 4 OR A DOMESTIC VIOLENCE OFFENSE
29 AS DEFINED IN SECTION 13-3601, THE COURT SHALL ORDER THAT THE DEFENDANT BE
30 FINGERPRINTED AT A DESIGNATED TIME AND PLACE BY THE APPROPRIATE LAW
31 ENFORCEMENT AGENCY IF THE COURT HAS REASONABLE CAUSE TO BELIEVE THAT THE
32 DEFENDANT WAS NOT PREVIOUSLY FINGERPRINTED.**

33 2. In every criminal case in which the defendant is incarcerated or
34 fingerprinted as a result of the charge, an originating law enforcement
35 agency or prosecutor, within forty days of the disposition, shall advise the
36 central state repository of all dispositions concerning the termination of
37 criminal proceedings against an individual arrested for an offense specified
38 in subsection C of this section. This information shall be submitted on a
39 form or in a manner required by the department.

40 3. Dispositions resulting from formal proceedings in a court having
41 jurisdiction in a criminal action against an individual who is arrested for
42 an offense specified in subsection C of this section or section ~~8-241~~ 8-341,
43 subsection T, ~~paragraph 3~~ shall be reported to the central state repository

1 within forty days of the date of the disposition. This information shall be
2 submitted on a form or in a manner specified by rules approved by the supreme
3 court.

4 4. The state department of corrections or the department of juvenile
5 corrections, within forty days, shall advise the central state repository
6 that it has assumed supervision of a person convicted of an offense specified
7 in subsection C of this section or section ~~8-241~~ 8-341, subsection T,
8 ~~paragraph 3~~. The state department of corrections or the department of
9 juvenile corrections shall also report dispositions that occur thereafter to
10 the central state repository within forty days of the date of the
11 dispositions. This information shall be submitted on a form or in a manner
12 required by the department of public safety.

13 5. Each criminal justice agency shall query the central state
14 repository before dissemination of any criminal history record information
15 to ensure the completeness of the information. Inquiries shall be made
16 before any dissemination except in those cases in which time is of the
17 essence and the repository is technically incapable of responding within the
18 necessary time period. If time is of the essence, the inquiry shall still
19 be made and the response shall be provided as soon as possible.

20 V. The director shall adopt rules specifying that any agency that
21 collects, stores or disseminates criminal justice information that is subject
22 to the provisions of this section shall establish effective security measures
23 to protect the information from unauthorized access, disclosure, modification
24 or dissemination. The rules shall include reasonable safeguards to protect
25 the affected information systems from fire, flood, wind, theft, sabotage or
26 other natural or man-made hazards or disasters.

27 W. The department shall make available to agencies that contribute to,
28 or receive criminal justice information from, the central state repository
29 or through the Arizona criminal justice information system a continuing
30 training program in the proper methods for collecting, storing and
31 disseminating information in compliance with this section.

32 X. Nothing in this section creates a cause of action or a right to
33 bring an action including an action based on discrimination due to sexual
34 orientation.

35 Y. A person who knowingly or recklessly permits unauthorized access
36 or releases or procures the release of criminal history record information,
37 other than as provided in this section, or who uses such information for a
38 purpose other than as provided by this section is guilty of a class 6 felony.

39 Z. For purposes of this section:

40 1. "Administration of criminal justice" means performance of the
41 detection, apprehension, detention, pretrial release, post-trial release,
42 prosecution, adjudication, correctional supervision or rehabilitation of
43 criminal offenders. Administration of criminal justice includes enforcement

1 of criminal traffic offenses and civil traffic violations, including parking
2 violations, when performed by a criminal justice agency. Administration of
3 criminal justice also includes criminal identification activities and the
4 collection, storage and dissemination of criminal history record information.

5 2. "Administrative records" means records that contain adequate and
6 proper documentation of the organization, functions, policies, decisions,
7 procedures and essential transactions of the agency and that are designed to
8 furnish information to protect the rights of this state and of persons
9 directly affected by the agency's activities.

10 3. "Arizona criminal justice information system" or "system" means the
11 statewide information system managed by the director for the collection,
12 processing, preservation, dissemination and exchange of criminal justice
13 information and includes the electronic equipment, facilities, procedures and
14 agreements necessary to exchange this information.

15 4. "Central state repository" means the central location within the
16 department for the collection, storage and dissemination of Arizona criminal
17 history records and related criminal justice information.

