

REFERENCE TITLE: sexual offenses; children; sentencing

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

## HB 2889

Introduced by  
Representatives Biasiucci, Blackman, Bolick, Carroll, Chaplik, Cobb,  
Finchem, Hoffman, John, Kaiser, Nguyen, Wilmeth, Senators Borrelli, Gowan

### AN ACT

AMENDING SECTIONS 13-705, 13-1307, 13-3212, 13-3409, 13-3552, 13-3553,  
13-3560, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES;  
RELATING TO SEXUAL OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

6 A. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE AND WHO IS  
7 CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN IN THE FIRST DEGREE  
8 INVOLVING COMMERCIAL SEXUAL EXPLOITATION OF A MINOR OR CHILD SEX  
9 TRAFFICKING OR INVOLVING MOLESTATION OF A CHILD AND THE PERSON HAS  
10 PREVIOUSLY BEEN CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN IN THE  
11 FIRST DEGREE INVOLVING MOLESTATION OF A CHILD SHALL BE SENTENCED TO  
12 IMPRISONMENT IN THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS FOR  
13 NATURAL LIFE. A PERSON WHO IS SENTENCED TO NATURAL LIFE IS NOT ELIGIBLE  
14 FOR COMMUTATION, PAROLE, WORK FURLOUGH, WORK RELEASE OR RELEASE FROM  
15 CONFINEMENT ON ANY BASIS FOR THE REMAINDER OF THE PERSON'S NATURAL LIFE.

16 B. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE AND WHO IS  
17 CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN IN THE FIRST DEGREE  
18 INVOLVING MOLESTATION OF A CHILD SHALL BE SENTENCED TO A TERM OF  
19 IMPRISONMENT AS FOLLOWS:

20 <u>MINIMUM</u>	20 <u>PRESUMPTIVE</u>	20 <u>MAXIMUM</u>
21 20 YEARS	21 30 YEARS	21 40 YEARS

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

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

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

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

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

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

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

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

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

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

~~F.~~ G. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving luring a minor for sexual exploitation, sexual extortion or unlawful age misrepresentation and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for 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, the person is eligible for 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

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows 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, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

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

~~F.~~ H. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving sexual abuse or bestiality under section 13-1411, subsection A, paragraph 2 and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for 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, the person is eligible for 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

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows 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, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

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

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

~~H.~~ J. Except as provided in subsection ~~F~~ H of this section, a person who is sentenced for a dangerous crime against children in the first degree pursuant to this section 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.

~~I.~~ K. A person who is convicted of any dangerous crime against children in the first degree pursuant to subsection ~~C or D~~ E OR F of this section and who has been previously convicted of two or more predicate

felonies shall 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 the person has served not fewer than thirty-five years or the sentence is commuted.

~~J.~~ L. Notwithstanding chapter 10 of this title, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the second degree pursuant to subsection ~~B, C or~~ D, E OR F of this section is guilty of a class 3 felony and if the person is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B 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:

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

~~K.~~ M. A person who is convicted of any dangerous crime against children in the second degree and who has been previously convicted of one or more predicate felonies 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, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

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

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

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

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

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

1       ~~0.~~ S. For the purposes of this section:

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

4       (a) Second degree murder.

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

8       (c) Sexual assault.

9       (d) Molestation of a child.

10       (e) Sexual conduct with a minor.

11       (f) Commercial sexual exploitation of a minor.

12       (g) Sexual exploitation of a minor.

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

15       (i) Kidnapping.

16       (j) Sexual abuse.

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

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

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

21       (n) Continuous sexual abuse of a child.

22       (o) Attempted first degree murder.

23       (p) Sex trafficking.

24       (q) Manufacturing methamphetamine under circumstances that cause  
25 physical injury to a minor.

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

28       (s) Luring a minor for sexual exploitation.

29       (t) Aggravated luring a minor for sexual exploitation.

30       (u) Unlawful age misrepresentation.

31       (v) Unlawful mutilation.

32       (w) Sexual extortion as prescribed in section 13-1428.

