

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2207

Introduced by
Representatives Farnsworth, Adams, Biggs, Burns J, Driggs, Konopnicki,
Lujan, Miranda B, Sinema

AN ACT

AMENDING SECTIONS 8-201, 8-203.01, 8-321, 8-341, 8-343, 8-348, 8-350, 11-361, 11-459, 12-2703, 13-105 AND 13-107, ARIZONA REVISED STATUTES; REPEALING SECTION 13-119, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-501 AND 13-502, ARIZONA REVISED STATUTES; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 248, SECTION 1; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 287, SECTION 1; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-604; TRANSFERRING AND RENUMBERING SECTIONS 13-604.01 AND 13-604.02, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, AS SECTIONS 13-705 AND 13-708, RESPECTIVELY; REPEALING SECTION 13-604.03, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-604.04, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, AS SECTION 13-901.03; AMENDING SECTION 13-607, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-609, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, AS SECTION 13-709; AMENDING SECTIONS 13-610, 13-701 AND 13-702, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-702.01 AND 13-702.02, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTIONS 13-703, 13-703.01, 13-703.02, 13-703.03, 13-703.04, 13-703.05, 13-704, 13-705 AND 13-706, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7.1, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, AS SECTIONS 13-751, 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 AND 13-759, RESPECTIVELY; RENUMBERING SECTIONS 13-708 AND 13-709, ARIZONA REVISED STATUTES, AS SECTIONS 13-711 AND 13-712, RESPECTIVELY; RENUMBERING SECTION 13-713, ARIZONA REVISED STATUTES, AS SECTION 13-706; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED

STATUTES, BY ADDING NEW SECTIONS 13-703 AND 13-704; AMENDING SECTION 13-705, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-706, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTION 13-707, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-708 AND 13-709, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-709.01, 13-709.02, 13-709.03 AND 13-709.04; AMENDING SECTION 13-710, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-711 AND 13-712, ARIZONA REVISED STATUTES; AMENDING TITLE 13, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7.1; AMENDING SECTION 13-751, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 3 AND AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 4 AND AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-755, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-901.01, ARIZONA REVISED STATUTES; AMENDING SECTION 13-901.03, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-902, 13-905, 13-906, 13-907, 13-909, 13-910, 13-912.01, 13-921, 13-1104, 13-1105, 13-1204, 13-1207, 13-1212, 13-1304, 13-1307, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1414, 13-1417, 13-1423, 13-2308.01, 13-2312, 13-2411, 13-3107, 13-3113, 13-3206, 13-3212, 13-3407, 13-3407.01, 13-3408, 13-3409, 13-3411, 13-3419, 13-3422, 13-3552, 13-3553, 13-3554, 13-3601, 13-3623, 13-3716, 13-3727, 13-3821, 13-3824, 13-3828, 13-3994, 13-4032, 13-4062, 13-4501, 13-4511, 13-4515, 15-341, 15-512, 15-550, 20-448, 25-411, 31-281, 31-403, 31-412, 41-1604.08, 41-1604.10, 41-1604.11, 41-1604.13, 41-1604.14, 41-1604.15, 41-1604.16, 41-1609.05, 41-1758.03, 41-1967.01, 41-2814 AND 46-321, ARIZONA REVISED STATUTES; AMENDING LAWS 2003, CHAPTER 255, SECTION 8; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-201, Arizona Revised Statutes, is amended to
3 read:
4 8-201. Definitions
5 In this title, unless the context otherwise requires:
6 1. "Abandoned" means the failure of the parent to provide reasonable
7 support and to maintain regular contact with the child, including providing
8 normal supervision. Abandoned includes a judicial finding that a parent has
9 made only minimal efforts to support and communicate with the child. Failure
10 to maintain a normal parental relationship with the child without just cause
11 for a period of six months constitutes prima facie evidence of abandonment.
12 2. "Abuse" means the infliction or allowing of physical injury,
13 impairment of bodily function or disfigurement or the infliction of or
14 allowing another person to cause serious emotional damage as evidenced by
15 severe anxiety, depression, withdrawal or untoward aggressive behavior and
16 which emotional damage is diagnosed by a medical doctor or psychologist
17 pursuant to section 8-821 and is caused by the acts or omissions of an
18 individual having care, custody and control of a child. Abuse includes:
19 (a) Inflicting or allowing sexual abuse pursuant to section 13-1404,
20 sexual conduct with a minor pursuant to section 13-1405, sexual assault
21 pursuant to section 13-1406, molestation of a child pursuant to section
22 13-1410, commercial sexual exploitation of a minor pursuant to section
23 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest
24 pursuant to section 13-3608 or child prostitution pursuant to section
25 13-3212.
26 (b) Physical injury to a child that results from abuse as described in
27 section 13-3623, subsection C.
28 3. "Adult" means a person who is eighteen years of age or older.
29 4. "Adult court" means the appropriate justice court, municipal court
30 or criminal division of the superior court that has jurisdiction to hear
31 proceedings concerning offenses committed by juveniles as provided in
32 sections 8-327 and 13-501.
33 5. "Award" or "commit" means to assign legal custody.
34 6. "Child", "youth" or "juvenile" means an individual who is under the
35 age of eighteen years.
36 7. "Complaint" means a written statement of the essential facts
37 constituting a public offense that is any of the following:
38 (a) Made on an oath before a judge or commissioner of the superior
39 court or an authorized juvenile hearing officer.
40 (b) Made pursuant to section 13-3903.
41 (c) Accompanied by an affidavit of a law enforcement officer or
42 employee that swears on information and belief to the accuracy of the
43 complaint pursuant to section 13-4261.

1 8. "Custodian" means a person, other than a parent or legal guardian,
2 who stands in loco parentis to the child or a person to whom legal custody of
3 the child has been given by order of the juvenile court.

4 9. "Delinquency hearing" means a proceeding in the juvenile court to
5 determine whether a juvenile has committed a specific delinquent act as set
6 forth in a petition.

7 10. "Delinquent act" means an act by a juvenile that if committed by an
8 adult would be a criminal offense or a petty offense, a violation of any law
9 of this state, or of another state if the act occurred in that state, or a
10 law of the United States, or a violation of any law that can only be violated
11 by a minor and that has been designated as a delinquent offense, or any
12 ordinance of a city, county or political subdivision of this state defining
13 crime. Delinquent act does not include an offense under section 13-501,
14 subsection A or B if the offense is filed in adult court. Any juvenile who
15 is prosecuted as an adult or who is remanded for prosecution as an adult
16 shall not be adjudicated as a delinquent juvenile for the same offense.

17 11. "Delinquent juvenile" means a child who is adjudicated to have
18 committed a delinquent act.

19 12. "Department" means the department of economic security.

20 13. "Dependent child":

21 (a) Means a child who is adjudicated to be:

22 (i) In need of proper and effective parental care and control and who
23 has no parent or guardian, or one who has no parent or guardian willing to
24 exercise or capable of exercising such care and control.

25 (ii) Destitute or who is not provided with the necessities of life,
26 including adequate food, clothing, shelter or medical care.

27 (iii) A child whose home is unfit by reason of abuse, neglect, cruelty
28 or depravity by a parent, a guardian or any other person having custody or
29 care of the child.

30 (iv) Under ~~the age of~~ eight years **OF AGE** and who is found to have
31 committed an act that would result in adjudication as a delinquent juvenile
32 or incorrigible child if committed by an older juvenile or child.

33 (v) Incompetent or not restorable to competency and who is alleged to
34 have committed a serious offense as defined in section ~~13-604~~ **13-706**.

35 (b) Does not include a child who in good faith is being furnished
36 Christian Science treatment by a duly accredited practitioner if none of the
37 circumstances described in subdivision (a) of this paragraph exists.

38 14. "Detention" means the temporary confinement of a juvenile who
39 requires secure care in a physically restricting facility that is completely
40 surrounded by a locked and physically secure barrier with restricted ingress
41 and egress for the protection of the juvenile or the community pending court
42 disposition or as a condition of probation.

43 15. "Incorrigible child" means a child who:

1 (a) Is adjudicated as a child who refuses to obey the reasonable and
2 proper orders or directions of a parent, guardian or custodian and who is
3 beyond the control of that person.

4 (b) Is habitually truant from school as defined in section 15-803,
5 subsection C.

6 (c) Is a runaway from the child's home or parent, guardian or
7 custodian.

8 (d) Habitually behaves in such a manner as to injure or endanger the
9 morals or health of self or others.

10 (e) Commits any act constituting an offense that can only be committed
11 by a minor and that is not designated as a delinquent act.

12 (f) Fails to obey any lawful order of a court of competent
13 jurisdiction given in a noncriminal action.

14 16. "Independent living program" includes a residential program with
15 supervision of less than twenty-four hours a day.

16 17. "Juvenile court" means the juvenile division of the superior court
17 when exercising its jurisdiction over children in any proceeding relating to
18 delinquency, dependency or incorrigibility.

19 18. "Law enforcement officer" means a peace officer, sheriff, deputy
20 sheriff, municipal police officer or constable.

21 19. "Medical director of a mental health agency" means a psychiatrist,
22 or licensed physician experienced in psychiatric matters, who is designated
23 in writing by the governing body of the agency as the person in charge of the
24 medical services of the agency, or a psychiatrist designated by the governing
25 body to act for the director. The term includes the superintendent of the
26 state hospital.

27 20. "Mental health agency" means any private or public facility that is
28 licensed by this state as a mental health treatment agency, a psychiatric
29 hospital, a psychiatric unit of a general hospital or a residential treatment
30 center for emotionally disturbed children and that uses secure settings or
31 mechanical restraints.

32 21. "Neglect" or "neglected" means the inability or unwillingness of a
33 parent, guardian or custodian of a child to provide that child with
34 supervision, food, clothing, shelter or medical care if that inability or
35 unwillingness causes substantial risk of harm to the child's health or
36 welfare, except if the inability of a parent or guardian to provide services
37 to meet the needs of a child with a disability or chronic illness is solely
38 the result of the unavailability of reasonable services.

39 22. "Petition" means a written statement of the essential facts that
40 allege delinquency, incorrigibility or dependency.

41 23. "Prevention" means the creation of conditions, opportunities and
42 experiences that encourage and develop healthy, self-sufficient children and
43 that occur before the onset of problems.

44 24. "Protective supervision" means supervision that is ordered by the
45 juvenile court of children who are found to be dependent or incorrigible.

1 25. "Referral" means a report that is submitted to the juvenile court
2 and that alleges that a child is dependent or incorrigible or that a juvenile
3 has committed a delinquent or criminal act.

4 26. "Secure care" means confinement in a facility that is completely
5 surrounded by a locked and physically secure barrier with restricted ingress
6 and egress.

7 27. "Serious emotional injury" means an injury that is diagnosed by a
8 medical doctor or a psychologist and that does any one or a combination of
9 the following:

10 (a) Seriously impairs mental faculties.

11 (b) Causes serious anxiety, depression, withdrawal or social
12 dysfunction behavior to the extent that the child suffers dysfunction that
13 requires treatment.

14 (c) Is the result of sexual abuse pursuant to section 13-1404, sexual
15 conduct with a minor pursuant to section 13-1405, sexual assault pursuant to
16 section 13-1406, molestation of a child pursuant to section 13-1410, child
17 prostitution pursuant to section 13-3212, commercial sexual exploitation of a
18 minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to
19 section 13-3553 or incest pursuant to section 13-3608.

20 28. "Serious physical injury" means an injury that is diagnosed by a
21 medical doctor and that does any one or a combination of the following:

22 (a) Creates a reasonable risk of death.

23 (b) Causes serious or permanent disfigurement.

24 (c) Causes significant physical pain.

25 (d) Causes serious impairment of health.

26 (e) Causes the loss or protracted impairment of an organ or limb.

27 (f) Is the result of sexual abuse pursuant to section 13-1404, sexual
28 conduct with a minor pursuant to section 13-1405, sexual assault pursuant to
29 section 13-1406, molestation of a child pursuant to section 13-1410, child
30 prostitution pursuant to section 13-3212, commercial sexual exploitation of a
31 minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to
32 section 13-3553 or incest pursuant to section 13-3608.

33 29. "Shelter care" means the temporary care of a child in any public or
34 private facility or home that is licensed by this state and that offers a
35 physically nonsecure environment that is characterized by the absence of
36 physically restricting construction or hardware and that provides the child
37 access to the surrounding community.

38 Sec. 2. Section 8-203.01, Arizona Revised Statutes, is amended to
39 read:

40 8-203.01. Fingerprinting juvenile probation officers; affidavit

41 A. ~~Beginning July 1, 1985,~~ Juvenile probation officers employed by the
42 juvenile court shall be fingerprinted as a condition of employment. A
43 juvenile probation officer shall submit fingerprints and the form prescribed
44 in subsection D of this section to the chief juvenile probation officer
45 within twenty days after the date a juvenile probation officer begins work.

1 Employment with the juvenile court as a juvenile probation officer is
2 conditioned on the results of the fingerprint check.

3 B. Fingerprint checks shall be conducted pursuant to section 41-1750,
4 subsection G.

5 C. The juvenile court shall assume the costs of fingerprint checks and
6 may charge these costs to ~~its~~ THE fingerprinted juvenile probation officer.

7 D. Juvenile probation officers shall certify on forms that are
8 provided by the juvenile court and notarized that they are not awaiting trial
9 on and have never been convicted of or admitted committing any of the
10 following criminal offenses in this state or similar offenses in another
11 state or jurisdiction:

- 12 1. Sexual abuse of a minor.
- 13 2. Incest.
- 14 3. First or second degree murder.
- 15 4. Kidnapping.
- 16 5. Arson.
- 17 6. Sexual assault.
- 18 7. Sexual exploitation of a minor.
- 19 8. Contributing to the delinquency of a minor.
- 20 9. Commercial sexual exploitation of a minor.
- 21 10. Felony offenses involving distribution of marijuana, ~~or~~ dangerous
22 DRUGS or narcotic drugs.
- 23 11. Burglary.
- 24 12. Robbery.
- 25 13. A dangerous crime against children ~~as defined in~~ PURSUANT TO
26 section ~~13-604.01~~ 13-705.
- 27 14. Child abuse.
- 28 15. Sexual conduct with a minor.
- 29 16. Molestation of a child.

30 E. The juvenile court shall make documented, good faith efforts to
31 contact previous employers of juvenile probation officers to obtain
32 information or recommendations ~~which~~ THAT may be relevant to an individual's
33 fitness for employment as a juvenile probation officer.

34 Sec. 3. Section 8-321, Arizona Revised Statutes, is amended to read:
35 8-321. Referrals; diversions; conditions; community based
36 alternative programs

37 A. Except as provided in subsection B of this section, before a
38 petition is filed or an admission or adjudication hearing is held, the county
39 attorney may divert the prosecution of a juvenile who is accused of
40 committing a delinquent act or a child who is accused of committing an
41 incorrigible act to a community based alternative program or to a diversion
42 program administered by the juvenile court.

43 B. A juvenile ~~who is a chronic felony offender as defined in section~~
44 ~~13-501, who is a violent felony offender or who is alleged to have committed~~

1 ~~a violation of section 28-1381, 28-1382 or 28-1383~~ is not eligible for
2 diversion IF THE JUVENILE IS EITHER:

3 1. ALLEGED TO HAVE COMMITTED A DANGEROUS OFFENSE AS DEFINED IN SECTION
4 13-105.

5 2. A CHRONIC FELONY OFFENDER AS DEFINED IN SECTION 13-501.

6 3. ALLEGED TO HAVE COMMITTED AN OFFENSE THAT IS LISTED IN SECTION
7 13-501.

8 4. ALLEGED TO HAVE COMMITTED A VIOLATION OF TITLE 28, CHAPTER 4.

9 C. Except as provided in section 8-323, the county attorney has sole
10 discretion to decide whether to divert or defer prosecution of a juvenile
11 offender. The county attorney may designate the offenses that shall be
12 retained by the juvenile court for diversion or that shall be referred
13 directly to a community based alternative program.

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

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

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

29 1. Participation in unpaid community restitution work.

30 2. Participation in a counseling program that is approved by the court
31 and that is designed to strengthen family relationships and to prevent
32 repetitive juvenile delinquency.

33 3. Participation in an education program that is approved by the court
34 and that has as its goal the prevention of further delinquent behavior.

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

38 5. Participation in a nonresidential program of rehabilitation or
39 supervision that is offered by the court or offered by a community youth
40 serving agency and approved by the court.

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

42 7. Payment of a monetary assessment.

43 G. If the juvenile successfully complies with the conditions set forth
44 by the probation officer, the county attorney shall not file a petition in
45 juvenile court and the program's resolution shall not be used against the

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

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

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

12 1. The juvenile's participation is voluntary.

13 2. The victim's participation is voluntary.

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

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

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

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

24 K. The participants shall determine consequences within thirty days
25 after referral to the community based alternative program, and the juvenile
26 shall complete the consequences within ninety days after the matter is
27 referred to the community based alternative program. The county attorney or
28 the juvenile probation officer may extend the time in which to complete the
29 consequences for good cause. If the community based alternative program
30 involves a school, the deadlines for determination and completion of
31 consequences shall be thirty and ninety school days, respectively.

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

40 M. If the juvenile successfully completes the consequences, the county
41 attorney shall not file a petition in juvenile court and the program's
42 resolution shall not be used against the juvenile in any further proceeding
43 and is not an adjudication of incorrigibility or delinquency. The resolution
44 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 a
4 juvenile who is diverted pursuant to subsection A of this section a fee of
5 fifty 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. Any amount greater than forty dollars of
10 the fee assessed pursuant to this subsection shall only be used to supplement
11 monies currently used for the salaries of juvenile probation and surveillance
12 officers and for support of programs and services of the superior court
13 juvenile probation departments. The clerk of the superior court shall pay
14 all monies collected from this assessment to the county treasurer for deposit
15 in the juvenile probation fund, to be utilized as provided in section 12-268,
16 and the county attorney shall pay all monies collected from this assessment
17 into the county attorney juvenile diversion fund established by section
18 11-537.

19 O. The supreme court shall annually establish an average cost per
20 juvenile for providing diversion services in each county, based on the monies
21 appropriated for diversion pursuant to section 8-322, excluding the cost of
22 juvenile intake services provided by the juvenile court, and the number of
23 juveniles diverted the previous year. On the county attorney's certification
24 to the supreme court of the number of juveniles diverted to a county attorney
25 community based alternative program each quarter, the annual average cost per
26 juvenile for each juvenile diverted shall be reimbursed to the county
27 attorney juvenile diversion fund established by section 11-537 out of monies
28 appropriated to the supreme court for diversion programs.

29 P. If the juvenile does not acknowledge responsibility for the
30 offense, or fails to comply with the consequences set by the community based
31 alternative program, the case shall be submitted to the county attorney for
32 review.

33 Q. After reviewing a referral, if the county attorney declines
34 prosecution, the county attorney may return the case to the juvenile
35 probation department for further action as provided in subsection F of this
36 section.

37 ~~R. For the purposes of this section, "violent" means an offense~~
38 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~
39 ~~dangerous instrument or the intentional or knowing infliction of serious~~
40 ~~physical injury on another person and includes an offense listed in section~~
41 ~~13-501.~~

42 Sec. 4. Section 8-341, Arizona Revised Statutes, is amended to read:

43 8-341. Disposition and commitment; definitions

44 A. After receiving and considering the evidence on the proper
45 disposition of the case, the court may enter judgment as follows:

- 1 1. It may award a delinquent juvenile:
- 2 (a) To the care of the juvenile's parents, subject to the supervision
- 3 of a probation department.
- 4 (b) To a probation department, subject to any conditions the court may
- 5 impose, including a period of incarceration in a juvenile detention center of
- 6 not more than one year.
- 7 (c) To a reputable citizen of good moral character, subject to the
- 8 supervision of a probation department.
- 9 (d) To a private agency or institution, subject to the supervision of
- 10 a probation officer.
- 11 (e) To the department of juvenile corrections.
- 12 (f) To maternal or paternal relatives, subject to the supervision of a
- 13 probation department.
- 14 (g) To an appropriate official of a foreign country of which the
- 15 juvenile is a foreign national who is unaccompanied by a parent or guardian
- 16 in this state to remain on unsupervised probation for at least one year on
- 17 the condition that the juvenile cooperate with that official.
- 18 2. It may award an incorrigible child:
- 19 (a) To the care of the child's parents, subject to the supervision of
- 20 a probation department.
- 21 (b) To the protective supervision of a probation department, subject
- 22 to any conditions the court may impose.
- 23 (c) To a reputable citizen of good moral character, subject to the
- 24 supervision of a probation department.
- 25 (d) To a public or private agency, subject to the supervision of a
- 26 probation department.
- 27 (e) To maternal or paternal relatives, subject to the supervision of a
- 28 probation department.
- 29 B. If a juvenile is placed on probation pursuant to this section, the
- 30 period of probation may continue until the juvenile's eighteenth birthday,
- 31 except that the term of probation shall not exceed one year if all of the
- 32 following apply:
- 33 1. The juvenile is not charged with a subsequent offense.
- 34 2. The juvenile has not been found in violation of a condition of
- 35 probation.
- 36 3. The court has not made a determination that it is in the best
- 37 interests of the juvenile or the public to require continued
- 38 supervision. The court shall state by minute entry or written order its
- 39 reasons for finding that continued supervision is required.
- 40 4. The offense for which the juvenile is placed on probation does not
- 41 involve ~~the discharge, use or threatening exhibition of a deadly weapon or~~
- 42 ~~dangerous instrument or the intentional or knowing infliction of serious~~
- 43 ~~physical injury on another~~ A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.
- 44 5. The offense for which the juvenile is placed on probation does not
- 45 involve a violation of title 13, chapter 14 or 35.1.

1 6. Restitution ordered pursuant to section 8-344 has been made.

2 C. If a juvenile is adjudicated as a first time felony juvenile
3 offender, the court shall provide the following written notice to the
4 juvenile:

5 You have been adjudicated a first time felony juvenile
6 offender. You are now on notice that if you are adjudicated of
7 another offense that would be a felony offense if committed by
8 an adult and if you commit the other offense when you are
9 fourteen years of age or older, you will be placed on juvenile
10 intensive probation, which may include home arrest and
11 electronic monitoring, or you may be placed on juvenile
12 intensive probation and may be incarcerated for a period of time
13 in a juvenile detention center, or you may be committed to the
14 department of juvenile corrections or you may be prosecuted as
15 an adult. If you are convicted as an adult of a felony offense
16 and you commit any other offense, you will be prosecuted as an
17 adult.

18 D. If a juvenile is fourteen years of age or older and is adjudicated
19 as a repeat felony juvenile offender, the juvenile court shall place the
20 juvenile on juvenile intensive probation, which may include home arrest and
21 electronic monitoring, may place the juvenile on juvenile intensive
22 probation, which may include incarceration for a period of time in a juvenile
23 detention center, or may commit the juvenile to the department of juvenile
24 corrections pursuant to subsection A, paragraph 1, subdivision (e) of this
25 section for a significant period of time.

26 E. If the juvenile is adjudicated as a repeat felony juvenile
27 offender, the court shall provide the following written notice to the
28 juvenile:

29 You have been adjudicated a repeat felony juvenile
30 offender. You are now on notice that if you are arrested for
31 another offense that would be a felony offense if committed by
32 an adult and if you commit the other offense when you are
33 fifteen years of age or older, you will be tried as an adult in
34 the criminal division of the superior court. If you commit the
35 other offense when you are fourteen years of age or older, you
36 may be tried as an adult in the criminal division of the
37 superior court. If you are convicted as an adult, you will be
38 sentenced to a term of incarceration. If you are convicted as
39 an adult of a felony offense and you commit any other offense,
40 you will be prosecuted as an adult.

41 F. The failure or inability of the court to provide the notices
42 required under subsections C and E of this section does not preclude the use
43 of the prior adjudications for any purpose otherwise permitted.

44 G. Except as provided in subsection S of this section, after
45 considering the nature of the offense and the age, physical and mental

1 condition and earning capacity of the juvenile, the court shall order the
2 juvenile to pay a reasonable monetary assessment if the court determines that
3 an assessment is in aid of rehabilitation. If the director of the department
4 of juvenile corrections determines that enforcement of an order for monetary
5 assessment as a term and condition of conditional liberty is not
6 cost-effective, the director may require the youth to perform an equivalent
7 amount of community restitution in lieu of the payment ordered as a condition
8 of conditional liberty.

9 H. If a child is adjudicated incorrigible, the court may impose a
10 monetary assessment on the child of not more than one hundred fifty dollars.

11 I. A juvenile who is charged with unlawful purchase, possession or
12 consumption of spirituous liquor is subject to section 8-323. The monetary
13 assessment for a conviction of unlawful purchase, possession or consumption
14 of spirituous liquor by a juvenile shall not exceed five hundred dollars.
15 The court of competent jurisdiction may order a monetary assessment or
16 equivalent community restitution.

17 J. The court shall require the monetary assessment imposed under
18 subsection G or H of this section on a juvenile who is not committed to the
19 department of juvenile corrections to be satisfied in one or both of the
20 following forms:

21 1. Monetary reimbursement by the juvenile in a lump sum or installment
22 payments through the clerk of the superior court for appropriate
23 distribution.

24 2. A program of work, not in conflict with regular schooling, to
25 repair damage to the victim's property, to provide community restitution or
26 to provide the juvenile with a job for wages. The court order for
27 restitution or monetary assessment shall specify, according to the
28 dispositional program, the amount of reimbursement and the portion of wages
29 of either existing or provided work that is to be credited toward
30 satisfaction of the restitution or assessment, or the nature of the work to
31 be performed and the number of hours to be spent working. The number of
32 hours to be spent working shall be set by the court based on the severity of
33 the offense but shall not be less than sixteen hours.

34 K. If a juvenile is committed to the department of juvenile
35 corrections the court shall specify the amount of the monetary assessment
36 imposed pursuant to subsection G or H of this section.

37 L. After considering the length of stay guidelines developed pursuant
38 to section 41-2816, subsection C, the court may set forth in the order of
39 commitment the minimum period during which the juvenile shall remain in
40 secure care while in the custody of the department of juvenile corrections.
41 When the court awards a juvenile to the department of juvenile corrections or
42 an institution or agency, it shall transmit with the order of commitment
43 copies of a diagnostic psychological evaluation and educational assessment if
44 one has been administered, copies of the case report, all other psychological
45 and medical reports, restitution orders, any request for postadjudication

1 notice that has been submitted by a victim and any other documents or records
2 pertaining to the case requested by the department of juvenile corrections or
3 an institution or agency. The department shall not release a juvenile from
4 secure care before the juvenile completes the length of stay determined by
5 the court in the commitment order unless the county attorney in the county
6 from which the juvenile was committed requests the committing court to reduce
7 the length of stay. The department may temporarily escort the juvenile from
8 secure care pursuant to section 41-2804, may release the juvenile from secure
9 care without a further court order after the juvenile completes the length of
10 stay determined by the court or may retain the juvenile in secure care for
11 any period subsequent to the completion of the length of stay in accordance
12 with the law.

13 M. Written notice of the release of any juvenile pursuant to
14 subsection L of this section shall be made to any victim requesting notice,
15 the juvenile court that committed the juvenile and the county attorney of the
16 county from which the juvenile was committed.

17 N. Notwithstanding any law to the contrary, if a person is under the
18 supervision of the court as an adjudicated delinquent juvenile at the time
19 the person reaches eighteen years of age, treatment services may be provided
20 until the person reaches twenty-one years of age if the court, the person and
21 the state agree to the provision of the treatment and a motion to transfer
22 the person pursuant to section 8-327 has not been filed or has been
23 withdrawn. The court may terminate the provision of treatment services after
24 the person reaches eighteen years of age if the court determines that any of
25 the following applies:

- 26 1. The person is not progressing toward treatment goals.
- 27 2. The person terminates treatment.
- 28 3. The person commits a new offense after reaching eighteen years of
29 age.
- 30 4. Continued treatment is not required or is not in the best interests
31 of the state or the person.

32 O. On the request of a victim of an act that may have involved
33 significant exposure as defined in section 13-1415 or that if committed by an
34 adult would be a sexual offense, the prosecuting attorney shall petition the
35 adjudicating court to require that the juvenile be tested for the presence of
36 the human immunodeficiency virus. If the victim is a minor the prosecuting
37 attorney shall file this petition at the request of the victim's parent or
38 guardian. If the act committed against a victim is an act that if committed
39 by an adult would be a sexual offense or the court determines that sufficient
40 evidence exists to indicate that significant exposure occurred, it shall
41 order the department of juvenile corrections or the department of health
42 services to test the juvenile pursuant to section 13-1415. Notwithstanding
43 any law to the contrary, the department of juvenile corrections and the
44 department of health services shall release the test results only to the
45 victim, the delinquent juvenile, the delinquent juvenile's parent or guardian

1 and a minor victim's parent or guardian and shall counsel them regarding the
2 meaning and health implications of the results.

3 P. If a juvenile has been adjudicated delinquent for an offense that
4 if committed by an adult would be a felony, the court shall provide the
5 department of public safety Arizona automated fingerprint identification
6 system established in section 41-2411 with the juvenile's fingerprints,
7 personal identification data and other pertinent information. If a juvenile
8 has been committed to the department of juvenile corrections the department
9 shall provide the fingerprints and information required by this subsection to
10 the Arizona automated fingerprint identification system. If the juvenile's
11 fingerprints and information have been previously submitted to the Arizona
12 automated fingerprint identification system the information is not required
13 to be resubmitted.

14 Q. Access to fingerprint records submitted pursuant to subsection P of
15 this section shall be limited to the administration of criminal justice as
16 defined in section 41-1750. Dissemination of fingerprint information shall
17 be limited to the name of the juvenile, juvenile case number, date of
18 adjudication and court of adjudication.

19 R. If a juvenile is adjudicated delinquent for an offense that if
20 committed by an adult would be a misdemeanor, the court may prohibit the
21 juvenile from carrying or possessing a firearm while the juvenile is under
22 the jurisdiction of the department of juvenile corrections or the juvenile
23 court.

24 S. The court shall order a juvenile who is adjudicated delinquent for
25 a violation of section 13-1602, subsection A, paragraph 5 to pay a fine of at
26 least three hundred dollars but not more than one thousand dollars. Any
27 restitution ordered shall be paid in accordance with section 13-809,
28 subsection A. The court may order the juvenile to perform community
29 restitution in lieu of the payment for all or part of the fine if it is in
30 the best interests of the juvenile. The amount of community restitution
31 shall be equivalent to the amount of the fine by crediting any service
32 performed at a rate of ten dollars per hour.

33 T. For the purposes of this section:

34 1. "First time felony juvenile offender" means a juvenile who is
35 adjudicated delinquent for an offense that would be a felony offense if
36 committed by an adult.

37 2. "Repeat felony juvenile offender" means a juvenile to whom both of
38 the following apply:

39 (a) Is adjudicated delinquent for an offense that would be a felony
40 offense if committed by an adult.

41 (b) Previously has been adjudicated a first time felony juvenile
42 offender.

43 3. "Sexual offense" means oral sexual contact, sexual contact or
44 sexual intercourse as defined in section 13-1401.

1 Sec. 5. Section 8-343, Arizona Revised Statutes, is amended to read:

2 ~~8-343.~~ Disposition of offenses involving driving or in actual
3 physical control of a motor vehicle while under the
4 influence of intoxicating liquor or drugs

5 A. A juvenile who is adjudicated delinquent for a violation of section
6 28-1381 or 28-1382 shall be incarcerated for a period of twenty-four
7 consecutive hours.

8 B. A juvenile who within a period of ~~sixty~~ EIGHTY-FOUR months is
9 adjudicated delinquent for a violation of section 28-1381 or 28-1382 and who
10 has previously been adjudicated for a violation of section 28-1381, 28-1382
11 or 28-1383 or an act in another state, a court of the United States or a
12 tribal court that if committed in this state would be a violation of section
13 28-1381, 28-1382 or 28-1383 shall be incarcerated for a period of thirty
14 consecutive days that shall be served in a juvenile detention center or in
15 the department of juvenile corrections.

16 C. A juvenile who is adjudicated delinquent for a violation of section
17 28-1383 shall be sentenced as provided in section 28-1383, except that ~~the~~
18 ~~provisions of~~ section 13-801 ~~do~~ DOES not apply and any incarceration shall be
19 served in a juvenile detention center or in the department of juvenile
20 corrections.

21 D. If a juvenile is adjudicated delinquent for a violation of section
22 28-1381, 28-1382 or 28-1383, the court shall order the juvenile to pay at
23 least one hundred dollars but not more than five hundred dollars plus any
24 applicable surcharges and assessments to the public agency processing the
25 violation or the court may order the juvenile to perform at least eighty
26 hours of community restitution under the supervision of the court.

27 E. The dates of the commission of the offense shall be the determining
28 factor in applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection B of
29 this section, irrespective of the sequence in which the offenses were
30 committed. A second violation for which a conviction occurs as provided in
31 this section shall not include a conviction for an offense arising out of the
32 same series of acts.

33 F. In addition to any other penalties prescribed by law, if a juvenile
34 is adjudicated delinquent for a violation of section 28-1381, 28-1382 or
35 28-1383, the court shall order the juvenile to complete alcohol or other drug
36 screening that is provided by a facility approved by the department of health
37 services or a probation department. If the court determines that the
38 juvenile requires further alcohol or other drug education or treatment, the
39 juvenile may be required pursuant to court order to obtain education or
40 treatment under the court's supervision from an approved facility. The court
41 may review an education or treatment determination at the request of the
42 state or the defendant or on the court's initiative. The juvenile shall pay
43 the costs of the screening, education or treatment unless the court waives
44 part or all of the costs. The court may order the parent or guardian of the

1 juvenile to pay part or all of the costs of the screening, education or
2 treatment.

3 Sec. 6. Section 8-348, Arizona Revised Statutes, is amended to read:
4 8-348. Setting aside adjudication; application; release from
5 disabilities; exceptions

6 A. Except as provided in subsections C and D of this section, a person
7 who is at least eighteen years of age, who has been adjudicated delinquent or
8 incorrigible and who has fulfilled the conditions of probation and discharge
9 ordered by the court or who is discharged from the department of juvenile
10 corrections pursuant to section 41-2820 on successful completion of the
11 individual treatment plan may apply to the juvenile court to set aside the
12 adjudication. The court or the department of juvenile corrections shall
13 inform the person of this right at the time the person is discharged. The
14 person or, if authorized in writing, the person's attorney, probation officer
15 or parole officer may apply to set aside the adjudication. A copy of the
16 application shall be served on the prosecutor.

17 B. If the court grants the application, the court shall set aside the
18 adjudication and shall order that the person be released from all penalties
19 and disabilities resulting from the adjudication except those imposed by the
20 department of transportation pursuant to section 28-3304, 28-3306, 28-3307 or
21 28-3308. Regardless of whether the court sets aside the adjudication, the
22 adjudication may be used for any purpose as provided in section 8-207 or
23 13-501 and the department of transportation may use the adjudication for the
24 purposes of enforcing the provisions of section 28-3304, 28-3306, 28-3307 or
25 28-3308 as if the adjudication had not been set aside.

26 C. A person may not apply to set aside the adjudication if the person
27 either:

- 28 1. Has been convicted of a criminal offense.
- 29 2. Has a criminal charge pending.

30 3. Has not successfully completed all of the terms and conditions of
31 probation or been discharged from the department of juvenile corrections
32 pursuant to section 41-2820 on successful completion of the ~~individualized~~
33 ~~INDIVIDUAL~~ treatment plan.

- 34 4. Has not paid in full all restitution and monetary assessments.

35 D. This section does not apply to a person who was adjudicated
36 delinquent for any of the following:

- 37 ~~1. An offense involving the infliction of serious physical injury.~~
- 38 ~~2. An offense involving the use or exhibition of a deadly weapon or~~
39 ~~dangerous instrument.~~

- 40 1. A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.

- 41 ~~3.~~ 2. An offense in violation of title 13, chapter 14.

42 ~~4.~~ 3. An offense in violation of section 28-1381, 28-1382, 28-1383 or
43 28-3473.

- 44 ~~5.~~ 4. A civil traffic violation under title 28, chapter 3.

1 ~~E. For the purposes of this section:~~
2 ~~1. "Dangerous instrument" and "deadly weapon" have the same meaning~~
3 ~~prescribed in section 13-105.~~
4 ~~2. "Serious physical injury" has the same meaning prescribed in~~
5 ~~section 13-105.~~
6 Sec. 7. Section 8-350, Arizona Revised Statutes, is amended to read:
7 8-350. Dangerous offenders; sex offenders; notification to
8 schools; definition
9 A. If a ~~person~~ JUVENILE is adjudicated delinquent for or convicted of
10 a dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or
11 13-1417 and the ~~person~~ JUVENILE is placed on probation and is attending
12 school, the court shall notify the elementary or high school district in
13 which the ~~person~~ JUVENILE resides that the ~~person~~ JUVENILE has been
14 adjudicated delinquent or convicted and is on probation. The elementary or
15 high school district shall transmit this notice to the school that the person
16 attends.
17 B. Elementary or high school districts and local elementary and high
18 schools through the local school district may request from the court the
19 criminal history of individual students to determine if a student has been
20 adjudicated delinquent for or convicted of a dangerous offense or a violation
21 of section 13-1405, 13-1406, 13-1410 or 13-1417.
22 C. The school that the person attends shall make the information it
23 receives pursuant to this section available to teachers, parents, guardians
24 or custodians ~~upon~~ ON request.
25 D. For the purposes of this section, "dangerous offense" ~~means an~~
26 ~~offense involving the discharge, use or threatening exhibition of a deadly~~
27 ~~weapon or dangerous instrument or the intentional or knowing infliction of~~
28 ~~serious physical injury on another person~~ HAS THE SAME MEANING PRESCRIBED IN
29 SECTION 13-105.
30 Sec. 8. Section 11-361, Arizona Revised Statutes, is amended to read:
31 11-361. Definition of program
32 For the purposes of this article, unless the context otherwise
33 requires, "program" means a special supervision program in which the county
34 attorney of a participating county may divert or defer, before a guilty plea
35 or a trial, the prosecution of a person WHO IS accused of committing a crime,
36 ~~other than~~ EXCEPT THAT THE COUNTY ATTORNEY MAY NOT DIVERT OR DEFER THE
37 PROSECUTION OF a person who:
38 1. Has been previously convicted of a felony. ~~—~~
39 2. Is accused of committing a ~~felony involving the discharge, use or~~
40 ~~threatening exhibition of a deadly weapon or dangerous instrument or the~~
41 ~~intentional or knowing infliction of serious physical injury or~~ DANGEROUS
42 OFFENSE AS DEFINED IN SECTION 13-105.
43 3. Has previously completed a program established pursuant to this
44 article.

1 Sec. 9. Section 11-459, Arizona Revised Statutes, is amended to read:

2 11-459. Prisoner work, community restitution work and home
3 detention program; eligibility; monitoring;
4 procedures; home detention for persons sentenced for
5 driving under the influence of alcohol or drugs;
6 community restitution work committee; members; duties

7 A. The sheriff may establish a prisoner work, community restitution
8 work and home detention program for eligible sentenced prisoners, which shall
9 be treated the same as confinement in jail and shall fulfill the sheriff's
10 duty to take charge of and keep the county jail and prisoners.

11 B. A prisoner is not eligible for a prisoner work, community
12 restitution work and home detention program if any of the following applies:

13 1. After independent review and determination of the jail's
14 classification program, the prisoner is found by the sheriff to constitute a
15 risk to either himself or other members of the community.

16 2. The prisoner has a past history of violent behavior.

17 3. The prisoner has been convicted of a serious offense as defined in
18 section ~~13-604~~ 13-706 or has been determined to be a dangerous and repetitive
19 offender.

20 4. Jail time is being served as a result of a felony conviction.

21 5. The sentencing judge states at the time of the sentence that the
22 prisoner may not be eligible for a prisoner work, community restitution work
23 and home detention program.

24 6. The prisoner is sentenced to a county jail and is being held for
25 another jurisdiction.

26 C. ~~For prisoners who are~~ IF A PRISONER IS selected for the program,
27 the sheriff may require electronic monitoring in the prisoner's home whenever
28 the prisoner is not at the prisoner's regular place of employment or while
29 the prisoner is assigned to a community work task. If electronic monitoring
30 is required, the prisoner shall remain under the control of a home detention
31 device that constantly monitors the prisoner's location in order to determine
32 that the prisoner has not left the prisoner's premises. In all other cases,
33 the sheriff shall implement a system of monitoring using visitation,
34 telephone contact or other appropriate methods to assure compliance with the
35 home detention requirements. The sheriff may place appropriate restrictions
36 on prisoners in the program, including testing prisoners for consumption of
37 alcoholic beverages or drugs or prohibiting association with individuals who
38 are determined to be detrimental to the prisoner's successful participation
39 in the program.

40 D. If a prisoner is placed on electronic monitoring pursuant to
41 subsection C of this section, the prisoner shall pay an electronic monitoring
42 fee in an amount ranging from zero to full cost and thirty dollars per month
43 while on electronic monitoring, unless, after determining the inability of
44 the prisoner to pay these fees, the sheriff assesses a lesser fee. The

1 SHERIFF SHALL USE THE fees collected ~~shall be used by the sheriff~~ to offset
2 operational costs of the program.

3 E. Prisoners who are selected for the home detention program shall be
4 employed in the county in which they are incarcerated. The sheriff shall
5 review the place of employment to determine whether it is appropriate for a
6 home detention prisoner. If the prisoner is terminated from employment or
7 does not come to work, the employer shall notify the sheriff's office.
8 Alternatively, or in addition, a community restitution work assignment may be
9 made by the sheriff to a program recommended to the sheriff by the community
10 restitution work committee. If a prisoner is incapable of performing
11 community restitution or being employed, the sheriff may exempt the prisoner
12 from these programs.

13 F. The sheriff may require that a prisoner who is employed during the
14 week also participate in community restitution work programs on weekends.

15 G. The sheriff may allow prisoners to be away from home detention for
16 special purposes, including church attendance, medical appointments or
17 funerals. The standard for review and determination of such leave is the
18 same as that implemented to decide transportation requests for similar
19 purposes made by prisoners WHO ARE confined in the county jail.

20 H. Community restitution work shall include public works projects
21 operated and supervised by public agencies of this state or counties, cities
22 or towns on recommendation of the community restitution work committee and
23 approval of the sheriff. The community restitution work committee may also
24 recommend and the sheriff may approve other forms of community restitution
25 work sponsored and supervised by public or private community oriented
26 organizations and agencies.

27 I. The community restitution work committee is established in each
28 county and is composed of two designees of the sheriff, a representative of
29 the county attorney's office selected by the county attorney, a
30 representative of a local police agency selected by the police chief of the
31 largest city in the county and three persons selected by the county board of
32 supervisors from the private sector. A sheriff's designee shall serve as
33 committee chairman and schedule all meetings. The committee shall meet as
34 often as necessary, but no less than once every three months, for the purpose
35 of considering and recommending appropriate community restitution work
36 projects for home detention prisoners. The committee shall make its
37 recommendations to the sheriff. Members are not eligible to receive
38 compensation.

39 J. At any time the sheriff may terminate a prisoner's participation in
40 the prisoner work, community restitution work and home detention program and
41 require that the prisoner complete the remaining term of the prisoner's
42 sentence in jail confinement.

43 K. If authorized by the court, a person who is sentenced pursuant to
44 section 28-1381 or 28-1382 shall not be placed under home detention in a

1 prisoner work, community restitution work and home detention program except
2 as provided in subsections L through Q of this section.

3 L. By a majority vote of the full membership of the board of
4 supervisors after a public hearing and a finding of necessity a county may
5 authorize the sheriff to establish a home detention program for persons who
6 are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If
7 the board ~~authorized~~ **AUTHORIZES** the establishment of a home detention
8 program, a county sheriff may establish the program. A prisoner who is
9 placed under the program established pursuant to this subsection shall bear
10 the cost of all testing, monitoring and enrollment in alcohol or substance
11 abuse programs unless, after determining the inability of the prisoner to pay
12 the cost, the court assesses a lesser amount. The county shall use the
13 collected monies to offset operational costs of the program.

14 M. If a county sheriff establishes a home detention program under
15 subsection L of this section, a prisoner must meet the following eligibility
16 requirements for the program:

17 1. Subsection B of this section applies in determining eligibility
18 for the program.

19 2. If the prisoner is sentenced under section 28-1381, subsection I,
20 the prisoner first serves a minimum of twenty-four consecutive hours in jail.

21 3. Notwithstanding section 28-1387, subsection C, if the prisoner is
22 sentenced under section 28-1381, subsection K or section 28-1382, subsection
23 D or F, the prisoner first serves a minimum of fifteen consecutive days in
24 jail before being placed under home detention.

25 4. The prisoner is required to comply with all of the following
26 requirements for the duration of the prisoner's participation in the home
27 detention program:

28 (a) All of the provisions of subsections C through H of this section.

29 (b) Testing at least once a day for the use of alcoholic beverages or
30 drugs by a scientific method that is not limited to urinalysis or a breath or
31 intoxication test in the prisoner's home or at the office of a person
32 designated by the court to conduct these tests.

33 (c) Participation in an alcohol or drug program, or both. These
34 programs shall be accredited by the department of health services or a county
35 probation department.

36 (d) Prohibition of association with any individual determined to be
37 detrimental to the prisoner's successful participation in the program.

38 (e) All other provisions of the sentence imposed.

39 5. Any additional eligibility criteria that the county may impose.

40 N. If a county sheriff establishes a home detention program under
41 subsection L of this section, the court, on placing the prisoner in the
42 program, shall require electronic monitoring in the prisoner's home and, if
43 consecutive hours of jail time are ordered, shall require the prisoner to
44 remain at home during the consecutive hours ordered. The detention device
45 shall constantly monitor the prisoner's location to ensure that the prisoner

1 does not leave the premises. Nothing in this subsection shall be deemed to
2 waive the minimum jail confinement requirements under subsection M, paragraph
3 2 of this section.

4 O. The court shall terminate a prisoner's participation in the home
5 detention program and shall require the prisoner to complete the remaining
6 term of the jail sentence by jail confinement if either:

7 1. The prisoner fails to successfully complete a court ordered alcohol
8 or drug screening, counseling, education and treatment program pursuant to
9 subsection M, paragraph 4, subdivision (c) of this section or section
10 28-1381, subsection J or L or violates an order pursuant to section 28-1382,
11 subsection E or G.

12 2. The prisoner leaves the premises during a time that the prisoner is
13 ordered to be on the premises without permission of the court or supervising
14 authority.

15 P. At any other time the court may terminate a prisoner's
16 participation in the home detention program and require the prisoner to
17 complete the remaining term of the jail sentence by jail confinement.

18 Q. The sheriff may terminate the program at any time.

19 R. A person who is sentenced pursuant to section 28-1383 shall not be
20 placed under home detention in a prisoner work, community restitution work
21 and home detention program.

22 Sec. 10. Section 12-2703, Arizona Revised Statutes, is amended to
23 read:

24 12-2703. Scope of remedies; violation; classification

25 A. It is unlawful for any person to render for compensation any
26 service constituting the unauthorized practice of immigration and nationality
27 law or to otherwise violate this chapter.

28 B. A person having an interest or right that is or may be adversely
29 affected under this chapter may initiate an action for civil remedies. The
30 provisions of this article are in addition to all other causes of action,
31 remedies and penalties that are available in this state.

32 C. The attorney general shall initiate appropriate proceedings to
33 prevent or to stop violations of this chapter.

34 ~~D. SECTION 13-703, SUBSECTION A AND SUBSECTION B, PARAGRAPH 1 DO NOT~~
35 ~~APPLY FOR THE PURPOSE OF ENHANCING THE SENTENCE OF A PERSON WHO IS CONVICTED~~
36 ~~OF TWO OR MORE OFFENSES UNDER THIS SECTION.~~

37 ~~D.~~ E. A person who violates this chapter is guilty of a class 6
38 felony.

