

House Engrossed

mandatory sentences; children; trafficking; smuggling

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2696

AN ACT

AMENDING SECTIONS 13-705, 13-1308, 13-1428, 13-2319, 13-2323, 13-3205,
13-3207, 13-3554, 13-3560, 13-3625, 31-412, 41-1604.11 AND 41-1604.13,
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 13-705, 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 and the person has previously been convicted of a dangerous
10 crime against children in the first degree shall be sentenced to
11 imprisonment in the custody of the state department of corrections for
12 natural life. A person who is sentenced to natural life is not eligible
13 for commutation, parole, work furlough, work release or release from
14 confinement on any basis for the remainder of the person's natural life.

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

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

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

41 D. Except as otherwise provided in this section, a person who is at
42 least eighteen years of age or who has been tried as an adult and who is
43 convicted of a dangerous crime against children in the first degree
44 involving attempted first degree murder of a minor who is twelve, thirteen
45 or fourteen years of age, second degree murder of a minor who is twelve,

1 thirteen or fourteen years of age, sexual assault of a minor who is
2 twelve, thirteen or fourteen years of age, taking a child for the purpose
3 of prostitution, child sex trafficking, commercial sexual exploitation of
4 a minor, sexual conduct with a minor who is twelve, thirteen or fourteen
5 years of age, ~~continuous sexual abuse of a child~~ or manufacturing
6 methamphetamine under circumstances that cause physical injury to a minor
7 who is twelve, thirteen or fourteen years of age or involving or using
8 minors in drug offenses shall be sentenced to a term of imprisonment as
9 follows:

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

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

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

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

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

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

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

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

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

41 A person who has been previously convicted of one predicate felony shall
42 be sentenced to a term of imprisonment as follows and the person is not
43 eligible for suspension of sentence, probation, pardon or release from
44 confinement on any basis except as specifically authorized by section
45 31-233, subsection A or B until the sentence imposed by the court has been

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

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

5 G. Except as otherwise provided in this section, if a person is at
6 least eighteen years of age or has been tried as an adult and is convicted
7 of a dangerous crime against children involving sexual abuse or bestiality
8 under section 13-1411, subsection A, paragraph 2 and is sentenced to a
9 term of imprisonment, the term of imprisonment is as follows and the
10 person is not eligible for release from confinement on any basis except as
11 specifically authorized by section 31-233, subsection A or B until the
12 sentence imposed by the court has been served, the person is eligible for
13 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

16 A person who has been previously convicted of one predicate felony shall
17 be sentenced to a term of imprisonment as follows and the person is not
18 eligible for suspension of sentence, probation, pardon or release from
19 confinement on any basis except as specifically authorized by section
20 31-233, subsection A or B until the sentence imposed by the court has been
21 served, the person is eligible for release pursuant to section 41-1604.07
22 or the sentence is commuted:

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

25 H. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO IS AT
26 LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO IS
27 CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN IN THE FIRST DEGREE
28 INVOLVING CONTINUOUS SEXUAL ABUSE OF A CHILD SHALL BE SENTENCED TO A TERM
29 OF IMPRISONMENT AS FOLLOWS:

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
39 YEARS	60 YEARS	81 YEARS

32 A PERSON WHO HAS BEEN PREVIOUSLY CONVICTED OF ONE PREDICATE FELONY SHALL
33 BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
69 YEARS	90 YEARS	111 YEARS

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

40 ~~H.~~ J. Except as provided in ~~subsection~~ SUBSECTIONS F, G, L AND M
41 of this section, a person who is sentenced for a dangerous crime against
42 children in the first degree pursuant to this section is not eligible for
43 suspension of sentence, probation, pardon or release from confinement on
44 any basis except as specifically authorized by section 31-233, subsection

1 A or B until the sentence imposed by the court has been served or
2 commuted.

3 ~~J.~~ K. A person who is convicted of any dangerous crime against
4 children in the first degree pursuant to subsection C, D, ~~or~~ E **OR** H of
5 this section and who has been previously convicted of two or more
6 predicate felonies shall be sentenced to life imprisonment and 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 person has served not fewer than
10 thirty-five years or the sentence is commuted.

