

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

# HOUSE BILL 2383

AN ACT

AMENDING SECTIONS 13-701, 13-702, 13-703, 13-704, 13-705, 13-710, 13-1214,  
13-1402, 13-1403, 13-1406, 13-3107, 13-3212, 13-3407, 13-3419 AND 13-3994,  
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 13-701, Arizona Revised Statutes, is amended to  
3 read:

4 13-701. Sentence of imprisonment for felony; presentence  
5 report; aggravating and mitigating factors;  
6 consecutive terms of imprisonment; definition

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

10 B. No prisoner may be transferred to the custody of the state  
11 department of corrections without a certified copy of the judgment and  
12 sentence, signed by the sentencing judge, and a copy of a recent  
13 presentence investigation report unless the court has waived preparation  
14 of the report.

15 C. ~~The minimum or maximum term imposed pursuant to section 13-702,~~  
16 ~~13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be~~  
17 ~~imposed~~ THE COURT SHALL IMPOSE A SENTENCE WITHIN THE APPLICABLE SENTENCING  
18 RANGE PRESCRIBED BY THIS TITLE. THE COURT MAY IMPOSE A SENTENCE THAT IS  
19 GREATER THAN THE PRESUMPTIVE SENTENCE only if one or more of the  
20 circumstances alleged to be in aggravation of the crime are found BY THE  
21 TRIER OF FACT to be true ~~by the trier of fact~~ beyond a reasonable doubt or  
22 are admitted by the defendant, except that an alleged aggravating  
23 circumstance under subsection D, paragraph 11 of this section shall be  
24 found to be true by the court. ~~, or~~ THE COURT MAY IMPOSE A SENTENCE THAT  
25 IS LESS THAN THE PRESUMPTIVE SENTENCE ONLY IF THE COURT FINDS ONE OR MORE  
26 CIRCUMSTANCES in mitigation of the crime ~~are found to be~~ ARE true. ~~by the~~  
27 ~~court,~~ CIRCUMSTANCES IN AGGRAVATION OR MITIGATION OF THE CRIME MAY BE  
28 FOUND BASED on any evidence or information introduced or submitted to the  
29 court or the trier of fact before sentencing or any evidence presented at  
30 trial. ~~, and~~ THE COURT SHALL SET FORTH IN THE RECORD factual findings and  
31 reasons in support of ~~such~~ THE findings ~~are set forth on the record at the~~  
32 ~~time of sentencing.~~

33 D. For the purpose of determining the sentence pursuant to  
34 subsection C of this section, the trier of fact shall determine and the  
35 court shall consider the following aggravating circumstances, except that  
36 the court shall determine an aggravating circumstance under paragraph 11  
37 of this subsection:

38 1. Infliction or threatened infliction of serious physical injury,  
39 except if this circumstance is an essential element of the offense of  
40 conviction or has been ~~utilized~~ USED to enhance the range of punishment  
41 under section 13-704.

42 2. Use, threatened use or possession of a deadly weapon or  
43 dangerous instrument during the commission of the crime, except if this  
44 circumstance is an essential element of the offense of conviction or has

1 been ~~utilized~~ USED to enhance the range of punishment under section  
2 13-704.

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

5 4. Presence of an accomplice.

6 5. Especially heinous, cruel or depraved manner in which the  
7 offense was committed.

8 6. The defendant committed the offense as consideration for the  
9 receipt, or in the expectation of the receipt, of anything of pecuniary  
10 value.

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

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

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

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

21 11. The defendant was previously convicted of a felony within the  
22 ten years immediately preceding the date of the offense. A conviction  
23 outside the jurisdiction of this state for an offense that if committed in  
24 this state would be punishable as a felony is a felony conviction for the  
25 purposes of this paragraph.

26 12. The defendant was wearing body armor as defined in section  
27 13-3116.

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

31 14. The defendant was appointed pursuant to title 14 as a fiduciary  
32 and the offense involved conduct directly related to the defendant's  
33 duties to the victim as fiduciary.

34 15. Evidence that the defendant committed the crime out of malice  
35 toward a victim because of the victim's identity in a group listed in  
36 section 41-1750, subsection A, paragraph 3 or because of the defendant's  
37 perception of the victim's identity in a group listed in section 41-1750,  
38 subsection A, paragraph 3.

39 16. The defendant was convicted of a violation of section 13-1102,  
40 section 13-1103, section 13-1104, subsection A, paragraph 3 or section  
41 13-1204, subsection A, paragraph 1 or 2 arising from an act that was  
42 committed while driving a motor vehicle and the defendant's alcohol  
43 concentration at the time of committing the offense was 0.15 or more. For  
44 the purposes of this paragraph, "alcohol concentration" has the same  
45 meaning prescribed in section 28-101.

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

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

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

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

12          21. The defendant was in violation of 8 United States Code section  
13 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the  
14 offense.

15          22. The defendant used a remote stun gun or an authorized remote  
16 stun gun in the commission of the offense. For the purposes of this  
17 paragraph:

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

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

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

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

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

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

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

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

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

1           26. During or immediately following the commission of the offense,  
2 the defendant used a mask or other disguise to obscure the defendant's  
3 face to avoid identification.

4           27. Any other factor that the state alleges is relevant to the  
5 defendant's character or background or to the nature or circumstances of  
6 the crime.

7           E. For the purpose of determining the sentence pursuant to  
8 subsection C of this section, the court shall consider the following  
9 mitigating circumstances:

10           1. The age of the defendant.

11           2. The defendant's capacity to appreciate the wrongfulness of the  
12 defendant's conduct or to conform the defendant's conduct to the  
13 requirements of law was significantly impaired, but not so impaired as to  
14 constitute a defense to prosecution.

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

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

19           5. During or immediately following the commission of the offense,  
20 the defendant complied with all duties imposed under sections 28-661,  
21 28-662 and 28-663.

22           6. Any other factor that is relevant to the defendant's character  
23 or background or to the nature or circumstances of the crime and that the  
24 court finds to be mitigating.

25           F. If the trier of fact finds at least one aggravating  
26 circumstance, the trial court may find by a preponderance of the evidence  
27 additional aggravating circumstances. In determining what sentence to  
28 impose, the court shall take into account the amount of aggravating  
29 circumstances and whether the amount of mitigating circumstances is  
30 sufficiently substantial to justify the lesser term. If the trier of fact  
31 finds aggravating circumstances and the court does not find any mitigating  
32 circumstances, the court shall impose an aggravated sentence.

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

36           H. This section does not affect any provision of law that imposes  
37 the death penalty, that expressly provides for imprisonment for life or  
38 that authorizes or restricts the granting of probation and suspending the  
39 execution of sentence.

