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REFERENCE TITLE: sexual assault of a spouse.

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SB 1040

Introduced by
Senators Blendu: Martin

AN ACT

AMENDING SECTIONS 12-511, 13-501, 13-1401, 13-1407, 13-1420, 13-1423, 13-3821, 36-3701 AND 46-292, ARIZONA REVISED STATUTES; REPEALING SECTION 13-1406.01, ARIZONA REVISED STATUTES; RELATING TO SEXUAL ASSAULT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-511, Arizona Revised Statutes, is amended to
3 read:

4 12-511. Civil action arising from criminal conduct: definitions

5 A. Notwithstanding section 12-542, the statute of limitations for any
6 civil cause of action that is brought by a victim against a defendant for
7 criminal conduct against the victim is as follows:

8 1. If the defendant is convicted of criminal conduct against the
9 victim, the statute of limitations is extended for one year from the time the
10 conviction becomes final.

11 2. Regardless of whether the defendant is convicted of criminal
12 conduct against the victim, the statute of limitations is tolled from the
13 time the defendant is charged by a criminal complaint or indictment until the
14 final adjudication of the criminal prosecution of the defendant.

15 B. If the civil cause of action brought pursuant to subsection A of
16 this section arises out of more than one incident of criminal conduct
17 included in the conviction, the statute of limitations prescribed by
18 subsection A of this section shall run from the date of the last incident of
19 criminal conduct or conviction.

20 C. There is no duty under a policy of insurance to defend or indemnify
21 for any loss resulting from criminal conduct as defined by this section if
22 the civil action is not commenced within the time period that would be
23 applicable without any tolling or extension of the statute of limitations
24 pursuant to this section.

25 D. This section does not toll or extend any statute of limitations
26 applicable to a civil cause of action brought against the employer or former
27 employer of any defendant who is subject to this section.

28 E. This section does not shorten any other applicable tolling
29 provisions.

30 F. In any action brought pursuant to this section, the standard of
31 proof is by the preponderance of the evidence.

32 G. For the purposes of this section:

33 1. "Civil cause of action" means any civil claim that the victim could
34 have brought against the defendant only for criminal conduct committed
35 against the victim regardless of whether any of these incidents ~~were~~ WAS
36 criminally prosecuted.

37 2. "Criminal conduct":

38 (a) Means any act in violation of section 13-1103, 13-1104, 13-1105,
39 13-1203, 13-1204, 13-1208, 13-1304, 13-1404, 13-1405, 13-1406, ~~13-1406.01,~~
40 13-1410, 13-1417, 13-3552, 13-3553, 13-3554, 13-3601 or 13-3601.02.

41 (b) INCLUDES ANY ACT INVOLVING SEXUAL ASSAULT OF A SPOUSE THAT WAS
42 COMMITTED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

43 3. "Defendant" means a natural person.

44 4. "Final disposition" has the same meaning prescribed in sections
45 8-382 and 13-4401.

1 5. "Victim" has the same meaning prescribed in sections 8-382 and
2 13-4401.

3 Sec. 2. Section 13-501, Arizona Revised Statutes, is amended to read:

4 13-501. Persons under eighteen years of age; felony charging;
5 definitions

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

9 1. First degree murder in violation of section 13-1105.

10 2. Second degree murder in violation of section 13-1104.

11 3. Forcible sexual assault in violation of section 13-1406.

12 4. Armed robbery in violation of section 13-1904.

13 5. Any other violent felony offense.

14 6. Any felony offense committed by a chronic felony offender.

15 7. Any offense that is properly joined to an offense listed in this
16 subsection.

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

21 1. A class 1 felony.

22 2. A class 2 felony.

23 3. A class 3 felony in violation of any offense in chapters 10 through
24 17 or chapter 19 or 23 of this title.

25 4. A class 3, 4, 5 or 6 felony involving the intentional or knowing
26 infliction of serious physical injury or the discharge, use or threatening
27 exhibition of a deadly weapon or dangerous instrument.

28 5. Any felony offense committed by a chronic felony offender.

