

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2299

Introduced by
Representatives Konopnicki, Burns J, Mason: McClure

AN ACT

AMENDING SECTIONS 8-201, 8-321, 8-341, 8-343, 8-350, 11-361, 11-459, 12-2703, 13-105, 13-107, 13-501, 13-502, 13-604, 13-604.01, 13-604.02, 13-609, 13-610, 13-702, 13-702.01, 13-707, 13-710, 13-901.01, 13-905, 13-906, 13-909, 13-910, 13-912.01, 13-921, 13-1104, 13-1105, 13-1406, 13-1423, 13-3107, 13-3113, 13-3407, 13-3408, 13-3411, 13-3419, 13-3422, 13-3994, 13-4032, 13-4062, 13-4511, 13-4515, 15-341, 31-403, 31-412, 41-1604.10, 41-1604.11, 41-1604.13, 41-1604.14, 41-1604.15, 41-1604.16 AND 41-1609.05, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-604.03, 13-702.02 AND 13-711, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-611; AMENDING TITLE 13, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7.1; TRANSFERRING AND RENUMBERING SECTIONS 13-703, 13-703.01, 13-703.02, 13-703.03, 13-703.04, 13-703.05, 13-704, 13-705 AND 13-706, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 7.1, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, AS SECTIONS 13-751, 13-752, 13-753, 13-754, 13-755, 13-756, 13-757, 13-758 AND 13-759, RESPECTIVELY; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 13-703 AND 13-705; RENUMBERING SECTION 13-712, ARIZONA REVISED STATUTES, AS SECTION 13-706; RENUMBERING SECTION 13-713, ARIZONA REVISED STATUTES, AS SECTION 13-704; AMENDING SECTIONS 13-704 AND 13-706, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-751 AND 13-755, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 3 AND AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-752, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 4 AND AS TRANSFERRED AND RENUMBERED BY THIS ACT; TRANSFERRING AND RENUMBERING SECTION 13-604.04, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 9,

ARIZONA REVISED STATUTES, AS SECTION 13-901.03; AMENDING SECTION 13-901.03,
ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING
LAWS 2003, CHAPTER 255, SECTION 8; 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 8-201, Arizona Revised Statutes, is amended to
3 read:
4 8-201. Definitions
5 In this title, unless the context otherwise requires:
6 1. "Abandoned" means the failure of the parent to provide reasonable
7 support and to maintain regular contact with the child, including providing
8 normal supervision. Abandoned includes a judicial finding that a parent has
9 made only minimal efforts to support and communicate with the child. Failure
10 to maintain a normal parental relationship with the child without just cause
11 for a period of six months constitutes prima facie evidence of abandonment.
12 2. "Abuse" means the infliction or allowing of physical injury,
13 impairment of bodily function or disfigurement or the infliction of or
14 allowing another person to cause serious emotional damage as evidenced by
15 severe anxiety, depression, withdrawal or untoward aggressive behavior and
16 which emotional damage is diagnosed by a medical doctor or psychologist
17 pursuant to section 8-821 and is caused by the acts or omissions of an
18 individual having care, custody and control of a child. Abuse includes:
19 (a) Inflicting or allowing sexual abuse pursuant to section 13-1404,
20 sexual conduct with a minor pursuant to section 13-1405, sexual assault
21 pursuant to section 13-1406, molestation of a child pursuant to section
22 13-1410, commercial sexual exploitation of a minor pursuant to section
23 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest
24 pursuant to section 13-3608 or child prostitution pursuant to section
25 13-3212.
26 (b) Physical injury to a child that results from abuse as described in
27 section 13-3623, subsection C.
28 3. "Adult" means a person who is eighteen years of age or older.
29 4. "Adult court" means the appropriate justice court, municipal court
30 or criminal division of the superior court that has jurisdiction to hear
31 proceedings concerning offenses committed by juveniles as provided in
32 sections 8-327 and 13-501.
33 5. "Award" or "commit" means to assign legal custody.
34 6. "Child", "youth" or "juvenile" means an individual who is under the
35 age of eighteen years.
36 7. "Complaint" means a written statement of the essential facts
37 constituting a public offense that is any of the following:
38 (a) Made on an oath before a judge or commissioner of the superior
39 court or an authorized juvenile hearing officer.
40 (b) Made pursuant to section 13-3903.
41 (c) Accompanied by an affidavit of a law enforcement officer or
42 employee that swears on information and belief to the accuracy of the
43 complaint pursuant to section 13-4261.

1 8. "Custodian" means a person, other than a parent or legal guardian,
2 who stands in loco parentis to the child or a person to whom legal custody of
3 the child has been given by order of the juvenile court.

4 9. "Delinquency hearing" means a proceeding in the juvenile court to
5 determine whether a juvenile has committed a specific delinquent act as set
6 forth in a petition.

7 10. "Delinquent act" means an act by a juvenile that if committed by an
8 adult would be a criminal offense or a petty offense, a violation of any law
9 of this state, or of another state if the act occurred in that state, or a
10 law of the United States, or a violation of any law that can only be violated
11 by a minor and that has been designated as a delinquent offense, or any
12 ordinance of a city, county or political subdivision of this state defining
13 crime. Delinquent act does not include an offense under section 13-501,
14 subsection A or B if the offense is filed in adult court. Any juvenile who
15 is prosecuted as an adult or who is remanded for prosecution as an adult
16 shall not be adjudicated as a delinquent juvenile for the same offense.

17 11. "Delinquent juvenile" means a child who is adjudicated to have
18 committed a delinquent act.

19 12. "Department" means the department of economic security.

20 13. "Dependent child":

21 (a) Means a child who is adjudicated to be:

22 (i) In need of proper and effective parental care and control and who
23 has no parent or guardian, or one who has no parent or guardian willing to
24 exercise or capable of exercising such care and control.

25 (ii) Destitute or who is not provided with the necessities of life,
26 including adequate food, clothing, shelter or medical care.

27 (iii) A child whose home is unfit by reason of abuse, neglect, cruelty
28 or depravity by a parent, a guardian or any other person having custody or
29 care of the child.

30 (iv) Under ~~the age of~~ eight years **OF AGE** and who is found to have
31 committed an act that would result in adjudication as a delinquent juvenile
32 or incorrigible child if committed by an older juvenile or child.

33 (v) Incompetent or not restorable to competency and who is alleged to
34 have committed a serious offense as defined in section ~~13-604~~ **13-105**.

35 (b) Does not include a child who in good faith is being furnished
36 Christian Science treatment by a duly accredited practitioner if none of the
37 circumstances described in subdivision (a) of this paragraph exists.

38 14. "Detention" means the temporary confinement of a juvenile who
39 requires secure care in a physically restricting facility that is completely
40 surrounded by a locked and physically secure barrier with restricted ingress
41 and egress for the protection of the juvenile or the community pending court
42 disposition or as a condition of probation.

- 1 15. "Incorrigible child" means a child who:
2 (a) Is adjudicated as a child who refuses to obey the reasonable and
3 proper orders or directions of a parent, guardian or custodian and who is
4 beyond the control of that person.
5 (b) Is habitually truant from school as defined in section 15-803,
6 subsection C.
7 (c) Is a runaway from the child's home or parent, guardian or
8 custodian.
9 (d) Habitually behaves in such a manner as to injure or endanger the
10 morals or health of self or others.
11 (e) Commits any act constituting an offense that can only be committed
12 by a minor and that is not designated as a delinquent act.
13 (f) Fails to obey any lawful order of a court of competent
14 jurisdiction given in a noncriminal action.
15 16. "Independent living program" includes a residential program with
16 supervision of less than twenty-four hours a day.
17 17. "Juvenile court" means the juvenile division of the superior court
18 when exercising its jurisdiction over children in any proceeding relating to
19 delinquency, dependency or incorrigibility.
20 18. "Law enforcement officer" means a peace officer, sheriff, deputy
21 sheriff, municipal police officer or constable.
22 19. "Medical director of a mental health agency" means a psychiatrist,
23 or licensed physician experienced in psychiatric matters, who is designated
24 in writing by the governing body of the agency as the person in charge of the
25 medical services of the agency, or a psychiatrist designated by the governing
26 body to act for the director. The term includes the superintendent of the
27 state hospital.
28 20. "Mental health agency" means any private or public facility that is
29 licensed by this state as a mental health treatment agency, a psychiatric
30 hospital, a psychiatric unit of a general hospital or a residential treatment
31 center for emotionally disturbed children and that uses secure settings or
32 mechanical restraints.
33 21. "Neglect" or "neglected" means the inability or unwillingness of a
34 parent, guardian or custodian of a child to provide that child with
35 supervision, food, clothing, shelter or medical care if that inability or
36 unwillingness causes substantial risk of harm to the child's health or
37 welfare, except if the inability of a parent or guardian to provide services
38 to meet the needs of a child with a disability or chronic illness is solely
39 the result of the unavailability of reasonable services.
40 22. "Petition" means a written statement of the essential facts that
41 allege delinquency, incorrigibility or dependency.
42 23. "Prevention" means the creation of conditions, opportunities and
43 experiences that encourage and develop healthy, self-sufficient children and
44 that occur before the onset of problems.

1 24. "Protective supervision" means supervision that is ordered by the
2 juvenile court of children who are found to be dependent or incorrigible.