39 ~~E. The provisions of section 13-702.02 shall not apply to enhance the~~
40 ~~sentence of a person convicted of two or more offenses under this section.~~

41 Sec. 11. Section 13-105, Arizona Revised Statutes, is amended to read:

42 13-105. Definitions

43 In this title, unless the context otherwise requires:

44 1. "ABSCONDER" MEANS A PROBATIONER WHO HAS MOVED FROM THE
45 PROBATIONER'S PRIMARY RESIDENCE WITHOUT PERMISSION OF THE PROBATION OFFICER,

1 WHO CANNOT BE LOCATED WITHIN NINETY DAYS OF THE PREVIOUS CONTACT AND AGAINST
2 WHOM A PETITION TO REVOKE HAS BEEN FILED IN THE SUPERIOR COURT ALLEGING THAT
3 THE PROBATIONER'S WHEREABOUTS ARE UNKNOWN. A PROBATIONER IS NO LONGER DEEMED
4 AN ABSCONDER WHEN THE PROBATIONER IS VOLUNTARILY OR INVOLUNTARILY RETURNED TO
5 PROBATION SERVICE.

6 ~~1-~~ 2. "Act" means a bodily movement.

7 ~~2-~~ 3. "Benefit" means anything of value or advantage, present or
8 prospective.

9 ~~3-~~ 4. "Calendar year" means three hundred sixty-five days' actual
10 time served without release, suspension or commutation of sentence,
11 probation, pardon or parole, work furlough or release from confinement on any
12 other basis.

13 ~~4-~~ 5. "Community supervision" means that portion of a felony sentence
14 THAT IS imposed by the court pursuant to section 13-603, subsection I and
15 THAT IS served in the community after completing a period of imprisonment or
16 served in prison in accordance with section 41-1604.07.

17 ~~5-~~ 6. "Conduct" means an act or omission and its accompanying
18 culpable mental state.

19 ~~6-~~ 7. "Crime" means a misdemeanor or a felony.

20 ~~7-~~ 8. "Criminal street gang" means an ongoing formal or informal
21 association of persons whose IN WHICH members or associates individually or
22 collectively engage in the commission, attempted commission, facilitation or
23 solicitation of any felony act and that has at least one individual who is a
24 criminal street gang member.

25 ~~8-~~ 9. "Criminal street gang member" means an individual to whom AT
26 LEAST two of the following seven criteria that indicate criminal street gang
27 membership apply:

- 28 (a) Self-proclamation.
- 29 (b) Witness testimony or official statement.
- 30 (c) Written or electronic correspondence.
- 31 (d) Paraphernalia or photographs.
- 32 (e) Tattoos.
- 33 (f) Clothing or colors.
- 34 (g) Any other indicia of street gang membership.

35 ~~9-~~ 10. "Culpable mental state" means intentionally, knowingly,
36 recklessly or with criminal negligence as those terms are ~~thusly~~ defined IN
37 THIS PARAGRAPH:

38 (a) "Intentionally" or "with the intent to" means, with respect to a
39 result or to conduct described by a statute defining an offense, that a
40 person's objective is to cause that result or to engage in that conduct.

41 (b) "Knowingly" means, with respect to conduct or to a circumstance
42 described by a statute defining an offense, that a person is aware or
43 believes that ~~his or her~~ THE PERSON'S conduct is of that nature or that the
44 circumstance exists. It does not require any knowledge of the unlawfulness
45 of the act or omission.

1 (c) "Recklessly" means, with respect to a result or to a circumstance
2 described by a statute defining an offense, that a person is aware of and
3 consciously disregards a substantial and unjustifiable risk that the result
4 will occur or that the circumstance exists. The risk must be of such nature
5 and degree that disregard of such risk constitutes a gross deviation from the
6 standard of conduct that a reasonable person would observe in the situation.
7 A person who creates such a risk but WHO is unaware of such risk solely by
8 reason of voluntary intoxication also acts recklessly with respect to such
9 risk.

10 (d) "Criminal negligence" means, with respect to a result or to a
11 circumstance described by a statute defining an offense, that a person fails
12 to perceive a substantial and unjustifiable risk that the result will occur
13 or that the circumstance exists. The risk must be of such nature and degree
14 that the failure to perceive it constitutes a gross deviation from the
15 standard of care that a reasonable person would observe in the situation.

16 ~~10.~~ 11. "Dangerous drug" means dangerous drug as defined ~~by~~ IN section
17 13-3401.

18 ~~11.~~ 12. "Dangerous instrument" means anything that under the
19 circumstances in which it is used, attempted to be used or threatened to be
20 used is readily capable of causing death or serious physical injury.

21 13. "DANGEROUS OFFENSE" MEANS A FELONY INVOLVING THE DISCHARGE, USE OR
22 THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR THE
23 INTENTIONAL OR KNOWING INFLECTION OF SERIOUS PHYSICAL INJURY ON ANOTHER.

24 ~~12.~~ 14. "Deadly physical force" means force ~~which~~ THAT is used with
25 the purpose of causing death or serious physical injury or in the manner of
26 its use or intended use is capable of creating a substantial risk of causing
27 death or serious physical injury.

28 ~~13.~~ 15 "Deadly weapon" means anything designed for lethal use,
29 including a firearm.

30 ~~14.~~ 16. "Economic loss" means any loss incurred by a person as a
31 result of the commission of an offense. Economic loss includes lost
32 interest, lost earnings and other losses ~~which~~ THAT would not have been
33 incurred but for the offense. Economic loss does not include losses incurred
34 by the convicted person, damages for pain and suffering, punitive damages or
35 consequential damages.

36 ~~15.~~ 17. "Enterprise" includes any corporation, association, labor
37 union or other legal entity.

38 ~~16.~~ 18. "Felony" means an offense for which a sentence to a term of
39 imprisonment in the custody of the state department of corrections is
40 authorized by any law of this state.

41 ~~17.~~ 19. "Firearm" means any loaded or unloaded handgun, pistol,
42 revolver, rifle, shotgun or other weapon ~~which~~ that will or is designed to or
43 may readily be converted to expel a projectile by the action of expanding
44 gases, except that it does not include a firearm in permanently inoperable
45 condition.

1 ~~18-~~ 20. "Government" means the state, any political subdivision of the
2 state or any department, agency, board, commission, institution or
3 governmental instrumentality of or within the state or political subdivision.

4 ~~19-~~ 21. "Government function" means any activity ~~which~~ THAT a public
5 servant is legally authorized to undertake on behalf of a government.

6 22. "HISTORICAL PRIOR FELONY CONVICTION" MEANS:

7 (a) ANY PRIOR FELONY CONVICTION FOR WHICH THE OFFENSE OF CONVICTION
8 EITHER:

9 (i) MANDATED A TERM OF IMPRISONMENT EXCEPT FOR A VIOLATION OF CHAPTER
10 34 OF THIS TITLE INVOLVING A DRUG BELOW THE THRESHOLD AMOUNT.

11 (ii) INVOLVED THE INTENTIONAL OR KNOWING INFLECTION OF SERIOUS
12 PHYSICAL INJURY.

13 (iii) INVOLVED THE USE OR EXHIBITION OF A DEADLY WEAPON OR DANGEROUS
14 INSTRUMENT.

15 (iv) INVOLVED THE ILLEGAL CONTROL OF A CRIMINAL ENTERPRISE.

16 (v) INVOLVED AGGRAVATED DRIVING UNDER THE INFLUENCE OF INTOXICATING
17 LIQUOR OR DRUGS, DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR
18 DRUGS WITH A SUSPENDED, CANCELED, REVOKED OR REFUSED DRIVER LICENSE OR
19 DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS WITH TWO OR MORE
20 DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUG CONVICTIONS WITHIN
21 A PERIOD OF EIGHTY-FOUR MONTHS.

22 (vi) INVOLVED ANY DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN
23 SECTION 13-705.

24 (b) ANY CLASS 2 OR 3 FELONY, EXCEPT THE OFFENSES LISTED IN SUBDIVISION
25 (a) OF THIS PARAGRAPH, THAT WAS COMMITTED WITHIN THE TEN YEARS IMMEDIATELY
26 PRECEDING THE DATE OF THE PRESENT OFFENSE. ANY TIME SPENT ON ABSCONDER
27 STATUS WHILE ON PROBATION OR INCARCERATED IS EXCLUDED IN CALCULATING IF THE
28 OFFENSE WAS COMMITTED WITHIN THE PRECEDING TEN YEARS. IF A COURT DETERMINES
29 A PERSON WAS NOT ON ABSCONDER STATUS WHILE ON PROBATION, THAT TIME IS NOT
30 EXCLUDED.

31 (c) ANY CLASS 4, 5 OR 6 FELONY, EXCEPT THE OFFENSES LISTED IN
32 SUBDIVISION (a) OF THIS PARAGRAPH, THAT WAS COMMITTED WITHIN THE FIVE YEARS
33 IMMEDIATELY PRECEDING THE DATE OF THE PRESENT OFFENSE. ANY TIME SPENT ON
34 ABSCONDER STATUS WHILE ON PROBATION OR INCARCERATED IS EXCLUDED IN
35 CALCULATING IF THE OFFENSE WAS COMMITTED WITHIN THE PRECEDING FIVE YEARS. IF
36 A COURT DETERMINES A PERSON WAS NOT ON ABSCONDER STATUS WHILE ON PROBATION,
37 THAT TIME IS NOT EXCLUDED.

38 (d) ANY FELONY CONVICTION THAT IS A THIRD OR MORE PRIOR FELONY
39 CONVICTION.

40 ~~20-~~ 23. "Intoxication" means any mental or physical incapacity
41 resulting from use of drugs, toxic vapors or intoxicating liquors.

42 ~~21-~~ 24. "Misdemeanor" means an offense for which a sentence to a term
43 of imprisonment other than to the custody of the state department of
44 corrections is authorized by any law of this state.

1 ~~22.~~ 25. "Narcotic drug" means narcotic drugs as defined ~~by~~ IN section
2 13-3401.

3 ~~23.~~ 26. "Offense" or "public offense" means conduct for which a
4 sentence to a term of imprisonment or of a fine is provided by any law of the
5 state in which it occurred or by any law, regulation or ordinance of a
6 political subdivision of that state and, if the act occurred in a state other
7 than this state, it would be so punishable under the laws, regulations or
8 ordinances of this state or of a political subdivision of this state if the
9 act had occurred in this state.

10 ~~24.~~ 27. "Omission" means the failure to perform an act as to which a
11 duty of performance is imposed by law.

12 ~~25.~~ 28. "Peace officer" means any person vested by law with a duty to
13 maintain public order and make arrests.

14 ~~26.~~ 29. "Person" means a human being and, as the context requires, an
15 enterprise, a public or private corporation, an unincorporated association, a
16 partnership, a firm, a society, a government, a governmental authority or an
17 individual or entity capable of holding a legal or beneficial interest in
18 property.

19 ~~27.~~ 30. "Petty offense" means an offense for which a sentence of a
20 fine only is authorized by law.

21 ~~28.~~ 31. "Physical force" means force used upon or directed toward the
22 body of another person and includes confinement, but does not include deadly
23 physical force.

24 ~~29.~~ 32. "Physical injury" means the impairment of physical condition.

25 ~~30.~~ 33. "Possess" means knowingly to have physical possession or
26 otherwise to exercise dominion or control over property.

27 ~~31.~~ 34. "Possession" means a voluntary act if the defendant knowingly
28 exercised dominion or control over property.

29 35. "PRECONVICTION CUSTODY" MEANS THE CONFINEMENT OF A PERSON IN A JAIL
30 IN THIS STATE OR ANOTHER STATE AFTER THE PERSON IS ARRESTED FOR OR CHARGED
31 WITH A FELONY OFFENSE.

32 ~~32.~~ 36. "Property" means anything of value, tangible or intangible.

33 ~~33.~~ 37. "Public servant":

34 (a) Means any officer or employee of any branch of government, whether
35 elected, appointed or otherwise employed, including a peace officer, and any
36 person participating as an advisor or consultant or otherwise in performing a
37 governmental function.

38 (b) Does not include jurors or witnesses.

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

42 ~~34.~~ 38. "Serious physical injury" includes physical injury ~~which~~ THAT
43 creates a reasonable risk of death, or which causes serious and permanent
44 disfigurement, serious impairment of health or loss or protracted impairment
45 of the function of any bodily organ or limb.

1 ~~35-~~ 39. "Unlawful" means contrary to law or, where the context so
2 requires, not permitted by law.

3 ~~36-~~ 40. "Vehicle" means a device in, upon or by which any person or
4 property is, may be or could have been transported or drawn upon a highway,
5 waterway or airway, excepting devices moved by human power or used
6 exclusively upon stationary rails or tracks.

7 ~~37-~~ 41. "Voluntary act" means a bodily movement performed consciously
8 and as a result of effort and determination.

9 ~~38-~~ 42. "Voluntary intoxication" means intoxication caused by the
10 knowing use of drugs, toxic vapors or intoxicating liquors by a person, the
11 tendency of which to cause intoxication the person knows or ought to know,
12 unless the person introduces them pursuant to medical advice or under such
13 duress as would afford a defense to an offense.

14 Sec. 12. Section 13-107, Arizona Revised Statutes, is amended to read:
15 ~~13-107.~~ Time limitations

16 A. A prosecution for any homicide, any offense that is listed in
17 chapter 14 or 35.1 of this title and that is a class 2 felony, any violent
18 sexual assault pursuant to section 13-1423, any violation of section
19 13-2308.01, any misuse of public monies or a felony involving falsification
20 of public records or any attempt to commit an offense listed in this
21 subsection may be commenced at any time.

22 B. Except as otherwise provided in this section, prosecutions for
23 other offenses must be commenced within the following periods after actual
24 discovery by the state or the political subdivision having jurisdiction of
25 the offense or discovery by the state or the political subdivision that
26 should have occurred with the exercise of reasonable diligence, whichever
27 first occurs:

- 28 1. For a class 2 through a class 6 felony, seven years.
- 29 2. For a misdemeanor, one year.
- 30 3. For a petty offense, six months.

31 C. For the purposes of subsection B of this section, a prosecution is
32 commenced when an indictment, information or complaint is filed.

33 D. The period of limitation does not run during any time when the
34 accused is absent from the state or has no reasonably ascertainable place of
35 abode within the state.

36 E. The period of limitation does not run for a serious offense as
37 defined in section ~~13-604~~ 13-706 during any time when the identity of the
38 person who commits the offense or offenses is unknown.

39 F. The time limitation within which a prosecution of a class 6 felony
40 shall commence shall be determined pursuant to subsection B, paragraph 1 of
41 this section, irrespective of whether a court enters a judgment of conviction
42 for or a prosecuting attorney designates the offense as a misdemeanor.

43 G. If a complaint, indictment or information filed before the period
44 of limitation has expired is dismissed for any reason, a new prosecution may
45 be commenced within six months after the dismissal becomes final even if the

1 period of limitation has expired at the time of the dismissal or will expire
2 within six months of the dismissal.

3 Sec. 13. Repeal

4 Section 13-119, Arizona Revised Statutes, is repealed.

5 Sec. 14. Section 13-501, Arizona Revised Statutes, is amended to read:

6 13-501. Persons under eighteen years of age; felony charging;
7 definitions

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

- 11 1. First degree murder in violation of section 13-1105.
- 12 2. Second degree murder in violation of section 13-1104.
- 13 3. Forcible sexual assault in violation of section 13-1406.
- 14 4. Armed robbery in violation of section 13-1904.
- 15 5. Any other violent felony offense.
- 16 6. Any felony offense committed by a chronic felony offender.
- 17 7. Any offense that is properly joined to an offense listed in this
18 subsection.

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

- 23 1. A class 1 felony.
- 24 2. A class 2 felony.
- 25 3. A class 3 felony in violation of any offense in chapters 10 through
26 17 or chapter 19 or 23 of this title.
- 27 4. A class 3, 4, 5 or 6 felony involving ~~the intentional or knowing~~
28 ~~infliction of serious physical injury or the discharge, use or threatening~~
29 ~~exhibition of a deadly weapon or dangerous instrument~~ A DANGEROUS OFFENSE.
- 30 5. Any felony offense committed by a chronic felony offender.
- 31 6. Any offense that is properly joined to an offense listed in this
32 subsection.

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

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

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

1 transfer the juvenile to the juvenile court pursuant to section 8-302. If
2 the court finds that the juvenile is a chronic felony offender or if the
3 juvenile does not file a motion to determine if the juvenile is a chronic
4 felony offender, the criminal prosecution shall continue.

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

8 G. For the purposes of this section:

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

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

15 3. "Forcible sexual assault" means sexual assault pursuant to section
16 13-1406 that is committed without consent as defined in section 13-1401,
17 paragraph 4- 5, subdivision (a).

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

20 ~~5-~~ 4. "Other violent felony offense" means:

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

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

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

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

27 Sec. 15. Section 13-502, Arizona Revised Statutes, is amended to read:

28 13-502. Insanity test; burden of proof; guilty except insane
29 verdict

30 A. A person may be found guilty except insane if at the time of the
31 commission of the criminal act the person was afflicted with a mental disease
32 or defect of such severity that the person did not know the criminal act was
33 wrong. A mental disease or defect constituting legal insanity is an
34 affirmative defense. Mental disease or defect does not include disorders
35 that result from acute voluntary intoxication or withdrawal from alcohol or
36 drugs, character defects, psychosexual disorders or impulse control
37 disorders. Conditions that do not constitute legal insanity include but are
38 not limited to momentary, temporary conditions arising from the pressure of
39 the circumstances, moral decadence, depravity or passion growing out of
40 anger, jealousy, revenge, hatred or other motives in a person who does not
41 suffer from a mental disease or defect or an abnormality that is manifested
42 only by criminal conduct.

43 B. In a case involving the death or serious physical injury of or the
44 threat of death or serious physical injury to another person, if a plea of
45 insanity is made and the court determines that a reasonable basis exists to

1 support the plea, the court may commit the defendant to a secure state mental
 2 health facility under the department of health services, a secure county
 3 mental health evaluation and treatment facility or another secure licensed
 4 mental health facility for up to thirty days for mental health evaluation and
 5 treatment. Experts at the mental health facility who are licensed pursuant
 6 to title 32, who are familiar with this state's insanity statutes, who are
 7 specialists in mental diseases and defects and who are knowledgeable
 8 concerning insanity shall observe and evaluate the defendant. The expert or
 9 experts who examine the defendant shall submit a written report of the
 10 evaluation to the court, the defendant's attorney and the prosecutor. The
 11 court shall order the defendant to pay the costs of the mental health
 12 facility to the clerk of the court. The clerk of the court shall transmit
 13 the reimbursements to the mental health facility for all of its costs. If
 14 the court finds the defendant is indigent or otherwise is unable to pay all
 15 or any of the costs, the court shall order the county to reimburse the mental
 16 health facility for the remainder of the costs. Notwithstanding section
 17 36-545.02, the mental health facility may maintain the reimbursements. If
 18 the court does not commit the defendant to a secure state mental health
 19 facility, a secure county mental health evaluation and treatment facility or
 20 another secure licensed mental health facility, the court shall appoint an
 21 independent expert who is licensed pursuant to title 32, who is familiar with
 22 this state's insanity statutes, who is a specialist in mental diseases and
 23 defects and who is knowledgeable concerning insanity to observe and evaluate
 24 the defendant. The expert who examines the defendant shall submit a written
 25 report of the evaluation to the court, the defendant's attorney and the
 26 prosecutor. The court shall order the defendant to pay the costs of the
 27 services of the independent expert to the clerk of the court. The clerk of
 28 the court shall transmit the reimbursements to the expert. If the court
 29 finds the defendant is indigent or otherwise unable to pay all or any of the
 30 costs, the court shall order the county to reimburse the expert for the
 31 remainder of the costs. This subsection does not prohibit the defendant or
 32 this state from obtaining additional psychiatric examinations by other mental
 33 health experts who are licensed pursuant to title 32, who are familiar with
 34 this state's insanity statutes, who are specialists in mental diseases and
 35 defects and who are knowledgeable concerning insanity.

36 C. The defendant shall prove the defendant's legal insanity by clear
 37 and convincing evidence.

38 D. If the finder of fact finds the defendant guilty except insane, the
 39 court shall determine the sentence the defendant could have received pursuant
 40 to ~~section 13-703, subsection A or~~ section 13-707 or SECTION 13-751,
 41 SUBSECTION A OR the presumptive sentence the defendant could have received
 42 pursuant to section ~~13-604, section 13-604.01, section 13-701, subsection C,~~
 43 13-702, SECTION 13-703, SECTION 13-704, SECTION 13-705, SECTION 13-706,
 44 SUBSECTION A, section 13-710 or section 13-1406 if the defendant had not been
 45 found insane, and the judge shall sentence the defendant to a term of

1 incarceration in the state department of corrections and shall order the
2 defendant to be placed under the jurisdiction of the psychiatric security
3 review board and committed to a state mental health facility under the
4 department of health services pursuant to section 13-3994 for that term. In
5 making this determination the court shall not consider the sentence
6 enhancements for prior convictions under section ~~13-604~~ 13-703 OR 13-704.
7 The court shall expressly identify each act that the defendant committed and
8 separately find whether each act involved the death or physical injury of or
9 a substantial threat of death or physical injury to another person.

10 E. A guilty except insane verdict is not a criminal conviction for
11 sentencing enhancement purposes under section ~~13-604~~ 13-703 OR 13-704.

12 Sec. 16. Repeal

13 A. Section ~~13-604~~, Arizona Revised Statutes, as amended by Laws 2007,
14 chapter 248, section 1, is repealed.

15 B. Section ~~13-604~~, Arizona Revised Statutes, as amended by Laws 2007,
16 chapter 287, section 1, is repealed.

17 Sec. 17. Title 13, chapter 6, Arizona Revised Statutes, is amended by
18 adding a new section 13-604, to read:

19 ~~13-604.~~ Class 6 felony; designation

20 A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A PERSON IS
21 CONVICTED OF ANY CLASS 6 FELONY NOT INVOLVING A DANGEROUS OFFENSE AND IF THE
22 COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE
23 HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT IT WOULD BE
24 UNDULY HARSH TO SENTENCE THE DEFENDANT FOR A FELONY, THE COURT MAY ENTER
25 JUDGMENT OF CONVICTION FOR A CLASS 1 MISDEMEANOR AND MAKE DISPOSITION
26 ACCORDINGLY OR MAY PLACE THE DEFENDANT ON PROBATION IN ACCORDANCE WITH
27 CHAPTER 9 OF THIS TITLE AND REFRAIN FROM DESIGNATING THE OFFENSE AS A FELONY
28 OR MISDEMEANOR UNTIL THE PROBATION IS TERMINATED. THE OFFENSE SHALL BE
29 TREATED AS A FELONY FOR ALL PURPOSES UNTIL SUCH TIME AS THE COURT MAY
30 ACTUALLY ENTER AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR. THIS
31 SUBSECTION DOES NOT APPLY TO ANY PERSON WHO STANDS CONVICTED OF A CLASS 6
32 FELONY AND WHO HAS PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES.

33 B. IF A CRIME OR PUBLIC OFFENSE IS PUNISHABLE IN THE DISCRETION OF THE
34 COURT BY A SENTENCE AS A CLASS 6 FELONY OR A CLASS 1 MISDEMEANOR, THE OFFENSE
35 SHALL BE DEEMED A MISDEMEANOR IF THE PROSECUTING ATTORNEY:

36 1. FILES AN INFORMATION IN SUPERIOR COURT DESIGNATING THE OFFENSE AS A
37 MISDEMEANOR.

38 2. FILES A COMPLAINT IN JUSTICE COURT OR MUNICIPAL COURT DESIGNATING
39 THE OFFENSE AS A MISDEMEANOR WITHIN THE JURISDICTION OF THE RESPECTIVE COURT.

40 3. FILES A COMPLAINT, WITH THE CONSENT OF THE DEFENDANT, BEFORE OR
41 DURING THE PRELIMINARY HEARING AMENDING THE COMPLAINT TO CHARGE A
42 MISDEMEANOR.

1 Sec. 18. Transfer and renumber

2 A. Section 13-604.01, Arizona Revised Statutes, is transferred and
3 renumbered for placement in title 13, chapter 7, Arizona Revised Statutes, as
4 section 13-705.

5 B. Section 13-604.02, Arizona Revised Statutes, is transferred and
6 renumbered for placement in title 13, chapter 7, Arizona Revised Statutes, as
7 section 13-708.

8 Sec. 19. Repeal

9 Section ~~13-604.03~~, Arizona Revised Statutes, is repealed.

10 Sec. 20. Transfer and renumber

11 Section 13-604.04, Arizona Revised Statutes, is transferred and
12 renumbered for placement in title 13, chapter 9, Arizona Revised Statutes, as
13 section 13-901.03.

14 Sec. 21. Section 13-607, Arizona Revised Statutes, is amended to read:

15 13-607. Judgment of guilt and sentence document; fingerprint;
16 contents of document; recitations

17 A. At the time of sentencing a person convicted of a felony offense or
18 a violation of section 13-1802, 13-1805, 28-1381 or 28-1382, the court shall
19 execute a judgment of guilt and sentence document or minute order as
20 prescribed by this section.

21 B. The court or a person appointed by the court shall at the time of
22 sentencing and in open court permanently affix ~~a~~ THE DEFENDANT'S fingerprint
23 ~~of the defendant~~ to the document or order.

24 C. The document or order shall recite all of the following in addition
25 to any information deemed appropriate by the court:

26 1. The DEFENDANT'S full name and date of birth ~~of the defendant~~.

27 2. The name of the counsel for the defendant or, if counsel was
28 waived, the fact that the defendant knowingly, voluntarily and intelligently
29 waived the defendant's right to counsel after having been fully apprised of
30 the defendant's right to counsel.

31 3. The name, statutory citation and classification of the offense.

32 4. Whether there was a finding by the trier of fact that the offense
33 was of a dangerous or repetitive nature pursuant to section ~~13-604 or~~
34 ~~13-604.02~~ 13-703, 13-704 OR 13-708.

35 5. Whether the basis of the finding of guilt was by trial to a jury or
36 to the court, or by plea of guilty or no contest.

37 6. That there was a knowing, voluntary and intelligent waiver of the
38 right to a jury trial if the finding of guilt was based on a trial to the
39 court.

40 7. That there was a knowing, voluntary and intelligent waiver of all
41 pertinent rights if the finding of guilt was based on a plea of guilty or no
42 contest.

43 8. A certification by the court or the clerk of the court that at the
44 time of sentencing and in open court the defendant's fingerprint was
45 permanently affixed to the document or order.

1 D. The document or order shall be made a permanent part of the public
2 records of the court, and the recitations contained in the document or order
3 are prima facie evidence of the facts stated in the recitations.

4 Sec. 22. Transfer and renumber

5 Section 13-609, Arizona Revised Statutes, is transferred and renumbered
6 for placement in title 13, chapter 7, Arizona Revised Statutes, as section
7 13-709.

8 Sec. 23. Section 13-610, Arizona Revised Statutes, is amended to read:
9 13-610. DNA testing

10 A. Within thirty days after a person is sentenced to the state
11 department of corrections or a person who is accepted under the interstate
12 compact for the supervision of parolees and probationers arrives in this
13 state, the state department of corrections shall secure a sufficient sample
14 of blood or other bodily substances for deoxyribonucleic acid testing and
15 extraction from the person if the person was convicted of an offense listed
16 in this section and was sentenced to a term of imprisonment or was convicted
17 of any offense that was committed in another jurisdiction that if committed
18 in this state would be a violation of any offense listed in this section and
19 the person is under the supervision of the state department of corrections.
20 The state department of corrections shall transmit the sample to the
21 department of public safety.

22 B. Within thirty days after a person is placed on probation and
23 sentenced to a term of incarceration in a county jail detention facility or
24 is detained in a county juvenile detention facility, the county detention
25 facility shall secure a sufficient sample of blood or other bodily substances
26 for deoxyribonucleic acid testing and extraction from the person if the
27 person was convicted of or adjudicated delinquent for an offense listed in
28 this section. The county detention facility shall transmit the sample to the
29 department of public safety.

30 C. Within thirty days after a person is convicted and placed on
31 probation without a term of incarceration or adjudicated delinquent and
32 placed on probation, the county probation department shall secure a
33 sufficient sample of blood or other bodily substances for deoxyribonucleic
34 acid testing and extraction from the person if the person was convicted of or
35 adjudicated delinquent for an offense listed in this section. The county
36 probation department shall transmit the sample to the department of public
37 safety.

38 D. Within thirty days after the arrival of a person who is accepted
39 under the interstate compact for the supervision of parolees and probationers
40 and who is under the supervision of a county probation department, the county
41 probation department shall secure a sufficient sample of blood or other
42 bodily substances for deoxyribonucleic acid testing and extraction from the
43 person if the person was convicted of an offense that was committed in
44 another jurisdiction that if committed in this state would be a violation of
45 any offense listed in this section and was sentenced to a term of probation.

1 The county probation department shall transmit the sample to the department
2 of public safety.

3 E. Within thirty days after a juvenile is committed to the department
4 of juvenile corrections, the department of juvenile corrections shall secure
5 a sufficient sample of blood or other bodily substances for deoxyribonucleic
6 acid testing and extraction from the youth if the youth was adjudicated
7 delinquent for an offense listed in this section and was committed to a
8 secure care facility. The department of juvenile corrections shall transmit
9 the sample to the department of public safety.

10 F. Within thirty days after the arrival in this state of a juvenile
11 who is accepted by the department of juvenile corrections pursuant to the
12 interstate compact on juveniles and who was adjudicated for an offense that
13 was committed in another jurisdiction that if committed in this state would
14 be a violation of any offense listed in this section, the compact
15 administrator shall request that the sending state impose as a condition of
16 supervision that the juvenile submit a sufficient sample of blood or other
17 bodily substances for deoxyribonucleic acid testing. If the sending state
18 does not impose that condition, the department of juvenile corrections shall
19 request a sufficient sample of blood or other bodily substances for
20 deoxyribonucleic acid testing within thirty days after the juvenile's arrival
21 in this state. The department of juvenile corrections shall transmit the
22 sample to the department of public safety.

23 G. Notwithstanding subsections A through F of this section, the agency
24 that is responsible for securing a sample pursuant to this section shall not
25 secure the sample if the scientific criminal analysis section of the
26 department of public safety has previously received and maintains a sample
27 sufficient for deoxyribonucleic acid testing.

28 H. The department of public safety shall do all of the following:

29 1. Conduct or oversee through mutual agreement an analysis of the
30 samples that it receives pursuant to subsections K, L and O of this section.

31 2. Make and maintain a report of the results of each deoxyribonucleic
32 acid analysis.

33 3. Maintain samples of blood and other bodily substances for at least
34 thirty-five years.

35 I. Any sample and the result of any test that is obtained pursuant to
36 this section may be used only as follows:

37 1. For law enforcement identification purposes.

38 2. In a proceeding in a criminal prosecution or juvenile adjudication.

39 3. In a proceeding under title 36, chapter 37.

40 J. If the conviction of a person who is subject to this section is
41 overturned on appeal or postconviction relief and a final mandate has been
42 issued, on petition of the person to the superior court in the county in
43 which the conviction occurred, the court shall order that the person's
44 deoxyribonucleic acid profile resulting from that conviction be expunged from
45 the Arizona deoxyribonucleic acid identification system established by

1 section 41-2418 unless the person has been convicted of another offense that
2 would require the person to submit to deoxyribonucleic acid testing pursuant
3 to this section.

4 K. If a person is arrested for any offense listed in subsection O,
5 paragraph 3 of this section and is transferred by the arresting authority to
6 a state, county or local law enforcement agency or jail, the arresting
7 authority or its designee shall secure a sufficient sample of buccal cells or
8 other bodily substances for deoxyribonucleic acid testing and extraction from
9 the person for the purpose of determining identification characteristics.
10 The arresting authority or its designee shall transmit the sample to the
11 department of public safety.

12 L. If a judicial officer as defined in section 13-3967 releases a
13 person on the person's own recognizance or on bail, the judicial officer
14 shall order the person to report, within five days, if the person is charged
15 with a felony or misdemeanor offense listed in subsection O, paragraph 3 of
16 this section to the law enforcement agency that arrested the person or its
17 designee and submit a sufficient sample of buccal cells or other bodily
18 substances for deoxyribonucleic acid testing and extraction. The arresting
19 authority or its designee shall transmit the sample to the department of
20 public safety. If a person does not comply with an order made pursuant to
21 this subsection, the court shall revoke the person's release.

22 M. A person who is subject to subsection K or L of this section may
23 petition the superior court in the county in which the arrest occurred or the
24 criminal charge was filed to order that the person's deoxyribonucleic acid
25 profile and sample be expunged from the Arizona deoxyribonucleic acid
26 identification system, unless the person has been arrested or charged with or
27 convicted of another offense that would require the person to submit to
28 deoxyribonucleic acid testing pursuant to this section, if any of the
29 following applies:

30 1. The criminal charges are not filed within the applicable period
31 prescribed by section 13-107.

32 2. The criminal charges are dismissed.

33 3. The person is acquitted at trial.

34 N. If any sample that is submitted to the department of public safety
35 under this section is found to be unacceptable for analysis and use or cannot
36 be used by the department, the department shall require that another sample
37 of blood or other bodily substances be secured pursuant to this section.

38 O. This section applies to persons who are:

39 1. Convicted of any felony offense.

40 2. Adjudicated delinquent for any of the following offenses:

41 (a) A violation or an attempt to violate any offense in chapter 11 of
42 this title, any felony offense in chapter 14 or 35.1 of this title or section
43 13-1507, 13-1508 or 13-3608.

1 (b) Any offense for which a person is required to register pursuant to
2 section 13-3821.

3 (c) A violation of any felony offense in chapter 34 of this title that
4 may be prosecuted pursuant to section 13-501, subsection B, paragraph 2.

5 (d) A violation of any felony offense that is listed in section
6 13-501.

7 3. Beginning January 1, 2008, arrested for a violation of any offense
8 in chapter 11 of this title, a violation of section 13-1402, 13-1403,
9 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1417, 13-1507, 13-1508,
10 13-3208, 13-3214, 13-3555 or 13-3608 or a violation of any serious offense
11 ~~pursuant to AS DEFINED IN section 13-604~~ 13-706 involving the discharge, use
12 or threatening exhibition of a deadly weapon or dangerous instrument or the
13 intentional or knowing infliction of serious physical injury.

14 Sec. 24. Section 13-701, Arizona Revised Statutes, is amended to read:

15 13-701. Sentence of imprisonment for felony; presentence
16 report; aggravating and mitigating factors;
17 consecutive terms of imprisonment; definition

18 A. A sentence of imprisonment for a felony shall be a definite term of
19 years and the person sentenced, unless otherwise provided by law, shall be
20 committed to the custody of the state department of corrections.

21 B. No prisoner may be transferred to the custody of the state
22 department of corrections without a certified copy of the judgment and
23 sentence, signed by the sentencing judge, and a copy of a recent presentence
24 investigation report unless the court has waived preparation of the report.

25 ~~C. Except as provided in section 13-604 the term of imprisonment for a~~
26 ~~felony shall be determined as follows for a first offense:~~

27 ~~1. For a class 2 felony, five years.~~

28 ~~2. For a class 3 felony, three and one half years.~~

29 ~~3. For a class 4 felony, two and one half years.~~

30 ~~4. For a class 5 felony, one and one half years.~~

31 ~~5. For a class 6 felony, one year.~~

32 C. THE MINIMUM OR MAXIMUM TERM IMPOSED PURSUANT TO SECTION 13-702,
33 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 OR 13-3419 MAY BE
34 IMPOSED ONLY IF ONE OR MORE OF THE CIRCUMSTANCES ALLEGED TO BE IN AGGRAVATION
35 OF THE CRIME ARE FOUND TO BE TRUE BY THE TRIER OF FACT BEYOND A REASONABLE
36 DOUBT OR ARE ADMITTED BY THE DEFENDANT, EXCEPT THAT AN ALLEGED AGGRAVATING
37 CIRCUMSTANCE UNDER SUBSECTION D, PARAGRAPH 11 OF THIS SECTION SHALL BE FOUND
38 TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE CRIME ARE FOUND TO BE TRUE
39 BY THE COURT, ON ANY EVIDENCE OR INFORMATION INTRODUCED OR SUBMITTED TO THE
40 COURT OR THE TRIER OF FACT BEFORE SENTENCING OR ANY EVIDENCE PRESENTED AT
41 TRIAL, AND FACTUAL FINDINGS AND REASONS IN SUPPORT OF SUCH FINDINGS ARE SET
42 FORTH ON THE RECORD AT THE TIME OF SENTENCING.

43 D. FOR THE PURPOSE OF DETERMINING THE SENTENCE PURSUANT TO SUBSECTION
44 C OF THIS SECTION, THE TRIER OF FACT SHALL DETERMINE AND THE COURT SHALL

1 CONSIDER THE FOLLOWING AGGRAVATING CIRCUMSTANCES, EXCEPT THAT THE COURT SHALL
2 DETERMINE AN AGGRAVATING CIRCUMSTANCE UNDER PARAGRAPH 11 OF THIS SUBSECTION:

3 1. INFLECTION OR THREATENED INFLECTION OF SERIOUS PHYSICAL INJURY,
4 EXCEPT IF THIS CIRCUMSTANCE IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF
5 CONVICTION OR HAS BEEN UTILIZED TO ENHANCE THE RANGE OF PUNISHMENT UNDER
6 SECTION 13-704.

7 2. USE, THREATENED USE OR POSSESSION OF A DEADLY WEAPON OR DANGEROUS
8 INSTRUMENT DURING THE COMMISSION OF THE CRIME, EXCEPT IF THIS CIRCUMSTANCE IS
9 AN ESSENTIAL ELEMENT OF THE OFFENSE OF CONVICTION OR HAS BEEN UTILIZED TO
10 ENHANCE THE RANGE OF PUNISHMENT UNDER SECTION 13-704.

11 3. IF THE OFFENSE INVOLVES THE TAKING OF OR DAMAGE TO PROPERTY, THE
12 VALUE OF THE PROPERTY SO TAKEN OR DAMAGED.

13 4. PRESENCE OF AN ACCOMPLICE.

14 5. ESPECIALLY HEINOUS, CRUEL OR DEPRAVED MANNER IN WHICH THE OFFENSE
15 WAS COMMITTED.

16 6. THE DEFENDANT COMMITTED THE OFFENSE AS CONSIDERATION FOR THE
17 RECEIPT, OR IN THE EXPECTATION OF THE RECEIPT, OF ANYTHING OF PECUNIARY
18 VALUE.

19 7. THE DEFENDANT PROCURED THE COMMISSION OF THE OFFENSE BY PAYMENT, OR
20 PROMISE OF PAYMENT, OF ANYTHING OF PECUNIARY VALUE.

21 8. AT THE TIME OF THE COMMISSION OF THE OFFENSE, THE DEFENDANT WAS A
22 PUBLIC SERVANT AND THE OFFENSE INVOLVED CONDUCT DIRECTLY RELATED TO THE
23 DEFENDANT'S OFFICE OR EMPLOYMENT.

24 9. THE VICTIM OR, IF THE VICTIM HAS DIED AS A RESULT OF THE CONDUCT OF
25 THE DEFENDANT, THE VICTIM'S IMMEDIATE FAMILY SUFFERED PHYSICAL, EMOTIONAL OR
26 FINANCIAL HARM.

27 10. DURING THE COURSE OF THE COMMISSION OF THE OFFENSE, THE DEATH OF AN
28 UNBORN CHILD AT ANY STAGE OF ITS DEVELOPMENT OCCURRED.

29 11. THE DEFENDANT WAS PREVIOUSLY CONVICTED OF A FELONY WITHIN THE TEN
30 YEARS IMMEDIATELY PRECEDING THE DATE OF THE OFFENSE. A CONVICTION OUTSIDE
31 THE JURISDICTION OF THIS STATE FOR AN OFFENSE THAT IF COMMITTED IN THIS STATE
32 WOULD BE PUNISHABLE AS A FELONY IS A FELONY CONVICTION FOR THE PURPOSES OF
33 THIS PARAGRAPH.

34 12. THE DEFENDANT WAS WEARING BODY ARMOR AS DEFINED IN SECTION 13-3116.

35 13. THE VICTIM OF THE OFFENSE IS AT LEAST SIXTY-FIVE YEARS OF AGE OR IS
36 A DISABLED PERSON AS DEFINED IN SECTION 38-492.

37 14. THE DEFENDANT WAS APPOINTED PURSUANT TO TITLE 14 AS A FIDUCIARY AND
38 THE OFFENSE INVOLVED CONDUCT DIRECTLY RELATED TO THE DEFENDANT'S DUTIES TO
39 THE VICTIM AS FIDUCIARY.

40 15. EVIDENCE THAT THE DEFENDANT COMMITTED THE CRIME OUT OF MALICE
41 TOWARD A VICTIM BECAUSE OF THE VICTIM'S IDENTITY IN A GROUP LISTED IN SECTION
42 41-1750, SUBSECTION A, PARAGRAPH 3 OR BECAUSE OF THE DEFENDANT'S PERCEPTION
43 OF THE VICTIM'S IDENTITY IN A GROUP LISTED IN SECTION 41-1750, SUBSECTION A,
44 PARAGRAPH 3.

1 16. THE DEFENDANT WAS CONVICTED OF A VIOLATION OF SECTION 13-1102,
2 SECTION 13-1103, SECTION 13-1104, SUBSECTION A, PARAGRAPH 3 OR SECTION
3 13-1204, SUBSECTION A, PARAGRAPH 1 OR 2 ARISING FROM AN ACT THAT WAS
4 COMMITTED WHILE DRIVING A MOTOR VEHICLE AND THE DEFENDANT'S ALCOHOL
5 CONCENTRATION AT THE TIME OF COMMITTING THE OFFENSE WAS 0.15 OR MORE. FOR
6 THE PURPOSES OF THIS PARAGRAPH, "ALCOHOL CONCENTRATION" HAS THE SAME MEANING
7 PRESCRIBED IN SECTION 28-101.

8 17. LYING IN WAIT FOR THE VICTIM OR AMBUSHING THE VICTIM DURING THE
9 COMMISSION OF ANY FELONY.

10 18. THE OFFENSE WAS COMMITTED IN THE PRESENCE OF A CHILD AND ANY OF THE
11 CIRCUMSTANCES EXISTS THAT ARE SET FORTH IN SECTION 13-3601, SUBSECTION A.

12 19. THE OFFENSE WAS COMMITTED IN RETALIATION FOR A VICTIM'S EITHER
13 REPORTING CRIMINAL ACTIVITY OR BEING INVOLVED IN AN ORGANIZATION, OTHER THAN
14 A LAW ENFORCEMENT AGENCY, THAT IS ESTABLISHED FOR THE PURPOSE OF REPORTING OR
15 PREVENTING CRIMINAL ACTIVITY.

16 20. THE DEFENDANT WAS IMPERSONATING A PEACE OFFICER AS DEFINED IN
17 SECTION 1-215.

18 21. THE DEFENDANT WAS IN VIOLATION OF 8 UNITED STATES CODE SECTION
19 1323, 1324, 1325, 1326 OR 1328 AT THE TIME OF THE COMMISSION OF THE OFFENSE.

20 22. THE DEFENDANT USED A REMOTE STUN GUN OR AN AUTHORIZED REMOTE STUN
21 GUN IN THE COMMISSION OF THE OFFENSE. FOR THE PURPOSES OF THIS PARAGRAPH:

22 (a) "AUTHORIZED REMOTE STUN GUN" MEANS A REMOTE STUN GUN THAT HAS ALL
23 OF THE FOLLOWING:

24 (i) AN ELECTRICAL DISCHARGE THAT IS LESS THAN ONE HUNDRED THOUSAND
25 VOLTS AND LESS THAN NINE JOULES OF ENERGY PER PULSE.

26 (ii) A SERIAL OR IDENTIFICATION NUMBER ON ALL PROJECTILES THAT ARE
27 DISCHARGED FROM THE REMOTE STUN GUN.

28 (iii) AN IDENTIFICATION AND TRACKING SYSTEM THAT, ON DEPLOYMENT OF
29 REMOTE ELECTRODES, DISPERSES CODED MATERIAL THAT IS TRACEABLE TO THE
30 PURCHASER THROUGH RECORDS THAT ARE KEPT BY THE MANUFACTURER ON ALL REMOTE
31 STUN GUNS AND ALL INDIVIDUAL CARTRIDGES SOLD.

32 (iv) A TRAINING PROGRAM THAT IS OFFERED BY THE MANUFACTURER.

33 (b) "REMOTE STUN GUN" MEANS AN ELECTRONIC DEVICE THAT EMITS AN
34 ELECTRICAL CHARGE AND THAT IS DESIGNED AND PRIMARILY EMPLOYED TO INCAPACITATE
35 A PERSON OR ANIMAL EITHER THROUGH CONTACT WITH ELECTRODES ON THE DEVICE
36 ITSELF OR REMOTELY THROUGH WIRED PROBES THAT ARE ATTACHED TO THE DEVICE OR
37 THROUGH A SPARK, PLASMA, IONIZATION OR OTHER CONDUCTIVE MEANS EMITTING FROM
38 THE DEVICE.

39 23. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE, THE
40 DEFENDANT COMMITTED A VIOLATION OF SECTION 28-661, 28-662 OR 28-663.

41 24. ANY OTHER FACTOR THAT THE STATE ALLEGES IS RELEVANT TO THE
42 DEFENDANT'S CHARACTER OR BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE
43 CRIME.

1 E. FOR THE PURPOSE OF DETERMINING THE SENTENCE PURSUANT TO SUBSECTION
2 C OF THIS SECTION, THE COURT SHALL CONSIDER THE FOLLOWING MITIGATING
3 CIRCUMSTANCES:

4 1. THE AGE OF THE DEFENDANT.

5 2. THE DEFENDANT'S CAPACITY TO APPRECIATE THE WRONGFULNESS OF THE
6 DEFENDANT'S CONDUCT OR TO CONFORM THE DEFENDANT'S CONDUCT TO THE REQUIREMENTS
7 OF LAW WAS SIGNIFICANTLY IMPAIRED, BUT NOT SO IMPAIRED AS TO CONSTITUTE A
8 DEFENSE TO PROSECUTION.

9 3. THE DEFENDANT WAS UNDER UNUSUAL OR SUBSTANTIAL DURESS, ALTHOUGH NOT
10 SUCH AS TO CONSTITUTE A DEFENSE TO PROSECUTION.

11 4. THE DEGREE OF THE DEFENDANT'S PARTICIPATION IN THE CRIME WAS MINOR,
12 ALTHOUGH NOT SO MINOR AS TO CONSTITUTE A DEFENSE TO PROSECUTION.

13 5. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE, THE
14 DEFENDANT COMPLIED WITH ALL DUTIES IMPOSED UNDER SECTIONS 28-661, 28-662 AND
15 28-663.

16 6. ANY OTHER FACTOR THAT IS RELEVANT TO THE DEFENDANT'S CHARACTER OR
17 BACKGROUND OR TO THE NATURE OR CIRCUMSTANCES OF THE CRIME AND THAT THE COURT
18 FINDS TO BE MITIGATING.

19 F. IF THE TRIER OF FACT FINDS AT LEAST ONE AGGRAVATING CIRCUMSTANCE,
20 THE TRIAL COURT MAY FIND BY A PREPONDERANCE OF THE EVIDENCE ADDITIONAL
21 AGGRAVATING CIRCUMSTANCES. IN DETERMINING WHAT SENTENCE TO IMPOSE, THE COURT
22 SHALL TAKE INTO ACCOUNT THE AMOUNT OF AGGRAVATING CIRCUMSTANCES AND WHETHER
23 THE AMOUNT OF MITIGATING CIRCUMSTANCES IS SUFFICIENTLY SUBSTANTIAL TO CALL
24 FOR THE LESSER TERM. IF THE TRIER OF FACT FINDS AGGRAVATING CIRCUMSTANCES
25 AND THE COURT DOES NOT FIND ANY MITIGATING CIRCUMSTANCES, THE COURT SHALL
26 IMPOSE AN AGGRAVATED SENTENCE.