29 6. Any offense that is properly joined to an offense listed in this
30 subsection.

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

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

39 E. Upon motion of the juvenile the court shall hold a hearing after
40 arraignment and before trial to determine if a juvenile is a chronic felony
41 offender. At the hearing the state shall prove by a preponderance of the
42 evidence that the juvenile is a chronic felony offender. If the court does
43 not find that the juvenile is a chronic felony offender, the court shall
44 transfer the juvenile to the juvenile court pursuant to section 8-302. If
45 the court finds that the juvenile is a chronic felony offender or if the

juvenile does not file a motion to determine if the juvenile is a chronic felony offender, the criminal prosecution shall continue.

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

G. For the purposes of this section:

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

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

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

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

5. "Other violent felony offenses" means:

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

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

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

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

Sec. 3. Section 13-1401, Arizona Revised Statutes, is amended to read:

13-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Oral sexual contact" means oral contact with the penis, vulva or anus.

2. "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.

3. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.

~~4. "Spouse" means a person who is legally married and cohabiting.~~

~~5-~~ 4. "Without consent" includes any of the following:

(a) The victim is coerced by the immediate use or threatened use of force against a person or property.

(b) The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For purposes of this subdivision, "mental defect" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.

1 (c) The victim is intentionally deceived as to the nature of the act.

2 (d) The victim is intentionally deceived to erroneously believe that
3 the person is the victim's spouse.

4 Sec. 4. Repeal

5 Section 13-1406.01, Arizona Revised Statutes, is repealed.

6 Sec. 5. Section 13-1407, Arizona Revised Statutes, is amended to read:
7 13-1407. Defenses

8 A. It is a defense to a prosecution pursuant to sections 13-1404 and
9 13-1405 involving a minor, ~~if the act was done in furtherance of lawful~~
10 ~~medical practice.~~

11 B. It is a defense to a prosecution pursuant to sections 13-1404 and
12 13-1405 in which the victim's lack of consent is based on incapacity to
13 consent because the victim was fifteen, sixteen or seventeen years of age, ~~if~~
14 ~~if at the time the defendant engaged in the conduct constituting the offense~~
15 ~~the defendant did not know and could not reasonably have known the age of the~~
16 ~~victim.~~

17 C. It is a defense to a prosecution pursuant to section 13-1402,
18 13-1404, 13-1405 or 13-1406, ~~if the act was done by a duly licensed~~
19 ~~physician or registered nurse or a person acting under his or her~~ THE
20 ~~PHYSICIAN'S OR NURSE'S~~ direction, or any other person who renders emergency
21 care at the scene of an emergency occurrence, ~~and~~ THE ACT consisted of
22 administering a recognized and lawful form of treatment ~~which~~ THAT was
23 reasonably adapted to promoting the physical or mental health of the patient
24 and the treatment was administered in an emergency when the duly licensed
25 physician or registered nurse or a person acting under ~~his or her~~ THE
26 ~~PHYSICIAN'S OR NURSE'S~~ direction, or any other person rendering emergency
27 care at the scene of an emergency occurrence, reasonably believed that no one
28 competent to consent could be consulted and that a reasonable person, wishing
29 to safeguard the welfare of the patient, would consent.

30 D. It is a defense to a prosecution pursuant to section 13-1404, ~~OR~~
31 ~~13-1405 or 13-1406~~ that the person was the spouse of the other person at the
32 time of commission of the act. It is not a defense to a prosecution pursuant
33 to section ~~13-1406.01~~ 13-1406 that the defendant was the spouse of the victim
34 at the time of commission of the act.

35 E. It is a defense to A prosecution pursuant to section 13-1404 or
36 13-1410 that the defendant was not motivated by a sexual interest. It is a
37 defense to A prosecution pursuant to section 13-1404 involving a victim under
38 fifteen years of age that the defendant was not motivated by a sexual
39 interest.

40 F. It is a defense to A prosecution pursuant to section 13-1405 if the
41 victim is ~~of the age of~~ fifteen, sixteen or seventeen YEARS OF AGE, the
42 defendant is ~~less than~~ UNDER nineteen years of age or attending high school
43 and is no more than twenty-four months older than the victim and the conduct
44 is consensual.