18 5. "Criminal history record information" and "criminal history record"
19 means information that is collected by criminal justice agencies on
20 individuals and that consists of identifiable descriptions and notations of
21 arrests, detentions, indictments and other formal criminal charges, and any
22 disposition arising from those actions, sentencing, formal correctional
23 supervisory action and release. Criminal history record information and
24 criminal history record do not include identification information to the
25 extent that the information does not indicate involvement of the individual
26 in the criminal justice system or information relating to juveniles unless
27 they have been adjudicated as adults.

28 6. "Criminal justice agency" means either:

29 (a) A court at any governmental level with criminal or equivalent
30 jurisdiction, including courts of any foreign sovereignty duly recognized by
31 the federal government.

32 (b) A government agency or subunit of a government agency that is
33 specifically authorized to perform as its principal function the
34 administration of criminal justice pursuant to a statute, ordinance or
35 executive order and that allocates more than fifty per cent of its annual
36 budget to the administration of criminal justice. This subdivision includes
37 agencies of any foreign sovereignty duly recognized by the federal
38 government.

39 7. "Criminal justice information" means information that is collected
40 by criminal justice agencies and that is needed for the performance of their
41 legally authorized and required functions, such as criminal history record
42 information, citation information, stolen property information, traffic
43 accident reports and wanted persons information. Criminal justice

1 information does not include the administrative records of a criminal justice
2 agency.

3 8. "Disposition" means information disclosing that a decision has been
4 made not to bring criminal charges or that criminal proceedings have been
5 concluded or information relating to sentencing, correctional supervision,
6 release from correctional supervision, the outcome of an appellate review of
7 criminal proceedings or executive clemency.

8 9. "Dissemination" means the written, oral or electronic communication
9 or transfer of criminal justice information to individuals and agencies other
10 than the criminal justice agency that maintains the information.
11 Dissemination includes the act of confirming the existence or nonexistence
12 of criminal justice information.

13 10. "Management control":

14 (a) Means the authority to set and enforce:

15 (i) Priorities regarding development and operation of criminal justice
16 information systems and programs.

17 (ii) Standards for the selection, supervision and termination of
18 personnel involved in the development of criminal justice information systems
19 and programs and in the collection, maintenance, analysis and dissemination
20 of criminal justice information.

21 (iii) Policies governing the operation of computers, circuits and
22 telecommunications terminals used to process criminal justice information to
23 the extent that the equipment is used to process, store or transmit criminal
24 justice information.

25 (b) Includes the supervision of equipment, systems design, programming
26 and operating procedures necessary for the development and implementation of
27 automated criminal justice information systems.

28 11. "PROCESS CONTROL NUMBER" MEANS THE ARIZONA AUTOMATED FINGERPRINT
29 IDENTIFICATION SYSTEM NUMBER THAT ATTACHES TO EACH ARREST EVENT AT THE TIME
30 OF FINGERPRINTING AND THAT IS ASSIGNED TO THE ARREST FINGERPRINT CARD,
31 DISPOSITION FORM AND OTHER PERTINENT DOCUMENTS.

32 ~~11-~~ 12. "Secondary dissemination" means the dissemination of criminal
33 justice information from an individual or agency that originally obtained the
34 information from the central state repository or through the Arizona criminal
35 justice information system to another individual or agency.

36 ~~12-~~ 13. "Sexual orientation" means consensual homosexuality or
37 heterosexuality.

38 ~~13-~~ 14. "Subject of record" means the person who is the primary
39 subject of a criminal justice record.

40 Sec. 29. Repeal

41 Section 41-1750, Arizona Revised Statutes, as amended by Laws 1997,
42 chapter 220, section 89 and chapter 222, section 73, is repealed.

1 Sec. 30. Section 44-1261, Arizona Revised Statutes, is amended to
2 read:

3 44-1261. Definitions; exemptions

4 A. In this article, unless the context otherwise requires:

5 1. "Consumer" means the purchaser, other than for purposes of resale,
6 of a motor vehicle, any person to whom the motor vehicle is transferred
7 during the duration of an express warranty applicable to the motor vehicle
8 or any other person entitled by the terms of the warranty to enforce the
9 obligations of the warranty.

10 2. "Motor vehicle" means a self-propelled vehicle designated primarily
11 for the transportation of persons or property over the public highways.

12 3. "USED MOTOR VEHICLE" MEANS A MOTOR VEHICLE THAT HAS BEEN SOLD,
13 BARGAINED, EXCHANGED OR GIVEN AWAY OR THE TITLE TO WHICH HAS BEEN TRANSFERRED
14 FROM THE PERSON WHO FIRST ACQUIRED THE VEHICLE FROM THE MANUFACTURER,
15 IMPORTER OR DEALER OR AGENT OF THE MANUFACTURER OR IMPORTER AND THAT HAS BEEN
16 PLACED IN BONA FIDE CONSUMER USE.