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

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

1           Sec. 2. Section 13-702, Arizona Revised Statutes, is amended to  
2 read:

3           13-702. First time felony offenders; sentencing

4           A. ~~Unless a specific sentence is otherwise provided, the term of~~  
5 ~~imprisonment for a first felony offense shall be the presumptive sentence~~  
6 ~~determined pursuant to subsection D of this section.~~ Except for those  
7 felonies involving a dangerous offense or if a specific sentence is  
8 otherwise provided, the **TERMS OF IMPRISONMENT FOR A FIRST FELONY OFFENSE**  
9 **SHALL BE WITHIN THE FOLLOWING RANGES:** ~~court may increase or reduce the~~  
10 ~~presumptive sentence within the ranges set by subsection D of this~~  
11 ~~section. Any reduction or increase shall be based on the aggravating and~~  
12 ~~mitigating circumstances listed in section 13-701, subsections D and E and~~  
13 ~~shall be within the ranges prescribed in subsection D of this section.~~

14           B. ~~If a person is convicted of a felony without having previously~~  
15 ~~been convicted of any felony and if at least two of the aggravating~~  
16 ~~factors listed in section 13-701, subsection D apply, the court may~~  
17 ~~increase the maximum term of imprisonment otherwise authorized for that~~  
18 ~~offense to an aggravated term. If a person is convicted of a felony~~  
19 ~~without having previously been convicted of any felony and if the court~~  
20 ~~finds at least two mitigating factors listed in section 13-701, subsection~~  
21 ~~E apply, the court may decrease the minimum term of imprisonment otherwise~~  
22 ~~authorized for that offense to a mitigated term.~~

23           C. ~~The aggravated or mitigated term imposed pursuant to subsection~~  
24 ~~D of this section may be imposed only if at least two of the aggravating~~  
25 ~~circumstances are found beyond a reasonable doubt to be true by the trier~~  
26 ~~of fact or are admitted by the defendant, except that an aggravating~~  
27 ~~circumstance under section 13-701, subsection D, paragraph 11 shall be~~  
28 ~~found to be true by the court, or in mitigation of the crime are found to~~  
29 ~~be true by the court, on any evidence or information introduced or~~  
30 ~~submitted to the court or the trier of fact before sentencing or any~~  
31 ~~evidence presented at trial, and factual findings and reasons in support~~  
32 ~~of these findings are set forth on the record at the time of sentencing.~~

33           D. ~~The term of imprisonment for a presumptive, minimum, or maximum,~~  
34 ~~mitigated or aggravated sentence shall be within the range prescribed~~  
35 ~~under this subsection. The terms are as follows:~~

36	<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
37		<u>MINIMUM</u>				<u>MAXIMUM</u>
38	Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
39	Class 3	2 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.75 years
40	Class 4	1 year	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.75 years
41	Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years
42	Class 6	<del>.33</del> .25 years	<del>.5 years</del>	1 year	<del>1.5 years</del>	2 years

1 ~~E.~~ B. The court shall inform all of the parties before sentencing  
2 occurs of its intent to increase or decrease a sentence to the ~~aggravated~~  
3 ~~MAXIMUM~~ or ~~mitigated~~ ~~MINIMUM~~ sentence pursuant ~~TO~~ this section. If the  
4 court fails to inform the parties, a party waives its right to be informed  
5 unless the party timely objects at the time of sentencing.

6 ~~F. For the purposes of this section, "trier of fact" means a jury,~~  
7 ~~unless the defendant and the state waive a jury in which case the trier of~~  
8 ~~fact means the court.~~

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

11 13-703. Repetitive offenders; sentencing

12 A. If a person is convicted of multiple felony offenses that were  
13 not committed on the same occasion but that either are consolidated for  
14 trial purposes or are not historical prior felony convictions, the person  
15 shall be sentenced as a first time felony offender pursuant to section  
16 13-702 for the first offense, as a category one repetitive offender for the  
17 second offense, and as a category two repetitive offender for the  
18 third and subsequent offenses.

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

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

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

31 ~~E. If a person is sentenced as a category one repetitive offender~~  
32 ~~pursuant to subsection A of this section and if at least two aggravating~~  
33 ~~circumstances listed in section 13-701, subsection D apply or at least two~~  
34 ~~mitigating circumstances listed in section 13-701, subsection E apply, the~~  
35 ~~court may impose a mitigated or aggravated sentence pursuant to subsection~~  
36 ~~H of this section.~~

37 ~~F. If a person is sentenced as a category two repetitive offender~~  
38 ~~pursuant to subsection A or B of this section and if at least two~~  
39 ~~aggravating circumstances listed in section 13-701, subsection D apply or~~  
40 ~~at least two mitigating circumstances listed in section 13-701, subsection~~  
41 ~~E apply, the court may impose a mitigated or aggravated sentence pursuant~~  
42 ~~to subsection I of this section.~~

43 ~~G. If a person is sentenced as a category three repetitive offender~~  
44 ~~pursuant to subsection C of this section and at least two aggravating~~  
45 ~~circumstances listed in section 13-701, subsection D or at least two~~

~~mitigating circumstances listed in section 13-701, subsection E apply, the court may impose a mitigated or aggravated sentence pursuant to subsection J of this section.~~

~~H.~~ D. A category one repetitive offender shall be sentenced within the following ranges:

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

~~I.~~ E. A category two repetitive offender shall be sentenced within the following ranges:

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

~~J.~~ F. A category three repetitive offender shall be sentenced within the following ranges:

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

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

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



1           ~~M.~~ H. A person who has been convicted in any court outside the  
2 jurisdiction of this state of an offense that was punishable by that  
3 jurisdiction as a felony is subject to this section. A person who has  
4 been convicted as an adult of an offense punishable as a felony under the  
5 provisions of any prior code in this state or the jurisdiction in which  
6 the offense was committed is subject to this section. A person who has  
7 been convicted of a felony weapons possession violation in any court  
8 outside the jurisdiction of this state that would not be punishable as a  
9 felony under the laws of this state is not subject to this section.

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

30           ~~O.~~ J. A person who is sentenced pursuant to this section is not  
31 eligible for suspension of sentence, probation, pardon or release from  
32 confinement on any basis, except as specifically authorized by section  
33 31-233, subsection A or B, until the sentence imposed by the court has  
34 been served, the person is eligible for release pursuant to section  
35 41-1604.07 or the sentence is commuted.

36           ~~P.~~ K. The court shall inform all of the parties before sentencing  
37 occurs of its intent to impose ~~an aggravated~~ A MAXIMUM or ~~mitigated~~  
38 MINIMUM sentence pursuant to subsection ~~H, I or J~~ D, E OR F of this  
39 section. If the court fails to inform the parties, a party waives its  
40 right to be informed unless the party timely objects at the time of  
41 sentencing.

1 ~~Q.~~ L. The court in imposing a sentence shall consider the evidence  
2 and opinions presented by the victim or the victim's immediate family at  
3 any aggravation or mitigation proceeding or in the presentence report.

