

State of Arizona
Senate
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First Regular Session
2005

CHAPTER 185

SENATE BILL 1040

AN ACT

AMENDING SECTIONS 12-511 AND 13-501, ARIZONA REVISED STATUTES; REPEALING SECTION 13-1406.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-1407, 13-1420 AND 13-1423, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-2907.03; AMENDING SECTIONS 13-3821 AND 36-3701, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2406; AMENDING SECTION 46-292, 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

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

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

6 G. For the purposes of this section:

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

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

13 3. "Forcible sexual assault" means sexual assault pursuant to section
14 13-1406 that is committed without consent as defined in section 13-1401,
15 paragraph ~~5~~ 4, subdivision (a).

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

18 5. "Other violent felony ~~offenses~~ OFFENSE" means:

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

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

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

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

25 Sec. 3. Repeal

26 Section ~~13-1406.01~~, Arizona Revised Statutes, is repealed.

27 Sec. 4. Section 13-1407, Arizona Revised Statutes, is amended to read:
28 ~~13-1407.~~ Defenses

29 A. It is a defense to a prosecution pursuant to sections 13-1404 and
30 13-1405 involving a minor, ~~if~~ if the act was done in furtherance of lawful
31 medical practice.

32 B. It is a defense to a prosecution pursuant to sections 13-1404 and
33 13-1405 in which the victim's lack of consent is based on incapacity to
34 consent because the victim was fifteen, sixteen or seventeen years of age, ~~if~~
35 if at the time the defendant engaged in the conduct constituting the offense
36 the defendant did not know and could not reasonably have known the age of the
37 victim.

38 C. It is a defense to a prosecution pursuant to section 13-1402,
39 13-1404, 13-1405 or 13-1406, ~~if~~ if the act was done by a duly licensed
40 physician or registered nurse or a person acting under ~~his or her~~ THE
41 PHYSICIAN'S OR NURSE'S direction, or any other person who renders emergency
42 care at the scene of an emergency occurrence, ~~and~~ THE ACT consisted of
43 administering a recognized and lawful form of treatment ~~which~~ THAT was
44 reasonably adapted to promoting the physical or mental health of the patient
45 and the treatment was administered in an emergency when the duly licensed
46 physician or registered nurse or a person acting under ~~his or her~~ THE

1 PHYSICIAN'S OR NURSE'S direction, or any other person rendering emergency
2 care at the scene of an emergency occurrence, reasonably believed that no one
3 competent to consent could be consulted and that a reasonable person, wishing
4 to safeguard the welfare of the patient, would consent.

5 D. It is a defense to a prosecution pursuant to section 13-1404, ~~OR~~
6 13-1405 ~~or 13-1406~~ that the person was the spouse of the other person at the
7 time of commission of the act. It is not a defense to a prosecution pursuant
8 to section ~~13-1406.01~~ 13-1406 that the defendant was the spouse of the victim
9 at the time of commission of the act.

10 E. It is a defense to A prosecution pursuant to section 13-1404 or
11 13-1410 that the defendant was not motivated by a sexual interest. It is a
12 defense to A prosecution pursuant to section 13-1404 involving a victim under
13 fifteen years of age that the defendant was not motivated by a sexual
14 interest.

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

20 Sec. 5. Section 13-1420, Arizona Revised Statutes, is amended to read:

21 13-1420. Sexual offense; evidence of similar crimes; definition

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

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

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

- 30 1. Sexual abuse, ~~in violation of~~ section 13-1404.
- 31 2. Sexual conduct with a minor in violation of section 13-1405.
- 32 3. Sexual assault, ~~in violation of~~ section 13-1406.
- 33 4. Sexual assault of a spouse, ~~in violation of section 13-1406.01~~ IF
34 THE OFFENSE WAS COMMITTED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
35 SECTION.
- 36 5. Molestation of a child, ~~in violation of~~ section 13-1410.
- 37 6. Continuous sexual abuse of a child, ~~in violation of~~ section
38 13-1417.
- 39 7. Sexual misconduct by a behavioral health professional, ~~in~~
40 violation of section 13-1418.
- 41 8. Commercial sexual exploitation of a minor, ~~in violation of~~ section
42 13-3552.
- 43 9. Sexual exploitation of a minor, ~~in violation of~~ section 13-3553.

