

REFERENCE TITLE: **sentencing; drug offenses; repetitive offenders**

State of Arizona  
House of Representatives  
Fifty-third Legislature  
Second Regular Session  
2018

## **HB 2303**

Introduced by  
Representatives Stringer: Bolding, Bowers, Campbell, Clodfelter, Engel,  
Hernandez, Navarrete, Toma

AN ACT

AMENDING SECTIONS 13-105, 13-701, 13-703, 13-704, 13-705, 13-709, 13-3401,  
13-3405, 13-3407, 13-3408, 13-3409 AND 13-3411, ARIZONA REVISED STATUTES;  
REPEALING SECTION 13-3419, ARIZONA REVISED STATUTES; 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 13-105, Arizona Revised Statutes, is amended to  
3 read:

4 13-105. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Absconder" means a probationer who has moved from the  
7 probationer's primary residence without permission of the probation  
8 officer, who cannot be located within ninety days of the previous contact  
9 and against whom a petition to revoke has been filed in the superior court  
10 alleging that the probationer's whereabouts are unknown. A probationer is  
11 no longer deemed an absconder when the probationer is voluntarily or  
12 involuntarily returned to probation service.

13 2. "Act" means a bodily movement.

14 3. "Benefit" means anything of value or advantage, present or  
15 prospective.

16 4. "Calendar year" means three hundred sixty-five days' actual time  
17 served without release, suspension or commutation of sentence, probation,  
18 pardon or parole, work furlough or release from confinement on any other  
19 basis.

20 5. "Community supervision" means that portion of a felony sentence  
21 that is imposed by the court pursuant to section 13-603, subsection I and  
22 that is served in the community after completing a period of imprisonment  
23 or served in prison in accordance with section 41-1604.07.

24 6. "Conduct" means an act or omission and its accompanying culpable  
25 mental state.

26 7. "Crime" means a misdemeanor or a felony.

27 8. "Criminal street gang" means an ongoing formal or informal  
28 association of persons in which members or associates individually or  
29 collectively engage in the commission, attempted commission, facilitation  
30 or solicitation of any felony act and that has at least one individual who  
31 is a criminal street gang member.

32 9. "Criminal street gang member" means an individual to whom  
33 at least two of the following seven criteria that indicate criminal street  
34 gang membership apply:

35 (a) Self-proclamation.

36 (b) Witness testimony or official statement.

37 (c) Written or electronic correspondence.

38 (d) Paraphernalia or photographs.

39 (e) Tattoos.

40 (f) Clothing or colors.

41 (g) Any other indicia of street gang membership.

42 10. "Culpable mental state" means intentionally, knowingly,  
43 recklessly or with criminal negligence as those terms are defined in this  
44 paragraph:

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

4 (b) "Knowingly" means, with respect to conduct or to a circumstance  
5 described by a statute defining an offense, that a person is aware or  
6 believes that the person's conduct is of that nature or that the  
7 circumstance exists. It does not require any knowledge of the  
8 unlawfulness of the act or omission.

9 (c) "Recklessly" means, with respect to a result or to a  
10 circumstance described by a statute defining an offense, that a person is  
11 aware of and consciously disregards a substantial and unjustifiable risk  
12 that the result will occur or that the circumstance exists. The risk must  
13 be of such nature and degree that disregard of such risk constitutes a  
14 gross deviation from the standard of conduct that a reasonable person  
15 would observe in the situation. A person who creates such a risk but who  
16 is unaware of such risk solely by reason of voluntary intoxication also  
17 acts recklessly with respect to such risk.

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

25 11. "Dangerous drug" means dangerous drug as defined in section  
26 13-3401.

27 12. "Dangerous instrument" means anything that under the  
28 circumstances in which it is used, attempted to be used or threatened to  
29 be used is readily capable of causing death or serious physical injury.

30 13. "Dangerous offense" means an offense involving the discharge,  
31 use or threatening exhibition of a deadly weapon or dangerous instrument  
32 or the intentional or knowing infliction of serious physical injury on  
33 another person.

34 14. "Deadly physical force" means force that is used with the  
35 purpose of causing death or serious physical injury or in the manner of  
36 its use or intended use is capable of creating a substantial risk of  
37 causing death or serious physical injury.

38 15. "Deadly weapon" means anything designed for lethal use,  
39 including a firearm.

40 16. "Economic loss" means any loss incurred by a person as a result  
41 of the commission of an offense. Economic loss includes lost interest,  
42 lost earnings and other losses that would not have been incurred but for  
43 the offense. Economic loss does not include losses incurred by the  
44 convicted person, damages for pain and suffering, punitive damages or  
45 consequential damages.

1           17. "Enterprise" includes any corporation, association, labor union  
2 or other legal entity.

3           18. "Felony" means an offense for which a sentence to a term of  
4 imprisonment in the custody of the state department of corrections is  
5 authorized by any law of this state.

6           19. "Firearm" means any loaded or unloaded handgun, pistol,  
7 revolver, rifle, shotgun or other weapon that will or is designed to or  
8 may readily be converted to expel a projectile by the action of expanding  
9 gases, except that it does not include a firearm in permanently inoperable  
10 condition.

11           20. "Government" means the state, any political subdivision of the  
12 state or any department, agency, board, commission, institution or  
13 governmental instrumentality of or within the state or political  
14 subdivision.

15           21. "Government function" means any activity that a public servant  
16 is legally authorized to undertake on behalf of a government.

17           22. "Historical prior felony conviction" means:

18           (a) Any prior felony conviction for which the offense of conviction  
19 either:

20           (i) Mandated a term of imprisonment ~~except for a violation of~~  
21 ~~chapter 34 of this title involving a drug below the threshold amount.~~

22           (ii) Involved a dangerous offense.

23           (iii) Involved the illegal control of a criminal enterprise.

24           (iv) Involved aggravated driving under the influence of  
25 intoxicating liquor or drugs.

26           (v) Involved any dangerous crime against children as defined in  
27 section 13-705.

28           (b) Any class 2 or 3 felony, except the offenses listed in  
29 subdivision (a) of this paragraph, that was committed within the ten years  
30 immediately preceding the date of the present offense. Any time spent on  
31 absconder status while on probation, on escape status or incarcerated is  
32 excluded in calculating if the offense was committed within the preceding  
33 ten years. If a court determines a person was not on absconder status  
34 while on probation or escape status, that time is not excluded. For the  
35 purposes of this subdivision, "escape" means:

36           (i) A departure from custody or from a juvenile secure care  
37 facility, a juvenile detention facility or an adult correctional facility  
38 in which the person is held or detained, with knowledge that the departure  
39 is not permitted, or the failure to return to custody or detention  
40 following a temporary leave granted for a specific purpose or for a  
41 limited period.

42           (ii) A failure to report as ordered to custody or detention to  
43 begin serving a term of incarceration.

44           (c) Any class 4, 5 or 6 felony, except the offenses listed in  
45 subdivision (a) of this paragraph, **AN OFFENSE IN VIOLATION OF SECTION**

1 13-3405, SUBSECTION A, PARAGRAPH 1, SECTION 13-3407, SUBSECTION A,  
 2 PARAGRAPH 1 OR SECTION 13-3408, SUBSECTION A, PARAGRAPH 1 OR ANY OTHER  
 3 OFFENSE INCLUDED IN CHAPTER 34 OF THIS TITLE, WHETHER A COMPLETED OR  
 4 PREPARATORY OFFENSE, INVOLVING A DRUG BELOW THE THRESHOLD AMOUNT, that was  
 5 committed within the five years immediately preceding the date of the  
 6 present offense. Any time spent on absconder status while on probation,  
 7 on escape status or incarcerated is excluded in calculating if the offense  
 8 was committed within the preceding five years. If a court determines a  
 9 person was not on absconder status while on probation or escape status,  
 10 that time is not excluded. For the purposes of this subdivision, "escape"  
 11 has the same meaning prescribed in subdivision (b) of this paragraph.

12 (d) Any felony conviction that is a third or more prior felony  
 13 conviction, EXCEPT A CONVICTION FOR A VIOLATION OF SECTION 13-3405,  
 14 SUBSECTION A, PARAGRAPH 1, SECTION 13-3407, SUBSECTION A, PARAGRAPH 1 OR  
 15 SECTION 13-3408, SUBSECTION A, PARAGRAPH 1 OR FOR ANY OTHER OFFENSE  
 16 INCLUDED IN CHAPTER 34 OF THIS TITLE, WHETHER A COMPLETED OR PREPARATORY  
 17 OFFENSE, INVOLVING A DRUG BELOW THE THRESHOLD AMOUNT. For the purposes of  
 18 this subdivision, "prior felony conviction" includes any offense committed  
 19 outside the jurisdiction of this state that was punishable by that  
 20 jurisdiction as a felony, EXCEPT AN OFFENSE THAT HAS THE SAME OR SIMILAR  
 21 ELEMENTS AS SECTION 13-3405, SUBSECTION A, PARAGRAPH 1, SECTION 13-3407,  
 22 SUBSECTION A, PARAGRAPH 1 OR SECTION 13-3408, SUBSECTION A, PARAGRAPH 1 OR  
 23 ANY OTHER OFFENSE INCLUDED IN CHAPTER 34 OF THIS TITLE, WHETHER A  
 24 COMPLETED OR PREPARATORY OFFENSE, INVOLVING A DRUG BELOW THE THRESHOLD  
 25 AMOUNT.

26 (e) Any offense committed outside the jurisdiction of this state  
 27 that was punishable by that jurisdiction as a felony and that was  
 28 committed within the five years immediately preceding the date of the  
 29 present offense, EXCEPT AN OFFENSE THAT HAS THE SAME OR SIMILAR ELEMENTS  
 30 AS SECTION 13-3405, SUBSECTION A, PARAGRAPH 1, SECTION 13-3407, SUBSECTION  
 31 A, PARAGRAPH 1 OR SECTION 13-3408, SUBSECTION A, PARAGRAPH 1 OR ANY OTHER  
 32 OFFENSE INCLUDED IN CHAPTER 34 OF THIS TITLE, WHETHER A COMPLETED OR  
 33 PREPARATORY OFFENSE, INVOLVING A DRUG BELOW THE THRESHOLD AMOUNT. Any  
 34 time spent on absconder status while on probation, on escape status or  
 35 incarcerated is excluded in calculating if the offense was committed  
 36 within the preceding five years. If a court determines a person was not  
 37 on absconder status while on probation or escape status, that time is not  
 38 excluded. For the purposes of this subdivision, "escape" has the same  
 39 meaning prescribed in subdivision (b) of this paragraph.

40 (f) Any offense committed outside the jurisdiction of this state  
 41 that involved the discharge, use or threatening exhibition of a deadly  
 42 weapon or dangerous instrument or the intentional or knowing infliction of  
 43 death or serious physical injury and that was punishable by that  
 44 jurisdiction as a felony. A person who has been convicted of a felony  
 45 weapons possession violation in any court outside the jurisdiction of this

1 state that would not be punishable as a felony under the laws of this  
2 state is not subject to this paragraph.

3 23. "Human smuggling organization" means an ongoing formal or  
4 informal association of persons in which members or associates  
5 individually or collectively engage in the smuggling of human beings.

6 24. "Intoxication" means any mental or physical incapacity resulting  
7 from use of drugs, toxic vapors or intoxicating liquors.

8 25. "Misdemeanor" means an offense for which a sentence to a term of  
9 imprisonment other than to the custody of the state department of  
10 corrections is authorized by any law of this state.

11 26. "Narcotic drug" means narcotic drugs as defined in section  
12 13-3401.

13 27. "Offense" or "public offense" means conduct for which a sentence  
14 to a term of imprisonment or of a fine is provided by any law of the state  
15 in which it occurred or by any law, regulation or ordinance of a political  
16 subdivision of that state and, if the act occurred in a state other than  
17 this state, it would be so punishable under the laws, regulations or  
18 ordinances of this state or of a political subdivision of this state if  
19 the act had occurred in this state.

20 28. "Omission" means the failure to perform an act as to which a  
21 duty of performance is imposed by law.

22 29. "Peace officer" means any person vested by law with a duty to  
23 maintain public order and make arrests and includes a constable.

24 30. "Person" means a human being and, as the context requires, an  
25 enterprise, a public or private corporation, an unincorporated  
26 association, a partnership, a firm, a society, a government, a  
27 governmental authority or an individual or entity capable of holding a  
28 legal or beneficial interest in property.

29 31. "Petty offense" means an offense for which a sentence of a fine  
30 only is authorized by law.

31 32. "Physical force" means force used upon or directed toward the  
32 body of another person and includes confinement, but does not include  
33 deadly physical force.

34 33. "Physical injury" means the impairment of physical condition.

35 34. "Possess" means knowingly to have physical possession or  
36 otherwise to exercise dominion or control over property.

37 35. "Possession" means a voluntary act if the defendant knowingly  
38 exercised dominion or control over property.

39 36. "Preconviction custody" means the confinement of a person in a  
40 jail in this state or another state after the person is arrested for or  
41 charged with a felony offense.

42 37. "Property" means anything of value, tangible or intangible.

43 38. "Public servant":

44 (a) Means any officer or employee of any branch of government,  
45 whether elected, appointed or otherwise employed, including a peace

1 officer, and any person participating as an advisor or consultant or  
2 otherwise in performing a governmental function.

3 (b) Does not include jurors or witnesses.

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

7 39. "Serious physical injury" includes physical injury that creates  
8 a reasonable risk of death, or that causes serious and permanent  
9 disfigurement, serious impairment of health or loss or protracted  
10 impairment of the function of any bodily organ or limb.

11 40. "Unlawful" means contrary to law or, where the context so  
12 requires, not permitted by law.

13 41. "Vehicle" means a device in, upon or by which any person or  
14 property is, may be or could have been transported or drawn upon a  
15 highway, waterway or airway, excepting devices moved by human power or  
16 used exclusively upon stationary rails or tracks.

17 42. "Voluntary act" means a bodily movement performed consciously  
18 and as a result of effort and determination.

19 43. "Voluntary intoxication" means intoxication caused by the  
20 knowing use of drugs, toxic vapors or intoxicating liquors by a person,  
21 the tendency of which to cause intoxication the person knows or ought to  
22 know, unless the person introduces them pursuant to medical advice or  
23 under such duress as would afford a defense to an offense.