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

6 13-704. Dangerous offenders; sentencing

7 A. Except as provided in section 13-705, a person who is at least  
8 eighteen years of age or who has been tried as an adult and who stands  
9 convicted of a felony that is a dangerous offense shall be sentenced to a  
10 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

17 B. Except as provided in section 13-705, a person who is convicted  
18 of a class 4, 5 or 6 felony that is a dangerous offense and who has one  
19 historical prior felony conviction involving a dangerous offense shall be  
20 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

25 C. Except as provided in section 13-705 or section 13-706,  
26 subsection A, a person who is convicted of a class 4, 5 or 6 felony that  
27 is a dangerous offense and who has two or more historical prior felony  
28 convictions involving dangerous offenses shall be sentenced to a term of  
29 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

34 D. Except as provided in section 13-705 or section 13-706,  
35 subsection A, a person who is convicted of a class 2 or 3 felony involving  
36 a dangerous offense and who has one historical prior felony conviction  
37 that is a class 1, 2 or 3 felony involving a dangerous offense shall be  
38 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

42 E. 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 two or more historical prior felony

1 convictions that are class 1, 2 or 3 felonies involving dangerous offenses  
 2 shall be sentenced to a term of imprisonment as follows:

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

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

19 1. For the second dangerous offense:

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

26 2. For any dangerous offense subsequent to the second dangerous  
 27 felony offense:

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

34 G. A person who is sentenced pursuant to subsection A, B, C, D, E  
 35 or F of this section is not eligible for suspension of sentence,  
 36 probation, pardon or release from confinement on any basis, except as  
 37 specifically authorized by section 31-233, subsection A or B, until the  
 38 sentence imposed by the court has been served, the person is eligible for  
 39 release pursuant to section 41-1604.07 or the sentence is commuted.

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

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

7           ~~I.~~ I. Convictions for two or more offenses committed on the same  
8 occasion shall be counted as only one conviction for the purposes of  
9 subsection A, B, C, D or E of this section.

10          ~~J.~~ J. A person who has been convicted in any court outside the  
11 jurisdiction of this state of an offense that was punishable by that  
12 jurisdiction as a felony is subject to subsection A, B, C, D or E of this  
13 section. A person who has been convicted of an offense punishable as a  
14 felony under the provisions of any prior code in this state or the  
15 jurisdiction in which the offense was committed is subject to subsection  
16 A, B, C, D or E of this section. A person who has been convicted of a  
17 felony weapons possession violation in any court outside the jurisdiction  
18 of this state that would not be punishable as a felony under the laws of  
19 this state is not subject to this section.

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

42          ~~L.~~ L. Except as provided in section 13-705 or 13-751, if the  
43 victim is an unborn child in the womb at any stage of its development, the  
44 defendant shall be sentenced pursuant to this section.

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

3           13-705. Dangerous crimes against children; sentences;  
4                                   definitions

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

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

29	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
30	13 years	20 years	27 years

31           C. Except as otherwise provided in this section, a person who is at  
32 least eighteen years of age or who has been tried as an adult and who is  
33 convicted of a dangerous crime against children in the first degree  
34 involving attempted first degree murder of a minor who is twelve, thirteen  
35 or fourteen years of age, second degree murder of a minor who is twelve,  
36 thirteen or fourteen years of age, sexual assault of a minor who is  
37 twelve, thirteen or fourteen years of age, taking a child for the purpose  
38 of prostitution, child sex trafficking, sexual conduct with a minor who is  
39 twelve, thirteen or fourteen years of age, continuous sexual abuse of a  
40 child or manufacturing methamphetamine under circumstances that cause  
41 physical injury to a minor who is twelve, thirteen or fourteen years of  
42 age or involving or using minors in drug offenses shall be sentenced to a  
43 term of imprisonment as follows:

44	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
45	13 years	20 years	27 years

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

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

5 D. Except as otherwise provided in this section, a person who is at  
6 least eighteen years of age or who has been tried as an adult and who is  
7 convicted of a dangerous crime against children in the first degree  
8 involving aggravated assault, unlawful mutilation, molestation of a child,  
9 commercial sexual exploitation of a minor, sexual exploitation of a minor,  
10 aggravated luring a minor for sexual exploitation, child abuse or  
11 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

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

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

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

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

30 A person who has been previously convicted of one predicate felony shall  
31 be sentenced to a term of imprisonment as follows and the person is not  
32 eligible for suspension of sentence, probation, pardon or release from  
33 confinement on any basis except as specifically authorized by section  
34 31-233, subsection A or B until the sentence imposed by the court has been  
35 served, the person is eligible for release pursuant to section 41-1604.07  
36 or the sentence is commuted:

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

39 F. Except as otherwise provided in this section, if a person is at  
40 least eighteen years of age or has been tried as an adult and is convicted  
41 of a dangerous crime against children involving sexual abuse or bestiality  
42 under section 13-1411, subsection A, paragraph 2 and is sentenced to a  
43 term of imprisonment, the term of imprisonment is as follows and the  
44 person is not eligible for release from confinement on any basis except as  
45 specifically authorized by section 31-233, subsection A or B until the

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

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

5 A person who has been previously convicted of one predicate felony shall  
6 be sentenced to a term of imprisonment as follows and the person is not  
7 eligible for suspension of sentence, probation, pardon or release from  
8 confinement on any basis except as specifically authorized by section  
9 31-233, subsection A or B until the sentence imposed by the court has been  
10 served, the person is eligible for release pursuant to section 41-1604.07  
11 or the sentence is commuted:

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

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

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

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

32 J. Notwithstanding chapter 10 of this title, a person who is at  
33 least eighteen years of age or who has been tried as an adult and who is  
34 convicted of a dangerous crime against children in the second degree  
35 pursuant to subsection B, C or D of this section is guilty of a class 3  
36 felony and if the person is sentenced to a term of imprisonment, the term  
37 of imprisonment is as follows and the person is not eligible for release  
38 from confinement on any basis except as specifically authorized by section  
39 31-233, subsection A or B until the person has served the sentence imposed  
40 by the court, the person is eligible for release pursuant to section  
41 41-1604.07 or the sentence is commuted:

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

44 K. A person who is convicted of any dangerous crime against  
45 children in the second degree and who has been previously convicted of one

1 or more predicate felonies is not eligible for suspension of sentence,  
2 probation, pardon or release from confinement on any basis except as  
3 specifically authorized by section 31-233, subsection A or B until the  
4 sentence imposed by the court has been served, the person is eligible for  
5 release pursuant to section 41-1604.07 or the sentence is commuted.

6 L. Section 13-704, subsection ~~+~~ I and section 13-707, subsection B  
7 apply to the determination of prior convictions.

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

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

18 O. A dangerous crime against children is in the first degree if it  
19 is a completed offense and is in the second degree if it is a preparatory  
20 offense, except attempted first degree murder is a dangerous crime against  
21 children in the first degree.

22 P. It is not a defense to a dangerous crime against children that  
23 the minor is a person posing as a minor or is otherwise fictitious if the  
24 defendant knew or had reason to know the purported minor was under fifteen  
25 years of age.