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

39       Sec. 2. Section 13-1307, Arizona Revised Statutes, is amended to  
40 read:

41       13-1307. Sex trafficking; classification; definitions

42       A. It is unlawful for a person to knowingly traffic another person  
43 who is eighteen years of age or older with either of the following:

1           1. The intent to cause the other person to engage in any  
2 prostitution or sexually explicit performance by deception, force or  
3 coercion.

4           2. The knowledge that the other person will engage in any  
5 prostitution or sexually explicit performance by deception, coercion or  
6 force.

7           B. A person who violates this section is guilty of a class 2 felony  
8 AND THE PERSON IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION,  
9 PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY  
10 AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED  
11 BY THE COURT HAS BEEN SERVED OR COMMUTED.

12           C. For the purposes of this section:

13           1. "Coercion" includes:

14           (a) Abusing or threatening to abuse the law or the legal system.

15           (b) Knowingly destroying, concealing, removing, confiscating,  
16 possessing or withholding another person's actual or purported passport or  
17 other immigration document, government issued identification document,  
18 government record or personal property.

19           (c) Extortion.

20           (d) Causing or threatening to cause financial harm to any person.

21           (e) Facilitating or controlling another person's access to a  
22 controlled substance.

23           2. "Force" includes causing or threatening to cause serious harm to  
24 another person or physically restraining or threatening to physically  
25 restrain another person.

26           3. "Sexually explicit performance" means a live or public act or  
27 show intended to arouse or satisfy the sexual desires or appeal to the  
28 prurient interest of patrons.

29           4. "Traffic" means to entice, recruit, harbor, provide, transport  
30 or otherwise obtain another person.

31           Sec. 3. Section 13-3212, Arizona Revised Statutes, is amended to  
32 read:

33           13-3212. Child sex trafficking; classification; increased  
34 punishment; definition

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

36           1. Causing any minor to engage in prostitution.

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

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

40           4. Receiving any benefit for or on account of procuring or placing  
41 a minor in any place or in the charge or custody of any person for the  
42 purpose of prostitution.

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

1           6. Financing, managing, supervising, controlling or owning, either  
2 alone or in association with others, prostitution activity involving a  
3 minor.

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

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

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

11          10. Enticing, recruiting, harboring, providing, transporting,  
12 making available to another or otherwise obtaining a minor with the  
13 knowledge that the minor will engage in prostitution or any sexually  
14 explicit performance.

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

17           1. Engaging in prostitution with a minor who is under fifteen years  
18 of age.

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

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

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

27          D. Notwithstanding any other law, a sentence imposed on a person  
28 for any of the following shall be consecutive to any other sentence  
29 imposed on the person at any time:

30           1. A violation of ~~subsection A or subsection B, paragraph 2 of~~ this  
31 section involving a minor who is fifteen, sixteen or seventeen years of  
32 age.

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

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

37          F. Child sex trafficking pursuant to subsection B, paragraph 1 of  
38 this section is a class 2 felony and is punishable pursuant to section  
39 13-705.

40          G. ~~EXCEPT AS PROVIDED IN SUBSECTION H OF THIS SECTION,~~ if the minor  
41 is fifteen, sixteen or seventeen years of age, child sex trafficking  
42 pursuant to ~~subsection A, paragraph 1, 2, 3, 4, 5, 6, 7 or 8 of~~ this  
43 section is a class 2 felony, the person convicted shall be sentenced  
44 pursuant to this section and the person is not eligible for suspension of  
45 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. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. The terms are as follows:

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

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
<del>10</del> 20 years	<del>13.5</del> 30 years	<del>24</del> 40 years

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

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
<del>17</del> 25 years	<del>24</del> 35 years	<del>31</del> 45 years

3. 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>
<del>24</del> 30 years	<del>31</del> 40 years	<del>38</del> 50 years