45 Sec. 6. Section 13-1420, Arizona Revised Statutes, is amended to read:
46 13-1420. Sexual offense; evidence of similar crimes; definition

1 A. If the defendant is charged with ~~a violation of~~ COMMITTING a sexual
2 offense, the court may admit evidence that the defendant committed past acts
3 ~~which~~ THAT would constitute a sexual offense and may consider the bearing
4 this evidence has on any matter to which it is relevant.

5 B. This section does not limit the admission or consideration of
6 evidence under any court rule.

7 C. For the purposes of this section, "sexual offense" means any of the
8 following:

- 9 1. Sexual abuse, ~~in violation of~~ section 13-1404.
- 10 2. Sexual conduct with a minor in violation of section 13-1405.
- 11 3. Sexual assault, ~~in violation of~~ section 13-1406.
- 12 4. Sexual assault of a spouse, ~~in violation of section 13-1406.01~~ IF
13 THE OFFENSE WAS COMMITTED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
14 SECTION.
- 15 5. Molestation of a child, ~~in violation of~~ section 13-1410.
- 16 6. Continuous sexual abuse of a child, ~~in violation of~~ section
17 13-1417.
- 18 7. Sexual misconduct by a behavioral health professional, ~~in~~
19 violation of section 13-1418.
- 20 8. Commercial sexual exploitation of a minor, ~~in violation of~~ section
21 13-3552.
- 22 9. Sexual exploitation of a minor, ~~in violation of~~ section 13-3553.

23 Sec. 7. Section 13-1423, Arizona Revised Statutes, is amended to read:
24 13-1423. Violent sexual assault; natural life sentence

25 A. A person is guilty of violent sexual assault if in the course of
26 committing an offense under section 13-1404, 13-1405, 13-1406, ~~13-1406.01~~ or
27 13-1410 the offense involved the discharge, use or threatening exhibition of
28 a deadly weapon or dangerous instrument or involved the intentional or
29 knowing infliction of serious physical injury and the person has a historical
30 prior felony conviction for a sexual offense under this chapter or any
31 offense committed outside this state that if committed in this state would
32 constitute a sexual offense under this chapter.

33 B. Notwithstanding sections 13-604 and 13-604.01, a person who is
34 guilty of a violent sexual assault shall be sentenced to life imprisonment
35 and the court shall order that the person not be released on any basis for
36 the remainder of the person's natural life.

37 Sec. 8. Section 13-3821, Arizona Revised Statutes, is amended to read:
38 13-3821. Persons required to register; procedure;
39 identification card

40 A. A person who has been convicted of a violation or attempted
41 violation of any of the following offenses or who has been convicted of an
42 offense committed in another jurisdiction that if committed in this state
43 would be a violation or attempted violation of any of the following offenses
44 or an offense that was in effect before September 1, 1978 and that, if
45 committed on or after September 1, 1978, has the same elements of an offense
46 listed in this section shall REGISTER, within ten days after the conviction

1 or within ten days after entering and remaining in any county of this state,
2 ~~register~~ with the sheriff of that county:

3 1. Unlawful imprisonment pursuant to section 13-1303 if the victim is
4 under eighteen years of age and the unlawful imprisonment was not committed
5 by the child's parent.

6 2. Kidnapping pursuant to section 13-1304 if the victim is under
7 eighteen years of age and the kidnapping was not committed by the child's
8 parent.

9 3. Sexual abuse pursuant to section 13-1404 if the victim is under
10 eighteen years of age.

11 4. Sexual conduct with a minor pursuant to section 13-1405.

12 5. Sexual assault pursuant to section 13-1406.

13 6. Sexual assault of a spouse ~~pursuant to section 13-1406.01~~ IF THE
14 OFFENSE WAS COMMITTED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
15 SECTION.

16 7. Molestation of a child pursuant to section 13-1410.

17 8. Continuous sexual abuse of a child pursuant to section 13-1417.