17 4. "USED MOTOR VEHICLE DEALER" MEANS A PERSON OR BUSINESS THAT SELLS
18 OR OFFERS FOR SALE A USED MOTOR VEHICLE AFTER SELLING OR OFFERING FOR SALE
19 FOUR OR MORE USED MOTOR VEHICLES IN THE PREVIOUS TWELVE MONTHS BUT DOES NOT
20 INCLUDE A BANK OR FINANCIAL INSTITUTION, AN INSURANCE COMPANY, A BUSINESS
21 SELLING A USED MOTOR VEHICLE TO AN EMPLOYEE OF THAT BUSINESS, A LESSOR
22 SELLING A LEASED VEHICLE BY OR TO THE LESSEE OF THAT VEHICLE OR TO AN
23 EMPLOYEE OF THE LESSEE OF THAT VEHICLE OR A PERSON WHO BUYS, SELLS, EXCHANGES
24 OR OFFERS OR ATTEMPTS TO NEGOTIATE A SALE OF OR EXCHANGE AN INTEREST IN A
25 CLASSIC CAR AS DEFINED IN SECTION 28-2483 OR A HISTORIC VEHICLE AS DEFINED
26 IN SECTION 28-2484.

27 B. If the motor vehicle is a motor home, the provisions of this
28 article shall apply to the self-propelled vehicle and chassis but ~~does~~ not
29 ~~include~~ TO those portions of the vehicle designed, used or maintained
30 primarily as a mobile dwelling, office or commercial space.

31 C. The provisions of this article do not apply to A SALE OF A MOTOR
32 VEHICLE TO A PURCHASER FOR THE PURPOSE OF RESALE FOR PROFIT OR TO a motor
33 vehicle with a declared gross weight over ten thousand pounds OR THAT IS SOLD
34 AT A PUBLIC AUCTION.

35 Sec. 31. Section 44-1266, Arizona Revised Statutes, is amended to
36 read:

37 44-1266. Notice to dealers and prospective purchasers

38 A. A manufacturer who has been ordered by judgment or decree to
39 replace or repurchase OR WHO HAS REPLACED OR REPURCHASED a motor vehicle
40 pursuant to this article or the repair or replace laws of another state
41 shall, before offering the motor vehicle for resale, attach to the motor
42 vehicle written notification indicating the motor vehicle has been replaced
43 or repurchased. A consumer has a cause of action against any person who

1 removes the written notification from the motor vehicle, except as provided
2 in subsection B of this section.

3 B. A motor vehicle dealer, broker, wholesale motor vehicle dealer or
4 wholesale motor vehicle auction dealer as defined in section 28-4301 who
5 offers for sale a motor vehicle that has been replaced or repurchased
6 pursuant to this article or the repair or replace laws of another state shall
7 provide the purchaser with the manufacturer's written notification indicating
8 that the motor vehicle has been replaced or repurchased before completion of
9 the sale.

10 C. It shall constitute an affirmative defense in an action brought
11 pursuant to subsection A of this section against a motor vehicle dealer or
12 an agent of a motor vehicle dealer that the notification described in
13 subsection A of this section was removed by someone other than the dealer or
14 agent without the knowledge of the dealer or agent.

15 Sec. 32. Title 44, chapter 9, article 5, Arizona Revised Statutes, is
16 amended by adding section 44-1267, to read:

17 44-1267. Used motor vehicles; title; implied warranty of
18 merchantability disclaimer; waiver; burden of proof;
19 remedies

20 A. UNLESS THE SELLER IS A USED MOTOR VEHICLE DEALER, BEFORE THE SELLER
21 ATTEMPTS TO SELL A USED MOTOR VEHICLE THE SELLER SHALL POSSESS THE TITLE TO
22 THE USED MOTOR VEHICLE AND THE TITLE SHALL BE IN THE SELLER'S NAME.