11 ~~K.~~ L. Notwithstanding chapter 10 of this title, a person who is at
12 least eighteen years of age or who has been tried as an adult and who is
13 convicted of a dangerous crime against children in the second degree
14 pursuant to subsection B, C, D, ~~or~~ E **OR** H of this section is guilty of a
15 class 3 felony and if the person is sentenced to a term of imprisonment,
16 the term of imprisonment is as follows and the person is not eligible for
17 release from confinement on any basis except as specifically authorized by
18 section 31-233, subsection A or B until the person has served the sentence
19 imposed by the court, the person is eligible for release pursuant to
20 section 41-1604.07 or the sentence is commuted:

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

21 ~~L.~~ M. A person who is convicted of any dangerous crime against
22 children in the second degree and who has been previously convicted of one
23 or more predicate felonies is not eligible for suspension of sentence,
24 probation, pardon or release from confinement on any basis except as
25 specifically authorized by section 31-233, subsection A or B until the
26 sentence imposed by the court has been served, the person is eligible for
27 release pursuant to section 41-1604.07 or the sentence is commuted.

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

30 ~~N.~~ O. The sentence imposed on a person by the court for a
31 dangerous crime against children under subsection G of this section
32 involving sexual abuse may be served concurrently with other sentences if
33 the offense involved only one victim. The sentence imposed on a person
34 for any other dangerous crime against children in the first or second
35 degree shall be consecutive to any other sentence imposed on the person at
36 any time, including sexual abuse of the same victim.

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

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

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

5 ~~R.~~ S. For the purposes of this section:

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

8 (a) Second degree murder.

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

12 (c) Sexual assault.

13 (d) Molestation of a child.

14 (e) Sexual conduct with a minor.

15 (f) Commercial sexual exploitation of a minor.

16 (g) Sexual exploitation of a minor.

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

19 (i) Kidnapping.

20 (j) Sexual abuse.

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

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

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

25 (n) Continuous sexual abuse of a child.

26 (o) Attempted first degree murder.

27 (p) Sex trafficking.

28 (q) Manufacturing methamphetamine under circumstances that cause
29 physical injury to a minor.

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

32 (s) Luring a minor for sexual exploitation.

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

34 (u) Unlawful age misrepresentation.

35 (v) Unlawful mutilation.

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

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

1 Sec. 2. Section 13-1308, Arizona Revised Statutes, is amended to
2 read:

3 **13-1308. Trafficking of persons for forced labor or services;**
4 **classification; definitions**

5 A. It is unlawful for a person to either:

6 1. Knowingly traffic another person with the intent to or knowledge
7 that the other person will be subject to forced labor or services.

8 2. Knowingly benefit, financially or by receiving anything of
9 value, from participation in a venture that has engaged in an act in
10 violation of section 13-1306, section 13-1307, this section or section
11 13-3212, subsection A, paragraph 9 or 10.

12 B. A violation of this section is a class 2 felony **AND THE PERSON**
13 **IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE**
14 **FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION**
15 **31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN**
16 **SERVED OR COMMUTED.**

17 C. For the purposes of this section:

18 1. "Forced labor or services":

19 (a) Means labor or services that are performed or provided by
20 another person and that are obtained through a person's either:

21 (i) Causing or threatening to cause serious physical injury to any
22 person.

23 (ii) Restraining or threatening to physically restrain another
24 person.

25 (iii) Knowingly destroying, concealing, removing, confiscating,
26 possessing or withholding another person's actual or purported passport or
27 other immigration document, government issued identification document,
28 government record or personal property.

29 (iv) Abusing or threatening to abuse the law or the legal system.

30 (v) Extortion.

31 (vi) Causing or threatening to cause financial harm to any person.

32 (vii) Facilitating or controlling another person's access to a
33 controlled substance.

34 (b) Does not include ordinary household chores and reasonable
35 disciplinary measures between a parent or legal guardian and the parent's
36 or legal guardian's child.

37 2. "Traffic" means to entice, recruit, harbor, provide, transport
38 or otherwise obtain another person by deception, coercion or force.