18 9. Taking a child for the purpose of prostitution pursuant to section
19 13-3206.

20 10. Child prostitution pursuant to section 13-3212.

21 11. Commercial sexual exploitation of a minor pursuant to section
22 13-3552.

23 12. Sexual exploitation of a minor pursuant to section 13-3553.

24 13. Luring a minor for sexual exploitation pursuant to section 13-3554.

25 14. A second or subsequent violation of indecent exposure to a person
26 under the age of fifteen years pursuant to section 13-1402, subsection B.

27 15. A second or subsequent violation of public sexual indecency to a
28 minor under the age of fifteen years pursuant to section 13-1403,
29 subsection B.

30 16. A third or subsequent violation of indecent exposure pursuant to
31 section 13-1402.

32 17. A third or subsequent violation of public sexual indecency pursuant
33 to section 13-1403.

34 18. A violation of section 13-3822 or 13-3824.

35 B. Before the person is released from confinement the state department
36 of corrections in conjunction with the department of public safety and each
37 county sheriff shall complete the registration of any person who was
38 convicted of a violation of any offense listed under subsection A of this
39 section. Within three days after the person's release from confinement, the
40 state department of corrections shall forward the registered person's records
41 to the department of public safety and to the sheriff of the county in which
42 the registered person intends to reside. Registration pursuant to this
43 subsection shall be consistent with subsection E of this section.

44 C. Notwithstanding subsection A of this section, the judge who
45 sentences a defendant for any violation of chapter 14 or 35.1 of this title
46 or for an offense for which there was a finding of sexual motivation pursuant

1 to section 13-118 may require the person who committed the offense to
2 register pursuant to this section.

3 D. The court may require a person who has been adjudicated delinquent
4 for an act that would constitute an offense specified in subsection A or C of
5 this section to register pursuant to this section. Any duty to register
6 under this subsection shall terminate when the person reaches twenty-five
7 years of age.

8 E. A person who has been convicted of or adjudicated delinquent and
9 who is required to register in the convicting state for an act that would
10 constitute an offense specified in subsection A or C of this section and who
11 is not a resident of this state shall be required to register pursuant to
12 this section if the person is either:

13 1. Employed full-time or part-time in this state, with or without
14 compensation, for more than fourteen consecutive days or for an aggregate
15 period of more than thirty days in a calendar year.

16 2. Enrolled as a full-time or part-time student in any school in this
17 state for more than fourteen consecutive days or for an aggregate period of
18 more than thirty days in a calendar year. For the purposes of this
19 paragraph, "school" means an educational institution of any description,
20 public or private, wherever located in this state.

21 F. Any duty to register under subsection D or E of this section for a
22 juvenile adjudication terminates when the person reaches twenty-five years of
23 age.

24 G. The court may order the termination of any duty to register under
25 this section ~~upon~~ ON successful completion of probation if the person was
26 under eighteen years of age when the offense for which the person was
27 convicted was committed.

28 H. At the time of registering, the person shall sign a statement in
29 writing giving such information as required by the director of the department
30 of public safety, including all names by which the person is known. The
31 sheriff shall fingerprint and photograph the person and within three days
32 thereafter shall send copies of the statement, fingerprints and photographs
33 to the criminal identification section within the department of public safety
34 and the chief of police, if any, of the place where the person resides.

35 I. ~~Upon~~ ON the person's initial registration and every year after the
36 person's initial registration, the person shall obtain a new nonoperating
37 identification license or a driver license from the motor vehicle division in
38 the department of transportation and shall carry a valid nonoperating
39 identification license or a driver license. Notwithstanding sections 28-3165
40 and 28-3171, the license shall be valid for one year from the date of
41 issuance, and the person shall submit to the department of transportation
42 proof of the person's address. The motor vehicle division shall annually
43 update the person's photograph and shall make a copy of the photograph
44 available to the criminal identification section of the department of public
45 safety or to any law enforcement agency.

J. Except as provided in subsection E or K of this section, the clerk of the superior court in the county in which a person has been convicted of a violation of any offense listed under subsection A of this section or has been ordered to register pursuant to subsection C or D of this section shall notify the sheriff in that county of the conviction within ten days after entry of the judgment.