24 Sec. 2. Section 13-701, Arizona Revised Statutes, is amended to  
25 read:

26 13-701. Sentence of imprisonment for felony; presentence  
27 report; aggravating and mitigating factors;  
28 consecutive terms of imprisonment; definition

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

32 B. No prisoner may be transferred to the custody of the state  
33 department of corrections without a certified copy of the judgment and  
34 sentence, signed by the sentencing judge, and a copy of a recent  
35 presentence investigation report unless the court has waived preparation  
36 of the report.

37 C. The minimum or maximum term imposed pursuant to section 13-702,  
38 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, ~~OR 13-3212 or 13-3419~~  
39 may be imposed only if one or more of the circumstances alleged to be in  
40 aggravation of the crime are found to be true by the trier of fact beyond  
41 a reasonable doubt or are admitted by the defendant, except that an  
42 alleged aggravating circumstance under subsection D, paragraph 11 of this  
43 section shall be found to be true by the court, or in mitigation of the  
44 crime are found to be true by the court, on any evidence or information  
45 introduced or submitted to the court or the trier of fact before

1 sentencing or any evidence presented at trial, and factual findings and  
2 reasons in support of such findings are set forth on the record at the  
3 time of sentencing.

4 D. For the purpose of determining the sentence pursuant to  
5 subsection C of this section, the trier of fact shall determine and the  
6 court shall consider the following aggravating circumstances, except that  
7 the court shall determine an aggravating circumstance under paragraph 11  
8 of this subsection:

9 1. Infliction or threatened infliction of serious physical injury,  
10 except if this circumstance is an essential element of the offense of  
11 conviction or has been utilized to enhance the range of punishment under  
12 section 13-704.

13 2. Use, threatened use or possession of a deadly weapon or  
14 dangerous instrument during the commission of the crime, except if this  
15 circumstance is an essential element of the offense of conviction or has  
16 been utilized to enhance the range of punishment under section 13-704.

17 3. If the offense involves the taking of or damage to property, the  
18 value of the property taken or damaged.

19 4. Presence of an accomplice.

20 5. Especially heinous, cruel or depraved manner in which the  
21 offense was committed.

22 6. The defendant committed the offense as consideration for the  
23 receipt, or in the expectation of the receipt, of anything of pecuniary  
24 value.

25 7. The defendant procured the commission of the offense by payment,  
26 or promise of payment, of anything of pecuniary value.

27 8. At the time of the commission of the offense, the defendant was  
28 a public servant and the offense involved conduct directly related to the  
29 defendant's office or employment.

30 9. The victim or, if the victim has died as a result of the conduct  
31 of the defendant, the victim's immediate family suffered physical,  
32 emotional or financial harm.

33 10. During the course of the commission of the offense, the death of  
34 an unborn child at any stage of its development occurred.

35 11. The defendant was previously convicted of a felony within the  
36 ten years immediately preceding the date of the offense. A conviction  
37 outside the jurisdiction of this state for an offense that if committed in  
38 this state would be punishable as a felony is a felony conviction for the  
39 purposes of this paragraph.

40 12. The defendant was wearing body armor as defined in section  
41 13-3116.

42 13. The victim of the offense is at least sixty-five years of age or  
43 is a person with a disability as defined in section 38-492, subsection B.

1           14. The defendant was appointed pursuant to title 14 as a fiduciary  
2 and the offense involved conduct directly related to the defendant's  
3 duties to the victim as fiduciary.

4           15. Evidence that the defendant committed the crime out of malice  
5 toward a victim because of the victim's identity in a group listed in  
6 section 41-1750, subsection A, paragraph 3 or because of the defendant's  
7 perception of the victim's identity in a group listed in section 41-1750,  
8 subsection A, paragraph 3.

9           16. The defendant was convicted of a violation of section 13-1102,  
10 section 13-1103, section 13-1104, subsection A, paragraph 3 or section  
11 13-1204, subsection A, paragraph 1 or 2 arising from an act that was  
12 committed while driving a motor vehicle and the defendant's alcohol  
13 concentration at the time of committing the offense was 0.15 or more. For  
14 the purposes of this paragraph, "alcohol concentration" has the same  
15 meaning prescribed in section 28-101.

16           17. Lying in wait for the victim or ambushing the victim during the  
17 commission of any felony.

18           18. The offense was committed in the presence of a child and any of  
19 the circumstances exists that are set forth in section 13-3601,  
20 subsection A.

21           19. The offense was committed in retaliation for a victim either  
22 reporting criminal activity or being involved in an organization, other  
23 than a law enforcement agency, that is established for the purpose of  
24 reporting or preventing criminal activity.

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

27           21. The defendant was in violation of 8 United States Code section  
28 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the  
29 offense.

30           22. The defendant used a remote stun gun or an authorized remote  
31 stun gun in the commission of the offense. For the purposes of this  
32 paragraph:

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

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

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

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

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

44           (b) "Remote stun gun" means an electronic device that emits an  
45 electrical charge and that is designed and primarily employed to

1 incapacitate a person or animal either through contact with electrodes on  
2 the device itself or remotely through wired probes that are attached to  
3 the device or through a spark, plasma, ionization or other conductive  
4 means emitting from the device.

5 23. During or immediately following the commission of the offense,  
6 the defendant committed a violation of section 28-661, 28-662 or 28-663.

7 24. The defendant was convicted of a violation of section 13-1307 or  
8 13-1308 or section 13-3212, subsection A, paragraph 9 or 10 and the  
9 defendant recruited, enticed or obtained the victim from a shelter that is  
10 designed to serve runaway youth, foster children, homeless persons or  
11 victims of human trafficking, domestic violence or sexual assault.

12 25. The defendant was convicted of a violation of section 13-1204  
13 and there is evidence that the defendant committed the crime out of malice  
14 toward a victim because of the victim's employment as a peace officer.

15 26. Any other factor that the state alleges is relevant to the  
16 defendant's character or background or to the nature or circumstances of  
17 the crime.

18 E. For the purpose of determining the sentence pursuant to  
19 subsection C of this section, the court shall consider the following  
20 mitigating circumstances:

21 1. The age of the defendant.

22 2. The defendant's capacity to appreciate the wrongfulness of the  
23 defendant's conduct or to conform the defendant's conduct to the  
24 requirements of law was significantly impaired, but not so impaired as to  
25 constitute a defense to prosecution.

26 3. The defendant was under unusual or substantial duress, although  
27 not to a degree that would constitute a defense to prosecution.

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

30 5. During or immediately following the commission of the offense,  
31 the defendant complied with all duties imposed under sections 28-661,  
32 28-662 and 28-663.

33 6. THE DEFENDANT'S PARTICIPATION IN THE OFFENSE WAS MOTIVATED OR  
34 SUBSTANTIALLY ATTRIBUTABLE TO A DOCUMENTED OR DIAGNOSED PATTERN OF:

35 (a) MENTAL ILLNESS, A COGNITIVE DEFICIT OR A HISTORY OF PERSISTENT  
36 OR SERIOUS SUBSTANCE ABUSE OR ADDICTION.

37 (b) PHYSICAL OR PSYCHOLOGICAL TRAUMA THAT IS A RESULT OF ACTIVE  
38 DUTY IN A COMBAT ZONE OF AN ARMED CONFLICT WHILE SERVING IN A BRANCH OF  
39 THE UNITED STATES ARMED FORCES.

40 (c) VICTIMIZATION STEMMING FROM ANY COMBINATION OF PHYSICAL,  
41 MENTAL, EMOTIONAL OR PSYCHOLOGICAL ABUSE OR DOMESTIC VIOLENCE IF THE  
42 OFFENSE WAS COMMITTED AT THE DIRECTION OF ANOTHER PERSON WHO:

43 (i) WAS A MORE CULPABLE PARTICIPANT IN THE OFFENSE OR WHO PLAYED A  
44 SIGNIFICANTLY GREATER ROLE IN THE OFFENSE.

1 (ii) EFFECTIVELY COERCED THE DEFENDANT'S INVOLVEMENT IN THE OFFENSE  
2 BY MEANS OF A THREAT OR ABUSE EITHER DIRECTLY FROM THE OTHER PERSON OR  
3 THROUGH ANY OTHER PERSON OR GROUP.

4 ~~6.~~ 7. Any other factor that is relevant to the defendant's  
5 character or background or to the nature or circumstances of the crime and  
6 that the court finds to be mitigating.

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

15 G. The court in imposing a sentence shall consider the evidence and  
16 opinions presented by the victim or the victim's immediate family at any  
17 aggravation or mitigation proceeding or in the presentence report.

18 H. This section does not affect any provision of law that imposes  
19 the death penalty, that expressly provides for imprisonment for life or  
20 that authorizes or restricts the granting of probation and suspending the  
21 execution of sentence.

22 I. The intentional failure by the court to impose the mandatory  
23 sentences or probation conditions provided in this title is malfeasance.

24 J. For the purposes of this section, "trier of fact" means a jury,  
25 unless the defendant and the state waive a jury in which case the trier of  
26 fact means the court.

27 Sec. 3. Section 13-703, Arizona Revised Statutes, is amended to  
28 read:

29 13-703. Repetitive offenders: sentencing

30 A. If a person is convicted of multiple felony offenses that were  
31 not committed on the same occasion but that ~~either~~ are consolidated for  
32 trial purposes ~~or are not historical prior felony convictions~~, the person  
33 shall be sentenced as a first time felony offender pursuant to section  
34 13-702 for the first offense, as a category one repetitive offender for  
35 the second offense, and as a category two repetitive offender for the  
36 third and subsequent offenses.

37 B. Except as provided in section 13-704 or 13-705, a person shall  
38 be sentenced as a category two repetitive offender if the person is at  
39 least eighteen years of age or has been tried as an adult and stands  
40 convicted of a felony and has one historical prior felony conviction.

41 C. Except as provided in section 13-704 or 13-705, a person shall  
42 be sentenced as a category three repetitive offender if the person is at  
43 least eighteen years of age or has been tried as an adult and stands  
44 convicted of a felony and has two or more historical prior felony  
45 convictions.

1 D. The presumptive term set by this section may be aggravated or  
 2 mitigated within the range under this section pursuant to section 13-701,  
 3 subsections C, D and E.

4 E. If a person is sentenced as a category one repetitive offender  
 5 pursuant to subsection A of this section and if at least two aggravating  
 6 circumstances listed in section 13-701, subsection D apply or at least two  
 7 mitigating circumstances listed in section 13-701, subsection E apply, the  
 8 court may impose a mitigated or aggravated sentence pursuant to subsection  
 9 H of this section.

10 F. If a person is sentenced as a category two repetitive offender  
 11 pursuant to subsection A or B of this section and if at least two  
 12 aggravating circumstances listed in section 13-701, subsection D apply or  
 13 at least two mitigating circumstances listed in section 13-701, subsection  
 14 E apply, the court may impose a mitigated or aggravated sentence pursuant  
 15 to subsection I of this section.

16 G. If a person is sentenced as a category three repetitive offender  
 17 pursuant to subsection C of this section and at least two aggravating  
 18 circumstances listed in section 13-701, subsection D or at least two  
 19 mitigating circumstances listed in section 13-701, subsection E apply, the  
 20 court may impose a mitigated or aggravated sentence pursuant to subsection  
 21 J of this section.

22 H. A category one repetitive offender shall be sentenced within the  
 23 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	3 years	4 years	5 years	10 years	12.5 years
Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
Class 4	1 year	1.5 years	2.5 years	3 years	3.75 years
Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
Class 6	.25 years	.5 years	1 year	1.5 years	2 years

30 I. A category two repetitive offender shall be sentenced within the  
 31 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	4.5 years	6 years	9.25 years	18.5 years	23 years
Class 3	3.25 years	4.5 years	6.5 years	13 years	16.25 years
Class 4	2.25 years	3 years	4.5 years	6 years	7.5 years
Class 5	1 year	1.5 years	2.25 years	3 years	3.75 years
Class 6	.75 years	1 year	1.75 years	2.25 years	2.75 years

38 J. A category three repetitive offender shall be sentenced within  
 39 the following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	10.5 years	14 years	15.75 years	28 years	35 years
Class 3	7.5 years	10 years	11.25 years	20 years	25 years
Class 4	6 years	8 years	10 years	12 years	15 years
Class 5	3 years	4 years	5 years	6 years	7.5 years
Class 6	2.25 years	3 years	3.75 years	4.5 years	5.75 years

1 K. The aggravated or mitigated term imposed pursuant to subsection  
 2 H, I or J of this section may be imposed only if at least two of the  
 3 aggravating circumstances are found beyond a reasonable doubt to be true  
 4 by the trier of fact or are admitted by the defendant, except that an  
 5 aggravating circumstance under section 13-701, subsection D, paragraph 11  
 6 shall be found to be true by the court, or in mitigation of the crime are  
 7 found to be true by the court, on any evidence or information introduced  
 8 or submitted to the court or the trier of fact before sentencing or any  
 9 evidence presented at trial, and factual findings and reasons in support  
 10 of these findings are set forth on the record at the time of sentencing.

11 L. Convictions for two or more offenses committed on the same  
 12 occasion shall be counted as only one conviction for the purposes of  
 13 subsections B and C of this section.

14 M. A person who has been convicted in any court outside the  
 15 jurisdiction of this state of an offense that was punishable by that  
 16 jurisdiction as a felony is subject to this section. A person who has  
 17 been convicted as an adult of an offense punishable as a felony under the  
 18 provisions of any prior code in this state or the jurisdiction in which  
 19 the offense was committed is subject to this section. A person who has  
 20 been convicted of a felony weapons possession violation in any court  
 21 outside the jurisdiction of this state that would not be punishable as a  
 22 felony under the laws of this state is not subject to this section.

23 N. The penalties prescribed by this section shall be substituted  
 24 for the penalties otherwise authorized by law if an allegation of prior  
 25 conviction is charged in the indictment or information and admitted or  
 26 found by the court. The release provisions prescribed by this section  
 27 shall not be substituted for any penalties required by the substantive  
 28 offense or a provision of law that specifies a later release or completion  
 29 of the sentence imposed before release. The court shall allow the  
 30 allegation of a prior conviction at any time before the date the case is  
 31 actually tried unless the allegation is filed fewer than twenty days  
 32 before the case is actually tried and the court finds on the record that  
 33 the person was in fact prejudiced by the untimely filing and states the  
 34 reasons for these findings. If the allegation of a prior conviction is  
 35 filed, the state must make available to the person a copy of any material  
 36 or information obtained concerning the prior conviction. The charge of  
 37 previous conviction shall not be read to the jury. For the purposes of  
 38 this subsection, "substantive offense" means the felony offense that the  
 39 trier of fact found beyond a reasonable doubt the person committed.  
 40 Substantive offense does not include allegations that, if proven, would  
 41 enhance the sentence of imprisonment or fine to which the person otherwise  
 42 would be subject.

