HB 2821

Introduced by
Representatives Montenegro: Biasiucci, Bliss, Carbone, Carter, Chaplik, Cook, Diaz, Dunn, Gillette, Grantham, Griffin, Hendrix, Jones, Kolodin, Livingston, Marshall, Martinez, Payne, Peña, Pingerelli, Smith, Toma, Willoughby, Wilmeth

AN ACT

AMENDING TITLE 12, CHAPTER 7, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 12-827, 12-828, 12-829 AND 12-830; AMENDING SECTION 13-603, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 38, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 35; AMENDING SECTIONS 31-402, 31-403 AND 41-1750, ARIZONA REVISED STATUTES; RELATING TO ILLEGAL BORDER CROSSINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 12, chapter 7, article 2, Arizona Revised Statutes, is amended by adding sections 12-827, 12-828, 12-829 and 12-830 to read:

12-827. Civil immunity for and indemnification of local government officials, employees and contractors; exception

A. A local government official, employee or contractor is immune from civil liability for damages arising from a cause of action under the laws of this state resulting from an action taken by the local government official, employee or contractor to enforce Title 13, chapter 38, article 35 or an order issued under Section 13-4295.05 during the course and scope of the local government official's, employee's or contractor's office, employment or contractual performance for or service on behalf of the local government.

B. A local government shall indemnify a local government official, employee or contractor for damages arising from a cause of action under federal law resulting from an action taken by the local government official, employee or contractor to enforce Title 13, chapter 38, article 35 during the course and scope of the local government official's, employee's or contractor's office, employment or contractual performance for or service on behalf of the local government in an amount not to exceed:

1. $100,000 to any one person or $300,000 for any single occurrence in the case of personal injury or death.
2. $10,000 for a single occurrence of property damage.

C. Subsections A and B of this section do not apply if the court or a jury determines that the local government official, employee or contractor acted in bad faith, with conscious indifference or with recklessness.

D. A local government shall indemnify a local government official, employee or contractor for reasonable attorney fees incurred in defense of a criminal prosecution against the local government official, employee or contractor for an action taken by the local government official, employee or contractor to enforce Title 13, chapter 38, article 35 during the course and scope of the local government official's, employee's or contractor's office, employment or contractual performance for or service on behalf of the local government.

E. This section does not waive any statutory limits on damages under state law.

12-828. Civil immunity for and indemnification of state officials, employees and contractors; exception

A. An elected or appointed state official or a state employee or contractor is immune from liability for damages arising from a cause of action under the laws of this state resulting from an action taken by the
STATE OFFICIAL, EMPLOYEE OR CONTRACTOR TO ENFORCE TITLE 13, CHAPTER 38, ARTICLE 35 OR AN ORDER ISSUED UNDER SECTION 13-4295.05 DURING THE COURSE AND SCOPE OF THE STATE OFFICIAL'S, EMPLOYEE'S OR CONTRACTOR'S OFFICE, EMPLOYMENT OR CONTRACTUAL PERFORMANCE FOR OR SERVICE ON BEHALF OF THIS STATE.

B. THIS STATE SHALL INDEMNIFY AN ELECTED OR APPOINTED STATE OFFICIAL OR A STATE EMPLOYEE OR CONTRACTOR FOR DAMAGES ARISING FROM A CAUSE OF ACTION UNDER FEDERAL LAW RESULTING FROM AN ACTION TAKEN BY THE STATE OFFICIAL, EMPLOYEE OR CONTRACTOR TO ENFORCE TITLE 13, CHAPTER 38, ARTICLE 35 DURING THE COURSE AND SCOPE OF THE STATE OFFICIAL'S, EMPLOYEE'S OR CONTRACTOR'S OFFICE, EMPLOYMENT OR CONTRACTUAL PERFORMANCE FOR OR SERVICE ON BEHALF OF THIS STATE. NOTWITHSTANDING ANY OTHER LAW, AN INDEMNIFICATION PAYMENT MADE UNDER THIS SUBSECTION IS NOT SUBJECT TO AN INDEMNIFICATION LIMIT UNDER THE LAWS OF THIS STATE.

C. SUBSECTIONS A AND B OF THIS SECTION DO NOT APPLY IF THE COURT OR A JURY DETERMINES THAT THE STATE OFFICIAL, EMPLOYEE OR CONTRACTOR ACTED IN BAD FAITH, WITH CONSCIOUS INDIFFERENCE OR WITH RECKLESSNESS.

D. THIS STATE SHALL INDEMNIFY A STATE OFFICIAL, EMPLOYEE OR CONTRACTOR FOR REASONABLE ATTORNEY FEES INCURRED IN DEFENSE OF A CRIMINAL PROSECUTION AGAINST THE STATE OFFICIAL, EMPLOYEE OR CONTRACTOR FOR AN ACTION TAKEN BY THE OFFICIAL, EMPLOYEE OR CONTRACTOR TO ENFORCE TITLE 13, CHAPTER 38, ARTICLE 35 DURING THE COURSE AND SCOPE OF THE STATE OFFICIAL'S, EMPLOYEE'S OR CONTRACTOR'S OFFICE, EMPLOYMENT OR CONTRACTUAL PERFORMANCE FOR OR SERVICE ON BEHALF OF THIS STATE.

E. THE ATTORNEY GENERAL SHALL REPRESENT A STATE OFFICIAL, EMPLOYEE OR CONTRACTOR IN ANY ACTION IN WHICH THE STATE OFFICIAL, EMPLOYEE OR CONTRACTOR MAY BE ENTITLED TO INDEMNIFICATION UNDER SUBSECTION B OF THIS SECTION.

F. THIS SECTION DOES NOT WAIVE ANY STATUTORY LIMITS ON DAMAGES UNDER STATE LAW.

12-829. Appeal to supreme court

FOR A CIVIL ACTION THAT IS BROUGHT AGAINST A PERSON WHO MAY BE ENTITLED TO IMMUNITY OR INDEMNIFICATION UNDER SECTION 12-827 OR 12-828, AN APPEAL MUST BE TAKEN DIRECTLY TO THE SUPREME COURT.

12-830. Other laws not affected

SECTIONS 12-827, 12-828 AND 12-829 DO NOT AFFECT A DEFENSE, IMMUNITY OR JURISDICTIONAL BAR AVAILABLE TO THIS STATE OR A LOCAL GOVERNMENT OR AN OFFICIAL, EMPLOYEE OR CONTRACTOR OF THIS STATE OR A LOCAL GOVERNMENT.