26 Q. For the purposes of this section:

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

29 (a) Second degree murder.

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

33 (c) Sexual assault.

34 (d) Molestation of a child.

35 (e) Sexual conduct with a minor.

36 (f) Commercial sexual exploitation of a minor.

37 (g) Sexual exploitation of a minor.

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

40 (i) Kidnapping.

41 (j) Sexual abuse.

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

44 (l) Child sex trafficking as prescribed in section 13-3212.

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



- 1 (n) Continuous sexual abuse of a child.
- 2 (o) Attempted first degree murder.
- 3 (p) Sex trafficking.
- 4 (q) Manufacturing methamphetamine under circumstances that cause
- 5 physical injury to a minor.
- 6 (r) Bestiality as prescribed in section 13-1411, subsection A,
- 7 paragraph 2.
- 8 (s) Luring a minor for sexual exploitation.
- 9 (t) Aggravated luring a minor for sexual exploitation.
- 10 (u) Unlawful age misrepresentation.
- 11 (v) Unlawful mutilation.
- 12 (w) Sexual extortion as prescribed in section 13-1428.

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

19 Sec. 6. Section 13-710, Arizona Revised Statutes, is amended to  
20 read:

21 13-710. Sentence for second degree murder

22 A. Except as provided in section 13-705 or section 13-706,  
23 subsection A, a person who is convicted of second degree murder as ~~defined~~  
24 ~~PRESCRIBED~~ by section 13-1104 shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 calendar years	16 calendar years	25 calendar years

27 B. Except as provided in section 13-704 or section 13-706,  
28 subsection A, a person who is convicted of second degree murder as ~~defined~~  
29 ~~PRESCRIBED~~ by section 13-1104 and who has previously been convicted of  
30 second degree murder or a class 2 or 3 felony involving a dangerous  
31 offense shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
15 calendar years	20 calendar years	29 calendar years

34 ~~C. The presumptive term imposed pursuant to subsections A and B of~~  
35 ~~this section may be mitigated or aggravated pursuant to section 13-701,~~  
36 ~~subsections D and E.~~

37 Sec. 7. Section 13-1214, Arizona Revised Statutes, is amended to  
38 read:

39 13-1214. Unlawful mutilation; classification; definition

40 A. It is unlawful for a person to:

- 41 1. Mutilate a female who is under eighteen years of age.
- 42 2. Knowingly transport a female who is under eighteen years of age
- 43 to another jurisdiction for the purpose of mutilation.
- 44 3. Recklessly transport a female who is under eighteen years of age
- 45 to another jurisdiction where mutilation is likely to occur.

1 B. In addition to any other penalty prescribed by this title, the  
2 court shall order a person who is convicted of a violation of this section  
3 to pay a fine of not less than ~~twenty-five thousand dollars~~ \$25,000.

4 C. Unlawful mutilation is a class 2 felony, and the person  
5 convicted shall be sentenced pursuant to this section and the person is  
6 not eligible for suspension of sentence, probation, pardon or release from  
7 confinement on any basis except as specifically authorized by section  
8 31-233, subsection A or B until the sentence imposed by the court has been  
9 served or commuted. If the victim is under fifteen years of age, unlawful  
10 mutilation is punishable pursuant to section 13-705. ~~The presumptive term~~  
11 ~~may be aggravated or mitigated within the range under this section~~  
12 ~~pursuant to section 13-701, subsections C, D and E.~~ The term for a first  
13 offense is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5.25 years	7 years	14 years

16 The term for a defendant who has one historical prior felony conviction is  
17 as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7 years	10.5 years	21 years

20 The term for a defendant who has two or more historical prior felony  
21 convictions is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
14 years	15.75 years	28 years

24 D. The sentence imposed on a person for unlawful mutilation shall  
25 be consecutive to any other unlawful mutilation sentence imposed on the  
26 person at any time.

27 E. The consent of the minor on whom the mutilation is performed or  
28 the parents of the minor is not a defense to a prosecution for unlawful  
29 mutilation.

30 F. For the purposes of this section, "mutilate" or "mutilation"  
31 means the partial or total removal of the clitoris, prepuce, labia minora,  
32 with or without excision of the labia major, the narrowing of the vaginal  
33 opening through the creation of a covering seal formed by cutting and  
34 repositioning the inner or outer labia, with or without removal of the  
35 clitoris, or any harmful procedure to the genitalia, including pricking,  
36 piercing, incising, scraping or cauterizing. Mutilate and mutilation do  
37 not include procedures performed by a licensed physician that are proven  
38 to be medically necessary due to a medically recognized condition.

39 Sec. 8. Section 13-1402, Arizona Revised Statutes, is amended to  
40 read:

41 13-1402. Indecent exposure; exception; classification

42 A. A person commits indecent exposure if he or she exposes his or  
43 her genitals or anus or she exposes the areola or nipple of her breast or  
44 breasts and another person is present, and the defendant is reckless about

1 whether the other person, as a reasonable person, would be offended or  
2 alarmed by the act.

3 B. Indecent exposure does not include an act of breast-feeding by a  
4 mother.

5 C. Indecent exposure to a person who is fifteen or more years of  
6 age is a class 1 misdemeanor. Indecent exposure to a person who is under  
7 fifteen years of age is a class 6 felony.

8 D. A person who is convicted of a felony violation of this section  
9 and who has two or more historical prior felony convictions for a  
10 violation of this section or section 13-1403 involving indecent exposure  
11 or public sexual indecency to a minor who is under fifteen years of age  
12 shall be sentenced to a term of imprisonment as follows:

<del>Mitigated</del>	<del>Minimum</del>	<u>Presumptive</u>	<del>Maximum</del>	<del>Aggravated</del>
<del>6 years</del>	<del>8 years</del>	10 years	<del>12 years</del>	15 years

13  
14  
15  
16 ~~E. The presumptive term imposed pursuant to subsection D of this~~  
17 ~~section may be mitigated or aggravated pursuant to section 13-701,~~  
18 ~~subsections D and E.~~

19 Sec. 9. Section 13-1403, Arizona Revised Statutes, is amended to  
20 read:

21 13-1403. Public sexual indecency; public sexual indecency to  
22 a minor; classification

23 A. A person commits public sexual indecency by intentionally or  
24 knowingly engaging in any of the following acts, if another person is  
25 present, and the defendant is reckless about whether such other person, as  
26 a reasonable person, would be offended or alarmed by the act:

- 27 1. An act of sexual contact.
- 28 2. An act of oral sexual contact.
- 29 3. An act of sexual intercourse.
- 30 4. An act of bestiality.

31 B. A person commits public sexual indecency to a minor if the  
32 person intentionally or knowingly engages in any of the acts listed in  
33 subsection A of this section and such person is reckless about whether a  
34 minor who is under fifteen years of age is present.