H. If the PERSON HAS PREVIOUSLY BEEN CONVICTED OF CHILD SEX TRAFFICKING INVOLVING A minor WHO is fifteen, sixteen or seventeen years of age, child sex trafficking pursuant to ~~subsection A, paragraph 9 or 10 of~~ this section is a class 2 felony, THE PERSON CONVICTED SHALL BE SENTENCED PURSUANT TO THIS SECTION AND THE PERSON SHALL BE SENTENCED TO IMPRISONMENT IN THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS FOR NATURAL LIFE. A PERSON WHO IS SENTENCED TO NATURAL LIFE IS NOT ELIGIBLE FOR COMMUTATION, PAROLE, WORK FURLOUGH, WORK RELEASE OR RELEASE FROM CONFINEMENT ON ANY BASIS FOR THE REMAINDER OF THE PERSON'S NATURAL LIFE.

~~1. If the minor is fifteen, sixteen or seventeen years of age, child sex trafficking pursuant to subsection B, paragraph 2 of this section is a class 2 felony, 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. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. The terms are as follows:~~

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

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

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

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

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

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

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

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

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

Sec. 4. Section 13-3409, Arizona Revised Statutes, is amended to read:

13-3409. Involving or using minors in drug offenses; classification

A. A person shall not knowingly:

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

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

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

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

1       Sec. 5. Section 13-3552, Arizona Revised Statutes, is amended to  
2 read:

3       13-3552. Commercial sexual exploitation of a minor;  
4               classification

5       A. A person commits commercial sexual exploitation of a minor by  
6 knowingly:

7       1. Using, employing, persuading, enticing, inducing or coercing a  
8 minor to engage in or assist others to engage in exploitive exhibition or  
9 other sexual conduct for the purpose of producing any visual depiction or  
10 live act depicting such conduct.

11       2. Using, employing, persuading, enticing, inducing or coercing a  
12 minor to expose the genitals or anus or the areola or nipple of the female  
13 breast for financial or commercial gain.

14       3. Permitting a minor under the person's custody or control to  
15 engage in or assist others to engage in exploitive exhibition or other  
16 sexual conduct for the purpose of producing any visual depiction or live  
17 act depicting such conduct.

18       4. Transporting or financing the transportation of any minor  
19 through or across this state with the intent that the minor engage in  
20 prostitution, exploitive exhibition or other sexual conduct for the  
21 purpose of producing a visual depiction or live act depicting such  
22 conduct.

23       5. Using an advertisement for prostitution as defined in section  
24 13-3211 that contains a visual depiction of a minor.

25       B. Subsection A, paragraph 5 of this section does not apply to an  
26 act that is prohibited by section 13-3555 or to websites or internet  
27 service providers that host advertisements created and published by third  
28 parties and do not participate in creating or publishing the  
29 advertisements.

30       C. Commercial sexual exploitation of a minor is a class 2 felony  
31 and if the minor is under fifteen years of age it is punishable pursuant  
32 to section 13-705. COMMERCIAL SEXUAL EXPLOITATION OF A MINOR WHO IS  
33 FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE IS A CLASS 2 FELONY, THE PERSON  
34 CONVICTED SHALL BE SENTENCED PURSUANT TO THIS SECTION AND THE PERSON SHALL  
35 BE SENTENCED TO IMPRISONMENT IN THE CUSTODY OF THE STATE DEPARTMENT OF  
36 CORRECTIONS FOR NATURAL LIFE. A PERSON WHO IS SENTENCED TO NATURAL LIFE  
37 IS NOT ELIGIBLE FOR COMMUTATION, PAROLE, WORK FURLOUGH, WORK RELEASE OR  
38 RELEASE FROM CONFINEMENT ON ANY BASIS FOR THE REMAINDER OF THE PERSON'S  
39 NATURAL LIFE.

40       Sec. 6. Section 13-3553, Arizona Revised Statutes, is amended to  
41 read:

42       13-3553. Sexual exploitation of a minor; evidence;  
43               classification

44       A. A person commits sexual exploitation of a minor by knowingly:

1           1. Recording, filming, photographing, developing or duplicating any  
2 visual depiction in which a minor is engaged in exploitive exhibition or  
3 other sexual conduct.