Sec. 2. Section 13-603, Arizona Revised Statutes, is amended to read:

13-603. Authorized disposition of offenders

A. Every person convicted of any offense defined in this title or defined outside this title shall be sentenced in accordance with this chapter and chapters 7, 8 and 9 of this title unless otherwise provided by law.
B. If a person is convicted of an offense, the court, if authorized by chapter 9 of this title, may suspend the imposition or execution of sentence and grant such person a period of probation except as otherwise provided by law. The sentence is tentative to the extent that it may be altered or revoked in accordance with chapter 9 of this title, but for all other purposes it is a final judgment of conviction.

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court or the court's designee pursuant to chapter 8 of this title. Restitution ordered pursuant to this subsection shall be paid to the clerk of the court for disbursement to the victim and is a criminal penalty for the purposes of a federal bankruptcy involving the person convicted of an offense.

D. If the court imposes probation it may also impose a fine as authorized by chapter 8 of this title.

E. If a person is convicted of an offense and not granted a period of probation, or when probation is revoked, any of the following sentences may be imposed:

1. A term of imprisonment authorized by this chapter or chapter 7 of this title.

2. A fine authorized by chapter 8 of this title. The sentence is tentative to the extent it may be modified or revoked in accordance with chapter 8 of this title, but for all other purposes it is a final judgment of conviction. If the conviction is of a class 2, 3 or 4 felony, the sentence cannot consist solely of a fine.

3. Both imprisonment and a fine.

4. Intensive probation, subject to the provisions of chapter 9 of this title.

5. Intensive probation, subject to the provisions of chapter 9 of this title, and a fine.

6. A new term of probation or intensive probation.

7. If the conviction is for a misdemeanor, in addition to any sentence authorized by law, a term of:

   (a) Community restitution pursuant to section 13-717, subsection A.

   (b) Education or treatment pursuant to section 13-717, subsection B.

F. If an enterprise is convicted of any offense, a fine may be imposed as authorized by chapter 8 of this title.

G. If a person or an enterprise is convicted of any felony, the court, in addition to any other sentence authorized by law, may order the forfeiture, suspension or revocation of any charter, license, permit or prior approval granted to the person or enterprise by any department or agency of the state or of any political subdivision.
H. A court authorized to pass sentence on a person convicted of any offense defined within or without this title shall have a duty to determine and impose the punishment prescribed for such offense.

I. If a person is convicted of a felony offense and the court sentences the person to a term of imprisonment, the court at the time of sentencing shall impose on the convicted person a term of community supervision. The term of community supervision shall be served consecutively to the actual period of imprisonment if the person signs and agrees to abide by conditions of supervision established by the state department of corrections. Except pursuant to subsection J of this section, the term of community supervision imposed by the court shall be for a period equal to one day for every seven days of the sentence or sentences imposed.

J. In calculating the term of community supervision, all fractions shall be decreased to the nearest month, except for a class 5 or 6 felony which shall not be less than one month.

K. Notwithstanding subsection I of this section, if the court sentences a person to serve a consecutive term of probation immediately after the person serves a term of imprisonment, the court may waive community supervision and order that the person begin serving the term of probation on the person's release from confinement. The court may retroactively waive the term of community supervision or that part remaining to be served if the community supervision was imposed before July 21, 1997. If the court waives community supervision, the term of probation imposed shall be equal to or greater than the term of community supervision that would have been imposed. If the court does not waive community supervision, the person shall begin serving the term of probation after the person serves the term of community supervision. The state department of corrections shall provide reasonable notice to the probation department of the scheduled release of the inmate from confinement by the department.

L. NOTWITHSTANDING SUBSECTIONS I, J AND K OF THIS SECTION, A DEFENDANT WHO IS CONVICTED OF AN OFFENSE UNDER CHAPTER 38, ARTICLE 35 OF THIS TITLE IS NOT ELIGIBLE FOR COMMUNITY SUPERVISION.

M. If at the time of sentencing the court is of the opinion that a sentence that the law requires the court to impose is clearly excessive, the court may enter a special order allowing the person sentenced to petition the board of executive clemency for a commutation of sentence within ninety days after the person is committed to the custody of the state department of corrections. If the court enters a special order regarding commutation, the court shall set forth in writing its specific reasons for concluding that the sentence is clearly excessive. The court shall allow both the state and the victim to submit a written statement on the matter. The court's order, and reasons for its
order, and the statements of the state and the victim shall be sent to the
board of executive clemency.

Sec. 3. Title 13, chapter 38, Arizona Revised Statutes, is amended
by adding article 35, to read:

ARTICLE 35. ILLEGAL ENTRY INTO THIS STATE

13-4295. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "ALIEN" MEANS A PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE
UNITED STATES AS DESCRIBED IN 8 UNITED STATES CODE SECTION 1101.
2. "PORT OF ENTRY" MEANS A PORT OF ENTRY IN THE UNITED STATES AS
DESCRIBED IN 19 CODE OF FEDERAL REGULATIONS PART 101.1.

13-4295.01. Illegal entry from foreign nation; affirmative
defense; classification
A. IT IS UNLAWFUL FOR A PERSON WHO IS AN ALIEN TO ENTER OR ATTEMPT
TO ENTER THIS STATE DIRECTLY FROM A FOREIGN NATION AT ANY LOCATION OTHER
THAN A LAWFUL PORT OF ENTRY.
B. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF
THIS SECTION IF ANY OF THE FOLLOWING APPLIES:
1. THE FEDERAL GOVERNMENT HAS GRANTED THE DEFENDANT LAWFUL PRESENCE
IN THE UNITED STATES OR ASYLUM UNDER 8 UNITED STATES CODE SECTION 1158.
2. THE DEFENDANT'S CONDUCT DOES NOT CONSTITUTE A VIOLATION OF 8
UNITED STATES CODE SECTION 1325(a).
3. THE DEFENDANT WAS APPROVED FOR BENEFITS UNDER THE DEFERRED
ACTION FOR CHILDHOOD ARRIVALS PROGRAM BETWEEN JUNE 15, 2012 AND JULY 16,
2021.
C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, THE FOLLOWING
FEDERAL PROGRAMS DO NOT PROVIDE AN AFFIRMATIVE DEFENSE FOR THE PURPOSES OF
SUBSECTION B, PARAGRAPH 1 OF THIS SECTION:
1. THE DEFERRED ACTION FOR PARENTS OF AMERICANS AND LAWFUL
PERMANENT RESIDENTS PROGRAM.
2. ANY PROGRAM NOT ENACTED BY THE UNITED STATES CONGRESS THAT IS A
SUCCESSOR TO OR MATERIALLY SIMILAR TO THE PROGRAM DESCRIBED IN SUBSECTION
B, PARAGRAPH 3 OF THIS SECTION OR PARAGRAPH 1 OF THIS SUBSECTION.
D. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT
THAT A VIOLATION OF THIS SECTION IS A CLASS 6 FELONY IF THE DEFENDANT HAS
BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SECTION.