43 O. A person who is sentenced pursuant to this section is not  
 44 eligible for suspension of sentence, probation, pardon or release from  
 45 confinement on any basis, except as specifically authorized by section

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

4 P. The court shall inform all of the parties before sentencing  
5 occurs of its intent to impose an aggravated or mitigated sentence  
6 pursuant to subsection H, I or J of this section. If the court fails to  
7 inform the parties, a party waives its right to be informed unless the  
8 party timely objects at the time of sentencing.

9 Q. The court in imposing a sentence shall consider the evidence and  
10 opinions presented by the victim or the victim's immediate family at any  
11 aggravation or mitigation proceeding or in the presentence report.

12 Sec. 4. Section 13-704, Arizona Revised Statutes, is amended to  
13 read:

14 13-704. Dangerous offenders; sentencing

15 A. Except as provided in section 13-705, a person who is at least  
16 eighteen years of age or who has been tried as an adult and who stands  
17 convicted of a felony that is a dangerous offense shall be sentenced to a  
18 term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	7 years	10.5 years	21 years
Class 3	5 years	7.5 years	15 years
Class 4	4 years	6 years	8 years
Class 5	2 years	3 years	4 years
Class 6	1.5 years	2.25 years	3 years

25 B. Except as provided in section 13-705, a person who is convicted  
26 of a class 4, 5 or 6 felony that is a dangerous offense and who has one  
27 historical prior felony conviction involving a dangerous offense shall be  
28 sentenced to a term of imprisonment as follows:

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

33 C. Except as provided in section 13-705 or section 13-706,  
34 subsection A, a person who is convicted of a class 4, 5 or 6 felony that  
35 is a dangerous offense and who has two or more historical prior felony  
36 convictions involving dangerous offenses shall be sentenced to a term of  
37 imprisonment as follows:

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

42 D. Except as provided in section 13-705 or section 13-706,  
43 subsection A, a person who is convicted of a class 2 or 3 felony involving  
44 a dangerous offense and who has one historical prior felony conviction

1 that is a class 1, 2 or 3 felony involving a dangerous offense shall be  
 2 sentenced to a term of imprisonment as follows:

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

6 E. Except as provided in section 13-705 or section 13-706,  
 7 subsection A, a person who is convicted of a class 2 or 3 felony involving  
 8 a dangerous offense and who has two or more historical prior felony  
 9 convictions that are class 1, 2 or 3 felonies involving dangerous offenses  
 10 shall be sentenced to a term of imprisonment as follows:

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

14 F. A person who is convicted of two or more felony offenses that  
 15 are dangerous offenses and that were not committed on the same occasion  
 16 but that are consolidated for trial purposes ~~or that are not historical~~  
 17 ~~prior felony convictions~~ shall be sentenced, for the second or subsequent  
 18 offense, pursuant to this subsection. For a person sentenced pursuant to  
 19 this subsection, the minimum term prescribed shall be the presumptive  
 20 term. If the court increases or decreases a sentence pursuant to this  
 21 subsection, the court shall state on the record the reasons for the  
 22 increase or decrease. The court shall inform all of the parties before  
 23 the sentencing occurs of its intent to increase or decrease a sentence  
 24 pursuant to this subsection. If the court fails to inform the parties, a  
 25 party waives its right to be informed unless the party timely objects at  
 26 the time of sentencing. The terms are as follows:

27 1. For the second dangerous offense:

<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Increased Maximum</u>
Class 2	10.5 years	21 years	26.25 years
Class 3	7.5 years	15 years	18.75 years
Class 4	6 years	8 years	10 years
Class 5	3 years	4 years	5 years
Class 6	2.25 years	3 years	3.75 years

35 2. For any dangerous offense subsequent to the second dangerous  
 36 felony offense:

<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Increased Maximum</u>
Class 2	15.75 years	28 years	35 years
Class 3	11.25 years	20 years	25 years
Class 4	10 years	12 years	15 years
Class 5	5 years	6 years	7.5 years
Class 6	3.75 years	4.5 years	5.6 years

44 G. A person who is sentenced pursuant to subsection A, B, C, D, E  
 45 or F of this section is not eligible for suspension of sentence,

1 probation, pardon or release from confinement on any basis, except as  
 2 specifically authorized by section 31-233, subsection A or B, until the  
 3 sentence imposed by the court has been served, the person is eligible for  
 4 release pursuant to section 41-1604.07 or the sentence is commuted.

5 H. The presumptive term authorized by this section may be mitigated  
 6 or aggravated pursuant to the terms of section 13-701, subsections C, D  
 7 and E.

8 I. For the purposes of determining the applicability of the  
 9 penalties provided in subsection A, D or E of this section for second or  
 10 subsequent class 2 or 3 felonies, the conviction for any felony committed  
 11 before October 1, 1978 that, if committed after October 1, 1978, could be  
 12 a dangerous offense under subsection A, D or E of this section may be  
 13 designated by the state as a prior felony.

14 J. Convictions for two or more offenses committed on the same  
 15 occasion shall be counted as only one conviction for the purposes of  
 16 subsection A, B, C, D or E of this section.

17 K. A person who has been convicted in any court outside the  
 18 jurisdiction of this state of an offense that was punishable by that  
 19 jurisdiction as a felony is subject to subsection A, B, C, D or E of this  
 20 section. A person who has been convicted of an offense punishable as a  
 21 felony under the provisions of any prior code in this state or the  
 22 jurisdiction in which the offense was committed is subject to subsection  
 23 A, B, C, D or E of this section. A person who has been convicted of a  
 24 felony weapons possession violation in any court outside the jurisdiction  
 25 of this state that would not be punishable as a felony under the laws of  
 26 this state is not subject to this section.

27 L. The penalties prescribed by this section shall be substituted  
 28 for the penalties otherwise authorized by law if an allegation of prior  
 29 conviction is charged in the indictment or information and admitted or  
 30 found by the court or if an allegation of dangerous offense is charged in  
 31 the indictment or information and admitted or found by the trier of fact.  
 32 The release provisions prescribed by this section shall not be substituted  
 33 for any penalties required by the substantive offense or provision of law  
 34 that specifies a later release or completion of the sentence imposed  
 35 before release. The court shall allow the allegation of a prior  
 36 conviction or the allegation of a dangerous offense at any time before the  
 37 date the case is actually tried unless the allegation is filed fewer than  
 38 twenty days before the case is actually tried and the court finds on the  
 39 record that the defendant was in fact prejudiced by the untimely filing  
 40 and states the reasons for these findings. If the allegation of a prior  
 41 conviction is filed, the state must make available to the defendant a copy  
 42 of any material or information obtained concerning the prior conviction.  
 43 The charge of prior conviction shall not be read to the jury. For the  
 44 purposes of this subsection, "substantive offense" means the felony that  
 45 the trier of fact found beyond a reasonable doubt the defendant committed.

1 Substantive offense does not include allegations that, if proven, would  
2 enhance the sentence of imprisonment or fine to which the defendant  
3 otherwise would be subject.

4 M. Except as provided in section 13-705 or 13-751, if the victim is  
5 an unborn child in the womb at any stage of its development, the defendant  
6 shall be sentenced pursuant to this section.

7 Sec. 5. Section 13-705, Arizona Revised Statutes, is amended to  
8 read:

9 13-705. Dangerous crimes against children; sentences;  
10 definitions

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

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

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

37 C. Except as otherwise provided in this section, a person who is at  
38 least eighteen years of age or who has been tried as an adult and who is  
39 convicted of a dangerous crime against children in the first degree  
40 involving attempted first degree murder of a minor who is twelve, thirteen  
41 or fourteen years of age, second degree murder of a minor who is twelve,  
42 thirteen or fourteen years of age, sexual assault of a minor who is  
43 twelve, thirteen or fourteen years of age, taking a child for the purpose  
44 of prostitution, child sex trafficking, sexual conduct with a minor who is  
45 twelve, thirteen or fourteen years of age, continuous sexual abuse of a

1 child or manufacturing methamphetamine under circumstances that cause  
2 physical injury to a minor who is twelve, thirteen or fourteen years of  
3 age ~~or involving or using minors in drug offenses~~ shall be sentenced to a  
4 term of imprisonment as follows:

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

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

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23 years	30 years	37 years

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

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

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

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

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

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

35 A person who has been previously convicted of one predicate felony shall  
36 be sentenced to a term of imprisonment as follows and the person is not  
37 eligible for suspension of sentence, probation, pardon or release from  
38 confinement on any basis except as specifically authorized by section  
39 31-233, subsection A or B until the sentence imposed by the court has been  
40 served, the person is eligible for release pursuant to section 41-1604.07  
41 or the sentence is commuted:

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

44 F. Except as otherwise provided in this section, if a person is at  
45 least eighteen years of age or has been tried as an adult and is convicted

1 of a dangerous crime against children involving sexual abuse or bestiality  
2 under section 13-1411, subsection A, paragraph 2 and is sentenced to a  
3 term of imprisonment, the term of imprisonment is as follows and the  
4 person is not eligible for release from confinement on any basis except as  
5 specifically authorized by section 31-233, subsection A or B until the  
6 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:

8	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
9	2.5 years	5 years	7.5 years

10 A person who has been previously convicted of one predicate felony shall  
11 be sentenced to a term of imprisonment as follows and the person is not  
12 eligible for suspension of sentence, probation, pardon or release from  
13 confinement on any basis except as specifically authorized by section  
14 31-233, subsection A or B until the sentence imposed by the court has been  
15 served, the person is eligible for release pursuant to section 41-1604.07  
16 or the sentence is commuted:

17	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
18	8 years	15 years	22 years

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

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

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

37 J. Notwithstanding chapter 10 of this title, a person who is at  
38 least eighteen years of age or who has been tried as an adult and who is  
39 convicted of a dangerous crime against children in the second degree  
40 pursuant to subsection B, C or D of this section is guilty of a class 3  
41 felony and if the person is sentenced to a term of imprisonment, the term  
42 of imprisonment is as follows and the person is not eligible for release  
43 from confinement on any basis except as specifically authorized by section  
44 31-233, subsection A or B until the person has served the sentence imposed

1 by the court, the person is eligible for release pursuant to section  
2 41-1604.07 or the sentence is commuted:

3	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4	5 years	10 years	15 years

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

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

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

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

24 O. A dangerous crime against children is in the first degree if it  
25 is a completed offense and is in the second degree if it is a preparatory  
26 offense, except attempted first degree murder is a dangerous crime against  
27 children in the first degree.

28 P. For the purposes of this section:

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

31 (a) Second degree murder.

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

35 (c) Sexual assault.

36 (d) Molestation of a child.

37 (e) Sexual conduct with a minor.

38 (f) Commercial sexual exploitation of a minor.

39 (g) Sexual exploitation of a minor.

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

42 (i) Kidnapping.

43 (j) Sexual abuse.

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

- 1 (l) Child sex trafficking as prescribed in section 13-3212.
- 2 ~~(m) Involving or using minors in drug offenses.~~
- 3 ~~(n)~~ (m) Continuous sexual abuse of a child.
- 4 ~~(o)~~ (n) Attempted first degree murder.
- 5 ~~(p)~~ (o) Sex trafficking.
- 6 ~~(q)~~ (p) Manufacturing methamphetamine under circumstances that
- 7 cause physical injury to a minor.
- 8 ~~(r)~~ (q) Bestiality as prescribed in section 13-1411, subsection A,
- 9 paragraph 2.
- 10 ~~(s)~~ (r) Luring a minor for sexual exploitation.
- 11 ~~(t)~~ (s) Aggravated luring a minor for sexual exploitation.
- 12 ~~(u)~~ (t) Unlawful age misrepresentation.
- 13 ~~(v)~~ (u) Unlawful mutilation.

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

20 Sec. 6. Section 13-709, Arizona Revised Statutes, is amended to  
21 read:

22 13-709. Offenses committed in school safety zone; sentences;  
23 definitions

24 A. Except as otherwise prescribed in section 13-3411, a person who  
25 is convicted of a felony offense that is committed in a school safety zone  
26 is guilty of the same class of felony that the person would otherwise be  
27 guilty of if the violation had not occurred within a school safety zone,  
28 except that the court may impose a sentence that is one year longer than  
29 the minimum, maximum and presumptive sentence for that violation if the  
30 person is not a criminal street gang member or up to five years longer  
31 than the minimum, maximum and presumptive sentence for that violation if  
32 the person is a criminal street gang member. The additional sentence  
33 imposed under this subsection is in addition to any other enhanced  
34 punishment that may be applicable under section 13-703, section 13-704,  
35 section 13-706, section 13-708, subsection D or chapter 34 of this title.

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

40 C. Each school district governing board or its designee, or chief  
41 administrative officer in the case of a nonpublic or charter school, may  
42 place and maintain permanently affixed signs that are located in a visible  
43 manner at the main entrance of each school and that identify the school  
44 and its accompanying grounds as a school safety zone. A school may  
45 include information regarding the school safety zone boundaries on a sign

1 that identifies the area as a drug free zone and not post separate school  
2 safety zone signs.

3 D. FOR THE PURPOSES OF DETERMINING THE ADDITIONAL SENTENCE PURSUANT  
4 TO THIS SECTION, THE TRIER OF FACT SHALL DETERMINE AND THE COURT SHALL  
5 CONSIDER THE FOLLOWING FACTORS:

6 1. WHETHER CHILDREN WERE PRESENT DURING THE COMMISSION OF THE  
7 OFFENSE.

8 2. IF ANOTHER PERSON WAS PRESENT DURING THE COMMISSION OF THE  
9 OFFENSE, THE AGE AND RELATIONSHIP OF THE DEFENDANT TO THAT PERSON.

10 3. THE TIME OF DAY THAT THE OFFENSE OCCURRED.

11 4. THE PRESENCE OF ANY AGGRAVATING OR MITIGATING CIRCUMSTANCES  
12 PURSUANT TO SECTION 13-701, SUBSECTIONS D AND E.