3 25. "Referral" means a report that is submitted to the juvenile court
4 and that alleges that a child is dependent or incorrigible or that a juvenile
5 has committed a delinquent or criminal act.

6 26. "Secure care" means confinement in a facility that is completely
7 surrounded by a locked and physically secure barrier with restricted ingress
8 and egress.

9 27. "Serious emotional injury" means an injury that is diagnosed by a
10 medical doctor or a psychologist and that does any one or a combination of
11 the following:

12 (a) Seriously impairs mental faculties.

13 (b) Causes serious anxiety, depression, withdrawal or social
14 dysfunction behavior to the extent that the child suffers dysfunction that
15 requires treatment.

16 (c) Is the result of sexual abuse pursuant to section 13-1404, sexual
17 conduct with a minor pursuant to section 13-1405, sexual assault pursuant to
18 section 13-1406, molestation of a child pursuant to section 13-1410, child
19 prostitution pursuant to section 13-3212, commercial sexual exploitation of a
20 minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to
21 section 13-3553 or incest pursuant to section 13-3608.

22 28. "Serious physical injury" means an injury that is diagnosed by a
23 medical doctor and that does any one or a combination of the following:

24 (a) Creates a reasonable risk of death.

25 (b) Causes serious or permanent disfigurement.

26 (c) Causes significant physical pain.

27 (d) Causes serious impairment of health.

28 (e) Causes the loss or protracted impairment of an organ or limb.

29 (f) Is the result of sexual abuse pursuant to section 13-1404, sexual
30 conduct with a minor pursuant to section 13-1405, sexual assault pursuant to
31 section 13-1406, molestation of a child pursuant to section 13-1410, child
32 prostitution pursuant to section 13-3212, commercial sexual exploitation of a
33 minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to
34 section 13-3553 or incest pursuant to section 13-3608.

35 29. "Shelter care" means the temporary care of a child in any public or
36 private facility or home that is licensed by this state and that offers a
37 physically nonsecure environment that is characterized by the absence of
38 physically restricting construction or hardware and that provides the child
39 access to the surrounding community.

40 Sec. 2. Section 8-321, Arizona Revised Statutes, is amended to read:

41 8-321. Referrals; diversions; conditions; community based
42 alternative programs

43 A. Except as provided in subsection B of this section, before a
44 petition is filed or an admission or adjudication hearing is held, the county
45 attorney may divert the prosecution of a juvenile who is accused of

1 committing a delinquent act or a child who is accused of committing an
2 incorrigible act to a community based alternative program or to a diversion
3 program administered by the juvenile court.

4 B. A juvenile ~~who is a chronic felony offender as defined in section~~
5 ~~13-501, who is a violent felony offender or who is alleged to have committed~~
6 ~~a violation of section 28-1381, 28-1382 or 28-1383~~ is not eligible for
7 diversion. ~~IF THE JUVENILE IS EITHER:~~

8 1. ALLEGED TO HAVE COMMITTED A DANGEROUS OFFENSE AS DEFINED IN SECTION
9 13-105.

10 2. A CHRONIC FELONY OFFENDER AS DEFINED IN SECTION 13-501.

11 3. ALLEGED TO HAVE COMMITTED AN OFFENSE LISTED IN SECTION 13-501.

12 4. ALLEGED TO HAVE COMMITTED A VIOLATION OF TITLE 28, CHAPTER 4.

13 C. Except as provided in section 8-323, the county attorney has sole
14 discretion to decide whether to divert or defer prosecution of a juvenile
15 offender. The county attorney may designate the offenses that shall be
16 retained by the juvenile court for diversion or that shall be referred
17 directly to a community based alternative program.

18 D. The county attorney or the juvenile court in cooperation with the
19 county attorney may establish community based alternative programs.

20 E. Except for offenses that the county attorney designates as eligible
21 for diversion or referral to a community based alternative program, on
22 receipt of a referral alleging the commission of an offense, the juvenile
23 probation officer shall submit the referral to the county attorney to
24 determine if a petition should be filed.

25 F. If the county attorney diverts the prosecution of a juvenile to the
26 juvenile court, the juvenile probation officer shall conduct a personal
27 interview with the alleged juvenile offender. At least one of the juvenile's
28 parents or guardians shall attend the interview. The probation officer may
29 waive the requirement for the attendance of the parent or guardian for good
30 cause. If the juvenile acknowledges responsibility for the delinquent or
31 incorrigible act, the juvenile probation officer shall require that the
32 juvenile comply with one or more of the following conditions:

33 1. Participation in unpaid community restitution work.

34 2. Participation in a counseling program that is approved by the court
35 and that is designed to strengthen family relationships and to prevent
36 repetitive juvenile delinquency.

37 3. Participation in an education program that is approved by the court
38 and that has as its goal the prevention of further delinquent behavior.

39 4. Participation in an education program that is approved by the court
40 and that is designed to deal with ancillary problems experienced by the
41 juvenile, such as alcohol or drug abuse.

42 5. Participation in a nonresidential program of rehabilitation or
43 supervision that is offered by the court or offered by a community youth
44 serving agency and approved by the court.

45 6. Payment of restitution to the victim of the delinquent act.

1 7. Payment of a monetary assessment.

2 G. If the juvenile successfully complies with the conditions set forth
3 by the probation officer, the county attorney shall not file a petition in
4 juvenile court and the program's resolution shall not be used against the
5 juvenile in any further proceeding and is not an adjudication of
6 incorrigibility or delinquency. The resolution of the program is not a
7 conviction of crime, does not impose any civil disabilities ordinarily
8 resulting from a conviction and does not disqualify the juvenile in any civil
9 service application or appointment.

10 H. In order to participate in a community based alternative program
11 the juvenile who is referred to a program shall admit responsibility for the
12 essential elements of the accusation and shall cooperate with the program in
13 all of its proceedings.

14 I. All of the following apply to each community based alternative
15 program that is established pursuant to this section:

16 1. The juvenile's participation is voluntary.

17 2. The victim's participation is voluntary.

18 3. The community based alternative program shall ensure that the
19 victim, the juvenile's parent or guardian and any other persons who are
20 directly affected by an offense have the right to participate.

21 4. The participants shall agree to the consequences imposed on the
22 juvenile or the juvenile's parent or guardian.

23 5. The meetings and records shall be open to the public.

24 J. After holding a meeting the participants in the community based
25 alternative program may agree on any legally reasonable consequences that the
26 participants determine are necessary to fully and fairly resolve the matter
27 except confinement.

28 K. The participants shall determine consequences within thirty days
29 after referral to the community based alternative program, and the juvenile
30 shall complete the consequences within ninety days after the matter is
31 referred to the community based alternative program. The county attorney or
32 the juvenile probation officer may extend the time in which to complete the
33 consequences for good cause. If the community based alternative program
34 involves a school, the deadlines for determination and completion of
35 consequences shall be thirty and ninety school days, respectively.

36 L. The community based alternative program, the juvenile, the
37 juvenile's parent or guardian and the victim may sign a written contract in
38 which the parties agree to the program's resolution of the matter and in
39 which the juvenile's parent or guardian agrees to ensure that the juvenile
40 complies with the contract. The contract may provide that the parent or
41 guardian shall post a bond payable to this state to secure the performance of
42 any consequence imposed on the juvenile pursuant to subsection J of this
43 section.

1 M. If the juvenile successfully completes the consequences, the county
2 attorney shall not file a petition in juvenile court and the program's
3 resolution shall not be used against the juvenile in any further proceeding
4 and is not an adjudication of incorrigibility or delinquency. The resolution
5 of the program is not a conviction of crime, does not impose any civil
6 disabilities ordinarily resulting from a conviction and does not disqualify
7 the juvenile in any civil service application or appointment.

8 N. The county attorney or juvenile court shall assess the parent of a
9 juvenile who is diverted pursuant to subsection A of this section a fee of
10 fifty dollars unless, after determining the inability of the parent to pay
11 the fee, the county attorney or juvenile court assesses a lesser amount. All
12 monies assessed pursuant to this subsection shall be used for the
13 administration and support of community based alternative programs or
14 juvenile court diversion programs. Any amount greater than forty dollars of
15 the fee assessed pursuant to this subsection shall only be used to supplement
16 monies currently used for the salaries of juvenile probation and surveillance
17 officers and for support of programs and services of the superior court
18 juvenile probation departments. The clerk of the superior court shall pay
19 all monies collected from this assessment to the county treasurer for deposit
20 in the juvenile probation fund, to be utilized as provided in section 12-268,
21 and the county attorney shall pay all monies collected from this assessment
22 into the county attorney juvenile diversion fund established by section
23 11-537.

24 O. The supreme court shall annually establish an average cost per
25 juvenile for providing diversion services in each county, based on the monies
26 appropriated for diversion pursuant to section 8-322, excluding the cost of
27 juvenile intake services provided by the juvenile court, and the number of
28 juveniles diverted the previous year. On the county attorney's certification
29 to the supreme court of the number of juveniles diverted to a county attorney
30 community based alternative program each quarter, the annual average cost per
31 juvenile for each juvenile diverted shall be reimbursed to the county
32 attorney juvenile diversion fund established by section 11-537 out of monies
33 appropriated to the supreme court for diversion programs.

34 P. If the juvenile does not acknowledge responsibility for the
35 offense, or fails to comply with the consequences set by the community based
36 alternative program, the case shall be submitted to the county attorney for
37 review.