13-4295.02. Illegal reentry by certain aliens; classification; definition
A. IT IS UNLAWFUL FOR A PERSON WHO IS AN ALIEN TO ENTER, TO ATTEMPT
TO ENTER OR TO BE FOUND AT ANY TIME IN THIS STATE IF EITHER OF THE
FOLLOWING APPLIES:
1. THE PERSON HAS BEEN DENIED ADMISSION TO OR EXCLUDED, DEPORTED OR
REMOVED FROM THE UNITED STATES.
2. THE PERSON HAS DEPARTED FROM THE UNITED STATES WHILE AN ORDER OF
EXCLUSION, DEPORTATION OR REMOVAL IS OUTSTANDING.
B. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT THAT A VIOLATION OF THIS SECTION IS A CLASS 3 FELONY IF ANY OF THE FOLLOWING APPLIES:

1. THE DEFENDANT’S REMOVAL WAS SUBSEQUENT TO A CONVICTION FOR COMMISSION OF TWO OR MORE MISDEMEANORS INVOLVING DRUGS OR CRIMES AGAINST A PERSON, OR BOTH.

2. THE DEFENDANT WAS EXCLUDED PURSUANT TO 8 UNITED STATES CODE SECTION 1225(c) BECAUSE THE DEFENDANT WAS EXCLUDABLE UNDER 8 UNITED STATES CODE SECTION 1182(a)(3)(B).

3. THE DEFENDANT WAS REMOVED PURSUANT TO 8 UNITED STATES CODE CHAPTER 12, SUBCHAPTER V.

4. THE DEFENDANT WAS REMOVED PURSUANT TO 8 UNITED STATES CODE SECTION 1231(a)(4)(B).

C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, A VIOLATION OF THIS SECTION IS A CLASS 2 FELONY IF THE DEFENDANT WAS REMOVED SUBSEQUENT TO A CONVICTION FOR THE COMMISSION OF A FELONY.

D. FOR PURPOSES OF THIS SECTION, “REMOVAL” INCLUDES AN ORDER ISSUED PURSUANT TO SECTION 13-4295.05 OR ANY OTHER AGREEMENT IN WHICH AN ALIEN STIPULATES TO REMOVAL PURSUANT TO A CRIMINAL PROCEEDING PURSUANT TO EITHER FEDERAL OR STATE LAW.

13-4295.03. Refusal to comply with order to return to a foreign nation; classification

A. A PERSON WHO IS AN ALIEN COMMITS REFUSAL TO COMPLY WITH AN ORDER TO RETURN TO A FOREIGN NATION IF ALL OF THE FOLLOWING OCCUR:

1. THE PERSON IS CHARGED WITH OR CONVICTED OF AN OFFENSE UNDER THIS ARTICLE.

2. A MAGISTRATE OR JUDGE, AS APPLICABLE, ISSUES AN ORDER PURSUANT TO SECTION 13-4295.05 FOR THE PERSON TO RETURN TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR ATTEMPTED TO ENTER.

3. THE PERSON REFUSES TO COMPLY WITH THE ORDER.

B. A VIOLATION OF THIS SECTION IS A CLASS 2 FELONY.

13-4295.04. Enforcement prohibited in certain locations

A PEACE OFFICER MAY NOT ARREST OR DETAIN A PERSON TO ENFORCE THIS ARTICLE IF THE PERSON IS ON THE PREMISES OR GROUNDS OF ANY OF THE FOLLOWING:

1. A PUBLIC OR PRIVATE PRIMARY OR POSTSECONDARY EDUCATIONAL INSTITUTION.

2. A CHURCH, SYNAGOGUE OR OTHER ESTABLISHED PLACE OF RELIGIOUS WORSHIP.

3. A HEALTH CARE FACILITY AS DEFINED IN SECTION 36-437, INCLUDING A FACILITY THAT A STATE AGENCY MAINTAINS OR OPERATES TO PROVIDE HEALTH CARE, OR THE OFFICE OF A HEALTH CARE PROVIDER AS DEFINED IN SECTION 12-2291, IF THE PERSON IS ON THE PREMISES OR GROUNDS OF THE HEALTH CARE FACILITY OR OFFICE OF A HEALTH CARE PROVIDER TO RECEIVE MEDICAL TREATMENT.
13-4295.05. Order to return to foreign nation

A. DURING A PERSON’S APPEARANCE BEFORE A MAGISTRATE PURSUANT TO
SECTION 13-3897 OR 13-3898 AND AFTER DETERMINING THAT PROBABLE CAUSE
EXISTS FOR ARREST FOR AN OFFENSE UNDER SECTION 13-4295.01 OR 13-4295.02,
THE MAGISTRATE MAY ORDER THE PERSON TO BE RELEASED FROM CUSTODY AND ISSUE
A WRITTEN ORDER IN ACCORDANCE WITH SUBSECTION C OF THIS SECTION.

B. AT ANY TIME AFTER A PERSON’S APPEARANCE BEFORE A MAGISTRATE
PURSUANT TO SECTION 13-3897 OR 13-3898, THE JUDGE, INSTEAD OF CONTINUING
THE PROSECUTION OF OR ENTERING AN ADJUDICATION REGARDING AN OFFENSE UNDER
SECTION 13-4295.01 OR 13-4295.02, MAY DISMISS THE CHARGE PENDING AGAINST
THE PERSON AND ISSUE A WRITTEN ORDER IN ACCORDANCE WITH SUBSECTION C OF
THIS SECTION.

C. A WRITTEN ORDER AUTHORIZED BY SUBSECTION A OR B OF THIS SECTION
SHALL DISCHARGE THE PERSON AND REQUIRE THE PERSON TO RETURN TO THE FOREIGN
NATION FROM WHICH THE PERSON ENTERED OR ATTEMPTED TO ENTER AND MAY BE
ISSUED IF ALL OF THE FOLLOWING APPLY:

1. THE PERSON AGREES TO THE ORDER.

2. THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN OFFENSE UNDER
   THIS ARTICLE OR PREVIOUSLY OBTAINED A DISCHARGE UNDER AN ORDER ISSUED
   PURSUANT TO THIS SECTION.