27 G. THE COURT IN IMPOSING A SENTENCE SHALL CONSIDER THE EVIDENCE AND
28 OPINIONS PRESENTED BY THE VICTIM OR THE VICTIM'S IMMEDIATE FAMILY AT ANY
29 AGGRAVATION OR MITIGATION PROCEEDING OR IN THE PRESENTENCE REPORT.

30 H. NOTHING IN THIS SECTION AFFECTS ANY PROVISION OF LAW THAT IMPOSES
31 THE DEATH PENALTY, THAT EXPRESSLY PROVIDES FOR IMPRISONMENT FOR LIFE OR THAT
32 AUTHORIZES OR RESTRICTS THE GRANTING OF PROBATION AND SUSPENDING THE
33 EXECUTION OF SENTENCE.

34 I. THE INTENTIONAL FAILURE BY THE COURT TO IMPOSE THE MANDATORY
35 SENTENCES OR PROBATION CONDITIONS PROVIDED IN THIS TITLE IS MALFEASANCE.

36 J. FOR THE PURPOSES OF THIS SECTION, "TRIER OF FACT" MEANS A JURY,
37 UNLESS THE DEFENDANT AND THE STATE WAIVE A JURY IN WHICH CASE THE TRIER OF
38 FACT MEANS THE COURT.

39 Sec. 25. Section 13-702, Arizona Revised Statutes, is amended to read:
40 13-702. First time felony offenders; sentencing; definition

41 A. ~~Sentences provided in section 13-701 for a first conviction of a~~
42 ~~felony,~~ EXCEPT AS PROVIDED IN SECTIONS 13-703 AND 13-704, THE TERM OF
43 IMPRISONMENT FOR A FIRST FELONY OFFENSE SHALL BE THE PRESUMPTIVE SENTENCE
44 DETERMINED PURSUANT TO SUBSECTION D OF THIS SECTION. Except FOR those
45 felonies involving ~~the discharge, use or threatening exhibition of a deadly~~

1 ~~weapon or dangerous instrument or the intentional or knowing infliction of~~
 2 ~~serious physical injury upon another~~ A DANGEROUS OFFENSE or if a specific
 3 sentence is otherwise provided, THE COURT may ~~be increased~~ INCREASE or
 4 ~~reduced by the court~~ REDUCE THE PRESUMPTIVE SENTENCE within the ranges set by
 5 ~~this~~ subsection D OF THIS SECTION. Any reduction or increase shall be based
 6 on the aggravating and mitigating circumstances ~~contained~~ LISTED in SECTION
 7 13-701, subsections ~~C and D of this section~~ D AND E and shall be within the
 8 ~~following~~ ranges:— PRESCRIBED IN SUBSECTION D OF THIS SECTION.

	<u>Minimum</u>	<u>Maximum</u>
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15 B. ~~The upper or lower term imposed pursuant to section 13-604,~~
 16 ~~13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may~~
 17 ~~be imposed only if one or more of the circumstances alleged to be in~~
 18 ~~aggravation of the crime are found to be true by the trier of fact beyond a~~
 19 ~~reasonable doubt or are admitted by the defendant, except that an alleged~~
 20 ~~aggravating circumstance under subsection C, paragraph 11 of this section~~
 21 ~~shall be found to be true by the court, or in mitigation of the crime are~~
 22 ~~found to be true by the court, on any evidence or information introduced or~~
 23 ~~submitted to the court or the trier of fact before sentencing or any evidence~~
 24 ~~presented at trial, and factual findings and reasons in support of such~~
 25 ~~findings are set forth on the record at the time of sentencing.~~

26 C. ~~For the purpose of determining the sentence pursuant to section~~
 27 ~~13-710 and subsection A of this section, the trier of fact shall determine~~
 28 ~~and the court shall consider the following aggravating circumstances, except~~
 29 ~~that the court shall determine an aggravating circumstance under paragraph 11~~
 30 ~~of this subsection:~~

31 1. ~~Infliction or threatened infliction of serious physical injury,~~
 32 ~~except if this circumstance is an essential element of the offense of~~
 33 ~~conviction or has been utilized to enhance the range of punishment under~~
 34 ~~section 13-604.~~

35 2. ~~Use, threatened use or possession of a deadly weapon or dangerous~~
 36 ~~instrument during the commission of the crime, except if this circumstance is~~
 37 ~~an essential element of the offense of conviction or has been utilized to~~
 38 ~~enhance the range of punishment under section 13-604.~~

39 3. ~~If the offense involves the taking of or damage to property, the~~
 40 ~~value of the property so taken or damaged.~~

41 4. ~~Presence of an accomplice.~~

42 5. ~~Especially heinous, cruel or depraved manner in which the offense~~
 43 ~~was committed.~~

- 1 ~~6. The defendant committed the offense as consideration for the~~
2 ~~receipt, or in the expectation of the receipt, of anything of pecuniary~~
3 ~~value.~~
- 4 ~~7. The defendant procured the commission of the offense by payment, or~~
5 ~~promise of payment, of anything of pecuniary value.~~
- 6 ~~8. At the time of the commission of the offense, the defendant was a~~
7 ~~public servant and the offense involved conduct directly related to the~~
8 ~~defendant's office or employment.~~
- 9 ~~9. The victim or, if the victim has died as a result of the conduct of~~
10 ~~the defendant, the victim's immediate family suffered physical, emotional or~~
11 ~~financial harm.~~
- 12 ~~10. During the course of the commission of the offense, the death of an~~
13 ~~unborn child at any stage of its development occurred.~~
- 14 ~~11. The defendant was previously convicted of a felony within the ten~~
15 ~~years immediately preceding the date of the offense. A conviction outside~~
16 ~~the jurisdiction of this state for an offense that if committed in this state~~
17 ~~would be punishable as a felony is a felony conviction for the purposes of~~
18 ~~this paragraph.~~
- 19 ~~12. The defendant was wearing body armor as defined in section 13-3116.~~
- 20 ~~13. The victim of the offense is at least sixty-five years of age or is~~
21 ~~a disabled person as defined by section 38-492.~~
- 22 ~~14. The defendant was appointed pursuant to title 14 as a fiduciary and~~
23 ~~the offense involved conduct directly related to the defendant's duties to~~
24 ~~the victim as fiduciary.~~
- 25 ~~15. Evidence that the defendant committed the crime out of malice~~
26 ~~toward a victim because of the victim's identity in a group listed in section~~
27 ~~41-1750, subsection A, paragraph 3 or because of the defendant's perception~~
28 ~~of the victim's identity in a group listed in section 41-1750, subsection A,~~
29 ~~paragraph 3.~~
- 30 ~~16. The defendant was convicted of a violation of section 13-1102,~~
31 ~~section 13-1103, section 13-1104, subsection A, paragraph 3 or section~~
32 ~~13-1204, subsection A, paragraph 1 or 2 arising from an act that was~~
33 ~~committed while driving a motor vehicle and the defendant's alcohol~~
34 ~~concentration at the time of committing the offense was 0.15 or more. For~~
35 ~~the purposes of this paragraph, "alcohol concentration" has the same meaning~~
36 ~~prescribed in section 28-101.~~
- 37 ~~17. Lying in wait for the victim or ambushing the victim during the~~
38 ~~commission of any felony.~~
- 39 ~~18. The offense was committed in the presence of a child and any of the~~
40 ~~circumstances exist that are set forth in section 13-3601, subsection A.~~
- 41 ~~19. The offense was committed in retaliation for a victim's either~~
42 ~~reporting criminal activity or being involved in an organization, other than~~
43 ~~a law enforcement agency, that is established for the purpose of reporting or~~
44 ~~preventing criminal activity.~~

1 ~~20. The defendant was impersonating a peace officer as defined in~~
2 ~~section 1-215.~~

3 ~~21. The defendant was in violation of 8 United States Code section~~
4 ~~1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.~~

5 ~~22. The defendant used a remote stun gun or an authorized remote stun~~
6 ~~gun in the commission of the offense. For the purposes of this paragraph:~~

7 ~~(a) "Authorized remote stun gun" means a remote stun gun that has all~~
8 ~~of the following:~~

9 ~~(i) An electrical discharge that is less than one hundred thousand~~
10 ~~volts and less than nine joules of energy per pulse.~~

11 ~~(ii) A serial or identification number on all projectiles that are~~
12 ~~discharged from the remote stun gun.~~

13 ~~(iii) An identification and tracking system that, on deployment of~~
14 ~~remote electrodes, disperses coded material that is traceable to the~~
15 ~~purchaser through records that are kept by the manufacturer on all remote~~
16 ~~stun guns and all individual cartridges sold.~~

17 ~~(iv) A training program that is offered by the manufacturer.~~

18 ~~(b) "Remote stun gun" means an electronic device that emits an~~
19 ~~electrical charge and that is designed and primarily employed to incapacitate~~
20 ~~a person or animal either through contact with electrodes on the device~~
21 ~~itself or remotely through wired probes that are attached to the device or~~
22 ~~through a spark, plasma, ionization or other conductive means emitting from~~
23 ~~the device.~~

24 ~~23. During or immediately following the commission of the offense, the~~
25 ~~defendant committed a violation of either section 28-661, 28-662 or 28-663.~~

26 ~~24. Any other factor that the state alleges is relevant to the~~
27 ~~defendant's character or background or to the nature or circumstances of the~~
28 ~~crime.~~

29 ~~D. For the purpose of determining the sentence pursuant to section~~
30 ~~13-710 and subsection A of this section, the court shall consider the~~
31 ~~following mitigating circumstances:~~

32 ~~1. The age of the defendant.~~

33 ~~2. The defendant's capacity to appreciate the wrongfulness of the~~
34 ~~defendant's conduct or to conform the defendant's conduct to the requirements~~
35 ~~of law was significantly impaired, but not so impaired as to constitute a~~
36 ~~defense to prosecution.~~

37 ~~3. The defendant was under unusual or substantial duress, although not~~
38 ~~such as to constitute a defense to prosecution.~~

39 ~~4. The degree of the defendant's participation in the crime was minor,~~
40 ~~although not so minor as to constitute a defense to prosecution.~~

41 ~~5. During or immediately following the commission of the offense, the~~
42 ~~defendant complied with all duties imposed under sections 28-661, 28-662 and~~
43 ~~28-663.~~

1 ~~6. Any other factor that is relevant to the defendant's character or~~
2 ~~background or to the nature or circumstances of the crime and that the court~~
3 ~~finds to be mitigating.~~

4 ~~If the trier of fact finds at least one aggravating circumstance, the trial~~
5 ~~court may find by a preponderance of the evidence additional aggravating~~
6 ~~circumstances. In determining what sentence to impose, the court shall take~~
7 ~~into account the amount of aggravating circumstances and whether the amount~~
8 ~~of mitigating circumstances is sufficiently substantial to call for the~~
9 ~~lesser term. If the trier of fact finds aggravating circumstances and the~~
10 ~~court does not find any mitigating circumstances, the court shall impose an~~
11 ~~aggravated sentence.~~

12 ~~E. The court in imposing a sentence shall consider the evidence and~~
13 ~~opinions presented by the victim or the victim's immediate family at any~~
14 ~~aggravation or mitigation proceeding or in the presentence report.~~

15 ~~F. Nothing in this section affects any provision of law that imposes~~
16 ~~the death penalty, that expressly provides for imprisonment for life or that~~
17 ~~authorizes or restricts the granting of probation and suspending the~~
18 ~~execution of sentence.~~

19 ~~G. Notwithstanding any other provision of this title, if a person is~~
20 ~~convicted of any class 6 felony not involving the intentional or knowing~~
21 ~~infliction of serious physical injury or the discharge, use or threatening~~
22 ~~exhibition of a deadly weapon or dangerous instrument and if the court,~~
23 ~~having regard to the nature and circumstances of the crime and to the history~~
24 ~~and character of the defendant, is of the opinion that it would be unduly~~
25 ~~harsh to sentence the defendant for a felony, the court may enter judgment of~~
26 ~~conviction for a class 1 misdemeanor and make disposition accordingly or may~~
27 ~~place the defendant on probation in accordance with chapter 9 of this title~~
28 ~~and refrain from designating the offense as a felony or misdemeanor until the~~
29 ~~probation is terminated. The offense shall be treated as a felony for all~~
30 ~~purposes until such time as the court may actually enter an order designating~~
31 ~~the offense a misdemeanor. This subsection does not apply to any person who~~
32 ~~stands convicted of a class 6 felony and who has previously been convicted of~~
33 ~~two or more felonies. If a crime or public offense is punishable in the~~
34 ~~discretion of the court by a sentence as a class 6 felony or a class 1~~
35 ~~misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting~~
36 ~~attorney:~~

37 ~~1. Files an information in superior court designating the offense as a~~
38 ~~misdemeanor.~~

39 ~~2. Files a complaint in justice court or municipal court designating~~
40 ~~the offense as a misdemeanor within the jurisdiction of the respective court.~~

41 ~~3. Files a complaint, with the consent of the defendant, before or~~
42 ~~during the preliminary hearing amending the complaint to charge a~~
43 ~~misdemeanor.~~

1 B. IF A PERSON IS CONVICTED OF A FELONY WITHOUT HAVING PREVIOUSLY BEEN
2 CONVICTED OF ANY FELONY AND IF AT LEAST TWO OF THE AGGRAVATING FACTORS LISTED
3 IN SECTION 13-701, SUBSECTION D APPLY OR AT LEAST TWO OF THE MITIGATING
4 FACTORS LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE COURT MAY INCREASE
5 OR DECREASE THE MAXIMUM OR MINIMUM TERM OF IMPRISONMENT OTHERWISE AUTHORIZED
6 FOR THAT OFFENSE TO AN EXCEPTIONALLY AGGRAVATED OR EXCEPTIONALLY MITIGATED
7 TERM.

8 C. THE EXCEPTIONALLY AGGRAVATED OR EXCEPTIONALLY MITIGATED TERM
9 IMPOSED PURSUANT TO SUBSECTION D OF THIS SECTION MAY BE IMPOSED ONLY IF AT
10 LEAST TWO OF THE AGGRAVATING CIRCUMSTANCES ARE FOUND BEYOND A REASONABLE
11 DOUBT TO BE TRUE BY THE TRIER OF FACT OR ARE ADMITTED BY THE DEFENDANT,
12 EXCEPT THAT AN AGGRAVATING CIRCUMSTANCE UNDER SECTION 13-701, SUBSECTION D,
13 PARAGRAPH 11 SHALL BE FOUND TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE
14 CRIME ARE FOUND TO BE TRUE BY THE COURT, ON ANY EVIDENCE OR INFORMATION
15 INTRODUCED OR SUBMITTED TO THE COURT OR THE TRIER OF FACT BEFORE SENTENCING
16 OR ANY EVIDENCE PRESENTED AT TRIAL, AND FACTUAL FINDINGS AND REASONS IN
17 SUPPORT OF THESE FINDINGS ARE SET FORTH ON THE RECORD AT THE TIME OF
18 SENTENCING.

19 D. THE TERM OF IMPRISONMENT FOR A PRESUMPTIVE, MINIMUM, MAXIMUM,
20 EXCEPTIONALLY MITIGATED OR EXCEPTIONALLY AGGRAVATED SENTENCE SHALL BE WITHIN
21 THE RANGE PRESCRIBED UNDER THIS SUBSECTION. THE TERMS ARE AS FOLLOWS:

	EXCEPTIONALLY					EXCEPTIONALLY
<u>FELONY</u>	<u>MITIGATED</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>		<u>AGGRAVATED</u>
24 CLASS 2	3 YEARS	4 YEARS	5 YEARS	10 YEARS		12.5 YEARS
25 CLASS 3	2 YEARS	2.5 YEARS	3.5 YEARS	7 YEARS		8.75 YEARS
26 CLASS 4	1 YEAR	1.5 YEARS	2.5 YEARS	3 YEARS		3.75 YEARS
27 CLASS 5	.5 YEARS	.75 YEARS	1.5 YEARS	2 YEARS		2.5 YEARS
28 CLASS 6	.33 YEARS	.5 YEARS	1 YEAR	1.5 YEARS		2 YEARS

29 E. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE SENTENCING OCCURS
30 OF ITS INTENT TO INCREASE OR DECREASE A SENTENCE TO THE EXCEPTIONALLY
31 AGGRAVATED OR EXCEPTIONALLY MITIGATED SENTENCE PURSUANT THIS SECTION. IF THE
32 COURT FAILS TO INFORM THE PARTIES, A PARTY WAIVES ITS RIGHT TO BE INFORMED
33 UNLESS THE PARTY TIMELY OBJECTS AT THE TIME OF SENTENCING.

34 ~~H.~~ F. For the purposes of this section, "trier of fact" means a jury,
35 unless the defendant and the state waive a jury in which case the trier of
36 fact means the court.

37 Sec. 26. Repeal
38 Sections 13-702.01 and 13-702.02, Arizona Revised Statutes, are
39 repealed.

40 Sec. 27. Transfer and renumber
41 The following Arizona Revised Statutes sections are transferred and
42 renumbered for placement in title 13, chapter 7.1, Arizona Revised Statutes,
43 as added by this act, as follows:

- 44 1. Section 13-703 as section 13-751.

1 2. Section 13-703.01, as amended by Laws 2005, chapter 325, section 3,
2 as section 13-752, as amended by section 40 of this act.
3 3. Section 13-703.01, as amended by Laws 2005, chapter 325, section 4,
4 as section 13-752, as amended by section 41 of this act.
5 4. Section 13-703.02 as section 13-753.
6 5. Section 13-703.03 as section 13-754.
7 6. Section 13-703.04 as section 13-755.
8 7. Section 13-703.05 as section 13-756.
9 8. Section 13-704 as section 13-757.
10 9. Section 13-705 as section 13-758.
11 10. Section 13-706 as section 13-759.
12 Sec. 28. Renumber
13 A. Section 13-708, Arizona Revised Statutes, is renumbered as section
14 13-711.
15 B. Section 13-709, Arizona Revised Statutes, is renumbered as section
16 13-712.
17 C. Section 13-713, Arizona Revised Statutes, is renumbered as section
18 13-706.
19 Sec. 29. Title 13, chapter 7, Arizona Revised Statutes, is amended by
20 adding new sections 13-703 and 13-704, to read:
21 13-703. Repetitive offenders; sentencing; definition
22 A. A PERSON SHALL BE SENTENCED AS A CATEGORY ONE REPETITIVE OFFENDER
23 IF THE PERSON IS CONVICTED OF TWO FELONY OFFENSES THAT WERE NOT COMMITTED ON
24 THE SAME OCCASION BUT THAT EITHER ARE CONSOLIDATED FOR TRIAL PURPOSES OR ARE
25 NOT HISTORICAL PRIOR FELONY CONVICTIONS.
26 B. A PERSON SHALL BE SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER
27 IF THE PERSON EITHER:
28 1. IS CONVICTED OF THREE OR MORE FELONY OFFENSES THAT WERE NOT
29 COMMITTED ON THE SAME OCCASION BUT THAT EITHER ARE CONSOLIDATED FOR TRIAL
30 PURPOSES OR ARE NOT HISTORICAL PRIOR FELONY CONVICTIONS.
31 2. EXCEPT AS PROVIDED IN SECTION 13-704 OR 13-705, IS CONVICTED OF A
32 FELONY AND HAS ONE HISTORICAL PRIOR FELONY CONVICTION.
33 C. EXCEPT AS PROVIDED IN SECTION 13-704 OR 13-705, A PERSON SHALL BE
34 SENTENCED AS A CATEGORY THREE REPETITIVE OFFENDER IF THE PERSON IS CONVICTED
35 OF A FELONY AND HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS.
36 D. THE PRESUMPTIVE TERM SET BY THIS SECTION MAY BE AGGRAVATED OR
37 MITIGATED WITHIN THE RANGE UNDER THIS SECTION PURSUANT TO SECTION 13-701,
38 SUBSECTIONS C, D AND E.
39 E. IF A PERSON IS SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER
40 PURSUANT TO SUBSECTION B, PARAGRAPH 2 OF THIS SECTION AND IF AT LEAST TWO
41 AGGRAVATING FACTORS LISTED IN SECTION 13-701, SUBSECTION D APPLY OR AT LEAST
42 TWO MITIGATING FACTORS LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE
43 COURT MAY IMPOSE AN EXCEPTIONALLY MITIGATED OR EXCEPTIONALLY AGGRAVATED
44 SENTENCE PURSUANT TO SUBSECTION H OF THIS SECTION.

1 F. IF A PERSON IS SENTENCED AS A CATEGORY THREE REPETITIVE OFFENDER
2 PURSUANT TO SUBSECTION C OF THIS SECTION AND AT LEAST TWO AGGRAVATING FACTORS
3 LISTED IN SECTION 13-701, SUBSECTION D OR AT LEAST TWO MITIGATING FACTORS
4 LISTED IN SECTION 13-701, SUBSECTION E APPLY, THE COURT MAY IMPOSE AN
5 EXCEPTIONALLY MITIGATED OR EXCEPTIONALLY AGGRAVATED SENTENCE PURSUANT TO
6 SUBSECTION I OF THIS SECTION.

7 G. A CATEGORY ONE REPETITIVE OFFENDER SHALL BE SENTENCED AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
8	CLASS 2	4 YEARS	5 YEARS	10 YEARS
9	CLASS 3	2.5 YEARS	3.5 YEARS	7 YEARS
10	CLASS 4	1.5 YEARS	2.5 YEARS	3 YEARS
11	CLASS 5	.75 YEARS	1.5 YEARS	2 YEARS
12	CLASS 6	.5 YEARS	1 YEAR	1.5 YEARS

13 H. A CATEGORY TWO REPETITIVE OFFENDER SHALL BE SENTENCED AS FOLLOWS:
14 EXCEPTIONALLY

	<u>FELONY</u>	<u>MITIGATED</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>	<u>AGGRAVATED</u>
15	CLASS 2	4.5 YEARS	6 YEARS	9.25 YEARS	18.5 YEARS	23.25 YEARS
16	CLASS 3	3.5 YEARS	4.5 YEARS	6.5 YEARS	13 YEARS	16.25 YEARS
17	CLASS 4	2.25 YEARS	3 YEARS	4.5 YEARS	6 YEARS	7.5 YEARS
18	CLASS 5	1 YEAR	1.5 YEARS	2.25 YEARS	3 YEARS	3.75 YEARS
19	CLASS 6	.75 YEARS	1 YEAR	1.75 YEARS	2.25 YEARS	2.75 YEARS

20 I. A CATEGORY THREE REPETITIVE OFFENDER SHALL BE SENTENCED AS FOLLOWS:
21 EXCEPTIONALLY

	<u>FELONY</u>	<u>MITIGATED</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>	<u>AGGRAVATED</u>
22	CLASS 2	10.5 YEARS	14 YEARS	15.75 YEARS	28 YEARS	35 YEARS
23	CLASS 3	7.5 YEARS	10 YEARS	11.25 YEARS	20 YEARS	25 YEARS
24	CLASS 4	6 YEARS	8 YEARS	10 YEARS	12 YEARS	15 YEARS
25	CLASS 5	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7.5 YEARS
26	CLASS 6	2.25 YEARS	3 YEARS	3.75 YEARS	4.5 YEARS	5.75 YEARS

27 J. THE EXCEPTIONALLY AGGRAVATED OR EXCEPTIONALLY MITIGATED TERM
28 IMPOSED PURSUANT TO SUBSECTION H OR I OF THIS SECTION MAY BE IMPOSED ONLY IF
29 AT LEAST TWO OF THE AGGRAVATING CIRCUMSTANCES ARE FOUND BEYOND A REASONABLE
30 DOUBT TO BE TRUE BY THE TRIER OF FACT OR ARE ADMITTED BY THE DEFENDANT,
31 EXCEPT THAT AN AGGRAVATING CIRCUMSTANCE UNDER SECTION 13-701, SUBSECTION D,
32 PARAGRAPH 11 SHALL BE FOUND TO BE TRUE BY THE COURT, OR IN MITIGATION OF THE
33 CRIME ARE FOUND TO BE TRUE BY THE COURT, ON ANY EVIDENCE OR INFORMATION
34 INTRODUCED OR SUBMITTED TO THE COURT OR THE TRIER OF FACT BEFORE SENTENCING
35 OR ANY EVIDENCE PRESENTED AT TRIAL, AND FACTUAL FINDINGS AND REASONS IN
36 SUPPORT OF THESE FINDINGS ARE SET FORTH ON THE RECORD AT THE TIME OF
37 SENTENCING.

38 K. CONVICTIONS FOR TWO OR MORE OFFENSES COMMITTED ON THE SAME OCCASION
39 SHALL BE COUNTED AS ONLY ONE CONVICTION FOR THE PURPOSES OF THIS SECTION.

40 L. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE
41 JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE
42 WOULD BE PUNISHABLE AS A FELONY IS SUBJECT TO THIS SECTION. A PERSON WHO HAS
43
44
45

1 BEEN CONVICTED AS AN ADULT OF AN OFFENSE PUNISHABLE AS A FELONY UNDER THE
2 PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO THIS SECTION.

3 M. THE PENALTIES PRESCRIBED BY THIS SECTION SHALL BE SUBSTITUTED FOR
4 THE PENALTIES OTHERWISE AUTHORIZED BY LAW IF AN ALLEGATION OF PRIOR
5 CONVICTION IS CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND
6 BY THE COURT. THE RELEASE PROVISIONS PRESCRIBED BY THIS SECTION SHALL NOT BE
7 SUBSTITUTED FOR ANY PENALTIES REQUIRED BY THE SUBSTANTIVE OFFENSE OR A
8 PROVISION OF LAW THAT SPECIFIES A LATER RELEASE OR COMPLETION OF THE SENTENCE
9 IMPOSED BEFORE RELEASE. THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR
10 CONVICTION AT ANY TIME BEFORE THE DATE THE CASE IS ACTUALLY TRIED UNLESS THE
11 ALLEGATION IS FILED FEWER THAN TWENTY DAYS BEFORE THE CASE IS ACTUALLY TRIED
12 AND THE COURT FINDS ON THE RECORD THAT THE DEFENDANT WAS IN FACT PREJUDICED
13 BY THE UNTIMELY FILING AND STATES THE REASONS FOR THESE FINDINGS. IF THE
14 ALLEGATION OF A PRIOR CONVICTION IS FILED, THE STATE MUST MAKE AVAILABLE TO
15 THE DEFENDANT A COPY OF ANY MATERIAL OR INFORMATION OBTAINED CONCERNING THE
16 PRIOR CONVICTION. THE CHARGE OF PREVIOUS CONVICTION SHALL NOT BE READ TO THE
17 JURY.

18 N. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT ELIGIBLE
19 FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON
20 ANY BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A
21 OR B, UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS
22 ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS
23 COMMUTED.

24 O. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE SENTENCING OCCURS
25 OF ITS INTENT TO IMPOSE AN EXCEPTIONALLY AGGRAVATED OR EXCEPTIONALLY
26 MITIGATED SENTENCE PURSUANT TO SUBSECTION H OR I OF THIS SECTION. IF THE
27 COURT FAILS TO INFORM THE PARTIES, A PARTY WAIVES ITS RIGHT TO BE INFORMED
28 UNLESS THE PARTY TIMELY OBJECTS AT THE TIME OF SENTENCING.

29 P. THE COURT IN IMPOSING A SENTENCE SHALL CONSIDER THE EVIDENCE AND
30 OPINIONS PRESENTED BY THE VICTIM OR THE VICTIM'S IMMEDIATE FAMILY AT ANY
31 AGGRAVATION OR MITIGATION PROCEEDING OR IN THE PRESENTENCE REPORT.

32 Q. NOTHING IN THIS SECTION AFFECTS ANY PROVISION OF LAW THAT IMPOSES
33 THE DEATH PENALTY, THAT EXPRESSLY PROVIDES FOR IMPRISONMENT FOR LIFE OR THAT
34 AUTHORIZES OR RESTRICTS THE GRANTING OF PROBATION AND SUSPENDING THE
35 EXECUTION OF SENTENCE.

36 R. FOR THE PURPOSES OF THIS SECTION, "SUBSTANTIVE OFFENSE" MEANS THE
37 FELONY OFFENSE THAT THE TRIER OF FACT FOUND BEYOND A REASONABLE DOUBT THE
38 DEFENDANT COMMITTED. SUBSTANTIVE OFFENSE DOES NOT INCLUDE ALLEGATIONS THAT,
39 IF PROVEN, WOULD ENHANCE THE SENTENCE OF IMPRISONMENT OR FINE TO WHICH THE
40 DEFENDANT OTHERWISE WOULD BE SUBJECT.

41 13-704. Dangerous offenders; sentencing

42 A. EXCEPT AS PROVIDED IN SECTION 13-705, A PERSON WHO IS CONVICTED OF
43 A FELONY THAT IS A DANGEROUS OFFENSE SHALL BE SENTENCED TO A TERM OF
44 IMPRISONMENT AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
1				
2	CLASS 2	7 YEARS	10.5 YEARS	21 YEARS
3	CLASS 3	5 YEARS	7.5 YEARS	15 YEARS
4	CLASS 4	4 YEARS	6 YEARS	8 YEARS
5	CLASS 5	2 YEARS	3 YEARS	4 YEARS
6	CLASS 6	1.5 YEARS	2.25 YEARS	3 YEARS

7 B. EXCEPT AS PROVIDED IN SECTION 13-705, A PERSON WHO IS CONVICTED OF
8 A CLASS 4, 5 OR 6 FELONY THAT IS A DANGEROUS OFFENSE AND WHO HAS ONE
9 HISTORICAL PRIOR FELONY CONVICTION INVOLVING A DANGEROUS OFFENSE SHALL BE
10 SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
11				
12	CLASS 4	8 YEARS	10 YEARS	12 YEARS
13	CLASS 5	4 YEARS	5 YEARS	6 YEARS
14	CLASS 6	3 YEARS	3.75 YEARS	4 YEARS

15 C. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION
16 A, A PERSON WHO IS CONVICTED OF A CLASS 4, 5 OR 6 FELONY THAT IS A DANGEROUS
17 OFFENSE AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS INVOLVING
18 DANGEROUS OFFENSES SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
19				
20	CLASS 4	12 YEARS	14 YEARS	16 YEARS
21	CLASS 5	6 YEARS	7 YEARS	8 YEARS
22	CLASS 6	4.5 YEARS	5.25 YEARS	6 YEARS

23 D. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION
24 A, A PERSON WHO IS CONVICTED OF A CLASS 2 OR 3 FELONY INVOLVING A DANGEROUS
25 OFFENSE AND WHO HAS ONE HISTORICAL PRIOR FELONY CONVICTION THAT IS A CLASS 1,
26 2 OR 3 FELONY INVOLVING A DANGEROUS OFFENSE SHALL BE SENTENCED TO A TERM OF
27 IMPRISONMENT AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
28				
29	CLASS 2	14 YEARS	15.75 YEARS	28 YEARS
30	CLASS 3	10 YEARS	11.25 YEARS	20 YEARS

31 E. EXCEPT AS PROVIDED IN SECTION 13-705 OR SECTION 13-706, SUBSECTION
32 A, A PERSON WHO IS CONVICTED OF A CLASS 2 OR 3 FELONY INVOLVING A DANGEROUS
33 OFFENSE AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS THAT ARE
34 CLASS 1, 2 OR 3 FELONIES INVOLVING DANGEROUS OFFENSES SHALL BE SENTENCED TO A
35 TERM OF IMPRISONMENT AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
36				
37	CLASS 2	21 YEARS	28 YEARS	35 YEARS
38	CLASS 3	15 YEARS	20 YEARS	25 YEARS

39 F. A PERSON WHO IS CONVICTED OF TWO OR MORE FELONY OFFENSES THAT ARE
40 DANGEROUS OFFENSES AND THAT WERE NOT COMMITTED ON THE SAME OCCASION BUT THAT
41 ARE CONSOLIDATED FOR TRIAL PURPOSES SHALL BE SENTENCED, FOR THE SECOND OR
42 SUBSEQUENT OFFENSE, PURSUANT TO THIS SUBSECTION. THE MINIMUM TERM PRESCRIBED
43 SHALL BE THE PRESUMPTIVE SENTENCE. IF THE COURT INCREASES OR DECREASES A
44 SENTENCE PURSUANT TO THIS SUBSECTION, THE COURT SHALL STATE ON THE RECORD THE
45 REASONS FOR THE INCREASE OR DECREASE. THE COURT SHALL INFORM ALL OF THE

1 PARTIES BEFORE THE SENTENCING OCCURS OF ITS INTENT TO INCREASE OR DECREASE A
2 SENTENCE PURSUANT TO THIS SUBSECTION. IF THE COURT FAILS TO INFORM THE
3 PARTIES, A PARTY WAIVES ITS RIGHT TO BE INFORMED UNLESS THE PARTY TIMELY
4 OBJECTS AT THE TIME OF SENTENCING. THE TERMS ARE AS FOLLOWS:

5 1. FOR THE SECOND DANGEROUS OFFENSE:

6 <u>FELONY</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
7 CLASS 2	10.5 YEARS	21 YEARS
8 CLASS 3	7.5 YEARS	15 YEARS
9 CLASS 4	6 YEARS	8 YEARS
10 CLASS 5	3 YEARS	4 YEARS
11 CLASS 6	2.25 YEARS	3 YEARS

12 2. FOR ANY DANGEROUS OFFENSE SUBSEQUENT TO THE SECOND DANGEROUS FELONY
13 OFFENSE:

14 <u>FELONY</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
15 CLASS 2	15.75 YEARS	28 YEARS
16 CLASS 3	11.25 YEARS	20 YEARS
17 CLASS 4	10 YEARS	12 YEARS
18 CLASS 5	5 YEARS	6 YEARS
19 CLASS 6	3.75 YEARS	4.5 YEARS

20 G. A PERSON WHO IS SENTENCED PURSUANT TO SUBSECTION A, B, C, D, E OR F
21 OF THIS SECTION IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON
22 OR RELEASE FROM CONFINEMENT ON ANY BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED
23 BY SECTION 31-233, SUBSECTION A OR B, UNTIL THE SENTENCE IMPOSED BY THE COURT
24 HAS BEEN SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION
25 41-1604.07 OR THE SENTENCE IS COMMUTED.

26 H. THE PRESUMPTIVE TERM AUTHORIZED BY THIS SECTION MAY BE MITIGATED OR
27 AGGRAVATED PURSUANT TO THE TERMS OF SECTION 13-701, SUBSECTIONS C, D OR E.

28 I. FOR THE PURPOSES OF DETERMINING THE APPLICABILITY OF THE PENALTIES
29 PROVIDED IN THIS SECTION FOR SECOND OR SUBSEQUENT CLASS 2 OR 3 FELONIES, THE
30 CONVICTION FOR ANY FELONY COMMITTED BEFORE OCTOBER 1, 1978 THAT, IF COMMITTED
31 AFTER OCTOBER 1, 1978, COULD BE A DANGEROUS OFFENSE UNDER THIS SECTION MAY BE
32 DESIGNATED BY THE STATE AS A PRIOR FELONY.

33 J. CONVICTIONS FOR TWO OR MORE OFFENSES COMMITTED ON THE SAME OCCASION
34 SHALL BE COUNTED AS ONLY ONE CONVICTION FOR THE PURPOSES OF THIS SECTION.

35 K. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE
36 JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE
37 WOULD BE PUNISHABLE AS A FELONY IS SUBJECT TO THIS SECTION. A PERSON WHO HAS
38 BEEN CONVICTED AS AN ADULT OF AN OFFENSE PUNISHABLE AS A FELONY UNDER THE
39 PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO THIS SECTION.

40 L. THE PENALTIES PRESCRIBED BY THIS SECTION SHALL BE SUBSTITUTED FOR
41 THE PENALTIES OTHERWISE AUTHORIZED BY LAW IF AN ALLEGATION OF PRIOR
42 CONVICTION IS CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND
43 BY THE COURT OR IF AN ALLEGATION OF DANGEROUS OFFENSE IS CHARGED IN THE
44 INDICTMENT OR INFORMATION AND ADMITTED OR FOUND BY THE TRIER OF FACT. THE
45 RELEASE PROVISIONS PRESCRIBED BY THIS SECTION SHALL NOT BE SUBSTITUTED FOR

1 ANY PENALTIES REQUIRED BY THE SUBSTANTIVE OFFENSE OR PROVISION OF LAW THAT
2 SPECIFIES A LATER RELEASE OR COMPLETION OF THE SENTENCE IMPOSED BEFORE
3 RELEASE. THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION OR THE
4 ALLEGATION OF A DANGEROUS OFFENSE AT ANY TIME BEFORE THE DATE THE CASE IS
5 ACTUALLY TRIED UNLESS THE ALLEGATION IS FILED FEWER THAN TWENTY DAYS BEFORE
6 THE CASE IS ACTUALLY TRIED AND THE COURT FINDS ON THE RECORD THAT THE
7 DEFENDANT WAS IN FACT PREJUDICED BY THE UNTIMELY FILING AND STATES THE
8 REASONS FOR THESE FINDINGS. IF THE ALLEGATION OF A PRIOR CONVICTION IS
9 FILED, THE STATE MUST MAKE AVAILABLE TO THE DEFENDANT A COPY OF ANY MATERIAL
10 OR INFORMATION OBTAINED CONCERNING THE PRIOR CONVICTION. THE CHARGE OF PRIOR
11 CONVICTION SHALL NOT BE READ TO THE JURY. FOR THE PURPOSES OF THIS
12 SUBSECTION, "SUBSTANTIVE OFFENSE" MEANS THE FELONY, MISDEMEANOR OR PETTY
13 OFFENSE THAT THE TRIER OF FACT FOUND BEYOND A REASONABLE DOUBT THE DEFENDANT
14 COMMITTED. SUBSTANTIVE OFFENSE DOES NOT INCLUDE ALLEGATIONS THAT, IF PROVEN,
15 WOULD ENHANCE THE SENTENCE OF IMPRISONMENT OR FINE TO WHICH THE DEFENDANT
16 OTHERWISE WOULD BE SUBJECT.

17 M. EXCEPT AS PROVIDED IN SECTION 13-705 OR 13-751, IF THE VICTIM IS AN
18 UNBORN CHILD IN THE WOMB AT ANY STAGE OF ITS DEVELOPMENT, THE DEFENDANT SHALL
19 BE SENTENCED PURSUANT TO THIS SECTION.

20 Sec. 30. Section 13-705, Arizona Revised Statutes, as transferred and
21 renumbered by this act, is amended to read:

22 13-705. Dangerous crimes against children; sentences;
23 definitions

24 A. A person who is at least eighteen years of age and who ~~stands~~ IS
25 convicted of a dangerous crime against children in the first degree involving
26 sexual assault of a minor who is twelve years of age or younger or sexual
27 conduct with a minor who is twelve years of age or younger shall be sentenced
28 to life imprisonment and is not eligible for suspension of sentence,
29 probation, pardon or release from confinement on any basis except as
30 specifically authorized by section 31-233, subsection A or B until the person
31 has served thirty-five years or the sentence is commuted. This subsection
32 does not apply to masturbatory contact.

33 B. Except as otherwise provided in this section, a person who is ~~at~~
34 ~~least eighteen years of age or who has been tried as an adult and who stands~~
35 convicted of a dangerous crime against children in the first degree involving
36 attempted first degree murder of a minor who is under twelve years of age,
37 second degree murder of a minor who is under twelve years of age, sexual
38 assault of a minor who is under twelve years of age, sexual conduct with a
39 minor who is under twelve years of age or manufacturing methamphetamine under
40 circumstances that cause physical injury to a minor who is under twelve years
41 of age may be sentenced to life imprisonment and is not eligible for
42 suspension of sentence, probation, pardon or release from confinement on any
43 basis except as specifically authorized by section 31-233, subsection A or B
44 until the person has served thirty-five years or the sentence is commuted.
45 If a life sentence is not imposed pursuant to this subsection, the person

1 shall be sentenced to a ~~presumptive~~ term of imprisonment ~~for twenty years.~~ AS
2 FOLLOWS:

3	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
4	13 YEARS	20 YEARS	27 YEARS

5 C. Except as otherwise provided in this section, a person who is ~~at~~
6 ~~least eighteen years of age or who has been tried as an adult and who stands~~
7 convicted of a dangerous crime against children in the first degree involving
8 attempted first degree murder of a minor who is twelve, thirteen or fourteen
9 years of age, second degree murder of a minor who is twelve, thirteen or
10 fourteen years of age, sexual assault of a minor who is twelve, thirteen or
11 fourteen years of age, taking a child for the purpose of prostitution, child
12 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen
13 years of age, continuous sexual abuse of a child, sex trafficking of a minor
14 who is under fifteen years of age or manufacturing methamphetamine under
15 circumstances that cause physical injury to a minor who is twelve, thirteen
16 or fourteen years of age or involving or using minors in drug offenses shall
17 be sentenced to a ~~presumptive~~ term of imprisonment ~~for twenty years.~~ ~~If the~~
18 ~~convicted~~ AS FOLLOWS:

19	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
20	13 YEARS	20 YEARS	27 YEARS

21 THE TERM OF IMPRISONMENT FOR A person WHO has been previously convicted of
22 one predicate felony ~~the person shall be sentenced to a presumptive term of~~
23 ~~imprisonment for thirty years.~~ IS AS FOLLOWS:

24	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
25	23 YEARS	30 YEARS	37 YEARS

26 D. Except as otherwise provided in this section, a person who is ~~at~~
27 ~~least eighteen years of age or who has been tried as an adult and who stands~~
28 convicted of a dangerous crime against children in the first degree involving
29 aggravated assault, molestation of a child, commercial sexual exploitation of
30 a minor, sexual exploitation of a minor, child abuse or kidnapping shall be
31 sentenced to a ~~presumptive~~ term of imprisonment ~~for seventeen years.~~ ~~If the~~
32 ~~convicted~~ AS FOLLOWS:

33	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
34	10 YEARS	17 YEARS	24 YEARS

35 THE TERM OF IMPRISONMENT FOR A person WHO has been previously convicted of
36 one predicate felony ~~the person shall be sentenced to a presumptive term of~~
37 ~~imprisonment for twenty-eight years.~~ IS AS FOLLOWS:

38	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
39	21 YEARS	28 YEARS	35 YEARS

40 E. Except as otherwise provided in this section, ~~IF~~ a person ~~who~~ is ~~at~~
41 ~~least eighteen years of age or who has been tried as an adult and who stands~~
42 convicted of a dangerous crime against children involving luring a minor for
43 sexual exploitation ~~pursuant to section 13-3554 is guilty of a class 3 felony~~
44 ~~and shall be sentenced to a presumptive term of imprisonment for ten years~~
45 ~~and, unless the person has previously been convicted of a predicate felony,~~

1 ~~the presumptive term may be increased or decreased by up to five years~~
2 ~~pursuant to section 13-702, subsections B, C and D. If the person AND is~~
3 sentenced to a term of imprisonment, **THE TERM OF IMPRISONMENT IS AS FOLLOWS**
4 **AND** the person is not eligible for release from confinement on any basis
5 except as specifically authorized by section 31-233, subsection A or B until
6 the sentence imposed by the court has been served, the person is eligible for
7 release pursuant to section 41-1604.07 or the sentence is commuted. ~~If the~~
8 ~~convicted:~~

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
5 YEARS	10 YEARS	15 YEARS

11 **THE TERM OF IMPRISONMENT FOR A** person **WHO** has been previously convicted of
12 one predicate felony the person ~~shall be sentenced to a presumptive term of~~
13 ~~imprisonment for fifteen years~~ **IS AS FOLLOWS** and **THE PERSON** is not eligible
14 for suspension of sentence, probation, pardon or release from confinement on
15 any basis except as specifically authorized by section 31-233, subsection A
16 or B until the sentence imposed by the court has been served, the person is
17 eligible for release pursuant to section 41-1604.07 or the sentence is
18 commuted. ~~:-~~

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
8 YEARS	15 YEARS	22 YEARS

21 F. Except as otherwise provided in this section, ~~IF~~ a person ~~who is at~~
22 ~~least eighteen years of age or who has been tried as an adult and who stands~~
23 convicted of a dangerous crime against children involving sexual abuse ~~under~~
24 ~~section 13-1404~~ or bestiality under section 13-1411, subsection A, paragraph
25 2 ~~is guilty of a class 3 felony and shall be~~ **AND IS** sentenced to a
26 ~~presumptive term of imprisonment for five years, and unless the person has~~
27 ~~previously been convicted of a predicate felony, the presumptive term may be~~
28 ~~increased or decreased by up to two and one half years pursuant to section~~
29 ~~13-702, subsections B, C and D. If the person is sentenced to a~~ term of
30 imprisonment, **THE TERM OF IMPRISONMENT IS AS FOLLOWS** **AND** the person is not
31 eligible for release from confinement on any basis except as specifically
32 authorized by section 31-233, subsection A or B until the sentence imposed by
33 the court has been served, the person is eligible for release pursuant to
34 section 41-1604.07 or the sentence is commuted. ~~If the convicted:~~

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
2.5 YEARS	5 YEARS	7.5 YEARS

37 **THE TERM OF IMPRISONMENT FOR** person **WHO** has been previously convicted of one
38 predicate felony ~~the person shall be sentenced to a presumptive term of~~
39 ~~imprisonment for fifteen years~~ **IS AS FOLLOWS** and **THE PERSON** is not eligible
40 for suspension of sentence, probation, pardon or release from confinement on
41 any basis except as specifically authorized by section 31-233, subsection A
42 or B until the sentence imposed by the court has been served, the person is
43 eligible for release pursuant to section 41-1604.07 or the sentence is
44 commuted. ~~:-~~

1	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
2	8 YEARS	15 YEARS	22 YEARS

3 G. The presumptive sentences prescribed in subsections B, C and D of
 4 this section or subsections E and F of this section if the person has
 5 previously been convicted of a predicate felony may be increased or decreased
 6 ~~by up to seven years~~ pursuant to ~~the provisions of~~ section ~~13-702~~ 13-701,
 7 subsections ~~B, C, and D~~ AND E.

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

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

22 J. Notwithstanding chapter 10 of this title, a person who is ~~at least~~
 23 ~~eighteen years of age or who has been tried as an adult and who stands~~
 24 convicted of a dangerous crime against children in the second degree pursuant
 25 to subsection C or D of this section is guilty of a class 3 felony and ~~shall~~
 26 ~~be sentenced to a presumptive term of imprisonment for ten years. The~~
 27 ~~presumptive term may be increased or decreased by up to five years pursuant~~
 28 ~~to section 13-702, subsections B, C and D.~~ if the person is sentenced to a
 29 term of imprisonment, THE TERM OF IMPRISONMENT IS AS FOLLOWS AND the person
 30 is not eligible for release from confinement on any basis except as
 31 specifically authorized by section 31-233, subsection A or B until the person
 32 has served the sentence imposed by the court, the person is eligible for
 33 release pursuant to section 41-1604.07 or the sentence is commuted: ~~—~~

34	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
35	5 YEARS	10 YEARS	15 YEARS

36 K. A person who is convicted of any dangerous crime against children
 37 in the second degree and who has been previously convicted of one or more
 38 predicate felonies is not 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 by
 41 the court has been served, the person is eligible for release pursuant to
 42 section 41-1604.07 or the sentence is commuted.

43 ~~K.~~ L. Section ~~13-604, subsections M and O~~ 13-704, SUBSECTION I AND
 44 SECTION 13-707, SUBSECTION C apply to the determination of prior convictions.

1 ~~L.~~ M. The sentence ~~that is~~ imposed on a person by the court for a
2 dangerous crime against children under subsection D of this section ~~and that~~
3 ~~involves~~ INVOLVING child molestation or sexual abuse pursuant to subsection F
4 of this section may be served concurrently with other sentences if the
5 offense involved only one victim. The sentence imposed on a person for any
6 other dangerous crime against children in the first or second degree shall be
7 consecutive to any other sentence imposed on the person at any time,
8 including child molestation and sexual abuse of the same victim.