39 Sec. 3. Section 13-1428, Arizona Revised Statutes, is amended to
40 read:

41 **13-1428. Sexual extortion: classification; definition**

42 A. A person commits sexual extortion by knowingly communicating a
43 threat with the intent to coerce another person to do any of the
44 following:

45 1. Engage in sexual contact or sexual intercourse.

1 2. Allow the other person's genitals, anus or female breast to be
2 photographed, filmed, videotaped or digitally recorded.

3 3. Exhibit the other person's genitals, anus or female breast.

4 B. Sexual extortion is a class 3 felony AND THE PERSON IS NOT
5 ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM
6 CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION
7 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN
8 SERVED OR COMMUTED. ~~Unless~~ IF the victim is under fifteen years of age,
9 ~~in which case~~ sexual extortion is a class 2 felony AND IS punishable
10 pursuant to section 13-705.

11 C. For the purposes of this section, "communicating a threat" means
12 a threat to do any of the following:

13 1. Damage the property of the other person.

14 2. Harm the reputation of the other person.

15 3. Produce or distribute a photograph, film, videotape or digital
16 recording that depicts the other person engaging in sexual contact or
17 sexual intercourse or the exhibition of the other person's genitals, anus
18 or female breast.

19 Sec. 4. Section 13-2319, Arizona Revised Statutes, is amended to
20 read:

21 13-2319. Smuggling; classification; definitions

22 A. It is unlawful for a person to intentionally engage in the
23 smuggling of human beings ~~for profit or commercial purpose~~.

24 B. A violation of this section is a class ~~4~~ 3 felony.

25 C. Notwithstanding subsection B of this section, a violation of
26 this section:

27 ~~1.~~ is a class 2 felony if ANY OF THE FOLLOWING APPLY:

28 1. The human being who is smuggled is under eighteen years of age
29 and is not accompanied by a family member over eighteen years of age. ~~or~~

30 2. The offense involved the use of a deadly weapon or dangerous
31 instrument.

32 ~~2. 3. Is a class 3 felony if~~ The offense ~~involves~~ INVOLVED the use
33 or threatened use of deadly physical force ~~and the person is not eligible~~
34 ~~for suspension of sentence, probation, pardon or release from confinement~~
35 ~~on any other basis except pursuant to section 31-233, subsection A or B~~
36 ~~until the sentence imposed by the court is served, the person is eligible~~
37 ~~for release pursuant to section 41-1604.07 or the sentence is commuted.~~

38 D. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION IS NOT
39 ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM
40 CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION
41 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN
42 SERVED OR COMMUTED.

43 ~~D.~~ E. Chapter 10 of this title does not apply to a violation of
44 subsection C, paragraph 1 ~~OR~~ 2 of this section.

1 ~~F.~~ F. Notwithstanding any other law, in the enforcement of this
2 section a peace officer may lawfully stop any person who is operating a
3 motor vehicle if the officer has reasonable suspicion to believe the
4 person is in violation of any civil traffic law.

5 ~~F.~~ G. For the purposes of this section:

6 1. "Family member" means the person's parent, grandparent, sibling
7 or any other person who is related to the person by consanguinity or
8 affinity to the second degree.

9 2. "Procurement of transportation" means any participation in or
10 facilitation of transportation and includes:

11 (a) Providing services that facilitate transportation including
12 travel arrangement services or money transmission services.

13 (b) Providing property that facilitates transportation, including a
14 weapon, a vehicle or other means of transportation or false
15 identification, or selling, leasing, renting or otherwise making available
16 a drop house as defined in section 13-2322.

17 3. "Smuggling of human beings" means the transportation,
18 procurement of transportation or use of property or real property by a
19 person or an entity that knows or has reason to know that the person or
20 persons transported or to be transported are not United States citizens,
21 permanent resident aliens or persons otherwise lawfully in this state or
22 have attempted to enter, entered or remained in the United States in
23 violation of law.