3. THE PERSON IS NOT CHARGED WITH ANOTHER CLASS 1 MISDEMEANOR OR
   ANY FELONY OFFENSE.

4. BEFORE THE ISSUANCE OF THE ORDER, THE ARRESTING LAW ENFORCEMENT
   AGENCY DOES ALL OF THE FOLLOWING:
   (a) COLLECTS ALL IDENTIFYING INFORMATION OF THE PERSON, WHICH MUST
       INCLUDE TAKING FINGERPRINTS FROM THE PERSON AND USING OTHER APPLICABLE
       PHOTOGRAPHIC AND BIOMETRIC MEASURES TO IDENTIFY THE PERSON.
   (b) CROSS-REFERENCE THE COLLECTED INFORMATION WITH ALL RELEVANT
       LOCAL, STATE AND FEDERAL CRIMINAL DATABASES AND FEDERAL LISTS OR
       CLASSIFICATIONS THAT ARE USED TO IDENTIFY A PERSON AS A THREAT OR
       POTENTIAL THREAT TO NATIONAL SECURITY.

D. ON CONVICTION OF AN OFFENSE UNDER THIS ARTICLE, THE JUDGE SHALL
ENTER AN ORDER THAT REQUIRES THE PERSON TO RETURN TO THE FOREIGN NATION
FROM WHICH THE PERSON ENTERED OR ATTEMPTED TO ENTER. AN ORDER ISSUED
UNDER THIS SUBSECTION TAKES EFFECT ON COMPLETION OF THE PERSON'S TERM
IMPRISONMENT.

E. AN ORDER THAT IS ISSUED UNDER THIS SECTION MUST INCLUDE BOTH OF
   THE FOLLOWING:
   1. THE MANNER OF TRANSPORTATION OF THE PERSON TO A PORT OF ENTRY.
   2. THE LAW ENFORCEMENT OFFICER OR STATE AGENCY THAT IS RESPONSIBLE
      FOR MONITORING COMPLIANCE WITH THE ORDER.

F. AN ORDER THAT IS ISSUED UNDER THIS SECTION MUST BE FILED WITH
   EITHER OF THE FOLLOWING:
   1. FOR ORDERS ENTERED UNDER SUBSECTION A OF THIS SECTION, THE
      COUNTY CLERK OF THE COUNTY IN WHICH THE PERSON WAS ARRESTED.
2. For orders entered under subsection B or D of this section, the clerk of the court exercising jurisdiction in the case.

G. Not later than the seventh day after the date an order is issued under this section, the law enforcement officer or state agency that is required to monitor compliance with the order shall report the issuance of the order to the department of public safety for inclusion in the central state repository under section 41-1750.

13-4295.06. Abatement of prosecution on basis of immigration status determination prohibited

The court may not abate the prosecution of an offense under this article on the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated.

Sec. 4. Section 31-402, Arizona Revised Statutes, is amended to read:

31-402. Powers of board; powers and duties of governor; powers and duties of executive director

A. For all persons who committed felony offenses before January 1, 1994, the board of executive clemency shall have exclusive power to pass on and recommend reprieves, commutations, paroles and pardons. A reprieve, commutation or pardon may not be granted by the governor unless it has first been recommended by the board.

B. For all persons who committed felony offenses before January 1, 1994, all applications for reprieves, commutations and pardons made to the governor shall be at once transmitted to the chairperson of the board, and the board shall return the applications with its recommendation to the governor. All applications for reprieves, commutations and pardons made to the governor shall include documentation that the victim or the victim's family was notified pursuant to section 31-411, subsection H.

C. For all persons who committed felony offenses on or after January 1, 1994, in addition to the powers and duties prescribed in subsection A of this section, the board of executive clemency:

1. Is vested with the powers and duties of the board of pardons and paroles as they existed before January 1, 1994 to carry out articles 3, 4.1, 5, 6 and 7 of this chapter.

2. After a hearing for which the victim, county attorney and presiding judge are given notice and an opportunity to be heard, may make recommendations to the governor for commutation of sentence after finding by clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender and that there is a substantial probability that when released the offender will conform the offender's conduct to the requirements of the law.

3. Shall receive petitions from individuals for whom the court has entered a special order allowing the person to petition the board pursuant
to section 13-603, subsection 1- M and may make recommendations to the
1
governor.
4. Shall receive petitions from individuals, organizations or the
department for review and commutation of sentences and pardon of
offenders in extraordinary cases and may make recommendations to the
2
governor.
5. Shall receive petitions from the state department of corrections
alleging that an offender has violated the offender's terms and conditions
of community supervision and has lapsed or is probably about to lapse into
criminal ways or company. If the board determines that an offender on
community supervision has violated the terms and conditions of community
supervision the board may do any of the following:
(a) If the offender has not committed an additional offense, place
the offender on electronic monitoring.
(b) Revoke community supervision and return the offender to prison
for the remainder of the offender's community supervision.
(c) Impose additional terms and conditions on the offender while
keeping the offender on community supervision. If there is reasonable
cause to believe that an offender who has been kept on community
supervision has violated any term or condition of community supervision,
any member of the board may petition the board to revoke community
supervision. After a petition to revoke has been submitted, the
chairperson may issue a summons directing the offender to appear on a
specified date for a revocation hearing or may issue a warrant for the
offender's arrest. This subsection does not limit the state department of
corrections' authority with respect to submitting revocation petitions or
issuing revocation warrants.
D. Any recommendation for commutation that is made unanimously by
the members present and voting and that is not acted on by the governor
within ninety days after the board submits its recommendation to the
governor automatically becomes effective.
E. The executive director shall perform all administrative,
operational and financial functions for the board.
F. The executive director may employ case analysts as deemed
necessary within the limits of legislative appropriation and subject to
title 41, chapter 4, article 4. The analysts shall aid the board in
making investigations, in securing information and in performing necessary
administrative functions to assist the board in passing on applications
for parole and commutation.
G. The executive director may employ hearing officers as deemed
necessary within the limits of legislative appropriation and subject to
title 41, chapter 4, article 4. The hearing officers shall conduct
probable cause hearings on parole, work furlough, community supervision
and home arrest revocations or rescissions. Hearing officers shall assist
the board in making investigations, securing information and performing
necessary administrative functions.

Sec. 5. Section 31-403, Arizona Revised Statutes, is amended to
read:

31-403. **Commutation; restrictions on consideration**

A. A person who is otherwise eligible for commutation and who is
denied a commutation of sentence recommendation shall not petition or be
considered by the board for commutation of that sentence for a period of
five years following the date of the board's denial of the commutation
recommendation if the offense for which the commutation recommendation was
denied involved any of the following:

1. Death in violation of section 13-1104 or 13-1105.
2. Serious physical injury if the person was sentenced pursuant to
   section 13-704.
3. A dangerous crime against children as defined in section 13-705.
4. A felony offense in violation of title 13, chapter 14 or 35.1.