38 Q. After reviewing a referral, if the county attorney declines
39 prosecution, the county attorney may return the case to the juvenile
40 probation department for further action as provided in subsection F of this
41 section.

42 ~~R. For the purposes of this section, "violent" means an offense~~
43 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~
44 ~~dangerous instrument or the intentional or knowing infliction of serious~~

1 ~~physical injury on another person and includes an offense listed in section~~
2 ~~13-501.~~

3 Sec. 3. Section 8-341, Arizona Revised Statutes, is amended to read:
4 8-341. Disposition and commitment; definitions

5 A. After receiving and considering the evidence on the proper
6 disposition of the case, the court may enter judgment as follows:

7 1. It may award a delinquent juvenile:

8 (a) To the care of the juvenile's parents, subject to supervision of a
9 probation department.

10 (b) To a probation department, subject to any conditions the court may
11 impose, including a period of incarceration in a juvenile detention center of
12 not more than one year.

13 (c) To a reputable citizen of good moral character, subject to the
14 supervision of a probation department.

15 (d) To a private agency or institution, subject to the supervision of
16 a probation officer.

17 (e) To the department of juvenile corrections.

18 (f) To maternal or paternal relatives, subject to the supervision of a
19 probation department.

20 (g) To an appropriate official of a foreign country of which the
21 juvenile is a foreign national who is unaccompanied by a parent or guardian
22 in this state to remain on unsupervised probation for at least one year on
23 the condition that the juvenile cooperate with that official.

24 2. It may award an incorrigible child:

25 (a) To the care of the child's parents, subject to the supervision of
26 a probation department.

27 (b) To the protective supervision of a probation department, subject
28 to any conditions the court may impose.

29 (c) To a reputable citizen of good moral character, subject to the
30 supervision of a probation department.

31 (d) To a public or private agency, subject to the supervision of a
32 probation department.

33 (e) To maternal or paternal relatives, subject to the supervision of a
34 probation department.

35 B. If a juvenile is placed on probation pursuant to this section, the
36 period of probation may continue until the juvenile's eighteenth birthday,
37 except that the term of probation shall not exceed one year if all of the
38 following apply:

39 1. The juvenile is not charged with a subsequent offense.

40 2. The juvenile has not been found in violation of a condition of
41 probation.

42 3. The court has not made a determination that it is in the best
43 interests of the juvenile or the public to require continued
44 supervision. The court shall state by minute entry or written order its
45 reasons for finding that continued supervision is required.

1 4. The offense for which the juvenile is placed on probation does not
2 involve ~~the discharge, use or threatening exhibition of a deadly weapon or~~
3 ~~dangerous instrument or the intentional or knowing infliction of serious~~
4 ~~physical injury on another~~ A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.

5 5. The offense for which the juvenile is placed on probation does not
6 involve a violation of title 13, chapter 14 or 35.1.

7 6. Restitution ordered pursuant to section 8-344 has been made.

8 C. If a juvenile is adjudicated as a first time felony juvenile
9 offender, the court shall provide the following written notice to the
10 juvenile:

11 You have been adjudicated a first time felony juvenile
12 offender. You are now on notice that if you are adjudicated of
13 another offense that would be a felony offense if committed by
14 an adult and if you commit the other offense when you are
15 fourteen years of age or older, you will be placed on juvenile
16 intensive probation, which may include home arrest and
17 electronic monitoring, or you may be placed on juvenile
18 intensive probation and may be incarcerated for a period of time
19 in a juvenile detention center, or you may be committed to the
20 department of juvenile corrections or you may be prosecuted as
21 an adult. If you are convicted as an adult of a felony offense
22 and you commit any other offense, you will be prosecuted as an
23 adult.

24 D. If a juvenile is fourteen years of age or older and is adjudicated
25 as a repeat felony juvenile offender, the juvenile court shall place the
26 juvenile on juvenile intensive probation, which may include home arrest and
27 electronic monitoring, may place the juvenile on juvenile intensive
28 probation, which may include incarceration for a period of time in a juvenile
29 detention center, or may commit the juvenile to the department of juvenile
30 corrections pursuant to subsection A, paragraph 1, subdivision (e) of this
31 section for a significant period of time.

32 E. If the juvenile is adjudicated as a repeat felony juvenile
33 offender, the court shall provide the following written notice to the
34 juvenile:

35 You have been adjudicated a repeat felony juvenile
36 offender. You are now on notice that if you are arrested for
37 another offense that would be a felony offense if committed by
38 an adult and if you commit the other offense when you are
39 fifteen years of age or older, you will be tried as an adult in
40 the criminal division of the superior court. If you commit the
41 other offense when you are fourteen years of age or older, you
42 may be tried as an adult in the criminal division of the
43 superior court. If you are convicted as an adult, you will be
44 sentenced to a term of incarceration. If you are convicted as

1 an adult of a felony offense and you commit any other offense,
2 you will be prosecuted as an adult.

3 F. The failure or inability of the court to provide the notices
4 required under subsections C and E of this section does not preclude the use
5 of the prior adjudications for any purpose otherwise permitted.

6 G. After considering the nature of the offense and the age, physical
7 and mental condition and earning capacity of the juvenile, the court shall
8 order the juvenile to pay a reasonable monetary assessment if the court
9 determines that an assessment is in aid of rehabilitation. If the director
10 of the department of juvenile corrections determines that enforcement of an
11 order for monetary assessment as a term and condition of conditional liberty
12 is not cost-effective, the director may require the youth to perform an
13 equivalent amount of community restitution in lieu of the payment ordered as
14 a condition of conditional liberty.

15 H. If a child is adjudicated incorrigible, the court may impose a
16 monetary assessment on the child of not more than one hundred fifty dollars.

17 I. A juvenile who is charged with unlawful purchase, possession or
18 consumption of spirituous liquor is subject to section 8-323. The monetary
19 assessment for a conviction of unlawful purchase, possession or consumption
20 of spirituous liquor by a juvenile shall not exceed five hundred dollars.
21 The court of competent jurisdiction may order a monetary assessment or
22 equivalent community restitution.

23 J. The court shall require the monetary assessment imposed under
24 subsection G or H of this section on a juvenile who is not committed to the
25 department of juvenile corrections to be satisfied in one or both of the
26 following forms:

27 1. Monetary reimbursement by the juvenile in a lump sum or installment
28 payments through the clerk of the superior court for appropriate
29 distribution.

30 2. A program of work, not in conflict with regular schooling, to
31 repair damage to the victim's property, to provide community restitution or
32 to provide the juvenile with a job for wages. The court order for
33 restitution or monetary assessment shall specify, according to the
34 dispositional program, the amount of reimbursement and the portion of wages
35 of either existing or provided work that is to be credited toward
36 satisfaction of the restitution or assessment, or the nature of the work to
37 be performed and the number of hours to be spent working. The number of
38 hours to be spent working shall be set by the court based on the severity of
39 the offense but shall not be less than sixteen hours.

40 K. If a juvenile is committed to the department of juvenile
41 corrections the court shall specify the amount of the MONETARY assessment
42 imposed pursuant to subsection G or H of this section.

43 L. After considering the length of stay guidelines developed pursuant
44 to section 41-2816, subsection C, the court may set forth in the order of
45 commitment the minimum period during which the juvenile shall remain in

1 secure care while in the custody of the department of juvenile corrections.
 2 When the court awards a juvenile to the department of juvenile corrections or
 3 an institution or agency, it shall transmit with the order of commitment
 4 copies of a diagnostic psychological evaluation and educational assessment if
 5 one has been administered, copies of the case report, all other psychological
 6 and medical reports, restitution orders, any request for postadjudication
 7 notice that has been submitted by a victim and any other documents or records
 8 pertaining to the case requested by the department of juvenile corrections or
 9 an institution or agency. The department shall not release a juvenile from
 10 secure care before the juvenile completes the length of stay determined by
 11 the court in the commitment order unless the county attorney in the county
 12 from which the juvenile was committed requests the committing court to reduce
 13 the length of stay. The department may release the juvenile from secure care
 14 without a further court order after the juvenile completes the length of stay
 15 determined by the court or may retain the juvenile in secure care for any
 16 period subsequent to the completion of the length of stay in accordance with
 17 the law.

18 M. Written notice of the release of any juvenile pursuant to
 19 subsection L of this section shall be made to any victim requesting notice,
 20 the juvenile court that committed the juvenile and the county attorney of the
 21 county from which the juvenile was committed.

22 N. Notwithstanding any law to the contrary, if a person is under the
 23 supervision of the court as an adjudicated delinquent juvenile at the time
 24 the person reaches eighteen years of age, treatment services may be provided
 25 until the person reaches twenty-one years of age if the court, the person and
 26 the state agree to the provision of the treatment and a motion to transfer
 27 the person pursuant to section 8-327 has not been filed or has been
 28 withdrawn. The court may terminate the provision of treatment services after
 29 the person reaches eighteen years of age if the court determines that any of
 30 the following applies:

- 31 1. The person is not progressing toward treatment goals.
- 32 2. The person terminates treatment.
- 33 3. The person commits a new offense after reaching eighteen years of
 34 age.
- 35 4. Continued treatment is not required or is not in the best interests
 36 of the state or the person.