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

11 O. A DANGEROUS CRIME AGAINST CHILDREN IS IN THE FIRST DEGREE IF IT IS
12 A COMPLETED OFFENSE AND IS IN THE SECOND DEGREE IF IT IS A PREPARATORY
13 OFFENSE, EXCEPT ATTEMPTED FIRST DEGREE MURDER IS A DANGEROUS CRIME AGAINST
14 CHILDREN IN THE FIRST DEGREE.

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

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

18 (a) Second degree murder.

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

22 (c) Sexual assault.

23 (d) Molestation of a child.

24 (e) Sexual conduct with a minor.

25 (f) Commercial sexual exploitation of a minor.

26 (g) Sexual exploitation of a minor.

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

29 (i) Kidnapping.

30 (j) Sexual abuse.

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

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

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

35 (n) Continuous sexual abuse of a child.

36 (o) Attempted first degree murder.

37 (p) Sex trafficking.

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

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

42 (s) Luring a minor for sexual exploitation.

43 ~~A dangerous crime against children is in the first degree if it is a~~
44 ~~completed offense and is in the second degree if it is a preparatory offense,~~

1 ~~except attempted first degree murder is a dangerous crime against children in~~
2 ~~the first degree.~~

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

9 Sec. 31. Section 13-706, Arizona Revised Statutes, as renumbered by
10 this act, is amended to read:

11 13-706. Serious, violent or aggravated offenders; sentencing;
12 life imprisonment; definition

13 A. UNLESS A LONGER TERM OF IMPRISONMENT OR DEATH IS THE PRESCRIBED
14 PENALTY, A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED
15 AS AN ADULT AND WHO IS CONVICTED OF A SERIOUS OFFENSE, FIRST DEGREE MURDER OR
16 ANY DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705, WHETHER A
17 COMPLETED OR PREPARATORY OFFENSE, AND WHO HAS PREVIOUSLY BEEN CONVICTED OF
18 TWO OR MORE SERIOUS OFFENSES NOT COMMITTED ON THE SAME OCCASION SHALL BE
19 SENTENCED TO LIFE IMPRISONMENT AND IS NOT 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 PERSON HAS SERVED AT LEAST TWENTY-FIVE YEARS OR THE SENTENCE IS COMMUTED.

23 ~~A.~~ B. Unless a longer term of imprisonment or death is the prescribed
24 penalty and notwithstanding any provision that establishes a shorter term of
25 imprisonment, a person who has been convicted of committing or attempting or
26 conspiring to commit any violent or aggravated felony and who has previously
27 been convicted on separate occasions of two or more violent or aggravated
28 felonies not committed on the same occasion shall be sentenced to
29 imprisonment for life and is not eligible for suspension of sentence,
30 probation, pardon or release on any basis except that the person may be
31 eligible for commutation after the person has served at least thirty-five
32 years.

33 ~~B.~~ C. In order for the penalty under subsection ~~A~~ B of this section
34 to apply, both of the following must occur:

35 1. The aggravated or violent felonies that comprise the prior
36 convictions shall have been entered within fifteen years of the conviction
37 for the third offense, not including time spent in custody or on probation
38 for an offense or while the person is an absconder.

39 2. The sentence for the first aggravated or violent felony conviction
40 shall have been imposed before the conduct occurred that gave rise to the
41 second conviction, and the sentence for the second aggravated or violent
42 felony conviction shall have been imposed before the conduct occurred that
43 gave rise to the third conviction.

44 ~~C.~~ D. Chapter 3 of this title applies to all offenses under this
45 section.

1 ~~D.~~ E. For the purposes of this section, if a person has been
2 convicted of an offense committed in another jurisdiction that if committed
3 in this state would be a violation or attempted violation of any of the
4 offenses listed in this section and that has the same elements of an offense
5 listed in this section, the offense committed in another jurisdiction is
6 considered an offense committed in this state.

7 ~~E.~~ F. For the purposes of this section, ~~:-~~:

8 1. "SERIOUS OFFENSE" MEANS ANY OF THE FOLLOWING OFFENSES IF COMMITTED
9 IN THIS STATE OR ANY OFFENSE COMMITTED OUTSIDE THIS STATE THAT IF COMMITTED
10 IN THIS STATE WOULD CONSTITUTE ONE OF THE FOLLOWING OFFENSES:

- 11 (a) FIRST DEGREE MURDER.
- 12 (b) SECOND DEGREE MURDER.
- 13 (c) MANSLAUGHTER.
- 14 (d) AGGRAVATED ASSAULT RESULTING IN SERIOUS PHYSICAL INJURY OR
15 INVOLVING THE DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR
16 DANGEROUS INSTRUMENT.
- 17 (e) SEXUAL ASSAULT.
- 18 (f) ANY DANGEROUS CRIME AGAINST CHILDREN.
- 19 (g) ARSON OF AN OCCUPIED STRUCTURE.
- 20 (h) ARMED ROBBERY.
- 21 (i) BURGLARY IN THE FIRST DEGREE.
- 22 (j) KIDNAPPING.
- 23 (k) SEXUAL CONDUCT WITH A MINOR UNDER FIFTEEN YEARS OF AGE.
- 24 (l) CHILD PROSTITUTION.

25 2. "Violent or aggravated felony" means any of the following offenses:

- 26 ~~1-~~ (a) First degree murder.
- 27 ~~2-~~ (b) Second degree murder.
- 28 ~~3-~~ (c) Aggravated assault resulting in serious physical injury or
29 involving the discharge, use or threatening exhibition of a deadly weapon or
30 dangerous instrument.
- 31 ~~4-~~ (d) Dangerous or deadly assault by prisoner.
- 32 ~~5-~~ (e) Committing assault with intent to incite to riot or
33 participate in riot.
- 34 ~~6-~~ (f) Drive by shooting.
- 35 ~~7-~~ (g) Discharging a firearm at a residential structure if the
36 structure is occupied.
- 37 ~~8-~~ (h) Kidnapping.
- 38 ~~9-~~ (i) Sexual conduct with a minor that is a class 2 felony.
- 39 ~~10-~~ (j) Sexual assault.
- 40 ~~11-~~ (k) Molestation of a child.
- 41 ~~12-~~ (l) Continuous sexual abuse of a child.
- 42 ~~13-~~ (m) Violent sexual assault.
- 43 ~~14-~~ (n) Burglary in the first degree committed in a residential
44 structure if the structure is occupied.
- 45 ~~15-~~ (o) Arson of an occupied structure.

- 1 ~~16.~~ (p) Arson of an occupied jail or prison facility.
- 2 ~~17.~~ (q) Armed robbery.
- 3 ~~18.~~ (r) Participating in or assisting a criminal syndicate or leading
- 4 or participating in a criminal street gang.
- 5 ~~19.~~ (s) Terrorism.
- 6 ~~20.~~ (t) Taking a child for the purpose of prostitution.
- 7 ~~21.~~ (u) Child prostitution.
- 8 ~~22.~~ (v) Commercial sexual exploitation of a minor.
- 9 ~~23.~~ (w) Sexual exploitation of a minor.
- 10 ~~24.~~ (x) Unlawful introduction of disease or parasite as prescribed by
- 11 section 13-2912, subsection A, paragraph 2 or 3.

12 Sec. 32. Section 13-707, Arizona Revised Statutes, is amended to read:

13 ~~13-707.~~ Misdemeanors; sentencing

14 A. A sentence of imprisonment for a misdemeanor shall be for a

15 definite term to be served other than a place within custody of the state

16 department of corrections. The court shall fix the term of imprisonment

17 within the following maximum limitations:

- 18 1. For a class 1 misdemeanor, six months.
- 19 2. For a class 2 misdemeanor, four months.
- 20 3. For a class 3 misdemeanor, thirty days.

21 B. A PERSON WHO IS CONVICTED OF ANY MISDEMEANOR OR PETTY OFFENSE,

22 OTHER THAN A TRAFFIC OFFENSE, AND WHO HAS BEEN CONVICTED OF ONE OR MORE OF

23 THE SAME MISDEMEANORS OR PETTY OFFENSES WITHIN TWO YEARS NEXT PRECEDING THE

24 DATE OF THE PRESENT OFFENSE MAY AT THE DISCRETION OF THE PROSECUTOR BE

25 SENTENCED FOR THE NEXT HIGHER CLASS OF OFFENSE THAN THAT FOR WHICH THE PERSON

26 CURRENTLY IS CONVICTED. TIME SPENT INCARCERATED WITHIN THE TWO YEARS NEXT

27 PRECEDING THE DATE OF THE OFFENSE FOR WHICH A PERSON IS CURRENTLY BEING

28 SENTENCED SHALL NOT BE INCLUDED IN THE TWO YEARS REQUIRED TO BE FREE OF

29 CONVICTIONS.

30 C. IF A PERSON IS CONVICTED OF A MISDEMEANOR OFFENSE AND THE OFFENSE

31 REQUIRES ENHANCED PUNISHMENT BECAUSE IT IS A SECOND OR SUBSEQUENT OFFENSE,

32 THE COURT SHALL DETERMINE THE EXISTENCE OF THE PREVIOUS CONVICTION. THE

33 COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION TO BE MADE IN THE SAME

34 MANNER AS THE ALLEGATION PRESCRIBED BY SECTION 28-1387, SUBSECTION A.

35 D. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE

36 JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE

37 WOULD BE PUNISHABLE AS A MISDEMEANOR IS SUBJECT TO THIS SECTION. A PERSON

38 WHO HAS BEEN CONVICTED AS AN ADULT OF AN OFFENSE PUNISHABLE AS A MISDEMEANOR

39 UNDER THE PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO THIS

40 SECTION.

41 ~~B.~~ E. The court may, ~~pursuant to this section,~~ direct that ~~the~~ A

42 person WHO IS sentenced PURSUANT TO SUBSECTION A OF THIS SECTION shall not be

43 released on any basis until the sentence imposed by the court has been

44 served.

1 Sec. 33. Section 13-708, Arizona Revised Statutes, as transferred and
2 renumbered by this act, is amended to read:

3 13-708. Offenses committed while released from confinement

4 A. ~~Notwithstanding any law to the contrary,~~ A person WHO IS convicted
5 of ~~any felony~~ A DANGEROUS offense ~~involving the discharge, use or threatening~~
6 ~~exhibition of a deadly weapon or dangerous instrument or the intentional or~~
7 ~~knowing infliction on another of serious physical injury if~~ THAT IS committed
8 while the person is on probation, ~~for a conviction of a felony offense or~~
9 parole, work furlough, community supervision or any other release or ~~escape~~
10 HAS ESCAPED from confinement for conviction of a felony offense shall be
11 sentenced to imprisonment for not less than the presumptive sentence
12 authorized under this chapter and is not eligible for suspension or
13 commutation or release on any basis until the sentence imposed is served.

14 B. ~~If the person committed the~~ A PERSON WHO IS CONVICTED OF A
15 DANGEROUS offense THAT IS COMMITTED while THE PERSON IS on release or ~~escape~~
16 HAS ESCAPED from confinement for a conviction of a DANGEROUS OFFENSE OR A
17 serious offense as defined in section ~~13-604, an offense resulting in serious~~
18 ~~physical injury or an offense involving the use or exhibition of a deadly~~
19 ~~weapon or dangerous instrument, the person~~ 13-706 shall be sentenced to the
20 maximum sentence authorized under this chapter and is not eligible for
21 suspension or commutation or release on any basis until the sentence imposed
22 is served. If the court finds that at least two substantial aggravating
23 circumstances listed in section ~~13-702~~ 13-701, subsection ~~C~~ D apply, the
24 court may increase the maximum sentence authorized under this chapter by up
25 to twenty-five per cent. A sentence imposed pursuant to this subsection
26 shall revoke the convicted person's release if the person was on release and
27 shall be consecutive to any other sentence from which the convicted person
28 had been temporarily released or had escaped, unless the sentence from which
29 the convicted person had been paroled or placed on probation was imposed by a
30 jurisdiction other than this state.

31 ~~B.~~ C. ~~Notwithstanding any law to the contrary,~~ A person WHO IS
32 convicted of any felony offense THAT IS not included in subsection A OR B of
33 this section ~~if~~ AND THAT IS committed while the person is on probation for a
34 conviction of a felony offense or parole, work furlough, community
35 supervision or any other release or escape from confinement for conviction of
36 a felony offense shall be sentenced to a term of not less than the
37 presumptive sentence authorized for the offense and the person is not
38 eligible for suspension of sentence, probation, pardon or release from
39 confinement on any basis except as specifically authorized by section 31-233,
40 subsection A or B until the sentence imposed by the court has been served,
41 the person is eligible for release pursuant to section 41-1604.07 or the
42 sentence is commuted. The release provisions prescribed by this section
43 shall not be substituted for any penalties required by the substantive
44 offense or provision of law that specifies a later release or completion of
45 the sentence imposed ~~prior to~~ BEFORE release. A sentence imposed pursuant to

1 this subsection shall revoke the convicted person's release if the person was
2 on release and shall be consecutive to any other sentence from which the
3 convicted person had been temporarily released or had escaped, unless the
4 sentence from which the convicted person had been paroled or placed on
5 probation was imposed by a jurisdiction other than this state. For THE
6 purposes of this subsection, "substantive offense" means the felony,
7 misdemeanor or petty offense that the trier of fact found beyond a reasonable
8 doubt the defendant committed. Substantive offense does not include
9 allegations that, if proven, would enhance the sentence of imprisonment or
10 fine to which the defendant would otherwise be subject.

11 D. A PERSON WHO IS CONVICTED OF COMMITTING ANY FELONY OFFENSE THAT IS
12 COMMITTED WHILE THE PERSON IS RELEASED ON BOND OR ON THE PERSON'S OWN
13 RECOGNIZANCE ON A SEPARATE FELONY OFFENSE OR WHILE THE PERSON IS ESCAPED FROM
14 PRECONVICTION CUSTODY FOR A SEPARATE FELONY OFFENSE SHALL BE SENTENCED TO A
15 TERM OF IMPRISONMENT TWO YEARS LONGER THAN WOULD OTHERWISE BE IMPOSED FOR THE
16 FELONY OFFENSE COMMITTED WHILE ON RELEASE. THE ADDITIONAL SENTENCE IMPOSED
17 UNDER THIS SUBSECTION IS IN ADDITION TO ANY ENHANCED PUNISHMENT THAT MAY BE
18 APPLICABLE UNDER SECTION 13-703, SECTION 13-704, SECTION 13-709.01,
19 SUBSECTION A OR SECTION 13-709.02, SUBSECTION C, THE PERSON IS NOT ELIGIBLE
20 FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON
21 ANY BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A
22 OR B, UNTIL THE TWO YEARS ARE SERVED, THE PERSON IS ELIGIBLE FOR RELEASE
23 PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED. THE COURT SHALL
24 ALLOW THE ALLEGATION THAT THE PERSON COMMITTED A FELONY WHILE RELEASED ON
25 BOND OR ON THE PERSON'S OWN RECOGNIZANCE ON A SEPARATE FELONY OFFENSE OR
26 WHILE ESCAPED FROM PRECONVICTION CUSTODY ON A SEPARATE FELONY OFFENSE AT ANY
27 TIME BEFORE THE CASE IS ACTUALLY TRIED UNLESS THE ALLEGATION IS FILED FEWER
28 THAN TWENTY DAYS BEFORE THE CASE IS ACTUALLY TRIED AND THE COURT FINDS ON THE
29 RECORD THAT THE PERSON WAS IN FACT PREJUDICED BY THE UNTIMELY FILING AND
30 STATES THE REASONS FOR THESE FINDINGS. THE ALLEGATION THAT THE PERSON
31 COMMITTED A FELONY WHILE RELEASED ON BOND OR ON THE PERSON'S OWN RECOGNIZANCE
32 OR WHILE ESCAPED FROM PRECONVICTION CUSTODY SHALL NOT BE READ TO THE JURY.

33 Sec. 34. Section 13-709, Arizona Revised Statutes, as transferred and
34 renumbered by this act, is amended to read:

35 13-709. Offenses committed in school safety zone; sentences;
36 definitions

37 A. Except as otherwise prescribed in section 13-3411, a person who is
38 convicted of a felony offense that is committed in a school safety zone is
39 guilty of the same class of felony that the person would otherwise be guilty
40 of if the violation had not occurred within a school safety zone, except that
41 the court may impose a sentence that is one year longer than the minimum,
42 maximum and presumptive sentence for that violation if the person is not a
43 criminal street gang member or up to five years longer than the minimum,
44 maximum and presumptive sentence for that violation if the person is a
45 criminal street gang member. The additional sentence imposed under this

1 subsection is in addition to any other enhanced punishment that may be
2 applicable under section ~~13-604~~ 13-703, SECTION 13-704, SECTION 13-706,
3 SECTION 13-708, SUBSECTION D or chapter 34 of this title.

4 B. In addition to any other penalty prescribed by this title, the
5 court may order a person who is subject to ~~the provisions of~~ subsection A of
6 this section to pay a fine of not less than two thousand dollars and not more
7 than the maximum authorized by chapter 8 of this title.

8 C. Each school district governing board or its designee, or chief
9 administrative officer in the case of a nonpublic or charter school, may
10 place and maintain permanently affixed signs that are located in a visible
11 manner at the main entrance of each school and that identify the school and
12 its accompanying grounds as a school safety zone. A school may include
13 information regarding the school safety zone boundaries on a sign that
14 identifies the area as a drug free zone and not post separate school safety
15 zone signs.

16 D. For the purposes of this section:

17 1. "School" means any public or nonpublic kindergarten program, common
18 school or high school.

19 2. "School safety zone" means any of the following:

20 (a) The area within three hundred feet of a school or its accompanying
21 grounds.

22 (b) Any public property within one thousand feet of a school or its
23 accompanying grounds.

24 (c) Any school bus.

25 (d) A bus contracted to transport pupils to any school during the time
26 when the contracted vehicle is transporting pupils on behalf of the school.

27 (e) A school bus stop.

28 (f) Any bus stop where school children are awaiting, boarding or
29 exiting a bus contracted to transport pupils to any school.

30 Sec. 35. Title 13, chapter 7, Arizona Revised Statutes, is amended by
31 adding sections 13-709.01, 13-709.02, 13-709.03 and 13-709.04, to read:

32 13-709.01. Special sentencing provisions; assault

33 A. A PERSON WHO IS CONVICTED OF INTENTIONALLY OR KNOWINGLY COMMITTING
34 AGGRAVATED ASSAULT ON A PEACE OFFICER WHILE THE OFFICER IS ENGAGED IN THE
35 EXECUTION OF ANY OFFICIAL DUTIES PURSUANT TO SECTION 13-1204, SUBSECTION A,
36 PARAGRAPH 1 OR 2 SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN THE
37 PRESUMPTIVE SENTENCE AUTHORIZED UNDER THIS CHAPTER AND IS NOT ELIGIBLE FOR
38 SUSPENSION OF SENTENCE, COMMUTATION OR RELEASE ON ANY BASIS UNTIL THE
39 SENTENCE IMPOSED IS SERVED.

40 B. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-1207 SHALL
41 NOT BE ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM
42 CONFINEMENT ON ANY BASIS UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN
43 SERVED OR COMMUTED. A SENTENCE IMPOSED PURSUANT TO SECTION 13-1207 SHALL BE
44 CONSECUTIVE TO ANY OTHER SENTENCE PRESENTLY BEING SERVED BY THE CONVICTED
45 PERSON.

1 C. THE SENTENCE IMPOSED FOR A VIOLATION OF SECTION 13-1212 SHALL RUN
2 CONSECUTIVELY TO ANY SENTENCE OF IMPRISONMENT FOR WHICH THE PRISONER WAS
3 CONFINED OR TO ANY TERM OF COMMUNITY SUPERVISION, PROBATION, PAROLE, WORK
4 FURLOUGH OR OTHER RELEASE FROM CONFINEMENT.

5 13-709.02. Special sentencing provisions: organized crime:
6 fraud; terrorism

7 A. IF A PERSON IS CONVICTED OF A VIOLATION OF SECTION 13-2308.01 AND
8 THE COURT FINDS AT LEAST ONE AGGRAVATING CIRCUMSTANCE LISTED IN SECTION
9 13-701, SUBSECTION D, THE COURT MAY IMPOSE A LIFE SENTENCE. IF THE COURT
10 IMPOSES A LIFE SENTENCE, THE COURT MAY ORDER THAT THE DEFENDANT NOT BE
11 RELEASED ON ANY BASIS FOR THE REMAINDER OF THE DEFENDANT'S NATURAL LIFE. IF
12 THE COURT DOES NOT SENTENCE THE DEFENDANT TO NATURAL LIFE, THE DEFENDANT
13 SHALL NOT BE RELEASED ON ANY BASIS UNTIL THE PERSON HAS SERVED TWENTY-FIVE
14 CALENDAR YEARS.

15 B. A PERSON WHO IS CONVICTED OF A KNOWING VIOLATION OF SECTION
16 13-2312, SUBSECTION C IS NOT ELIGIBLE FOR PROBATION, PARDON, SUSPENSION OF
17 SENTENCE OR RELEASE ON ANY BASIS UNTIL THE PERSON HAS SERVED THE SENTENCE
18 IMPOSED BY THE COURT OR THE SENTENCE IS COMMUTED.

19 C. A PERSON WHO IS CONVICTED OF COMMITTING ANY FELONY OFFENSE WITH THE
20 INTENT TO PROMOTE, FURTHER OR ASSIST ANY CRIMINAL CONDUCT BY A CRIMINAL
21 STREET GANG SHALL NOT BE ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION,
22 PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS AUTHORIZED BY
23 SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS
24 BEEN SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION
25 41-1604.07 OR THE SENTENCE IS COMMUTED. THE PRESUMPTIVE, MINIMUM AND MAXIMUM
26 SENTENCE FOR THE OFFENSE SHALL BE INCREASED BY THREE YEARS IF THE OFFENSE IS
27 A CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE
28 IS A CLASS 2 OR 3 FELONY. THE ADDITIONAL SENTENCE IMPOSED PURSUANT TO THIS
29 SUBSECTION IS IN ADDITION TO ANY ENHANCED SENTENCE THAT MAY BE APPLICABLE.

30 13-709.03. Special sentencing provisions: drug offenses

31 A. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-3407,
32 SUBSECTION A, PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE SHALL BE
33 SENTENCED AS FOLLOWS:

34	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
35	5 YEARS	10 YEARS	15 YEARS

36 B. A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 13-3407,
37 SUBSECTION A, PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE AND WHO HAS
38 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SECTION 13-3407, SUBSECTION A,
39 PARAGRAPH 2, 3, 4 OR 7 INVOLVING METHAMPHETAMINE OR SECTION 13-3407.01 SHALL
40 BE SENTENCED AS FOLLOWS:

41	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
42	10 YEARS	15 YEARS	20 YEARS

43 C. THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCE FOR A VIOLATION OF
44 SECTION 13-3411, SUBSECTION A SHALL BE INCREASED BY ONE YEAR. A PERSON IS
45 NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM

1 CONFINEMENT ON ANY BASIS EXCEPT PURSUANT TO SECTION 31-233, SUBSECTION A OR B
2 UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED. THE
3 ADDITIONAL SENTENCE IMPOSED UNDER SECTION 13-3411, SUBSECTION B IS IN
4 ADDITION TO ANY ENHANCED PUNISHMENT THAT MAY BE APPLICABLE UNDER SECTION
5 13-703, SECTION 13-704 OR ANY PROVISION OF CHAPTER 34 OF THIS TITLE.

6 D. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTIONS A AND B OF
7 THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,
8 SUBSECTIONS D AND E.

9 13-709.04. Special sentencing provision; family offenses

10 A. IF A PERSON IS CONVICTED OF AN OFFENSE INVOLVING DOMESTIC VIOLENCE
11 AND THE VICTIM WAS PREGNANT AT THE TIME OF THE COMMISSION OF THE OFFENSE, AT
12 THE TIME OF SENTENCING THE COURT SHALL TAKE INTO CONSIDERATION THE FACT THAT
13 THE VICTIM WAS PREGNANT AND MAY INCREASE THE SENTENCE.

14 B. THE MAXIMUM SENTENCE OTHERWISE AUTHORIZED FOR A VIOLATION OF
15 SECTION 13-3601, SUBSECTION A SHALL BE INCREASED BY UP TO TWO YEARS IF THE
16 DEFENDANT COMMITTED A FELONY OFFENSE AGAINST A PREGNANT VICTIM AND KNEW THAT
17 THE VICTIM WAS PREGNANT OR IF THE DEFENDANT COMMITTED A FELONY OFFENSE
18 CAUSING PHYSICAL INJURY TO A PREGNANT VICTIM AND KNEW THAT THE VICTIM WAS
19 PREGNANT.

20 Sec. 36. Section 13-710, Arizona Revised Statutes, is amended to read:

21 13-710. Sentence for second degree murder

22 A. Except as provided in section ~~13-604, subsection S or section~~
23 ~~13-604.01~~ 13-705 OR SECTION 13-706, SUBSECTION A, a person who ~~stands~~ IS
24 convicted of second degree murder as defined by section 13-1104 shall be
25 sentenced ~~to a presumptive term of sixteen calendar years. The presumptive~~
26 ~~term imposed pursuant to this subsection may be mitigated or aggravated by up~~
27 ~~to six years pursuant to the terms of section 13-702, subsections C and D.~~
28 AS FOLLOWS:

29	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
30	10 YEARS	16 YEARS	22 YEARS

31 B. Except as provided in section ~~13-604, subsection S or section~~
32 ~~13-604.01~~ 13-704 OR SECTION 13-706, SUBSECTION A, a person who ~~stands~~ IS
33 convicted of second degree murder as defined by section 13-1104 and who has
34 previously been convicted of second degree murder or a class 2 or 3 felony
35 involving the use or exhibition of a deadly weapon or dangerous instrument or
36 the intentional or knowing infliction of serious physical injury on another
37 shall be sentenced ~~to a presumptive term of twenty calendar years. The~~
38 ~~presumptive term imposed pursuant to this subsection may be mitigated or~~
39 ~~aggravated by up to five years pursuant to the terms of section 13-702,~~
40 ~~subsection C and D.~~ AS FOLLOWS:

41	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
42	15 YEARS	20 YEARS	25 YEARS

43 C. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO SUBSECTIONS A AND B OF
44 THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701,
45 SUBSECTIONS D AND E.

1 D. Evidence that is admitted at the trial and that relates to any
2 aggravating or mitigating circumstances shall be deemed admitted as evidence
3 at a sentencing proceeding if the trier of fact considering that evidence is
4 the same trier of fact that determined the defendant's guilt. The
5 prosecution and the defendant shall be permitted to rebut any information
6 received at the aggravation or penalty phase of the sentencing proceeding and
7 shall be given fair opportunity to present argument as to whether the
8 information is sufficient to establish the existence of any of the
9 circumstances included in subsections F and G of this section.

10 E. In determining whether to impose a sentence of death or life
11 imprisonment, the trier of fact shall take into account the aggravating and
12 mitigating circumstances that have been proven. The trier of fact shall
13 impose a sentence of death if the trier of fact finds one or more of the
14 aggravating circumstances enumerated in subsection F of this section and then
15 determines that there are no mitigating circumstances sufficiently
16 substantial to call for leniency.

17 F. The trier of fact shall consider the following aggravating
18 circumstances in determining whether to impose a sentence of death:

19 1. The defendant has been convicted of another offense in the United
20 States for which under Arizona law a sentence of life imprisonment or death
21 was imposable.

22 2. The defendant has been or was previously convicted of a serious
23 offense, whether preparatory or completed. Convictions for serious offenses
24 committed on the same occasion as the homicide, or not committed on the same
25 occasion but consolidated for trial with the homicide, shall be treated as a
26 serious offense under this paragraph.

27 3. In the commission of the offense the defendant knowingly created a
28 grave risk of death to another person or persons in addition to the person
29 murdered during the commission of the offense.

30 4. The defendant procured the commission of the offense by payment, or
31 promise of payment, of anything of pecuniary value.

32 5. The defendant committed the offense as consideration for the
33 receipt, or in expectation of the receipt, of anything of pecuniary value.

34 6. The defendant committed the offense in an especially heinous, cruel
35 or depraved manner.

36 7. The defendant committed the offense while:

37 (a) In the custody of or on authorized or unauthorized release from
38 the state department of corrections, a law enforcement agency or a county or
39 city jail.

40 (b) On probation for a felony offense.

41 8. The defendant has been convicted of one or more other homicides, as
42 defined in section 13-1101, that were committed during the commission of the
43 offense.

1 9. The defendant was an adult at the time the offense was committed or
2 was tried as an adult and the murdered person was under fifteen years of age,
3 was an unborn child in the womb at any stage of its development or was
4 seventy years of age or older.

5 10. The murdered person was an on duty peace officer who was killed in
6 the course of performing the officer's official duties and the defendant
7 knew, or should have known, that the murdered person was a peace officer.

8 11. The defendant committed the offense with the intent to promote,
9 further or assist the objectives of a criminal street gang or criminal
10 syndicate or to join a criminal street gang or criminal syndicate.

11 12. The defendant committed the offense to prevent a person's
12 cooperation with an official law enforcement investigation, to prevent a
13 person's testimony in a court proceeding, in retaliation for a person's
14 cooperation with an official law enforcement investigation or in retaliation
15 for a person's testimony in a court proceeding.

16 13. The offense was committed in a cold, calculated manner without
17 pretense of moral or legal justification.

18 14. The defendant used a remote stun gun or an authorized remote stun
19 gun in the commission of the offense. For the purposes of this paragraph:

20 (a) "Authorized remote stun gun" means a remote stun gun that has all
21 of the following:

22 (i) An electrical discharge that is less than one hundred thousand
23 volts and less than nine joules of energy per pulse.

24 (ii) A serial or identification number on all projectiles that are
25 discharged from the remote stun gun.

26 (iii) An identification and tracking system that, on deployment of
27 remote electrodes, disperses coded material that is traceable to the
28 purchaser through records that are kept by the manufacturer on all remote
29 stun guns and all individual cartridges sold.

30 (iv) A training program that is offered by the manufacturer.

31 (b) "Remote stun gun" means an electronic device that emits an
32 electrical charge and that is designed and primarily employed to incapacitate
33 a person or animal either through contact with electrodes on the device
34 itself or remotely through wired probes that are attached to the device or
35 through a spark, plasma, ionization or other conductive means emitting from
36 the device.

37 G. The trier of fact shall consider as mitigating circumstances any
38 factors proffered by the defendant or the state that are relevant in
39 determining whether to impose a sentence less than death, including any
40 aspect of the defendant's character, propensities or record and any of the
41 circumstances of the offense, including but not limited to the following:

42 1. The defendant's capacity to appreciate the wrongfulness of his
43 conduct or to conform his conduct to the requirements of law was
44 significantly impaired, but not so impaired as to constitute a defense to
45 prosecution.

1 2. The defendant was under unusual and substantial duress, although
2 not such as to constitute a defense to prosecution.

3 3. The defendant was legally accountable for the conduct of another
4 under ~~the provisions of~~ section 13-303, but his participation was relatively
5 minor, although not so minor as to constitute a defense to prosecution.

6 4. The defendant could not reasonably have foreseen that his conduct
7 in the course of the commission of the offense for which the defendant was
8 convicted would cause, or would create a grave risk of causing, death to
9 another person.

10 5. The defendant's age.

11 H. For purposes of determining whether a conviction of any dangerous
12 crime against children is a serious offense pursuant to this section, an
13 unborn child shall be treated like a minor who is under twelve years of age.

14 I. For the purposes of this section, "serious offense" means any of
15 the following offenses if committed in this state or any offense committed
16 outside this state that if committed in this state would constitute one of
17 the following offenses:

18 1. First degree murder.

19 2. Second degree murder.

20 3. Manslaughter.

21 4. Aggravated assault resulting in serious physical injury or
22 committed by the use, threatened use or exhibition of a deadly weapon or
23 dangerous instrument.

24 5. Sexual assault.

25 6. Any dangerous crime against children.

26 7. Arson of an occupied structure.

27 8. Robbery.

28 9. Burglary in the first degree.

29 10. Kidnapping.

30 11. Sexual conduct with a minor under fifteen years of age.

31 12. Burglary in the second degree.

32 13. Terrorism.

33 Sec. 40. Section 13-752, Arizona Revised Statutes, as amended by Laws
34 2005, chapter 325, section 3 and as transferred and renumbered by this act,
35 is amended to read:

36 13-752. Sentences of death, life imprisonment or natural life;
37 imposition; sentencing proceedings; definitions

38 A. If the state has filed a notice of intent to seek the death penalty
39 and the defendant is convicted of first degree murder, the trier of fact at
40 the sentencing proceeding shall determine whether to impose a sentence of
41 death in accordance with the procedures provided in this section. If the
42 trier of fact determines that a sentence of death is not appropriate, or if
43 the state has not filed a notice of intent to seek the death penalty, and the
44 defendant is convicted of first degree murder, the court shall determine
45 whether to impose a sentence of life or natural life.

1 B. Before trial, the prosecution shall notice one or more of the
2 aggravating circumstances under section ~~13-703~~ 13-751, subsection F.

3 C. If the trier of fact finds the defendant guilty of first degree
4 murder, the trier of fact shall then immediately determine whether one or
5 more alleged aggravating circumstances have been proven. This proceeding is
6 the aggravation phase of the sentencing proceeding.

7 D. If the trier of fact finds that one or more of the alleged
8 aggravating circumstances have been proven, the trier of fact shall then
9 immediately determine whether the death penalty should be imposed. This
10 proceeding is the penalty phase of the sentencing proceeding.

11 E. At the aggravation phase, the trier of fact shall make a special
12 finding on whether each alleged aggravating circumstance has been proven
13 based on the evidence that was presented at the trial or at the aggravation
14 phase. If the trier of fact is a jury, a unanimous verdict is required to
15 find that the aggravating circumstance has been proven. If the trier of fact
16 unanimously finds that an aggravating circumstance has not been proven, the
17 defendant is entitled to a special finding that the aggravating circumstance
18 has not been proven. If the trier of fact unanimously finds no aggravating
19 circumstances, the court shall then determine whether to impose a sentence of
20 life or natural life on the defendant.

21 F. The penalty phase shall be held immediately after the trier of fact
22 finds at the aggravation phase that one or more of the aggravating
23 circumstances under section ~~13-703~~ 13-751, subsection F have been proven. A
24 finding by the trier of fact that any of the remaining aggravating
25 circumstances alleged has not been proven or the inability of the trier of
26 fact to agree on the issue of whether any of the remaining aggravating
27 circumstances alleged has been proven shall not prevent the holding of the
28 penalty phase.

29 G. At the penalty phase, the defendant and the state may present any
30 evidence that is relevant to the determination of whether there is mitigation
31 that is sufficiently substantial to call for leniency. In order for the
32 trier of fact to make this determination, the state may present any evidence
33 that demonstrates that the defendant should not be shown leniency.

34 H. The trier of fact shall determine unanimously whether death is the
35 appropriate sentence. If the trier of fact is a jury and the jury
36 unanimously determines that the death penalty is not appropriate, the court
37 shall determine whether to impose a sentence of life or natural life.

38 I. If the trier of fact at any prior phase of the trial is the same
39 trier of fact at the subsequent phase, any evidence that was presented at any
40 prior phase of the trial shall be deemed admitted as evidence at any
41 subsequent phase of the trial.

42 J. At the aggravation phase, if the trier of fact is a jury, the jury
43 is unable to reach a verdict on any of the alleged aggravating circumstances
44 and the jury has not found that at least one of the alleged aggravating
45 circumstances has been proven, the court shall dismiss the jury and shall

1 impanel a new jury. The new jury shall not retry the issue of the
2 defendant's guilt or the issue regarding any of the aggravating circumstances
3 that the first jury found not proved by unanimous verdict. If the new jury
4 is unable to reach a unanimous verdict, the court shall impose a sentence of
5 life or natural life on the defendant.

6 K. At the penalty phase, if the trier of fact is a jury and the jury
7 is unable to reach a verdict, the court shall dismiss the jury and shall
8 impanel a new jury. The new jury shall not retry the issue of the
9 defendant's guilt or the issue regarding any of the aggravating circumstances
10 that the first jury found by unanimous verdict to be proved or not proved.
11 If the new jury is unable to reach a unanimous verdict, the court shall
12 impose a sentence of life or natural life on the defendant.

13 L. If the jury that rendered a verdict of guilty is not the jury first
14 impaneled for the aggravation phase, the jury impaneled in the aggravation
15 phase shall not retry the issue of the defendant's guilt. If the jury
16 impaneled in the aggravation phase is unable to reach a verdict on any of the
17 alleged aggravating circumstances and the jury has not found that at least
18 one of the alleged aggravating circumstances has been proven, the court shall
19 dismiss the jury and shall impanel a new jury. The new jury shall not retry
20 the issue of the defendant's guilt or the issue regarding any of the
21 aggravating circumstances that the first jury found not proved by unanimous
22 verdict. If the new jury is unable to reach a unanimous verdict, the court
23 shall impose a sentence of life or natural life on the defendant.

24 M. Alternate jurors who are impaneled for the trial in a case in which
25 the offense is punishable by death shall not be excused from the case until
26 the completion of the sentencing proceeding.

27 N. If the sentence of a person who was sentenced to death is
28 overturned, the person shall be resentenced pursuant to this section by a
29 jury that is specifically impaneled for this purpose as if the original
30 sentencing had not occurred.

31 O. In any case that requires sentencing or resentencing in which the
32 defendant has been convicted of an offense that is punishable by death and in
33 which the trier of fact was a judge or a jury that has since been discharged,
34 the defendant shall be sentenced or resentenced pursuant to this section by a
35 jury that is specifically impaneled for this purpose.

36 P. The trier of fact shall make all factual determinations required by
37 this section or the Constitution of the United States or this state to impose
38 a death sentence. If the defendant bears the burden of proof, the issue
39 shall be determined in the penalty phase. If the state bears the burden of
40 proof, the issue shall be determined in the aggravation phase.

41 Q. If the death penalty was not alleged or was alleged but not
42 imposed, the court shall determine whether to impose a sentence of life or
43 natural life. In determining whether to impose a sentence of life or natural
44 life, the court:

1 1. May consider any evidence introduced before sentencing or at any
2 other sentencing proceeding.

3 2. Shall consider the aggravating and mitigating circumstances listed
4 in section ~~13-702~~ 13-701 and any statement made by a victim.

5 R. Subject to ~~the provisions of~~ section ~~13-703~~ 13-751, subsection B, a
6 victim has the right to be present at the aggravation phase and to present
7 any information that is relevant to the proceeding. A victim has the right
8 to be present and to present information at the penalty phase. At the
9 penalty phase, the victim may present information about the murdered person
10 and the impact of the murder on the victim and other family members and may
11 submit a victim impact statement in any format to the trier of fact.

12 S. For the purposes of this section:

13 1. "Trier of fact" means a jury unless the defendant and the state
14 waive a jury, in which case the trier of fact shall be the court.

15 2. "Victim" means the murdered person's spouse, parent, child,
16 grandparent or sibling, any other person related to the murdered person by
17 consanguinity or affinity to the second degree or any other lawful
18 representative of the murdered person, except if the spouse, parent, child,
19 grandparent, sibling, other person related to the murdered person by
20 consanguinity or affinity to the second degree or other lawful representative
21 is in custody for an offense or is the accused.

22 Sec. 41. Section 13-752, Arizona Revised Statutes, as amended by Laws
23 2005, chapter 325, section 4 and as transferred and renumbered by this act,
24 is amended to read:

25 13-752. Sentences of death, life imprisonment or natural life;
26 imposition; sentencing proceedings; definitions

27 A. If the state has filed a notice of intent to seek the death penalty
28 and the defendant is convicted of first degree murder, the trier of fact at
29 the sentencing proceeding shall determine whether to impose a sentence of
30 death in accordance with the procedures provided in this section. If the
31 trier of fact determines that a sentence of death is not appropriate, or if
32 the state has not filed a notice of intent to seek the death penalty, and the
33 defendant is convicted of first degree murder, the court shall determine
34 whether to impose a sentence of life or natural life.

35 B. Before trial, the prosecution shall notice one or more of the
36 aggravating circumstances under section ~~13-703~~ 13-751, subsection F.

37 C. If the trier of fact finds the defendant guilty of first degree
38 murder, the trier of fact shall then immediately determine whether one or
39 more alleged aggravating circumstances have been proven. This proceeding is
40 the aggravation phase of the sentencing proceeding.

41 D. If the trier of fact finds that one or more of the alleged
42 aggravating circumstances have been proven, the trier of fact shall then
43 immediately determine whether the death penalty should be imposed. This
44 proceeding is the penalty phase of the sentencing proceeding.

1 E. At the aggravation phase, the trier of fact shall make a special
2 finding on whether each alleged aggravating circumstance has been proven
3 based on the evidence that was presented at the trial or at the aggravation
4 phase. If the trier of fact is a jury, a unanimous verdict is required to
5 find that the aggravating circumstance has been proven. If the trier of fact
6 unanimously finds that an aggravating circumstance has not been proven, the
7 defendant is entitled to a special finding that the aggravating circumstance
8 has not been proven. If the trier of fact unanimously finds no aggravating
9 circumstances, the court shall then determine whether to impose a sentence of
10 life or natural life on the defendant.

11 F. The penalty phase shall be held immediately after the trier of fact
12 finds at the aggravation phase that one or more of the aggravating
13 circumstances under section ~~13-703~~ 13-751, subsection F have been proven. A
14 finding by the trier of fact that any of the remaining aggravating
15 circumstances alleged has not been proven or the inability of the trier of
16 fact to agree on the issue of whether any of the remaining aggravating
17 circumstances alleged has been proven shall not prevent the holding of the
18 penalty phase.

19 G. At the penalty phase, the defendant and the state may present any
20 evidence that is relevant to the determination of whether there is mitigation
21 that is sufficiently substantial to call for leniency. In order for the
22 trier of fact to make this determination, the state may present any evidence
23 that demonstrates that the defendant should not be shown leniency.

24 H. The trier of fact shall determine unanimously whether death is the
25 appropriate sentence. If the trier of fact is a jury and the jury
26 unanimously determines that the death penalty is not appropriate, the court
27 shall determine whether to impose a sentence of life or natural life.

28 I. If the trier of fact at any prior phase of the trial is the same
29 trier of fact at the subsequent phase, any evidence that was presented at any
30 prior phase of the trial shall be deemed admitted as evidence at any
31 subsequent phase of the trial.

32 J. At the aggravation phase, if the trier of fact is a jury, the jury
33 is unable to reach a verdict on any of the alleged aggravating circumstances
34 and the jury has not found that at least one of the alleged aggravating
35 circumstances has been proven, the court shall dismiss the jury and shall
36 impanel a new jury. The new jury shall not retry the issue of the
37 defendant's guilt or the issue regarding any of the aggravating circumstances
38 that the first jury found not proved by unanimous verdict. If the new jury
39 is unable to reach a unanimous verdict, the court shall impose a sentence of
40 life or natural life on the defendant.

41 K. At the penalty phase, if the trier of fact is a jury and the jury
42 is unable to reach a verdict, the court shall dismiss the jury and shall
43 impanel a new jury. The new jury shall not retry the issue of the
44 defendant's guilt or the issue regarding any of the aggravating circumstances
45 that the first jury found by unanimous verdict to be proved or not proved.

1 If the new jury is unable to reach a unanimous verdict, the court shall
2 impose a sentence of life or natural life on the defendant.

3 L. If the jury that rendered a verdict of guilty is not the jury first
4 impaneled for the aggravation phase, the jury impaneled in the aggravation
5 phase shall not retry the issue of the defendant's guilt. If the jury
6 impaneled in the aggravation phase is unable to reach a verdict on any of the
7 alleged aggravating circumstances and the jury has not found that at least
8 one of the alleged aggravating circumstances has been proven, the court shall
9 dismiss the jury and shall impanel a new jury. The new jury shall not retry
10 the issue of the defendant's guilt or the issue regarding any of the
11 aggravating circumstances that the first jury found not proved by unanimous
12 verdict. If the new jury is unable to reach a unanimous verdict, the court
13 shall impose a sentence of life or natural life on the defendant.

14 M. Alternate jurors who are impaneled for the trial in a case in which
15 the offense is punishable by death shall not be excused from the case until
16 the completion of the sentencing proceeding.

17 N. If the sentence of a person who was sentenced to death is
18 overturned, the person shall be resentenced pursuant to this section by a
19 jury that is specifically impaneled for this purpose as if the original
20 sentencing had not occurred.

21 O. In any case that requires sentencing or resentencing in which the
22 defendant has been convicted of an offense that is punishable by death and in
23 which the trier of fact was a judge or a jury that has since been discharged,
24 the defendant shall be sentenced or resentenced pursuant to this section by a
25 jury that is specifically impaneled for this purpose.

26 P. The trier of fact shall make all factual determinations required by
27 this section or the Constitution of the United States or this state to impose
28 a death sentence. If the defendant bears the burden of proof, the issue
29 shall be determined in the penalty phase. If the state bears the burden of
30 proof, the issue shall be determined in the aggravation phase.

31 Q. If the death penalty was not alleged or was alleged but not
32 imposed, the court shall determine whether to impose a sentence of life or
33 natural life. In determining whether to impose a sentence of life or natural
34 life, the court:

35 1. May consider any evidence introduced before sentencing or at any
36 other sentencing proceeding.

37 2. Shall consider the aggravating and mitigating circumstances listed
38 in section ~~13-702~~ 13-701 and any statement made by a victim.

39 R. Subject to ~~the provisions of~~ section ~~13-703~~ 13-751, subsection B, a
40 victim has the right to be present at the aggravation phase and to present
41 any information that is relevant to the proceeding. A victim has the right
42 to be present at the penalty phase. At the penalty phase, the victim has the
43 right to be heard pursuant to section 13-4426.

1 S. For the purposes of this section:

2 1. "Trier of fact" means a jury unless the defendant and the state
3 waive a jury, in which case the trier of fact shall be the court.

4 2. "Victim" means the murdered person's spouse, parent, child,
5 grandparent or sibling, any other person related to the murdered person by
6 consanguinity or affinity to the second degree or any other lawful
7 representative of the murdered person, except if the spouse, parent, child,
8 grandparent, sibling, other person related to the murdered person by
9 consanguinity or affinity to the second degree or other lawful representative
10 is in custody for an offense or is the accused.

11 Sec. 42. Section 13-755, Arizona Revised Statutes, as transferred and
12 renumbered by this act, is amended to read:

13 13-755. Death sentences; supreme court review

14 A. The supreme court shall review all death sentences. On review, the
15 supreme court shall independently review the trial court's findings of
16 aggravation and mitigation and the propriety of the death sentence.

17 B. If the supreme court determines that an error was made regarding a
18 finding of aggravation or mitigation, the supreme court shall independently
19 determine if the mitigation the supreme court finds is sufficiently
20 substantial to warrant leniency in light of the existing aggravation. If the
21 supreme court finds that the mitigation is not sufficiently substantial to
22 warrant leniency, the supreme court shall affirm the death sentence. If the
23 supreme court finds that the mitigation is sufficiently substantial to
24 warrant leniency, the supreme court shall impose a life sentence pursuant to
25 section ~~13-703~~ 13-751, subsection A.

26 C. The independent review required by subsection A does not preclude
27 the supreme court from remanding a case for further action if the trial court
28 erroneously excluded evidence or if the appellate record does not adequately
29 reflect the evidence presented.

30 Sec. 43. Section 13-901.01, Arizona Revised Statutes, is amended to
31 read:

32 13-901.01. Probation for persons convicted of possession or use
33 of controlled substances or drug paraphernalia;
34 treatment; prevention; education; exceptions;
35 definition

36 A. Notwithstanding any law to the contrary, any person who is
37 convicted of the personal possession or use of a controlled substance or drug
38 paraphernalia is eligible for probation. The court shall suspend the
39 imposition or execution of sentence and place the person on probation.