13 5. IF APPLICABLE, THE EXTENT TO WHICH THE LOCATION OF THE OFFENSE  
14 WAS DETERMINED OR CONTROLLED BY AN UNDERCOVER LAW ENFORCEMENT AGENT,  
15 WHETHER AN UNDERCOVER LAW ENFORCEMENT AGENT REQUESTED ANY ACTION AT THE  
16 LOCATION OR WHETHER A CONFIDENTIAL INFORMANT WAS INVOLVED IN THE OFFENSE.

17 ~~D.~~ E. For the purposes of this section:

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

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

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

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

25 ~~(c)~~ (b) Any school bus.

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

29 ~~(e)~~ (d) A school bus stop.

30 ~~(f)~~ (e) Any bus stop where school children are awaiting, boarding  
31 or exiting a bus contracted to transport pupils to any school.

32 Sec. 7. Section 13-3401, Arizona Revised Statutes, is amended to  
33 read:

34 13-3401. Definitions

35 In this chapter, unless the context otherwise requires:

36 1. "Administer" means to apply, inject or facilitate the inhalation  
37 or ingestion of a substance to the body of a person.

38 2. "Amidone" means any substance identified chemically as  
39 (4-4-diphenyl-6-dimethylamine-heptanone-3), or any salt of such substance,  
40 by whatever trade name designated.

41 3. "Board" means the Arizona state board of pharmacy.

42 4. "Cannabis" means the following substances under whatever names  
43 they may be designated:

44 (a) The resin extracted from any part of a plant of the genus  
45 cannabis, and every compound, manufacture, salt, derivative, mixture or

1 preparation of such plant, its seeds or its resin. Cannabis does not  
2 include oil or cake made from the seeds of such plant, any fiber,  
3 compound, manufacture, salt, derivative, mixture or preparation of the  
4 mature stalks of such plant except the resin extracted from the stalks or  
5 any fiber, oil or cake or the sterilized seed of such plant ~~which~~ THAT is  
6 incapable of germination.

7 (b) Every compound, manufacture, salt, derivative, mixture or  
8 preparation of such resin or tetrahydrocannabinol.

9 5. "Coca leaves" means cocaine, its optical isomers and any  
10 compound, manufacture, salt, derivative, mixture or preparation of coca  
11 leaves, except derivatives of coca leaves ~~which~~ THAT do not contain  
12 cocaine, ecgonine or substances from which cocaine or ecgonine may be  
13 synthesized or made.

14 6. "Dangerous drug" means the following by whatever official,  
15 common, usual, chemical or trade name designated:

16 (a) Any material, compound, mixture or preparation that contains  
17 any quantity of the following hallucinogenic substances and their salts,  
18 isomers, whether optical, positional or geometric, and salts of isomers,  
19 unless specifically excepted, whenever the existence of such salts,  
20 isomers and salts of isomers is possible within the specific chemical  
21 designation:

- 22 (i) Alpha-ethyltryptamine.
- 23 (ii) Alpha-methyltryptamine.
- 24 (iii) (2-aminopropyl) benzofuran (APB).
- 25 (iv) (2-aminopropyl)-2, 3-dihydrobenzofuran (APDB).
- 26 (v) Aminorex.
- 27 (vi) 4-bromo-2, 5-dimethoxyphenethylamine.
- 28 (vii) 4-bromo-2, 5-dimethoxyamphetamine.
- 29 (viii) Bufotenine.
- 30 (ix) [3-(3-carbamoylphenyl)phenyl]N-cyclohexyl carbamate (URB-597).
- 31 (x) Diethyltryptamine.
- 32 (xi) 2, 5-dimethoxyamphetamine.
- 33 (xii) Dimethyltryptamine.
- 34 (xiii) (2-ethylaminopropyl)-benzofuran (EAPB).
- 35 (xiv) 5-methoxy-alpha-methyltryptamine.
- 36 (xv) 5-methoxy-3, 4-methylenedioxyamphetamine.
- 37 (xvi) 4-methyl-2, 5-dimethoxyamphetamine.
- 38 (xvii) (2-methylaminopropyl)-benzofuran (MAPB).
- 39 (xviii) Ibogaine.
- 40 (xix) Lysergic acid amide.
- 41 (xx) Lysergic acid diethylamide.
- 42 (xxi) Mescaline.
- 43 (xxii) 4-methoxyamphetamine.
- 44 (xxiii) Methoxymethylenedioxyamphetamine (MMDA).
- 45 (xxiv) Methylenedioxyamphetamine (MDA).

- 1 (xxv) 3, 4-methylenedioxyamphetamine.  
 2 (xxvi) 3, 4-methylenedioxy-N-ethylamphetamine.  
 3 (xxvii) N-ethyl-3-piperidyl benzilate (JB-318).  
 4 (xxviii) N-hydroxy-3, 4-methylenedioxyamphetamine.  
 5 (xxix) N-methyl-3-piperidyl benzilate (JB-336).  
 6 (xxx) N-methyltryptamine mimetic substances that are any substances  
 7 derived from N-methyltryptamine by any substitution at the nitrogen, any  
 8 substitution at the indole ring, any substitution at the alpha carbon, any  
 9 substitution at the beta carbon or any combination of the above.  
 10 N-methyltryptamine mimetic substances do not include melatonin (5-methoxy-  
 11 n-acetyltryptamine). Substances in the N-methyltryptamine generic  
 12 definition include AcO-DMT, Baeocystine, Bromo-DALT, DiPT, DMT, DPT, HO-  
 13 DET, HO-DiPT, HO-DMT, HO-DPT, HO-MET, MeO-DALT, MeO-DET, MeO-DiPT, MeO-  
 14 DMT, MeO-DPT, MeO-NMT, MET, NMT and Norbufotenin.  
 15 (xxxi) N-(1-phenylcyclohexyl) ethylamine (PCE).  
 16 (xxxii) Nabilone.  
 17 (xxxiii) 1-(1-phenylcyclohexyl) pyrrolidine (PHP).  
 18 (xxxiv) 1-(1-(2-thienyl)-cyclohexyl) piperidine (TCP).  
 19 (xxxv) 1-(1-(2-thienyl)-cyclohexyl) pyrrolidine.  
 20 (xxxvi) Para-methoxyamphetamine (PMA).  
 21 (xxxvii) Psilacetin.  
 22 (xxxviii) Psilocybin.  
 23 (xxxix) Psilocyn.  
 24 (xl) Synhexyl.  
 25 (xli) Trifluoromethylphenylpiperazine (TFMPP).  
 26 (xlii) Trimethoxyamphetamine (TMA).  
 27 (xliii) 1-pentyl-3-(naphthoyl)indole (JWH-018 and isomers).  
 28 (xliv) 1-butyl-3-(naphthoyl)indole (JWH-073 and isomers).  
 29 (xlv) 1-hexyl-3-(naphthoyl)indole (JWH-019 and isomers).  
 30 (xlvi) 1-pentyl-3-(4-chloro naphthoyl)indole (JWH-398 and isomers).  
 31 (xlvii) 1-(2-(4-(morpholinyl)ethyl))-3-(naphthoyl)indole (JWH-200  
 32 and isomers).  
 33 (xlviii) 1-pentyl-3-(methoxyphenylacetyl)indole (JWH-250 and  
 34 isomers).  
 35 (xlix) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone  
 36 (JWH-015 and isomers).  
 37 (l) (6AR, 10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan2-  
 38 YL)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (HU-210).  
 39 (li) 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol  
 40 (CP 47,497 and isomers).  
 41 (lii) 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol  
 42 (cannabicyclohexanol, CP-47,497 C8 homologue and isomers).  
 43 (b) Any material, compound, mixture or preparation that contains  
 44 any quantity of cannabimimetic substances and their salts, isomers,  
 45 whether optical, positional or geometric, and salts of isomers, unless

1 specifically excepted, whenever the existence of such salts, isomers and  
2 salts of isomers is possible within the specific chemical designation.  
3 For the purposes of this subdivision, "cannabimimetic substances" means  
4 any substances within the following structural classes:

5 (i) 2-(3-hydroxycyclohexyl)phenol with substitution at the  
6 5-position of the phenolic ring by alkyl or alkenyl, whether or not  
7 substituted on the cyclohexyl ring to any extent. Substances in the  
8 2-(3-hydroxycyclohexyl)phenol generic definition include CP-47,497,  
9 CP-47,497 C8-Homolog, CP-55,940 and CP-56,667.

10 (ii) 3-(naphthoyl)indole or 3-(naphthylmethane)indole by  
11 substitution at the nitrogen atom of the indole ring, whether or not  
12 further substituted on the indole ring to any extent, whether or not  
13 substituted on the naphthoyl or naphthyl ring to any extent. Substances  
14 in the 3-(naphthoyl)indole generic definition include AM-678, AM-2201,  
15 JWH-004, JWH-007, JWH-009, JWH-015, JWH-016, JWH-018, JWH-019, JWH-020,  
16 JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072,  
17 JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096,  
18 JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-175, JWH-180,  
19 JWH-181, JWH-182, JWH-184, JWH-185, JWH-189, JWH-192, JWH-193, JWH-194,  
20 JWH-195, JWH-196, JWH-197, JWH-199, JWH-200, JWH-210, JWH-211, JWH-212,  
21 JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242,  
22 JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399,  
23 JWH-400, JWH-412, JWH-413, JWH-414 and JWH-415.

24 (iii) 3-naphthoyl-indazole or 3-(naphthylmethane)-indazole by  
25 substitution at one or both of the nitrogen atoms of the indazole ring,  
26 whether or not further substituted on the indazole ring to any extent,  
27 whether or not substituted on the naphthoyl ring to any extent.  
28 Substances in the 3-naphthoyl-indazole or 3-(naphthylmethane)-indazole  
29 generic definition include THJ2201 and THJ-018.

30 (iv) 3-(naphthoyl)pyrrole by substitution at the nitrogen atom of  
31 the pyrrole ring, whether or not further substituted in the pyrrole ring  
32 to any extent, whether or not substituted on the naphthoyl ring to any  
33 extent. Substances in the 3-(naphthoyl)pyrrole generic definition include  
34 JWH-030, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244,  
35 JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-346, JWH-348,  
36 JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371,  
37 JWH-373 and JWH-392.

38 (v) 1-(naphthylmethylene)indene by substitution of the 3-position  
39 of the indene ring, whether or not further substituted in the indene ring  
40 to any extent, whether or not substituted on the naphthyl ring to any  
41 extent. Substances in the 1-(naphthylmethylene)indene generic definition  
42 include JWH-176.

43 (vi) 3-(phenylacetyl)indole or 3-(benzoyl)indole by substitution at  
44 the nitrogen atom of the indole ring, whether or not further substituted  
45 in the indole ring to any extent, whether or not substituted on the phenyl

1 ring to any extent. Substances in the 3-(phenylacetyl)indole generic  
2 definition include AM-694, AM-2233, JWH-167, JWH-201, JWH-202, JWH-203,  
3 JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH--237, JWH-248,  
4 JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306,  
5 JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-4, RCS-8, SR-18  
6 and SR-19.

7 (vii) 3-(cyclopropylmethanone) indole or 3-(cyclobutylmethanone)  
8 indole or 3-(cyclopentylmethanone) indole by substitution at the nitrogen  
9 atom of the indole ring, whether or not further substituted in the indole  
10 ring to any extent, whether or not substituted on the cyclopropyl,  
11 cyclobutyl or cyclopentyl rings to any extent. Substances in the  
12 3-(cyclopropylmethanone) indole generic definition include UR-144,  
13 fluoro-UR-144 and XLR-11.

14 (viii) 3-adamantoylindole with substitution at the nitrogen atom of  
15 the indole ring, whether or not further substituted on the indole ring to  
16 any extent, whether or not substituted on the adamantyl ring to any  
17 extent. Substances in the 3-adamantoylindole generic definition include  
18 AB-001.

19 (ix) N-(adamantyl)-indole-3-carboxamide with substitution at the  
20 nitrogen atom of the indole ring, whether or not further substituted on  
21 the indole ring to any extent, whether or not substituted on the adamantyl  
22 ring to any extent. Substances in the N-(adamantyl)-indole-3-carboxamide  
23 generic definition include SDB-001.

24 (x) Indole-3-carboxamide or Indazole-3-carboxamide with  
25 substitution at the nitrogen atom of the indole ring or by substitution at  
26 one or both of the nitrogen atoms of the indazole ring, whether or not  
27 further substituted on the indole ring or the indazole ring to any extent,  
28 whether or not substituted on the nitrogen of the carboxamide to any  
29 extent. Substances in the indole-3-carboxamide or indazole-3-carboxamide  
30 generic definition include AKB-48, fluoro-AKB-48, APINACA, AB-PINACA,  
31 AB-FUBINACA, ABICA and ADBICA.

32 (xi) 8-Quinolinylnyl-indole-3-carboxylate or  
33 8-quinolinylnyl-indazole-3-carboxylate by substitution at the nitrogen atom  
34 of the indole ring or by substitution at one or both of the nitrogen atoms  
35 of the indazole ring, whether or not further substituted in the indole  
36 ring or indazole ring to any extent, whether or not substituted on the  
37 quinoline ring to any extent. Substances in the 8-quinolinylnyl-indole-  
38 3-carboxylate or the 8-quinolinylnyl-indazole-3-carboxylate generic  
39 definition include PB-22, fluoro-PB-22, NPB-22 and fluoro-NPB-22.

40 (xii) Naphthalenyl-indole-3-carboxylate or  
41 naphthalenyl-indazole-3-carboxylate by substitution at the nitrogen atom  
42 of the indole ring or by substitution at one or both of the nitrogen atoms  
43 of the indazole ring, whether or not further substituted in the indole or  
44 indazole ring to any extent, whether or not substituted on the  
45 naphthalenyl ring to any extent. Substances in the naphthalenyl-indole-

1 3-carboxylate or naphthalenyl-indazole-3-carboxylate generic definition  
 2 include NM2201, FDU-PB-22, SDB-005 and fluoro SDB-005.