37 O. On the request of a victim of an act that may have involved
 38 significant exposure as defined in section 13-1415 or that if committed by an
 39 adult would be a sexual offense, the prosecuting attorney shall petition the
 40 adjudicating court to require that the juvenile be tested for the presence of
 41 the human immunodeficiency virus. If the victim is a minor the prosecuting
 42 attorney shall file this petition at the request of the victim's parent or
 43 guardian. If the act committed against a victim is an act that if committed
 44 by an adult would be a sexual offense or the court determines that sufficient
 45 evidence exists to indicate that significant exposure occurred, it shall

1 order the department of juvenile corrections or the department of health
2 services to test the juvenile pursuant to section 13-1415. Notwithstanding
3 any law to the contrary, the department of juvenile corrections and the
4 department of health services shall release the test results only to the
5 victim, the delinquent juvenile, the delinquent juvenile's parent or guardian
6 and a minor victim's parent or guardian and shall counsel them regarding the
7 meaning and health implications of the results.

8 P. If a juvenile has been adjudicated delinquent for an offense that
9 if committed by an adult would be a felony, the court shall provide the
10 department of public safety Arizona automated fingerprint identification
11 system established in section 41-2411 with the juvenile's fingerprints,
12 personal identification data and other pertinent information. If a juvenile
13 has been committed to the department of juvenile corrections the department
14 shall provide the fingerprints and information required by this subsection to
15 the Arizona automated fingerprint identification system. If the juvenile's
16 fingerprints and information have been previously submitted to the Arizona
17 automated fingerprint identification system the information is not required
18 to be resubmitted.

19 Q. Access to fingerprint records submitted pursuant to subsection P of
20 this section shall be limited to the administration of criminal justice as
21 defined in section 41-1750. Dissemination of fingerprint information shall
22 be limited to the name of the juvenile, juvenile case number, date of
23 adjudication and court of adjudication.

24 R. If a juvenile is adjudicated delinquent for an offense that if
25 committed by an adult would be a misdemeanor, the court may prohibit the
26 juvenile from carrying or possessing a firearm while the juvenile is under
27 the jurisdiction of the department of juvenile corrections or the juvenile
28 court.

29 S. For the purposes of this section:

30 1. "First time felony juvenile offender" means a juvenile who is
31 adjudicated delinquent for an offense that would be a felony offense if
32 committed by an adult.

33 2. "Repeat felony juvenile offender" means a juvenile to whom both of
34 the following apply:

35 (a) Is adjudicated delinquent for an offense that would be a felony
36 offense if committed by an adult.

37 (b) Previously has been adjudicated a first time felony juvenile
38 offender.

39 3. "Sexual offense" means oral sexual contact, sexual contact or
40 sexual intercourse as defined in section 13-1401.

1 Sec. 4. Section 8-343, Arizona Revised Statutes, is amended to read:

2 8-343. Disposition of offenses involving driving or in actual
3 physical control of a motor vehicle while under the
4 influence of intoxicating liquor or drugs

5 A. A juvenile who is adjudicated delinquent for a violation of section
6 28-1381 or 28-1382 shall be incarcerated for a period of twenty-four
7 consecutive hours.

8 B. A juvenile who within a period of ~~sixty~~ EIGHTY-FOUR months is
9 adjudicated delinquent for a violation of section 28-1381 or 28-1382 and who
10 has previously been adjudicated for a violation of section 28-1381, 28-1382
11 or 28-1383 or an act in another state, a court of the United States or a
12 tribal court that if committed in this state would be a violation of section
13 28-1381, 28-1382 or 28-1383 shall be incarcerated for a period of thirty
14 consecutive days that shall be served in a juvenile detention center or in
15 the department of juvenile corrections.

16 C. A juvenile who is adjudicated delinquent for a violation of section
17 28-1383 shall be sentenced as provided in section 28-1383, except that ~~the~~
18 ~~provisions of~~ section 13-801 ~~do~~ DOES not apply and any incarceration shall be
19 served in a juvenile detention center or in the department of juvenile
20 corrections.

21 D. If a juvenile is adjudicated delinquent for a violation of section
22 28-1381, 28-1382 or 28-1383, the court shall order the juvenile to pay at
23 least one hundred dollars but not more than five hundred dollars plus any
24 applicable surcharges and assessments to the public agency processing the
25 violation or the court may order the juvenile to perform at least eighty
26 hours of community restitution under the supervision of the court.

27 E. The dates of the commission of the offense shall be the determining
28 factor in applying the sixty month provision of subsection B of this section,
29 irrespective of the sequence in which the offenses were committed. A second
30 violation for which a conviction occurs as provided in this section shall not
31 include a conviction for an offense arising out of the same series of acts.

32 F. In addition to any other penalties prescribed by law, if a juvenile
33 is adjudicated delinquent for a violation of section 28-1381, 28-1382 or
34 28-1383, the court shall order the juvenile to complete alcohol or other drug
35 screening that is provided by a facility approved by the department of health
36 services or a probation department. If the court determines that the
37 juvenile requires further alcohol or other drug education or treatment, the
38 juvenile may be required pursuant to court order to obtain education or
39 treatment under the court's supervision from an approved facility. The court
40 may review an education or treatment determination at the request of the
41 state or the defendant or on the court's initiative. The juvenile shall pay
42 the costs of the screening, education or treatment unless the court waives
43 part or all of the costs. The court may order the parent or guardian of the
44 juvenile to pay part or all of the costs of the screening, education or
45 treatment.

1 Sec. 5. Section 8-350, Arizona Revised Statutes, is amended to read:
2 8-350. Dangerous offenders; sex offenders; notification to
3 schools; definition

4 A. If a person JUVENILE is adjudicated delinquent for or convicted of
5 a dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or
6 13-1417 and the person JUVENILE is placed on probation and is attending
7 school, the court shall notify the elementary or high school district in
8 which the person JUVENILE resides that the person JUVENILE has been
9 adjudicated delinquent or convicted and is on probation. The elementary or
10 high school district shall transmit this notice to the school that the person
11 JUVENILE attends.

12 B. Elementary or high school districts and local elementary and high
13 schools through the local school district may request from the court the
14 criminal history of individual students to determine if a student has been
15 adjudicated delinquent for or convicted of a dangerous offense or a violation
16 of section 13-1405, 13-1406, 13-1410 or 13-1417.

17 C. The school that the person attends shall make the information it
18 receives pursuant to this section available to teachers, parents, guardians
19 or custodians upon ON request.

20 D. For the purposes of this section, "dangerous offense" ~~means an~~
21 ~~offense involving the discharge, use or threatening exhibition of a deadly~~
22 ~~weapon or dangerous instrument or the intentional or knowing infliction of~~
23 ~~serious physical injury on another person~~ HAS THE SAME MEANING PRESCRIBED IN
24 SECTION 13-105.

25 Sec. 6. Section 11-361, Arizona Revised Statutes, is amended to read:
26 11-361. Definition of program

27 For the purposes of this article, unless the context otherwise
28 requires, "program" means a special supervision program in which the county
29 attorney of a participating county may divert or defer, before a guilty plea
30 or a trial, the prosecution of a person WHO IS accused of committing a crime,
31 ~~other than~~ EXCEPT THAT THE COUNTY ATTORNEY MAY NOT DEFER OR DIVERT a person
32 who:

- 33 1. Has been previously convicted of a felony. ~~.-~~
- 34 2. Is accused of committing a ~~felony involving the discharge, use or~~
35 ~~threatening exhibition of a deadly weapon or dangerous instrument or the~~
36 ~~intentional or knowing infliction of serious physical injury or~~ DANGEROUS
37 OFFENSE AS DEFINED IN SECTION 13-105.
- 38 3. Has previously completed a program established pursuant to this
39 article.

1 Sec. 7. Section 11-459, Arizona Revised Statutes, is amended to read:

2 11-459. Prisoner work, community restitution work and home
3 detention program; eligibility; monitoring;
4 procedures; home detention for persons sentenced for
5 driving under the influence of alcohol or drugs;
6 community restitution work committee; members; duties

7 A. The sheriff may establish a prisoner work, community restitution
8 work and home detention program for eligible sentenced prisoners, which shall
9 be treated the same as confinement in jail and shall fulfill the sheriff's
10 duty to take charge of and keep the county jail and prisoners.

11 B. A prisoner is not eligible for a prisoner work, community
12 restitution work and home detention program if any of the following applies:

13 1. After independent review and determination of the jail's
14 classification program, the prisoner is found by the sheriff to constitute a
15 risk to either himself or other members of the community.

16 2. The prisoner has a past history of violent behavior.

17 3. The prisoner has been convicted of a serious offense as defined ~~by~~
18 ~~IN~~ section ~~13-604~~ 13-105 or has been determined to be a dangerous and
19 repetitive offender.

20 4. Jail time is being served as a result of a felony conviction.

21 5. The sentencing judge states at the time of the sentence that the
22 prisoner may not be eligible for a prisoner work, community restitution work
23 and home detention program.

24 6. The prisoner is sentenced to a county jail and is being held for
25 another jurisdiction.

26 C. ~~For prisoners who are~~ IF A PRISONER IS selected for the program,
27 the sheriff may require electronic monitoring in the prisoner's home whenever
28 the prisoner is not at his regular place of employment or while the prisoner
29 is assigned to a community work task. If electronic monitoring is required,
30 the prisoner shall remain under the control of a home detention device that
31 constantly monitors the prisoner's location in order to determine that the
32 prisoner has not left his premises. In all other cases, the sheriff shall
33 implement a system of monitoring using visitation, telephone contact or other
34 appropriate methods to assure compliance with the home detention
35 requirements. The sheriff may place appropriate restrictions on prisoners in
36 the program, including testing prisoners for consumption of alcoholic
37 beverages or drugs or prohibiting association with individuals who are
38 determined to be detrimental to the prisoner's successful participation in
39 the program.