40 B. Any person who has been convicted of or indicted for a violent
41 crime as defined in section ~~13-604.04~~ 13-901.03 is not eligible for probation
42 as provided for in this section but instead shall be sentenced pursuant to
43 chapter 34 of this title.

1 C. Personal possession or use of a controlled substance pursuant to
2 this section shall not include possession for sale, production, manufacturing
3 or transportation for sale of any controlled substance.

4 D. If a person is convicted of personal possession or use of a
5 controlled substance or drug paraphernalia, as a condition of probation, the
6 court shall require participation in an appropriate drug treatment or
7 education program administered by a qualified agency or organization that
8 provides such programs to persons who abuse controlled substances. Each
9 person who is enrolled in a drug treatment or education program shall be
10 required to pay for participation in the program to the extent of the
11 person's financial ability.

12 E. A person who has been placed on probation pursuant to this section
13 and who is determined by the court to be in violation of probation shall have
14 new conditions of probation established by the court. The court shall select
15 the additional conditions it deems necessary, including intensified drug
16 treatment, community restitution, intensive probation, home arrest or any
17 other sanctions except that the court shall not impose a term of
18 incarceration unless the court determines that the person violated probation
19 by committing an offense listed in chapter 34 or 34.1 of this title or an act
20 in violation of an order of the court relating to drug treatment.

21 F. If a person is convicted a second time of personal possession or
22 use of a controlled substance or drug paraphernalia, the court may include
23 additional conditions of probation it deems necessary, including intensified
24 drug treatment, community restitution, intensive probation, home arrest or
25 any other action within the jurisdiction of the court.

26 G. At any time while the defendant is on probation, if after having a
27 reasonable opportunity to do so the defendant fails or refuses to participate
28 in drug treatment, the probation department or the prosecutor may petition
29 the court to revoke the defendant's probation. If the court finds that the
30 defendant refused to participate in drug treatment, the defendant shall no
31 longer be eligible for probation under this section but instead shall be
32 sentenced pursuant to chapter 34 of this title.

33 H. A person is not eligible for probation under this section but
34 instead shall be sentenced pursuant to chapter 34 of this title if the court
35 finds the person either:

36 1. Had been convicted three times of personal possession of a
37 controlled substance or drug paraphernalia.

38 2. Refused drug treatment as a term of probation.

39 3. Rejected probation.

40 4. Was convicted of the personal possession or use of a controlled
41 substance or drug paraphernalia and the offense involved methamphetamine.

42 I. Subsections G and H of this section do not prohibit the defendant
43 from being placed on probation pursuant to section 13-901 if the defendant
44 otherwise qualifies for probation under that section.

1 J. For the purposes of this section, "controlled substance" has the
2 same meaning prescribed in section 36-2501.

3 Sec. 44. Section 13-901.03, Arizona Revised Statutes, as transferred
4 and renumbered by this act, is amended to read:

5 13-901.03. Violent crimes; allegation; definition

6 A. FOR THE PURPOSES OF SECTION 13-901.01, the allegation that ~~the~~ A
7 defendant committed a violent crime shall be charged in the indictment or
8 information and admitted or found by the court. The court shall allow the
9 allegation that the defendant committed a violent crime at any time before
10 the date the case is actually tried unless the allegation is filed fewer than
11 twenty days before the case is actually tried and the court finds on the
12 record that the defendant was in fact prejudiced by the untimely filing and
13 states the reasons for these findings.

14 B. For the ~~purpose~~ PURPOSES of this section, "violent crime" includes
15 any criminal act that results in death or physical injury or any criminal use
16 of a deadly weapon or dangerous instrument.

17 Sec. 45. Section 13-902, Arizona Revised Statutes, is amended to read:

18 13-902. Periods of probation

19 A. Unless terminated sooner, probation may continue for the following
20 periods:

- 21 1. For a class 2 felony, seven years.
- 22 2. For a class 3 felony, five years.
- 23 3. For a class 4 felony, four years.
- 24 4. For a class 5 or 6 felony, three years.
- 25 5. For a class 1 misdemeanor, three years.
- 26 6. For a class 2 misdemeanor, two years.
- 27 7. For a class 3 misdemeanor, one year.

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

- 30 1. For a violation of section 28-1381 or 28-1382, five years.
- 31 2. For a violation of section 28-1383, ten years.

32 C. When the court has required, as a condition of probation, that the
33 defendant make restitution for any economic loss related to the defendant's
34 offense and that condition has not been satisfied, the court at any time
35 before the termination or expiration of probation may extend the period
36 within the following limits:

- 37 1. For a felony, not more than five years.
- 38 2. For a misdemeanor, not more than two years.

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

42 E. After conviction of a felony offense or an attempt to commit any
43 offense that is included in chapter 14 or 35.1 of this title or section
44 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may
45 continue for a term of not less than the term that is specified in subsection

1 A of this section up to and including life and that the court believes is
2 appropriate for the ends of justice.

3 F. After conviction of a violation of section 13-3824, subsection A,
4 if a term of probation is imposed and the offense for which the person was
5 required to register was a felony, probation may continue for a term of not
6 less than the term that is specified in subsection A of this section up to
7 and including life and that the court believes is appropriate for the ends of
8 justice.

9 G. Beginning November 1, 2006, after conviction of a dangerous crime
10 against children as defined in section ~~13-604.01~~ 13-705, if a term of
11 probation is imposed, the court shall require global position system
12 monitoring for the duration of the term of probation.

13 Sec. 46. Section 13-905, Arizona Revised Statutes, is amended to read:
14 13-905. Restoration of civil rights; persons completing
15 probation

16 A. A person who has been convicted of two or more felonies and whose
17 period of probation has been completed may have any civil rights which were
18 lost or suspended by ~~his~~ THE felony conviction restored by the judge who
19 discharges him at the end of the term of probation.

20 B. ~~Upon~~ ON proper application, a person who has been discharged from
21 probation either ~~prior to~~ BEFORE or after adoption of this chapter may have
22 any civil rights which were lost or suspended by ~~his~~ THE felony conviction
23 restored by the superior court judge by whom the person was sentenced or ~~his~~
24 THE JUDGE'S successors in office from the county in which ~~he~~ THE PERSON was
25 originally convicted. The clerk of ~~such~~ THE superior court shall have the
26 responsibility for processing the application ~~upon~~ ON request of the person
27 involved or ~~his~~ THE PERSON'S attorney. The superior court shall ~~cause~~ SERVE
28 a copy of the application ~~to be served upon~~ ON the county attorney.

29 C. If the person was convicted of a dangerous offense ~~under section~~
30 ~~13-604~~, the person may not file for the restoration of ~~his~~ THE right to
31 possess or carry a gun or firearm. If the person was convicted of a serious
32 offense as defined in section ~~13-604~~ 13-706 the person may not file for the
33 restoration of ~~his~~ THE right to possess or carry a gun or firearm for ten
34 years from the date of his discharge from probation. If the person was
35 convicted of any other felony offense, the person may not file for the
36 restoration of ~~his~~ THE right to possess or carry a gun or firearm for two
37 years from the date of ~~his~~ THE PERSON'S discharge from probation.

38 Sec. 47. Section 13-906, Arizona Revised Statutes, is amended to read:
39 13-906. Applications by persons discharged from prison

40 A. ~~Upon~~ ON proper application, a person who has been convicted of two
41 or more felonies and who has received an absolute discharge from imprisonment
42 may have any civil rights which were lost or suspended by his conviction
43 restored by the superior court judge by whom the person was sentenced or ~~his~~
44 THE JUDGE'S successors in office from the county in which ~~he~~ THE PERSON was
45 originally sentenced.

1 B. A person who is subject to ~~the provisions of~~ subsection A of this
 2 section may file, no sooner than two years from the date of his absolute
 3 discharge, an application for restoration of civil rights that shall be
 4 accompanied by a certificate of absolute discharge from the director of the
 5 state department of corrections. The clerk of the superior court that
 6 sentenced the applicant shall have the responsibility for processing
 7 applications for restoration of civil rights upon request of the person
 8 involved, ~~his~~ THE PERSON'S attorney or a representative of the state
 9 department of corrections. The superior court shall ~~cause~~ SERVE a copy of
 10 the application ~~to be served upon~~ ON the county attorney.

11 C. If the person was convicted of a dangerous offense ~~under section~~
 12 ~~13-604~~, the person may not file for the restoration of ~~his~~ THE right to
 13 possess or carry a gun or firearm. If the person was convicted of a serious
 14 offense as defined in section ~~13-604~~ 13-706, the person may not file for the
 15 restoration of ~~his~~ THE right to possess or carry a gun or firearm for ten
 16 years from the date of his absolute discharge from imprisonment. If the
 17 person was convicted of any other felony offense, the person may not file for
 18 the restoration of ~~his~~ THE right to possess or carry a gun or firearm for two
 19 years from the date of ~~his~~ THE PERSON'S absolute discharge from imprisonment.

20 Sec. 48. Section 13-907, Arizona Revised Statutes, is amended to read:
 21 13-907. Setting aside judgment of convicted person on
 22 discharge; application; release from disabilities;
 23 exceptions

24 A. Except as ~~otherwise~~ provided in SUBSECTION D OF this section, every
 25 person convicted of a criminal offense, on fulfillment of the conditions of
 26 probation or sentence and discharge by the court, may apply to the judge,
 27 justice of the peace or magistrate who pronounced sentence or imposed
 28 probation or such judge, justice of the peace or magistrate's successor in
 29 office to have the judgment of guilt set aside. The convicted person shall
 30 be informed of this right at the time of discharge.

31 B. ~~The application to set aside the judgment may be made by~~ The
 32 convicted person or ~~by~~, IF AUTHORIZED IN WRITING, the convicted person's
 33 attorney or probation officer ~~authorized in writing~~ MAY APPLY TO SET ASIDE
 34 THE JUDGMENT.

35 C. If the judge, justice of the peace or magistrate grants the
 36 application, the judge, justice of the peace or magistrate shall set aside
 37 the judgment of guilt, dismiss the accusations or information and order that
 38 the person be released from all penalties and disabilities resulting from the
 39 conviction ~~other than~~ EXCEPT those imposed by:

40 1. The department of transportation pursuant to section 28-3304,
 41 28-3306, 28-3307, 28-3308 or 28-3319, except that the conviction may be used
 42 as a conviction if ~~such~~ THE conviction would be admissible had it not been
 43 set aside and may be pleaded and proved in any subsequent prosecution of such
 44 person by the state or any of its subdivisions for any offense or used by the

1 department of transportation in enforcing section 28-3304, 28-3306, 28-3307,
2 28-3308 or 28-3319 as if the judgment of guilt had not been set aside.

3 2. The game and fish commission pursuant to section 17-314 or 17-340.

4 D. This section does not apply to a person WHO WAS convicted of a
5 criminal offense:

6 ~~1. Involving the infliction of serious physical injury.~~

7 ~~2. Involving the use or exhibition of a deadly weapon or dangerous~~
8 ~~instrument.~~

9 1. INVOLVING A DANGEROUS OFFENSE.

10 ~~3.~~ 2. For which the person is required or ordered by the court to
11 register pursuant to section 13-3821.

12 ~~4.~~ 3. For which there has been a finding of sexual motivation
13 pursuant to section 13-118.

14 ~~5.~~ 4. In which the victim is a minor under fifteen years of age.

15 ~~6.~~ 5. In violation of section 28-3473, any local ordinance relating
16 to stopping, standing or operation of a vehicle or title 28, chapter 3,
17 except a violation of section 28-693 or any local ordinance relating to the
18 same subject matter as section 28-693.

19 Sec. 49. Section 13-909, Arizona Revised Statutes, is amended to read:

20 ~~13-909.~~ Restoration of civil rights; persons completing
21 probation for federal offense

22 A. A person who has been convicted of two or more felonies and whose
23 period of probation has been completed may have any civil rights which were
24 lost or suspended by ~~his~~ THE felony conviction in a United States district
25 court restored by the presiding judge of the superior court in the county in
26 which ~~he~~ THE PERSON now resides, ~~upon~~ ON filing of an affidavit of discharge
27 from the judge who discharged him at the end of the term of probation.

28 B. ~~Upon~~ ON proper application, a person who has been discharged from
29 probation either ~~prior to~~ BEFORE or after adoption of this chapter may have
30 any civil rights which were lost or suspended by ~~his~~ THE felony conviction
31 restored by an application filed with the clerk of the superior court in the
32 county in which ~~he~~ THE PERSON now resides. The clerk of the superior court
33 shall process the application ~~upon~~ ON request of the person involved or ~~his~~
34 THE PERSON'S attorney.

35 C. If the person was convicted of an offense which would be a
36 dangerous offense ~~under section 13-604~~, the person may not file for the
37 restoration of ~~his~~ THE right to possess or carry a gun or firearm. If the
38 person was convicted of an offense which would be a serious offense as
39 defined in section ~~13-604~~ 13-706 the person may not file for the restoration
40 of ~~his~~ THE right to possess or carry a gun or firearm for ten years from the
41 date of ~~his~~ THE PERSON'S discharge from probation. If the person was
42 convicted of any other felony offense, the person may not file for the
43 restoration of his right to possess or carry a gun or firearm for two years
44 from the date of his discharge from probation.

1 a gun or firearm until the person attains thirty years of age. If the
2 person's adjudication was for any other felony offense, the person may not
3 file for the restoration of ~~his~~ THE right to possess or carry a gun or
4 firearm for two years from the date of ~~his~~ THE PERSON'S discharge.

5 Sec. 52. Section 13-921, Arizona Revised Statutes, is amended to read:
6 13-921. Probation for defendants under eighteen years of age:
7 dual adult juvenile probation

8 A. The court may enter a judgment of guilt and place the defendant on
9 probation pursuant to this section if all of the following apply:

10 1. The defendant is under eighteen years of age at the time the
11 offense is committed.

12 2. The defendant is convicted of a felony offense.

13 3. The defendant is not sentenced to a term of imprisonment.

14 4. The defendant does not have a historical prior felony conviction ~~as~~
15 ~~defined in section 13-604.~~

16 B. If the court places a defendant on probation pursuant to this
17 section, all of the following apply:

18 1. Except as provided in paragraphs 2, 3 and 4 of this subsection, if
19 the defendant successfully completes the terms and conditions of probation,
20 the court may set aside the judgment of guilt, dismiss the information or
21 indictment, expunge the defendant's record and order the person to be
22 released from all penalties and disabilities resulting from the conviction.
23 The clerk of the court in which the conviction occurred shall notify each
24 agency to which the original conviction was reported that all penalties and
25 disabilities have been discharged and that the defendant's record has been
26 expunged.

27 2. The conviction may be used as a conviction if it would be
28 admissible pursuant to section ~~13-604~~ 13-703 OR 13-704 as if it had not been
29 set aside and the conviction may be pleaded and proved as a prior conviction
30 in any subsequent prosecution of the defendant.

31 3. The conviction is deemed to be a conviction for the purposes of
32 sections 28-3304, 28-3305, 28-3306 and 28-3320.

33 4. The defendant shall comply with sections 13-3821 and 13-3822.

34 C. A defendant who is placed on probation pursuant to this section is
35 deemed to be on adult probation.

36 D. If a defendant is placed on probation pursuant to this section, the
37 court as a condition of probation may order the defendant to participate in
38 services that are available to the juvenile court.

39 E. The court may order that a defendant who is placed on probation
40 pursuant to this section be incarcerated in a county jail at whatever time or
41 intervals, consecutive or nonconsecutive, that the court determines. The
42 incarceration shall not extend beyond the period of court ordered probation,
43 and the length of time the defendant actually spends in a county jail shall
44 not exceed one year.

1 F. In addition to the provisions of this section, the court may apply
2 any of the provisions of section 13-901.

3 Sec. 53. Section 13-1104, Arizona Revised Statutes, is amended to
4 read:

5 13-1104. Second degree murder; classification

6 A. A person commits second degree murder if without premeditation:

7 1. The person intentionally causes the death of another person,
8 including an unborn child or, as a result of intentionally causing the death
9 of another person, causes the death of an unborn child; or

10 2. Knowing that the person's conduct will cause death or serious
11 physical injury, the person causes the death of another person, including an
12 unborn child or, as a result of knowingly causing the death of another
13 person, causes the death of an unborn child; or

14 3. Under circumstances manifesting extreme indifference to human life,
15 the person recklessly engages in conduct that creates a grave risk of death
16 and thereby causes the death of another person, including an unborn child or,
17 as a result of recklessly causing the death of another person, causes the
18 death of an unborn child.

19 B. An offense under this section applies to an unborn child in the
20 womb at any stage of its development. A person may not be prosecuted under
21 this section if any of the following applies:

22 1. The person was performing an abortion for which the consent of the
23 pregnant woman, or a person authorized by law to act on the pregnant woman's
24 behalf, has been obtained or for which the consent was implied or authorized
25 by law.

26 2. The person was performing medical treatment on the pregnant woman
27 or the pregnant woman's unborn child.

28 3. The person was the unborn child's mother.

29 C. Second degree murder is a class 1 felony and is punishable as
30 provided by section ~~13-604, subsection S, section 13-604.01~~ 13-705 if the
31 victim is under fifteen years of age or is an unborn child, SECTION 13-706,
32 SUBSECTION A or section 13-710.

33 Sec. 54. Section 13-1105, Arizona Revised Statutes, is amended to
34 read:

35 13-1105. First degree murder; classification

36 A. A person commits first degree murder if:

37 1. Intending or knowing that the person's conduct will cause death,
38 the person causes the death of another person, including an unborn child,
39 with premeditation or, as a result of causing the death of another person
40 with premeditation, causes the death of an unborn child.

41 2. Acting either alone or with one or more other persons the person
42 commits or attempts to commit sexual conduct with a minor under section
43 13-1405, sexual assault under section 13-1406, molestation of a child under
44 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under
45 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under

1 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under
2 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory
3 threshold amount for each offense or combination of offenses, involving or
4 using minors in drug offenses under section 13-3409, kidnapping under section
5 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under
6 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or
7 13-1904, escape under section 13-2503 or 13-2504, child abuse under section
8 13-3623, subsection A, paragraph 1, ~~or~~ unlawful flight from a pursuing law
9 enforcement vehicle under section 28-622.01 and, in the course of and in
10 furtherance of the offense or immediate flight from the offense, the person
11 or another person causes the death of any person.

12 3. Intending or knowing that the person's conduct will cause death to
13 a law enforcement officer, the person causes the death of a law enforcement
14 officer who is in the line of duty.

15 B. Homicide, as prescribed in subsection A, paragraph 2 of this
16 section, requires no specific mental state other than what is required for
17 the commission of any of the enumerated felonies.

18 C. An offense under subsection A, paragraph 1 of this section applies
19 to an unborn child in the womb at any stage of its development. A person
20 shall not be prosecuted under subsection A, paragraph 1 of this section if
21 any of the following applies:

22 1. The person was performing an abortion for which the consent of the
23 pregnant woman, or a person authorized by law to act on the pregnant woman's
24 behalf, has been obtained or for which the consent was implied or authorized
25 by law.

26 2. The person was performing medical treatment on the pregnant woman
27 or the pregnant woman's unborn child.

28 3. The person was the unborn child's mother.

29 D. First degree murder is a class 1 felony and is punishable by death
30 or life imprisonment as provided by sections ~~13-703~~ 13-751 and ~~13-703.01~~
31 13-752.

32 Sec. 55. Section 13-1204, Arizona Revised Statutes, is amended to
33 read:

34 13-1204. Aggravated assault; classification; definition

35 A. A person commits aggravated assault if the person commits assault
36 as prescribed by section 13-1203 under any of the following circumstances:

37 1. If the person causes serious physical injury to another.

38 2. If the person uses a deadly weapon or dangerous instrument.

39 3. If the person commits the assault by any means of force that causes
40 temporary but substantial disfigurement, temporary but substantial loss or
41 impairment of any body organ or part or a fracture of any body part.

42 4. If the person commits the assault while the victim is bound or
43 otherwise physically restrained or while the victim's capacity to resist is
44 substantially impaired.

1 5. If the person commits the assault after entering the private home
2 of another with the intent to commit the assault.

3 6. If the person is eighteen years of age or older and commits the
4 assault on a child who is fifteen years of age or under.

5 7. If the person commits assault as prescribed by section 13-1203,
6 subsection A, paragraph 1 or 3 and the person is in violation of an order of
7 protection issued against the person pursuant to section 13-3602 or 13-3624.

8 8. If the person commits the assault knowing or having reason to know
9 that the victim is any of the following:

10 (a) A peace officer, or a person summoned and directed by the officer
11 while engaged in the execution of any official duties.

12 (b) A firefighter, fire investigator, fire inspector, emergency
13 medical technician or paramedic engaged in the execution of any official
14 duties, or a person summoned and directed by such individual while engaged in
15 the execution of any official duties.

16 (c) A teacher or other person employed by any school and the teacher
17 or other employee is on the grounds of a school or grounds adjacent to the
18 school or is in any part of a building or vehicle used for school purposes,
19 any teacher or school nurse visiting a private home in the course of the
20 teacher's or nurse's professional duties or any teacher engaged in any
21 authorized and organized classroom activity held on other than school
22 grounds.

23 (d) A ~~licensed~~ health care practitioner who is certified or licensed
24 pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and
25 directed by the licensed health care practitioner while engaged in the
26 person's professional duties. This subdivision does not apply if the person
27 who commits the assault is seriously mentally ill, as defined in section
28 36-550, or is afflicted with alzheimer's disease or related dementia.

29 (e) A prosecutor.

30 9. If the person knowingly takes or attempts to exercise control over
31 any of the following:

32 (a) A peace officer's or other officer's firearm and the person knows
33 or has reason to know that the victim is a peace officer or other officer
34 employed by one of the agencies listed in paragraph 10, subdivision (a), item
35 (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the
36 execution of any official duties.

37 (b) Any weapon other than a firearm that is being used by a peace
38 officer or other officer or that the officer is attempting to use, and the
39 person knows or has reason to know that the victim is a peace officer or
40 other officer employed by one of the agencies listed in paragraph 10,
41 subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is
42 engaged in the execution of any official duties.

43 (c) Any implement that is being used by a peace officer or other
44 officer or that the officer is attempting to use, and the person knows or has
45 reason to know that the victim is a peace officer or other officer employed

1 by one of the agencies listed in paragraph 10, subdivision (a), item (i),
2 (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution
3 of any official duties. For the purposes of this ~~paragraph~~ SUBDIVISION,
4 "implement" means an object that is designed for or that is capable of
5 restraining or injuring an individual. Implement does not include handcuffs.

6 10. If the person meets both of the following conditions:

7 (a) Is imprisoned or otherwise subject to the custody of any of the
8 following:

9 (i) The state department of corrections.

10 (ii) The department of juvenile corrections.

11 (iii) A law enforcement agency.

12 (iv) A county or city jail or an adult or juvenile detention facility
13 of a city or county.

14 (v) Any other entity that is contracting with the state department of
15 corrections, the department of juvenile corrections, a law enforcement
16 agency, another state, any private correctional facility, a county, a city or
17 the federal bureau of prisons or other federal agency that has responsibility
18 for sentenced or unsentenced prisoners.

19 (b) Commits an assault knowing or having reason to know that the
20 victim is acting in an official capacity as an employee of any of the
21 entities listed in subdivision (a) of this paragraph.

22 B. Except pursuant to subsections C and D of this section, aggravated
23 assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9,
24 subdivision (a) of this section is a class 3 felony except if the victim is
25 under fifteen years of age in which case it is a class 2 felony punishable
26 pursuant to section ~~13-604.01~~ 13-705. Aggravated assault pursuant to
27 subsection A, paragraph 3 of this section is a class 4 felony. Aggravated
28 assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph
29 10 of this section is a class 5 felony. Aggravated assault pursuant to
30 subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of
31 this section is a class 6 felony.

32 C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of
33 this section committed on a peace officer while the officer is engaged in the
34 execution of any official duties is a class 2 felony. Aggravated assault
35 pursuant to subsection A, paragraph 3 of this section committed on a peace
36 officer while the officer is engaged in the execution of any official duties
37 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph
38 8, subdivision (a) of this section resulting in any physical injury to a
39 peace officer while the officer is engaged in the execution of any official
40 duties is a class 5 felony.

41 D. Aggravated assault pursuant to:

42 1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony
43 if committed on a prosecutor.

44 2. Subsection A, paragraph 3 of this section is a class 3 felony if
45 committed on a prosecutor.

1 3. Subsection A, paragraph 8, subdivision (e) of this section is a
2 class 5 felony if the assault results in physical injury to a prosecutor.

3 E. For the purposes of this section, "prosecutor" means a county
4 attorney, a municipal prosecutor or the attorney general and includes an
5 assistant or deputy county attorney, municipal prosecutor or attorney
6 general.

7 Sec. 56. Section 13-1207, Arizona Revised Statutes, is amended to
8 read:

9 13-1207. Prisoners who commit assault with intent to incite to
10 riot or participate in riot; classification

11 A person, while in the custody of the state department of corrections
12 or a county or city jail, who commits assault upon another person with the
13 intent to incite to riot or who participates in a riot is guilty of a class 2
14 felony ~~and shall not be eligible for suspension of sentence, probation,~~
15 ~~pardon or release from confinement on any basis until the sentence imposed by~~
16 ~~the court has been served or commuted. A sentence imposed pursuant to this~~
17 ~~section shall be consecutive to any other sentence presently being served by~~
18 ~~the convicted person~~ AND SECTION 13-709.01, SUBSECTION B APPLIES TO THE
19 SENTENCE IMPOSED.

20 Sec. 57. Section 13-1212, Arizona Revised Statutes, is amended to
21 read:

22 13-1212. Prisoner assault with bodily fluids; liability for
23 costs; classification; definition

24 A. A prisoner commits prisoner assault with bodily fluids if the
25 prisoner throws or projects any bodily fluid at or onto a correctional
26 facility employee or private prison security officer who the prisoner knows
27 or reasonably should know is an employee of a correctional facility or is a
28 private prison security officer.

29 B. A prisoner who is convicted of a violation of this section is
30 liable for any costs incurred by the correctional facility employee or
31 private prison security officer, including costs incurred for medical
32 expenses or cleaning uniforms.

33 C. The state department of corrections shall adopt rules for the
34 payment of costs pursuant to subsection B **OF THIS SECTION**. Monies in the
35 prisoner's trust fund or retention account established by the correctional
36 facility in which the prisoner is incarcerated may be used to pay the costs
37 pursuant to subsection B **OF THIS SECTION**.

38 D. A prisoner who violates this section is guilty of a class 6 felony
39 and the sentence imposed for a violation of this section shall run
40 consecutively ~~to any sentence of imprisonment for which the prisoner was~~
41 ~~confined or to any term of community supervision, probation, parole, work~~
42 ~~furlough or other release from confinement~~ PURSUANT TO SECTION 13-709.01,
43 SUBSECTION C.

44 E. For the purposes of this section, "bodily fluids" means saliva,
45 blood, seminal fluid, urine or feces.

1 Sec. 58. Section 13-1304, Arizona Revised Statutes, is amended to
2 read:

3 13-1304. Kidnapping; classification; consecutive sentence

4 A. A person commits kidnapping by knowingly restraining another person
5 with the intent to:

- 6 1. Hold the victim for ransom, as a shield or hostage; or
- 7 2. Hold the victim for involuntary servitude; or
- 8 3. Inflict death, physical injury or a sexual offense on the victim,
9 or to otherwise aid in the commission of a felony; or
- 10 4. Place the victim or a third person in reasonable apprehension of
11 imminent physical injury to the victim or ~~such~~ THE third person~~;~~; OR
- 12 5. Interfere with the performance of a governmental or political
13 function~~;~~; OR
- 14 6. Seize or exercise control over any airplane, train, bus, ship or
15 other vehicle.

16 B. Kidnapping is a class 2 felony unless the victim is released
17 voluntarily by the defendant without physical injury in a safe place ~~prior to~~
18 BEFORE arrest and ~~prior to~~ BEFORE accomplishing any of the further enumerated
19 offenses in subsection A of this section in which case it is a class 4
20 felony. If the victim is released pursuant to an agreement with the state
21 and without any physical injury, it is a class 3 felony. If the victim is
22 under fifteen years of age kidnapping is a class 2 felony punishable pursuant
23 to section ~~13-604.01~~ 13-705. The sentence for kidnapping of a victim under
24 fifteen years of age shall run consecutively to any other sentence imposed on
25 the defendant and to any undischarged term of imprisonment of the defendant.

26 Sec. 59. Section 13-1307, Arizona Revised Statutes, is amended to
27 read:

28 13-1307. Sex trafficking; classification

29 A. It is unlawful for a person to knowingly recruit, entice, harbor,
30 transport, provide or obtain by any means another person who is eighteen
31 years of age or older with the intent of causing the other person to engage
32 in prostitution by force, fraud or coercion.

33 B. It is unlawful for a person to recruit, entice, harbor, transport,
34 provide or obtain by any means another person who is under eighteen years of
35 age with the intent of causing the other person to engage in prostitution.

36 C. Notwithstanding any other law, a sentence imposed on a person for a
37 violation of subsection B of this section shall be consecutive to any other
38 sentence imposed on the person at any time.

39 D. A person who violates this section is guilty of a class 2 felony,
40 except that if the offense is committed against a person who is under fifteen
41 years of age, the offense is a dangerous crime against children punishable
42 pursuant to section ~~13-604.01~~ 13-705.

1 Sec. 60. Section 13-1404, Arizona Revised Statutes, is amended to
2 read:

3 13-1404. Sexual abuse; classification

4 A. A person commits sexual abuse by intentionally or knowingly
5 engaging in sexual contact with any person WHO IS fifteen or more years of
6 age without consent of that person or with any person who is under fifteen
7 years of age if the sexual contact involves only the female breast.

8 B. Sexual abuse is a class 5 felony unless the victim is under fifteen
9 years of age in which case sexual abuse is a class 3 felony punishable
10 pursuant to section ~~13-604.01~~ 13-705.

11 Sec. 61. Section 13-1405, Arizona Revised Statutes, is amended to
12 read:

13 13-1405. Sexual conduct with a minor; classification

14 A. A person commits sexual conduct with a minor by intentionally or
15 knowingly engaging in sexual intercourse or oral sexual contact with any
16 person who is under eighteen years of age.

17 B. Sexual conduct with a minor who is under fifteen years of age is a
18 class 2 felony and is punishable pursuant to section ~~13-604.01~~ 13-705.
19 Sexual conduct with a minor who is at least fifteen years of age is a class 6
20 felony. Sexual conduct with a minor who is at least fifteen years of age is
21 a class 2 felony if the person is the minor's parent, stepparent, adoptive
22 parent, legal guardian or foster parent and the convicted person is not
23 eligible for suspension of sentence, probation, pardon or release from
24 confinement on any basis except as specifically authorized by section 31-233,
25 subsection A or B until the sentence imposed has been served or commuted.

26 Sec. 62. Section 13-1406, Arizona Revised Statutes, is amended to
27 read:

28 13-1406. Sexual assault; classification; increased punishment

29 A. A person commits sexual assault by intentionally or knowingly
30 engaging in sexual intercourse or oral sexual contact with any person without
31 consent of such person.

32 B. Sexual assault is a class 2 felony, and the person convicted shall
33 be sentenced pursuant to this section and the person is not eligible for
34 suspension of sentence, probation, pardon or release from confinement on any
35 basis except as specifically authorized by section 31-233, subsection A or B
36 until the sentence imposed by the court has been served or commuted. If the
37 victim is under fifteen years of age, sexual assault is punishable pursuant
38 to section ~~13-604.01~~ 13-705. The presumptive term may be aggravated or
39 mitigated within the range under this section pursuant to section ~~13-702~~
40 13-701, subsections ~~B~~, C, ~~and~~ D AND E. If the sexual assault involved the
41 intentional or knowing administration of flunitrazepam, gamma hydroxy
42 butyrate or ketamine hydrochloride without the victim's knowledge, the
43 presumptive, minimum and maximum sentence for the offense shall be increased
44 by three years. The additional sentence imposed pursuant to this subsection

1 is in addition to any enhanced sentence that may be applicable. The term for
2 a first offense is as follows:

3	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4	5.25 years	7 years	14 years

5 The term for a defendant who has one historical prior felony conviction
6 is as follows:

7	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8	7 years	10.5 years	21 years

9 The term for a defendant who has two or more historical prior felony
10 convictions is as follows:

11	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
12	14 years	15.75 years	28 years

13 C. The sentence imposed on a person for a sexual assault shall be
14 consecutive to any other sexual assault sentence imposed on the person at any
15 time.

16 D. Notwithstanding ~~sections 13-604 and 13-604.01~~ SECTION 13-703,
17 SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A AND SECTION
18 13-708, SUBSECTION D, if the sexual assault involved the intentional or
19 knowing infliction of serious physical injury, the person may be sentenced to
20 life imprisonment and is not eligible for suspension of sentence, probation,
21 pardon or release from confinement on any basis except as specifically
22 authorized by section 31-233, subsection A or B until at least twenty-five
23 years have been served or the sentence is commuted. If the person was at
24 least eighteen years of age and the victim was twelve years of age or
25 younger, the person shall be sentenced pursuant to section ~~13-604.01,~~
26 ~~subsection A~~ 13-705.

27 Sec. 63. Section 13-1410, Arizona Revised Statutes, is amended to
28 read:

29 13-1410. Molestation of a child; classification

30 A. A person commits molestation of a child by intentionally or
31 knowingly engaging in or causing a person to engage in sexual contact, except
32 sexual contact with the female breast, with a child WHO IS under fifteen
33 years of age.

34 B. Molestation of a child is a class 2 felony that is punishable
35 pursuant to section ~~13-604.01~~ 13-705.

36 Sec. 64. Section 13-1411, Arizona Revised Statutes, is amended to
37 read:

38 13-1411. Bestiality; classification; definition

39 A. A person commits bestiality by knowingly doing either of the
40 following:

41 1. Engaging in oral sexual contact, sexual contact or sexual
42 intercourse with an animal.

43 2. Causing another person to engage in oral sexual contact, sexual
44 contact or sexual intercourse with an animal.

1 B. In addition to any other penalty imposed for a violation of
2 subsection A of this section, the court may order that the convicted person
3 do any of the following:

4 1. Undergo a psychological assessment and participate in appropriate
5 counseling at the convicted person's own expense.

6 2. Reimburse an animal shelter as defined in section 11-1022 for any
7 reasonable costs incurred for the care and maintenance of any animal that was
8 taken to the animal shelter as a result of conduct proscribed by subsection A
9 of this section.

10 C. This section does not apply to:

11 1. Accepted veterinary medical practices performed by a licensed
12 veterinarian or veterinary technician.

13 2. Insemination of animals by the same species, bred for commercial
14 purposes.

15 3. Accepted animal husbandry practices that provide necessary care for
16 animals bred for commercial purposes.

17 D. Bestiality is a class 6 felony, except that bestiality pursuant to
18 subsection A, paragraph 2 of this section is a class 3 felony punishable
19 pursuant to section ~~13-604.01~~ 13-705 if the other person is a minor under
20 fifteen years of age.

21 E. For the purposes of this section, "animal" means a nonhuman mammal,
22 bird, reptile or amphibian, either dead or alive.

23 Sec. 65. Section 13-1414, Arizona Revised Statutes, is amended to
24 read:

25 13-1414. Expenses of investigation

26 Any medical expenses arising out of the need to secure evidence that a
27 person has been the victim of a dangerous crime against children as defined
28 in section ~~13-604.01~~ 13-705 or a sexual assault shall be paid by the county
29 in which the offense occurred.

30 Sec. 66. Section 13-1417, Arizona Revised Statutes, is amended to
31 read:

32 13-1417. Continuous sexual abuse of a child; classification

33 A. A person who over a period of three months or more in duration
34 engages in three or more acts in violation of section 13-1405, 13-1406 or
35 13-1410 with a child WHO IS under fourteen years of age is guilty of
36 continuous sexual abuse of a child.

37 B. Continuous sexual abuse of a child is a class 2 felony and is
38 punishable pursuant to section ~~13-604.01~~ 13-705.

39 C. To convict a person of continuous sexual abuse of a child, the
40 trier of fact shall unanimously agree that the requisite number of acts
41 occurred. The trier of fact does not need to agree on which acts constitute
42 the requisite number.

43 D. Any other felony sexual offense involving the victim shall not be
44 charged in the same proceeding with a charge under this section unless the
45 other charged felony sexual offense occurred outside the time period charged

1 under this section or the other felony sexual offense is charged in the
2 alternative. A defendant may be charged with only one count under this
3 section unless more than one victim is involved. If more than one victim is
4 involved, a separate count may be charged for each victim.

5 Sec. 67. Section 13-1423, Arizona Revised Statutes, is amended to
6 read:

7 13-1423. Violent sexual assault; natural life sentence

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

16 B. Notwithstanding ~~sections 13-604 and 13-604.01~~ SECTION 13-703,
17 SECTION 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A AND SECTION
18 13-708, SUBSECTION D, a person who is guilty of a violent sexual assault
19 shall be sentenced to life imprisonment and the court shall order that the
20 person not be released on any basis for the remainder of the person's natural
21 life.

22 Sec. 68. Section 13-2308.01, Arizona Revised Statutes, is amended to
23 read:

24 13-2308.01. Terrorism; classification

25 A. It is unlawful for a person to intentionally or knowingly do any of
26 the following:

- 27 1. Engage in an act of terrorism.
- 28 2. Organize, manage, direct, supervise or finance an act of terrorism.
- 29 3. Solicit, incite or induce others to promote or further an act of
30 terrorism.

31 4. Without lawful authority or when exceeding lawful authority,
32 manufacture, sell, deliver, display, use, make accessible to others, possess
33 or exercise control over a weapon of mass destruction knowing or having
34 reason to know that the device or object involved is a weapon of mass
35 destruction.

36 5. Make property available to another, by transaction, transportation
37 or otherwise, knowing or having reason to know that the property is intended
38 to facilitate an act of terrorism.

39 6. Provide advice, assistance or direction in the conduct, financing
40 or management of an act of terrorism knowing or having reason to know that an
41 act of terrorism has occurred or may result by:

- 42 (a) Harboring or concealing any person or property.
- 43 (b) Warning any person of impending discovery, apprehension,
44 prosecution or conviction. This subdivision does not apply to a warning that

1 is given in connection with an effort to bring another person into compliance
2 with the law.

3 (c) Providing any person with material support or resources or any
4 other means of avoiding discovery, apprehension, prosecution or conviction.

5 (d) Concealing or disguising the nature, location, source, ownership
6 or control of material support or resources.

7 (e) Preventing or obstructing by means of force, deception or
8 intimidation anyone from performing an act that might aid in the discovery,
9 apprehension, prosecution or conviction of any person or that might aid in
10 the prevention of an act of terrorism.

11 (f) Suppressing by any act of concealment, alteration or destruction
12 any physical evidence that might aid in the discovery, apprehension,
13 prosecution or conviction of any person or that might aid in the prevention
14 of an act of terrorism.

15 (g) Concealing the identity of any person.

16 B. This section does not apply to any person who is a member or
17 employee of the armed forces of the United States, a federal or state
18 governmental agency or any political subdivision of a state, a charitable,
19 scientific or educational institution or a private entity if both of the
20 following apply:

21 1. The person is engaged in lawful activity within the scope of the
22 person's employment and the person is otherwise duly authorized or licensed
23 to manufacture, possess, sell, deliver, display, use, exercise control over
24 or make accessible to others any weapon of mass destruction or to otherwise
25 engage in any activity described in this paragraph.

26 2. The person is in compliance with all applicable federal and state
27 laws in doing so.

28 C. A violation of subsection A of this section is a class 2 felony,
29 except that if the court finds that at least one of the aggravating
30 circumstances listed in section ~~13-702~~ 13-701, subsection ~~C~~ D applies, ~~the~~
31 ~~court may impose a life sentence. If the court imposes a life sentence, the~~
32 ~~court may order that the defendant not be released on any basis for the~~
33 ~~remainder of the defendant's natural life. If the court does not sentence~~
34 ~~the defendant to natural life, the defendant shall not be released on any~~
35 ~~basis until the completion of the service of twenty-five calendar years~~ THE
36 DEFENDANT SHALL BE SENTENCED PURSUANT TO SECTION 13-709.02, SUBSECTION A.

37 Sec. 69. Section 13-2312, Arizona Revised Statutes, is amended to
38 read:

39 13-2312. Illegal control of an enterprise; illegally conducting
40 an enterprise; classification

41 A. A person commits illegal control of an enterprise if such person,
42 through racketeering or its proceeds, acquires or maintains, by investment or
43 otherwise, control of any enterprise.

1 B. A person commits illegally conducting an enterprise if such person
2 is employed by or associated with any enterprise and conducts such
3 enterprise's affairs through racketeering or participates directly or
4 indirectly in the conduct of any enterprise that the person knows is being
5 conducted through racketeering.

6 C. A person violates this section if he hires, engages or uses a minor
7 for any conduct preparatory to or in completion of any offense in this
8 section.

9 D. A knowing violation of this **SUBSECTION A OR B OF THIS** section is a
10 class 3 felony, ~~except that~~. A knowing violation of subsection C **OF THIS**
11 **SECTION** is a class 2 felony and ~~the person convicted is not eligible for~~
12 ~~probation, pardon, suspension of sentence or release on any basis until the~~
13 ~~person has served the sentence imposed by the court or the sentence is~~
14 ~~commuted~~ **SECTION 13-709.02, SUBSECTION B APPLIES TO THE SENTENCE IMPOSED.**

15 Sec. 70. Section 13-2411, Arizona Revised Statutes, is amended to
16 read:

17 **13-2411. Impersonating a peace officer; classification;**
18 **definition**

19 A. A person commits impersonating a peace officer if the person,
20 without lawful authority, pretends to be a peace officer and engages in any
21 conduct with the intent to induce another to submit to the person's pretended
22 authority or to rely ~~upon~~ **ON** the person's pretended acts.

23 B. It is not a defense to a prosecution under this section that the
24 law enforcement agency the person pretended to represent did not in fact
25 exist or that the law enforcement agency the person pretended to represent
26 did not in fact possess the authority claimed for it.

27 C. Impersonating a peace officer is a class 6 felony, except that
28 impersonating a peace officer during the commission of any of the following
29 felonies is a class 4 felony:

- 30 1. Negligent homicide.
- 31 2. Manslaughter.
- 32 3. First degree murder.
- 33 4. Second degree murder.
- 34 5. Assault.
- 35 6. Aggravated assault.
- 36 7. Sexual assault.
- 37 8. Violent sexual assault.
- 38 9. Sexual abuse.
- 39 10. Unlawfully administering intoxicating liquors, narcotic ~~drug~~ **DRUGS**
40 or dangerous ~~drug~~ **DRUGS**.
- 41 11. Attack by a person's vicious animal ~~pursuant to~~ **AS PRESCRIBED IN**
42 section 13-1208.
- 43 12. Drive by shooting.
- 44 13. Discharging a firearm at a structure.
- 45 14. Aggravated criminal damage.

1 9. In self-defense or defense of another person against an animal
2 attack if a reasonable person would believe that deadly physical force
3 against the animal is immediately necessary and reasonable under the
4 circumstances to protect oneself or the other person.

5 D. For the purposes of this section:

6 1. "Municipality" means any city or town and includes any property
7 that is fully enclosed within the city or town.

8 2. "Properly supervised range" means a range that is ~~operated~~ ANY OF
9 THE FOLLOWING:

10 (a) OPERATED by a club affiliated with the national rifle association
11 of America, the amateur trapshooting association, the national skeet
12 association or any other nationally recognized shooting organization, or by
13 any public or private school. ~~, or~~

14 (b) Approved by any agency of the federal government, this state, ~~OR~~
15 a county or city within which the range is located. ~~or~~

16 (c) OPERATED with adult supervision for shooting air or carbon dioxide
17 gas operated guns, or for shooting in underground ranges on private or public
18 property.

19 Sec. 72. Section 13-3113, Arizona Revised Statutes, is amended to
20 read:

21 13-3113. Adjudicated delinquents; firearm possession;
22 classification

23 A person who was previously adjudicated delinquent for an offense that
24 would be a felony if committed by an adult and who possesses, uses or carries
25 a firearm within ten years from the date of his adjudication or his release
26 or escape from custody is guilty of a class 5 felony for a first offense and
27 a class 4 felony for a second or subsequent offense if the person was
28 previously adjudicated for an offense that if committed as an adult would
29 constitute:

30 1. Burglary in the first degree.

31 2. Burglary in the second degree.

32 3. Arson.

33 4. Any felony offense involving the use or threatening exhibition of a
34 deadly weapon or dangerous instrument.

35 5. A serious offense as defined in section ~~13-604~~ 13-706.

36 Sec. 73. Section 13-3206, Arizona Revised Statutes, is amended to
37 read:

38 13-3206. Taking child for purpose of prostitution;
39 classification

40 A person who takes away any minor from ~~such person's~~ THE MINOR'S
41 father, mother, guardian or other person having the legal custody of ~~such~~
42 ~~person~~ THE MINOR, for the purpose of prostitution, is guilty of a class 4
43 felony. If the minor is under fifteen years of age, taking a child for THE
44 PURPOSE OF prostitution is a class 2 felony and is punishable pursuant to
45 section ~~13-604.01~~ 13-705.

1 Sec. 74. Section 13-3212, Arizona Revised Statutes, is amended to
2 read:

3 13-3212. Child prostitution; classification; increased
4 punishment

5 A. A person commits child prostitution by knowingly:

- 6 1. Causing any minor to engage in prostitution.
7 2. Using any minor for the purposes of prostitution.
8 3. Permitting a minor who is under the person's custody or control to
9 engage in prostitution.

10 4. Receiving any benefit for or on account of procuring or placing a
11 minor in any place or in the charge or custody of any person for the purpose
12 of prostitution.

13 5. Receiving any benefit pursuant to an agreement to participate in
14 the proceeds of prostitution of a minor.

15 6. Financing, managing, supervising, controlling or owning, either
16 alone or in association with others, prostitution activity involving a minor.

17 7. Transporting or financing the transportation of any minor with the
18 intent that the minor engage in prostitution.

19 8. Engaging in prostitution with a minor.

20 B. Notwithstanding any other law, a sentence imposed on a person for a
21 violation of this section involving a minor who is fifteen, sixteen or
22 seventeen years of age shall be consecutive to any other sentence imposed on
23 the person at any time.

24 C. If a person is convicted of a violation of subsection A, paragraph
25 8 of this section, the victim is fifteen, sixteen or seventeen years of age
26 and the court sentences the person to a term of probation, the court shall
27 order that as an initial term of probation the person be imprisoned in the
28 county jail for not less than thirty days. This jail term of incarceration
29 shall not be deleted, deferred or otherwise suspended and shall commence on
30 the date of sentencing. This subsection does not apply to persons who are
31 sentenced to serve a period of incarceration in the state department of
32 corrections.

33 D. Child prostitution is a class 2 felony, and if the minor is under
34 fifteen years of age it is punishable pursuant to section ~~13-604.01~~ 13-705.