35 C. Public sexual indecency is a class 1 misdemeanor. Public sexual  
36 indecency to a minor is a class 5 felony.

37 D. A person who is convicted of a felony violation of this section  
38 and who has two or more historical prior felony convictions for a  
39 violation of this section or section 13-1402 involving indecent exposure  
40 or public sexual indecency to a minor who is under fifteen years of age  
41 shall be sentenced to a term of imprisonment as follows:

<del>Mitigated</del>	<del>Minimum</del>	<u>Presumptive</u>	<del>Maximum</del>	<del>Aggravated</del>
<del>6 years</del>	<del>8 years</del>	10 years	<del>12 years</del>	15 years

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

Sec. 10. Section 13-1406, Arizona Revised Statutes, is amended to read:

13-1406. Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705. ~~The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E.~~ If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable. The term for a first offense is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5.25 years	7 years	14 years

The term for a defendant who has one historical prior felony conviction is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7 years	10.5 years	21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
14 years	15.75 years	28 years

C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen

1 years of age and the victim was twelve years of age or younger, the person  
2 shall be sentenced pursuant to section 13-705.

3 Sec. 11. Section 13-3107, Arizona Revised Statutes, is amended to  
4 read:

5 13-3107. Unlawful discharge of firearms; exceptions;  
6 classification; definitions

7 A. A person who with criminal negligence discharges a firearm  
8 within or into the limits of any municipality is guilty of a class 6  
9 felony.

10 B. Notwithstanding the fact that the offense involves the discharge  
11 of a deadly weapon, unless a dangerous offense is alleged and proven  
12 pursuant to section 13-704, subsection ~~K~~ K, section 13-604 applies to  
13 this offense.

14 C. This section does not apply if the firearm is discharged:

15 1. As allowed pursuant to chapter 4 of this title.

16 2. On a properly supervised range.

17 3. To lawfully take wildlife during an open season established by  
18 the Arizona game and fish commission and subject to the limitations  
19 prescribed by title 17 and Arizona game and fish commission rules and  
20 orders. This paragraph does not prevent a city, town or county from  
21 adopting an ordinance or rule restricting the discharge of a firearm  
22 within one-fourth mile of an occupied structure without the consent of the  
23 owner or occupant of the structure. For the purposes of this paragraph:

24 (a) "Occupied structure" means any building in which, at the time  
25 of the firearm's discharge, a reasonable person from the location where a  
26 firearm is discharged would expect a person to be present.

27 (b) "Take" has the same meaning prescribed in section 17-101.

28 4. For the control of nuisance wildlife by permit from the Arizona  
29 game and fish department or the United States fish and wildlife service.

30 5. By special permit of the chief of police of the municipality.

31 6. As required by an animal control officer in the performance of  
32 duties as specified in section 9-499.04.

33 7. Using blanks.

34 8. More than one mile from any occupied structure as defined in  
35 section 13-3101.

36 9. In self-defense or defense of another person against an animal  
37 attack if a reasonable person would believe that deadly physical force  
38 against the animal is immediately necessary and reasonable under the  
39 circumstances to protect oneself or the other person.

40 D. For the purposes of this section:

41 1. "Municipality" means any city or town and includes any property  
42 that is fully enclosed within the city or town.

43 2. "Properly supervised range" means a range that is any of the  
44 following:

1 (a) Operated by a club affiliated with the national rifle  
2 association of America, the amateur trapshooting association, the national  
3 skeet association or any other nationally recognized shooting  
4 organization, or by any public or private school.

5 (b) Approved by any agency of the federal government, this state or  
6 a county or city within which the range is located.

7 (c) Operated with adult supervision for shooting air or carbon  
8 dioxide gas operated guns, or for shooting in underground ranges on  
9 private or public property.

10 Sec. 12. Section 13-3212, Arizona Revised Statutes, is amended to  
11 read:

12 13-3212. Child sex trafficking; classification; increased  
13 punishment; definition

14 A. A person commits child sex trafficking by knowingly:

15 1. Causing any minor to engage in prostitution.

16 2. Using any minor for the purposes of prostitution.

17 3. Permitting a minor who is under the person's custody or control  
18 to engage in prostitution.

19 4. Receiving any benefit for or on account of procuring or placing  
20 a minor in any place or in the charge or custody of any person for the  
21 purpose of prostitution.

22 5. Receiving any benefit pursuant to an agreement to participate in  
23 the proceeds of prostitution of a minor.

24 6. Financing, managing, supervising, controlling or owning, either  
25 alone or in association with others, prostitution activity involving a  
26 minor.

27 7. Transporting or financing the transportation of any minor with  
28 the intent that the minor engage in prostitution.

29 8. Providing a means by which a minor engages in prostitution.

30 9. Enticing, recruiting, harboring, providing, transporting, making  
31 available to another or otherwise obtaining a minor with the intent to  
32 cause the minor to engage in prostitution or any sexually explicit  
33 performance.

34 10. Enticing, recruiting, harboring, providing, transporting,  
35 making available to another or otherwise obtaining a minor with the  
36 knowledge that the minor will engage in prostitution or any sexually  
37 explicit performance.

38 B. A person who is at least eighteen years of age commits child sex  
39 trafficking by knowingly:

40 1. Engaging in prostitution with a minor who is under fifteen years  
41 of age.

42 2. Engaging in prostitution with a minor who the person knows or  
43 should have known is fifteen, sixteen or seventeen years of age.

44 3. Engaging in prostitution with a minor who is fifteen, sixteen or  
45 seventeen years of age.

1 C. It is not a defense to a prosecution under subsection A and  
2 subsection B, paragraphs 1 and 2 of this section that the other person is  
3 a peace officer posing as a minor or a person assisting a peace officer  
4 posing as a minor.

5 D. Notwithstanding any other law, a sentence imposed on a person  
6 for any of the following shall be consecutive to any other sentence  
7 imposed on the person at any time:

8 1. A violation of subsection A or subsection B, paragraph 2 of this  
9 section involving a minor who is fifteen, sixteen or seventeen years of  
10 age.

11 2. A violation of subsection A, paragraph 9 or 10 of this section.

12 E. Child sex trafficking pursuant to subsection A of this section  
13 is a class 2 felony if the minor is under fifteen years of age and is  
14 punishable pursuant to section 13-705.

15 F. Child sex trafficking pursuant to subsection B, paragraph 1 of  
16 this section is a class 2 felony and is punishable pursuant to section  
17 13-705.