1 Sec. 6. Section 13-1423, Arizona Revised Statutes, is amended to read:

2 13-1423. Violent sexual assault; natural life sentence

3 A. A person is guilty of violent sexual assault if in the course of
4 committing an offense under section 13-1404, 13-1405, 13-1406, ~~13-1406.01~~ or
5 13-1410 the offense involved the discharge, use or threatening exhibition of
6 a deadly weapon or dangerous instrument or involved the intentional or
7 knowing infliction of serious physical injury and the person has a historical
8 prior felony conviction for a sexual offense under this chapter or any
9 offense committed outside this state that if committed in this state would
10 constitute a sexual offense under this chapter.

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

15 Sec. 7. Title 13, chapter 29, Arizona Revised Statutes, is amended by
16 adding section 13-2907.03, to read:

17 13-2907.03. False reporting of sexual assault involving a
18 spouse; classification

19 A PERSON WHO INTENTIONALLY MAKES A FALSE REPORT OF SEXUAL ASSAULT
20 INVOLVING A SPOUSE KNOWING THE REPORT IS FALSE OR A PERSON WHO COERCES
21 ANOTHER PERSON TO MAKE A FALSE REPORT OF SEXUAL ASSAULT INVOLVING A SPOUSE
22 KNOWING THE REPORT IS FALSE IS GUILTY OF A CLASS 1 MISDEMEANOR.

23 Sec. 8. Section 13-3821, Arizona Revised Statutes, is amended to read:

24 13-3821. Persons required to register; procedure;
25 identification card

26 A. A person who has been convicted of a violation or attempted
27 violation of any of the following offenses or who has been convicted of an
28 offense committed in another jurisdiction that if committed in this state
29 would be a violation or attempted violation of any of the following offenses
30 or an offense that was in effect before September 1, 1978 and that, if
31 committed on or after September 1, 1978, has the same elements of an offense
32 listed in this section shall REGISTER, within ten days after the conviction
33 or within ten days after entering and remaining in any county of this state,
34 ~~register~~ with the sheriff of that county:

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

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

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

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

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

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

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

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

6 9. Taking a child for the purpose of prostitution pursuant to section
7 13-3206.

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

9 11. Commercial sexual exploitation of a minor pursuant to section
10 13-3552.

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

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

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

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

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

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

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

23 B. Before the person is released from confinement the state department
24 of corrections in conjunction with the department of public safety and each
25 county sheriff shall complete the registration of any person who was
26 convicted of a violation of any offense listed under subsection A of this
27 section. Within three days after the person's release from confinement, the
28 state department of corrections shall forward the registered person's records
29 to the department of public safety and to the sheriff of the county in which
30 the registered person intends to reside. Registration pursuant to this
31 subsection shall be consistent with subsection E of this section.

32 C. Notwithstanding subsection A of this section, the judge who
33 sentences a defendant for any violation of chapter 14 or 35.1 of this title
34 or for an offense for which there was a finding of sexual motivation pursuant
35 to section 13-118 may require the person who committed the offense to
36 register pursuant to this section.

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

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

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

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

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

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

16 H. At the time of registering, the person shall sign a statement in
17 writing giving such information as required by the director of the department
18 of public safety, including all names by which the person is known. The
19 sheriff shall fingerprint and photograph the person and within three days
20 thereafter shall send copies of the statement, fingerprints and photographs
21 to the criminal identification section within the department of public safety
22 and the chief of police, if any, of the place where the person resides.