K. Within ten days after entry of judgment, a court not of record shall notify the arresting law enforcement agency of an offender's conviction of a violation of section 13-1402. Within ten days after receiving this information, the law enforcement agency shall determine if the offender is required to register pursuant to this section. If the law enforcement agency determines that the offender is required to register, the law enforcement agency shall provide the information required by section 13-3825 to the department of public safety and shall make community notification as required by law.

L. A person who is required to register pursuant to this section because of a conviction for the unlawful imprisonment of a minor or the kidnapping of a minor is required to register, absent additional or subsequent convictions, for a period of ten years from the date that the person is released from prison, jail, probation, community supervision or parole and the person has fulfilled all restitution obligations. Notwithstanding this subsection, a person who has a prior conviction for an offense for which registration is required pursuant to this section is required to register for life.

M. A person who is required to register pursuant to this section and who is a student at a public or private institution of postsecondary education or who is employed, with or without compensation, at a public or private institution of postsecondary education or who carries on a vocation at a public or private institution of postsecondary education shall notify the county sheriff having jurisdiction of the institution of postsecondary education. The person required to register pursuant to this section shall also notify the sheriff of each change in enrollment or employment status at the institution.

Sec. 9. Section 36-3701, Arizona Revised Statutes, is amended to read:

36-3701. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means any agency that is authorized to direct the release of a person who is serving a sentence or term of confinement or who is receiving treatment, including a state or federal prison, a county jail and the Arizona state hospital.

2. "Competent professional" means a person who is:

(a) Familiar with the state's sexually violent persons statutes and sexual offender treatment programs available in this state.

(b) Approved by the superior court as meeting court approved guidelines.

1 3. "Conviction" includes a finding of guilt at any time for a sexually
2 violent offense or an order of the juvenile court adjudicating the person
3 delinquent for any sexually violent offense.

4 4. "Less restrictive alternative" means court ordered treatment in a
5 setting that is less restrictive than total confinement and that is conducted
6 in a setting approved by the superintendent of the state hospital.

7 5. "Mental disorder" means a paraphilia, personality disorder or
8 conduct disorder or any combination of paraphilia, personality disorder and
9 conduct disorder that predisposes a person to commit sexual acts to such a
10 degree as to render the person a danger to the health and safety of others.

11 6. "Sexually violent offense" means any of the following:

12 (a) Sexual conduct with a minor pursuant to section 13-1405, sexual
13 assault pursuant to section 13-1406, ~~sexual assault of a spouse pursuant to~~
14 ~~section 13-1406.01~~, molestation of a child pursuant to section 13-1410, ~~or~~
15 continuous sexual abuse of a child pursuant to section 13-1417 OR SEXUAL
16 ASSAULT OF A SPOUSE IF THE OFFENSE WAS COMMITTED BEFORE THE EFFECTIVE DATE OF
17 THIS AMENDMENT TO THIS SECTION.

18 (b) Second degree murder pursuant to section 13-1104, first degree
19 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
20 aggravated assault pursuant to section 13-1204, unlawful imprisonment
21 pursuant to section 13-1303, kidnaping pursuant to section 13-1304 or
22 burglary in the first degree pursuant to section 13-1508 if the court at the
23 time of sentencing or civil commitment proceedings determines beyond a
24 reasonable doubt that the act was sexually motivated pursuant to section
25 13-118.

26 (c) An attempt, a solicitation, a facilitation or a conspiracy to
27 commit an offense listed in subdivision (a) or (b) of this paragraph.

28 (d) An act committed in another jurisdiction that if committed in this
29 state would be a sexually violent offense listed in subdivision (a) or (b) of
30 this paragraph.

31 (e) A conviction for a felony offense that was in effect before
32 September 1, 1978, ~~AND~~ that if committed on or after September 1, 1978 would
33 be comparable to a sexually violent offense listed in subdivision (a) or (b)
34 of this paragraph.