35 E. If the minor is fifteen, sixteen or seventeen years of age, child
36 prostitution pursuant to subsection A, paragraph 1, 2, 3, 4, 5, 6 or 7 of
37 this section is a class 2 felony, the person convicted shall be sentenced
38 pursuant to this section and the person is not eligible for suspension of
39 sentence, probation, pardon or release from confinement on any basis except
40 as specifically authorized by section 31-233, subsection A or B until the
41 sentence imposed by the court has been served or commuted. The presumptive
42 term may be aggravated or mitigated within the range under this section
43 pursuant to section ~~13-702~~ 13-701, subsections ~~B, C, and~~ D AND E. The terms
44 are as follows:

- 45 1. The term for a first offense is as follows:

1	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
2	7 years	10.5 years	21 years

3 2. The term for a defendant who has one historical prior felony
4 conviction is as follows:

5	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
6	14 years	15.75 years	28 years

7 3. The term for a defendant who has two or more historical prior
8 felony convictions is as follows:

9	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10	21 years	28 years	35 years

11 Sec. 75. Section 13-3407, Arizona Revised Statutes, is amended to
12 read:

13 13-3407. Possession, use, administration, acquisition, sale,
14 manufacture or transportation of dangerous drugs;
15 classification

- 16 A. A person shall not knowingly:
- 17 1. Possess or use a dangerous drug.
 - 18 2. Possess a dangerous drug for sale.
 - 19 3. Possess equipment or chemicals, or both, for the purpose of
 - 20 manufacturing a dangerous drug.
 - 21 4. Manufacture a dangerous drug.
 - 22 5. Administer a dangerous drug to another person.
 - 23 6. Obtain or procure the administration of a dangerous drug by fraud,
 - 24 deceit, misrepresentation or subterfuge.
 - 25 7. Transport for sale, import into this state or offer to transport
 - 26 for sale or import into this state, sell, transfer or offer to sell or
 - 27 transfer a dangerous drug.

- 28 B. A person who violates:
- 29 1. Subsection A, paragraph 1 of this section is guilty of a class 4
 - 30 felony. Unless the drug involved is lysergic acid diethylamide,
 - 31 methamphetamine, amphetamine or phencyclidine or the person was previously
 - 32 convicted of a felony offense or a violation of this section or section
 - 33 13-3408, the court on motion of the state, considering the nature and
 - 34 circumstances of the offense, for a person not previously convicted of any
 - 35 felony offense or a violation of this section or section 13-3408 may enter
 - 36 judgment of conviction for a class 1 misdemeanor and make disposition
 - 37 accordingly or may place the defendant on probation in accordance with
 - 38 chapter 9 of this title and refrain from designating the offense as a felony
 - 39 or misdemeanor until the probation is successfully terminated. The offense
 - 40 shall be treated as a felony for all purposes until the court enters an order
 - 41 designating the offense a misdemeanor.

- 42 2. Subsection A, paragraph 2 of this section is guilty of a class 2
- 43 felony.

- 1 3. Subsection A, paragraph 3 of this section is guilty of a class 3
2 felony, except that if the offense involved methamphetamine, the person is
3 guilty of a class 2 felony.
- 4 4. Subsection A, paragraph 4 of this section is guilty of a class 2
5 felony.
- 6 5. Subsection A, paragraph 5 of this section is guilty of a class 2
7 felony.
- 8 6. Subsection A, paragraph 6 of this section is guilty of a class 3
9 felony.
- 10 7. Subsection A, paragraph 7 of this section is guilty of a class 2
11 felony.
- 12 C. Except as provided in subsection E of this section, a person who is
13 convicted of a violation of subsection A, paragraph 1, 3 or 6 and who has not
14 previously been convicted of any felony or who has not been sentenced
15 pursuant to section ~~13-604~~ 13-703, SECTION 13-704, SECTION 13-706, SUBSECTION
16 A, SECTION 13-708, SUBSECTION D or any other law making the convicted person
17 ineligible for probation is eligible for probation.
- 18 D. Except as provided in subsection E of this section, if the
19 aggregate amount of dangerous drugs involved in one offense or all of the
20 offenses that are consolidated for trial equals or exceeds the statutory
21 threshold amount, a person who is convicted of a violation of subsection A,
22 paragraph 2, 5 or 7 of this section is not eligible for suspension of
23 sentence, probation, pardon or release from confinement on any basis until
24 the person has served the sentence imposed by the court, the person is
25 eligible for release pursuant to section 41-1604.07 or the sentence is
26 commuted.
- 27 E. If the person is convicted of a violation of subsection A,
28 paragraph 2, 3, 4 or 7 of this section and the drug involved is
29 methamphetamine, the person shall be sentenced pursuant to section ~~13-712~~
30 13-709.03, SUBSECTIONS A OR B.
- 31 F. A person who is convicted of a violation of subsection A, paragraph
32 4 of this section or subsection A, paragraph 2, 3 or 7 of this section
33 involving methamphetamine is not eligible for suspension of sentence,
34 probation, pardon or release from confinement on any basis until the person
35 has served the sentence imposed by the court, the person is eligible for
36 release pursuant to section 41-1604.07 or the sentence is commuted.
- 37 G. If a person is convicted of a violation of subsection A, paragraph
38 5 of this section, if the drug is administered without the other person's
39 consent, if the other person is under eighteen years of age and if the drug
40 is flunitrazepam, gamma hydroxy butrate or ketamine hydrochloride, the
41 convicted person is not eligible for suspension of sentence, probation,
42 pardon or release from confinement on any basis until the person has served
43 the sentence imposed by the court, the person is eligible for release
44 pursuant to section 41-1604.07 or the sentence is commuted.

1 H. In addition to any other penalty prescribed by this title, the
2 court shall order a person who is convicted of a violation of ~~any provision~~
3 ~~of~~ this section to pay a fine of not less than one thousand dollars or three
4 times the value as determined by the court of the dangerous drugs involved in
5 or giving rise to the charge, whichever is greater, and not more than the
6 maximum authorized by chapter 8 of this title. A judge shall not suspend any
7 part or all of the imposition of any fine required by this subsection.

8 I. A person who is convicted of a violation of ~~a provision of~~ this
9 section for which probation or release before the expiration of the sentence
10 imposed by the court is authorized is prohibited from using any marijuana,
11 dangerous drug, narcotic drug or prescription-only drug except as lawfully
12 administered by a health care practitioner and as a condition of any
13 probation or release shall be required to submit to drug testing administered
14 under the supervision of the probation department of the county or the state
15 department of corrections, as appropriate, during the duration of the term of
16 probation or before the expiration of the sentence imposed.

17 J. If a person who is convicted of a violation of ~~a provision of~~ this
18 section is granted probation, the court shall order that as a condition of
19 probation the person perform not less than three hundred sixty hours of
20 community restitution with an agency or organization ~~providing~~ THAT PROVIDES
21 counseling, rehabilitation or treatment for alcohol or drug abuse, an agency
22 or organization that provides medical treatment to persons who abuse
23 controlled substances, an agency or organization that serves persons who are
24 victims of crime or any other appropriate agency or organization.

25 Sec. 76. Section 13-3407.01, Arizona Revised Statutes, is amended to
26 read:

27 13-3407.01. Manufacturing methamphetamine under circumstances
28 that cause physical injury to a minor:
29 classification

30 A. A person shall not knowingly manufacture methamphetamine under any
31 circumstance that causes physical injury to a minor who is under fifteen
32 years of age.

33 B. A person who violates this section is guilty of a class 2 felony
34 and is punishable as provided by section ~~13-604.01~~ 13-705.

35 Sec. 77. Section 13-3408, Arizona Revised Statutes, is amended to
36 read:

37 13-3408. Possession, use, administration, acquisition, sale,
38 manufacture or transportation of narcotic drugs;
39 classification

40 A. A person shall not knowingly:

- 41 1. Possess or use a narcotic drug.
- 42 2. Possess a narcotic drug for sale.
- 43 3. Possess equipment or chemicals, or both, for the purpose of
44 manufacturing a narcotic drug.
- 45 4. Manufacture a narcotic drug.

- 1 5. Administer a narcotic drug to another person.
2 6. Obtain or procure the administration of a narcotic drug by fraud,
3 deceit, misrepresentation or subterfuge.
4 7. Transport for sale, import into this state, offer to transport for
5 sale or import into this state, sell, transfer or offer to sell or transfer a
6 narcotic drug.
7 B. A person who violates:
8 1. Subsection A, paragraph 1 of this section is guilty of a class 4
9 felony.
10 2. Subsection A, paragraph 2 of this section is guilty of a class 2
11 felony.
12 3. Subsection A, paragraph 3 of this section is guilty of a class 3
13 felony.
14 4. Subsection A, paragraph 4 of this section is guilty of a class 2
15 felony.
16 5. Subsection A, paragraph 5 of this section is guilty of a class 2
17 felony.
18 6. Subsection A, paragraph 6 of this section is guilty of a class 3
19 felony.
20 7. Subsection A, paragraph 7 of this section is guilty of a class 2
21 felony.
22 C. A person who is convicted of a violation of subsection A, paragraph
23 1, 3 or 6 of this section and who has not previously been convicted of any
24 felony or who has not been sentenced pursuant to section ~~13-604~~ 13-703,
25 SECTION 13-704, SECTION 13-706, SUBSECTION A, SECTION 13-708, SUBSECTION D or
26 any other provision of law making the convicted person ineligible for
27 probation is eligible for probation.
28 D. If the aggregate amount of narcotic drugs involved in one offense
29 or all of the offenses that are consolidated for trial equals or exceeds the
30 statutory threshold amount, a person who is convicted of a violation of
31 subsection A, paragraph 2, 5 or 7 of this section is not eligible for
32 suspension of sentence, probation, pardon or release from confinement on any
33 basis until the person has served the sentence imposed by the court, the
34 person is eligible for release pursuant to section 41-1604.07 or the sentence
35 is commuted.
36 E. A person who is convicted of a violation of subsection A, paragraph
37 4 of this section is not eligible for suspension of sentence, probation,
38 pardon or release from confinement on any basis until the person has served
39 the sentence imposed by the court, the person is eligible for release
40 pursuant to section 41-1604.07 or the sentence is commuted.
41 F. In addition to any other penalty prescribed by this title, the
42 court shall order a person who is convicted of a violation of ~~any provision~~
43 of this section to pay a fine of not less than two thousand dollars or three
44 times the value as determined by the court of the narcotic drugs involved in
45 or giving rise to the charge, whichever is greater, and not more than the

1 maximum authorized by chapter 8 of this title. A judge shall not suspend any
2 part or all of the imposition of any fine required by this subsection.

3 G. A person who is convicted of a violation of ~~a provision of~~ this
4 section for which probation or release before the expiration of the sentence
5 imposed by the court is authorized is prohibited from using any marijuana,
6 dangerous drug, narcotic drug or prescription-only drug except as lawfully
7 administered by a health care practitioner and as a condition of any
8 probation or release shall be required to submit to drug testing administered
9 under the supervision of the probation department of the county or the state
10 department of corrections, as appropriate, during the duration of the term of
11 probation or before the expiration of the sentence imposed.

12 H. If a person who is convicted of a violation of this section is
13 granted probation, the court shall order that as a condition of probation the
14 person perform not less than three hundred sixty hours of community
15 restitution with an agency or organization that provides counseling,
16 rehabilitation or treatment for alcohol or drug abuse, an agency or
17 organization that provides medical treatment to persons who abuse controlled
18 substances, an agency or organization that serves persons who are victims of
19 crime or any other appropriate agency or organization.

20 Sec. 78. Section 13-3409, Arizona Revised Statutes, is amended to
21 read:

22 13-3409. Involving or using minors in drug offenses;
23 classification

24 A. A person shall not knowingly:

25 1. Hire, employ or use a minor to engage in any conduct, completed or
26 preparatory, ~~which~~ THAT is prohibited by sections 13-3404, 13-3404.01, and
27 13-3405 ~~through~~, 13-3406, 13-3407 AND 13-3408.

28 2. Sell, transfer or offer to sell or transfer to a minor any
29 substance if its possession is prohibited by sections 13-3404, 13-3404.01,
30 13-3405, 13-3407 and 13-3408.

31 B. A person who violates ~~a provision of~~ this section is guilty of a
32 class 2 felony and is not eligible for suspension of sentence, probation,
33 pardon or release from confinement on any basis until the sentence imposed by
34 the court has been served or commuted, and if the minor is under fifteen
35 years of age it is punishable pursuant to section ~~13-604.01, subsection C~~
36 13-705.

37 C. In addition to any other penalty prescribed by this title, the
38 court shall order a person who is convicted of a violation of this section to
39 pay a fine of not less than two thousand dollars or three times the value as
40 determined by the court of the substance involved in or giving rise to the
41 charge, whichever is greater, and not more than the maximum authorized by
42 chapter 8 of this title. A judge shall not suspend any part or all of the
43 imposition of any fine required by this subsection.

1 Sec. 79. Section 13-3411, Arizona Revised Statutes, is amended to
2 read:

3 13-3411. Possession, use, sale or transfer of marijuana,
4 peyote, prescription drugs, dangerous drugs or
5 narcotic drugs or manufacture of dangerous drugs in
6 a drug free school zone; violation; classification;
7 definitions

8 A. It is unlawful for a person to do any of the following:

9 1. Intentionally be present in a drug free school zone to sell or
10 transfer marijuana, peyote, prescription-only drugs, dangerous drugs or
11 narcotic drugs.

12 2. Possess or use marijuana, peyote, dangerous drugs or narcotic drugs
13 in a drug free school zone.

14 3. Manufacture dangerous drugs in a drug free school zone.

15 B. A person who violates subsection A of this section is guilty of the
16 same class of felony that the person would otherwise be guilty of had the
17 violation not occurred within a drug free school zone, ~~but the minimum,~~
18 ~~maximum and presumptive sentence for that violation shall be increased by one~~
19 ~~year. A person convicted of violating subsection A of this section is not~~
20 ~~eligible for suspension of sentence, probation, pardon or release from~~
21 ~~confinement on any basis except pursuant to section 31-233, subsection A or B~~
22 ~~until the sentence imposed by the court has been served or commuted. The~~
23 ~~additional sentence imposed under this subsection is in addition to any~~
24 ~~enhanced punishment that may be applicable under section 13-604 or other~~
25 ~~provisions of this chapter~~ AND SECTION 13-709.03, SUBSECTION C APPLIES TO THE
26 SENTENCE IMPOSED.

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

34 D. Each school district's governing board or its designee, or the
35 chief administrative officer in the case of a nonpublic school, shall place
36 and maintain permanently affixed signs located in a visible manner at the
37 main entrance of each school that identifies the school and its accompanying
38 grounds as a drug free school zone.

39 E. The drug free school zone map prepared pursuant to title 15 shall
40 constitute an official record as to the location and boundaries of each drug
41 free school zone. The school district's governing board or its designee, or
42 the chief administrative officer in the case of any nonpublic school, shall
43 promptly notify the county attorney of any changes in the location and
44 boundaries of any school property and shall file with the county recorder the
45 original map prepared pursuant to title 15.

1 F. All school personnel who observe a violation of this section shall
2 immediately report the violation to a school administrator. The
3 administrator shall immediately report the violation to a peace officer. It
4 is unlawful for any school personnel or school administrator to fail to
5 report a violation as prescribed in this section.

6 G. School personnel having custody or control of school records of a
7 student involved in an alleged violation of this section shall make the
8 records available to a peace officer upon written request signed by a
9 magistrate. Records disclosed pursuant to this subsection are confidential
10 and may be used only in a judicial or administrative proceeding. A person
11 furnishing records required under this subsection or a person participating
12 in a judicial or administrative proceeding or investigation resulting from
13 the furnishing of records required under this subsection is immune from civil
14 or criminal liability by reason of such action unless the person acted with
15 malice.

16 H. A person who violates subsection F of this section is guilty of a
17 class 3 misdemeanor.

18 I. For THE purposes of this section:

19 1. "Drug free school zone" means the area within three hundred feet of
20 a school or its accompanying grounds, any public property within one thousand
21 feet of a school or its accompanying grounds, a school bus stop or on any
22 school bus or bus contracted to transport pupils to any school.

23 2. "School" means any public or nonpublic kindergarten program, common
24 school or high school.

25 Sec. 80. Section 13-3419, Arizona Revised Statutes, is amended to
26 read:

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

29 A. Except for a person convicted of possession offenses pursuant to
30 section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A,
31 paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is
32 convicted of two or more offenses under this chapter that were not committed
33 on the same occasion but that either are consolidated for trial purposes or
34 are not historical prior felony convictions ~~as defined in section 13-604~~
35 shall be sentenced for the second or subsequent offense pursuant to this
36 section. The person shall not be eligible for suspension of sentence,
37 probation, pardon or release from confinement on any basis except as
38 specifically authorized by section 31-233, subsection A or B until the
39 sentence imposed by the court has been served, the person is eligible for
40 release pursuant to section 41-1604.07 or the sentence is commuted, except
41 that a person sentenced pursuant to paragraph 1 of this subsection shall be
42 eligible for probation. The presumptive term for paragraph 1, 2, 3 or 4 of
43 this subsection may be aggravated within the range under this section
44 pursuant to section ~~13-702~~ 13-701, subsections ~~B,~~ C and D. The presumptive
45 term for paragraph 1, 2 or 3 of this subsection may be mitigated within the

1 range under this section pursuant to section ~~13-702~~ 13-701, subsections ~~B, C~~
2 and ~~D, E~~. The terms are as follows:

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

6	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7	Class 2	4 years	5 years	10 years
8	Class 3	2.5 years	3.5 years	7 years
9	Class 4	1.5 years	2.5 years	3 years
10	Class 5	.75 years	1.5 years	2 years

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

14	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
15	Class 2	4 years	5 years	10 years
16	Class 3	2.5 years	3.5 years	7 years
17	Class 4	1.5 years	2.5 years	3 years
18	Class 5	.75 years	1.5 years	2 years

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

22	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23	Class 2	4 years	5 years	10 years
24	Class 3	2.5 years	3.5 years	7 years
25	Class 4	1.5 years	2.5 years	3 years
26	Class 5	9 months .75 YEARS	1.5 years	2 years

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

30	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
31	Class 2	4 years	7 years	12 years
32	Class 3	2.5 years	5 years	9 years
33	Class 4	1.5 years	3 years	5 years
34	Class 5	9 months .75 YEARS	2.5 years	4 years

35 B. For offenders WHO ARE sentenced pursuant to subsection A,
36 ~~paragraphs 1 through 4~~ of this section the court may increase the maximum
37 sentence otherwise authorized by up to twenty-five per cent.

38 C. For offenders WHO ARE sentenced pursuant to subsection A, paragraph
39 1, 2 or 3 of this section the court may decrease the minimum sentence
40 otherwise authorized by up to twenty-five per cent.

41 D. If the court increases or decreases a sentence pursuant to this
42 section, the court shall state on the record the reasons for the increase or
43 decrease.

1 E. The court shall inform all of the parties before the sentencing
2 occurs of its intent to increase or decrease a sentence pursuant to this
3 section. If the court fails to inform the parties, a party waives its right
4 to be informed unless the party timely objects at the time of sentencing.

5 Sec. 81. Section 13-3422, Arizona Revised Statutes, is amended to
6 read:

7 13-3422. Drug court program; establishment; participation

8 A. The presiding judge of the superior court in each county may
9 establish a drug court program as defined in section 13-3401.

10 B. Cases assigned to the drug court program may consist of defendants
11 who are drug dependent persons and who are charged with a probation eligible
12 offense under this chapter, including preparatory offenses.

13 C. A defendant may be admitted into the drug court program prior to a
14 guilty plea or a trial only on the agreement of the court and the prosecutor.

15 D. A defendant is not eligible for entry into the drug court program
16 pursuant to subsections F and H of this section if any of the following
17 applies:

18 1. The defendant has been convicted of a serious offense as defined in
19 section ~~13-604~~ 13-706.

20 2. The defendant has been convicted of an offense under chapter 14 of
21 this title.

22 3. The defendant has been convicted of ~~an~~ A DANGEROUS offense
23 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~
24 ~~dangerous instrument or the intentional or knowing infliction of serious~~
25 ~~physical injury.~~

26 4. The defendant has completed or previously been terminated from a
27 drug court program other than a juvenile drug court program.

28 5. The defendant has completed or previously been terminated from a
29 drug diversion program other than a juvenile drug diversion program for an
30 offense in violation of this chapter.

31 E. For the purposes of subsection D of this section, the age of the
32 conviction does not matter.

33 F. Notwithstanding any law to the contrary, if a defendant who is
34 assigned to the drug court program is subsequently found guilty of the
35 offense and probation is otherwise available, the court, without entering a
36 judgment of guilt and with the concurrence of the defendant, may defer
37 further proceedings and place the defendant on probation. The terms and
38 conditions of probation shall provide for the treatment of the drug dependent
39 person and shall include any other conditions and requirements that the court
40 deems appropriate, including the imposition of a fine, payment of fees and
41 any other terms and conditions as provided by law which are not in violation
42 of section 13-901.01.

43 G. If the defendant is placed on probation pursuant to subsection F of
44 this section and the defendant violates a term or condition of probation, the

1 court may terminate the defendant's participation in the drug court program,
2 enter an adjudication of guilt and revoke the defendant's probation.

3 H. If the defendant is convicted of an offense listed in subsection I
4 of this section and is placed on probation pursuant to subsection F of this
5 section, on fulfillment of the terms and conditions of probation, the court
6 may discharge the defendant and dismiss the proceedings against the defendant
7 or may dispose of the case as provided by law.

8 I. A defendant is eligible for dismissal of proceedings as provided in
9 subsection H of this section if the defendant is convicted of any of the
10 following offenses:

11 1. Possession or use of marijuana in violation of section 13-3405,
12 subsection A, paragraph 1.

13 2. Possession or use of a prescription-only drug in violation of
14 section 13-3406, subsection A, paragraph 1.

15 3. Possession or use of a dangerous drug in violation of section
16 13-3407, subsection A, paragraph 1.

17 4. Possession or use of a narcotic drug in violation of section
18 13-3408, subsection A, paragraph 1.

19 5. Possession or use of drug paraphernalia in violation of section
20 13-3415, subsection A.

21 6. Any preparatory offense, as prescribed in chapter 10 of this title,
22 to an offense listed in this subsection.

23 J. If the defendant is placed on probation pursuant to subsection F of
24 this section and the defendant fails to fulfill the terms and conditions of
25 probation, the court shall enter an adjudication of guilt and sentence the
26 defendant as provided by law.

27 K. If a defendant chooses not to participate in the drug court
28 program, the defendant shall be prosecuted as provided by law.

29 L. This section does not prohibit the presiding judge of the superior
30 court from establishing a drug court program other than as defined in section
31 13-3401 with other terms and conditions, including requiring a defendant to
32 participate in a drug court program subsequent to the entry of judgment of
33 guilt and sentencing.

34 Sec. 82. Section 13-3552, Arizona Revised Statutes, is amended to
35 read:

36 13-3552. Commercial sexual exploitation of a minor;
37 classification

38 A. A person commits commercial sexual exploitation of a minor by
39 knowingly:

40 1. Using, employing, persuading, enticing, inducing or coercing a
41 minor to engage in or assist others to engage in exploitive exhibition or
42 other sexual conduct for the purpose of producing any visual depiction or
43 live act depicting such conduct.

1 Sec. 85. Section 13-3601, Arizona Revised Statutes, is amended to
2 read:

3 13-3601. Domestic violence; definition; classification;
4 sentencing option; arrest and procedure for
5 violation; weapon seizure; notice

6 A. "Domestic violence" means any act which is a dangerous crime
7 against children as defined in section ~~13-604.01~~ 13-705 or an offense defined
8 in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through
9 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph
10 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923,
11 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

12 1. The relationship between the victim and the defendant is one of
13 marriage or former marriage or of persons residing or having resided in the
14 same household.

15 2. The victim and the defendant have a child in common.

16 3. The victim or the defendant is pregnant by the other party.

17 4. The victim is related to the defendant or the defendant's spouse by
18 blood or court order as a parent, grandparent, child, grandchild, brother or
19 sister or by marriage as a parent-in-law, grandparent-in-law, stepparent,
20 step-grandparent, stepchild, step-grandchild, brother-in-law or
21 sister-in-law.

22 5. The victim is a child who resides or has resided in the same
23 household as the defendant and is related by blood to a former spouse of the
24 defendant or to a person who resides or who has resided in the same household
25 as the defendant.

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

1 under 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 a
7 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 that is owned or possessed by the
10 victim shall not be seized unless there is probable cause to believe that
11 both 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 to
22 the owner or possessor may endanger the victim, the person who reported the
23 assault or threat or another person in the household, the prosecutor shall
24 file a notice of intent to retain the firearm in the appropriate superior,
25 justice or municipal court. The prosecutor shall serve notice on the owner
26 or possessor of the firearm by certified mail. The notice shall state that
27 the firearm will be retained for not more than six months following the date
28 of seizure. On receipt of the notice, the owner or possessor may request a
29 hearing for the return of the firearm, to dispute the grounds for seizure or
30 to request an earlier return date. The court shall hold the hearing within
31 ten days after receiving the owner's or possessor's request for a hearing.
32 At the hearing, unless the court determines that the return of the firearm
33 may endanger the victim, the person who reported the assault or threat or
34 another person in the household, the court shall order the return of the
35 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 is
40 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 who is arrested pursuant to subsection B of this section
2 may be released from custody in accordance with the Arizona rules of criminal
3 procedure or any other applicable statute. Any order for release, with or
4 without an appearance bond, shall include pretrial release conditions that
5 are necessary to provide for the protection of the alleged victim and other
6 specifically designated persons and may provide for additional conditions
7 that 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~~ THE 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 that is included in domestic violence carries the
21 classification prescribed in the section of this title in which the offense
22 is classified. If the defendant committed a felony offense listed in
23 subsection A of this section against a pregnant victim and knew that the
24 victim was pregnant or if the defendant committed a felony offense causing
25 physical injury to a pregnant victim and knew that the victim was pregnant,
26 ~~the maximum sentence otherwise authorized shall be increased by up to two~~
27 ~~years~~ SECTION 13-709.04, SUBSECTION B APPLIES TO THE SENTENCE IMPOSED.

28 M. If the defendant is found guilty of a first offense included in
29 domestic violence, the court shall provide the following written notice to
30 the defendant:

31 You have been convicted of an offense included in domestic
32 violence. You are now on notice that:

33 1. If you are convicted of a second offense included in
34 domestic violence, you may be placed on supervised probation and
35 may be incarcerated as a condition of probation.

36 2. A third or subsequent charge may be filed as a felony
37 and a conviction for that offense shall result in a term of
38 incarceration.

39 N. The failure or inability of the court to provide the notice
40 required under subsection M of this section does not preclude the use of the
41 prior convictions for any purpose otherwise permitted.

1 Sec. 86. Section 13-3623, Arizona Revised Statutes, is amended to
2 read:

3 13-3623. Child or vulnerable adult abuse; emotional abuse;
4 classification; exceptions; definitions

5 A. Under circumstances likely to produce death or serious physical
6 injury, any person who causes a child or vulnerable adult to suffer physical
7 injury or, having the care or custody of a child or vulnerable adult, who
8 causes or permits the person or health of the child or vulnerable adult to be
9 injured or who causes or permits a child or vulnerable adult to be placed in
10 a situation where the person or health of the child or vulnerable adult is
11 endangered is guilty of an offense as follows:

12 1. If done intentionally or knowingly, the offense is a class 2 felony
13 and if the victim is under fifteen years of age it is punishable pursuant to
14 section ~~13-604.01~~ 13-705.

15 2. If done recklessly, the offense is a class 3 felony.

16 3. If done with criminal negligence, the offense is a class 4 felony.

17 B. Under circumstances other than those likely to produce death or
18 serious physical injury to a child or vulnerable adult, any person who causes
19 a child or vulnerable adult to suffer physical injury or abuse or, having the
20 care or custody of a child or vulnerable adult, who causes or permits the
21 person or health of the child or vulnerable adult to be injured or who causes
22 or permits a child or vulnerable adult to be placed in a situation where the
23 person or health of the child or vulnerable adult is endangered is guilty of
24 an offense as follows:

25 1. If done intentionally or knowingly, the offense is a class 4
26 felony.

27 2. If done recklessly, the offense is a class 5 felony.

28 3. If done with criminal negligence, the offense is a class 6 felony.

29 C. For the purposes of subsections A and B of this section, the terms
30 endangered and abuse include but are not limited to circumstances in which a
31 child or vulnerable adult is permitted to enter or remain in any structure or
32 vehicle in which volatile, toxic or flammable chemicals are found or
33 equipment is possessed by any person for the purpose of manufacturing a
34 dangerous drug in violation of section 13-3407, subsection A, ~~paragraphs~~
35 ~~PARAGRAPH~~ 3 or 4. Notwithstanding any other provision of this section, a
36 violation committed under the circumstances described in this subsection does
37 not require that a person have care or custody of the child or vulnerable
38 adult.

39 D. A person who intentionally or knowingly engages in emotional abuse
40 of a vulnerable adult who is a patient or resident in any setting in which
41 health care, health-related services or assistance with one or more of the
42 activities of daily living is provided or, having the care or custody of a
43 vulnerable adult, who intentionally or knowingly subjects or permits the
44 vulnerable adult to be subjected to emotional abuse is guilty of a class 6
45 felony.

1 E. This section does not apply to:

2 1. A health care provider as defined in section 36-3201 who permits a
3 patient to die or the patient's condition to deteriorate by not providing
4 health care if that patient refuses that care directly or indirectly through
5 a health care directive as defined in section 36-3201, through a surrogate
6 pursuant to section 36-3231 or through a court appointed guardian as provided
7 for in title 14, chapter 5, article 3.

8 2. A vulnerable adult who is being furnished spiritual treatment
9 through prayer alone and who would not otherwise be considered to be abused,
10 neglected or endangered if medical treatment were being furnished.

11 F. For the purposes of this section:

12 1. "Abuse", when used in reference to a child, means abuse as defined
13 in section 8-201, except for those acts in the definition that are declared
14 unlawful by another statute of this title and, when used in reference to a
15 vulnerable adult, means:

- 16 (a) Intentional infliction of physical harm.
- 17 (b) Injury caused by criminally negligent acts or omissions.
- 18 (c) Unlawful imprisonment, as described in section 13-1303.
- 19 (d) Sexual abuse or sexual assault.

20 2. "Child" means an individual who is under eighteen years of age.

21 3. "Emotional abuse" means a pattern of ridiculing or demeaning a
22 vulnerable adult, making derogatory remarks to a vulnerable adult, verbally
23 harassing a vulnerable adult or threatening to inflict physical or emotional
24 harm on a vulnerable adult.

25 4. "Physical injury" means the impairment of physical condition and
26 includes any skin bruising, pressure sores, bleeding, failure to thrive,
27 malnutrition, dehydration, burns, fracture of any bone, subdural hematoma,
28 soft tissue swelling, injury to any internal organ or any physical condition
29 that imperils health or welfare.

30 5. "Serious physical injury" means physical injury that creates a
31 reasonable risk of death or that causes serious or permanent disfigurement,
32 serious impairment of health or loss or protracted impairment of the function
33 of any bodily organ or limb.

34 6. "Vulnerable adult" means an individual who is eighteen years of age
35 or older and who is unable to protect himself from abuse, neglect or
36 exploitation by others because of a mental or physical impairment.

37 Sec. 87. Section 13-3716, Arizona Revised Statutes, is amended to
38 read:

39 13-3716. Unlawful failure to give notice of conviction of
40 dangerous crime against children or child abuse;
41 classification

42 A. It is unlawful for a person who has been convicted of a dangerous
43 crime against children as defined in section ~~13-604.01~~ 13-705 or child abuse
44 pursuant to section 13-3623, subsection A or subsection B, paragraph 1 to
45 fail to give notice of the fact of the conviction to a business institution

1 or organization when applying for employment or volunteering for service with
2 any business institution or organization that sponsors any activity in which
3 adults supervise children. For the purposes of this ~~section~~ SUBSECTION,
4 business institutions or organizations include schools, preschools, child
5 care providers and youth organizations.

6 B. A person who violates this section is guilty of a class 5 felony.

7 Sec. 88. Section 13-3727, Arizona Revised Statutes, is amended to
8 read:

9 13-3727. Unlawful residency; persons convicted of criminal
10 offenses; exceptions; preemption; classification

11 A. It is unlawful for a person who has been convicted of a dangerous
12 crime against children as defined in section ~~13-604.01~~ 13-705, who is
13 required to register pursuant to section 13-3821 and who is classified as a
14 level three offender pursuant to sections 13-3825 and 13-3826 to reside
15 within one thousand feet of the real property comprising any of the
16 following:

17 1. A private school, as defined in section 15-101, or a public school
18 that provides instruction in kindergarten programs and any combination of
19 kindergarten programs and grades one through eight.

20 2. A private school, as defined in section 15-101, or a public school
21 that provides instruction in any combination of grades nine through twelve.

22 3. A child care facility as defined in section 36-881.

23 B. This section does not apply to any of the following:

24 1. A person who establishes the person's residence before ~~the~~
25 ~~effective date of this section~~ SEPTEMBER 19, 2007 or before a new school or
26 child care facility is located.

27 2. A person who is a minor.

28 3. A person who is currently serving a term of probation.

29 4. A person who has had the person's civil rights restored pursuant to
30 chapter 9 of this title.

31 5. A person who has not been convicted of a subsequent offense in the
32 previous ten years, excluding any time the person was incarcerated in any
33 federal, state, county or local jail or prison facility.

34 C. Notwithstanding any other law and as a matter of statewide concern,
35 a county, city or town shall not enact an ordinance that provides for
36 distance restrictions greater than those found in this section.

37 D. A person who violates this section is guilty of a class 1
38 misdemeanor.

39 Sec. 89. Section 13-3821, Arizona Revised Statutes, is amended to
40 read:

41 13-3821. Persons required to register; procedure;
42 identification card; assessment; definitions

43 A. A person who has been convicted of a violation or attempted
44 violation of any of the following offenses or who has been convicted of an
45 offense committed in another jurisdiction that if committed in this state

1 would be a violation or attempted violation of any of the following offenses
2 or an offense that was in effect before September 1, 1978 and that, if
3 committed on or after September 1, 1978, has the same elements of an offense
4 listed in this section or who is required to register by the convicting
5 jurisdiction, within ten days after the conviction or within ten days after
6 entering and remaining in any county of this state, shall register with the
7 sheriff of that county:

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

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

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

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

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

18 6. Sexual assault of a spouse if the offense was committed before
19 August 12, 2005.

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

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

22 9. Taking a child for the purpose of prostitution pursuant to section
23 13-3206.

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

25 11. Commercial sexual exploitation of a minor pursuant to section
26 13-3552.

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

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

29 14. Sex trafficking of a minor pursuant to section 13-1307.

30 15. A second or subsequent violation of indecent exposure to a person
31 under fifteen years of age pursuant to section 13-1402.

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

35 17. A third or subsequent violation of indecent exposure pursuant to
36 section 13-1402.

37 18. A third or subsequent violation of public sexual indecency pursuant
38 to section 13-1403.

39 19. A violation of section 13-3822 or 13-3824.

40 B. Before the person is released from confinement the state department
41 of corrections in conjunction with the department of public safety and each
42 county sheriff shall complete the registration of any person who was
43 convicted of a violation of any offense listed under subsection A of this
44 section. Within three days after the person's release from confinement, the
45 state department of corrections shall forward the registered person's records

1 to the department of public safety and to the sheriff of the county in which
2 the registered person intends to reside. Registration pursuant to this
3 subsection shall be consistent with subsection E of this section.

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

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

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

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

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

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

30 G. The court may order the termination of any duty to register under
31 this section on successful completion of probation if the person was under
32 eighteen years of age when the offense for which the person was convicted was
33 committed.

34 H. The court may order the suspension or termination of any duty to
35 register under this section after a hearing held pursuant to section 13-923.

36 I. At the time of registering, the person shall sign or affix an
37 electronic fingerprint to a statement giving such information as required by
38 the director of the department of public safety, including all names by which
39 the person is known, any required online identifier and the name of any
40 website or internet communication service where the identifier is being used.
41 The sheriff shall fingerprint and photograph the person and within three days
42 thereafter shall send copies of the statement, fingerprints and photographs
43 to the department of public safety and the chief of police, if any, of the
44 place where the person resides. The information that is required by this
45 subsection shall include the physical location of the person's residence and

1 the person's address. If the person has a place of residence that is
 2 different from the person's address, the person shall provide the person's
 3 address, the physical location of the person's residence and the name of the
 4 owner of the residence if the residence is privately owned and not offered
 5 for rent or lease. If the person receives mail at a post office box, the
 6 person shall provide the location and number of the post office box. If the
 7 person does not have an address or a permanent place of residence, the person
 8 shall provide a description and physical location of any temporary residence
 9 and shall register as a transient not less than every ninety days with the
 10 sheriff in whose jurisdiction the transient is physically present.

11 J. On the person's initial registration and every year after the
 12 person's initial registration, the person shall confirm any required online
 13 identifier and the name of any website or internet communication service
 14 where the identifier is being used, ~~the person~~ shall obtain a new
 15 nonoperating identification license or a driver license from the motor
 16 vehicle division in the department of transportation and shall carry a valid
 17 nonoperating identification license or a driver license. Notwithstanding
 18 sections 28-3165 and 28-3171, the license is valid for one year from the date
 19 of issuance, and the person shall submit to the department of transportation
 20 proof of the person's address and place of residence. The motor vehicle
 21 division shall annually update the person's address and photograph and shall
 22 make a copy of the photograph available to the department of public safety or
 23 to any law enforcement agency. The motor vehicle division shall provide to
 24 the department of public safety daily address updates for persons required to
 25 register pursuant to this section.

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

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

41 M. A person who is required to register pursuant to this section
 42 because of a conviction for the unlawful imprisonment of a minor or the
 43 kidnapping of a minor is required to register, absent additional or
 44 subsequent convictions, for a period of ten years from the date that the
 45 person is released from prison, jail, probation, community supervision or

1 parole and the person has fulfilled all restitution obligations.
2 Notwithstanding this subsection, a person who has a prior conviction for an
3 offense for which registration is required pursuant to this section is
4 required to register for life.

5 N. A person who is required to register pursuant to this section and
6 who is a student at a public or private institution of postsecondary
7 education or who is employed, with or without compensation, at a public or
8 private institution of postsecondary education or who carries on a vocation
9 at a public or private institution of postsecondary education shall notify
10 the county sheriff having jurisdiction of the institution of postsecondary
11 education. The person WHO IS required to register pursuant to this section
12 shall also notify the sheriff of each change in enrollment or employment
13 status at the institution.

14 O. At the time of registering, the sheriff shall secure a sufficient
15 sample of blood or other bodily substances for deoxyribonucleic acid testing
16 and extraction from a person who has been convicted of an offense committed
17 in another jurisdiction that if committed in this state would be a violation
18 or attempted violation of any of the offenses listed in subsection A of this
19 section or an offense that was in effect before September 1, 1978 and that,
20 if committed on or after September 1, 1978, has the same elements of an
21 offense listed in subsection A of this section or who is required to register
22 by the convicting jurisdiction. The sheriff shall transmit the sample to the
23 department of public safety.

24 P. Any person WHO IS required to register under subsection A of this
25 section shall register ~~their~~ THE PERSON'S required online identifier and the
26 name of any website or internet communication service where the identifier is
27 being used or ~~intends to use the identifier~~ IS INTENDED TO BE USED with the
28 sheriff from and after December 31, 2007, regardless of whether the person
29 was required to register an identifier at the time of ~~their~~ THE PERSON'S
30 initial registration under this section.

31 Q. ON CONVICTION OF ANY OFFENSE FOR WHICH A PERSON IS REQUIRED TO
32 REGISTER PURSUANT TO THIS SECTION, IN ADDITION TO ANY OTHER PENALTY
33 PRESCRIBED BY LAW, THE COURT SHALL ORDER THE PERSON TO PAY AN ADDITIONAL
34 ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS. THIS ASSESSMENT IS NOT SUBJECT TO
35 ANY SURCHARGE. THE COURT SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS
36 SECTION TO THE COUNTY TREASURER. THE COUNTY TREASURER SHALL TRANSMIT THE
37 MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT
38 THE MONIES RECEIVED IN THE SEX OFFENDER MONITORING FUND ESTABLISHED BY
39 SECTION 13-3828. NOTWITHSTANDING ANY OTHER LAW, THE COURT SHALL NOT WAIVE
40 THE ASSESSMENT IMPOSED PURSUANT TO THIS SECTION.

41 ~~Q-~~ R. For the purposes of this section:
42 1. "Address" means the location at which the person receives mail.
43 2. "Required online identifier" means any electronic e-mail address
44 information or instant message, chat, social networking or other similar

1 internet communication name, but does not include A social security number,
2 date of birth, ~~or~~ or pin number.

3 3. "Residence" means the person's dwelling place, whether permanent or
4 temporary.

5 Sec. 90. Section 13-3824, Arizona Revised Statutes, is amended to
6 read:

7 13-3824. Violation; classification; assessment

8 A. A person who is subject to registration under this article and who
9 fails to comply with the requirements of this article is guilty of a class 4
10 felony.

11 B. Notwithstanding subsection A of this section, a person who fails to
12 comply with section 13-3821, subsection ~~I~~ J is guilty of a class 6 felony
13 and, in addition to any other penalty prescribed by law, the court shall
14 order the person to pay an additional assessment of two hundred fifty
15 dollars. This assessment is not subject to any surcharge. The court shall
16 transmit the monies received pursuant to this subsection to the county
17 treasurer. The county treasurer shall transmit the monies received to the
18 state treasurer. The state treasurer shall deposit the monies received in
19 the sex offender monitoring fund established by section 13-3828.
20 Notwithstanding any other law, the court shall not waive the assessment
21 imposed pursuant to this subsection.

22 Sec. 91. Section 13-3828, Arizona Revised Statutes, is amended to
23 read:

24 13-3828. Sex offender monitoring fund

25 The sex offender monitoring fund is established consisting of monies
26 collected from assessments pursuant to sections ~~13-119~~ 13-3821 and 13-3824.
27 The department of public safety shall administer the fund. Monies in the
28 fund are subject to legislative appropriation.

29 Sec. 92. Section 13-3994, Arizona Revised Statutes, is amended to
30 read:

31 13-3994. Commitment; hearing; jurisdiction; definition

32 A. A person who is found guilty except insane pursuant to section
33 13-502 shall be committed to a secure state mental health facility under the
34 department of health services for a period of treatment.

35 B. If the criminal act of the person committed pursuant to subsection
36 A of this section did not cause the death or serious physical injury of or
37 the threat of death or serious physical injury to another person, the court
38 shall set a hearing date within seventy-five days after the person's
39 commitment to determine if the person is entitled to release from confinement
40 or if the person meets the standards for civil commitment pursuant to title
41 36, chapter 5. The court shall notify the medical director of the mental
42 health facility, the attorney general, the county attorney, the victim and
43 the attorney representing the person, if any, of the date of the hearing.
44 Fourteen days before the hearing the director of the mental health facility

1 shall submit to the court a report addressing the person's mental health and
2 dangerousness.

3 C. At a hearing held pursuant to subsection B of this section:

4 1. If the person proves by clear and convincing evidence that the
5 person no longer suffers from a mental disease or defect and is not
6 dangerous, the court shall order the person's release and the person's
7 commitment ordered pursuant to section 13-502, subsection D shall terminate.
8 Before determining to release a person pursuant to this paragraph, the court
9 shall consider the entire criminal history of the person and shall not order
10 the person's release if the court determines that the person has a propensity
11 to reoffend.

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

18 D. If the court finds that the criminal act of the person committed
19 pursuant to subsection A of this section caused the death or serious physical
20 injury of or the threat of death or serious physical injury to another
21 person, the court shall place the person under the jurisdiction of the
22 psychiatric security review board. The court shall state the beginning date,
23 length and ending date of the board's jurisdiction over the person. The
24 length of the board's jurisdiction over the person is equal to the sentence
25 the person could have received pursuant to ~~section 13-703, subsection A or~~
26 section 13-707 or SECTION 13-751, SUBSECTION A OR the presumptive sentence
27 the defendant could have received pursuant to section ~~13-604, section~~
28 ~~13-604.01, section 13-701~~ 13-702, subsection ~~C~~ D, SECTION 13-703, SECTION
29 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A, section 13-710 or
30 section 13-1406. In making this determination the court shall not consider
31 the sentence enhancements for prior convictions under section ~~13-604~~ 13-703
32 OR 13-704. The court shall retain jurisdiction of all matters that are not
33 specifically delegated to the psychiatric security review board for the
34 duration of the presumptive sentence.

35 E. A person who is placed under the jurisdiction of the psychiatric
36 security review board pursuant to subsection D of this section is not
37 eligible for discharge from the board's jurisdiction until the board's
38 jurisdiction over the person expires.

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

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

5 2. If the person proves by clear and convincing evidence that the
6 person no longer suffers from a mental disease or defect and is not
7 dangerous, the psychiatric security review board shall order the person's
8 release. The person shall remain under the jurisdiction of the board.
9 Before determining to release a person pursuant to this paragraph, the board
10 shall consider the entire criminal history of the person and shall not order
11 the person's release if the board determines that the person has a propensity
12 to reoffend.

13 3. If the psychiatric security review board finds that the person
14 still suffers from a mental disease or defect or that the mental disease or
15 defect is in stable remission but the person is no longer dangerous, the
16 board shall order the person's conditional release. The person shall remain
17 under the board's jurisdiction. The board in conjunction with the state
18 mental health facility and behavioral health community providers shall
19 specify the conditions of the person's release. The board shall continue to
20 monitor and supervise a person who is released conditionally. Before the
21 conditional release of a person, a supervised treatment plan shall be in
22 place, including the necessary funding to implement the plan.

23 4. If the person is sentenced pursuant to section ~~13-604, subsection~~
24 ~~F, G, H, I, J or K~~ 13-704 and the psychiatric security review board finds
25 that the person no longer needs ongoing treatment for a mental disease and
26 the person is dangerous or has a propensity to reoffend, the board shall
27 order the person to be transferred to the state department of corrections for
28 the remainder of the sentence imposed pursuant to section 13-502,
29 subsection D. The board shall consider the safety and protection of the
30 public.

31 G. Within twenty days after the psychiatric security review board
32 orders a person to be transferred to the state department of corrections, the
33 person may file a petition for a judicial determination. The person shall
34 serve a copy of the request on the attorney general. If the person files a
35 petition for a judicial determination, the person shall remain in a state
36 mental health facility pending the result of the judicial determination. The
37 person requesting the judicial determination has the burden of proving the
38 issues by clear and convincing evidence. The judicial determination is
39 limited to the following issues:

40 1. Whether the person no longer needs ongoing treatment for a mental
41 disease.

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

43 H. A person who is placed under the jurisdiction of the psychiatric
44 security review board pursuant to subsection D of this section may not seek a
45 new release hearing earlier than twenty months after a prior release hearing,

1 except that the medical director of the state mental health facility may
2 request a new release hearing for a person under the jurisdiction of the
3 psychiatric security review board at any time. The person shall not be held
4 in confinement for more than two years without a hearing before the board to
5 determine if the person should be released or conditionally released.

6 I. At any hearing for release or conditional release pursuant to this
7 section:

8 1. Public safety and protection are primary.

9 2. The applicant has the burden of proof by clear and convincing
10 evidence.

11 J. At least fifteen days before a hearing is scheduled to consider a
12 person's release, or before the expiration of the board's jurisdiction over
13 the person, the state mental health facility or supervising agency shall
14 submit to the psychiatric security review board a report on the person's
15 mental health. The psychiatric security review board shall determine whether
16 to release the person or to order the county attorney to institute civil
17 commitment proceedings pursuant to title 36.

18 K. The procedures for civil commitment govern the continued commitment
19 of the person after the expiration of the jurisdiction of the psychiatric
20 security review board.

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

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

42 N. The director of a facility that is providing treatment to a person
43 on conditional release or any other person who is responsible for the
44 supervision of the person may take the person or request that the person be
45 taken into custody if there is reasonable cause to believe that the person's

1 mental health has deteriorated to the point that the person's conditional
2 release should be revoked and that the person is in need of immediate care,
3 custody or treatment or that deterioration is likely because of noncompliance
4 with a treatment program. A person who is taken into custody pursuant to
5 this subsection shall be transported immediately to a secure state mental
6 health facility and shall have the same rights as any person appearing before
7 the psychiatric security review board.