24 Sec. 5. Section 13-2323, Arizona Revised Statutes, is amended to
25 read:

26 13-2323. Participating in a human smuggling organization or
27 operation; classification

28 A. A person commits participating in a human smuggling organization
29 **OR OPERATION** by any of the following:

30 1. Intentionally **OR KNOWINGLY** organizing, managing, directing,
31 supervising, **COORDINATING, FACILITATING, LEADING, ASSISTING, PARTICIPATING**
32 **IN** or financing a human smuggling organization ~~with the intent to promote~~
33 ~~or further~~ **OR OPERATION THAT FURTHERS** the criminal objectives of the human
34 smuggling organization **OR OPERATION**.

35 2. Knowingly directing or instructing others to engage in violence
36 or intimidation to promote or further the criminal objectives of a human
37 smuggling organization **OR OPERATION**.

38 3. Furnishing advice or direction in the conduct, financing or
39 management of a human smuggling organization's **OR OPERATION'S** affairs with
40 the intent to promote or further the criminal objectives of a human
41 smuggling organization **OR OPERATION**.

42 4. Intentionally promoting or furthering the criminal objectives of
43 a human smuggling organization **OR OPERATION** by inducing or committing any
44 act or omission by a public servant in violation of the public servant's
45 official duty.

1 5. KNOWINGLY GUIDING, DIRECTING, COORDINATING, FACILITATING OR
2 ASSISTING IN TRANSPORTING, PROCURING TRANSPORTATION OR USING PROPERTY OR
3 REAL PROPERTY BY A PERSON OR AN ENTITY THAT KNOWS OR HAS REASON TO KNOW
4 THAT THE PERSON OR PERSONS BEING TRANSPORTED OR WHO WILL BE TRANSPORTED
5 ARE NOT CITIZENS OF THE UNITED STATES AND ARE ATTEMPTING TO ILLEGALLY
6 ENTER OR STAY IN THE UNITED STATES.

7 ~~B. A person commits assisting a human smuggling organization by
8 committing any felony offense, whether completed or preparatory, at the
9 direction of or in association with any human smuggling organization.~~

10 ~~C. B. Participating in a human smuggling organization OR OPERATION
11 is a class 2 felony.~~

12 ~~D. Assisting a human smuggling organization is a class 3 felony.~~

13 C. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION IS NOT
14 ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM
15 CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION
16 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN
17 SERVED OR COMMUTED.

18 Sec. 6. Section 13-3205, Arizona Revised Statutes, is amended to
19 read:

20 **13-3205. Causing spouse to become prostitute; classification**

21 A person who knowingly by force, fraud, intimidation or
22 threats, ~~—~~ causes his or her spouse to live in a house of prostitution or
23 to lead a life of prostitution, ~~—~~ is guilty of a class 5 felony **AND THE
24 PERSON IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR
25 RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY
26 SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT
27 HAS BEEN SERVED OR COMMUTED.**

28 Sec. 7. Section 13-3207, Arizona Revised Statutes, is amended to
29 read:

30 **13-3207. Detention of persons in house of prostitution for
31 debt; classification**

32 A person who knowingly detains any person in a house of prostitution
33 because of a debt ~~such THAT~~ person has contracted or is said to have
34 contracted, ~~—~~ is guilty of a class 5 felony **AND THE PERSON IS NOT ELIGIBLE
35 FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT
36 ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233,
37 SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED
38 OR COMMUTED.**

39 Sec. 8. Section 13-3554, Arizona Revised Statutes, is amended to
40 read:

41 **13-3554. Luring a minor for sexual exploitation;
42 classification**

43 A. A person commits luring a minor for sexual exploitation by
44 offering or soliciting sexual conduct with another person knowing or
45 having reason to know that the other person is a minor.

1 B. It is not a defense to a prosecution for a violation of this
2 section that the other person is not a minor.

3 C. Luring a minor for sexual exploitation is a class 3 felony, and
4 if the minor is under fifteen years of age it is punishable pursuant to
5 section 13-705. **A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION**
6 **IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE**
7 **FROM 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.**

10 Sec. 9. Section 13-3560, Arizona Revised Statutes, is amended to
11 read:

12 13-3560. **Aggravated luring a minor for sexual exploitation;**
13 **classification; definitions**

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

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

21 2. By means of the communication, offers or solicits sexual conduct
22 with the minor. The offer or solicitation may occur before,
23 contemporaneously with, after or as an integrated part of the transmission
24 of the visual depiction.