40 D. If a prisoner is placed on electronic monitoring pursuant to
41 subsection C of this section, the prisoner shall pay an electronic monitoring
42 fee in an amount ranging from zero to full cost and thirty dollars per month
43 while on electronic monitoring, unless, after determining the inability of
44 the prisoner to pay these fees, the sheriff assesses a lesser fee. The

1 SHERIFF SHALL USE THE fees collected ~~shall be used by the sheriff~~ to offset
2 operational costs of the program.

3 E. Prisoners who are selected for the home detention program shall be
4 employed in the county in which they are incarcerated. The sheriff shall
5 review the place of employment to determine whether it is appropriate for a
6 home detention prisoner. If the prisoner is terminated from employment or
7 does not come to work, the employer shall notify the sheriff's office.
8 Alternatively, or in addition, a community restitution work assignment may be
9 made by the sheriff to a program recommended to the sheriff by the community
10 restitution work committee. If a prisoner is incapable of performing
11 community restitution or being employed, the sheriff may exempt the prisoner
12 from these programs.

13 F. The sheriff may require that a prisoner who is employed during the
14 week also participate in community restitution work programs on weekends.

15 G. The sheriff may allow prisoners to be away from home detention for
16 special purposes, including church attendance, medical appointments or
17 funerals. The standard for review and determination of such leave is the
18 same as that implemented to decide transportation requests for similar
19 purposes made by prisoners confined in the county jail.

20 H. Community restitution work shall include public works projects
21 operated and supervised by public agencies of this state or counties, cities
22 or towns on recommendation of the community restitution work committee and
23 approval of the sheriff. The community restitution work committee may also
24 recommend and the sheriff may approve other forms of community restitution
25 work sponsored and supervised by public or private community oriented
26 organizations and agencies.

27 I. The community restitution work committee is established in each
28 county and is composed of two designees of the sheriff, a representative of
29 the county attorney's office selected by the county attorney, a
30 representative of a local police agency selected by the police chief of the
31 largest city in the county and three persons selected by the county board of
32 supervisors from the private sector. A sheriff's designee shall serve as
33 committee chairman and schedule all meetings. The committee shall meet as
34 often as necessary, but no less than once every three months, for the purpose
35 of considering and recommending appropriate community restitution work
36 projects for home detention prisoners. The committee shall make its
37 recommendations to the sheriff. Members are not eligible to receive
38 compensation.

39 J. At any time the sheriff may terminate a prisoner's participation in
40 the prisoner work, community restitution work and home detention program and
41 require that the prisoner complete the remaining term of the prisoner's
42 sentence in jail confinement.

43 K. If authorized by the court, a person who is sentenced pursuant to
44 section 28-1381 or 28-1382 shall not be placed under home detention in a

1 prisoner work, community restitution work and home detention program except
2 as provided in subsections L through Q of this section.

3 L. By a majority vote of the full membership of the board of
4 supervisors after a public hearing and a finding of necessity a county may
5 authorize the sheriff to establish a home detention program for persons who
6 are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If
7 the board ~~authorized~~ **AUTHORIZES** the establishment of a home detention
8 program, a county sheriff may establish the program. A prisoner who is
9 placed under the program established pursuant to this subsection shall bear
10 the cost of all testing, monitoring and enrollment in alcohol or substance
11 abuse programs unless, after determining the inability of the prisoner to pay
12 the cost, the court assesses a lesser amount. The county shall use the
13 collected monies to offset operational costs of the program.

14 M. If a county sheriff establishes a home detention program under
15 subsection L of this section, a prisoner must meet the following eligibility
16 requirements for the program:

17 1. The provisions of subsection B of this section apply in determining
18 eligibility for the program.

19 2. If the prisoner is sentenced under section 28-1381, subsection I,
20 the prisoner first serves a minimum of twenty-four consecutive hours in jail.

21 3. Notwithstanding section 28-1387, subsection C, if the prisoner is
22 sentenced under section 28-1381, subsection K or section 28-1382, subsection
23 D or F, the prisoner first serves a minimum of fifteen consecutive days in
24 jail before being placed under home detention.

25 4. The prisoner is required to comply with all of the following
26 requirements for the duration of the prisoner's participation in the home
27 detention program:

28 (a) All of the provisions of subsections C through H of this section.

29 (b) Testing at least once a day for the use of alcoholic beverages or
30 drugs by a scientific method that is not limited to urinalysis or a breath or
31 intoxication test in the prisoner's home or at the office of a person
32 designated by the court to conduct these tests.

33 (c) Participation in an alcohol or drug program, or both. These
34 programs shall be accredited by the department of health services or a county
35 probation department.

36 (d) Prohibition of association with any individual determined to be
37 detrimental to the prisoner's successful participation in the program.

38 (e) All other provisions of the sentence imposed.

39 5. Any additional eligibility criteria that the county may impose.

40 N. If a county sheriff establishes a home detention program under
41 subsection L of this section, the court, on placing the prisoner in the
42 program, shall require electronic monitoring in the prisoner's home and, if
43 consecutive hours of jail time are ordered, shall require the prisoner to
44 remain at home during the consecutive hours ordered. The detention device
45 shall constantly monitor the prisoner's location to ensure that the prisoner

1 does not leave the premises. Nothing in this subsection shall be deemed to
2 waive the minimum jail confinement requirements under subsection M, paragraph
3 2 of this section.

4 O. The court shall terminate a prisoner's participation in the home
5 detention program and shall require the prisoner to complete the remaining
6 term of the jail sentence by jail confinement if either:

7 1. The prisoner fails to successfully complete a court ordered alcohol
8 or drug screening, counseling, education and treatment program pursuant to
9 subsection M, paragraph 4, subdivision (c) of this section, section 28-1381,
10 subsection J or L or section 28-1382, subsection E or G.

11 2. The prisoner leaves the premises during a time that the prisoner is
12 ordered to be on the premises without permission of the court or supervising
13 authority.

14 P. At any other time the court may terminate a prisoner's
15 participation in the home detention program and require the prisoner to
16 complete the remaining term of the jail sentence by jail confinement.

17 Q. The sheriff may terminate the program at any time.

18 R. A person who is sentenced pursuant to section 28-1383 shall not be
19 placed under home detention in a prisoner work, community restitution work
20 and home detention program.

21 Sec. 8. Section 12-2703, Arizona Revised Statutes, is amended to read:

22 12-2703. Scope of remedies; violation; classification

23 A. It is unlawful for any person to render for compensation any
24 service constituting the unauthorized practice of immigration and nationality
25 law or to otherwise violate this chapter.

26 B. A person having an interest or right that is or may be adversely
27 affected under this chapter may initiate an action for civil remedies. The
28 provisions of this article are in addition to all other causes of action,
29 remedies and penalties that are available in this state.

30 C. The attorney general shall initiate appropriate proceedings to
31 prevent or to stop violations of this chapter.

32 D. SECTION 13-703, SUBSECTION A AND SUBSECTION B, PARAGRAPH 1 DO NOT
33 APPLY FOR THE PURPOSE OF ENHANCING THE SENTENCE OF A PERSON WHO IS CONVICTED
34 OF TWO OR MORE OFFENSES UNDER THIS SECTION.

35 ~~D.~~ E. A person who violates this chapter is guilty of a class 6
36 felony.

37 ~~E.—The provisions of section 13-702.02 shall not apply to enhance the~~
38 ~~sentence of a person convicted of two or more offenses under this section.~~

39 Sec. 9. Section 13-105, Arizona Revised Statutes, is amended to read:

40 13-105. Definitions

41 In this title, unless the context otherwise requires:

42 1. "ABSCONDER" MEANS A PROBATIONER WHO HAS MOVED FROM THE
43 PROBATIONER'S PRIMARY PLACE OF RESIDENCE WITHOUT PERMISSION OF THE PROBATION
44 OFFICER, WHO CANNOT BE LOCATED WITHIN NINETY DAYS OF THE PREVIOUS CONTACT AND
45 AGAINST WHOM A PETITION TO REVOKE HAS BEEN FILED IN THE SUPERIOR COURT

1 ALLEGING THAT THE PROBATIONER'S WHEREABOUTS ARE UNKNOWN. A PROBATIONER IS NO
2 LONGER DEEMED TO BE AN ABSCONDER WHEN VOLUNTARILY OR INVOLUNTARILY RETURNED
3 TO PROBATION SERVICE.

4 ~~1-~~ 2. "Act" means a bodily movement.

5 ~~2-~~ 3. "Benefit" means anything of value or advantage, present or
6 prospective.

7 ~~3-~~ 4. "Calendar year" means three hundred sixty-five days' actual
8 time served without release, suspension or commutation of sentence,
9 probation, pardon or parole, work furlough or release from confinement on any
10 other basis.

11 ~~4-~~ 5. "Community supervision" means that portion of a felony sentence
12 THAT IS imposed by the court pursuant to section 13-603, subsection I and
13 THAT IS served in the community after completing a period of imprisonment or
14 served in prison in accordance with section 41-1604.07.