B. Notwithstanding subsection A, paragraph 2 of this section, if, in its sole discretion, the board determines that the person committed an
offense that involved serious physical injury as defined in section 13-105
and that the person was not sentenced pursuant to section 13-704, the
board may order that the person shall not petition or be considered by the
board for commutation of that sentence for a period of five years
following the date of the board's denial of the commutation
recommendation.

C. Notwithstanding subsection A or B of this section, the board, at
the time of denial, may lengthen the five year period of time prescribed
in subsection A or B of this section to a period of up to ten years,
except that if the offense for which commutation was denied involved a
violation of an offense listed in subsection A, paragraph 1 of this
section, the board may lengthen the period of time to a period of time
that is greater than ten years and that is specified by the board by one
of the following votes:

1. A majority affirmative vote if four or more members consider the
   action.
2. A unanimous affirmative vote if three members consider the
   action.
3. A unanimous affirmative vote if two members consider the action
   pursuant to section 31-401, subsection I and the chairman concurs after
   reviewing the information considered by the two members. If the chairman
   is one of the two members constituting a two member quorum under section
   31-401, subsection I, and both the chairman and the other member vote to
   lengthen the five year period to a period of time greater than ten years,
   no further action shall be taken and the decision on whether to lengthen
   the five year period shall be considered by the board at a meeting at
   which at least three members are present and voting.
D. The board may waive the provisions of subsections A, B and C of this section if any of the following applies:

1. Condition, as determined by the board.
2. The person is the subject of a warrant of execution.
3. The sentence for which commutation is sought is the subject of a special order issued by the court pursuant to section 13-603, subsection M.

E. This section applies only to offenses that are committed on or after January 1, 2006.

Sec. 6. Section 41-1750, Arizona Revised Statutes, is amended to read:

41-1750. Central state repository; department of public safety; duties; funds; accounts; definitions

A. The department is responsible for the effective operation of the central state repository in order to collect, store and disseminate complete and accurate Arizona criminal history records and related criminal justice information. The department may procure criminal history records and related criminal justice information for violations that are not listed in this section. The department shall:

1. Procure from all criminal justice agencies in this state accurate and complete personal identification data, fingerprints, charges, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as a criminal defendant for any of the following:

   (a) A felony offense or an offense involving domestic violence as defined in section 13-3601.
   (b) A violation of title 13, chapter 14 or title 28, chapter 4.
   (c) An offense listed in:
      (i) Section 32-2422, subsection A, paragraph 4.
      (ii) Section 32-2441, paragraph 4.
      (iii) Section 32-2612, subsection A, paragraph 4.
      (iv) Section 32-2622, subsection A, paragraph 4.
      (v) Section 41-1758.03, subsections B and C.
      (vi) Section 41-1758.07, subsections B and C.
   (d) A VIOLATION OF SECTION 13-4295.01 OR 13-4295.02 AND FOR WHOM AN ORDER TO RETURN WAS ISSUED PURSUANT TO SECTION 13-4295.05.

2. Collect information concerning the number and nature of offenses known to have been committed in this state and of the legal steps taken in connection with these offenses, such other information that is useful in the study of crime and in the administration of criminal justice and all other information deemed necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.
3. Collect information concerning criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender, antisemitism or disability.

4. Cooperate with the central state repositories in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law.

5. Ensure the rapid exchange of information concerning the commission of crime and the detection of violators of the law among the criminal justice agencies of other states and of the federal government.

6. Furnish assistance to peace officers throughout this state in crime scene investigation for the detection of latent fingerprints and in the comparison of latent fingerprints.

7. Conduct periodic operational audits of the central state repository and of a representative sample of other agencies that contribute records to or receive criminal justice information from the central state repository or through the Arizona criminal justice information system.

8. Establish and enforce the necessary physical and system safeguards to ensure that the criminal justice information maintained and disseminated by the central state repository or through the Arizona criminal justice information system is appropriately protected from unauthorized inquiry, modification, destruction or dissemination as required by this section.

9. Aid and encourage coordination and cooperation among criminal justice agencies through the statewide and interstate exchange of criminal justice information.

10. Provide training and proficiency testing on the use of criminal justice information to agencies receiving information from the central state repository or through the Arizona criminal justice information system.

11. Operate and maintain the Arizona automated fingerprint identification system established by section 41-2411.

12. Provide criminal history record information to the fingerprinting division for the purpose of screening applicants for fingerprint clearance cards.

B. The director may establish guidelines for the submission and retention of criminal justice information as deemed useful for the study or prevention of crime and for the administration of criminal justice.

C. Criminal justice agencies may provide criminal history records and related criminal justice information for violations that are not listed in this section. The chief officers of criminal justice agencies of this state or its political subdivisions shall provide to the central state repository fingerprints and information concerning personal identification data, descriptions, crimes for which persons are arrested, process control numbers and dispositions and such other information as may
be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as criminal defendants for any of the following:

1. Felony offenses or offenses involving domestic violence as defined in section 13-3601.
2. Violations of title 13, chapter 14 or title 28, chapter 4 that have occurred in this state.
3. An offense listed in:
   (a) Section 32-2422, subsection A, paragraph 4.
   (b) Section 32-2441, paragraph 4.
   (c) Section 32-2612, subsection A, paragraph 4.
   (d) Section 32-2622, subsection A, paragraph 4.
   (e) Section 41-1758.03, subsections B and C.
   (f) Section 41-1758.07, subsections B and C.

D. The chief officers of law enforcement agencies of this state or its political subdivisions shall provide to the department such information as necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

E. The chief officers of criminal justice agencies of this state or its political subdivisions shall comply with the training and proficiency testing guidelines as required by the department to comply with the federal national crime information center mandates.

F. The chief officers of criminal justice agencies of this state or its political subdivisions also shall provide to the department information concerning crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender, antisemitism or disability.