35 7. "Sexually violent person" means a person to whom both of the
36 following apply:

37 (a) Has ever been convicted of or found guilty but insane of a
38 sexually violent offense or was charged with a sexually violent offense and
39 was determined incompetent to stand trial.

40 (b) Has a mental disorder that makes the person likely to engage in
41 acts of sexual violence.

42 Sec. 10. Section 46-292, Arizona Revised Statutes, is amended to read:

43 46-292. Eligibility for assistance

44 A. Cash assistance may be given under this title to any dependent
45 child:

1 1. Who has established residence in Arizona at the time of application
2 and is either:

3 (a) A citizen by birth or naturalization.

4 (b) A qualified alien who entered the United States on or before
5 August 21, 1996.

6 (c) A qualified alien who entered the United States as a member of one
7 of the exception groups under Public Law 104-193, section 412, in which case
8 the person shall be determined eligible in accordance with Public Law
9 104-193.

10 (d) Defined as a qualified alien by the attorney general of the United
11 States under the authority of Public Law 104-208, section 501.

12 For the purposes of subdivisions (b) and (c) of this paragraph, "qualified
13 alien" means a person who is defined as a qualified alien under Public Law
14 104-193, section 431.

15 2. Whose parent or parents or person or persons acting in the parents'
16 place, if employable, ~~shall~~ DO not refuse to accept available employment and
17 ~~if~~ any employable child in the family does not refuse to accept available
18 employment. The department shall assess the applicant's employability at the
19 time of initial application for assistance to establish a self-sufficiency
20 diversion option, if appropriate, before benefit issuance. The determination
21 of employability and the conditions under which employment shall be required
22 shall be determined by the state department, except that claimed
23 unemployability because of physical or mental incapacity shall be determined
24 by the state department in accordance with the provisions of this title.

25 3. Whose parent or parents or other relatives who are applying for or
26 receiving assistance on behalf of the child have not, within one year prior
27 to application, or while a recipient, transferred or assigned real or
28 personal property with the intent to evade federal or state eligibility
29 requirements. Transfer of property with retention of a life estate for the
30 purpose of qualifying for assistance is prohibited. Where fair consideration
31 for the property was received, no inquiry into motive is necessary. A person
32 found ineligible under this section shall be ineligible for such time as the
33 state department determines.

34 B. Qualified aliens entering the United States after August 21, 1996
35 are ineligible for benefits for a period of five years beginning on their
36 date of entry, except for Cuban and Haitian entrants as defined in section
37 501(e)(2) of the refugee education assistance act of 1980 and exceptions
38 provided under Public Law 104-193 (personal responsibility and work
39 opportunity reconciliation act of 1996) and Public Law 105-32 (balanced
40 budget act of 1997).

41 C. A parent or any other relative who applies for or receives cash
42 assistance under this title on behalf of a child shall cooperate with the
43 department by taking the following actions:

44 1. Providing information regarding the identity of the child's father
45 and mother and other pertinent information including their names, social
46 security numbers and current addresses or a sworn statement that attests to

1 the lack of this information and that is accompanied by facts supporting the
2 asserted lack of information.

3 2. Appearing at interviews, hearings and legal proceedings.

4 3. Submitting and having the child submit to genetic testing.

5 4. Signing authorizations for third parties to release information
6 concerning the applicant or the child, or both.

7 5. In cases in which parentage has not been established, providing a
8 sworn statement alleging paternity and setting forth facts establishing a
9 reasonable possibility of the requisite sexual contact between the parties.

10 6. Supplying additional information the department requires.

11 D. The department shall sanction a recipient who fails, without good
12 cause as prescribed in subsection E of this section, to cooperate with child
13 support enforcement efforts according to the sanction provisions of section
14 46-300.

15 E. One or more of the following circumstances constitute good cause
16 for failure to cooperate with child support enforcement efforts:

17 1. Cooperation may result in physical or emotional harm to the parent,
18 child for whom support is sought or caretaker relative with whom the child is
19 living.

20 2. Legal proceedings for adoption of the child for whom support is
21 sought are pending before a court.