15 ~~5-~~ 6. "Conduct" means an act or omission and its accompanying
16 culpable mental state.

17 ~~6-~~ 7. "Crime" means a misdemeanor or a felony.

18 ~~7-~~ 8. "Criminal street gang" means an ongoing formal or informal
19 association of persons whose members or associates individually or
20 collectively engage in the commission, attempted commission, facilitation or
21 solicitation of any felony act and that has at least one individual who is a
22 criminal street gang member.

23 ~~8-~~ 9. "Criminal street gang member" means an individual to whom AT
24 LEAST two of the following seven criteria that indicate criminal street gang
25 membership apply:

26 (a) Self-proclamation.

27 (b) Witness testimony or official statement.

28 (c) Written or electronic correspondence.

29 (d) Paraphernalia or photographs.

30 (e) Tattoos.

31 (f) Clothing or colors.

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

33 ~~9-~~ 10. "Culpable mental state" means intentionally, knowingly,
34 recklessly or with criminal negligence as those terms are ~~thusly~~ defined:

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

38 (b) "Knowingly" means, with respect to conduct or to a circumstance
39 described by a statute defining an offense, that a person is aware or
40 believes that his or her conduct is of that nature or that the circumstance
41 exists. It does not require any knowledge of the unlawfulness of the act or
42 omission.

43 (c) "Recklessly" means, with respect to a result or to a circumstance
44 described by a statute defining an offense, that a person is aware of and
45 consciously disregards a substantial and unjustifiable risk that the result

1 will occur or that the circumstance exists. The risk must be of such nature
2 and degree that disregard of such risk constitutes a gross deviation from the
3 standard of conduct that a reasonable person would observe in the situation.
4 A person who creates such a risk but WHO is unaware of such risk solely by
5 reason of voluntary intoxication also acts recklessly with respect to such
6 risk.

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

13 ~~10.~~ 11. "Dangerous drug" means dangerous drug as defined by IN section
14 13-3401.

15 ~~11.~~ 12. "Dangerous instrument" means anything that under the
16 circumstances in which it is used, attempted to be used or threatened to be
17 used is readily capable of causing death or serious physical injury.

18 13. "DANGEROUS OFFENSE" MEANS A FELONY INVOLVING THE DISCHARGE, USE OR
19 THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR THE
20 INTENTIONAL OR KNOWING INFLICTION OF SERIOUS PHYSICAL INJURY ON ANOTHER.

21 ~~12.~~ 14. "Deadly physical force" means force which is used with the
22 purpose of causing death or serious physical injury or in the manner of its
23 use or intended use is capable of creating a substantial risk of causing
24 death or serious physical injury.

25 ~~13.~~ 15. "Deadly weapon" means anything designed for lethal use,
26 including a firearm.

27 ~~14.~~ 16. "Economic loss" means any loss incurred by a person as a
28 result of the commission of an offense. Economic loss includes lost
29 interest, lost earnings and other losses which would not have been incurred
30 but for the offense. Economic loss does not include losses incurred by the
31 convicted person, damages for pain and suffering, punitive damages or
32 consequential damages.

33 ~~15.~~ 17. "Enterprise" includes any corporation, association, labor
34 union or other legal entity.

35 ~~16.~~ 18. "Felony" means an offense for which a sentence to a term of
36 imprisonment in the custody of the state department of corrections is
37 authorized by any law of this state.

38 ~~17.~~ 19. "Firearm" means any loaded or unloaded handgun, pistol,
39 revolver, rifle, shotgun or other weapon which will or is designed to or may
40 readily be converted to expel a projectile by the action of expanding gases,
41 except that it does not include a firearm in permanently inoperable
42 condition.

43 ~~18.~~ 20. "Government" means the state, any political subdivision of the
44 state or any department, agency, board, commission, institution or
45 governmental instrumentality of or within the state or political subdivision.

1 ~~19-~~ 21. "Government function" means any activity which a public
2 servant is legally authorized to undertake on behalf of a government.

3 22. "HISTORICAL PRIOR FELONY CONVICTION" MEANS:

4 (a) ANY PRIOR FELONY CONVICTION FOR WHICH THE OFFENSE OF CONVICTION
5 EITHER:

6 (i) MANDATED A TERM OF IMPRISONMENT EXCEPT FOR A VIOLATION OF CHAPTER
7 34 OF THIS TITLE INVOLVING A DRUG BELOW THE THRESHOLD AMOUNT.

8 (ii) INVOLVED THE INTENTIONAL OR KNOWING INFLECTION OF SERIOUS
9 PHYSICAL INJURY.

10 (iii) INVOLVED THE USE OR EXHIBITION OF A DEADLY WEAPON OR DANGEROUS
11 INSTRUMENT.

12 (iv) INVOLVED THE ILLEGAL CONTROL OF A CRIMINAL ENTERPRISE.

13 (v) INVOLVED AGGRAVATED DRIVING UNDER THE INFLUENCE OF INTOXICATING
14 LIQUOR OR DRUGS, DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR
15 DRUGS WITH A SUSPENDED, CANCELED, REVOKED OR REFUSED DRIVER LICENSE OR
16 DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS WITH TWO OR MORE
17 DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUG CONVICTIONS WITHIN
18 A PERIOD OF EIGHTY-FOUR MONTHS.

19 (vi) INVOLVED ANY DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN
20 SECTION 13-604.01.

21 (b) ANY CLASS 2 OR 3 FELONY, EXCEPT THE OFFENSES LISTED IN SUBDIVISION
22 (a) OF THIS PARAGRAPH, THAT WAS COMMITTED WITHIN THE TEN YEARS IMMEDIATELY
23 PRECEDING THE DATE OF THE PRESENT OFFENSE. ANY TIME SPENT ON ABSCONDER
24 STATUS WHILE ON PROBATION OR INCARCERATED IS EXCLUDED IN CALCULATING IF THE
25 OFFENSE WAS COMMITTED WITHIN THE PRECEDING TEN YEARS. IF A COURT DETERMINES
26 A PERSON WAS NOT ON ABSCONDER STATUS WHILE ON PROBATION, THAT TIME IS NOT
27 EXCLUDED.

28 (c) ANY CLASS 4, 5 OR 6 FELONY, EXCEPT THE OFFENSES LISTED IN
29 SUBDIVISION (a) OF THIS PARAGRAPH, THAT WAS COMMITTED WITHIN THE FIVE YEARS
30 IMMEDIATELY PRECEDING THE DATE OF THE PRESENT OFFENSE. ANY TIME SPENT ON
31 ABSCONDER STATUS WHILE ON PROBATION OR INCARCERATED IS EXCLUDED IN
32 CALCULATING IF THE OFFENSE WAS COMMITTED WITHIN THE PRECEDING FIVE YEARS. IF
33 A COURT DETERMINES A PERSON WAS NOT ON ABSCONDER STATUS WHILE ON PROBATION,
34 THAT TIME IS NOT EXCLUDED.

35 (d) ANY FELONY CONVICTION THAT IS A THIRD OR MORE PRIOR FELONY
36 CONVICTION.

37 ~~20-~~ 23. "Intoxication" means any mental or physical incapacity
38 resulting from use of drugs, toxic vapors or intoxicating liquors.

39 ~~21-~~ 24. "Misdemeanor" means an offense for which a sentence to a term
40 of imprisonment other than to the custody of the state department of
41 corrections is authorized by any law of this state.

42 ~~22-~~ 25. "Narcotic drug" means narcotic drugs as defined ~~by~~ IN section
43 13-3401.

44 ~~23-~~ 26. "Offense" or "public offense" means conduct for which a
45 sentence to a term of imprisonment or of a fine is provided by any law of the

1 state in which it occurred or by any law, regulation or ordinance of a
2 political subdivision of that state and, if the act occurred in a state other
3 than this state, it would be so punishable under the laws, regulations or
4 ordinances of this state or of a political subdivision of this state if the
5 act had occurred in this state.

6 ~~24.~~ 27. "Omission" means the failure to perform an act as to which a
7 duty of performance is imposed by law.

8 ~~25.~~ 28. "Peace officer" means any person vested by law with a duty to
9 maintain public order and make arrests.

10 ~~26.~~ 29. "Person" means a human being and, as the context requires, an
11 enterprise, a public or private corporation, an unincorporated association, a
12 partnership, a firm, a society, a government, a governmental authority or an
13 individual or entity capable of holding a legal or beneficial interest in
14 property.

15 ~~27.~~ 30. "Petty offense" means an offense for which a sentence of a
16 fine only is authorized by law.

17 ~~28.~~ 31. "Physical force" means force used upon or directed toward the
18 body of another person and includes confinement, but does not include deadly
19 physical force.

20 ~~29.~~ 32. "Physical injury" means the impairment of physical condition.

21 ~~30.~~ 33. "Possess" means knowingly to have physical possession or
22 otherwise to exercise dominion or control over property.

23 ~~31.~~ 34. "Possession" means a voluntary act if the defendant knowingly
24 exercised dominion or control over property.

25 ~~32.~~ 35. "Property" means anything of value, tangible or intangible.

26 ~~33.~~ 36. "Public servant":

27 (a) Means any officer or employee of any branch of government, whether
28 elected, appointed or otherwise employed, including a peace officer, and any
29 person participating as an advisor or consultant or otherwise in performing a
30 governmental function.