3 (c) Any material, compound, mixture or preparation that contains  
 4 any quantity of the following substances and their salts, isomers, whether  
 5 optical, positional or geometric, and salts of isomers having a potential  
 6 for abuse associated with a stimulant effect on the central nervous  
 7 system:

- 8 (i) Alpha-pyrrolidinobutiophenone (Alpha-PBP).
- 9 (ii) Alpha-pyrrolidinopropiophenone (Alpha-PPP).
- 10 (iii) Alpha-pyrrolidinovalerophenone (Alpha-PVP).
- 11 (iv) Alpha-pyrrolidinovalerothiophenone (Alpha-PVT).
- 12 (v) Aminoindane mimetic substances that are derived from  
 13 aminoindane by any substitution at the indane ring, replacement of the  
 14 amino group with another N group or any combination of the above.  
 15 Substances in the aminoindane generic definition include MDAI, MMAI, IAI  
 16 and AMMI.
- 17 (vi) Amphetamine.
- 18 (vii) Benzphetamine.
- 19 (viii) Benzylpiperazine (BZP).
- 20 (ix) Beta-keto-n-methylbenzodioxolylbutanamine (Butylone).
- 21 (x) Beta-keto-n-methylbenzodioxolylpentanamine (Pentylone).
- 22 (xi) Butorphanol.
- 23 (xii) Cathine ((+)-norpseudoephedrine).
- 24 (xiii) Cathinomimetic substances that are any substances derived  
 25 from cathinone, (2-amino-1-phenyl-1-propanone) by any substitution at the  
 26 phenyl ring, any substitution at the 3 position, any substitution at the  
 27 nitrogen atom or any combination of the above substitutions.
- 28 (xiv) Cathinone.
- 29 (xv) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).
- 30 (xvi) Chlorphentermine.
- 31 (xvii) Clortermine.
- 32 (xviii) Diethylpropion.
- 33 (xix) Dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine) (MDAI).
- 34 (xx) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).
- 35 (xxi) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).
- 36 (xxii) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N).
- 37 (xxiii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).
- 38 (xxiv) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H).
- 39 (xxv) Dimethylcathinone (Metamfepramone).
- 40 (xxvi) Ethcathinone.
- 41 (xxvii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2).
- 42 (xxviii) Fencamfamin.
- 43 (xxix) Fenethylamine.
- 44 (xxx) Fenproporex.
- 45 (xxxi) Fluoroamphetamine.

- 1 (xxxii) Fluoromethamphetamine.
- 2 (xxxiii) Fluoromethcathinone.
- 3 (xxxiv) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).
- 4 (xxxv) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine(2C-T-4).
- 5 (xxxvi) Mazindol.
- 6 (xxxvii) Mefenorex.
- 7 (xxxviii) Methamphetamine.
- 8 (xxxix) Methcathinone.
- 9 (xl) Methiopropamine.
- 10 (xli) Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
- 11 (xlii) Methoxymethcathinone (methedrone).
- 12 (xliii) Methoxyphenethylamine mimetic substances that are any
- 13 substances derived from 2, 5-dimethoxy-phenethylamine by any substitution
- 14 at the phenyl ring, any substitution at the nitrogen atom, any
- 15 substitutions at the carbon atoms of the ethylamine, or any combination of
- 16 the above substitutions.
- 17 (xliv) 4-methylaminorex.
- 18 (xlv) Methyl-a-pyrrolidinobutiophenone (MPBP).
- 19 (xlvi) Methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP).
- 20 (xlvii) Methylenedioxyethcathinone (Ethylone).
- 21 (xlviii) Methylenedioxymethcathinone (Methylone).
- 22 (xlix) Methylenedioxyprovalerone (MDPV).
- 23 (l) Methylmethcathinone (Mephedrone).
- 24 (li) Methylphenidate.
- 25 (lii) Modafinil.
- 26 (liii) Naphthylpyrovalerone (Naphyrone).
- 27 (liv) N-ethylamphetamine.
- 28 (lv) N, N-dimethylamphetamine.
- 29 (lvi) Pemoline.
- 30 (lvii) Phendimetrazine.
- 31 (lviii) Phenmetrazine.
- 32 (lix) Phentermine.
- 33 (lx) Pipradol.
- 34 (lxi) Propylhexedrine.
- 35 (lxii) Pyrovalerone.
- 36 (lxiii) Sibutramine.
- 37 (lxiv) Spa ((-)-1-dimethylamino-1,2-diphenylethane).
- 38 (d) Any material, compound, mixture or preparation that contains
- 39 any quantity of the following substances having a potential for abuse
- 40 associated with a depressant effect on the central nervous system:
- 41 (i) Any substance which contains any quantity of a derivative of
- 42 barbituric acid, or any salt of a derivative of barbituric acid, unless
- 43 specifically excepted.
- 44 (ii) Alprazolam.
- 45 (iii) Bromazepam.

- 1 (iv) Camazepam.
- 2 (v) Carisoprodol.
- 3 (vi) Chloral betaine.
- 4 (vii) Chloral hydrate.
- 5 (viii) Chlordiazepoxide.
- 6 (ix) Chlorhexadol.
- 7 (x) Clobazam.
- 8 (xi) Clonazepam.
- 9 (xii) Clorazepate.
- 10 (xiii) Clotiazepam.
- 11 (xiv) Cloxazolam.
- 12 (xv) Delorazepam.
- 13 (xvi) Diazepam.
- 14 (xvii) Dichloralphenazone.
- 15 (xviii) Estazolam.
- 16 (xix) Ethchlorvynol.
- 17 (xx) Ethinamate.
- 18 (xxi) Ethyl loflazepate.
- 19 (xxii) Etizolam.
- 20 (xxiii) Fenfluramine.
- 21 (xxiv) Fludiazepam.
- 22 (xxv) Flunitrazepam.
- 23 (xxvi) Flurazepam.
- 24 (xxvii) Gamma hydroxy butyrate.
- 25 (xxviii) Glutethimide.
- 26 (xxix) Halazepam.
- 27 (xxx) Haloxazolam.
- 28 (xxxi) Hydroxyphencyclidine (HO-PCP).
- 29 (xxxii) Ketamine.
- 30 (xxxiii) Ketazolam.
- 31 (xxxiv) Loprazolam.
- 32 (xxxv) Lorazepam.
- 33 (xxxvi) Lormetazepam.
- 34 (xxxvii) Lysergic acid.
- 35 (xxxviii) Mebutamate.
- 36 (xxxix) Mecloqualone.
- 37 (xl) Medazepam.
- 38 (xli) Meprobamate.
- 39 (xlii) Methaqualone.
- 40 (xliii) Methohexital.
- 41 (xliv) 2-(methoxyphenyl)-2-(ethylamino)cyclohexanone
- 42 (Methoxetamine).
- 43 (xlv) 2-(methoxyphenyl)-2-(methylamino)cyclohexanone
- 44 (Methoxyketamine).
- 45 (xlvi) Methoxyphencyclidine(MeO-PCP).

- 1 (xlvi) Methyprylon.
- 2 (xlviii) Midazolam.
- 3 (xlix) Nimetazepam.
- 4 (l) Nitrazepam.
- 5 (li) Nordiazepam.
- 6 (lii) Oxazepam.
- 7 (liii) Oxazolam.
- 8 (liv) Paraldehyde.
- 9 (lv) Petrichloral.
- 10 (lvi) Phencyclidine (PCP).
- 11 (lvii) Phencyclidine mimetic substances that are any substances
- 12 derived from phenylcyclohexylpiperidine by any substitution at the phenyl
- 13 ring, any substitution at the piperidine ring, any substitution at the
- 14 cyclohexyl ring, any replacement of the phenyl ring or any combination of
- 15 the above. Substances in the phenylcyclohexylpiperidine generic
- 16 definition include Amino-PCP, BCP, Bromo-PCP, BTCP, Chloro-PCP,
- 17 Fluoro-PCP, HO-PCP, MeO-PCP, Methyl-PCP, Nitro-PCP, Oxo-PCP, PCE, PCM,
- 18 PCPY, TCP and TCPY.
- 19 (lviii) Pinazepam.
- 20 (lix) Prazepam.
- 21 (lx) Scopolamine.
- 22 (lxi) Sulfondiethylmethane.
- 23 (lxii) Sulfonethylmethane.
- 24 (lxiii) Sulfonmethane.
- 25 (lxiv) Quazepam.
- 26 (lxv) Temazepam.
- 27 (lxvi) Tetrazepam.
- 28 (lxvii) Tiletamine.
- 29 (lxviii) Triazolam.
- 30 (lxix) Zaleplon.
- 31 (lxx) Zolazepam.
- 32 (lxxi) Zolpidem.
- 33 (lxxii) Zopiclone.
- 34 (e) Any material, compound, mixture or preparation that contains
- 35 any quantity of the following anabolic steroids and their salts, isomers
- 36 or esters:
  - 37 (i) Boldenone.
  - 38 (ii) Clostebol (4-chlorotestosterone).
  - 39 (iii) Dehydrochloromethyltestosterone.
  - 40 (iv) Drostanolone.
  - 41 (v) Ethylestrenol.
  - 42 (vi) Fluoxymesterone.
  - 43 (vii) Formebolone (formebolone).
  - 44 (viii) Mesterolone.
  - 45 (ix) Methandriol.

- 1 (x) Methandrostenolone (methandienone).
- 2 (xi) Methenolone.
- 3 (xii) Methyltestosterone.
- 4 (xiii) Mibolerone.
- 5 (xiv) Nandrolone.
- 6 (xv) Norethandrolon.
- 7 (xvi) Oxandrolone.
- 8 (xvii) Oxymesterone.
- 9 (xviii) Oxymetholone.
- 10 (xix) Stanolone (4-dihydrotestosterone).
- 11 (xx) Stanozolol.
- 12 (xxi) Testolactone.
- 13 (xxii) Testosterone.
- 14 (xxiii) Trenbolone.

15 7. "Deliver" means the actual, constructive or attempted exchange  
16 from one person to another, whether or not there is an agency  
17 relationship.

18 8. "Director" means the director of the department of health  
19 services.

20 9. "Dispense" means distribute, leave with, give away, dispose of  
21 or deliver.

22 10. "Drug court program" means a program that is established  
23 pursuant to section 13-3422 by the presiding judge of the superior court  
24 in cooperation with the county attorney in a county for the purpose of  
25 prosecuting, adjudicating and treating drug dependent persons who meet the  
26 criteria and guidelines for entry into the program that are developed and  
27 agreed on by the presiding judge and the prosecutor.

28 11. "Drug dependent person" means a person who is using a substance  
29 that is listed in paragraph 6, 19, 20, 21 or 28 of this section and who is  
30 in a state of psychological or physical dependence, or both, arising from  
31 the use of that substance.

32 12. "Federal act" has the same meaning prescribed in section  
33 32-1901.

34 13. "Isoamidone" means any substance identified chemically as  
35 (4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3), or any salt of such  
36 substance, by whatever trade name designated.

37 14. "Isonipecaïne" means any substance identified chemically as  
38 (1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester), or any salt  
39 of such substance, by whatever trade name designated.

40 15. "Ketobemidone" means any substance identified chemically as  
41 (4-(3-hydroxyphenyl)-1-methyl-4-piperidylethyl ketone hydrochloride), or  
42 any salt of such substance, by whatever trade name designated.

43 16. "Licensed" or "permitted" means authorized by the laws of this  
44 state to do certain things.

1           17. "Manufacture" means produce, prepare, propagate, compound, mix  
2 or process, directly or indirectly, by extraction from substances of  
3 natural origin or independently by means of chemical synthesis, or by a  
4 combination of extraction and chemical synthesis. Manufacture includes  
5 any packaging or repackaging or labeling or relabeling of containers.  
6 Manufacture does not include any producing, preparing, propagating,  
7 compounding, mixing, processing, packaging or labeling done in conformity  
8 with applicable state and local laws and rules by a licensed practitioner  
9 incident to and in the course of his licensed practice.

10           18. "Manufacturer" means a person who manufactures a narcotic or  
11 dangerous drug or other substance controlled by this chapter.

12           19. "Marijuana" means all parts of any plant of the genus cannabis,  
13 from which the resin has not been extracted, whether growing or not, and  
14 the seeds of such plant. Marijuana does not include the mature stalks of  
15 such plant or the sterilized seed of such plant ~~which~~ THAT is incapable of  
16 germination.

17           20. "Narcotic drugs" means the following, whether of natural or  
18 synthetic origin and any substance neither chemically nor physically  
19 distinguishable from them:

- 20           (a) Acetyl-alpha-methylfentanyl.
- 21           (b) Acetylmethadol.
- 22           (c) Alfentanil.
- 23           (d) Allylprodine.
- 24           (e) Alphacetylmethadol.
- 25           (f) Alphameprodine.
- 26           (g) Alphamethadol.
- 27           (h) Alpha-methylfentanyl.
- 28           (i) Alpha-methylthiofentanyl.
- 29           (j) Alphaprodine.
- 30           (k) Amidone (methadone).
- 31           (l) Anileridine.
- 32           (m) Benzethidine.
- 33           (n) Benzylfentanyl.
- 34           (o) Betacetylmethadol.
- 35           (p) Beta-hydroxyfentanyl.
- 36           (q) Beta-hydroxy-3-methylfentanyl.
- 37           (r) Betameprodine.
- 38           (s) Betamethadol.
- 39           (t) Betaprodine.
- 40           (u) Bezitramide.
- 41           (v) Buprenorphine and its salts.
- 42           (w) Cannabis.
- 43           (x) Carfentanil.
- 44           (y) 4-chloro-n-[-1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]benz  
45 enesulfonamide (W-18).

- 1           (z) 4-chloro-n-[1-(2-phenylethyl)-2-piperidinylidene]
- 2 benzenesulfonamide (W-15).
- 3           (aa) Clonitazene.
- 4           (bb) Coca leaves.
- 5           (cc) 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45).
- 6           (dd) Dextromoramide.
- 7           (ee) Dextropropoxyphene.
- 8           (ff) Diampromide.
- 9           (gg) 3,4-dichloro-n-(-[1-(dimethylamino)cyclohexyl]methyl)-benzamid
- 10 e (AH-7921).
- 11           (hh) 3,4-dichloro-n-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide
- 12 (U-47700).
- 13           (ii) Diethylthiambutene.
- 14           (jj) DifenoXin.
- 15           (kk) Dihydrocodeine.
- 16           (ll) Dimenoxadol.
- 17           (mm) DimepHeptanol.
- 18           (nn) Dimethylthiambutene.
- 19           (oo) Dioxaphetyl butyrate.
- 20           (pp) Diphenidine (DEP).
- 21           (qq) Diphenoxylate.
- 22           (rr) Dipipanone.
- 23           (ss) Ephenidine.
- 24           (tt) Ethylmethylthiambutene.
- 25           (uu) Etonitazene.
- 26           (vv) EtoXeridine.
- 27           (ww) Fentanyl.
- 28           (xx) Fentanyl mimetic substances that are any substances derived
- 29 from fentanyl by any substitution in the phenethyl group, any substitution
- 30 in the piperidine ring, any substitution in the aniline ring, any
- 31 replacement of the phenyl portion of the phenethyl group, any replacement
- 32 of the N-propionyl group or any combination of the above.
- 33           (yy) Furethidine.
- 34           (zz) Hydroxypethidine.
- 35           (aaa) Isoamidone (isomethadone).
- 36           (bbb) Isophenidine.
- 37           (ccc) Pethidine (meperidine).
- 38           (ddd) Ketobemidone.
- 39           (eee) Lefetamine.
- 40           (fff) Levomethorphan.
- 41           (ggg) Levomoramide.
- 42           (hhh) Levophenacymorphan.
- 43           (iii) Levorphanol.
- 44           (jjj) Metazocine.
- 45           (kkk) Methoxphenidine (MXP).