8 0. Before the initial hearing or any other hearing before the
9 psychiatric security review board on the release or conditional release of
10 the person, the person, the attorney who is representing the person and the
11 attorney general or county attorney who is representing the state may choose
12 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a
13 psychologist licensed pursuant to title 32, chapter 19.1 to examine the
14 person. All costs in connection with the examination shall be approved and
15 paid by the county of the sentencing court. The written examination results
16 shall be filed with the board and shall include an opinion as to:

- 17 1. The mental condition of the person.
- 18 2. Whether the person is dangerous.

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

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

1 R. For the purposes of this section, "state mental health facility"
2 means a secure state mental health facility under the department of health
3 services.

4 Sec. 93. Section 13-4032, Arizona Revised Statutes, is amended to
5 read:

6 13-4032. Appeal by state

7 An appeal may be taken by the state from:

8 1. An order dismissing an indictment, information or complaint or
9 count of an indictment, information or complaint.

10 2. An order granting a new trial.

11 3. A ruling on a question of law adverse to the state when the
12 defendant was convicted and appeals from the judgment.

13 4. An order made after judgment affecting the substantial rights of
14 the state or a victim, except that the state shall only take an appeal on an
15 order affecting the substantial rights of a victim at the victim's request.

16 5. A sentence on the grounds that it is illegal, or if the sentence
17 imposed is other than the presumptive sentence authorized by section ~~13-604~~
18 ~~or 13-701~~ 13-702, SECTION 13-703, SECTION 13-704 OR SECTION 13-706,
19 SUBSECTION A.

20 6. An order granting a motion to suppress the use of evidence.

21 7. A judgment of acquittal of one or more offenses charged in an
22 indictment, information or complaint or count of an indictment, information
23 or complaint that is entered after a verdict of guilty on the offense or
24 offenses.

25 Sec. 94. Section 13-4062, Arizona Revised Statutes, is amended to
26 read:

27 13-4062. Anti-marital fact privilege: other privileged
28 communications

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

30 1. A husband for or against his wife without her consent, nor a wife
31 for or against her husband without his consent, as to events occurring during
32 the marriage, nor can either, during the marriage or afterwards, without
33 consent of the other, be examined as to any communication made by one to the
34 other during the marriage. These exceptions do not apply in a criminal
35 action or proceeding for a crime committed by the husband against the wife,
36 or by the wife against the husband, nor in a criminal action or proceeding
37 against the husband for abandonment, failure to support or provide for or
38 failure or neglect to furnish the necessities of life to the wife or the
39 minor children. Either spouse, at his or her request, but not otherwise, may
40 be examined as a witness for or against the other in a prosecution for an
41 offense listed in section ~~13-604~~ 13-706, subsection ~~W- F~~, paragraph ~~4- 1~~, for
42 bigamy or adultery, committed by either spouse, or for sexual assault
43 committed by the husband.

1 2. An attorney, without consent of the attorney's client, as to any
2 communication made by the client to the attorney, or the attorney's advice
3 given in the course of professional employment.

4 3. A clergyman or priest, without consent of the person making the
5 confession, as to any confession made to the clergyman or priest in his
6 professional character in the course of discipline enjoined by the church to
7 which the clergyman or priest belongs.

8 4. A physician or surgeon, without consent of the physician's or
9 surgeon's patient, as to any information acquired in attending the patient
10 which was necessary to enable the physician or surgeon to prescribe or act
11 for the patient.

12 Sec. 95. Section 13-4501, Arizona Revised Statutes, is amended to
13 read:

14 13-4501. Definitions

15 In this chapter, unless the context otherwise requires:

16 1. "Clinical liaison" means a mental health expert or any other
17 individual who has experience and training in mental health or developmental
18 disabilities and who is qualified and appointed by the court to aid in
19 coordinating the treatment or training of individuals who are found
20 incompetent to stand trial. If mental retardation is an issue, the clinical
21 liaison shall be an expert in mental retardation.

22 2. "Incompetent to stand trial" means that as a result of a mental
23 illness, defect or disability a defendant is unable to understand the nature
24 and object of the proceeding or to assist in the defendant's defense. In the
25 case of a person under ~~the age of~~ eighteen years of age when the issue of
26 competency is raised, incompetent to stand trial also means a person who does
27 not have sufficient present ability to consult with the person's lawyer with
28 a reasonable degree of rational understanding or who does not have a rational
29 and factual understanding of the proceedings against the person. The
30 presence of a mental illness, defect or disability alone is not grounds for
31 finding a defendant incompetent to stand trial.

32 3. "Mental health expert" means a physician who is licensed pursuant
33 to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to
34 title 32, chapter 19.1 and who is:

35 (a) Familiar with this state's competency standards and statutes.

36 (b) Familiar with the treatment, training and restoration programs
37 that are available in this state.

38 (c) Certified by the court as meeting court developed guidelines using
39 recognized programs or standards.

40 4. "Mental illness, defect or disability" means a psychiatric or
41 neurological disorder that is evidenced by behavioral or emotional symptoms,
42 including congenital mental conditions, conditions resulting from injury or
43 disease and developmental disabilities as defined in section 36-551.

1 5. "Threat to public safety" means charged with the commission of any
2 of the following:

3 (a) A crime involving the discharge, use or threatening exhibition of
4 a deadly weapon or dangerous instrument or the infliction of physical injury
5 on another person.

6 (b) A dangerous crime against children pursuant to section ~~13-604.01~~
7 ~~13-705~~.

8 (c) Two or more nondangerous felonies within a period of twenty-four
9 months.

10 Sec. 96. Section 13-4511, Arizona Revised Statutes, is amended to
11 read:

12 13-4511. Competency to refuse treatment; length of sentence

13 If the court finds that a defendant is incompetent to stand trial, the
14 court shall determine:

15 1. If the defendant is incompetent to refuse treatment, including
16 medication, and should be subject to involuntary treatment.

17 2. The maximum sentence the defendant could have received pursuant to
18 section ~~13-604, 13-604.01~~, 13-702, SECTION 13-703, SECTION 13-704, SECTION
19 13-705, SECTION 13-706, SUBSECTION A, SECTION 13-707, SECTION 13-708,
20 SUBSECTION D, SECTION 13-710 or SECTION 13-1406 or the sentence the defendant
21 could have received pursuant to section ~~13-703~~ 13-751, subsection A or any
22 section for which a specific sentence is authorized. In making this
23 determination the court shall not consider the sentence enhancements for
24 prior convictions under section ~~13-604~~ 13-703 OR 13-704.

25 Sec. 97. Section 13-4515, Arizona Revised Statutes, is amended to
26 read:

27 13-4515. Duration of order; notice of dismissed charge or
28 voided order; petitions

29 A. An order or combination of orders that is issued pursuant to
30 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
31 months or the maximum possible sentence the defendant could have received
32 pursuant to section ~~13-604, 13-604.01~~, 13-702, SECTION 13-703, SECTION
33 13-704, SECTION 13-705, SECTION 13-706, SUBSECTION A, SECTION 13-708,
34 SUBSECTION D OR SECTION 13-751 or any section for which a specific sentence
35 is authorized, whichever is less. In making this determination the court
36 shall not consider the sentence enhancements under section ~~13-604~~ 13-703 OR
37 13-704 for prior convictions.

38 B. The court shall notify the prosecutor, the defense attorney, the
39 medical supervisor and the treating facility if the charges against the
40 defendant are dismissed or if an order is voided by the court. No charges
41 shall be dismissed without a hearing prior to the dismissal.

42 C. If a defendant is discharged or released on the expiration of an
43 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
44 supervisor may file a petition stating that the defendant requires further

1 treatment pursuant to title 36, chapter 5, ~~or~~ or appointment of a guardian
2 pursuant to title 14.

3 Sec. 98. Section 15-341, Arizona Revised Statutes, is amended to read:
4 15-341. General powers and duties; immunity; delegation

5 A. The governing board shall:

6 1. Prescribe and enforce policies and procedures for the governance of
7 the schools, not inconsistent with law or rules prescribed by the state board
8 of education.

9 2. Maintain the schools established by it for the attendance of each
10 pupil for a period of not less than one hundred seventy-five school days or
11 two hundred school days, as applicable, or its equivalent as approved by the
12 superintendent of public instruction for a school district operating on a
13 year-round operation basis, to offer an educational program on the basis of a
14 four day school week or to offer an alternative kindergarten program on the
15 basis of a three day school week, in each school year, and if the funds of
16 the district are sufficient, for a longer period, and as far as practicable
17 with equal rights and privileges.

18 3. Exclude from schools all books, publications, papers or audiovisual
19 materials of a sectarian, partisan or denominational character.

20 4. Manage and control the school property within its district.

21 5. Acquire school furniture, apparatus, equipment, library books and
22 supplies for the use of the schools.

23 6. Prescribe the curricula and criteria for the promotion and
24 graduation of pupils as provided in sections 15-701 and 15-701.01.

25 7. Furnish, repair and insure, at full insurable value, the school
26 property of the district.

27 8. Construct school buildings on approval by a vote of the district
28 electors.

29 9. Make in the name of the district conveyances of property belonging
30 to the district and sold by the board.

31 10. Purchase school sites when authorized by a vote of the district at
32 an election conducted as nearly as practicable in the same manner as the
33 election provided in section 15-481 and held on a date prescribed in section
34 15-491, subsection E, but such authorization shall not necessarily specify
35 the site to be purchased and such authorization shall not be necessary to
36 exchange unimproved property as provided in section 15-342, paragraph 23.

37 11. Construct, improve and furnish buildings used for school purposes
38 when such buildings or premises are leased from the national park service.

39 12. Purchase school sites or construct, improve and furnish school
40 buildings from the proceeds of the sale of school property only on approval
41 by a vote of the district electors.

42 13. Hold pupils to strict account for disorderly conduct on school
43 property.

44 14. Discipline students for disorderly conduct on the way to and from
45 school.

1 15. Except as provided in section 15-1224, deposit all monies received
2 by the district as gifts, grants and devises with the county treasurer who
3 shall credit the deposits as designated in the uniform system of financial
4 records. If not inconsistent with the terms of the gifts, grants and devises
5 given, any balance remaining after expenditures for the intended purpose of
6 the monies have been made shall be used for reduction of school district
7 taxes for the budget year, except that in the case of accommodation schools
8 the county treasurer shall carry the balance forward for use by the county
9 school superintendent for accommodation schools for the budget year.

10 16. Provide that, if a parent or legal guardian chooses not to accept a
11 decision of the teacher as provided in section 15-521, paragraph 3, the
12 parent or legal guardian may request in writing that the governing board
13 review the teacher's decision. Nothing in this paragraph shall be construed
14 to release school districts from any liability relating to a child's
15 promotion or retention.

16 17. Provide for adequate supervision over pupils in instructional and
17 noninstructional activities by certificated or noncertificated personnel.

18 18. Use school monies received from the state and county school
19 apportionment exclusively for payment of salaries of teachers and other
20 employees and contingent expenses of the district.

21 19. Make an annual report to the county school superintendent on or
22 before October 1 each year in the manner and form and on the blanks
23 prescribed by the superintendent of public instruction or county school
24 superintendent. The board shall also make reports directly to the county
25 school superintendent or the superintendent of public instruction whenever
26 required.

27 20. Deposit all monies received by school districts other than student
28 activities monies or monies from auxiliary operations as provided in sections
29 15-1125 and 15-1126 with the county treasurer to the credit of the school
30 district except as provided in paragraph 21 of this subsection and sections
31 15-1223 and 15-1224, and the board shall expend the monies as provided by law
32 for other school funds.

33 21. Establish a bank account in which the board during a month may
34 deposit miscellaneous monies received directly by the district. The board
35 shall remit monies deposited in the bank account at least monthly to the
36 county treasurer for deposit as provided in paragraph 20 of this subsection
37 and in accordance with the uniform system of financial records.

38 22. Employ an attorney admitted to practice in this state whose
39 principal practice is in the area of commercial real estate, or a real estate
40 broker who is licensed by this state and who is employed by a reputable
41 commercial real estate company, to negotiate a lease of five or more years
42 for the school district if the governing board decides to enter into a lease
43 of five or more years as lessor of school buildings or grounds as provided in
44 section 15-342, paragraph 7 or 10. Any lease of five or more years
45 negotiated pursuant to this paragraph shall provide that the lessee is

1 responsible for payment of property taxes pursuant to the requirements of
2 section 42-11104.

3 23. Prescribe and enforce policies and procedures for disciplinary
4 action against a teacher who engages in conduct that is a violation of the
5 policies of the governing board but that is not cause for dismissal of the
6 teacher or for revocation of the certificate of the teacher. Disciplinary
7 action may include suspension without pay for a period of time not to exceed
8 ten school days. Disciplinary action shall not include suspension with pay
9 or suspension without pay for a period of time longer than ten school days.
10 The procedures shall include notice, hearing and appeal provisions for
11 violations that are cause for disciplinary action. The governing board may
12 designate a person or persons to act on behalf of the board on these matters.

13 24. Prescribe and enforce policies and procedures for disciplinary
14 action against an administrator who engages in conduct that is a violation of
15 the policies of the governing board regarding duties of administrators but
16 that is not cause for dismissal of the administrator or for revocation of the
17 certificate of the administrator. Disciplinary action may include suspension
18 without pay for a period of time not to exceed ten school days. Disciplinary
19 action shall not include suspension with pay or suspension without pay for a
20 period of time longer than ten school days. The procedures shall include
21 notice, hearing and appeal provisions for violations that are cause for
22 disciplinary action. The governing board may designate a person or persons
23 to act on behalf of the board on these matters. For violations that are
24 cause for dismissal, the provisions of notice, hearing and appeal in chapter
25 5, article 3 of this title shall apply. The filing of a timely request for a
26 hearing suspends the imposition of a suspension without pay or a dismissal
27 pending completion of the hearing.

28 25. Notwithstanding section 13-3108, prescribe and enforce policies and
29 procedures that prohibit a person from carrying or possessing a weapon on
30 school grounds unless the person is a peace officer or has obtained specific
31 authorization from the school administrator.

32 26. Prescribe and enforce policies and procedures relating to the
33 health and safety of all pupils participating in district sponsored practice
34 sessions, games or other interscholastic athletic activities, including the
35 provision of water.

36 27. Prescribe and enforce policies and procedures regarding the smoking
37 of tobacco within school buildings. The policies and procedures shall be
38 adopted in consultation with school district personnel and members of the
39 community and shall state whether smoking is prohibited in school buildings.
40 If smoking in school buildings is not prohibited, the policies and procedures
41 shall clearly state the conditions and circumstances under which smoking is
42 permitted, those areas in a school building that may be designated as smoking
43 areas and those areas in a school building that may not be designated as
44 smoking areas.

1 28. Establish an assessment, data gathering and reporting system as
2 prescribed in chapter 7, article 3 of this title.

3 29. Provide special education programs and related services pursuant to
4 section 15-764, subsection A to all children with disabilities as defined in
5 section 15-761.

6 30. Administer competency tests prescribed by the state board of
7 education for the graduation of pupils from high school.

8 31. Secure insurance coverage for all construction projects for
9 purposes of general liability, property damage and workers' compensation and
10 secure performance and payment bonds for all construction projects.

11 32. Keep on file the resumes of all current and former employees who
12 provide instruction to pupils at a school. Resumes shall include an
13 individual's educational and teaching background and experience in a
14 particular academic content subject area. A school district shall inform
15 parents and guardians of the availability of the resume information and shall
16 make the resume information available for inspection on request of parents
17 and guardians of pupils enrolled at a school. Nothing in this paragraph
18 shall be construed to require any school to release personally identifiable
19 information in relation to any teacher or employee including the teacher's or
20 employee's address, salary, social security number or telephone number.

21 33. Report to local law enforcement agencies any suspected crime
22 against a person or property that is a serious offense as defined in section
23 ~~13-604~~ 13-706 or that involves a deadly weapon or dangerous instrument or
24 serious physical injury and any conduct that poses a threat of death or
25 serious physical injury to employees, students or anyone on the property of
26 the school. This paragraph does not limit or preclude the reporting by a
27 school district or an employee of a school district of suspected crimes other
28 than those required to be reported by this paragraph. For the purposes of
29 this paragraph, "dangerous instrument", "deadly weapon" and "serious physical
30 injury" have the same ~~meaning~~ MEANINGS prescribed in section 13-105.

31 34. In conjunction with local law enforcement agencies and local
32 medical facilities, develop an emergency response plan for each school in the
33 school district in accordance with minimum standards developed jointly by the
34 department of education and the division of emergency management within the
35 department of emergency and military affairs.

36 35. Annually assign at least one school district employee to
37 participate in a multihazard crisis training program developed or selected by
38 the governing board.

39 36. Provide written notice to the parents or guardians of all students
40 affected in the school district at least thirty days prior to a public
41 meeting to discuss closing a school within the school district. The notice
42 shall include the reasons for the proposed closure and the time and place of
43 the meeting. The governing board shall fix a time for a public meeting on
44 the proposed closure no less than thirty days before voting in a public
45 meeting to close the school. The school district governing board shall give

1 notice of the time and place of the meeting. At the time and place
 2 designated in the notice, the school district governing board shall hear
 3 reasons for or against closing the school. The school district governing
 4 board is exempt from this paragraph if it is determined by the governing
 5 board that the school shall be closed because it poses a danger to the health
 6 or safety of the pupils or employees of the school.

7 37. Incorporate instruction on Native American history into appropriate
 8 existing curricula.

9 38. Prescribe and enforce policies and procedures allowing pupils who
 10 have been diagnosed with anaphylaxis by a health care provider licensed
 11 pursuant to title 32, chapter 13, 14, 17 or 25 or by a registered nurse
 12 practitioner licensed and certified pursuant to title 32, chapter 15 to carry
 13 and self-administer emergency medications including auto-injectable
 14 epinephrine while at school and at school sponsored activities. The pupil's
 15 name on the prescription label on the medication container or on the
 16 medication device and annual written documentation from the pupil's parent or
 17 guardian to the school that authorizes possession and self-administration is
 18 sufficient proof that the pupil is entitled to the possession and
 19 self-administration of the medication. The policies shall require a pupil
 20 who uses auto-injectable epinephrine while at school and at school sponsored
 21 activities to notify the nurse or the designated school staff person of the
 22 use of the medication as soon as practicable. A school district and its
 23 employees are immune from civil liability with respect to all decisions made
 24 and actions taken that are based on good faith implementation of the
 25 requirements of this paragraph, except in cases of wanton or wilful neglect.

26 39. Allow the possession and self-administration of prescription
 27 medication for breathing disorders in handheld inhaler devices, by pupils who
 28 have been prescribed that medication by a health care professional licensed
 29 pursuant to title 32. The pupil's name on the prescription label on the
 30 medication container or on the handheld inhaler device and annual written
 31 documentation from the pupil's parent or guardian to the school that
 32 authorizes possession and self-administration shall be sufficient proof that
 33 the pupil is entitled to the possession and self-administration of the
 34 medication. A school district and its employees are immune from civil
 35 liability with respect to all decisions made and actions taken that are based
 36 on a good faith implementation of the requirements of this paragraph.

37 40. Prescribe and enforce policies and procedures to prohibit pupils
 38 from harassing, intimidating and bullying other pupils on school grounds, on
 39 school property, on school buses, at school bus stops and at school sponsored
 40 events and activities that include the following components:

41 (a) A procedure for pupils to confidentially report to school
 42 officials incidents of harassment, intimidation or bullying.

43 (b) A procedure for parents and guardians of pupils to submit written
 44 reports to school officials of suspected incidents of harassment,
 45 intimidation or bullying.

1 (c) A requirement that school district employees report suspected
2 incidents of harassment, intimidation or bullying to the appropriate school
3 official.

4 (d) A formal process for the documentation of reported incidents of
5 harassment, intimidation or bullying, except that no documentation shall be
6 maintained unless the harassment, intimidation or bullying has been proven.

7 (e) A formal process for the investigation by the appropriate school
8 officials of suspected incidents of harassment, intimidation or bullying.

9 (f) Disciplinary procedures for pupils who have admitted or been found
10 to have committed incidents of harassment, intimidation or bullying.

11 (g) A procedure that sets forth consequences for submitting false
12 reports of incidents of harassment, intimidation or bullying.

13 41. Prescribe and enforce policies and procedures regarding changing or
14 adopting attendance boundaries that include the following components:

15 (a) A procedure for holding public meetings to discuss attendance
16 boundary changes or adoptions that allows public comments.

17 (b) A procedure to notify the parents or guardians of the students
18 affected.

19 (c) A procedure to notify the residents of the households affected by
20 the attendance boundary changes.

21 (d) A process for placing public meeting notices and proposed maps on
22 the school district's website for public review, if the school district
23 maintains a website.

24 (e) A formal process for presenting the attendance boundaries of the
25 affected area in public meetings that allows public comments.

26 (f) A formal process for notifying the residents and parents or
27 guardians of the affected area as to the decision of the governing board on
28 the school district's website, if the school district maintains a website.

29 (g) A formal process for updating attendance boundaries on the school
30 district's website within ninety days of an adopted boundary change. The
31 school district shall send a direct link to the school district's attendance
32 boundaries website to the department of real estate.

33 (h) If the land that a school was built on was donated within the past
34 five years, a formal process to notify the entity ~~who~~ THAT donated the land
35 affected by the decision of the governing board.

36 B. Notwithstanding subsection A, paragraphs 8, 10 and 12 of this
37 section, the county school superintendent may construct, improve and furnish
38 school buildings or purchase or sell school sites in the conduct of an
39 accommodation school.

40 C. If any school district acquires real or personal property, whether
41 by purchase, exchange, condemnation, gift or otherwise, the governing board
42 shall pay to the county treasurer any taxes on the property that were unpaid
43 as of the date of acquisition, including penalties and interest. The lien
44 for unpaid delinquent taxes, penalties and interest on property acquired by a
45 school district:

1 1. Is not abated, extinguished, discharged or merged in the title to
2 the property.

3 2. Is enforceable in the same manner as other delinquent tax liens.

4 D. The governing board may not locate a school on property that is
5 less than one-fourth mile from agricultural land regulated pursuant to
6 section 3-365, except that the owner of the agricultural land may agree to
7 comply with the buffer zone requirements of section 3-365. If the owner
8 agrees in writing to comply with the buffer zone requirements and records the
9 agreement in the office of the county recorder as a restrictive covenant
10 running with the title to the land, the school district may locate a school
11 within the affected buffer zone. The agreement may include any stipulations
12 regarding the school, including conditions for future expansion of the school
13 and changes in the operational status of the school that will result in a
14 breach of the agreement.

15 E. A school district, its governing board members, its school council
16 members and its employees are immune from civil liability for the
17 consequences of adoption and implementation of policies and procedures
18 pursuant to subsection A of this section and section 15-342. This waiver
19 does not apply if the school district, its governing board members, its
20 school council members or its employees are guilty of gross negligence or
21 intentional misconduct.

22 F. A governing board may delegate in writing to a superintendent,
23 principal or head teacher the authority to prescribe procedures that are
24 consistent with the governing board's policies.

25 G. Notwithstanding any other provision of this title, a school
26 district governing board shall not take any action that would result in an
27 immediate reduction or a reduction within three years of pupil square footage
28 that would cause the school district to fall below the minimum adequate gross
29 square footage requirements prescribed in section 15-2011, subsection C,
30 unless the governing board notifies the school facilities board established
31 by section 15-2001 of the proposed action and receives written approval from
32 the school facilities board to take the action. A reduction includes an
33 increase in administrative space that results in a reduction of pupil square
34 footage or sale of school sites or buildings, or both. A reduction includes
35 a reconfiguration of grades that results in a reduction of pupil square
36 footage of any grade level. This subsection does not apply to temporary
37 reconfiguration of grades to accommodate new school construction if the
38 temporary reconfiguration does not exceed one year. The sale of equipment
39 that results in an immediate reduction or a reduction within three years that
40 falls below the equipment requirements prescribed in section 15-2011,
41 subsection B is subject to commensurate withholding of school district
42 capital outlay revenue limit monies pursuant to the direction of the school
43 facilities board. Except as provided in section 15-342, paragraph 10,
44 proceeds from the sale of school sites, buildings or other equipment shall be
45 deposited in the school plant fund as provided in section 15-1102.

1 H. Subsections C through G of this section apply to a county board of
2 supervisors and a county school superintendent when operating and
3 administering an accommodation school.

4 I. Until the state board of education and the auditor general adopt
5 rules pursuant to section 15-213, subsection I, a school district may procure
6 construction services, including services for new school construction
7 pursuant to section 15-2041, by the construction-manager-at-risk,
8 design-build and job-order-contracting methods of project delivery as
9 provided in title 41, chapter 23, except that the rules adopted by the
10 director of the department of administration do not apply to procurements
11 pursuant to this subsection. Any procurement commenced pursuant to this
12 subsection may be completed pursuant to this subsection.

13 Sec. 99. Section 15-512, Arizona Revised Statutes, is amended to read:

14 15-512. Noncertificated personnel; fingerprinting personnel;
15 background investigations; affidavit; civil immunity;
16 violation; classification; definition

17 A. Noncertificated personnel and personnel who are not paid employees
18 of the school district and who are not either the parent or the guardian of a
19 pupil who attends school in the school district but who are required or
20 allowed to provide services directly to pupils without the supervision of a
21 certificated employee and who are initially hired by a school district after
22 January 1, 1990 shall be fingerprinted as a condition of employment except
23 for personnel who are required as a condition of licensing to be
24 fingerprinted if the license is required for employment or for personnel who
25 were previously employed by a school district and who reestablished
26 employment with that district within one year after the date that the
27 employee terminated employment with the district. A school district may
28 release the results of a background check to another school district for
29 employment purposes. The employee's fingerprints and the form prescribed in
30 subsection D of this section shall be submitted to the school district within
31 twenty days after the date an employee begins work. A school district may
32 terminate an employee if the information on the form provided under
33 subsection D of this section is inconsistent with the information received
34 from the fingerprint check. The school district shall develop procedures for
35 fingerprinting employees. For the purposes of this subsection, "supervision"
36 means under the direction of and, except for brief periods of time during a
37 school day or a school activity, within sight of a certificated employee when
38 providing direct services to pupils.

39 B. Fingerprint checks shall be conducted pursuant to section 41-1750,
40 subsection G.

41 C. The school district shall assume the costs of fingerprint checks
42 and may charge these costs to its fingerprinted employee, except that the
43 school district may not charge the costs of the fingerprint check to
44 personnel of the school district who are not paid employees. The fees charged
45 for fingerprinting shall be deposited with the county treasurer who shall

1 credit the deposit to the fingerprint fund of the school district. The costs
2 charged to a fingerprinted employee are limited to and the proceeds in the
3 fund may only be applied to the actual costs, including personnel costs,
4 incurred as a result of the fingerprint checks. The fingerprint fund is a
5 continuing fund which is not subject to reversion.

6 D. Personnel required to be fingerprinted as prescribed in subsection
7 A of this section shall certify on forms that are provided by the school and
8 notarized whether they are awaiting trial on or have ever been convicted of
9 or admitted in open court or pursuant to a plea agreement committing any of
10 the following criminal offenses in this state or similar offenses in another
11 jurisdiction:

- 12 1. Sexual abuse of a minor.
- 13 2. Incest.
- 14 3. First or second degree murder.
- 15 4. Kidnapping.
- 16 5. Arson.
- 17 6. Sexual assault.
- 18 7. Sexual exploitation of a minor.
- 19 8. Felony offenses involving contributing to the delinquency of a
20 minor.
- 21 9. Commercial sexual exploitation of a minor.
- 22 10. Felony offenses involving sale, distribution or transportation of,
23 offer to sell, transport, or distribute or conspiracy to sell, transport or
24 distribute marijuana or dangerous or narcotic drugs.
- 25 11. Felony offenses involving the possession or use of marijuana,
26 dangerous drugs or narcotic drugs.
- 27 12. Misdemeanor offenses involving the possession or use of marijuana
28 or dangerous drugs.
- 29 13. Burglary in the first degree.
- 30 14. Burglary in the second or third degree.
- 31 15. Aggravated or armed robbery.
- 32 16. Robbery.
- 33 17. A dangerous crime against children as defined in section ~~13-604.01~~
34 [13-705](#).
- 35 18. Child abuse.
- 36 19. Sexual conduct with a minor.
- 37 20. Molestation of a child.
- 38 21. Manslaughter.
- 39 22. Aggravated assault.
- 40 23. Assault.
- 41 24. Exploitation of minors involving drug offenses.

42 E. A school district may refuse to hire or may review or terminate
43 personnel who have been convicted of or admitted committing any of the
44 criminal offenses prescribed in subsection D of this section or of a similar
45 offense in another jurisdiction. A school district which is considering

1 terminating an employee pursuant to ~~the provisions of~~ this subsection shall
2 hold a hearing to determine whether a person already employed shall be
3 terminated. In conducting a review, the governing board shall utilize the
4 guidelines, including the list of offenses that are not subject to review, as
5 prescribed by the state board of education pursuant to section 15-534,
6 subsection C. In considering whether to hire or terminate the employment of
7 a person the governing board shall take into account the following factors:
8 1. The nature of the crime and the potential for crimes against
9 children.
10 2. Offenses committed as a minor for which proceedings were held under
11 the jurisdiction of a juvenile or an adult court.
12 3. Offenses that have been expunged by a court of competent
13 jurisdiction, if the person has been pardoned or if the person's sentence has
14 been commuted.
15 4. The employment record of the person since the commission of the
16 crime if the crime was committed more than ten years before the governing
17 board's consideration of whether to hire or terminate the person.
18 5. The reliability of the evidence of an admission of a crime unless
19 made under oath in a court of competent jurisdiction.
20 F. Before employment with the school district, the district shall make
21 documented, good faith efforts to contact previous employers of a person to
22 obtain information and recommendations which may be relevant to a person's
23 fitness for employment. A governing board shall adopt procedures for
24 conducting background investigations required by this subsection, including
25 one or more standard forms for use by school district officials to document
26 their efforts to obtain information from previous employers. A school
27 district may provide information received as a result of a background
28 investigation required by this section to any other school district, to any
29 other public school and to any public entity that agrees pursuant to a
30 contract or intergovernmental agreement to perform background investigations
31 for school districts or other public schools. School districts and other
32 public schools may enter into intergovernmental agreements pursuant to
33 section 11-952 and cooperative purchasing agreements pursuant to rules
34 adopted in accordance with section 15-213 for the purposes of performing or
35 contracting for the performance of background investigations and for sharing
36 the results of background investigations required by this subsection.
37 Information obtained about an employee or applicant for employment by any
38 school district or other public school in the performance of a background
39 investigation may be retained by that school district or the other public
40 school or by any public entity that agrees pursuant to contract to perform
41 background investigations for school districts or other public schools and
42 may be provided to any school district or other public school that is
43 performing a background investigation required by this subsection.

1 G. A school district may fingerprint any other employee of the
2 district, whether paid or not, or any other applicant for employment with the
3 school district not otherwise required by this section to be fingerprinted on
4 the condition that the school district may not charge the costs of the
5 fingerprint check to the fingerprinted applicant or nonpaid employee.

6 H. Subsection A of this section does not apply to a person who
7 provides instruction or other education services to a pupil, with the written
8 consent of the parent or guardian of the pupil, under a work release program,
9 advance placement course or other education program that occurs off school
10 property.

11 I. Public entities that agree pursuant to contract to perform
12 background investigations, public schools, the department of education and
13 previous employers who provide information pursuant to this section are
14 immune from civil liability unless the information provided is false and is
15 acted on by the school district to the harm of the employee and the public
16 entity, the public school, the previous employer or the department of
17 education knows the information is false or acts with reckless disregard of
18 the information's truth or falsity. A school district which relies on
19 information obtained pursuant to this section in making employment decisions
20 is immune from civil liability for use of the information unless the
21 information obtained is false and the school district knows the information
22 is false or acts with reckless disregard of the information's truth or
23 falsity.

24 J. The superintendent of a school district or chief administrator of a
25 charter school or the person's designee who is responsible for implementing
26 the governing board's policy regarding background investigations required by
27 subsection F of this section and who fails to carry out that responsibility
28 is guilty of unprofessional conduct and shall be subject to disciplinary
29 action by the state board.

30 K. A school district may hire noncertificated personnel before
31 receiving the results of the fingerprint check but may terminate employment
32 if the information on the form provided in subsection D of this section is
33 inconsistent with the information received from the fingerprint check. In
34 addition to any other conditions or requirements deemed necessary by the
35 superintendent of public instruction to protect the health and safety of
36 pupils, noncertificated personnel who are required or allowed unsupervised
37 contact with pupils may be hired by school districts before the results of a
38 fingerprint check are received if all of the following conditions are met:

39 1. The school district that is seeking to hire the applicant shall
40 document in the applicant's file the necessity for hiring and placement of
41 the applicant before a fingerprint check could be completed.

42 2. The school district that is seeking to hire the applicant shall do
43 all of the following:

44 (a) Ensure that the department of public safety completes a statewide
45 criminal history information check on the applicant. A statewide criminal

1 history information check shall be completed by the department of public
2 safety every one hundred twenty days until the date that the fingerprint
3 check is completed.

4 (b) Obtain references from the applicant's current employer and two
5 most recent previous employers except for applicants who have been employed
6 for at least five years by the applicant's most recent employer.

7 (c) Provide general supervision of the applicant until the date that
8 the fingerprint check is completed.

9 (d) Report to the superintendent of public instruction on June 30 and
10 December 31 the number of applicants hired ~~prior to~~ BEFORE the completion of
11 a fingerprint check. In addition, the school district shall report the
12 number of applicants for whom fingerprint checks were not received after one
13 hundred twenty days and after one hundred seventy-five days of hire.

14 L. Notwithstanding any other law, this section does not apply to
15 pupils who attend school in a school district and who are also employed by a
16 school district.

17 M. A person who makes a false statement, representation or
18 certification in any application for employment with the school district is
19 guilty of a class 3 misdemeanor.

20 N. For the purpose of this section, "background investigation" means
21 any communication with an employee's or applicant's former employer that
22 concerns the education, training, experience, qualifications and job
23 performance of the employee or applicant and that is used for the purpose of
24 evaluating the employee or applicant for employment. Background
25 investigation does not include the results of any state or federal criminal
26 history records check.

27 Sec. 100. Section 15-550, Arizona Revised Statutes, is amended to
28 read:

29 15-550. Conviction as unprofessional conduct; penalty

30 A. A teacher who has been convicted of a dangerous crime against
31 children as defined in section ~~13-604.01~~ 13-705 or has been convicted of a
32 violation of section 13-1404 or 13-1406 in which the victim was a minor or
33 section 13-1405 or an act committed in another state or territory which if
34 committed in this state would have been a dangerous crime against children or
35 a violation of section 13-1404 OR 13-1406 in which the victim was a minor or
36 a violation of section 13-1405 ~~or 13-1406~~ is guilty of unprofessional conduct
37 and the teacher's certificate shall be revoked permanently immediately on
38 notification of conviction by the clerk of the court or the magistrate.

39 B. A teacher who has been convicted of a preparatory offense as
40 prescribed in section 13-1001 of any of the offenses prescribed in subsection
41 A of this section or any crime that requires the teacher to register as a sex
42 offender is guilty of unprofessional conduct and the teacher's certificate
43 shall be permanently revoked on notification of the conviction by a court of
44 competent jurisdiction.

1 Sec. 101. Section 20-448, Arizona Revised Statutes, is amended to
2 read:

3 20-448. Unfair discrimination; definitions

4 A. A person shall not make or permit any unfair discrimination between
5 individuals of the same class and equal expectation of life in the rates
6 charged for any contract of life insurance or of life annuity or in the
7 dividends or other benefits payable or in any other of the terms and
8 conditions of the contract.

9 B. A person shall not make or permit any unfair discrimination
10 respecting hemophiliacs or between individuals of the same class and of
11 essentially the same hazard in the amount of premium, policy fees or rates
12 charged for any policy or contract of disability insurance or in the benefits
13 payable or in any of the terms or conditions of the contract, or in any other
14 manner whatever. The provisions of this subsection regarding hemophiliacs do
15 not apply to any policy or subscription contract which provides only benefits
16 for specific diseases or for accidental injuries or which provides only
17 indemnity for blood transfusion services or replacement of whole blood
18 products, fractions or derivatives.

19 C. As to kinds of insurance other than life and disability, a person
20 shall not make or permit any unfair discrimination in favor of particular
21 persons or between insureds or subjects of insurance having substantially
22 like insuring, risk and exposure factors, or expense elements, in the terms
23 or conditions of any insurance contract, or in the rate or amount of premium
24 charged.

25 D. An insurer shall not refuse to consider an application for life or
26 disability insurance on the basis of a genetic condition, developmental delay
27 or developmental disability.

28 E. The rejection of an application or the determining of rates, terms
29 or conditions of a life or disability insurance contract on the basis of a
30 genetic condition, developmental delay or developmental disability
31 constitutes unfair discrimination, unless the applicant's medical condition
32 and history and either claims experience or actuarial projections establish
33 that substantial differences in claims are likely to result from the genetic
34 condition, developmental delay or developmental disability.

35 F. In addition to the provisions in subsection E of this section, the
36 rejection of an application or the determination of rates, terms or
37 conditions of a disability insurance contract on the basis of a genetic
38 condition constitutes unfair discrimination in the absence of a diagnosis of
39 the condition related to information obtained as a result of a genetic test.

40 G. An insurer that offers life, disability, property or liability
41 insurance contracts shall not deny a claim incurred or deny, refuse, refuse
42 to renew, restrict, cancel, exclude or limit coverage or charge a different
43 rate for the same coverage solely on the basis that the insured or proposed
44 insured is or has been a victim of domestic violence or is an entity or
45 individual that provides counseling, shelter, protection or other services to

1 victims of domestic violence. If an insurer that offers life, disability,
2 property or liability insurance contracts denies a claim incurred or denies,
3 refuses, refuses to renew, restricts, cancels, excludes or limits coverage or
4 charges a different rate for the same coverage on the basis of a mental or
5 physical condition and the insured or the proposed insured is or has been a
6 victim of domestic violence, the insurer shall submit a written explanation
7 to the insured or proposed insured of the reasons for the insurer's actions,
8 in accordance with section 20-2110. The fact that an insured or proposed
9 insured is or has been the victim of domestic violence is not a mental or
10 physical condition. Nothing contained in this subsection is intended to
11 provide any private right or cause of action to or on behalf of any applicant
12 or insured. It is the specific intent of this subsection to provide solely
13 an administrative remedy to the director for any violation of this section.
14 Nothing in this subsection prevents an insurer from refusing to issue a life
15 insurance policy insuring a person who has been the victim of domestic
16 violence if either of the following is true:

17 1. The family or household member who commits the act of domestic
18 violence is the applicant for or prospective owner of the policy or would be
19 the beneficiary of the policy and any of the following is true:

20 (a) The applicant or prospective beneficiary of the policy is known,
21 on the basis of police or court records, to have committed an act of domestic
22 violence.

23 (b) The insurer has knowledge of an arrest or conviction for a
24 domestic violence related offense by the family or household member.

25 (c) The insurance company has other reasonable grounds to believe, and
26 those grounds are corroborated, that the applicant or proposed beneficiary of
27 a policy is a family or household member committing acts of domestic
28 violence.

29 2. The applicant or prospective owner of the policy lacks an insurable
30 interest in the insured.

31 H. Nothing in subsection G of this section prevents an insurer that:

32 1. Offers life or disability insurance contracts from underwriting
33 coverage on the basis of an insured's or proposed insured's mental or
34 physical condition if the underwriting:

35 (a) Does not consider whether or not the mental or physical condition
36 was caused by an act of domestic violence.

37 (b) Is the same for an insured or proposed insured who is not the
38 victim of domestic violence as it is for an insured or proposed insured who
39 is the victim of domestic violence.

40 (c) Does not violate any other rule or law.

41 2. Offers property or liability insurance contracts from underwriting
42 coverage on the basis of the insured's claims history or characteristics of
43 the insured's property and using rating criteria consistent with section
44 20-384.

1 I. Any determination made pursuant to section 20-2537 by the external
2 independent review organization shall not be considered in connection with
3 the evaluation of whether any person subject to this article has complied
4 with this section.

5 J. A property or liability insurer may exclude coverage for losses
6 caused by an insured's intentional or fraudulent act. The exclusion shall
7 not deny an insured's otherwise covered property loss if the property loss is
8 caused by an act of domestic violence by another insured under the policy and
9 the insured who claims the property loss cooperates in any investigation
10 relating to the loss and did not cooperate in or contribute to the creation
11 of the property loss. The insurer may apply reasonable standards of proof
12 for claims filed under this subsection. The insurer may limit the payment to
13 the insured's insurable interest in the property minus any payment made to
14 any mortgagee or other party with a secured interest in the property. This
15 subsection does not require an insurer to pay any amount that is more than
16 the amount of the loss or property coverage limits. An insurer who pays a
17 claim under this subsection has the right of subrogation against any person
18 except the victim of the domestic violence.

19 K. All insurers shall adopt and adhere to written policies that are
20 consistent with ~~title 20~~, chapter 11 OF THIS TITLE and that specify the
21 procedures to be followed by employees, contractors, producers, agents and
22 brokers to ensure the privacy of and to help protect the safety of a victim
23 of domestic violence when taking an application, investigating a claim,
24 pursuing subrogation or taking any other action relating to a policy or claim
25 involving a victim of domestic violence. Insurers shall distribute the
26 written policies to employees, contractors, producers, agents and brokers who
27 have access to personal or privileged information regarding domestic
28 violence.

29 L. For the purposes of this section:

30 1. "Developmental delay" means a delay of at least one and one-half
31 standard deviations from the norm.

32 2. "Developmental disability" has the same meaning prescribed in
33 section 36-551.

34 3. "Domestic violence" means any act that is a dangerous crime against
35 children as defined in section ~~13-604.01~~ 13-705 or an offense defined in
36 section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through
37 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph
38 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923 or
39 13-3623, if any of the following applies:

40 (a) The relationship between the victim and the defendant is one of
41 marriage or former marriage or of persons residing or having resided in the
42 same household.

43 (b) The victim and the defendant have a child in common.

44 (c) The victim or the defendant is pregnant by the other party.

1 (d) The victim is related to the defendant or the defendant's spouse
2 by blood or court order as a parent, grandparent, child, grandchild, brother
3 or sister, or by marriage as a parent-in-law, grandparent-in-law, stepparent,
4 step-grandparent, stepchild, step-grandchild, brother-in-law or
5 sister-in-law.

6 (e) The victim is a child who resides or has resided in the same
7 household as the defendant and is related by blood to a former spouse of the
8 defendant or to a person who resides or has resided in the same household as
9 the defendant.

10 4. "Gene products" means gene fragments, nucleic acids or proteins
11 derived from deoxyribonucleic acids that would be a reflection of or indicate
12 DNA sequence information.

13 5. "Genetic condition" means a specific chromosomal or single-gene
14 genetic condition.

15 6. "Genetic test" means an analysis of an individual's DNA, gene
16 products or chromosomes that indicates a propensity for or susceptibility to
17 illness, disease, impairment or other disorders, whether physical or mental,
18 or that demonstrates genetic or chromosomal damage due to environmental
19 factors, or carrier status for a disease or disorder.

20 Sec. 102. Section 25-411, Arizona Revised Statutes, is amended to
21 read:

22 25-411. Modification of custody decree; affidavit; contents

23 A. A person shall not make a motion to modify a custody decree earlier
24 than one year after its date, unless the court permits it to be made on the
25 basis of affidavits that there is reason to believe the child's present
26 environment may seriously endanger the child's physical, mental, moral or
27 emotional health. At any time after a joint custody order is entered, a
28 parent may petition the court for modification of the order on the basis of
29 evidence that domestic violence involving a violation of section 13-1201 or
30 13-1204, spousal abuse or child abuse occurred since the entry of the joint
31 custody order. Six months after a joint custody order is entered, a parent
32 may petition the court for modification of the order based on the failure of
33 the other parent to comply with the provisions of the order. A motion or
34 petition to modify a custody order shall meet the requirements of this
35 section. Except as otherwise provided in subsection B of this section, if a
36 custodial parent is a member of the United States armed forces, the court
37 shall consider the terms of that parent's military family care plan to
38 determine what is in the child's best interest during the custodial parent's
39 military deployment.

40 B. For the purposes of a motion to modify a custody decree, the
41 military deployment of a custodial parent who is a member of the United
42 States armed forces is not a change in circumstances that materially affects
43 the welfare of the child if the custodial parent has filed a military family
44 care plan with the court at a previous custody proceeding and if the military
45 deployment is less than six months.

1 C. A custody decree or order that a court enters in contemplation of
2 or during the military deployment of a custodial parent outside of the
3 continental United States shall specifically reference the deployment and
4 include provisions governing the custody of the minor child after the
5 deployment ends. Either parent may file a petition with the court after the
6 deployment ends to modify the decree or order, in compliance with subsection
7 F of this section. The court shall hold a hearing or conference on the
8 petition within thirty days after the petition is filed.

9 D. The court may modify an order granting or denying parenting time
10 rights whenever modification would serve the best interest of the child, but
11 the court shall not restrict a parent's parenting time rights unless it finds
12 that the parenting time would endanger seriously the child's physical,
13 mental, moral or emotional health.

14 E. If after a custody or parenting time order is in effect one of the
15 parents is charged with a dangerous crime against children as defined in
16 section ~~13-604.01~~ 13-705, child molestation as defined in section 13-1410 or
17 an act of domestic violence as prescribed in section 13-3601 in which the
18 victim is a minor, the other parent may petition the court for an expedited
19 hearing. Pending the expedited hearing, the court may suspend parenting time
20 or change custody ex parte.

21 F. To modify any type of custody order a person shall submit an
22 affidavit or verified petition setting forth detailed facts supporting the
23 requested modification and shall give notice, together with a copy of the
24 affidavit or verified petition, to other parties to the proceeding, who may
25 file opposing affidavits. The court shall deny the motion unless it finds
26 that adequate cause for hearing the motion is established by the pleadings,
27 in which case it shall set a date for hearing on why the requested
28 modification should not be granted.

29 G. The court shall assess attorney fees and costs against a party
30 seeking modification if the court finds that the modification action is
31 vexatious and constitutes harassment.

32 H. Subsection ~~E~~ F of this section does not apply if the requested
33 relief is for the modification or clarification of visitation and not for a
34 change of joint custody, joint legal custody, joint physical custody or sole
35 custody.

36 Sec. 103. Section 31-281, Arizona Revised Statutes, is amended to
37 read:

38 31-281. Transition program; drug offenders; report

39 A. The department shall establish a transition program. The
40 department shall contract with any private or nonprofit entity to provide
41 eligible inmates with transition services and shall procure transition
42 services pursuant to title 41, chapter 23.

43 B. The director shall adopt rules to implement this article. The
44 rules shall include:

- 1 1. Eligibility criteria for receiving the contracted entity's
2 transition services. To be eligible, at a minimum, an inmate shall:
- 3 (a) Be convicted of a violation of title 13, chapter 34, except that
4 an inmate who was convicted of a violation of title 13, chapter 14 or 17 or
5 an offense involving death or physical injury or the use of a deadly weapon
6 or dangerous instrument is not eligible to participate in the transition
7 program.
- 8 (b) Be classified by the state department of corrections as a low risk
9 to the community.
- 10 (c) Not have been convicted of a violent crime as defined in section
11 ~~13-604.04~~ 13-901.03.
- 12 (d) Have a nonviolent risk score as determined by the department.
- 13 (e) Not have any felony detainers.
- 14 (f) Agree in writing to provide specific information after the inmate
15 is released. The department shall use the information to prepare the report
16 prescribed by subsection D, paragraph 3 of this section.
- 17 (g) Have made satisfactory progress on the inmate's individualized
18 corrections plan as determined by the department.
- 19 (h) Have maintained civil behavior while incarcerated as determined by
20 the department.
- 21 (i) Be current on restitution payments pursuant to section 31-254.
- 22 (j) Have a need and ability to benefit from the program as determined
23 by the department.
- 24 2. A requirement that the contracted entity train mentors or certify
25 that mentors are trained.
- 26 3. The services that may be offered to an inmate.
- 27 4. The criteria for inmates to participate in a three month early
28 release program. Inmates are not required to receive an early release.
- 29 5. A requirement that an inmate may be released pursuant to this
30 article only after the victim has been provided notice and an opportunity to
31 be heard. The department shall provide notice to a victim who has provided a
32 current address or other contact information. The notice shall inform the
33 victim of the opportunity to be heard on the early release. Any objection to
34 the inmate's early release must be made within twenty days after the
35 department has mailed the notice to the victim.
- 36 C. In awarding contracts under this section the department shall
37 comply with section 41-3751.
- 38 D. The department shall:
- 39 1. Conduct an annual study to determine the recidivism rate of persons
40 who receive the contracted entity's services pursuant to this article.
- 41 2. Evaluate the inmate and shall provide the information to the
42 contracted entity. The contracted entity shall make the final determination
43 of program eligibility.