31 (b) Does not include jurors or witnesses.

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

35 37. "SERIOUS OFFENSE" MEANS ANY OF THE FOLLOWING OFFENSES IF COMMITTED
36 IN THIS STATE OR ANY OFFENSE COMMITTED OUTSIDE THIS STATE WHICH IF COMMITTED
37 IN THIS STATE WOULD CONSTITUTE ONE OF THE FOLLOWING OFFENSES:

38 (a) FIRST DEGREE MURDER.

39 (b) SECOND DEGREE MURDER.

40 (c) MANSLAUGHTER.

41 (d) AGGRAVATED ASSAULT RESULTING IN SERIOUS PHYSICAL INJURY OR
42 INVOLVING THE DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR
43 DANGEROUS INSTRUMENT.

44 (e) SEXUAL ASSAULT.

45 (f) ANY DANGEROUS CRIME AGAINST CHILDREN.

1 (g) ARSON OF AN OCCUPIED STRUCTURE.

2 (h) ARMED ROBBERY.

3 (i) BURGLARY IN THE FIRST DEGREE.

4 (j) KIDNAPPING.

5 (k) SEXUAL CONDUCT WITH A MINOR UNDER FIFTEEN YEARS OF AGE.

6 ~~34-~~ 38. "Serious physical injury" includes physical injury which
7 creates a reasonable risk of death, or which causes serious and permanent
8 disfigurement, serious impairment of health or loss or protracted impairment
9 of the function of any bodily organ or limb.

10 ~~35-~~ 39. "Unlawful" means contrary to law or, where the context so
11 requires, not permitted by law.

12 ~~36-~~ 40. "Vehicle" means a device in, upon or by which any person or
13 property is, may be or could have been transported or drawn upon a highway,
14 waterway or airway, excepting devices moved by human power or used
15 exclusively upon stationary rails or tracks.

16 ~~37-~~ 41. "Voluntary act" means a bodily movement performed consciously
17 and as a result of effort and determination.

18 ~~38-~~ 42. "Voluntary intoxication" means intoxication caused by the
19 knowing use of drugs, toxic vapors or intoxicating liquors by a person, the
20 tendency of which to cause intoxication the person knows or ought to know,
21 unless the person introduces them pursuant to medical advice or under such
22 duress as would afford a defense to an offense.

23 Sec. 10. Section 13-107, Arizona Revised Statutes, is amended to read:

24 13-107. Time limitations

25 A. A prosecution for any homicide, any offense that is listed in
26 chapter 14 or 35.1 of this title and that is a class 2 felony, any violent
27 sexual assault pursuant to section 13-1423, any violation of section
28 13-2308.01, any misuse of public monies or a felony involving falsification
29 of public records or any attempt to commit an offense listed in this
30 subsection may be commenced at any time.

31 B. Except as otherwise provided in this section, prosecutions for
32 other offenses must be commenced within the following periods after actual
33 discovery by the state or the political subdivision having jurisdiction of
34 the offense or discovery by the state or the political subdivision that
35 should have occurred with the exercise of reasonable diligence, whichever
36 first occurs:

37 1. For a class 2 through a class 6 felony, seven years.

38 2. For a misdemeanor, one year.

39 3. For a petty offense, six months.

40 C. For the purposes of subsection B of this section, a prosecution is
41 commenced when an indictment, information or complaint is filed.

42 D. The period of limitation does not run during any time when the
43 accused is absent from the state or has no reasonably ascertainable place of
44 abode within the state.

1 E. The period of limitation does not run for a serious offense ~~as~~
2 ~~defined in section 13-604~~ during any time when the identity of the person who
3 commits the offense or offenses is unknown.

4 F. The time limitation within which a prosecution of a class 6 felony
5 shall commence shall be determined pursuant to subsection B, paragraph 1 of
6 this section, irrespective of whether a court enters a judgment of conviction
7 for or a prosecuting attorney designates the offense as a misdemeanor.

8 G. If a complaint, indictment or information filed before the period
9 of limitation has expired is dismissed for any reason, a new prosecution may
10 be commenced within six months after the dismissal becomes final even if the
11 period of limitation has expired at the time of the dismissal or will expire
12 within six months of the dismissal.

13 Sec. 11. Section 13-501, Arizona Revised Statutes, is amended to read:
14 13-501. Persons under eighteen years of age; felony charging;
15 definitions

16 A. The county attorney shall bring a criminal prosecution against a
17 juvenile in the same manner as an adult if the juvenile is fifteen, sixteen
18 or seventeen years of age and is accused of any of the following offenses:

- 19 1. First degree murder in violation of section 13-1105.
- 20 2. Second degree murder in violation of section 13-1104.
- 21 3. Forcible sexual assault in violation of section 13-1406.
- 22 4. Armed robbery in violation of section 13-1904.
- 23 5. Any other violent felony offense.
- 24 6. Any felony offense committed by a chronic felony offender.
- 25 7. Any offense that is properly joined to an offense listed in this

26 subsection.

27 B. Except as provided in subsection A of this section, the county
28 attorney may bring a criminal prosecution against a juvenile in the same
29 manner as an adult if the juvenile is at least fourteen years of age and is
30 accused of any of the following offenses:

- 31 1. A class 1 felony.
- 32 2. A class 2 felony.
- 33 3. A class 3 felony in violation of any offense in chapters 10 through
34 17 or chapter 19 or 23 of this title.
- 35 4. A class 3, 4, 5 or 6 felony involving ~~the intentional or knowing~~
36 ~~infliction of serious physical injury or the discharge, use or threatening~~
37 ~~exhibition of a deadly weapon or dangerous instrument~~ A DANGEROUS OFFENSE.

38 5. Any felony offense committed by a chronic felony offender.
39 6. Any offense that is properly joined to an offense listed in this
40 subsection.

41 C. A criminal prosecution shall be brought against a juvenile in the
42 same manner as an adult if the juvenile has been accused of a criminal
43 offense and has a historical prior felony conviction.

44 D. At the time the county attorney files a complaint or indictment the
45 county attorney shall file a notice stating that the juvenile is a chronic

1 felony offender. Subject to subsection E of this section, the notice shall
2 establish and confer jurisdiction over the juvenile as a chronic felony
3 offender.

4 E. Upon motion of the juvenile the court shall hold a hearing after
5 arraignment and before trial to determine if a juvenile is a chronic felony
6 offender. At the hearing the state shall prove by a preponderance of the
7 evidence that the juvenile is a chronic felony offender. If the court does
8 not find that the juvenile is a chronic felony offender, the court shall
9 transfer the juvenile to the juvenile court pursuant to section 8-302. If
10 the court finds that the juvenile is a chronic felony offender or if the
11 juvenile does not file a motion to determine if the juvenile is a chronic
12 felony offender, the criminal prosecution shall continue.

13 F. Except as provided in section 13-921, a person who is charged
14 pursuant to this section shall be sentenced in the criminal court in the same
15 manner as an adult for any offense for which the person is convicted.

16 G. For the purposes of this section:

17 1. "Accused" means a juvenile against whom a complaint, information or
18 indictment is filed.

19 2. "Chronic felony offender" means a juvenile who has had two prior
20 and separate adjudications and dispositions for conduct that would constitute
21 a historical prior felony conviction if the juvenile had been tried as an
22 adult.

23 3. "Forcible sexual assault" means sexual assault pursuant to section
24 13-1406 that is committed without consent as defined in section 13-1401,
25 paragraph ~~4~~ 5, subdivision (a).

26 ~~4. "Historical prior felony conviction" has the same meaning~~
27 ~~prescribed in section 13-604.~~

28 ~~5.~~ 4. "Other violent felony offense" means:

29 (a) Aggravated assault pursuant to section 13-1204, subsection A,
30 paragraph 1.

31 (b) Aggravated assault pursuant to section 13-1204, subsection A,
32 paragraph 2 involving the use of a deadly weapon.

33 (c) Drive by shooting pursuant to section 13-1209.

34 (d) Discharging a firearm at a structure pursuant to section 13-1211.

35 Sec. 12. Section 13-502, Arizona Revised Statutes, is amended to read:

36 13-502. ~~Insanity test; burden of proof; guilty except insane~~
37 verdict

38 A. A person may be found guilty except insane if at the time of the
39 commission of the criminal act the person was afflicted with a mental disease
40 or defect of such severity that the person did not know the criminal act was
41 wrong. A mental disease or defect constituting legal insanity is an
42 affirmative defense. Mental disease or defect does not include disorders
43 that result from acute voluntary intoxication or withdrawal from alcohol or
44 drugs, character defects, psychosexual disorders or impulse control
45 disorders. Conditions that do not constitute legal insanity include but are

1 not limited to momentary, temporary conditions arising from the pressure of
 2 the circumstances, moral decadence, depravity or passion growing out of
 3 anger, jealousy, revenge, hatred or other motives in a person who does not
 4 suffer from a mental disease or defect or an abnormality that is manifested
 5 only by criminal conduct.