4           2. Distributing, transporting, exhibiting, receiving, selling,  
5 purchasing, electronically transmitting, ~~possessing~~ or exchanging any  
6 visual depiction in which a minor is engaged in exploitive exhibition or  
7 other sexual conduct.

8           3. POSSESSING ANY VISUAL DEPICTION IN WHICH A MINOR IS ENGAGED IN  
9 EXPLOITIVE EXHIBITION OR OTHER SEXUAL CONDUCT.

10          B. If any visual depiction of sexual exploitation of a minor is  
11 admitted into evidence, the court shall seal that evidence at the  
12 conclusion of any grand jury proceeding, hearing or trial.

13          C. Sexual exploitation of a minor PURSUANT TO SUBSECTION A,  
14 PARAGRAPH 3 OF THIS SECTION is a class 2 felony and if the minor is under  
15 fifteen years of age it is punishable pursuant to section 13-705. SEXUAL  
16 EXPLOITATION OF A MINOR PURSUANT TO SUBSECTION A, PARAGRAPH 1 OR 2 IS A  
17 CLASS 2 FELONY, THE PERSON CONVICTED SHALL BE SENTENCED PURSUANT TO THIS  
18 SECTION AND THE PERSON SHALL BE SENTENCED TO IMPRISONMENT IN THE CUSTODY  
19 OF THE STATE DEPARTMENT OF CORRECTIONS FOR NATURAL LIFE. A PERSON WHO IS  
20 SENTENCED TO NATURAL LIFE IS NOT ELIGIBLE FOR COMMUTATION, PAROLE, WORK  
21 FURLOUGH, WORK RELEASE OR RELEASE FROM CONFINEMENT ON ANY BASIS FOR THE  
22 REMAINDER OF THE PERSON'S NATURAL LIFE.

23          Sec. 7. Section 13-3560, Arizona Revised Statutes, is amended to  
24 read:

25           13-3560. Aggravated luring a minor for sexual exploitation;  
26 classification; definitions

27          A. A person commits aggravated luring a minor for sexual  
28 exploitation if the person does both of the following:

29           1. Knowing the character and content of the depiction, uses an  
30 electronic communication device to transmit at least one visual depiction  
31 of material that is harmful to minors for the purpose of initiating or  
32 engaging in communication with a recipient who the person knows or has  
33 reason to know is a minor.

34           2. By means of the communication, offers or solicits sexual conduct  
35 with the minor. The offer or solicitation may occur before,  
36 contemporaneously with, after or as an integrated part of the transmission  
37 of the visual depiction.

38          B. It is not a defense to a prosecution for a violation of this  
39 section that the other person is not a minor or that the other person is a  
40 peace officer posing as a minor.

41          C. Aggravated luring a minor for sexual exploitation is a class 2  
42 felony, and if the minor is under fifteen years of age it is punishable  
43 pursuant to section 13-705, subsection ~~D~~ F.

44          D. The defense prescribed in section 13-1407, subsection E applies  
45 to a prosecution pursuant to this section.

1 E. For the purposes of this section:

2 1. "Electronic communication device" means any electronic device  
3 that is capable of transmitting visual depictions and includes any of the  
4 following:

5 (a) A computer, computer system or network as defined in section  
6 13-2301.

7 (b) A cellular or wireless telephone as defined in section 13-4801.

8 2. "Harmful to minors" has the same meaning prescribed in section  
9 13-3501.

10 Sec. 8. Section 31-412, Arizona Revised Statutes, is amended to  
11 read:

12 31-412. Criteria for release on parole; release; custody of  
13 parolee; definition

14 A. If a prisoner is certified as eligible for parole pursuant to  
15 section 41-1604.09 the board of executive clemency shall authorize the  
16 release of the applicant on parole if the applicant has reached the  
17 applicant's earliest parole eligibility date pursuant to section  
18 41-1604.09, subsection D and it appears to the board, in its sole  
19 discretion, that there is a substantial probability that the applicant  
20 will remain at liberty without violating the law and that the release is  
21 in the best interests of the state. The applicant shall thereupon be  
22 allowed to go on parole in the legal custody and under the control of the  
23 state department of corrections, until the board revokes the parole or  
24 grants an absolute discharge from parole or until the prisoner reaches the  
25 prisoner's individual earned release credit date pursuant to section  
26 41-1604.10. When the prisoner reaches the prisoner's individual earned  
27 release credit date the prisoner's parole shall be terminated and the  
28 prisoner shall no longer be under the authority of the board but shall be  
29 subject to revocation under section 41-1604.10.