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

28 C. Aggravated luring a minor for sexual exploitation is a class 2
29 felony, and if the minor is under fifteen years of age it is punishable
30 pursuant to section 13-705, subsection E. **A PERSON WHO IS CONVICTED OF A**
31 **VIOLATION OF THIS SECTION IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE,**
32 **PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS**
33 **SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE**
34 **SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED.**

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

37 E. For the purposes of this section:

38 1. "Electronic communication device" means any electronic device
39 that is capable of transmitting visual depictions and includes any of the
40 following:

41 (a) A computer, computer system or network as defined in section
42 13-2301.

(b) A cellular or wireless telephone as defined in section 13-4801.
2. "Harmful to minors" has the same meaning prescribed in section 13-3501.

Sec. 10. Section 13-3625, Arizona Revised Statutes, is amended to read:

13-3625. Unlawful sale or purchase of children; classification

A. Except for adoptions pursuant to title 8, chapter 1 and guardianships pursuant to title 14, chapter 5, a person shall not sell or offer to sell a child for money or other valuable consideration and shall not purchase or offer to purchase a child in exchange for money or other valuable consideration.

B. A person who violates this section is guilty of a class 5 felony 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.

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

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

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

B. Notwithstanding subsection A of this section, the director of the state department of corrections may certify as eligible for parole any prisoner, regardless of the classification of the prisoner, who has reached the prisoner's parole eligibility date pursuant to section 41-1604.09, subsection D, unless an increased term has been imposed pursuant to section 41-1604.09, subsection F, for the sole purpose of parole to the custody of any other jurisdiction to serve a term of imprisonment imposed by the other jurisdiction or to stand trial on

1 criminal charges in the other jurisdiction or for the sole purpose of
2 parole to the custody of the state department of corrections to serve any
3 consecutive term imposed on the prisoner. On review of an application for
4 parole pursuant to this subsection the board may authorize parole if, in
5 its discretion, parole appears to be in the best interests of the state.

6 C. A prisoner who is otherwise eligible for parole, who is not on
7 home arrest or work furlough and who is currently serving a sentence for a
8 conviction of a serious offense or conspiracy to commit or attempt to
9 commit a serious offense shall not be granted parole or absolute discharge
10 from imprisonment except by one of the following votes:

11 1. A majority affirmative vote if four or more members consider the
12 action.

13 2. A unanimous affirmative vote if three members consider the
14 action.

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

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

20 E. Payment of restitution by the prisoner in accordance with
21 subsection D of this section shall be made through the clerk of the
22 superior court in the county in which the prisoner was sentenced for the
23 offense for which the prisoner has been imprisoned in the same manner as
24 restitution is paid as a condition of probation. The clerk of the
25 superior court, on request, shall make the prisoner's restitution payment
26 history available to the board, victim, victim's attorney and department
27 without cost.

28 F. The board shall not disclose the address of the victim or the
29 victim's immediate family to any party without the written consent of the
30 victim or the victim's family.

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

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

36 2. A dangerous crime against children as defined in section
37 13-705. The citation of section 13-705 is not a necessary element for a
38 serious offense designation.

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

1 Sec. 12. Section 41-1604.11, Arizona Revised Statutes, is amended
2 to read:

3 41-1604.11. Order for removal; purposes; duration; work
4 furlough; notice; failure to return;
5 classification; applicability; definition

6 A. The director of the state department of corrections may
7 authorize the temporary removal under custody from prison or any other
8 institution for the detention of adults under the jurisdiction of the
9 state department of corrections of any inmate for the purpose of employing
10 that inmate in any work directly connected with the administration,
11 management or maintenance of the prison or institution in which the inmate
12 is confined, for purposes of cooperating voluntarily in medical research
13 that cannot be performed at the prison or institution, or for
14 participating in community action activities directed toward delinquency
15 prevention and community betterment programs. The removal shall not be
16 for a period longer than one day.