18 G. If the minor is fifteen, sixteen or seventeen years of age,  
19 child sex trafficking pursuant to subsection A, paragraph 1, 2, 3, 4, 5,  
20 6, 7 or 8 of this section is a class 2 felony, the person convicted shall  
21 be sentenced pursuant to this section and the person is not eligible for  
22 suspension of sentence, probation, pardon or release from confinement on  
23 any basis except as specifically authorized by section 31-233, subsection  
24 A or B until the sentence imposed by the court has been served or  
25 commuted. ~~The presumptive term may be aggravated or mitigated within the~~

26 ~~range under this section pursuant to section 13-701, subsections C, D and~~

27 ~~E.~~ The terms are as follows:

28 1. The term for a first offense is as follows:

29 <u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
30 10 years	13.5 years	24 years

31 2. The term for a defendant who has one historical prior felony  
32 conviction is as follows:

33 <u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
34 17 years	24 years	31 years

35 3. The term for a defendant who has two or more historical prior  
36 felony convictions is as follows:

37 <u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
38 24 years	31 years	38 years

39 H. If the minor is fifteen, sixteen or seventeen years of age,  
40 child sex trafficking pursuant to subsection A, paragraph 9 or 10 of this  
41 section is a class 2 felony.

42 I. If the minor is fifteen, sixteen or seventeen years of age,  
43 child sex trafficking pursuant to subsection B, paragraph 2 of this  
44 section is a class 2 felony, the person convicted shall be sentenced  
45 pursuant to this section and the person is not eligible for suspension of

1 sentence, probation, pardon or release from confinement on any basis  
2 except as specifically authorized by section 31-233, subsection A or B  
3 until the sentence imposed by the court has been served or commuted. ~~The~~  
4 ~~presumptive term may be aggravated or mitigated within the range under~~  
5 ~~this section pursuant to section 13-701, subsections C, D and E.~~ The  
6 terms are as follows:

7 1. The term for a first offense is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7 years	10.5 years	21 years

10 2. The term for a defendant who has one historical prior felony  
11 conviction is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
14 years	15.75 years	28 years

14 3. The term for a defendant who has two or more historical prior  
15 felony convictions is as follows:

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

18 J. Child sex trafficking pursuant to subsection B, paragraph 3 of  
19 this section is a class 6 felony. If the court sentences the person to a  
20 term of probation, the court shall order that as an initial term of  
21 probation the person be imprisoned in the county jail for not less than  
22 one hundred eighty consecutive days. This jail term shall commence on the  
23 date of sentencing. The court may suspend ninety days of the jail  
24 sentence if the person has not previously been convicted of a violation of  
25 this section, a violation of section 13-3214 or a violation of any city or  
26 town ordinance that prohibits prostitution and that has the same or  
27 substantially similar elements as section 13-3214 and the person  
28 successfully completes an appropriate court ordered education or treatment  
29 program.

30 K. This section does not preclude the state from alleging and  
31 proving any other sentencing enhancements as provided by law.

32 L. For the purposes of this section, "sexually explicit  
33 performance" means a live or public act or show intended to arouse or  
34 satisfy the sexual desires or appeal to the prurient interest of patrons.

35 Sec. 13. Section 13-3407, Arizona Revised Statutes, is amended to  
36 read:

37 13-3407. Possession, use, administration, acquisition, sale,  
38 manufacture or transportation of dangerous drugs;  
39 classification

40 A. A person shall not knowingly:

- 41 1. Possess or use a dangerous drug.
- 42 2. Possess a dangerous drug for sale.
- 43 3. Possess equipment or chemicals, or both, for the purpose of
- 44 manufacturing a dangerous drug.
- 45 4. Manufacture a dangerous drug.



1           5. Administer a dangerous drug to another person.

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

4           7. Transport for sale, import into this state or offer to transport  
5 for sale or import into this state, sell, transfer or offer to sell or  
6 transfer a dangerous drug.

7           B. A person who violates:

8           1. Subsection A, paragraph 1 of this section is guilty of a class 4  
9 felony. Unless the drug involved is lysergic acid diethylamide,  
10 methamphetamine, amphetamine or phencyclidine or the person was previously  
11 convicted of a felony offense or a violation of this section or section  
12 13-3408, the court on motion of the state, considering the nature and  
13 circumstances of the offense, for a person not previously convicted of any  
14 felony offense or a violation of this section or section 13-3408 may enter  
15 judgment of conviction for a class 1 misdemeanor and make disposition  
16 accordingly or may place the defendant on probation in accordance with  
17 chapter 9 of this title and refrain from designating the offense as a  
18 felony or misdemeanor until the probation is successfully terminated. The  
19 offense shall be treated as a felony for all purposes until the court  
20 enters an order designating the offense a misdemeanor.

21           2. Subsection A, paragraph 2 of this section is guilty of a class 2  
22 felony.

23           3. Subsection A, paragraph 3 of this section is guilty of a class 3  
24 felony, except that if the offense involved methamphetamine, the person is  
25 guilty of a class 2 felony.

26           4. Subsection A, paragraph 4 of this section is guilty of a class 2  
27 felony.

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

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

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

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

40           D. Except as provided in subsection E of this section, if the  
41 aggregate amount of dangerous drugs involved in one offense or all of the  
42 offenses that are consolidated for trial equals or exceeds the statutory  
43 threshold amount, a person who is convicted of a violation of subsection  
44 A, paragraph 2, 5 or 7 of this section is not eligible for suspension of  
45 sentence, probation, pardon or release from confinement on any basis until

1 the person has served the sentence imposed by the court, the person is  
2 eligible for release pursuant to section 41-1604.07 or the sentence is  
3 commuted.

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

7	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8	5 calendar years	10 calendar years	15 calendar years

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

12	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13	10 calendar years	15 calendar years	20 calendar years

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

21 G. If a person is convicted of a violation of subsection A,  
22 paragraph 5 of this section, if the drug is administered without the other  
23 person's consent, if the other person is under eighteen years of age and  
24 if the drug is flunitrazepam, gamma hydroxy butrate or ketamine  
25 hydrochloride, the convicted person is not eligible for suspension of  
26 sentence, probation, pardon or release from confinement on any basis until  
27 the person has served the sentence imposed by the court, the person is  
28 eligible for release pursuant to section 41-1604.07 or the sentence is  
29 commuted.

30 H. 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 one thousand dollars or three times the  
33 value as determined by the court of the dangerous drugs involved in or  
34 giving rise to the charge, whichever is greater, and not more than the  
35 maximum authorized by chapter 8 of this title. A judge shall not suspend  
36 any part or all of the imposition of any fine required by this subsection.

37 I. A person who is convicted of a violation of this section for  
38 which probation or release before the expiration of the sentence imposed  
39 by the court is authorized is prohibited from using any marijuana,  
40 dangerous drug, narcotic drug or prescription-only drug except as lawfully  
41 administered by a health care practitioner and as a condition of any  
42 probation or release shall be required to submit to drug testing  
43 administered under the supervision of the probation department of the  
44 county or the state department of corrections, as appropriate, during the

1 duration of the term of probation or before the expiration of the sentence  
 2 imposed.