30 B. Notwithstanding subsection A of this section, the director of  
31 the state department of corrections may certify as eligible for parole any  
32 prisoner, regardless of the classification of the prisoner, who has  
33 reached the prisoner's parole eligibility date pursuant to section  
34 41-1604.09, subsection D, unless an increased term has been imposed  
35 pursuant to section 41-1604.09, subsection F, for the sole purpose of  
36 parole to the custody of any other jurisdiction to serve a term of  
37 imprisonment imposed by the other jurisdiction or to stand trial on  
38 criminal charges in the other jurisdiction or for the sole purpose of  
39 parole to the custody of the state department of corrections to serve any  
40 consecutive term imposed on the prisoner. On review of an application for  
41 parole pursuant to this subsection the board may authorize parole if, in  
42 its discretion, parole appears to be in the best interests of the state.

43 C. A prisoner who is otherwise eligible for parole, who is not on  
44 home arrest or work furlough and who is currently serving a sentence for a  
45 conviction of a serious offense or conspiracy to commit or attempt to

1 commit a serious offense shall not be granted parole or absolute discharge  
2 from imprisonment except by one of the following votes:

3 1. A majority affirmative vote if four or more members consider the  
4 action.

5 2. A unanimous affirmative vote if three members consider the  
6 action.

7 3. A unanimous affirmative vote if two members consider the action  
8 pursuant to section 31-401, subsection I and the chairman concurs after  
9 reviewing the information considered by the two members.

10 D. The board, as a condition of parole, shall order a prisoner to  
11 make any court-ordered restitution.

12 E. Payment of restitution by the prisoner in accordance with  
13 subsection D of this section shall be made through the clerk of the  
14 superior court in the county in which the prisoner was sentenced for the  
15 offense for which the prisoner has been imprisoned in the same manner as  
16 restitution is paid as a condition of probation. The clerk of the  
17 superior court, on request, shall make the prisoner's restitution payment  
18 history available to the board, victim, victim's attorney and department  
19 without cost.

20 F. The board shall not disclose the address of the victim or the  
21 victim's immediate family to any party without the written consent of the  
22 victim or the victim's family.

23 G. For the purposes of this section, "serious offense" includes any  
24 of the following:

25 1. A serious offense as defined in section 13-706, subsection F,  
26 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j)  
27 or (k).

28 2. A dangerous crime against children as defined in section  
29 13-705. The citation of section 13-705 is not a necessary element for a  
30 serious offense designation.

31 3. A conviction under a prior criminal code for any offense that  
32 possesses reasonably equivalent offense elements as the offense elements  
33 that are listed under section 13-705, subsection ~~S~~, paragraph 1 or  
34 section 13-706, subsection F, paragraph 1.

35 Sec. 9. Section 41-1604.11, Arizona Revised Statutes, is amended to  
36 read:

37 41-1604.11. Order for removal; purposes; duration; work  
38 furlough; notice; failure to return;  
39 classification; applicability; definition

40 A. The director of the state department of corrections may  
41 authorize the temporary removal under custody from prison or any other  
42 institution for the detention of adults under the jurisdiction of the  
43 state department of corrections of any inmate for the purpose of employing  
44 that inmate in any work directly connected with the administration,  
45 management or maintenance of the prison or institution in which the inmate

1 is confined, for purposes of cooperating voluntarily in medical research  
2 that cannot be performed at the prison or institution, or for  
3 participating in community action activities directed toward delinquency  
4 prevention and community betterment programs. The removal shall not be  
5 for a period longer than one day.