17 B. Under specific rules established by the director for the
18 selection of inmates, the director may also authorize furlough, temporary
19 removal or temporary release of any inmate for compassionate leave, for
20 the purpose of furnishing to the inmate medical treatment not available at
21 the prison or institution, for purposes preparatory to a return to the
22 community within ninety days of the inmate's release date or for disaster
23 aid, including local mutual aid and state emergencies. When an inmate is
24 temporarily removed or temporarily released for a purpose preparatory to
25 return to the community or for compassionate leave, the director may
26 require the inmate to reimburse the state, in whole or part, for expenses
27 incurred by the state in connection with the temporary removal or release.

28 C. The board of executive clemency, under specific rules
29 established for the selection of inmates, if it appears to the board, in
30 its sole discretion, that there is a substantial probability that the
31 inmate will remain at liberty without violating the law and that the
32 release is in the best interests of the state, may authorize the release
33 of an inmate on work furlough if the inmate has served not less than six
34 months of the sentence imposed by the court, is within twelve months of
35 the inmate's parole eligibility date and has not been convicted of a
36 sexual offense. The director shall provide information as the board
37 requests concerning any inmate eligible for release on work furlough. The
38 inmate shall not be released on work furlough unless the release is
39 approved by the board.

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

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

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

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

9 E. Before holding a hearing on the work furlough under
10 consideration, the board, on request, shall notify and afford an
11 opportunity to be heard to the presiding judge of the superior court in
12 the county in which the inmate requesting a work furlough was sentenced,
13 the prosecuting attorney, the director of the arresting law enforcement
14 agency and the victim of the offense for which the inmate is incarcerated.
15 The notice shall state the name of the inmate requesting the work
16 furlough, the offense for which the inmate was sentenced, the length of
17 the sentence and the date of admission to the custody of the state
18 department of corrections. The notice to the victim shall also inform the
19 victim of the victim's right to be present and submit a written report to
20 the board expressing the victim's opinion concerning the inmate's release.
21 ~~No~~ A hearing concerning work furlough shall **NOT** be held until fifteen days
22 after the date of giving the notice. On mailing the notice, the board
23 shall file a hard copy of the notice as evidence that notification was
24 sent.

25 F. The board shall require that every inmate released on work
26 furlough comply with the terms and conditions of release as the board may
27 impose, including that the inmate be gainfully employed while on work
28 furlough and that the inmate make restitution to the victim of the offense
29 for which the inmate was incarcerated.

30 G. If the board finds that an inmate has failed to comply with the
31 terms and conditions of release or that the best interests of this state
32 would be served by revocation of an inmate's work furlough, the board may
33 issue a warrant for retaking the inmate before the expiration of the
34 inmate's maximum sentence. After return of the inmate, the board may
35 revoke the inmate's work furlough after the inmate has been given an
36 opportunity to be heard.

37 H. If the board denies the release of an inmate on work furlough or
38 home arrest, ~~it~~ **THE BOARD** may prescribe that the inmate not be recommended
39 again for release on work furlough or home arrest for a period of up to
40 one year.

41 I. The director shall transmit a monthly report containing the
42 name, date of birth, offense for which the inmate was sentenced, length of
43 the sentence and date of admission to the state department of corrections
44 of each inmate on work furlough or home arrest to the chairperson of the
45 house of representatives judiciary committee or its successor committee

1 and the chairperson of the senate judiciary committee or its successor
2 committee. The director shall also submit a report containing this
3 information for any inmate released on work furlough or home arrest within
4 a jurisdiction to the county attorney, sheriff and chief of police for the
5 jurisdiction in which the inmate is released on work furlough or home
6 arrest.

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

10 K. At any given time if the director declares there is a shortage
11 of beds available for inmates within the state department of corrections,
12 the parole eligibility as set forth in sections 31-411 and 41-1604.09 may
13 be suspended for any inmate who has served not less than six months of the
14 sentence imposed by the court, who has not been previously convicted of a
15 felony and who has been sentenced for a class 4, 5 or 6 felony, not
16 involving a sexual offense, the use or exhibition of a deadly weapon or
17 dangerous instrument or the infliction of serious physical injury pursuant
18 to section 13-704, and the inmate shall be continuously eligible for
19 parole, home arrest or work furlough.