1 3. Submit a written report to the governor, the president of the
2 senate and the speaker of the house of representatives on or before July 31
3 of each year and provide a copy of this report to the secretary of state and
4 the director of the Arizona state library, archives and public records. The
5 report shall contain the following information:

6 (a) The recidivism rate of persons who receive services pursuant to
7 this article.

8 (b) The number of persons who received services pursuant to this
9 article.

10 (c) The number of persons who were not provided services pursuant to
11 this article and who were on a list waiting to receive services.

12 (d) The types of services provided.

13 (e) The number of persons who received each type of service provided.

14 Sec. 104. Section 31-403, Arizona Revised Statutes, is amended to
15 read:

16 31-403. Commutation; restrictions on consideration

17 A. A person who is otherwise eligible for commutation and who is
18 denied a commutation of sentence recommendation shall not petition or be
19 considered by the board for commutation of that sentence for a period of five
20 years following the date of the board's denial of the commutation
21 recommendation if the offense for which the commutation recommendation was
22 denied involved any of the following:

23 1. Death in violation of section 13-1104 or 13-1105.

24 2. Serious physical injury if the person was sentenced pursuant to
25 section ~~13-604~~ 13-704.

26 3. A dangerous crime against children as defined in section ~~13-604.01~~
27 13-705.

28 4. A felony offense in violation of title 13, chapter 14 or 35.1.

29 B. Notwithstanding subsection A, paragraph 2 of this section, if, in
30 its sole discretion, the board determines that the person committed an
31 offense that involved serious physical injury as defined in section 13-105
32 and that the person was not sentenced pursuant to section ~~13-604~~ 13-704, the
33 board may order that the person shall not petition or be considered by the
34 board for commutation of that sentence for a period of five years following
35 the date of the board's denial of the commutation recommendation.

36 C. Notwithstanding subsection A or B of this section, the board, at
37 the time of denial, may lengthen the five year period of time prescribed in
38 subsection A or B of this section to a period of up to ten years, except that
39 if the offense for which commutation was denied involved a violation of an
40 offense listed in subsection A, paragraph 1 of this section, the board may
41 lengthen the period of time to a period of time that is greater than ten
42 years and that is specified by the board by one of the following votes:

43 1. A majority affirmative vote if four or more members consider the
44 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 and the chairman concurs after
4 reviewing the information considered by the two members. If the chairman is
5 one of the two members constituting a two member quorum under section 31-401,
6 subsection I, and both the chairman and the other member vote to lengthen the
7 five year period to a period of time greater than ten years, no further
8 action shall be taken and the decision on whether to lengthen the five year
9 period shall be considered by the board at a meeting at which at least three
10 members are present and voting.

11 D. The board may waive the provisions of subsections A, B and C of
12 this section if any of the following applies:

13 1. The person is in imminent danger of death due to a medical
14 condition, as determined by the board.

15 2. The person is the subject of a warrant of execution.

16 3. The sentence for which commutation is sought is the subject of a
17 special order issued by the court pursuant to section 13-603, subsection L.

18 E. This section applies only to offenses that are committed on or
19 after ~~the effective date of this section~~ JANUARY 1, 2006.

20 Sec. 105. Section 31-412, Arizona Revised Statutes, is amended to
21 read:

22 31-412. Criteria for release on parole; release; custody of
23 parolee; definition

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

39 B. Notwithstanding subsection A of this section, the director of the
40 state department of corrections may certify as eligible for parole any
41 prisoner, regardless of the classification of the prisoner, who has reached
42 the prisoner's parole eligibility date pursuant to section 41-1604.09,
43 subsection D, unless an increased term has been imposed pursuant to section
44 41-1604.09, subsection F, for the sole purpose of parole to the custody of
45 any other jurisdiction to serve a term of imprisonment imposed by the other

1 jurisdiction or to stand trial on criminal charges in the other jurisdiction
2 or for the sole purpose of parole to the custody of the state department of
3 corrections to serve any consecutive term imposed on the prisoner. On
4 review of an application for parole pursuant to this subsection the board may
5 authorize parole if, in its discretion, parole appears to be in the best
6 interests of the state.

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

12 1. A majority affirmative vote if four or more members consider the
13 action.

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

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

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

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

27 F. The board shall not disclose the address of the victim or the
28 victim's immediate family to any party without the written consent of the
29 victim or the victim's family.

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

32 1. A serious offense as defined in section ~~13-604~~ 13-706, subsection
33 ~~W~~ F, paragraph ~~4~~ 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j)
34 or (k).

35 2. A dangerous crime against children as defined in section ~~13-604.01~~
36 13-705. The citation of section ~~13-604.01~~ 13-705 is not a necessary element
37 for a serious offense designation.

38 3. A conviction under a prior criminal code for any offense that
39 possesses reasonably equivalent offense elements as the offense elements that
40 are listed under section ~~13-604, subsection W, paragraph 4 and section~~
41 ~~13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR
42 SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

1 the director the release credits may subsequently be restored. The director
2 shall maintain an account of release credits earned by each prisoner.

3 D. The director, according to rules ~~promulgated~~ ADOPTED by the
4 department, may authorize the release of any prisoner who has earned release
5 credits which, when added to the time served by the prisoner, equal the
6 sentence imposed by the court which shall be the prisoner's earned release
7 credit date. A prisoner on earned release credit release is not under the
8 control of the department and the department is not required to provide
9 parole services or otherwise supervise any prisoner released, except that the
10 department may revoke the release of the prisoner until the final expiration
11 of his sentence if the department has reason to believe that the released
12 prisoner has engaged in criminal conduct during the term of his release. If
13 a prisoner has a term of probation to be completed or served, the probation
14 department shall begin supervision of the prisoner when the prisoner is
15 released on the earned release credit date. If the prisoner's term of
16 probation equals or exceeds the prisoner's final expiration date, the
17 director OF THE STATE DEPARTMENT OF CORRECTIONS shall issue the prisoner an
18 absolute discharge on the prisoner's earned release credit date. The
19 prisoner is not under the control of the department and the department is not
20 required to provide parole services or otherwise supervise the prisoner. If
21 the prisoner's term of probation is less than the prisoner's final expiration
22 date, the prisoner is not under the control of the department and the
23 department is not required to provide parole services or otherwise supervise
24 the prisoner, except that the department may revoke the release at any time
25 between the earned release credit date and the final expiration date if the
26 department has reason to believe that the released prisoner has engaged in
27 criminal conduct during the term of release. The director may issue the
28 prisoner an absolute discharge from the sentence of imprisonment if it
29 appears that the prisoner will live and remain at liberty without violating
30 the law and it is in the best interest of the state. The STATE department of
31 corrections shall provide reasonable notice to the probation department of
32 the scheduled release of the prisoner from confinement by the STATE
33 department OF CORRECTIONS.

34 E. A prisoner shall forfeit five days of the prisoner's earned release
35 credits if the court finds or a disciplinary hearing held after a review by
36 and recommendations from the attorney general's office determines that the
37 prisoner does any of the following:

- 38 1. Brings a claim without substantial justification.
- 39 2. Unreasonably expands or delays a proceeding.
- 40 3. Testifies falsely or otherwise presents false information or
41 material to the court.
- 42 4. Submits a claim that is intended solely to harass the party it is
43 filed against.

1 F. If the prisoner does not have five days of earned release credits,
2 the prisoner shall forfeit the prisoner's existing earned release credits and
3 be ineligible from accruing earned release credits until the number of earned
4 release credits the prisoner would have otherwise accrued equals the
5 difference between five days and the number of existing earned release credit
6 days the prisoner forfeits pursuant to this section.

7 G. This section applies only to persons who commit felonies before
8 January 1, 1994.

9 Sec. 108. Section 41-1604.11, Arizona Revised Statutes, is amended to
10 read:

11 41-1604.11. Order for removal; purposes; duration; work
12 furlough; notice; failure to return;
13 classification; applicability; definition

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

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

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

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

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

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

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

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

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

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

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

44 I. The director shall transmit a monthly report containing the name,
45 date of birth, offense for which the inmate was sentenced, length of the

1 sentence and date of admission to the state department of corrections of each
2 inmate on work furlough or home arrest to the chairperson of the house of
3 representatives judiciary committee or its successor committee and the
4 chairperson of the senate judiciary committee or its successor committee.
5 The director shall also submit a report containing this information for any
6 inmate released on work furlough or home arrest within a jurisdiction to the
7 county attorney, sheriff and chief of police for the jurisdiction in which
8 the inmate is released on work furlough or home arrest.

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

12 K. At any given time if the director declares there is a shortage of
13 beds available for inmates within the state department of corrections, the
14 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
15 suspended for any inmate who has served not less than six months of the
16 sentence imposed by the court, who has not been previously convicted of a
17 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
18 a sexual offense, the use or exhibition of a deadly weapon or dangerous
19 instrument or the infliction of serious physical injury pursuant to section
20 ~~13-604~~ 13-704, and the inmate shall be continuously eligible for parole, home
21 arrest or work furlough.

22 L. Prisoners who have served at least one calendar year and who are
23 serving a sentence for conviction of a crime committed on or after October 1,
24 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02
25 or 36-1002.03, and who are sentenced to the custody of the state department
26 of corrections, may be temporarily released, according to the rules of the
27 department, at the discretion of the director, one hundred eighty calendar
28 days prior to expiration of the term imposed and shall remain under the
29 control of the state department of corrections until expiration of the
30 maximum sentence specified. If an offender released under this section or
31 pursuant to section 31-411, subsection B violates the rules, the offender may
32 be returned to custody and shall be classified to a parole class as provided
33 by the rules of the department.

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

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

38 1. A serious offense as defined in section ~~13-604~~ 13-706, subsection
39 ~~W- F~~, paragraph ~~4- 1~~, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j)
40 or (k).

41 2. A dangerous crime against children as defined in section ~~13-604.01~~
42 13-705. The citation of section ~~13-604.01~~ 13-705 is not a necessary element
43 for a serious offense designation.

1 3. A conviction under a prior criminal code for any offense that
2 possesses reasonably equivalent offense elements as the offense elements that
3 are listed under section ~~13-604, subsection W, paragraph 4 or section~~
4 ~~13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR
5 SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

6 Sec. 109. Section 41-1604.13, Arizona Revised Statutes, is amended to
7 read:

8 41-1604.13. Home arrest; eligibility; victim notification;
9 conditions; applicability; definitions

10 A. An inmate who has served not less than six months of the sentence
11 imposed by the court is eligible for the home arrest program if the inmate:

12 1. Meets the following criteria:

13 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
14 ~~the intentional or knowing infliction of serious physical injury or the use~~
15 ~~or exhibition of a deadly weapon or dangerous instrument~~ A DANGEROUS OFFENSE.

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

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

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

20 3. Is eligible for work furlough.

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

22 B. The board of executive clemency shall determine which inmates are
23 released to the home arrest program based on the criteria in subsection A of
24 this section and based on a determination that there is a substantial
25 probability that the inmate will remain at liberty without violating the law
26 and that the release is in the best interests of the state after considering
27 the offense for which the inmate is presently incarcerated, the prior record
28 of the inmate, the conduct of the inmate while incarcerated and any other
29 information concerning the inmate that is in the possession of the state
30 department of corrections, including any presentence report. The board
31 maintains the responsibility of revocation as applicable to all parolees.

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

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

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

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

- 1 D. Home arrest is conditioned on the following:
- 2 1. Active electronic monitoring surveillance for a minimum term of one
- 3 year or until eligible for general parole.
- 4 2. Participation in gainful employment or other beneficial activities.
- 5 3. Submission to alcohol and drug tests as mandated.
- 6 4. Payment of the electronic monitoring fee in an amount determined by
- 7 the board of not less than one dollar per day and not more than the total
- 8 cost of the electronic monitoring unless, after determining the inability of
- 9 the inmate to pay the fee, the board requires payment of a lesser amount.
- 10 The fees collected shall be returned to the department's home arrest program
- 11 to offset operational costs of the program.
- 12 5. Remaining at the inmate's place of residence at all times except
- 13 for movement out of the residence according to mandated conditions.
- 14 6. Adherence to any other conditions imposed by the court, board of
- 15 executive clemency or supervising corrections officers.
- 16 7. Compliance with all other conditions of supervision.
- 17 E. Before holding a hearing on home arrest, the board on request shall
- 18 notify and afford an opportunity to be heard to the presiding judge of the
- 19 superior court in the county in which the inmate requesting home arrest was
- 20 sentenced, the prosecuting attorney and the director of the arresting law
- 21 enforcement agency. The board shall notify the victim of the offense for
- 22 which the inmate is incarcerated. The notice shall state the name of the
- 23 inmate requesting home arrest, the offense for which the inmate was
- 24 sentenced, the length of the sentence and the date of admission to the
- 25 custody of the state department of corrections. The notice to the victim
- 26 shall also inform the victim of the victim's right to be present and to
- 27 submit a written report to the board expressing the victim's opinion
- 28 concerning the inmate's release. No hearing concerning home arrest may be
- 29 held until fifteen days after the date of giving the notice. On mailing the
- 30 notice, the board shall file a hard copy of the notice as evidence that
- 31 notification was sent.
- 32 F. An inmate who is placed on home arrest is on inmate status, is
- 33 subject to all the limitations of rights and movement and is entitled only to
- 34 due process rights of return.
- 35 G. If an inmate violates a condition of home arrest that poses any
- 36 threat or danger to the community, or commits an additional felony offense,
- 37 the board shall revoke the home arrest and return the inmate to the custody
- 38 of the state department of corrections to complete the term of imprisonment
- 39 as authorized by law.
- 40 H. The ratio of supervising corrections officers to supervisees in the
- 41 home arrest program shall be no greater than one officer for every
- 42 twenty-five supervisees.
- 43 I. The board shall determine when the supervisee is eligible for
- 44 transfer to the regular parole program pursuant to section 31-411.

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

3 K. For the purposes of this section: ~~—~~

4 1. "DANGEROUS OFFENSE" HAS THE SAME MEANING PRESCRIBED IN SECTION
5 13-105.

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

7 ~~1-~~ (a) A serious offense as defined in section ~~13-604~~ 13-706,
8 subsection ~~W~~ F, paragraph ~~4~~ 1, subdivision (a), (b), (c), (d), (e), (g),
9 (h), (i), (j) or (k).

10 ~~2-~~ (b) A dangerous crime against children as defined in section
11 ~~13-604.01~~ 13-705. The citation of section ~~13-604.01~~ 13-705 is not a necessary
12 element for a serious offense designation.

13 ~~3-~~ (c) A conviction under a prior criminal code for any offense that
14 possesses reasonably equivalent offense elements as the offense elements that
15 are listed under section ~~13-604, subsection W, paragraph 4 and section~~
16 ~~13-604.01, subsection N, paragraph 1~~ 13-705, SUBSECTION P, PARAGRAPH 1 OR
17 SECTION 13-706, SUBSECTION F, PARAGRAPH 1.

18 Sec. 110. Section 41-1604.14, Arizona Revised Statutes, is amended to
19 read:

20 ~~41-1604.14.~~ 41-1604.14. Release of prisoners with detainees; eligibility;
21 revocation of release

22 A. Notwithstanding any law to the contrary, the director may release a
23 prisoner to the custody and control of the United States immigration and
24 ~~naturalization service~~ CUSTOMS ENFORCEMENT if all of the following
25 requirements are satisfied:

26 1. The department receives an order of deportation for the prisoner
27 from the United States immigration and naturalization service.

28 2. The prisoner has served at least one-half of the sentence imposed
29 by the court.

30 3. The prisoner was convicted of a class 3, 4, 5 or 6 felony offense.

31 4. The prisoner was not convicted of an offense under title 13,
32 chapter 11.

33 5. The prisoner was not convicted of a sexual offense pursuant to
34 ~~sections~~ SECTION 13-1404, 13-1405, 13-1406 or 13-1410.

35 6. The prisoner was not sentenced pursuant to section ~~13-604~~ 13-703,
36 SECTION 13-704, SECTION 13-706, SUBSECTION A OR SECTION 13-708, SUBSECTION D.

37 B. If a prisoner who is released pursuant to this section returns
38 illegally to the United States, on notification from any federal or state law
39 enforcement agency that the prisoner is in custody, the director shall revoke
40 the prisoner's release. The prisoner shall not be eligible for parole,
41 community supervision or any other release from confinement until the
42 remainder of the sentence of imprisonment is served, except pursuant to
43 section 31-233, subsection A or B.

1 Sec. 111. Section 41-1604.15, Arizona Revised Statutes, is amended to
2 read:

3 41-1604.15. Probation or other release noneligibility; violent
4 crime; under the influence of marijuana, a
5 dangerous drug or a narcotic drug

6 Notwithstanding any law to the contrary, any person who is convicted of
7 a violent crime as defined in section ~~13-604.04~~ 13-901.03 that is committed
8 while the person is under the influence of marijuana, a dangerous drug or a
9 narcotic drug as defined in section 13-3401 is not eligible for probation or
10 release on any basis until the entire sentence has been served. Pursuant to
11 section 41-1604.07, the director shall include any such person in a
12 noneligible earned release credit class and the prisoner is not eligible for
13 placement in an eligible earned release credit class.

14 Sec. 112. Section 41-1604.16, Arizona Revised Statutes, is amended to
15 read:

16 41-1604.16. Parole or community supervision eligibility for
17 persons previously convicted of possession or use
18 of marijuana, a dangerous drug or a narcotic drug

19 A. Notwithstanding any law to the contrary, if a prisoner has been
20 convicted of the possession or use of marijuana pursuant to section 13-3405,
21 subsection A, paragraph 1, possession or use of a dangerous drug pursuant to
22 section 13-3407, subsection A, paragraph 1 or possession or use of a narcotic
23 drug pursuant to section 13-3408, subsection A, paragraph 1 and the prisoner
24 is not concurrently serving another sentence, the prisoner is eligible for
25 parole or if the offense for which the prisoner was incarcerated was
26 committed on or after January 1, 1994, the prisoner is eligible for community
27 supervision.

28 B. Any person who has previously been convicted of a violent crime as
29 defined in section ~~13-604.04~~ 13-901.03 or who has previously been convicted
30 and sentenced in any jurisdiction in the United States of any felony offense
31 is not eligible for parole or community supervision pursuant to this section.
32 If the department is unable to determine if a person has a prior felony
33 conviction, the department shall refer the inmate record to the sentencing
34 court. The sentencing court shall determine if the person has a prior felony
35 conviction. For the purposes of this subsection, the age of the conviction
36 does not matter.

37 C. On or before June 3, 1997, the director of the state department of
38 corrections shall prepare a list that identifies each person who is eligible
39 for parole or community supervision pursuant to this section and shall
40 deliver the list to the board of executive clemency.

41 D. An offense **THAT IS** committed in another jurisdiction **AND THAT IS**
42 not classified as a felony in Arizona is not a felony offense for purposes of
43 this section.

1 Sec. 113. Section 41-1609.05, Arizona Revised Statutes, is amended to
2 read:

3 41-1609.05. Community accountability pilot program; fund;
4 program termination; definition

5 A. The department shall contract with an experienced private or
6 nonprofit entity to operate a community accountability pilot program to
7 provide eligible inmates with supervision and treatment services. The
8 department shall procure community accountability services pursuant to
9 chapter 23 of this title.

10 B. Inmates enrolled in the program may be removed by the director
11 pursuant to subsection E of this section.

12 C. The goals of the community accountability pilot program include:

13 1. Reducing recidivism.

14 2. Providing treatment and rehabilitation services based on the
15 inmate's risk for recidivism and need for treatment.

16 3. Providing supervision through electronic monitoring based on the
17 inmate's risk for recidivism and need for supervision.

18 4. Preparing eligible inmates for independent living following
19 community supervision.

20 5. Enhancing public safety.

21 D. The community accountability pilot program may provide services to
22 eligible inmates that are designed to lower recidivism rates, including the
23 following community based services:

24 1. Substance abuse education and treatment.

25 2. Random mandatory drug testing.

26 3. Electronic monitoring, remote alcohol testing, global positioning
27 system tracking and voice identification community tracking.

28 4. Life skills programming.

29 5. Employment preparation.

30 6. Anger management.

31 7. Parenting skills, family orientation and family reunification.

32 8. Cognitive skills training.

33 9. General equivalency diplomas and adult basic education.

34 10. Housing assistance.

35 11. Health care and stress management.

36 12. Transportation planning.

37 13. Group and individual counseling.

38 E. The director shall identify inmates who are eligible for the
39 community accountability pilot program and shall determine all supervision,
40 admission and termination requirements. The director may remove an inmate
41 from the program. The director may order an eligible inmate to participate
42 in the program in lieu of parole or community supervision revocation or if
43 the inmate is at risk of violating or revocation of parole or community
44 supervision.

1 F. The contracting entity shall operate the program, including the
2 management of any facility and its staff, the design of the program and the
3 installation and maintenance of all equipment necessary for operation of any
4 facility. Facilities that are established and operated under the pilot
5 program shall be known as community accountability reporting centers. The
6 contracting entity shall use existing risk assessment scores utilized by the
7 department to establish treatment services based on the inmate's risk and
8 need. Case managers shall provide monthly reports to the eligible inmate's
9 supervising officer, except that a violation shall be reported within
10 twenty-four hours.

11 G. After an eligible inmate has been in the program for sixty days or
12 more, the department may require as a condition of program participation that
13 the eligible inmate pay a supervision fee, unless the inmate is determined to
14 be indigent. The case manager shall monitor the collection of the fee.
15 Monies collected pursuant to this subsection shall be deposited, pursuant to
16 sections 35-146 and 35-147, in the community accountability fund established
17 pursuant to subsection H of this section.

18 H. The community accountability fund is established consisting of fees
19 collected pursuant to subsection G of this section. The director shall
20 administer the fund for the purposes of this section. Monies in this fund
21 are continuously appropriated.

22 I. During each year of operation of the pilot program, the contracting
23 entity shall provide monthly reports to the department and the joint
24 legislative budget committee.

25 J. The pilot program established by this section ends on July 1, 2012
26 pursuant to section 41-3102.

27 K. For the purposes of this section, "eligible inmate" means an inmate
28 who is on community supervision or who is eligible for community supervision
29 and who has not been convicted of a violent crime as defined in section
30 ~~13-604.04~~ 13-901.03, a dangerous crime against children as defined in section
31 ~~13-604.01~~ 13-705 or a sexual offense pursuant to title 13, chapter 14 or
32 35.1.

33 Sec. 114. Section 41-1758.03, Arizona Revised Statutes, is amended to
34 read:

35 41-1758.03. Fingerprint clearance cards; issuance; immunity

36 A. On receiving the state and federal criminal history record of a
37 person, the division shall compare the record with the list of criminal
38 offenses that preclude the person from receiving a fingerprint clearance
39 card. If the person's criminal history record does not contain any of the
40 offenses listed in subsections B and C of this section, the division shall
41 issue the person a fingerprint clearance card.

42 B. A person who is subject to registration as a sex offender in this
43 state or any other jurisdiction or who is awaiting trial on or who has been
44 convicted of committing or attempting, soliciting, facilitating or conspiring
45 to commit one or more of the following offenses in this state or the same or

- 1 similar offenses in another state or jurisdiction is precluded from receiving
2 a fingerprint clearance card:
- 3 1. Sexual abuse of a vulnerable adult.
 - 4 2. Incest.
 - 5 3. First or second degree murder.
 - 6 4. Sexual assault.
 - 7 5. Sexual exploitation of a minor.
 - 8 6. Sexual exploitation of a vulnerable adult.
 - 9 7. Commercial sexual exploitation of a minor.
 - 10 8. Commercial sexual exploitation of a vulnerable adult.
 - 11 9. Child prostitution as prescribed in section 13-3212.
 - 12 10. Child abuse.
 - 13 11. Abuse of a vulnerable adult.
 - 14 12. Sexual conduct with a minor.
 - 15 13. Molestation of a child.
 - 16 14. Molestation of a vulnerable adult.
 - 17 15. A dangerous crime against children as defined in ~~13-604.01~~ SECTION
18 13-705.
 - 19 16. Exploitation of minors involving drug offenses.
 - 20 17. Taking a child for the purposes of prostitution as prescribed in
21 section 13-3206.
 - 22 18. Neglect or abuse of a vulnerable adult.
 - 23 19. Sex trafficking.
 - 24 20. Sexual abuse.
 - 25 21. Production, publication, sale, possession and presentation of
26 obscene items as prescribed in section 13-3502.
 - 27 22. Furnishing harmful items to minors as prescribed in section
28 13-3506.
 - 29 23. Furnishing harmful items to minors by internet activity as
30 prescribed in section 13-3506.01.
 - 31 24. Obscene or indecent telephone communications to minors for
32 commercial purposes as prescribed in section 13-3512.
 - 33 25. Luring a minor for sexual exploitation.
 - 34 26. Enticement of persons for purposes of prostitution.
 - 35 27. Procurement by false pretenses of person for purposes of
36 prostitution.
 - 37 28. Procuring or placing persons in a house of prostitution.
 - 38 29. Receiving earnings of a prostitute.
 - 39 30. Causing one's spouse to become a prostitute.
 - 40 31. Detention of persons in a house of prostitution for debt.
 - 41 32. Keeping or residing in a house of prostitution or employment in
42 prostitution.
 - 43 33. Pandering.
 - 44 34. Transporting persons for the purpose of prostitution, polygamy and
45 concubinage.

- 1 35. Portraying adult as a minor as prescribed in section 13-3555.
2 36. Admitting minors to public displays of sexual conduct as prescribed
3 in section 13-3558.
4 C. A person who is awaiting trial on or who has been convicted of
5 committing or attempting, soliciting, facilitating or conspiring to commit
6 one or more of the following offenses in this state or the same or similar
7 offenses in another state or jurisdiction is precluded from receiving a
8 fingerprint clearance card, except that the person may petition the board of
9 fingerprinting for a good cause exception pursuant to section 41-619.55:
10 1. Manslaughter.
11 2. Endangerment.
12 3. Threatening or intimidating.
13 4. Assault.
14 5. Unlawfully administering intoxicating liquors, narcotic drugs or
15 dangerous drugs.
16 6. Assault by vicious animals.
17 7. Drive by shooting.
18 8. Assaults on officers or fire fighters.
19 9. Discharging a firearm at a structure.
20 10. Indecent exposure.
21 11. Public sexual indecency.
22 12. Aggravated criminal damage.
23 13. Theft.
24 14. Theft by extortion.
25 15. Shoplifting.
26 16. Forgery.
27 17. Criminal possession of a forgery device.
28 18. Obtaining a signature by deception.
29 19. Criminal impersonation.
30 20. Theft of a credit card or obtaining a credit card by fraudulent
31 means.
32 21. Receipt of anything of value obtained by fraudulent use of a credit
33 card.
34 22. Forgery of a credit card.
35 23. Fraudulent use of a credit card.
36 24. Possession of any machinery, plate or other contrivance or
37 incomplete credit card.
38 25. False statement as to financial condition or identity to obtain a
39 credit card.
40 26. Fraud by persons authorized to provide goods or services.
41 27. Credit card transaction record theft.
42 28. Misconduct involving weapons.
43 29. Misconduct involving explosives.
44 30. Depositing explosives.
45 31. Misconduct involving simulated explosive devices.

- 1 32. Concealed weapon violation.
- 2 33. Possession and sale of peyote.
- 3 34. Possession and sale of a vapor-releasing substance containing a
4 toxic substance.
- 5 35. Sale of precursor chemicals.
- 6 36. Possession, use or sale of marijuana, dangerous drugs or narcotic
7 drugs.
- 8 37. Manufacture or distribution of an imitation controlled substance.
- 9 38. Manufacture or distribution of an imitation prescription-only drug.
- 10 39. Manufacture or distribution of an imitation over-the-counter drug.
- 11 40. Possession or possession with intent to use an imitation controlled
12 substance.
- 13 41. Possession or possession with intent to use an imitation
14 prescription-only drug.
- 15 42. Possession or possession with intent to use an imitation
16 over-the-counter drug.
- 17 43. Manufacture of certain substances and drugs by certain means.
- 18 44. Adding poison or other harmful substance to food, drink or
19 medicine.
- 20 45. A criminal offense involving criminal trespass and burglary under
21 title 13, chapter 15.
- 22 46. A criminal offense under title 13, chapter 23.
- 23 47. Child neglect.
- 24 48. Misdemeanor offenses involving contributing to the delinquency of a
25 minor.
- 26 49. Offenses involving domestic violence.
- 27 50. Arson.
- 28 51. Kidnapping.
- 29 52. Felony offenses involving sale, distribution or transportation of,
30 offer to sell, transport or distribute or conspiracy to sell, transport or
31 distribute marijuana, dangerous drugs or narcotic drugs.
- 32 53. Robbery.
- 33 54. Aggravated assault.
- 34 55. Felony offenses involving contributing to the delinquency of a
35 minor.
- 36 56. Negligent homicide.
- 37 57. Criminal damage.
- 38 58. Misappropriation of charter school monies as prescribed in section
39 13-1818.
- 40 59. Taking identity of another person or entity.
- 41 60. Aggravated taking identity of another person or entity.
- 42 61. Trafficking in the identity of another person or entity.
- 43 62. Cruelty to animals.
- 44 63. Prostitution.

1 64. Sale or distribution of material harmful to minors through vending
2 machines as prescribed in section 13-3513.

3 65. Welfare fraud.

4 D. A person who is awaiting trial on or who has been convicted of
5 committing or attempting or conspiring to commit a violation of section
6 28-1381, 28-1382 or 28-1383 in this state or the same or similar offense in
7 another state or jurisdiction within five years from the date of applying for
8 a fingerprint clearance card is precluded from driving any vehicle to
9 transport employees or clients of the employing agency as part of the
10 person's employment. The division shall place a notation on the fingerprint
11 clearance card that indicates this driving restriction. This subsection does
12 not preclude a person from driving a vehicle alone as part of the person's
13 employment.

14 E. Notwithstanding subsection C of this section, on receiving written
15 notice from the board of fingerprinting that a good cause exception was
16 granted pursuant to section 41-619.55, the division shall issue a fingerprint
17 clearance card to the person.

18 F. If the division denies a person's application for a fingerprint
19 clearance card pursuant to subsection C of this section and a good cause
20 exception is requested pursuant to section 41-619.55, the division shall
21 release, on request by the board of fingerprinting, the person's criminal
22 history record to the board of fingerprinting.

23 G. A person shall be granted a fingerprint clearance card if either of
24 the following applies:

25 1. An agency granted a good cause exception before August 16, 1999 and
26 no new precluding offense is identified. The fingerprint clearance card
27 shall specify only the program that granted the good cause exception. On the
28 request of the applicant, the agency that granted the prior good cause
29 exception shall notify the division in writing of the date on which the prior
30 good cause exception was granted and the date of the conviction and the name
31 of the offense for which the good cause exception was granted.

32 2. The board granted a good cause exception and no new precluding
33 offense is identified. The fingerprint clearance card shall specify the
34 programs for which the board granted the good cause exception.

35 H. The licensee or contract provider shall assume the costs of
36 fingerprint checks and may charge these costs to persons required to be
37 fingerprinted.

38 I. A person who is under eighteen years of age or who is at least
39 ninety-nine years of age is exempt from the fingerprint clearance card
40 requirements of this section. At all times the person shall be under the
41 direct visual supervision of personnel who have valid fingerprint clearance
42 cards.

43 J. The division may conduct periodic state criminal history records
44 checks for the purpose of updating the clearance status of current

1 fingerprint clearance card holders and may notify the board of fingerprinting
2 and the agency employing the person of the results of the records check.

3 K. The division shall revoke a person's fingerprint clearance card on
4 receipt of a written request for revocation from the board of fingerprinting
5 pursuant to section 41-619.55.

6 L. The division shall not issue a fingerprint clearance card to a
7 person if the division cannot determine, within thirty business days after
8 receipt of the person's state and federal criminal history record
9 information, whether the person is awaiting trial on or has been convicted of
10 committing any of the offenses listed in subsection B or C of this section.
11 If the division is unable to make the determination required by this section
12 and does not issue a fingerprint clearance card to a person, the person may
13 request a good cause exception pursuant to section 41-619.55.

14 M. Except as provided in subsection N of this section, if after
15 conducting a state and federal criminal history record check the division
16 determines that it is not authorized to issue a fingerprint clearance card to
17 a person, the division shall notify the agency that licenses or employs the
18 person that the division is not authorized to issue a fingerprint clearance
19 card. This notice shall include the criminal history information on which
20 the denial was based. This criminal history information is subject to
21 dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

22 N. If, after conducting a state and federal criminal history record
23 check on a person who requests a fingerprint clearance card pursuant to
24 section 15-1881, the division determines that it is not authorized to issue a
25 fingerprint clearance card to the person, the division shall not notify the
26 agency. The division shall notify the person who requested the card that the
27 division is not authorized to issue a fingerprint clearance card.

28 O. The division is not liable for damages resulting from:

29 1. The issuance of a fingerprint clearance card to a person who is
30 later found to have been ineligible to receive a fingerprint clearance card
31 at the time the card was issued.

32 2. The denial of a fingerprint clearance card to a person who is later
33 found to have been eligible to receive a fingerprint clearance card at the
34 time issuance of the card was denied.

35 P. The issuance of a fingerprint clearance card does not entitle a
36 person to employment.

37 Sec. 115. Section 41-1967.01, Arizona Revised Statutes, is amended to
38 read:

39 41-1967.01. Child care home provider; registration;
40 fingerprints; definition

41 A. A child care home provider who receives compensation to care for
42 four or fewer children and who has not been certified by the department of
43 economic security pursuant to section 46-807 or licensed or certified by the
44 department of health services pursuant to section 36-883 or 36-897.01 shall
45 register with the department of economic security if the child care home

1 provider wishes to be listed with the child care resource and referral
2 system.

3 B. Each applicant for registration shall submit a full set of
4 fingerprints to the department of public safety for the purpose of obtaining
5 a state and federal criminal records check pursuant to section 41-1750 and
6 Public Law 92-544. The department of public safety may exchange this
7 fingerprint data with the federal bureau of investigation.

8 C. Child care providers shall have a valid fingerprint clearance card
9 issued pursuant to chapter 12, article 3.1 of this title or shall apply for a
10 fingerprint clearance card by the date of registration with the department.

11 D. By the date of registration, child care providers shall certify on
12 forms that are provided by the department and notarized whether:

13 1. They are awaiting trial on or have been convicted of or admitted
14 committing any of the following criminal offenses in this state or similar
15 offenses in another state or jurisdiction:

16 (a) Sexual abuse of a minor.

17 (b) Incest.

18 (c) First or second degree murder.

19 (d) Kidnapping.

20 (e) Arson.

21 (f) Sexual assault.

22 (g) Sexual exploitation of a minor.

23 (h) Felony offenses involving contributing to the delinquency of a
24 minor.

25 (i) Commercial sexual exploitation of a minor.

26 (j) Felony offenses involving sale, distribution or transportation of,
27 offer to sell, transport or distribute or conspiracy to sell, transport or
28 distribute marijuana, dangerous drugs or narcotic drugs.

29 (k) Felony offenses involving the possession or use of marijuana,
30 dangerous drugs or narcotic drugs.

31 (l) Burglary.

32 (m) Aggravated or armed robbery.

33 (n) Robbery.

34 (o) A dangerous crime against children as defined in section ~~13-604.01~~
35 [13-705](#).

36 (p) Child abuse.

37 (q) Sexual conduct with a minor.

38 (r) Molestation of a child.

39 (s) Manslaughter.

40 (t) Assault or aggravated assault.

41 (u) Exploitation of minors involving drug offenses.

42 (v) A violation of section 28-1381, 28-1382 or 28-1383.

43 (w) Offenses involving domestic violence.

44 2. They are parents or guardians of a child adjudicated to be a
45 dependent child as defined in section 8-201.

1 3. They have been denied a license to operate a child care facility
2 for cause in this state or another state or had a license or certificate to
3 operate a child care facility revoked.

4 E. The notarized forms are confidential.

5 F. Each applicant for registration shall not have been the subject of
6 an investigation where a report of child abuse or neglect has been
7 substantiated.

8 G. Each applicant shall maintain current training and certification in
9 first aid and infant and child cardiopulmonary resuscitation.

10 H. The applicant shall enclose any pool on the applicant's premises
11 pursuant to section 36-1681, subsections A, B and C.

12 I. The applicant shall separately store firearms and ammunition under
13 lock and key or combination lock.

14 J. The department shall adopt rules to carry out this section.

15 K. The director shall charge a fee for processing the fingerprint
16 information required pursuant to this section.

17 L. Any obligation or liability under this section is governed by the
18 provisions of section 41-1967, subsections F, G and H.

19 M. For the purposes of this section, "child care provider" means a
20 registered child care home provider pursuant to subsection A of this section.

21 Sec. 116. Section 41-2814, Arizona Revised Statutes, is amended to
22 read:

23 41-2814. Fingerprinting personnel; exception; violation;
24 classification; definition

25 A. All employees of the department and all contract service providers
26 that provide services primarily on department premises shall be
27 fingerprinted. These individuals shall submit fingerprints and the form
28 prescribed in subsection F of this section within seven days after the date
29 of employment. Employment with the department is conditioned on the results
30 of the fingerprint check. Fingerprint checks shall be conducted pursuant to
31 section 41-1750, subsection G, paragraph 1.

32 B. Except as provided in subsection A of this section, a paid or
33 unpaid employee of a licensee or contract provider who has direct contact
34 with committed youth shall have a valid fingerprint clearance card issued
35 pursuant to chapter 12, article 3.1 of this title or shall apply for a
36 fingerprint clearance card within seven days of beginning employment.

37 C. A service contract or license with any contract provider or
38 licensee that involves the employment of persons who have direct contact with
39 committed youth shall provide that the contract or license may be canceled or
40 terminated immediately if a person certifies pursuant to subsection F of this
41 section that the person is awaiting trial on or has been convicted of any of
42 the offenses listed in subsection F of this section in this jurisdiction or
43 acts committed in another jurisdiction that would be offenses in this
44 jurisdiction or if the person does not possess or is denied issuance of a
45 valid fingerprint clearance card.

1 D. A contract provider or licensee may avoid cancellation or
2 termination of the contract or license under subsection C of this section if
3 a person who does not possess or has been denied issuance of a valid
4 fingerprint clearance card or who certifies pursuant to subsection F of this
5 section that the person has been convicted of or is awaiting trial on any of
6 the offenses listed in subsection F, paragraphs 1, 2, 3, 6, 7, 9, 15 through
7 18 and 21 of this section is immediately prohibited from employment or
8 service with the contract provider or licensee in any capacity requiring or
9 allowing direct contact with committed youth.

10 E. A contract provider or licensee may avoid cancellation or
11 termination of the contract or license under subsection C of this section if
12 a person who does not possess or has been denied issuance of a valid
13 fingerprint clearance card or who certifies pursuant to subsection F of this
14 section that the person has been convicted of or is awaiting trial on any of
15 the offenses listed in subsection F, paragraphs 4, 5, 8, 10 through 14, 19,
16 20, 22 and 23 of this section is immediately prohibited from employment or
17 service with the contract provider or licensee in any capacity requiring or
18 allowing direct contact with committed youth unless the employee is granted a
19 good cause exception pursuant to section 41-619.55.

20 F. Personnel who are employed by the department and contract personnel
21 who have direct contact with committed youth shall certify on forms provided
22 by the department and notarized whether they are awaiting trial on or have
23 ever been convicted of or committed any of the following criminal offenses in
24 this state or similar offenses in another state or jurisdiction:

- 25 1. Sexual abuse of a minor.
- 26 2. Incest.
- 27 3. First or second degree murder.
- 28 4. Kidnapping.
- 29 5. Arson.
- 30 6. Sexual assault.
- 31 7. Sexual exploitation of a minor.
- 32 8. Felony offenses involving contributing to the delinquency of a
33 minor.
- 34 9. Commercial sexual exploitation of a minor.
- 35 10. Felony offenses involving sale, distribution or transportation of,
36 offer to sell, transport or distribute or conspiracy to sell, transport or
37 distribute marijuana, dangerous drugs or narcotic drugs.
- 38 11. Felony offenses involving the possession or use of marijuana,
39 dangerous drugs or narcotic drugs.
- 40 12. Burglary.
- 41 13. Aggravated or armed robbery.
- 42 14. Robbery.
- 43 15. A dangerous crime against children as defined in section ~~13-604.01~~
44 [13-705](#).
- 45 16. Child abuse.

1 17. Sexual conduct with a minor.
2 18. Molestation of a child.
3 19. Manslaughter.
4 20. Assault or aggravated assault.
5 21. Exploitation of minors involving drug offenses.
6 22. A violation of section 28-1381, 28-1382 or 28-1383.
7 23. Offenses involving domestic violence.
8 G. The department shall make documented, good faith efforts to contact
9 previous employers of personnel to obtain information or recommendations that
10 may be relevant to an individual's fitness for employment.
11 H. Hospital employees, licensed medical personnel, staff and
12 volunteers who provide services to juveniles in a health care facility
13 located outside the secure care facility and who are under the direct visual
14 supervision as is medically reasonable of the department's employees or the
15 department's contracted security employees are exempt from the requirements
16 of this section.
17 I. The department of juvenile corrections shall notify the department
18 of public safety if the department of juvenile corrections receives credible
19 evidence that a person who possesses a valid fingerprint clearance card
20 either:
21 1. Is arrested for or charged with an offense listed in section
22 41-1758.03, subsection B.
23 2. Falsified information on the form required by subsection F of this
24 section.
25 J. A person who makes a false statement, representation or
26 certification in an application for employment with the department is guilty
27 of a class 3 misdemeanor.
28 K. For the purposes of this section, "employee" means paid and unpaid
29 personnel who have direct contact with committed youth.
30 Sec. 117. Section 46-321, Arizona Revised Statutes, is amended to
31 read:
32 46-321. Fingerprinting; affidavit
33 A. Sponsors, except military bases and federally recognized Indian
34 tribes, receiving federal child care food program monies from the department
35 of education shall register with the department of education in order to
36 receive those monies, unless they are public schools, child care facilities
37 licensed by the department of health services or child care homes certified
38 by the department of economic security.
39 B. Sponsors, except military bases and federally recognized Indian
40 tribes, receiving federal child care food program monies as provided in
41 subsection A of this section shall require all child care providers to submit
42 the form prescribed in subsection F of this section to the department of
43 education and to have valid fingerprint clearance cards issued pursuant to
44 title 41, chapter 12, article 3.1 or to apply for a fingerprint clearance

1 card within seven working days of employment before they receive any of those
2 monies.

3 C. Sponsors that are federally recognized Indian tribes or military
4 bases may submit and the department shall accept certifications that state
5 that any child care personnel who is employed or who will be employed during
6 the contract term has not been convicted of, has not admitted to or is not
7 awaiting trial on any of the offenses listed in subsection F of this section
8 or is not the parent or guardian of a child adjudicated to be a dependent
9 child as defined in section 8-201 or the parent or guardian of a child
10 adjudicated a dependent child under similar provisions in another state or
11 jurisdiction.

12 D. Sponsors that are federally recognized Indian tribes or military
13 bases may submit and the department shall accept certifications that state
14 that good faith efforts have been made to contact previous employers of
15 tribal and military child care personnel.

16 E. The department of education shall charge sponsors receiving federal
17 child care food program monies as provided in subsection A of this section
18 for the costs of their fingerprint checks.

19 F. Sponsors receiving federal child care food program monies as
20 provided in subsection A of this section shall require all child care
21 personnel to certify on forms that are provided by the department of
22 education and notarized that:

23 1. They are not awaiting trial on and have never been convicted of or
24 admitted committing any of the following criminal offenses in this state or
25 similar offenses in another state or jurisdiction:

- 26 (a) Sexual abuse of a minor.
- 27 (b) Incest.
- 28 (c) First or second degree murder.
- 29 (d) Kidnapping.
- 30 (e) Arson.
- 31 (f) Sexual assault.
- 32 (g) Sexual exploitation of a minor.
- 33 (h) Felony offenses involving contributing to the delinquency of a
34 minor.
- 35 (i) Commercial sexual exploitation of a minor.
- 36 (j) Felony offenses involving sale, distribution or transportation of,
37 offer to sell, transport or distribute or conspiracy to sell, transport or
38 distribute marijuana, dangerous drugs or narcotic drugs.
- 39 (k) Felony offenses involving the possession or use of marijuana,
40 dangerous drugs or narcotic drugs.
- 41 (l) Burglary.
- 42 (m) Aggravated or armed robbery.
- 43 (n) Robbery.
- 44 (o) A dangerous crime against children as defined in section ~~13-604.01~~
45 [13-705](#).

1 (p) Child abuse.
2 (q) Sexual conduct with a minor.
3 (r) Molestation of a child.
4 (s) Manslaughter.
5 (t) Assault or aggravated assault.
6 (u) Exploitation of minors involving drug offenses.
7 (v) A violation of section 28-1381, 28-1382 or 28-1383.
8 (w) Offenses involving domestic violence.
9 2. They are not parents or guardians of a child adjudicated to be a
10 dependent child as defined in section 8-201.
11 3. They have not been denied a license to operate a facility for the
12 care of children for cause in this state or another state or had a license or
13 certificate to operate such a facility revoked.
14 G. Sponsors shall make documented, good faith efforts to contact
15 previous employers of child care personnel who receive federal child care
16 food program monies as provided in subsection A of this section to obtain
17 information or recommendations that may be relevant to an individual's
18 fitness for child care.
19 H. The notarized forms are confidential.
20 I. The state board of education shall notify the department of public
21 safety if the state board of education receives credible evidence that any
22 child care provider who possesses a valid fingerprint clearance card either:
23 1. Is arrested for or charged with an offense listed in section
24 41-1758.03, subsection B.
25 2. Falsified information on the form required by subsection F of this
26 section.
27 Sec. 118. Laws 2003, chapter 255, section 8 is amended to read:
28 Sec. 8. Conditional enactment
29 A. The following do not become effective unless on or before June 30,
30 2013 the Arizona supreme court or the supreme court of the United States
31 rules that it is constitutional for a crime victim in a capital case to make
32 a sentencing recommendation:
33 1. Section ~~13-703.01~~ 13-752, Arizona Revised Statutes, as amended by
34 ~~section 3 of this act~~ LAWS 2005, CHAPTER 325, SECTION 4, AS TRANSFERRED AND
35 RENUMBERED BY SECTION 27 OF THIS ACT AND AS AMENDED BY SECTION 41 OF THIS
36 ACT.
37 2. LAWS 2003, CHAPTER 255, section 4 ~~of this act~~.
38 3. Section 13-4426, Arizona Revised Statutes, ~~as added by this act~~.
39 B. The attorney general shall notify in writing the director of the
40 Arizona legislative council of the date on which the condition is met or if
41 the condition is not met.
42 Sec. 119. Effective date
43 Except as provided by Laws 2003, chapter 255, section 8, as amended by
44 this act, this act is effective from and after December 31, 2008.