G. The director shall authorize the exchange of criminal justice information between the central state repository, or through the Arizona criminal justice information system, whether directly or through any intermediary, only as follows:

1. With criminal justice agencies of the federal government, Indian tribes, this state or its political subdivisions and other states, on request by the chief officers of such agencies or their designated representatives, specifically for the purposes of the administration of criminal justice and for evaluating the fitness of current and prospective criminal justice employees. The department may conduct periodic state and federal criminal history records checks for the purpose of updating the status of current criminal justice employees or volunteers and may notify the criminal justice agency of the results of the records check. The department is authorized to submit fingerprints to the federal bureau of investigation to be retained for the purpose of being searched by future submissions to the federal bureau of investigation including latent fingerprint searches.
2. With any noncriminal justice agency pursuant to a statute, ordinance or executive order that specifically authorizes the noncriminal justice agency to receive criminal history record information for the purpose of evaluating the fitness of current or prospective licensees, employees, contract employees or volunteers, on submission of the subject's fingerprints and the prescribed fee. Each statute, ordinance, or executive order that authorizes noncriminal justice agencies to receive criminal history record information for these purposes shall identify the specific categories of licensees, employees, contract employees or volunteers, and shall require that fingerprints of the specified individuals be submitted in conjunction with such requests for criminal history record information. The department may conduct periodic state and federal criminal history records checks for the purpose of updating the status of current licensees, employees, contract employees or volunteers and may notify the noncriminal justice agency of the results of the records check. The department is authorized to submit fingerprints to the federal bureau of investigation to be retained for the purpose of being searched by future submissions to the federal bureau of investigation including latent fingerprint searches.

3. With the board of fingerprinting for the purpose of conducting good cause exceptions pursuant to section 41-619.55 and central registry exceptions pursuant to section 41-619.57.

4. With any individual for any lawful purpose on submission of the subject of record's fingerprints and the prescribed fee.

5. With the governor, if the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with the governor's constitutional duty to ensure that the laws are faithfully executed or as needed to carry out the other responsibilities of the governor's office.

6. With regional computer centers that maintain authorized computer-to-computer interfaces with the department, that are criminal justice agencies or under the management control of a criminal justice agency and that are established by a statute, ordinance or executive order to provide automated data processing services to criminal justice agencies specifically for the purposes of the administration of criminal justice or evaluating the fitness of regional computer center employees who have access to the Arizona criminal justice information system and the national crime information center system.

7. With an individual who asserts a belief that criminal history record information relating to the individual is maintained by an agency or in an information system in this state that is subject to this section. On submission of fingerprints, the individual may review this information for the purpose of determining its accuracy and completeness by making application to the agency operating the system. Rules adopted under this section shall include provisions for administrative review and necessary
correction of any inaccurate or incomplete information. The review and
challenge process authorized by this paragraph is limited to criminal
history record information.

8. With individuals and agencies pursuant to a specific agreement
with a criminal justice agency to provide services required for the
administration of criminal justice pursuant to that agreement if the
agreement specifically authorizes access to data, limits the use of data
to purposes for which given and ensures the security and confidentiality
of the data consistent with this section.

9. With individuals and agencies for the express purpose of
research, evaluative or statistical activities pursuant to an agreement
with a criminal justice agency if the agreement specifically authorizes
access to data, limits the use of data to research, evaluative or
statistical purposes and ensures the confidentiality and security of the
data consistent with this section.

10. With the auditor general for audit purposes.

11. With central state repositories of other states for noncriminal
justice purposes for dissemination in accordance with the laws of those
states.

12. On submission of the fingerprint card, with the department of
child safety and a tribal social services agency to provide criminal
history record information on prospective adoptive parents for the purpose
of conducting the preadoption certification investigation under title 8,
chapter 1, article 1 if the department of economic security is conducting
the investigation, or with an agency or a person appointed by the court,
if the agency or person is conducting the investigation. Information
received under this paragraph shall only be used for the purposes of the
preadoption certification investigation.

13. With the department of child safety, a tribal social services
agency and the superior court for the purpose of evaluating the fitness of
custodians or prospective custodians of juveniles, including parents,
relatives and prospective guardians. Information received under this
paragraph shall only be used for the purposes of that evaluation. The
information shall be provided on submission of either:

(a) The fingerprint card.

(b) The name, date of birth and social security number of the
person.

14. On submission of a fingerprint card, provide criminal history
record information to the superior court for the purpose of evaluating the
fitness of investigators appointed under section 14-5303 or 14-5407,
guardians appointed under section 14-5206 or 14-5304 or conservators
appointed under section 14-5401.

15. With the supreme court to provide criminal history record
information on prospective fiduciaries pursuant to section 14-5651.
16. With the department of juvenile corrections to provide criminal history record information pursuant to section 41-2814.

17. On submission of the fingerprint card, provide criminal history record information to the Arizona peace officer standards and training board or a board certified law enforcement academy to evaluate the fitness of prospective cadets.

18. With the internet sex offender website database established pursuant to section 13-3827.

19. With licensees of the United States nuclear regulatory commission for the purpose of determining whether an individual should be granted unescorted access to the protected area of a commercial nuclear generating station on submission of the subject of record's fingerprints and the prescribed fee.

20. With the state board of education for the purpose of evaluating the fitness of a certificated educator, an applicant for a teaching or administrative certificate or a noncertificated person as defined in section 15-505 if the state board of education or its employees or agents have reasonable suspicion that the educator or person engaged in conduct that would be a criminal violation of the laws of this state or was involved in immoral or unprofessional conduct or that the applicant engaged in conduct that would warrant disciplinary action if the applicant were certificated at the time of the alleged conduct. The information shall be provided on the submission of either:
   (a) The fingerprint card.
   (b) The name, date of birth and social security number of the person.

21. With each school district and charter school in this state. The department of education and the state board for charter schools shall provide the department of public safety with a current list of email addresses for each school district and charter school in this state and shall periodically provide the department of public safety with updated email addresses. If the department of public safety is notified that a person who is required to have a fingerprint clearance card to be employed by or to engage in volunteer activities at a school district or charter school has been arrested for or convicted of an offense listed in section 41-1758.03, subsection B or has been arrested for or convicted of an offense that amounts to unprofessional conduct under section 15-550, the department of public safety shall notify each school district and charter school in this state that the person's fingerprint clearance card has been suspended or revoked.