23 B. EXCEPT AS PROVIDED IN SUBSECTION I OF THIS SECTION AND IN ADDITION
24 TO THE REQUIREMENTS OF SECTION 28-4412, A USED MOTOR VEHICLE DEALER SHALL NOT
25 EXCLUDE, MODIFY OR DISCLAIM THE IMPLIED WARRANTY OF MERCHANTABILITY
26 PRESCRIBED IN SECTION 47-2314 OR LIMIT THE REMEDIES FOR A BREACH OF THAT
27 WARRANTY, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, BEFORE MIDNIGHT OF
28 THE FIFTEENTH CALENDAR DAY AFTER DELIVERY OF A USED MOTOR VEHICLE OR UNTIL
29 A USED MOTOR VEHICLE IS DRIVEN FIVE HUNDRED MILES AFTER DELIVERY, WHICHEVER
30 IS EARLIER. IN CALCULATING TIME UNDER THIS SUBSECTION, A DAY ON WHICH THE
31 WARRANTY IS BREACHED IS EXCLUDED AND ALL SUBSEQUENT DAYS IN WHICH THE MOTOR
32 VEHICLE FAILS TO CONFORM WITH THE IMPLIED WARRANTY OF MERCHANTABILITY IS ALSO
33 EXCLUDED. IN CALCULATING DISTANCE UNDER THIS SUBSECTION, THE MILES DRIVEN
34 TO OBTAIN OR IN CONNECTION WITH THE REPAIR, SERVICING OR TESTING OF THE MOTOR
35 VEHICLE THAT FAILS TO CONFORM WITH THE IMPLIED WARRANTY OF MERCHANTABILITY
36 ARE EXCLUDED. AN ATTEMPT TO EXCLUDE, MODIFY OR DISCLAIM THE IMPLIED WARRANTY
37 OF MERCHANTABILITY OR TO LIMIT THE REMEDIES FOR A BREACH OF THAT WARRANTY,
38 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN VIOLATION OF THIS SUBSECTION
39 RENDERS A PURCHASE AGREEMENT VOIDABLE AT THE OPTION OF THE PURCHASER.

40 C. FOR THE PURPOSES OF THIS SECTION, THE IMPLIED WARRANTY OF
41 MERCHANTABILITY IS MET IF THE MOTOR VEHICLE FUNCTIONS IN A SAFE CONDITION AS
42 PROVIDED IN TITLE 28, CHAPTER 3, ARTICLE 16 AND IS SUBSTANTIALLY FREE OF ANY
43 DEFECT THAT SIGNIFICANTLY LIMITS THE USE OF THE MOTOR VEHICLE FOR THE
44 ORDINARY PURPOSE OF TRANSPORTATION ON ANY PUBLIC HIGHWAY. THE IMPLIED

1 WARRANTY OF MERCHANTABILITY EXPIRES AT MIDNIGHT OF THE FIFTEENTH CALENDAR DAY
2 AFTER DELIVERY OF A USED MOTOR VEHICLE OR UNTIL A USED MOTOR VEHICLE IS
3 DRIVEN FIVE HUNDRED MILES AFTER DELIVERY, WHICHEVER IS EARLIER. IN
4 CALCULATING TIME UNDER THIS SUBSECTION, A DAY ON WHICH THE WARRANTY IS
5 BREACHED IS EXCLUDED AND ALL SUBSEQUENT DAYS IN WHICH THE MOTOR VEHICLE FAILS
6 TO CONFORM WITH THE IMPLIED WARRANTY OF MERCHANTABILITY IS ALSO EXCLUDED.
7 IN CALCULATING DISTANCE UNDER THIS SUBSECTION, THE MILES DRIVEN TO OBTAIN OR
8 IN CONNECTION WITH THE REPAIR, SERVICING OR TESTING OF THE MOTOR VEHICLE THAT
9 FAILS TO CONFORM WITH THE IMPLIED WARRANTY OF MERCHANTABILITY ARE EXCLUDED.

10 D. THE IMPLIED WARRANTY OF MERCHANTABILITY DESCRIBED IN THIS SECTION
11 DOES NOT EXTEND TO DAMAGE THAT OCCURS AFTER THE SALE OF THE MOTOR VEHICLE AND
12 THAT IS THE RESULT OF ANY ABUSE, MISUSE, NEGLIGENCE, FAILURE TO PERFORM REGULAR
13 MAINTENANCE OR TO MAINTAIN ADEQUATE OIL, COOLANT OR OTHER REQUIRED FLUID OR
14 LUBRICANT OR OFF ROAD USE, RACING OR TOWING.

15 E. IF THE IMPLIED WARRANTY OF MERCHANTABILITY DESCRIBED IN THIS
16 SECTION IS BREACHED, THE PURCHASER SHALL GIVE REASONABLE NOTICE TO THE
17 SELLER. BEFORE THE PURCHASER EXERCISES ANY OTHER REMEDIES UNDER TITLE 47,
18 CHAPTER 2, THE SELLER SHALL HAVE A REASONABLE OPPORTUNITY TO REPAIR THE
19 VEHICLE. THE PURCHASER SHALL PAY ONE-HALF OF THE COST OF THE FIRST TWO
20 REPAIRS NECESSARY TO BRING THE VEHICLE IN COMPLIANCE WITH THE WARRANTY. THE
21 PURCHASER'S PAYMENTS ARE LIMITED TO A MAXIMUM PAYMENT OF TWENTY-FIVE DOLLARS
22 FOR EACH REPAIR.