23 I. ~~Upon~~ ON the person's initial registration and every year after the
24 person's initial registration, the person shall obtain a new nonoperating
25 identification license or a driver license from the motor vehicle division in
26 the department of transportation and shall carry a valid nonoperating
27 identification license or a driver license. Notwithstanding sections 28-3165
28 and 28-3171, the license shall be valid for one year from the date of
29 issuance, and the person shall submit to the department of transportation
30 proof of the person's address. The motor vehicle division shall annually
31 update the person's photograph and shall make a copy of the photograph
32 available to the criminal identification section of the department of public
33 safety or to any law enforcement agency.

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

40 K. Within ten days after entry of judgment, a court not of record
41 shall notify the arresting law enforcement agency of an offender's conviction
42 of a violation of section 13-1402. Within ten days after receiving this
43 information, the law enforcement agency shall determine if the offender is
44 required to register pursuant to this section. If the law enforcement agency
45 determines that the offender is required to register, the law enforcement
46 agency shall provide the information required by section 13-3825 to the

1 department of public safety and shall make community notification as required
2 by law.

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

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

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

22 36-3701. Definitions

23 In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

44 (a) Sexual conduct with a minor pursuant to section 13-1405, sexual
45 assault pursuant to section 13-1406, ~~sexual assault of a spouse pursuant to~~
46 ~~section 13-1406.01~~, molestation of a child pursuant to section 13-1410, or

1 continuous sexual abuse of a child pursuant to section 13-1417 OR SEXUAL
2 ASSAULT OF A SPOUSE IF THE OFFENSE WAS COMMITTED BEFORE THE EFFECTIVE DATE OF
3 THIS AMENDMENT TO THIS SECTION.

4 (b) Second degree murder pursuant to section 13-1104, first degree
5 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
6 aggravated assault pursuant to section 13-1204, unlawful imprisonment
7 pursuant to section 13-1303, ~~kidnaping~~ KIDNAPPING pursuant to section 13-1304
8 or burglary in the first degree pursuant to section 13-1508 if the court at
9 the time of sentencing or civil commitment proceedings determines beyond a
10 reasonable doubt that the act was sexually motivated pursuant to section
11 13-118.

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

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

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

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

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

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

28 Sec. 10. Title 41, chapter 21, article 1, Arizona Revised Statutes, is
29 amended by adding section 41-2406, to read:

30 41-2406. Sexual assault records

31 A. THE DEPARTMENT OF PUBLIC SAFETY SHALL PROVIDE A COPY OF EACH
32 APPLICABLE DISPOSITION REPORTING FORM RELATING TO SEXUAL ASSAULTS PURSUANT TO
33 SECTION 13-1406 AND FALSE REPORTING OF SEXUAL ASSAULT PURSUANT TO SECTION
34 13-2907.03 TO THE ARIZONA CRIMINAL JUSTICE COMMISSION.

35 B. THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL MAINTAIN THE
36 FOLLOWING RECORDS REGARDING SEXUAL ASSAULTS PURSUANT TO SECTION 13-1406 AND
37 FALSE REPORTING OF SEXUAL ASSAULT PURSUANT TO SECTION 13-2907.03 THAT ARE
38 SUBMITTED TO THE COMMISSION BY THE DEPARTMENT OF PUBLIC SAFETY:

39 1. THE NUMBER OF POLICE REPORTS THAT ARE FILED.

40 2. THE NUMBER OF CHARGES THAT ARE FILED AND WHAT CHARGES ARE FILED.

41 3. THE NUMBER OF CONVICTIONS THAT ARE OBTAINED.

42 4. THE SENTENCES THAT ARE IMPOSED FOR EACH CONVICTION.

43 B. FOR THE PURPOSES OF SUBSECTION A OF THIS SECTION, THE RECORDS SHALL
44 IDENTIFY THE TOTAL NUMBER OF POLICE REPORTS, CHARGES, CONVICTIONS AND
45 SENTENCES FOR ALL SEXUAL ASSAULTS AND THE NUMBER OF POLICE REPORTS, CHARGES,
46 CONVICTIONS AND SENTENCES FOR THOSE SEXUAL ASSAULTS THAT INVOLVED A SPOUSE.