22 3. The participant has been working, for less than ninety days, with a
23 public or licensed private social agency on the issue of whether to allow the
24 child for whom support is sought to be adopted.

25 4. The child for whom support is sought was conceived as a result of
26 sexual assault pursuant to section 13-1406 or incest.

27 F. A person claiming good cause has twenty days from the date the good
28 cause claim is provided to the agency to supply evidence supporting the
29 claim. When determining whether the parent or relative is cooperating with
30 the agency as provided in subsection C of this section, the agency shall
31 require:

32 1. If the good cause exception in subsection E, paragraph 1 of this
33 section is claimed, law enforcement, court, medical, criminal, psychological,
34 social service or governmental records or sworn statements from persons with
35 personal knowledge of the circumstances that indicate that the alleged parent
36 or obligor might inflict physical harm on the parent, child or caretaker
37 relative.

38 2. If the good cause exception in subsection E, paragraph 2 of this
39 section is claimed, court documents that indicate that legal proceedings for
40 adoption are pending before a court of competent jurisdiction.

41 3. If the good cause exception in subsection E, paragraph 3 of this
42 section is claimed, records from a public or licensed private social services
43 agency showing that placing the child for whom support is sought is under
44 consideration.

45 4. If the good cause exception in subsection E, paragraph 4 of this
46 section is claimed, law enforcement, court, medical, criminal, psychological,

1 social service or governmental records or sworn statements from persons with
2 personal knowledge of the circumstances surrounding the conception of the
3 child that indicate the child was conceived as a result of sexual assault
4 pursuant to section 13-1406 or incest.

5 G. Notwithstanding subsection A of this section and except as provided
6 in subsection H of this section, a dependent child or children who are born
7 during one of the following time periods are not eligible for assistance
8 under this title:

9 1. The period in which the parent or other relative is receiving
10 assistance benefits.

11 2. The temporary period in which the parent or other relative is
12 ineligible pursuant to a penalty imposed by the department for failure to
13 comply with benefit eligibility requirements, after which the parent or other
14 relative is eligible for a continuation of benefits.

15 3. Any period after November 1, 1995 that is less than sixty months
16 between a voluntary withdrawal from program benefits or a period of
17 ineligibility for program benefits which immediately followed a period during
18 which program benefits were received and a subsequent reapplication and
19 eligibility approval for benefits.

20 H. The following exceptions apply to the provisions of subsection
21 G of this section:

22 1. The department shall allow an increase in cash assistance under the
23 program for a dependent child or children born as a result of an act of
24 sexual assault as prescribed in section 13-1406 ~~or 13-1406.01~~ or incest. The
25 department shall ensure that the proper law enforcement authorities are
26 notified of allegations of sexual assault or incest made pursuant to this
27 paragraph. **FOR THE PURPOSES OF THIS PARAGRAPH, "AN ACT OF SEXUAL ASSAULT"**
28 **INCLUDES SEXUAL ASSAULT OF A SPOUSE IF THE OFFENSE WAS COMMITTED BEFORE THE**
29 **EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.**

30 2. For those parents or other relatives who are currently authorized
31 for cash assistance the department shall allow an increase in cash assistance
32 under the program as a result of the birth of a child or children to the
33 parent or other relative only if the birth occurred within ten months of the
34 initial eligible month. The department may use only the additional child or
35 children who are born from the pregnancies covered in this subsection in
36 computing the additional benefit.

37 3. The department shall allow an increase in cash assistance for any
38 dependent child born to a parent who has not received cash assistance under
39 this title for at least twelve consecutive months if the child is born within
40 the period beginning ten months after the twelve consecutive month period and
41 ending ten months after the parent resumes receiving cash assistance.

42 4. A dependent child or children who were born during a period in
43 which the custodial parent received cash assistance through the Arizona works
44 program shall be eligible to receive assistance under this title.

5. A dependent child or children who were born within ten months after the custodial parent received cash assistance through the Arizona works program shall be eligible to receive assistance under this title.