- 1 (lll) 3-methylfentanyl.
- 2 (mmm) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
- 3 (nnn) 3-methylthiofentanyl.
- 4 (ooo) Morpheridine.
- 5 (ppp) Noracymethadol.
- 6 (qqq) Norlevorphanol.
- 7 (rrr) Normethadone.
- 8 (sss) Norpipanone.
- 9 (ttt) Opium.
- 10 (uuu) Para-fluorofentanyl.
- 11 (vvv) Pentazocine.
- 12 (www) Phenadoxone.
- 13 (xxx) Phenampromide.
- 14 (yyy) Phenazocine.
- 15 (zzz) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
- 16 (aaaa) Phenomorphan.
- 17 (bbbb) Phenoperidine.
- 18 (cccc) Piminodine.
- 19 (dddd) Piritramide.
- 20 (eeee) Proheptazine.
- 21 (ffff) Properidine.
- 22 (gggg) Propiram.
- 23 (hhhh) Racemethorphan.
- 24 (iiii) Racemoramide.
- 25 (jjjj) Racemorphan.
- 26 (kkkk) Remifentanil.
- 27 (llll) Sufentanil.
- 28 (mmmm) Thenylfentanyl.
- 29 (nnnn) Thiofentanyl.
- 30 (oooo) Tilidine.
- 31 (pppp) Tramadol, 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)
- 32 cyclohexanol, and its salts, optical and geometric isomers, and its salts
- 33 of isomers.
- 34 (qqqq) Trimeperidine.
- 35 21. "Opium" means any compound, manufacture, salt, isomer, salt of
- 36 isomer, derivative, mixture or preparation of the following, but does not
- 37 include apomorphine or any of its salts:
- 38 (a) Acetorphine.
- 39 (b) Acetyldihydrocodeine.
- 40 (c) Benzylmorphine.
- 41 (d) Codeine.
- 42 (e) Codeine methylbromide.
- 43 (f) Codeine-N-oxide.
- 44 (g) Cyprenorphine.
- 45 (h) Desomorphine.

- 1 (i) Dihydromorphine.
- 2 (j) Drotebanol.
- 3 (k) Ethylmorphine.
- 4 (l) Etorphine.
- 5 (m) Heroin.
- 6 (n) Hydrocodone.
- 7 (o) Hydromorphinol.
- 8 (p) Hydromorphone.
- 9 (q) Levo-alphaacetylmethadol.
- 10 (r) Methyldesorphine.
- 11 (s) Methyldihydromorphine.
- 12 (t) Metopon.
- 13 (u) Morphine.
- 14 (v) Morphine methylbromide.
- 15 (w) Morphine methylsulfonate.
- 16 (x) Morphine-N-oxide.
- 17 (y) Myrophine.
- 18 (z) Nalorphine.
- 19 (aa) Nicocodeine.
- 20 (bb) Nicomorphine.
- 21 (cc) Normorphine.
- 22 (dd) Oxycodone.
- 23 (ee) Oxymorphone.
- 24 (ff) Pholcodine.
- 25 (gg) Thebacon.
- 26 (hh) Thebaine.

27 22. "Ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or  
28 phenylpropanolamine product" means a product that contains ephedrine,  
29 pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine and that is  
30 all of the following:

- 31 (a) Approved for sale under the federal act.
- 32 (b) Labeled, advertised and marketed only for an indication that is  
33 approved by the federal food and drug administration.
- 34 (c) Either:
  - 35 (i) A nonliquid that is sold in package sizes of not more than  
36 three grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or  
37 phenylpropanolamine and that is packaged in blister packs containing not  
38 more than two dosage units or, if the use of blister packs is technically  
39 infeasible, that is packaged in unit dose packets or pouches.
  - 40 (ii) A liquid that is sold in package sizes of not more than three  
41 grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or  
42 phenylpropanolamine.
- 43 23. "Peyote" means any part of a plant of the genus lophophora,  
44 known as the mescal button.

1           24. "Pharmacy" means a licensed business where drugs are compounded  
2 or dispensed by a licensed pharmacist.

3           25. "Practitioner" means a person licensed to prescribe and  
4 administer drugs.

5           26. "Precursor chemical I" means any material, compound, mixture or  
6 preparation ~~which~~ THAT contains any quantity of the following substances  
7 and their salts, optical isomers or salts of optical isomers:

8           (a) N-acetylanthranilic acid.

9           (b) Anthranilic acid.

10          (c) Ephedrine.

11          (d) Ergotamine.

12          (e) Isosafrole.

13          (f) Lysergic acid.

14          (g) Methylamine.

15          (h) N-ethylephedrine.

16          (i) N-ethylpseudoephedrine.

17          (j) N-methylephedrine.

18          (k) N-methylpseudoephedrine.

19          (l) Norephedrine.

20          (m) (-)-Norpseudoephedrine.

21          (n) Phenylacetic acid.

22          (o) Phenylpropanolamine.

23          (p) Piperidine.

24          (q) Pseudoephedrine.

25           27. "Precursor chemical II" means any material, compound, mixture  
26 or preparation ~~which~~ THAT contains any quantity of the following  
27 substances and their salts, optical isomers or salts of optical isomers:

28           (a) 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

29           (b) 4-cyano-1-methyl-4-phenylpiperidine.

30           (c) Chlorephedrine.

31           (d) Chlorpseudoephedrine.

32           (e) Ethyl-4-phenylpiperidine-4-carboxylate.

33           (f) 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

34           (g) 1-methyl-4-phenylpiperidine-4-carboxylic acid.

35           (h) N-formyl amphetamine.

36           (i) N-formyl methamphetamine.

37           (j) Phenyl-2-propanone.

38           (k) 1-piperidinocyclohexane carbonitrile.

39           (l) 1-pyrrolidinocyclohexane carbonitrile.

40           28. "Prescription-only drug" does not include a dangerous drug or  
41 narcotic drug but means:

42           (a) Any drug ~~which~~ THAT because of its toxicity or other  
43 potentiality for harmful effect, or the method of its use, or the  
44 collateral measures necessary to its use, is not generally recognized  
45 among experts, qualified by scientific training and experience to evaluate

1 its safety and efficacy, as safe for use except by or under the  
2 supervision of a medical practitioner.

3 (b) Any drug that is limited by an approved new drug application  
4 under the federal act or section 32-1962 to use under the supervision of a  
5 medical practitioner.

6 (c) Every potentially harmful drug, the labeling of which does not  
7 bear or contain full and adequate directions for use by the consumer.

8 (d) Any drug required by the federal act to bear on its label the  
9 legend "Caution: Federal law prohibits dispensing without prescription"  
10 or "Rx only".

11 29. "Produce" means grow, plant, cultivate, harvest, dry, process  
12 or prepare for sale.

13 30. "Regulated chemical" means the following substances in bulk  
14 form that are not a useful part of an otherwise lawful product:

- 15 (a) Acetic anhydride.
- 16 (b) Hypophosphorous acid.
- 17 (c) Iodine.
- 18 (d) Sodium acetate.
- 19 (e) Red phosphorus.
- 20 (f) Gamma butyrolactone (GBL).
- 21 (g) 1, 4-butanediol.
- 22 (h) Butyrolactone.
- 23 (i) 1, 2 butanolide.
- 24 (j) 2-oxanalone.
- 25 (k) Tetrahydro-2-furanone.
- 26 (l) Dihydro-2(3H)-furanone.
- 27 (m) Tetramethylene glycol.

28 31. "Retailer" means either:

29 (a) A person other than a practitioner who sells any precursor  
30 chemical or regulated chemical to another person for purposes of  
31 consumption and not resale, whether or not the person possesses a permit  
32 issued pursuant to title 32, chapter 18.

33 (b) A person other than a manufacturer or wholesaler who purchases,  
34 receives or acquires more than twenty-four grams of a precursor chemical.

35 32. "Sale" or "sell" means an exchange for anything of value or  
36 advantage, present or prospective.

37 33. "Sale for personal use" means the retail sale for a legitimate  
38 medical use in a single transaction to an individual customer, to an  
39 employer for dispensing to employees from first aid kits or medicine  
40 chests or to a school for administration pursuant to section 15-344.

41 34. "Scientific purpose" means research, teaching or chemical  
42 analysis.

43 35. "Suspicious transaction" means a transaction to which any of  
44 the following applies:

45 (a) A report is required under the federal act.

1 (b) The circumstances would lead a reasonable person to believe  
2 that any person is attempting to possess a precursor chemical or regulated  
3 chemical for the purpose of unlawful manufacture of a dangerous drug or  
4 narcotic drug, based on such factors as the amount involved, the method of  
5 payment, the method of delivery and any past dealings with any  
6 participant.

7 (c) The transaction involves payment for precursor or regulated  
8 chemicals in cash or money orders in a total amount of more than two  
9 hundred dollars.

10 (d) The transaction involves a sale, a transfer or furnishing to a  
11 retailer for resale without a prescription of ephedrine, pseudoephedrine,  
12 (-)-norpseudoephedrine or phenylpropanolamine that is not an ordinary  
13 ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine  
14 product.

15 36. "Threshold amount" means a weight, market value or other form  
16 of measurement of an unlawful substance as follows:

17 (a) ~~One gram~~ TEN GRAMS of heroin.

18 (b) ~~Nine~~ ONE HUNDRED grams of cocaine, COCAINE BASE OR HYDROLYZED  
19 COCAINE.

20 ~~(c) Seven hundred fifty milligrams of cocaine base or hydrolyzed~~  
21 ~~cocaine.~~

22 (c) FIVE MILLIGRAMS OF FENTANYL.

23 (d) ~~Four~~ EIGHT grams or ~~50~~ ONE HUNDRED milliliters of PCP.

24 (e) ~~Nine~~ TWENTY-EIGHT grams of methamphetamine, including  
25 methamphetamine in liquid suspension.

26 (f) ~~Nine~~ TWENTY-EIGHT grams of amphetamine, including amphetamine  
27 in liquid suspension.

28 (g) ~~One-half~~ ONE milliliter of lysergic acid diethylamide, or in  
29 the case of blotter dosage units ~~fifty~~ ONE HUNDRED dosage units.

30 (h) ~~Two~~ FIVE pounds of marijuana.

31 (i) For any combination consisting solely of those unlawful  
32 substances listed in subdivisions (a) through (h) of this paragraph, an  
33 amount equal to or in excess of the threshold amount, as determined by the  
34 application of section 13-3420.

35 (j) For any unlawful substance not listed in subdivisions (a)  
36 through (h) of this paragraph or any combination involving any unlawful  
37 substance not listed in subdivisions (a) through (h) of this paragraph, a  
38 value of at least one thousand dollars.

39 37. "Transfer" means furnish, deliver or give away.

40 38. "Vapor-releasing substance containing a toxic substance" means  
41 a material ~~which~~ THAT releases vapors or fumes containing any of the  
42 following:

43 (a) Ketones, including acetone, methyl ethyl ketone, mibk, miak,  
44 isophorone and mesityl oxide.

- 1 (b) Hydrocarbons, including propane, butane, pentane, hexane,
- 2 heptane and halogenated hydrocarbons.
- 3 (c) Ethylene dichloride.
- 4 (d) Pentachlorophenol.
- 5 (e) Chloroform.
- 6 (f) Methylene chloride.
- 7 (g) Trichloroethylene.
- 8 (h) Difluoroethane.
- 9 (i) Tetrafluoroethane.
- 10 (j) Aldehydes, including formaldehyde.
- 11 (k) Acetates, including ethyl acetate and butyl acetate.
- 12 (l) Aromatics, including benzene, toluene, xylene, ethylbenzene and
- 13 cumene.
- 14 (m) Alcohols, including methyl alcohol, ethyl alcohol, isopropyl
- 15 alcohol, butyl alcohol and diacetone alcohol.
- 16 (n) Ether, including Diethyl ether and petroleum ether.
- 17 (o) Nitrous oxide.
- 18 (p) Amyl nitrite.
- 19 (q) Isobutyl nitrite.

20 39. "Weight" unless otherwise specified includes the entire weight  
21 of any mixture or substance that contains a detectable amount of an  
22 unlawful substance. If a mixture or substance contains more than one  
23 unlawful substance, the weight of the entire mixture or substance is  
24 assigned to the unlawful substance that results in the greater offense.  
25 If a mixture or substance contains lysergic acid diethylamide, the offense  
26 that results from the unlawful substance shall be based on the greater  
27 offense as determined by the entire weight of the mixture or substance or  
28 the number of blotter dosage units. For the purposes of this paragraph,  
29 "mixture" means any combination of substances from which the unlawful  
30 substance cannot be removed without a chemical process.

31 40. "Wholesaler" means a person who in the usual course of business  
32 lawfully supplies narcotic drugs, dangerous drugs, precursor chemicals or  
33 regulated chemicals that he himself has not produced or prepared, but not  
34 to a person for the purpose of consumption by the person, whether or not  
35 the wholesaler has a permit that is issued pursuant to title 32,  
36 chapter 18. Wholesaler includes a person who sells, delivers or dispenses  
37 a precursor chemical in an amount or under circumstances that would  
38 require registration as a distributor of precursor chemicals under the  
39 federal act.

40 Sec. 8. Section 13-3405, Arizona Revised Statutes, is amended to  
41 read:

42 13-3405. Possession, use, production, sale or transportation  
43 of marijuana; classification

- 44 A. A person shall not knowingly:
  - 45 1. Possess or use marijuana.