20 L. Prisoners who have served at least one calendar year and who are
21 serving a sentence for conviction of a crime committed on or after October
22 1, 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01,
23 36-1002.02 or 36-1002.03, and who are sentenced to the custody of the
24 state department of corrections, may be temporarily released, according to
25 the rules of the department, at the discretion of the director, one
26 hundred eighty calendar days ~~prior to~~ BEFORE expiration of the term
27 imposed and shall remain under the control of the state department of
28 corrections until expiration of the maximum sentence specified. If an
29 offender released under this section or pursuant to section 31-411,
30 subsection B violates the rules, the offender may be returned to custody
31 and shall be classified to a parole class as provided by the rules of the
32 department.

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

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

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

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

43 3. A conviction under a prior criminal code for any offense that
44 possesses reasonably equivalent offense elements as the offense elements

1 that are listed under section 13-705, subsection ~~R~~ S, paragraph 1 or
2 section 13-706, subsection F, paragraph 1.

3 Sec. 13. Section 41-1604.13, Arizona Revised Statutes, is amended
4 to read:

5 **41-1604.13. Home arrest; eligibility; victim notification;**
6 **conditions; applicability; definitions**

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

10 1. Meets the following criteria:

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

13 (b) Was not convicted of a sexual offense.

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

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

17 3. Is eligible for work furlough.

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

19 B. The board of executive clemency shall determine which inmates
20 are released to the home arrest program based on the criteria in
21 subsection A of this section and based on a determination that there is a
22 substantial probability that the inmate will remain at liberty without
23 violating the law and that the release is in the best interests of the
24 state after considering the offense for which the inmate is presently
25 incarcerated, the prior record of the inmate, the conduct of the inmate
26 while incarcerated and any other information concerning the inmate that is
27 in the possession of the state department of corrections, including any
28 presentence report. The board maintains the responsibility of revocation
29 as applicable to all parolees.

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

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

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

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

43 D. Home arrest is conditioned on the following:

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

1 2. Participation in gainful employment or other beneficial
2 activities.

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

4 4. Payment of the electronic monitoring fee in an amount determined
5 by the board of not less than ~~one dollar~~ \$1 per day and not more than the
6 total cost of the electronic monitoring unless, after determining the
7 inability of the inmate to pay the fee, the board requires payment of a
8 lesser amount. The fees collected shall be returned to the department's
9 home arrest program to offset operational costs of the program.

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

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

14 7. Compliance with all other conditions of supervision.

15 8. Payment of a monthly home arrest supervision fee of at least
16 ~~sixty-five dollars~~ \$65 unless, after determining the inability of the
17 inmate to pay the fee, the department requires payment of a lesser amount.
18 The supervising corrections officer shall monitor the collection of the
19 fee. Monies collected shall be deposited, pursuant to sections 35-146 and
20 35-147, in the community corrections enhancement fund established by
21 section 31-418.

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

26 E. Before holding a hearing on home arrest, the board on request
27 shall notify and afford an opportunity to be heard to the presiding judge
28 of the superior court in the county in which the inmate requesting home
29 arrest was sentenced, the prosecuting attorney and the director of the
30 arresting law enforcement agency. The board shall notify the victim of
31 the offense for which the inmate is incarcerated. The notice shall state
32 the name of the inmate requesting home arrest, the offense for which the
33 inmate was sentenced, the length of the sentence and the date of admission
34 to the custody of the state department of corrections. The notice to the
35 victim shall also inform the victim of the victim's right to be present
36 and to submit a written report to the board expressing the victim's
37 opinion concerning the inmate's release. ~~NOT~~ A hearing concerning home
38 arrest may ~~NOT~~ be held until fifteen days after the date of giving the
39 notice. On mailing the notice, the board shall file a hard copy of the
40 notice as evidence that notification was sent.

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

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

6 H. The ratio of supervising corrections officers to supervisees in
7 the home arrest program shall **NOT** be ~~TO~~ greater than one officer for every
8 twenty-five supervisees.

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

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

13 K. For the purposes of this section:

14 1. "Dangerous offense" has the same meaning prescribed in section
15 13-105.

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

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

20 (b) A dangerous crime against children as defined in section
21 13-705. The citation of section 13-705 is not a necessary element for a
22 serious offense designation.

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