I. The department shall calculate the sixty-month time period referenced in subsection G, paragraph 3 of this section in the following manner:

1. For persons who are receiving cash assistance on November 1, 1995, the sixty-month time period begins on November 1, 1995. A subsequent sixty-month time period begins immediately after the previous period ends if the person is receiving cash assistance through two sixty-month periods. If the individual is not receiving cash assistance at the end of the previous sixty-month period, any subsequent sixty-month time period begins on the date when cash assistance became effective again, regardless of when the person received an actual payment.

2. For persons who begin receiving cash assistance after November 1, 1995, the sixty-month time period begins on the date cash assistance becomes effective, regardless of when the person received an actual payment. A subsequent sixty-month period begins as provided in paragraph 1 of this subsection.

J. In calculating a parent's or any other relative's benefit increase that arises from any general increase that has been approved for all program recipients, the department shall not consider a child or children born under the time periods listed in subsection G of this section.

K. For the parents or other relatives who have additional children for whom they receive no cash assistance payment under subsection G of this section, the department shall make any necessary program amendments or request any necessary federal waivers to allow the parents or other relatives to earn income in an amount equal to the disallowed cash assistance payment without affecting their eligibility for assistance.

L. The director shall adopt rules:

1. To implement this section including rules to define the investigatory steps which must be taken to confirm that an act of sexual assault or incest led to the birth of a dependent child or children.

2. That require the department to inform both verbally and in writing the parents and other relatives who are receiving assistance under this article of the specific family planning services that are available to them while they are enrolled as eligible persons in the Arizona health care cost containment system.

M. Nothing in this section shall be construed to prevent an otherwise eligible child who is not included in the family's calculation of benefits under this article from being eligible for coverage under title 36, chapter 29 or for any services that are directly linked to eligibility for the temporary assistance for needy families program.

N. Assistance shall not be denied or terminated under this article because the principal wage earner works one hundred or more hours per month.

1 O. The department shall include all income from every source available
2 to the person requesting cash assistance, except income that is required to
3 be disregarded by this subsection and as determined by the department in
4 rules. For the amount of income that is received from employment, each month
5 every employed person is entitled to receive an earned income disregard of
6 ninety dollars plus an additional thirty per cent of the remaining earned
7 income. A household that includes an employed person is entitled to an
8 earned income disregard equal to the actual amount billed to the household
9 for the care of an adult or child dependent household member, up to two
10 hundred dollars a month for a child under two years of age and up to one
11 hundred seventy-five dollars a month for each other dependent. This
12 dependent care disregard is allowed only if the expense is necessary to allow
13 the household member to become or remain employed or to attend postsecondary
14 training or education that is preparatory to employment.

15 P. Any parent or other relative who applies for or receives cash
16 assistance under this article on behalf of a dependent child who is between
17 six and sixteen years of age shall ensure that the child is enrolled in and
18 attending school. An initial applicant is ineligible for benefits until the
19 applicant's dependent children are verified to be enrolled in and attending
20 an educational program. The department of education shall assist the
21 department of economic security in obtaining verification of school
22 enrollment and attendance. The director of the department of economic
23 security may adopt rules for granting good cause exceptions from the
24 provisions of this subsection. The department of economic security shall
25 sanction a recipient who fails, without good cause, to ensure school
26 enrollment and attendance according to the provisions of section 46-300.

27 Q. Any parent or other relative who applies for or receives cash
28 assistance under this section on behalf of a dependent child shall ensure
29 that the child is immunized in accordance with the schedule of immunizations
30 pursuant to section 36-672. The director of the department of economic
31 security may adopt rules for granting good cause exceptions from the
32 provisions of this subsection. The department of economic security shall
33 sanction a recipient, in accordance with the provisions of section 46-300,
34 who fails, without good cause, to obtain the required immunizations for a
35 dependent child unless the recipient submits to the department of economic
36 security the documentation described in section 15-873.

37 Sec. 11. Intent

38 It is the intent of the legislature that the marital status of the
39 parties is no longer relevant under Arizona law in determining whether a
40 sexual act with another person is criminal or not, except as otherwise
41 expressly provided by law.