1 FOR THOSE SEXUAL ASSAULTS THAT INVOLVED A SPOUSE, THE REPORT SHALL IDENTIFY
2 WHETHER THE VICTIM AND THE VICTIM'S SPOUSE WERE ESTRANGED. THE RECORDS SHALL
3 ALSO IDENTIFY THE TOTAL NUMBER OF POLICE REPORTS, CHARGES, CONVICTIONS AND
4 SENTENCES FOR ALL FALSE REPORTS THAT RELATE TO SEXUAL ASSAULT OF A SPOUSE
5 PURSUANT TO SECTION 13-2907.03.

6 C. THE COMMISSION SHALL ANNUALLY SUBMIT THE REPORT REQUIRED BY
7 SUBSECTION B OF THIS SECTION TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND
8 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND SHALL PROVIDE A COPY OF THIS
9 REPORT TO THE SECRETARY OF STATE AND THE DIRECTOR OF THE ARIZONA STATE
10 LIBRARY, ARCHIVES AND PUBLIC RECORDS. THE COMMISSION MAY SUBMIT THIS REPORT
11 ELECTRONICALLY.

12 Sec. 11. Section 46-292, Arizona Revised Statutes, is amended to read:

13 46-292. Eligibility for assistance

14 A. Cash assistance may be given under this title to any dependent
15 child:

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

18 (a) A citizen by birth or naturalization.

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

21 (c) A qualified alien who entered the United States as a member of one
22 of the exception groups under Public Law 104-193, section 412, in which case
23 the person shall be determined eligible in accordance with Public Law
24 104-193.

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

27 For the purposes of subdivisions (b) and (c) of this paragraph, "qualified
28 alien" means a person who is defined as a qualified alien under Public Law
29 104-193, section 431.

30 2. Whose parent or parents or person or persons acting in the parents'
31 place, if employable, ~~shall~~ DO not refuse to accept available employment and
32 ~~if~~ any employable child in the family does not refuse to accept available
33 employment. The department shall assess the applicant's employability at the
34 time of initial application for assistance to establish a self-sufficiency
35 diversion option, if appropriate, before benefit issuance. The determination
36 of employability and the conditions under which employment shall be required
37 shall be determined by the state department, except that claimed
38 unemployability because of physical or mental incapacity shall be determined
39 by the state department in accordance with ~~the provisions of~~ this title.

40 3. Whose parent or parents or other relatives who are applying for or
41 receiving assistance on behalf of the child have not, within one year prior
42 to application, or while a recipient, transferred or assigned real or
43 personal property with the intent to evade federal or state eligibility
44 requirements. Transfer of property with retention of a life estate for the
45 purpose of qualifying for assistance is prohibited. Where fair consideration
46 for the property was received, no inquiry into motive is necessary. A person

1 found ineligible under this section shall be ineligible for such time as the
2 state department determines.

3 B. Qualified aliens entering the United States after August 21, 1996
4 are ineligible for benefits for a period of five years beginning on their
5 date of entry, except for Cuban and Haitian entrants as defined in section
6 501(e)(2) of the refugee education assistance act of 1980 and exceptions
7 provided under Public Law 104-193 (personal responsibility and work
8 opportunity reconciliation act of 1996) and Public Law 105-32 (balanced
9 budget act of 1997).

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

13 1. Providing information regarding the identity of the child's father
14 and mother and other pertinent information including their names, social
15 security numbers and current addresses or a sworn statement that attests to
16 the lack of this information and that is accompanied by facts supporting the
17 asserted lack of information.

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

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

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

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

25 6. Supplying additional information the department requires.

26 D. The department shall sanction a recipient who fails, without good
27 cause as prescribed in subsection E of this section, to cooperate with child
28 support enforcement efforts according to the sanction provisions of section
29 46-300.