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

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

14 Sec. 14. Section 13-3419, Arizona Revised Statutes, is amended to  
 15 read:

16 13-3419. Multiple drug offenses not committed on the same  
 17 occasion; sentencing

18 A. Except for a person convicted of possession offenses pursuant to  
 19 section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A,  
 20 paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is  
 21 convicted of two or more offenses under this chapter that were not  
 22 committed on the same occasion but that either are consolidated for trial  
 23 purposes or are not historical prior felony convictions shall be sentenced  
 24 for the second or subsequent offense pursuant to this section. The person  
 25 shall not be eligible for suspension of sentence, probation, pardon or  
 26 release from confinement on any basis except as specifically authorized by  
 27 section 31-233, subsection A or B until the sentence imposed by the court  
 28 has been served, the person is eligible for release pursuant to section  
 29 41-1604.07 or the sentence is commuted, except that a person sentenced  
 30 pursuant to paragraph 1 of this subsection shall be eligible for  
 31 probation. ~~The presumptive term for paragraph 1, 2, 3 or 4 of this~~  
 32 ~~subsection may be aggravated under this section pursuant to section~~  
 33 ~~13-701, subsections C and D. The presumptive term for paragraph 1, 2 or 3~~  
 34 ~~of this subsection may be mitigated within the range under this section~~  
 35 ~~pursuant to section 13-701, subsections C and E.~~ The terms are as  
 36 follows:

37 1. For two offenses for which the aggregate amount of drugs  
 38 involved in one offense or both of the offenses is less than the statutory  
 39 threshold amount for the second offense:

40	<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
41		<u>MINIMUM</u>				<u>MAXIMUM</u>
42	Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
43	Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.7 years
44	Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.7 years
45	Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years

2. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses is less than the statutory threshold amount for any offense subsequent to the second offense:

<u>Felony</u>	<u>Mitigated</u> <u>MINIMUM</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u> <u>MAXIMUM</u>
Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.7 years
Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.7 years
Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years

3. For two offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for the second offense:

<u>Felony</u>	<u>Mitigated</u> <u>MINIMUM</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u> <u>MAXIMUM</u>
Class 2	3 years	<del>4 years</del>	5 years	<del>10 years</del>	12.5 years
Class 3	1.8 years	<del>2.5 years</del>	3.5 years	<del>7 years</del>	8.7 years
Class 4	1.1 years	<del>1.5 years</del>	2.5 years	<del>3 years</del>	3.7 years
Class 5	.5 years	<del>.75 years</del>	1.5 years	<del>2 years</del>	2.5 years

4. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for any offense subsequent to the second offense:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u> <u>MAXIMUM</u>
Class 2	4 years	7 years	<del>12 years</del>	15 years
Class 3	2.5 years	5 years	<del>9 years</del>	11.2 years
Class 4	1.5 years	3 years	<del>5 years</del>	6.2 years
Class 5	.75 years	2.5 years	<del>4 years</del>	5 years

~~B. If the court increases or decreases a sentence pursuant to this section, the court shall state on the record the reasons for the increase or decrease.~~

~~B.~~ B. The court shall inform all of the parties before the sentencing occurs of its intent to increase or decrease a sentence pursuant to this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

Sec. 15. Section 13-3994, Arizona Revised Statutes, is amended to read:

13-3994. Commitment; hearing; jurisdiction; definition

A. A person who is found guilty except insane pursuant to section 13-502 shall be committed to a secure state mental health facility under the department of health services for a period of treatment.

B. If the criminal act of the person committed pursuant to subsection A of this section did not cause the death or serious physical

1 injury of or the threat of death or serious physical injury to another  
2 person, the court shall set a hearing date within seventy-five days after  
3 the person's commitment to determine if the person is entitled to release  
4 from confinement or if the person meets the standards for civil commitment  
5 pursuant to title 36, chapter 5. The court shall notify the medical  
6 director of the mental health facility, the attorney general, the county  
7 attorney, the victim and the attorney representing the person, if any, of  
8 the date of the hearing. Fourteen days before the hearing the director of  
9 the mental health facility shall submit to the court a report addressing  
10 the person's mental health and dangerousness.

11 C. At a hearing held pursuant to subsection B of this section:

12 1. If the person proves by clear and convincing evidence that the  
13 person no longer suffers from a mental disease or defect and is not  
14 dangerous, the court shall order the person's release and the person's  
15 commitment ordered pursuant to section 13-502, subsection D shall  
16 terminate. Before determining to release a person pursuant to this  
17 paragraph, the court shall consider the entire criminal history of the  
18 person and shall not order the person's release if the court determines  
19 that the person has a propensity to reoffend.

20 2. If the court finds that the person still suffers from a mental  
21 disease or defect, may present a threat of danger to self or others, has a  
22 grave, persistent or acute disability or has a propensity to reoffend, it  
23 shall order the county attorney to institute civil commitment proceedings  
24 pursuant to title 36 and the person's commitment ordered pursuant to  
25 section 13-502, subsection D shall terminate.

26 D. If the court finds that the criminal act of the person committed  
27 pursuant to subsection A of this section caused the death or serious  
28 physical injury of or the threat of death or serious physical injury to  
29 another person, the court shall place the person under the jurisdiction of  
30 the psychiatric security review board. The court shall state the  
31 beginning date, length and ending date of the board's jurisdiction over  
32 the person. The length of the board's jurisdiction over the person is  
33 equal to the sentence the person could have received pursuant to section  
34 13-707 or section 13-751, subsection A or the presumptive sentence the  
35 defendant could have received pursuant to section 13-702, subsection ~~A~~ A,  
36 section 13-703, section 13-704, section 13-705, section 13-706, subsection  
37 A, section 13-710 or section 13-1406. In making this determination the  
38 court shall not consider the sentence enhancements for prior convictions  
39 under section 13-703 or 13-704. The court shall retain jurisdiction of all  
40 matters that are not specifically delegated to the psychiatric security  
41 review board for the duration of the presumptive sentence.

42 E. A person who is placed under the jurisdiction of the psychiatric  
43 security review board pursuant to subsection D of this section is not  
44 eligible for discharge from the board's jurisdiction until the board's  
45 jurisdiction over the person expires.

1 F. A person who is placed under the jurisdiction of the psychiatric  
2 security review board pursuant to subsection D of this section is not  
3 entitled to a hearing before the board earlier than one hundred twenty  
4 days after the person's initial commitment. A request for a subsequent  
5 release hearing may be made pursuant to subsection H of this section.  
6 After the hearing, the board may take one of the following actions:

7 1. If the psychiatric security review board finds that the person  
8 still suffers from a mental disease or defect and is dangerous, the board  
9 shall order that the person remain committed at the secure state mental  
10 health facility.

11 2. If the person proves by clear and convincing evidence that the  
12 person no longer suffers from a mental disease or defect and is not  
13 dangerous, the psychiatric security review board shall order the person's  
14 release. The person shall remain under the jurisdiction of the board.  
15 Before determining to release a person pursuant to this paragraph, the  
16 board shall consider the entire criminal history of the person and shall  
17 not order the person's release if the board determines that the person has  
18 a propensity to reoffend.