6 B. Under specific rules established by the director for the  
7 selection of inmates, the director may also authorize furlough, temporary  
8 removal or temporary release of any inmate for compassionate leave, for  
9 the purpose of furnishing to the inmate medical treatment not available at  
10 the prison or institution, for purposes preparatory to a return to the  
11 community within ninety days of the inmate's release date or for disaster  
12 aid, including local mutual aid and state emergencies. When an inmate is  
13 temporarily removed or temporarily released for a purpose preparatory to  
14 return to the community or for compassionate leave, the director may  
15 require the inmate to reimburse the state, in whole or part, for expenses  
16 incurred by the state in connection with the temporary removal or release.

17 C. The board of executive clemency, under specific rules  
18 established for the selection of inmates, if it appears to the board, in  
19 its sole discretion, that there is a substantial probability that the  
20 inmate will remain at liberty without violating the law and that the  
21 release is in the best interests of the state, may authorize the release  
22 of an inmate on work furlough if the inmate has served not less than six  
23 months of the sentence imposed by the court, is within twelve months of  
24 the inmate's parole eligibility date and has not been convicted of a  
25 sexual offense. The director shall provide information as the board  
26 requests concerning any inmate eligible for release on work furlough. The  
27 inmate shall not be released on work furlough unless the release is  
28 approved by the board.

29 D. An inmate who is otherwise eligible for work furlough pursuant  
30 to subsection C of this section, who is not on home arrest and who is  
31 currently serving a sentence for a conviction of a serious offense or  
32 conspiracy to commit or attempt to commit a serious offense shall not be  
33 granted work furlough except by one of the following votes:

34 1. A majority affirmative vote if four or more members of the board  
35 of executive clemency consider the action.

36 2. A unanimous affirmative vote if three members of the board of  
37 executive clemency consider the action.

38 3. A unanimous affirmative vote if two members of the board of  
39 executive clemency consider the action pursuant to section 31-401,  
40 subsection I and the chairman of the board concurs after reviewing the  
41 information considered by the two members.

42 E. Before holding a hearing on the work furlough under  
43 consideration, the board, on request, shall notify and afford an  
44 opportunity to be heard to the presiding judge of the superior court in  
45 the county in which the inmate requesting a work furlough was sentenced,

1 the prosecuting attorney, the director of the arresting law enforcement  
2 agency and the victim of the offense for which the inmate is incarcerated.  
3 The notice shall state the name of the inmate requesting the work  
4 furlough, the offense for which the inmate was sentenced, the length of  
5 the sentence and the date of admission to the custody of the state  
6 department of corrections. The notice to the victim shall also inform the  
7 victim of the victim's right to be present and submit a written report to  
8 the board expressing the victim's opinion concerning the inmate's release.  
9 No hearing concerning work furlough shall be held until fifteen days after  
10 the date of giving the notice. On mailing the notice, the board shall  
11 file a hard copy of the notice as evidence that notification was sent.

12 F. The board shall require that every inmate released on work  
13 furlough comply with the terms and conditions of release as the board may  
14 impose, including that the inmate be gainfully employed while on work  
15 furlough and that the inmate make restitution to the victim of the offense  
16 for which the inmate was incarcerated.

17 G. If the board finds that an inmate has failed to comply with the  
18 terms and conditions of release or that the best interests of this state  
19 would be served by revocation of an inmate's work furlough, the board may  
20 issue a warrant for retaking the inmate before the expiration of the  
21 inmate's maximum sentence. After return of the inmate, the board may  
22 revoke the inmate's work furlough after the inmate has been given an  
23 opportunity to be heard.

24 H. If the board denies the release of an inmate on work furlough or  
25 home arrest, it may prescribe that the inmate not be recommended again for  
26 release on work furlough or home arrest for a period of up to one year.