23 F. THE MAXIMUM LIABILITY OF THE SELLER UNDER THIS SECTION IS LIMITED
24 TO THE PURCHASE PRICE PAID FOR THE USED MOTOR VEHICLE.

25 G. AN AGREEMENT FOR THE SALE OF A USED MOTOR VEHICLE BY A USED MOTOR
26 VEHICLE DEALER IS VOIDABLE AT THE OPTION OF THE PURCHASER UNLESS IT CONTAINS
27 ON ITS FACE THE FOLLOWING CONSPICUOUS STATEMENT PRINTED IN BOLD-FACED TEN
28 POINT OR LARGER TYPE SET OFF FROM THE BODY OF THE AGREEMENT:

29 THE SELLER HEREBY WARRANTS THAT THIS VEHICLE WILL BE FIT
30 FOR THE ORDINARY PURPOSES FOR WHICH THE VEHICLE IS USED FOR 15
31 DAYS OR 500 MILES AFTER DELIVERY, WHICHEVER IS EARLIER, EXCEPT
32 WITH REGARD TO PARTICULAR DEFECTS DISCLOSED ON THE FIRST PAGE OF
33 THIS AGREEMENT. YOU (THE PURCHASER) WILL HAVE TO PAY UP TO
34 \$25.00 FOR EACH OF THE FIRST TWO REPAIRS IF THE WARRANTY IS
35 VIOLATED.

36 H. THE INCLUSION OF THE STATEMENT PRESCRIBED IN SUBSECTION G OF THIS
37 SECTION IN THE AGREEMENT DOES NOT CREATE AN EXPRESS WARRANTY.

38 I. A PURCHASER OF A USED MOTOR VEHICLE MAY WAIVE THE IMPLIED WARRANTY
39 OF MERCHANTABILITY DESCRIBED IN THIS SECTION ONLY FOR A PARTICULAR DEFECT IN
40 THE VEHICLE AND ONLY IF ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

41 1. THE USED MOTOR VEHICLE DEALER FULLY AND ACCURATELY DISCLOSES TO THE
42 PURCHASER THAT BECAUSE OF CIRCUMSTANCES UNUSUAL TO THE USED MOTOR VEHICLE
43 DEALER'S BUSINESS, THE USED MOTOR VEHICLE HAS A PARTICULAR DEFECT.

1 2. THE PURCHASER AGREES TO BUY THE USED MOTOR VEHICLE AFTER
2 DISCLOSURE OF THE DEFECT.

3 3. BEFORE THE SALE, THE PURCHASER INDICATES AGREEMENT TO THE WAIVER
4 BY SIGNING AND DATING THE FOLLOWING CONSPICUOUS STATEMENT THAT IS PRINTED ON
5 THE FIRST PAGE OF THE SALES AGREEMENT IN BOLD-FACED TEN POINT OR LARGER TYPE
6 AND THAT IS WRITTEN IN THE LANGUAGE IN WHICH THE PRESENTATION WAS MADE:

7 ATTENTION PURCHASER: SIGN HERE ONLY IF THE DEALER TOLD
8 YOU THAT THIS VEHICLE HAS THE FOLLOWING PROBLEM(S) AND THAT YOU
9 AGREE TO BUY THE VEHICLE ON THOSE TERMS:

- 10 1. _____
11 2. _____
12 3. _____

13 J. THE DEALER HAS THE BURDEN TO PROVE BY A PREPONDERANCE OF THE
14 EVIDENCE THAT THE DEALER COMPLIED WITH SUBSECTION I OF THIS SECTION.

15 K. ANY PURCHASER OR SELLER WHO IS AGGRIEVED BY A TRANSACTION PURSUANT
16 TO THIS SECTION AND WHO SEEKS A LEGAL REMEDY SHALL PURSUE ANY APPROPRIATE
17 REMEDY PRESCRIBED IN TITLE 47, CHAPTER 2 AND SHALL COMPLY WITH THE
18 REQUIREMENTS PRESCRIBED IN TITLE 47, CHAPTER 2.

19 Sec. 33. Conditional enactment

20 Section 13-3601, Arizona Revised Statutes, as amended by this act, is
21 effective only if House Bill 2142, relating to domestic violence, is enacted
22 into law.

23 Sec. 34. Effective date

24 Sections 28-4301, 28-4412, 44-1261 and 44-1266 as amended by this act
25 and sections 13-1813, 28-4502 and 44-1267, as added by this act, are
26 effective from and after September 30, 1998.