19 3. If the psychiatric security review board finds that the person  
20 still suffers from a mental disease or defect or that the mental disease  
21 or defect is in stable remission but the person is no longer dangerous,  
22 the board shall order the person's conditional release. The person shall  
23 remain under the board's jurisdiction. The board in conjunction with the  
24 state mental health facility and behavioral health community providers  
25 shall specify the conditions of the person's release. The board shall  
26 continue to monitor and supervise a person who is released conditionally.  
27 Before the conditional release of a person, a supervised treatment plan  
28 shall be in place, including the necessary funding to implement the plan.

29 4. If the person is sentenced pursuant to section 13-704, section  
30 13-710 or section 13-751, subsection A and the psychiatric security review  
31 board finds that the person no longer needs ongoing treatment for a mental  
32 disease and the person is dangerous or has a propensity to reoffend, the  
33 board shall order the person to be transferred to the state department of  
34 corrections for the remainder of the sentence imposed pursuant to section  
35 13-502, subsection D. The board shall consider the safety and protection  
36 of the public.

37 G. Within twenty days after the psychiatric security review board  
38 orders a person to be transferred to the state department of corrections,  
39 the person may file a petition for a judicial determination. The person  
40 shall serve a copy of the request on the attorney general. If the person  
41 files a petition for a judicial determination, the person shall remain in  
42 a state mental health facility pending the result of the judicial  
43 determination. The person requesting the judicial determination has the  
44 burden of proving the issues by clear and convincing evidence. The  
45 judicial determination is limited to the following issues:

1           1. Whether the person no longer needs ongoing treatment for a  
2 mental disease.

3           2. Whether the person is dangerous or has a propensity to reoffend.

4           H. A person who is placed under the jurisdiction of the psychiatric  
5 security review board pursuant to subsection D of this section may not  
6 seek a new release hearing earlier than twenty months after a prior  
7 release hearing, except that the medical director of the state mental  
8 health facility may request a new release hearing for a person under the  
9 jurisdiction of the psychiatric security review board at any time. The  
10 person shall not be held in confinement for more than two years without a  
11 hearing before the board to determine if the person should be released or  
12 conditionally released.

13           I. At any hearing for release or conditional release pursuant to  
14 this section:

15           1. Public safety and protection are primary.

16           2. The applicant has the burden of proof by clear and convincing  
17 evidence.

18           J. At least fifteen days before a hearing is scheduled to consider  
19 a person's release, or before the expiration of the board's jurisdiction  
20 over the person, the state mental health facility or supervising agency  
21 shall submit to the psychiatric security review board a report on the  
22 person's mental health. The psychiatric security review board shall  
23 determine whether to release the person or to order the county attorney to  
24 institute civil commitment proceedings pursuant to title 36.

25           K. The procedures for civil commitment govern the continued  
26 commitment of the person after the expiration of the jurisdiction of the  
27 psychiatric security review board.

28           L. Before a person is released or conditionally released, at least  
29 three of the five psychiatric security review board members shall vote for  
30 the release or conditional release.

31           M. If at any time while the person remains under the jurisdiction  
32 of the psychiatric security review board it appears to the board, the  
33 chairman or vice-chairman of the board or the medical director of the  
34 state mental health facility that the person has failed to comply with the  
35 terms of the person's conditional release or that the mental health of the  
36 person has deteriorated, the board or the chairman or vice-chairman of the  
37 board for good cause or the medical director of the state mental health  
38 facility may order that the person be returned to a secure state mental  
39 health facility for evaluation or treatment. A written order of the  
40 board, the chairman or vice-chairman of the board or the medical director  
41 is sufficient warrant for any law enforcement officer to take the person  
42 into custody and to transport the person accordingly. Any sheriff or  
43 other peace officer shall execute the order and shall immediately notify  
44 the board of the person's return to the facility. Within twenty days  
45 after the person's return to a secure state mental health facility the

1 board shall conduct a hearing and shall give notice within five days  
2 before the hearing of the time and place of the hearing to the person, the  
3 victim, the attorney representing the person, the county attorney and the  
4 attorney general.

5 N. The director of a facility that is providing treatment to a  
6 person on conditional release or any other person who is responsible for  
7 the supervision of the person may take the person or request that the  
8 person be taken into custody if there is reasonable cause to believe that  
9 the person's mental health has deteriorated to the point that the person's  
10 conditional release should be revoked and that the person is in need of  
11 immediate care, custody or treatment or that deterioration is likely  
12 because of noncompliance with a treatment program. A person who is taken  
13 into custody pursuant to this subsection shall be transported immediately  
14 to a secure state mental health facility and shall have the same rights as  
15 any person appearing before the psychiatric security review board.

16 O. Before the initial hearing or any other hearing before the  
17 psychiatric security review board on the release or conditional release of  
18 the person, the person, the attorney who is representing the person and  
19 the attorney general or county attorney who is representing the state may  
20 choose a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a  
21 psychologist licensed pursuant to title 32, chapter 19.1 to examine the  
22 person. All costs in connection with the examination shall be approved  
23 and paid by the county of the sentencing court. The written examination  
24 results shall be filed with the board and shall include an opinion as to:

- 25 1. The mental condition of the person.
- 26 2. Whether the person is dangerous.

27 P. Notwithstanding subsection O of this section, the board or the  
28 chairman of the board for good cause may order an independent mental  
29 health evaluation by a psychiatrist licensed pursuant to title 32, chapter  
30 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1.  
31 The written examination results shall be filed with the board pursuant to  
32 subsection O of this section.

33 Q. If a person is found guilty except insane pursuant to section  
34 13-502, the department of health services shall assume custody of the  
35 person within ten days after receiving the order committing the person  
36 pursuant to subsection A of this section. The Arizona state hospital  
37 shall collect census data for guilty except insane treatment programs to  
38 establish maximum capacity and the allocation formula required pursuant to  
39 section 36-206, subsection D. If the Arizona state hospital reaches its  
40 funded capacity for forensic programs, the department of health services  
41 may defer the admission of the person found guilty except insane for up to  
42 an additional twenty days. The department of health services shall  
43 reimburse the county for the actual costs of each day the admission is  
44 deferred. If the department of health services is not able to admit the  
45 person found guilty except insane at the conclusion of the twenty day



1 deferral period, the department of health services shall notify the  
2 sentencing court, the prosecutor and the defense counsel of this fact. On  
3 receipt of this notification, the prosecutor or the person's defense  
4 counsel may request a hearing to determine the likely length of time  
5 admission will continue to be deferred and whether any other action should  
6 be taken. On receipt of the request for hearing, the court shall set a  
7 hearing within ten days.

8 R. For the purposes of this section, "state mental health facility"  
9 means a secure state mental health facility under the department of health  
10 services.

11 Sec. 16. Effective date

12 This act is effective from and after December 31, 2020.