27 I. The director shall transmit a monthly report containing the  
28 name, date of birth, offense for which the inmate was sentenced, length of  
29 the sentence and date of admission to the state department of corrections  
30 of each inmate on work furlough or home arrest to the chairperson of the  
31 house of representatives judiciary committee or its successor committee  
32 and the chairperson of the senate judiciary committee or its successor  
33 committee. The director shall also submit a report containing this  
34 information for any inmate released on work furlough or home arrest within  
35 a jurisdiction to the county attorney, sheriff and chief of police for the  
36 jurisdiction in which the inmate is released on work furlough or home  
37 arrest.

38 J. Any inmate who knowingly fails to return from furlough, home  
39 arrest, work furlough or temporary removal or temporary release granted  
40 under this section is guilty of a class 5 felony.

41 K. At any given time if the director declares there is a shortage  
42 of beds available for inmates within the state department of corrections,  
43 the parole eligibility as set forth in sections 31-411 and 41-1604.09 may  
44 be suspended for any inmate who has served not less than six months of the  
45 sentence imposed by the court, who has not been previously convicted of a



felony and who has been sentenced for a class 4, 5 or 6 felony, not involving a sexual offense, the use or exhibition of a deadly weapon or dangerous instrument or the infliction of serious physical injury pursuant to section 13-704, and the inmate shall be continuously eligible for parole, home arrest or work furlough.

L. Prisoners who have served at least one calendar year and who are serving a sentence for conviction of a crime committed on or after October 1, 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02 or 36-1002.03, and who are sentenced to the custody of the state department of corrections, may be temporarily released, according to the rules of the department, at the discretion of the director, one hundred eighty calendar days prior to expiration of the term imposed and shall remain under the control of the state department of corrections until expiration of the maximum sentence specified. If an offender released under this section or pursuant to section 31-411, subsection B violates the rules, the offender may be returned to custody and shall be classified to a parole class as provided by the rules of the department.

M. This section applies only to persons who commit felony offenses before January 1, 1994.

N. For the purposes of this section, "serious offense" means any of the following:

1. A serious offense as defined in section 13-706, subsection F, paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

2. A dangerous crime against children as defined in section 13-705. The citation of section 13-705 is not a necessary element for a serious offense designation.

3. A conviction under a prior criminal code for any offense that possesses reasonably equivalent offense elements as the offense elements that are listed under section 13-705, subsection ~~S~~ S, paragraph 1 or section 13-706, subsection F, paragraph 1.

Sec. 10. Section 41-1604.13, Arizona Revised Statutes, is amended to read:

41-1604.13. Home arrest; eligibility; victim notification; conditions; applicability; definitions

A. An inmate who has served not less than six months of the sentence imposed by the court is eligible for the home arrest program if the inmate:

1. Meets the following criteria:

(a) Was convicted of committing a class 4, 5 or 6 felony not involving a dangerous offense.

(b) Was not convicted of a sexual offense.

(c) Has not previously been convicted of any felony.

2. Violated parole by the commission of a technical violation that was not chargeable or indictable as a criminal offense.

1           3. Is eligible for work furlough.

2           4. Is eligible for parole pursuant to section 31-412, subsection A.

3           B. The board of executive clemency shall determine which inmates  
4 are released to the home arrest program based on the criteria in  
5 subsection A of this section and based on a determination that there is a  
6 substantial probability that the inmate will remain at liberty without  
7 violating the law and that the release is in the best interests of the  
8 state after considering the offense for which the inmate is presently  
9 incarcerated, the prior record of the inmate, the conduct of the inmate  
10 while incarcerated and any other information concerning the inmate that is  
11 in the possession of the state department of corrections, including any  
12 presentence report. The board maintains the responsibility of revocation  
13 as applicable to all parolees.

14           C. An inmate who is otherwise eligible for home arrest, who is not  
15 on work furlough and who is currently serving a sentence for a conviction  
16 of a serious offense or conspiracy to commit or attempt to commit a  
17 serious offense shall not be granted home arrest except by one of the  
18 following votes:

19           1. A majority affirmative vote if four or more members of the board  
20 of executive clemency consider the action.

21           2. A unanimous affirmative vote if three members of the board of  
22 executive clemency consider the action.