- 1           2. Possess marijuana for sale.
- 2           3. Produce marijuana.
- 3           4. Transport for sale, import into this state or offer to transport
- 4 for sale or import into this state, sell, transfer or offer to sell or
- 5 transfer marijuana.
- 6           B. A person who violates:
- 7           1. Subsection A, paragraph 1 of this section involving an amount of
- 8 marijuana not possessed for sale having a weight of less than ~~two~~ FIVE
- 9 pounds is guilty of a class ~~6 felony~~ 1 MISDEMEANOR.
- 10          2. Subsection A, paragraph 1 of this section involving an amount of
- 11 marijuana not possessed for sale having a weight of ~~at least two~~ FIVE
- 12 pounds ~~but less than four pounds~~ OR MORE is guilty of a class ~~5~~ 6 felony.
- 13          ~~3. Subsection A, paragraph 1 of this section involving an amount of~~
- 14 ~~marijuana not possessed for sale having a weight of four pounds or more is~~
- 15 ~~guilty of a class 4 felony.~~
- 16          ~~4.~~ 3. Subsection A, paragraph 2 of this section involving an
- 17 amount of marijuana having a weight of less than ~~two~~ FIVE pounds is guilty
- 18 of a class ~~4~~ 6 felony.
- 19          ~~5.~~ 4. Subsection A, paragraph 2 of this section involving an
- 20 amount of marijuana having a weight of ~~at least two~~ FIVE pounds ~~but not~~
- 21 ~~more than four pounds~~ OR MORE is guilty of a class ~~3~~ 5 felony.
- 22          ~~6. Subsection A, paragraph 2 of this section involving an amount of~~
- 23 ~~marijuana having a weight of more than four pounds is guilty of a class 2~~
- 24 ~~felony.~~
- 25          ~~7.~~ 5. Subsection A, paragraph 3 of this section involving an
- 26 amount of marijuana having a weight of less than ~~two~~ FIVE pounds is guilty
- 27 of a class ~~5~~ 6 felony.
- 28          ~~8.~~ 6. Subsection A, paragraph 3 of this section involving an
- 29 amount of marijuana having a weight of ~~at least two~~ FIVE pounds ~~but not~~
- 30 ~~more than four pounds~~ OR MORE is guilty of a class ~~4~~ 5 felony.
- 31          ~~9. Subsection A, paragraph 3 of this section involving an amount of~~
- 32 ~~marijuana having a weight of more than four pounds is guilty of a class 3~~
- 33 ~~felony.~~
- 34          ~~10.~~ 7. Subsection A, paragraph 4 of this section involving an
- 35 amount of marijuana having a weight of less than ~~two~~ FIVE pounds is guilty
- 36 of a class ~~3~~ 4 felony.
- 37          ~~11.~~ 8. Subsection A, paragraph 4 of this section involving an
- 38 amount of marijuana having a weight of ~~two~~ FIVE pounds or more is guilty
- 39 of a class ~~2~~ 3 felony.
- 40          ~~C. If the aggregate amount of marijuana involved in one offense or~~
- 41 ~~all of the offenses that are consolidated for trial equals or exceeds the~~
- 42 ~~statutory threshold amount, a person who is sentenced pursuant to~~
- 43 ~~subsection B, paragraph 5, 6, 8, 9 or 11 of this section is not eligible~~
- 44 ~~for suspension of sentence, probation, pardon or release from confinement~~
- 45 ~~on any basis until the person has served the sentence imposed by the~~

1 ~~court, the person is eligible for release pursuant to section 41-1604.07~~  
2 ~~or the sentence is commuted.~~

3 ~~D.~~ C. In addition to any other penalty prescribed by this title,  
4 the court shall order a person who is convicted of a violation of any  
5 provision of this section to pay a fine of not less than seven hundred  
6 fifty dollars or three times the value as determined by the court of the  
7 marijuana involved in or giving rise to the charge, whichever is greater,  
8 and not more than the maximum authorized by chapter 8 of this title. ~~A~~  
9 ~~judge shall not suspend any part or all of the imposition of any fine~~  
10 ~~required by this subsection.~~

11 ~~E.~~ D. A person who is convicted of a felony violation of any  
12 provision of this section for which probation or release before the  
13 expiration of the sentence imposed by the court is authorized is  
14 prohibited from using any marijuana, dangerous drug or narcotic drug  
15 except as lawfully administered by a practitioner and as a condition of  
16 any probation or release shall be required to submit to drug testing  
17 administered under the supervision of the probation department of the  
18 county or the state department of corrections as appropriate during the  
19 duration of the term of probation or before the expiration of the sentence  
20 imposed.

21 ~~F.~~ E. If the aggregate amount of marijuana involved in one offense  
22 or all of the offenses that are consolidated for trial is less than the  
23 statutory threshold amount, a person who is sentenced pursuant to  
24 subsection B, paragraph ~~4~~ 3, 5 OR 7 ~~or 10~~ and who is granted probation by  
25 the court shall be ordered by the court that as a condition of probation  
26 the person perform not less than two hundred forty hours of community  
27 restitution with an agency or organization providing counseling,  
28 rehabilitation or treatment for alcohol or drug abuse, an agency or  
29 organization that provides medical treatment to persons who abuse  
30 controlled substances, an agency or organization that serves persons who  
31 are victims of crime or any other appropriate agency or organization.

32 ~~G.~~ F. If a person who is sentenced pursuant to subsection B,  
33 paragraph 1, ~~OR 2 or 3~~ of this section is granted probation for a felony  
34 violation of this section, the court shall order that as a condition of  
35 probation the person perform not less than twenty-four hours of community  
36 restitution with an agency or organization providing counseling,  
37 rehabilitation or treatment for alcohol or drug abuse, an agency or  
38 organization that provides medical treatment to persons who abuse  
39 controlled substances, an agency or organization that serves persons who  
40 are victims of crime or any other appropriate agency or organization.

41 ~~H.~~ G. If a person is granted probation for a misdemeanor violation  
42 of this section, the court shall order as a condition of probation that  
43 the person attend eight hours of instruction on the nature and harmful  
44 effects of narcotic drugs, marijuana and other dangerous drugs on the

1 human system, and on the laws related to the control of these substances,  
2 or perform twenty-four hours of community restitution.

3 H. FOR THE PURPOSES OF DETERMINING THE SENTENCE FOR A VIOLATION OF  
4 THIS SECTION, THE TRIER OF FACT SHALL DETERMINE AND THE COURT SHALL  
5 CONSIDER THE FOLLOWING FACTORS:

6 1. WHETHER THE OFFENSE INVOLVED MORE OR LESS THAN THE STATUTORY  
7 AMOUNT OF MARIJUANA.

8 2. THE DEFENDANT'S ROLE IN COMMITTING THE OFFENSE.

9 3. THE DURATION OF THE DEFENDANT'S PARTICIPATION IN THE OFFENSE.

10 4. WHETHER THE DEFENDANT PROFITED FROM THE OFFENSE.

11 5. IF THE OFFENSE INVOLVED MORE THAN ONE DEFENDANT, THE SENTENCE OF  
12 ANY OTHER SIMILARLY SITUATED DEFENDANT.

13 6. THE DEFENDANT'S NEED FOR AND AMENABILITY TO DRUG OR MENTAL  
14 HEALTH TREATMENT OR OTHER REHABILITATIVE SERVICES.

15 7. THE PRESENCE OF ANY AGGRAVATING OR MITIGATING CIRCUMSTANCES  
16 PURSUANT TO SECTION 13-701, SUBSECTIONS D AND E.

17 8. IF APPLICABLE, THE EXTENT TO WHICH THE QUANTITY OF THE MARIJUANA  
18 WAS PROVIDED, REQUESTED, DETERMINED OR CONTROLLED BY AN UNDERCOVER LAW  
19 ENFORCEMENT AGENT OR WHETHER A CONFIDENTIAL INFORMANT WAS INVOLVED IN THE  
20 OFFENSE.

21 Sec. 9. Section 13-3407, Arizona Revised Statutes, is amended to  
22 read:

23 13-3407. Possession, use, administration, acquisition, sale,  
24 manufacture or transportation of dangerous drugs:  
25 classification

26 A. A person shall not knowingly:

27 1. Possess or use a dangerous drug.

28 2. Possess a dangerous drug for sale.

29 3. Possess equipment or chemicals, or both, for the purpose of  
30 manufacturing a dangerous drug.

31 4. Manufacture a dangerous drug.

32 5. Administer a dangerous drug to another person.

33 6. Obtain or procure the administration of a dangerous drug by  
34 fraud, deceit, misrepresentation or subterfuge.

35 7. Transport for sale, import into this state or offer to transport  
36 for sale or import into this state, sell, transfer or offer to sell or  
37 transfer a dangerous drug.

38 B. A person who violates:

39 1. Subsection A, paragraph 1 of this section is guilty of a class  
40 ~~4- 6~~ felony. ~~Unless the drug involved is lysergic acid diethylamide,~~  
41 ~~methamphetamine, amphetamine or phencyclidine or the person was previously~~  
42 ~~convicted of a felony offense or a violation of this section or section~~  
43 ~~13-3408, the court on motion of the state, considering the nature and~~  
44 ~~circumstances of the offense, for a person not previously convicted of any~~  
45 ~~felony offense or a violation of this section or section 13-3408 may enter~~

~~judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is successfully terminated. The offense shall be treated as a felony for all purposes until the court enters an order designating the offense a misdemeanor.~~

2. Subsection A, paragraph 2 OR 6 of this section is guilty of a class ~~2~~ 5 felony.

3. Subsection A, paragraph 3 of this section is guilty of a class ~~3~~ 5 felony, except that if the offense involved methamphetamine, the person is guilty of a class ~~2~~ 4 felony.

4. Subsection A, paragraph 4, 5 OR 7 of this section is guilty of a class ~~2~~ 4 felony.

~~5. Subsection A, paragraph 5 of this section is guilty of a class 2 felony.~~

~~6. Subsection A, paragraph 6 of this section is guilty of a class 3 felony.~~

~~7. Subsection A, paragraph 7 of this section is guilty of a class 2 felony.~~

~~C. Except as provided in subsection E of this section, a person who is convicted of a violation of subsection A, paragraph 1, 3 or 6 and who has not previously been convicted of any felony or who has not been sentenced pursuant to section 13-703, section 13-704, section 13-706, subsection A, section 13-708, subsection D or any other law making the convicted person ineligible for probation is eligible for probation.~~

~~D. Except as provided in subsection E of this section, if the aggregate amount of dangerous drugs involved in one offense or all of the offenses that are consolidated for trial equals or exceeds the statutory threshold amount, a person who is convicted of a violation of subsection A, paragraph 2, 5 or 7 of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.~~

~~E. If the person is convicted of a violation of subsection A, paragraph 2, 3, 4 or 7 of this section and the drug involved is methamphetamine, the person shall be sentenced as follows:~~

<del>Minimum</del>	<del>Presumptive</del>	<del>Maximum</del>
<del>5 calendar years</del>	<del>10 calendar years</del>	<del>15 calendar years</del>

~~A person who has previously been convicted of a violation of subsection A, paragraph 2, 3, 4 or 7 of this section involving methamphetamine or section 13-3407.01 shall be sentenced as follows:~~

<del>Minimum</del>	<del>Presumptive</del>	<del>Maximum</del>
<del>10 calendar years</del>	<del>15 calendar years</del>	<del>20 calendar years</del>

1 ~~F. A person who is convicted of a violation of subsection A,~~  
2 ~~paragraph 4 of this section or subsection A, paragraph 2, 3 or 7 of this~~  
3 ~~section involving methamphetamine is not eligible for suspension of~~  
4 ~~sentence, probation, pardon or release from confinement on any basis until~~  
5 ~~the person has served the sentence imposed by the court, the person is~~  
6 ~~eligible for release pursuant to section 41-1604.07 or the sentence is~~  
7 ~~commuted.~~

8 ~~G. If a person is convicted of a violation of subsection A,~~  
9 ~~paragraph 5 of this section, if the drug is administered without the other~~  
10 ~~person's consent, if the other person is under eighteen years of age and~~  
11 ~~if the drug is flunitrazepam, gamma hydroxy butrate or ketamine~~  
12 ~~hydrochloride, the convicted person is not eligible for suspension of~~  
13 ~~sentence, probation, pardon or release from confinement on any basis until~~  
14 ~~the person has served the sentence imposed by the court, the person is~~  
15 ~~eligible for release pursuant to section 41-1604.07 or the sentence is~~  
16 ~~commuted.~~

17 C. FOR THE PURPOSES OF DETERMINING THE SENTENCE FOR A VIOLATION OF  
18 THIS SECTION, THE TRIER OF FACT SHALL DETERMINE AND THE COURT SHALL  
19 CONSIDER THE FOLLOWING FACTORS:

- 20 1. WHETHER THE OFFENSE INVOLVED MORE OR LESS THAN THE STATUTORY  
21 AMOUNT OF A DANGEROUS DRUG.
- 22 2. THE DEFENDANT'S ROLE IN COMMITTING THE OFFENSE.
- 23 3. THE DURATION OF THE DEFENDANT'S PARTICIPATION IN THE OFFENSE.
- 24 4. WHETHER THE DEFENDANT PROFITED FROM THE OFFENSE.
- 25 5. IF THE OFFENSE INVOLVED MORE THAN ONE DEFENDANT, THE SENTENCE OF  
26 ANY OTHER SIMILARLY SITUATED DEFENDANT.
- 27 6. THE DEFENDANT'S NEED FOR AND AMENABILITY TO DRUG OR MENTAL  
28 HEALTH TREATMENT OR OTHER REHABILITATIVE SERVICES.
- 29 7. THE PRESENCE OF ANY AGGRAVATING OR MITIGATING CIRCUMSTANCES  
30 PURSUANT TO SECTION 13-701, SUBSECTIONS D AND E.
- 31 8. IF APPLICABLE, THE EXTENT TO WHICH THE QUANTITY OF THE DANGEROUS  
32 DRUG WAS PROVIDED, REQUESTED, DETERMINED OR CONTROLLED BY AN UNDERCOVER  
33 LAW ENFORCEMENT AGENT OR WHETHER A CONFIDENTIAL INFORMANT WAS INVOLVED IN  
34 THE OFFENSE.