22. With a tribal social services agency and the department of child safety as provided by law, which currently is the Adam Walsh child protection and safety act of 2006 (42 United States Code section 16961), for the purposes of investigating or responding to reports of child abuse, neglect or exploitation. Information received pursuant to this paragraph
from the national crime information center, the interstate identification
index and the Arizona criminal justice information system network shall
only be used for the purposes of investigating or responding as prescribed
in this paragraph. The information shall be provided on submission to the
department of public safety of either:
(a) The fingerprints of the person being investigated.
(b) The name, date of birth and social security number of the
person.
23. With a nonprofit organization that interacts with children or
vulnerable adults for the lawful purpose of evaluating the fitness of all
current and prospective employees, contractors and volunteers of the
organization. The criminal history record information shall be provided
on submission of the applicant fingerprint card and the prescribed fee.
24. With the superior court for the purpose of determining an
individual's eligibility for substance abuse and treatment courts in a
family or juvenile case.
25. With the governor to provide criminal history record
information on prospective gubernatorial nominees, appointees and
employees as provided by law.
H. The director shall adopt rules necessary to execute this
section.
I. The director, in the manner prescribed by law, shall remove and
destroy records that the director determines are no longer of value in the
detection or prevention of crime.
J. The director shall establish a fee in an amount necessary to
cover the cost of federal noncriminal justice fingerprint processing for
criminal history record information checks that are authorized by law for
noncriminal justice employment, licensing or other lawful purposes. An
additional fee may be charged by the department for state noncriminal
justice fingerprint processing. Fees submitted to the department for
state noncriminal justice fingerprint processing are not refundable.
K. The director shall establish a fee in an amount necessary to
cover the cost of processing copies of department reports, eight by ten
inch black and white photographs or eight by ten inch color photographs of
traffic accident scenes.
L. Except as provided in subsection O of this section, each agency
authorized by this section may charge a fee, in addition to any other fees
prescribed by law, in an amount necessary to cover the cost of state and
federal noncriminal justice fingerprint processing for criminal history
record information checks that are authorized by law for noncriminal
justice employment, licensing or other lawful purposes.
M. A fingerprint account within the records processing fund is
established for the purpose of separately accounting for the collection
and payment of fees for noncriminal justice fingerprint processing by the
department. Monies collected for this purpose shall be credited to the
account, and payments by the department to the United States for federal noncriminal justice fingerprint processing shall be charged against the account. Monies in the account not required for payment to the United States shall be used by the department in support of the department's noncriminal justice fingerprint processing duties. At the end of each fiscal year, any balance in the account not required for payment to the United States or to support the department's noncriminal justice fingerprint processing duties reverts to the state general fund.

N. A records processing fund is established for the purpose of separately accounting for the collection and payment of fees for department reports and photographs of traffic accident scenes processed by the department. Monies collected for this purpose shall be credited to the fund and shall be used by the department in support of functions related to providing copies of department reports and photographs. At the end of each fiscal year, any balance in the fund not required for support of the functions related to providing copies of department reports and photographs reverts to the state general fund.

O. The department of child safety may pay from appropriated monies the cost of federal fingerprint processing or federal criminal history record information checks that are authorized by law for employees and volunteers of the department, guardians pursuant to section 8-453, subsection A, paragraph 6, the licensing of foster parents or the certification of adoptive parents.

P. The director shall adopt rules that provide for:
1. The collection and disposition of fees pursuant to this section.
2. The refusal of service to those agencies that are delinquent in paying these fees.

Q. The director shall ensure that the following limitations are observed regarding dissemination of criminal justice information obtained from the central state repository or through the Arizona criminal justice information system:
1. Any criminal justice agency that obtains criminal justice information from the central state repository or through the Arizona criminal justice information system assumes responsibility for the security of the information and shall not secondarily disseminate this information to any individual or agency not authorized to receive this information directly from the central state repository or originating agency.

2. Dissemination to an authorized agency or individual may be accomplished by a criminal justice agency only if the dissemination is for criminal justice purposes in connection with the prescribed duties of the agency and not in violation of this section.

3. Criminal history record information disseminated to noncriminal justice agencies or to individuals shall be used only for the purposes for
which it was given. Secondary dissemination is prohibited unless otherwise authorized by law.

4. The existence or nonexistence of criminal history record information shall not be confirmed to any individual or agency not authorized to receive the information itself.

5. Criminal history record information to be released for noncriminal justice purposes to agencies of other states shall only be released to the central state repositories of those states for dissemination in accordance with the laws of those states.

6. Criminal history record information shall be released to noncriminal justice agencies of the federal government pursuant to the terms of the federal security clearance information act (P.L. 99-169).

R. This section and the rules adopted under this section apply to all agencies and individuals collecting, storing or disseminating criminal justice information processed by manual or automated operations if the collection, storage or dissemination is funded in whole or in part with monies made available by the law enforcement assistance administration after July 1, 1973, pursuant to title I of the crime control act of 1973, and to all agencies that interact with or receive criminal justice information from or through the central state repository and through the Arizona criminal justice information system.

S. This section does not apply to criminal history record information contained in:

1. Posters, arrest warrants, announcements or lists for identifying or apprehending fugitives or wanted persons.

2. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if these records are organized on a chronological basis.

3. Transcripts or records of judicial proceedings if released by a court or legislative or administrative proceedings.

4. Announcements of executive clemency or pardon.

5. Computer databases, other than the Arizona criminal justice information system, that are specifically designed for community notification of an offender's presence in the community pursuant to section 13-3825 or for public informational purposes authorized by section 13-3827.

T. Nothing in this section prevents a criminal justice agency from disclosing to the public criminal history record information that is reasonably contemporaneous to the event for which an individual is currently within the criminal justice system, including information noted on traffic accident reports concerning citations, blood alcohol tests or arrests made in connection with the traffic accident being investigated.
U. In order to ensure that complete and accurate criminal history record information is maintained and disseminated by the central state repository:

1. The booking agency shall take legible ten-print fingerprints of all persons who are arrested for offenses listed in subsection C of this section. The booking agency shall obtain a process control number and provide to the person fingerprinted a document that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.

2. Except as provided in paragraph 3 of this subsection, if a person is summoned to court as a result of an indictment or complaint for an offense listed in subsection C of this section, the court shall order the person to appear before the county sheriff and provide legible ten-print fingerprints. The county sheriff shall obtain a process control number and provide a document to the person fingerprinted that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court. For the purposes of this paragraph, "summoned" includes a written promise to appear by the defendant on a uniform traffic ticket and complaint.

3. If a person is arrested for a misdemeanor offense listed in subsection C of this section by a city or town law enforcement agency, the person shall appear before the law enforcement agency that arrested the defendant and provide legible ten-print fingerprints. The law enforcement agency shall obtain a process control number and provide a document to the person fingerprinted that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.

4. The mandatory fingerprint compliance form shall contain the following information:
   (a) Whether ten-print fingerprints have been obtained from the person.
   (b) Whether a process control number was obtained.
   (c) The offense or offenses for which the process control number was obtained.
   (d) Any report number of the arresting authority.
   (e) Instructions on reporting for ten-print fingerprinting, including available times and locations for reporting for ten-print fingerprinting.
   (f) Instructions that direct the person to provide the form to the court at the person's next court appearance.

5. Within ten days after a person is fingerprinted, the arresting authority or agency that took the fingerprints shall forward the fingerprints to the department in the manner or form required by the department.