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

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

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

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

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

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

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

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

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

14 4. If the good cause exception in subsection E, paragraph 4 of this
15 section is claimed, law enforcement, court, medical, criminal, psychological,
16 social service or governmental records or sworn statements from persons with
17 personal knowledge of the circumstances surrounding the conception of the
18 child that indicate the child was conceived as a result of sexual assault
19 pursuant to section 13-1406 or incest.

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

24 1. The period in which the parent or other relative is receiving
25 assistance benefits.

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

30 3. Any period after November 1, 1995 that is less than sixty months
31 between a voluntary withdrawal from program benefits or a period of
32 ineligibility for program benefits which immediately followed a period during
33 which program benefits were received and a subsequent reapplication and
34 eligibility approval for benefits.

35 H. The following exceptions apply to ~~the provisions of~~ subsection G of
36 this section:

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

45 2. For those parents or other relatives who are currently authorized
46 for cash assistance the department shall allow an increase in cash assistance

1 under the program as a result of the birth of a child or children to the
2 parent or other relative only if the birth occurred within ten months of the
3 initial eligible month. The department may use only the additional child or
4 children who are born from the pregnancies covered in this subsection in
5 computing the additional benefit.

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

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

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

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

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

28 2. For persons who begin receiving cash assistance after November 1,
29 1995, the sixty-month time period begins on the date cash assistance becomes
30 effective, regardless of when the person received an actual payment. A
31 subsequent sixty-month period begins as provided in paragraph 1 of this
32 subsection.

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

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

43 L. The director shall adopt rules:

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

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

6 M. Nothing in this section shall be construed to prevent an otherwise
7 eligible child who is not included in the family's calculation of benefits
8 under this article from being eligible for coverage under title 36, chapter
9 29 or for any services that are directly linked to eligibility for the
10 temporary assistance for needy families program.

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

14 O. The department shall include all income from every source available
15 to the person requesting cash assistance, except income that is required to
16 be disregarded by this subsection and as determined by the department in
17 rules. For the amount of income that is received from employment, each month
18 every employed person is entitled to receive an earned income disregard of
19 ninety dollars plus an additional thirty per cent of the remaining earned
20 income. A household that includes an employed person is entitled to an
21 earned income disregard equal to the actual amount billed to the household
22 for the care of an adult or child dependent household member, up to two
23 hundred dollars a month for a child under two years of age and up to one
24 hundred seventy-five dollars a month for each other dependent. This
25 dependent care disregard is allowed only if the expense is necessary to allow
26 the household member to become or remain employed or to attend postsecondary
27 training or education that is preparatory to employment.

28 P. Any parent or other relative who applies for or receives cash
29 assistance under this article on behalf of a dependent child who is between
30 six and sixteen years of age shall ensure that the child is enrolled in and
31 attending school. An initial applicant is ineligible for benefits until the
32 applicant's dependent children are verified to be enrolled in and attending
33 an educational program. The department of education shall assist the
34 department of economic security in obtaining verification of school
35 enrollment and attendance. The director of the department of economic
36 security may adopt rules for granting good cause exceptions from ~~the~~
37 ~~provisions of~~ this subsection. The department of economic security shall
38 sanction a recipient who fails, without good cause, to ensure school
39 enrollment and attendance according to ~~the provisions of~~ section 46-300.

40 Q. Any parent or other relative who applies for or receives cash
41 assistance under this section on behalf of a dependent child shall ensure
42 that the child is immunized in accordance with the schedule of immunizations
43 pursuant to section 36-672. The director of the department of economic
44 security may adopt rules for granting good cause exceptions from ~~the~~
45 ~~provisions of~~ this subsection. The department of economic security shall
46 sanction a recipient, in accordance with ~~the provisions of~~ section 46-300,

1 who fails, without good cause, to obtain the required immunizations for a
2 dependent child unless the recipient submits to the department of economic
3 security the documentation described in section 15-873.

4 Sec. 12. Intent

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

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.