23           3. A unanimous affirmative vote if two members of the board of  
24 executive clemency consider the action pursuant to section 31-401,  
25 subsection I and the chairman of the board concurs after reviewing the  
26 information considered by the two members.

27           D. Home arrest is conditioned on the following:

28           1. Active electronic monitoring surveillance for a minimum term of  
29 one year or until eligible for general parole.

30           2. Participation in gainful employment or other beneficial  
31 activities.

32           3. Submission to alcohol and drug tests as mandated.

33           4. Payment of the electronic monitoring fee in an amount determined  
34 by the board of not less than one dollar per day and not more than the  
35 total cost of the electronic monitoring unless, after determining the  
36 inability of the inmate to pay the fee, the board requires payment of a  
37 lesser amount. The fees collected shall be returned to the department's  
38 home arrest program to offset operational costs of the program.

39           5. Remaining at the inmate's place of residence at all times except  
40 for movement out of the residence according to mandated conditions.

41           6. Adherence to any other conditions imposed by the court, board of  
42 executive clemency or supervising corrections officers.

43           7. Compliance with all other conditions of supervision.

44           8. Payment of a monthly home arrest supervision fee of at least  
45 sixty-five dollars unless, after determining the inability of the inmate

1 to pay the fee, the department requires payment of a lesser amount. The  
2 supervising corrections officer shall monitor the collection of the fee.  
3 Monies collected shall be deposited, pursuant to sections 35-146 and  
4 35-147, in the community corrections enhancement fund established by  
5 section 31-418.

6 9. Payment of a drug testing fee in an amount to be determined by  
7 the board and not to exceed the costs of the drug testing program. The  
8 fees collected pursuant to this paragraph by the department may only be  
9 used to offset the costs of the drug testing program.

10 E. Before holding a hearing on home arrest, the board on request  
11 shall notify and afford an opportunity to be heard to the presiding judge  
12 of the superior court in the county in which the inmate requesting home  
13 arrest was sentenced, the prosecuting attorney and the director of the  
14 arresting law enforcement agency. The board shall notify the victim of  
15 the offense for which the inmate is incarcerated. The notice shall state  
16 the name of the inmate requesting home arrest, the offense for which the  
17 inmate was sentenced, the length of the sentence and the date of admission  
18 to the custody of the state department of corrections. The notice to the  
19 victim shall also inform the victim of the victim's right to be present  
20 and to submit a written report to the board expressing the victim's  
21 opinion concerning the inmate's release. No hearing concerning home  
22 arrest may be held until fifteen days after the date of giving the notice.  
23 On mailing the notice, the board shall file a hard copy of the notice as  
24 evidence that notification was sent.

25 F. An inmate who is placed on home arrest is on inmate status, is  
26 subject to all the limitations of rights and movement and is entitled only  
27 to due process rights of return.

28 G. If an inmate violates a condition of home arrest that poses any  
29 threat or danger to the community, or commits an additional felony  
30 offense, the board shall revoke the home arrest and return the inmate to  
31 the custody of the state department of corrections to complete the term of  
32 imprisonment as authorized by law.

33 H. The ratio of supervising corrections officers to supervisees in  
34 the home arrest program shall be no greater than one officer for every  
35 twenty-five supervisees.

36 I. The board shall determine when the supervisee is eligible for  
37 transfer to the regular parole program pursuant to section 31-411.

38 J. This section applies only to persons who commit felony offenses  
39 before January 1, 1994.

40 K. For the purposes of this section:

41 1. "Dangerous offense" has the same meaning prescribed in section  
42 13-105.

1           2. "Serious offense" includes any of the following:

2           (a) A serious offense as defined in section 13-706, subsection F,  
3 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or  
4 (k).

5           (b) A dangerous crime against children as defined in section  
6 13-705. The citation of section 13-705 is not a necessary element for a  
7 serious offense designation.

8           (c) A conviction under a prior criminal code for any offense that  
9 possesses reasonably equivalent offense elements as the offense elements  
10 that are listed under section 13-705, subsection ~~S~~ S, paragraph 1 or  
11 section 13-706, subsection F, paragraph 1.