6. On the issuance of a summons for a defendant who is charged with an offense listed in subsection C of this section, the summons shall
direct the defendant to provide ten-print fingerprints to the appropriate law enforcement agency.

7. At the initial appearance or on the arraignment of a summoned defendant who is charged with an offense listed in subsection C of this section, if the person does not present a completed mandatory fingerprint compliance form to the court or if the court has not received the process control number, the court shall order that within twenty calendar days the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency.

8. If the defendant fails to present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court, on its own motion, may remand the defendant into custody for ten-print fingerprinting. If otherwise eligible for release, the defendant shall be released from custody after being ten-print fingerprinted.

9. In every criminal case in which the defendant is incarcerated or fingerprinted as a result of the charge, an originating law enforcement agency or prosecutor, within forty days of the disposition, shall advise the central state repository of all dispositions concerning the termination of criminal proceedings against an individual arrested for an offense specified in subsection C of this section. This information shall be submitted on a form or in a manner required by the department.

10. Dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who is arrested for an offense specified in subsection C of this section or section 8-341, subsection Q, paragraph 3 shall be reported to the central state repository within forty days of the date of the disposition. This information shall be submitted on a form or in a manner specified by rules approved by the supreme court.

11. The state department of corrections or the department of juvenile corrections, within forty days, shall advise the central state repository that it has assumed supervision of a person convicted of an offense specified in subsection C of this section or section 8-341, subsection Q, paragraph 3. The state department of corrections or the department of juvenile corrections shall also report dispositions that occur thereafter to the central state repository within forty days of the date of the dispositions. This information shall be submitted on a form or in a manner required by the department of public safety.

12. Each criminal justice agency shall query the central state repository before dissemination of any criminal history record information to ensure the completeness of the information. Inquiries shall be made before any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be provided as soon as possible.
V. The director shall adopt rules specifying that any agency that collects, stores or disseminates criminal justice information that is subject to this section shall establish effective security measures to protect the information from unauthorized access, disclosure, modification or dissemination. The rules shall include reasonable safeguards to protect the affected information systems from fire, flood, wind, theft, sabotage or other natural or man-made hazards or disasters.

W. The department shall make available to agencies that contribute to, or receive criminal justice information from, the central state repository or through the Arizona criminal justice information system a continuing training program in the proper methods for collecting, storing and disseminating information in compliance with this section.

X. Nothing in this section creates a cause of action or a right to bring an action including an action based on discrimination due to sexual orientation.

Y. The definition prescribed in subsection Z, paragraph 3 of this section does not diminish or infringe on any rights protected under the first amendment to the United States constitution or the Arizona constitution.

Z. For the purposes of this section:

1. "Administration of criminal justice" means performance of the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision or rehabilitation of criminal offenders. Administration of criminal justice includes enforcement of criminal traffic offenses and civil traffic violations, including parking violations, when performed by a criminal justice agency. Administration of criminal justice also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. "Administrative records" means records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and that are designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.

3. "Antisemitism" includes the definition of antisemitism that was adopted by the international holocaust remembrance alliance on May 26, 2016 and that has been adopted by the United States department of state, including the contemporary examples of antisemitism identified in the adopted definition.

4. "Arizona criminal justice information system" or "system" means the statewide information system managed by the director for the collection, processing, preservation, dissemination and exchange of criminal justice information and includes the electronic equipment, facilities, procedures and agreements necessary to exchange this information.
5. "Booking agency" means the county sheriff or, if a person is booked into a municipal jail, the municipal law enforcement agency.

6. "Central state repository" means the central location within the department for the collection, storage and dissemination of Arizona criminal history records and related criminal justice information.

7. "Criminal history record information" and "criminal history record" means information that is collected by criminal justice agencies on individuals and that consists of identifiable descriptions and notations of arrests, detentions, indictments and other formal criminal charges, and any disposition arising from those actions, sentencing, formal correctional supervisory action and release. Criminal history record information and criminal history record do not include identification information to the extent that the information does not indicate involvement of the individual in the criminal justice system or information relating to juveniles unless they have been adjudicated as adults.

8. "Criminal justice agency" means either:
   (a) A court at any governmental level with criminal or equivalent jurisdiction, including courts of any foreign sovereignty duly recognized by the federal government.
   (b) A government agency or subunit of a government agency that is specifically authorized to perform as its principal function the administration of criminal justice pursuant to a statute, ordinance or executive order and that allocates more than fifty percent of its annual budget to the administration of criminal justice. This subdivision includes agencies of any foreign sovereignty duly recognized by the federal government.

9. "Criminal justice information" means information that is collected by criminal justice agencies and that is needed for the performance of their legally authorized and required functions, such as criminal history record information, citation information, stolen property information, traffic accident reports, wanted persons information and system network log searches. Criminal justice information does not include the administrative records of a criminal justice agency.

10. "Disposition" means information disclosing that a decision has been made not to bring criminal charges or that criminal proceedings have been concluded or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of an appellate review of criminal proceedings or executive clemency.

11. "Dissemination" means the written, oral or electronic communication or transfer of criminal justice information to individuals and agencies other than the criminal justice agency that maintains the information. Dissemination includes the act of confirming the existence or nonexistence of criminal justice information.
12. "Management control":
   (a) Means the authority to set and enforce:
      (i) Priorities regarding development and operation of criminal
          justice information systems and programs.
      (ii) Standards for the selection, supervision and termination of
          personnel involved in the development of criminal justice information
          systems and programs and in the collection, maintenance, analysis and
          dissemination of criminal justice information.
      (iii) Policies governing the operation of computers, circuits and
          telecommunications terminals used to process criminal justice information
          to the extent that the equipment is used to process, store or transmit
          criminal justice information.
   (b) Includes the supervision of equipment, systems design,
       programming and operating procedures necessary for the development and
       implementation of automated criminal justice information systems.

13. "Process control number" means the Arizona automated
    fingerprint identification system number that attaches to each arrest
    event at the time of fingerprinting and that is assigned to the arrest
    fingerprint card, disposition form and other pertinent documents.

14. "Secondary dissemination" means the dissemination of criminal
    justice information from an individual or agency that originally obtained
    the information from the central state repository or through the Arizona
    criminal justice information system to another individual or agency.

15. "Sexual orientation" means consensual homosexuality or
    heterosexuality.

16. "Subject of record" means the person who is the primary subject
    of a criminal justice record.

Sec. 7. Emergency
This act is an emergency measure that is necessary to preserve the
public peace, health or safety and is operative immediately as provided by
law.