35 ~~H. D.~~ In addition to any other penalty prescribed by this title,  
36 the court shall order a person who is convicted of a violation of this  
37 section to pay a fine of not less than one thousand dollars or three times  
38 the value as determined by the court of the dangerous drugs involved in or  
39 giving rise to the charge, whichever is greater, and not more than the  
40 maximum authorized by chapter 8 of this title. ~~A judge shall not suspend~~  
41 ~~any part or all of the imposition of any fine required by this subsection.~~

42 ~~I. E.~~ A person who is convicted of a violation of this section for  
43 which probation or release before the expiration of the sentence imposed  
44 by the court is authorized is prohibited from using any marijuana,  
45 dangerous drug, narcotic drug or prescription-only drug except as lawfully

1 administered by a health care practitioner and as a condition of any  
2 probation or release shall be required to submit to drug testing  
3 administered under the supervision of the probation department of the  
4 county or the state department of corrections, as appropriate, during the  
5 duration of the term of probation or before the expiration of the sentence  
6 imposed.

7 ~~F.~~ F. If a person who is convicted of a violation of this section  
8 is granted probation, the court shall order that as a condition of  
9 probation the person perform not less than three hundred sixty hours of  
10 community restitution with an agency or organization that provides  
11 counseling, rehabilitation or treatment for alcohol or drug abuse, an  
12 agency or organization that provides medical treatment to persons who  
13 abuse controlled substances, an agency or organization that serves persons  
14 who are victims of crime or any other appropriate agency or organization.

15 ~~K. The presumptive term imposed pursuant to subsection E of this~~  
16 ~~section may be mitigated or aggravated pursuant to section 13-701,~~  
17 ~~subsections D and E.~~

18 Sec. 10. Section 13-3408, Arizona Revised Statutes, is amended to  
19 read:

20 13-3408. Possession, use, administration, acquisition, sale,  
21 manufacture or transportation of narcotic drugs:  
22 classification

23 A. A person shall not knowingly:

- 24 1. Possess or use a narcotic drug.
- 25 2. Possess a narcotic drug for sale.
- 26 3. Possess equipment or chemicals, or both, for the purpose of  
27 manufacturing a narcotic drug.
- 28 4. Manufacture a narcotic drug.
- 29 5. Administer a narcotic drug to another person.
- 30 6. Obtain or procure the administration of a narcotic drug by  
31 fraud, deceit, misrepresentation or subterfuge.
- 32 7. Transport for sale, import into this state, offer to transport  
33 for sale or import into this state, sell, transfer or offer to sell or  
34 transfer a narcotic drug.

35 B. A person who violates:

- 36 1. Subsection A, paragraph 1 of this section is guilty of a class  
37 ~~4~~ 6 felony.
- 38 2. Subsection A, paragraph 2, 3 OR 6 of this section is guilty of a  
39 class ~~2~~ 5 felony.
- 40 ~~3. Subsection A, paragraph 3 of this section is guilty of a class 3~~  
41 ~~felony.~~
- 42 ~~4~~ 3. Subsection A, paragraph 4, 5 OR 7 of this section is guilty  
43 of a class ~~2~~ 4 felony.
- 44 ~~5. Subsection A, paragraph 5 of this section is guilty of a class 2~~  
45 ~~felony.~~

1           ~~6. Subsection A, paragraph 6 of this section is guilty of a class 3~~  
2 ~~felony.~~

3           ~~7. Subsection A, paragraph 7 of this section is guilty of a class 2~~  
4 ~~felony.~~

5           ~~C. A person who is convicted of a violation of subsection A,~~  
6 ~~paragraph 1, 3 or 6 of this section and who has not previously been~~  
7 ~~convicted of any felony or who has not been sentenced pursuant to section~~  
8 ~~13-703, section 13-704, subsection A, B, C, D or E, section 13-706,~~  
9 ~~subsection A, section 13-708, subsection D or any other provision of law~~  
10 ~~making the convicted person ineligible for probation is eligible for~~  
11 ~~probation.~~

12           ~~D. If the aggregate amount of narcotic drugs involved in one~~  
13 ~~offense or all of the offenses that are consolidated for trial equals or~~  
14 ~~exceeds the statutory threshold amount, a person who is convicted of a~~  
15 ~~violation of subsection A, paragraph 2, 5 or 7 of this section is not~~  
16 ~~eligible for suspension of sentence, probation, pardon or release from~~  
17 ~~confinement on any basis until the person has served the sentence imposed~~  
18 ~~by the court, the person is eligible for release pursuant to section~~  
19 ~~41-1604.07 or the sentence is commuted.~~

20           ~~E. A person who is convicted of a violation of subsection A,~~  
21 ~~paragraph 4 of this section is not eligible for suspension of sentence,~~  
22 ~~probation, pardon or release from confinement on any basis until the~~  
23 ~~person has served the sentence imposed by the court, the person is~~  
24 ~~eligible for release pursuant to section 41-1604.07 or the sentence is~~  
25 ~~commuted.~~

26           C. FOR THE PURPOSES OF DETERMINING THE SENTENCE FOR A VIOLATION OF  
27 THIS SECTION, THE TRIER OF FACT SHALL DETERMINE AND THE COURT SHALL  
28 CONSIDER THE FOLLOWING FACTORS:

29           1. WHETHER THE OFFENSE INVOLVED MORE OR LESS THAN THE STATUTORY  
30 AMOUNT OF A NARCOTIC DRUG.

31           2. THE DEFENDANT'S ROLE IN COMMITTING THE OFFENSE.

32           3. THE DURATION OF THE DEFENDANT'S PARTICIPATION IN THE OFFENSE.

33           4. WHETHER THE DEFENDANT PROFITED FROM THE OFFENSE.

34           5. IF THE OFFENSE INVOLVED MORE THAN ONE DEFENDANT, THE SENTENCE OF  
35 ANY OTHER SIMILARLY SITUATED DEFENDANT.

36           6. THE DEFENDANT'S NEED FOR AND AMENABILITY TO DRUG OR MENTAL  
37 HEALTH TREATMENT OR OTHER REHABILITATIVE SERVICES.

38           7. THE PRESENCE OF ANY AGGRAVATING OR MITIGATING CIRCUMSTANCES  
39 PURSUANT TO SECTION 13-701, SUBSECTIONS D AND E.

40           8. IF APPLICABLE, THE EXTENT TO WHICH THE QUANTITY OF THE NARCOTIC  
41 DRUG WAS PROVIDED, REQUESTED, DETERMINED OR CONTROLLED BY AN UNDERCOVER  
42 LAW ENFORCEMENT AGENT OR WHETHER A CONFIDENTIAL INFORMANT WAS INVOLVED IN  
43 THE OFFENSE.

1 ~~F.~~ D. In addition to any other penalty prescribed by this title,  
2 the court shall order a person who is convicted of a violation of this  
3 section to pay a fine of not less than two thousand dollars or three times  
4 the value as determined by the court of the narcotic drugs involved in or  
5 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~~  
7 ~~suspend any part or all of the imposition of any fine required by this~~  
8 ~~subsection.~~

9 ~~G.~~ E. A person who is convicted of a violation of this section for  
10 which probation or release before the expiration of the sentence imposed  
11 by the court is authorized is prohibited from using any marijuana,  
12 dangerous drug, narcotic drug or prescription-only drug except as lawfully  
13 administered by a health care practitioner and as a condition of any  
14 probation or release shall be required to submit to drug testing  
15 administered under the supervision of the probation department of the  
16 county or the state department of corrections, as appropriate, during the  
17 duration of the term of probation or before the expiration of the sentence  
18 imposed.

19 ~~H.~~ F. If a person who is convicted of a violation of this section  
20 is granted probation, the court shall order that as a condition of  
21 probation the person perform not less than three hundred sixty hours of  
22 community restitution with an agency or organization that provides  
23 counseling, rehabilitation or treatment for alcohol or drug abuse, an  
24 agency or organization that provides medical treatment to persons who  
25 abuse controlled substances, an agency or organization that serves persons  
26 who are victims of crime or any other appropriate agency or organization.

27 Sec. 11. Section 13-3409, Arizona Revised Statutes, is amended to  
28 read:

29 13-3409. Involving or using minors in drug offenses:  
30 classification

31 A. A person shall not knowingly:

32 1. Hire, employ or use a minor to engage in any conduct, completed  
33 or preparatory, that is prohibited by sections 13-3404, 13-3404.01,  
34 13-3405, 13-3406, 13-3407 and 13-3408.

35 2. Sell, transfer or offer to sell or transfer to a minor any  
36 substance if its possession is prohibited by sections 13-3404, 13-3404.01,  
37 13-3405, 13-3407 and 13-3408.

38 B. A person who violates this section is guilty of a class 2 felony  
39 ~~and is not eligible for suspension of sentence, probation, pardon or~~  
40 ~~release from confinement on any basis until the sentence imposed by the~~  
41 ~~court has been served or commuted, and if the minor is under fifteen years~~  
42 ~~of age it is punishable pursuant to section 13-705, subsection C.~~

43 C. In addition to any other penalty prescribed by this title, the  
44 court shall order a person who is convicted of a violation of this section  
45 to pay a fine of not less than two thousand dollars or three times the

1 value as determined by the court of the substance involved in or giving  
2 rise to the charge, whichever is greater, and not more than the maximum  
3 authorized by chapter 8 of this title. ~~A judge shall not suspend any part  
4 or all of the imposition of any fine required by this subsection.~~

5 Sec. 12. Section 13-3411, Arizona Revised Statutes, is amended to  
6 read:

7 13-3411. Possession, use, sale or transfer of marijuana,  
8 peyote, prescription drugs, dangerous drugs or  
9 narcotic drugs or manufacture of dangerous drugs  
10 in a drug free school zone; violation;  
11 classification; definitions

12 A. It is unlawful for a person to do any of the following:

13 1. Intentionally be present in a drug free school zone to sell or  
14 transfer marijuana, peyote, prescription-only drugs, dangerous drugs or  
15 narcotic drugs.

16 2. Possess or use marijuana, peyote, dangerous drugs or narcotic  
17 drugs in a drug free school zone.

18 3. Manufacture dangerous drugs in a drug free school zone.

19 B. A person who violates subsection A of this section is guilty of  
20 the same class of felony that the person would otherwise be guilty of had  
21 the violation not occurred within a drug free school zone, except that the  
22 presumptive, minimum and maximum sentence shall be increased by one year.  
23 The additional sentence imposed under this subsection is in addition to  
24 any enhanced punishment that may be applicable under section 13-703,  
25 section 13-704, section 13-708, subsection D or any provision in this  
26 chapter. ~~A person is not eligible for suspension of sentence, probation,  
27 pardon or release from confinement on any basis except pursuant to section  
28 31-233, subsection A or B until the sentence imposed by the court has been  
29 served or commuted.~~

30 C. In addition to any other penalty prescribed by this title, the  
31 court shall order a person who is convicted of a violation of this section  
32 to pay a fine of not less than two thousand dollars or three times the  
33 value as determined by the court of the drugs involved in or giving rise  
34 to the charge, whichever is greater, and not more than the maximum  
35 authorized by chapter 8 of this title. ~~A judge shall not suspend any part  
36 or all of the imposition of any fine required by this subsection.~~

37 D. Each school district's governing board or its designee, or the  
38 chief administrative officer in the case of a nonpublic school, shall  
39 place and maintain permanently affixed signs located in a visible manner  
40 at the main entrance of each school that identifies the school and its  
41 accompanying grounds as a drug free school zone.

42 E. The drug free school zone map prepared pursuant to title 15  
43 shall constitute an official record as to the location and boundaries of  
44 each drug free school zone. The school district's governing board or its  
45 designee, or the chief administrative officer in the case of any nonpublic

1 school, shall promptly notify the county attorney of any changes in the  
2 location and boundaries of any school property and shall file with the  
3 county recorder the original map prepared pursuant to title 15.

4 F. All school personnel who observe a violation of this section  
5 shall immediately report the violation to a school administrator. The  
6 administrator shall immediately report the violation to a peace  
7 officer. It is unlawful for any school personnel or school administrator  
8 to fail to report a violation as prescribed in this section.

9 G. School personnel having custody or control of school records of  
10 a student involved in an alleged violation of this section shall make the  
11 records available to a peace officer ~~upon~~ ON written request signed by a  
12 magistrate. Records disclosed pursuant to this subsection are  
13 confidential and may be used only in a judicial or administrative  
14 proceeding. A person furnishing records required under this subsection or  
15 a person participating in a judicial or administrative proceeding or  
16 investigation resulting from the furnishing of records required under this  
17 subsection is immune from civil or criminal liability by reason of such  
18 action unless the person acted with malice.

19 H. FOR THE PURPOSES OF DETERMINING THE ADDITIONAL SENTENCE PURSUANT  
20 TO THIS SECTION, THE TRIER OF FACT SHALL DETERMINE AND THE COURT SHALL  
21 CONSIDER THE FOLLOWING FACTORS:

22 1. WHETHER CHILDREN WERE PRESENT DURING THE COMMISSION OF THE  
23 OFFENSE.

24 2. IF ANOTHER PERSON WAS PRESENT DURING THE COMMISSION OF THE  
25 OFFENSE, THE AGE AND RELATIONSHIP OF THE DEFENDANT TO THAT PERSON.

26 3. THE TIME OF DAY THAT THE OFFENSE OCCURRED.

27 4. THE PRESENCE OF ANY AGGRAVATING OR MITIGATING CIRCUMSTANCES  
28 PURSUANT TO SECTION 13-701, SUBSECTIONS D AND E.

29 5. IF APPLICABLE, THE EXTENT TO WHICH THE LOCATION OF THE OFFENSE  
30 WAS DETERMINED OR CONTROLLED BY AN UNDERCOVER LAW ENFORCEMENT AGENT,  
31 WHETHER AN UNDERCOVER LAW ENFORCEMENT AGENT REQUESTED ANY ACTION AT THE  
32 LOCATION OR WHETHER A CONFIDENTIAL INFORMANT WAS INVOLVED IN THE OFFENSE.

33 ~~H.~~ I. A person who violates subsection F of this section is guilty  
34 of a class 3 misdemeanor.

35 ~~I.~~ J. For the purposes of this section:

36 1. "Drug free school zone" means the area within three hundred feet  
37 of a school or its accompanying grounds, ~~any public property within one~~  
38 ~~thousand feet of a school or its accompanying grounds~~, a school bus stop  
39 or on any school bus or bus contracted to transport pupils to any school.

40 2. "School" means any public or nonpublic kindergarten program,  
41 common school or high school.

42 Sec. 13. Repeal

43 Section 13-3419, Arizona Revised Statutes, is repealed.