6 B. In a case involving the death or serious physical injury of or the
 7 threat of death or serious physical injury to another person, if a plea of
 8 insanity is made and the court determines that a reasonable basis exists to
 9 support the plea, the court may commit the defendant to a secure state mental
 10 health facility under the department of health services, a secure county
 11 mental health evaluation and treatment facility or another secure licensed
 12 mental health facility for up to thirty days for mental health evaluation and
 13 treatment. Experts at the mental health facility who are licensed pursuant
 14 to title 32, who are familiar with this state's insanity statutes, who are
 15 specialists in mental diseases and defects and who are knowledgeable
 16 concerning insanity shall observe and evaluate the defendant. The expert or
 17 experts who examine the defendant shall submit a written report of the
 18 evaluation to the court, the defendant's attorney and the prosecutor. The
 19 court shall order the defendant to pay the costs of the mental health
 20 facility to the clerk of the court. The clerk of the court shall transmit
 21 the reimbursements to the mental health facility for all of its costs. If
 22 the court finds the defendant is indigent or otherwise is unable to pay all
 23 or any of the costs, the court shall order the county to reimburse the mental
 24 health facility for the remainder of the costs. Notwithstanding section
 25 36-545.02, the mental health facility may maintain the reimbursements. If
 26 the court does not commit the defendant to a secure state mental health
 27 facility, a secure county mental health evaluation and treatment facility or
 28 another secure licensed mental health facility, the court shall appoint an
 29 independent expert who is licensed pursuant to title 32, who is familiar with
 30 this state's insanity statutes, who is a specialist in mental diseases and
 31 defects and who is knowledgeable concerning insanity to observe and evaluate
 32 the defendant. The expert who examines the defendant shall submit a written
 33 report of the evaluation to the court, the defendant's attorney and the
 34 prosecutor. The court shall order the defendant to pay the costs of the
 35 services of the independent expert to the clerk of the court. The clerk of
 36 the court shall transmit the reimbursements to the expert. If the court
 37 finds the defendant is indigent or otherwise unable to pay all or any of the
 38 costs, the court shall order the county to reimburse the expert for the
 39 remainder of the costs. This subsection does not prohibit the defendant or
 40 this state from obtaining additional psychiatric examinations by other mental
 41 health experts who are licensed pursuant to title 32, who are familiar with
 42 this state's insanity statutes, who are specialists in mental diseases and
 43 defects and who are knowledgeable concerning insanity.

44 C. The defendant shall prove the defendant's legal insanity by clear
 45 and convincing evidence.

1 D. If the finder of fact finds the defendant guilty except insane, the
 2 court shall determine the sentence the defendant could have received pursuant
 3 to ~~section 13-703, subsection A or~~ section 13-707 or SECTION 13-751,
 4 SUBSECTION A OR the presumptive sentence the defendant could have received
 5 pursuant to section 13-604, SECTION 13-604.01, SECTION 13-701, subsection C,
 6 SECTION 13-703, SECTION 13-705, SUBSECTION A, section 13-710 or section
 7 13-1406 if the defendant had not been found insane, and the judge shall
 8 commit the defendant pursuant to section 13-3994 for that term. In making
 9 this determination the court shall not consider the sentence enhancements for
 10 prior convictions under section 13-604 OR 13-703. The court shall expressly
 11 identify each act that the defendant committed and separately find whether
 12 each act involved the death or physical injury of or a substantial threat of
 13 death or physical injury to another person.

14 E. A guilty except insane verdict is not a criminal conviction for
 15 sentencing enhancement purposes under section 13-604 OR 13-703.

16 Sec. 13. Section 13-604, Arizona Revised Statutes, is amended to read:
 17 13-604. Dangerous offenders; definitions

18 ~~A. Except as provided in subsection F, G or H of this section or~~
 19 ~~section 13-604.01, a person who is at least eighteen years of age or who has~~
 20 ~~been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,~~
 21 ~~whether a completed or preparatory offense, and who has a historical prior~~
 22 ~~felony conviction shall be sentenced to imprisonment as prescribed in this~~
 23 ~~subsection and shall not be eligible for suspension of sentence, probation,~~
 24 ~~pardon or release from confinement on any basis except as specifically~~
 25 ~~authorized by section 31-233, subsection A or B until the sentence imposed by~~
 26 ~~the court has been served, the person is eligible for release pursuant to~~
 27 ~~section 41-1604.07 or the sentence is commuted. The presumptive term may be~~
 28 ~~mitigated or aggravated within the range prescribed under this subsection~~
 29 ~~pursuant to the terms of section 13-702, subsections B, C and D. The terms~~
 30 ~~are as follows:~~

Felony	Minimum	Presumptive	Maximum
Class 4	3 years	4.5 years	6 years
Class 5	1.5 years	2.25 years	3 years
Class 6	1 year	1.75 years	2.25 years

35 ~~B. Except as provided in subsection I, J or K of this section or~~
 36 ~~section 13-604.01, a person who is at least eighteen years of age or who has~~
 37 ~~been tried as an adult and who stands convicted of a class 2 or 3 felony,~~
 38 ~~whether a completed or preparatory offense, and who has a historical prior~~
 39 ~~felony conviction shall be sentenced to imprisonment as prescribed in this~~
 40 ~~subsection and shall not be eligible for suspension of sentence, probation,~~
 41 ~~pardon or release from confinement on any basis except as specifically~~
 42 ~~authorized by section 31-233, subsection A or B until the sentence imposed by~~
 43 ~~the court has been served, the person is eligible for release pursuant to~~
 44 ~~section 41-1604.07 or the sentence is commuted. The presumptive term may be~~
 45 ~~mitigated or aggravated within the range prescribed under this subsection~~

1 ~~pursuant to the terms of section 13-702, subsections B, C and D. The terms~~
2 ~~are as follows:~~

Felony	Minimum	Presumptive	Maximum
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years

6 ~~C. Except as provided in subsection F, G, H or S of this section or~~
7 ~~section 13-604.01, a person who is at least eighteen years of age or who has~~
8 ~~been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,~~
9 ~~whether a completed or preparatory offense, and who has two or more~~
10 ~~historical prior felony convictions shall be sentenced to imprisonment as~~
11 ~~prescribed in this subsection and shall not be eligible for suspension of~~
12 ~~sentence, probation, pardon or release from confinement on any basis except~~
13 ~~as specifically authorized by section 31-233, subsection A or B until the~~
14 ~~sentence imposed by the court has been served, the person is eligible for~~
15 ~~release pursuant to section 41-1604.07 or the sentence is commuted. The~~
16 ~~presumptive term may be mitigated or aggravated within the range prescribed~~
17 ~~under this subsection pursuant to the terms of section 13-702, subsections B,~~
18 ~~C and D. The terms are as follows:~~

Felony	Minimum	Presumptive	Maximum
Class 4	8 years	10 years	12 years
Class 5	4 years	5 years	6 years
Class 6	3 years	3.75 years	4.5 years

23 ~~D. Except as provided in subsection I, J, K or S of this section or~~
24 ~~section 13-604.01, a person who is at least eighteen years of age or who has~~
25 ~~been tried as an adult and who stands convicted of a class 2 or 3 felony, and~~
26 ~~who has two or more historical prior felony convictions, shall be sentenced~~
27 ~~to imprisonment as prescribed in this subsection and shall not be eligible~~
28 ~~for suspension of sentence, probation, pardon or release from confinement on~~
29 ~~any basis except as specifically authorized by section 31-233, subsection A~~
30 ~~or B until the sentence imposed by the court has been served, the person is~~
31 ~~eligible for release pursuant to section 41-1604.07 or the sentence is~~
32 ~~commuted. The presumptive term may be mitigated or aggravated within the~~
33 ~~range prescribed under this subsection pursuant to the terms of section~~
34 ~~13-702, subsections B, C and D. The terms are as follows:~~

Felony	Minimum	Presumptive	Maximum
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

38 ~~E. A person who is at least eighteen years of age or who has been~~
39 ~~tried as an adult and who stands convicted of any misdemeanor or petty~~
40 ~~offense, other than a traffic offense, and who has been convicted of one or~~
41 ~~more of the same misdemeanors or petty offenses within two years next~~
42 ~~preceding the date of the present offense shall be sentenced for the next~~
43 ~~higher class of offense than that for which such person currently stands~~
44 ~~convicted.~~

1 ~~F.~~ A. Except as provided in section 13-604.01, a person who is ~~at~~
 2 ~~least eighteen years of age or who has been tried as an adult, and who stands~~
 3 convicted of a **FIRST OFFENSE INVOLVING A** class 4, 5 or 6 felony ~~involving the~~
 4 ~~intentional or knowing infliction of serious physical injury or the~~
 5 ~~discharge, use or threatening exhibition of a deadly weapon or dangerous~~
 6 ~~instrument without having previously been convicted of any felony THAT IS~~
 7 **FOUND TO BE A DANGEROUS OFFENSE** shall be sentenced to **A TERM OF** imprisonment
 8 ~~as prescribed in this subsection and shall not be eligible for suspension of~~
 9 ~~sentence, probation, pardon or release from confinement on any basis except~~
 10 ~~as specifically authorized by section 31-233, subsection A or B until the~~
 11 ~~sentence imposed by the court has been served, the person is eligible for~~
 12 ~~release pursuant to section 41-1604.07 or the sentence is commuted. The~~
 13 ~~presumptive term may be mitigated or aggravated within the range prescribed~~
 14 ~~under this subsection pursuant to the terms of section 13-702, subsections B,~~
 15 ~~C and D. The terms are as follows:~~

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	4 years	6 years	8 years
Class 5	2 years	3 years	4 years
Class 6	1.5 years	2.25 years	3 years

20 ~~G.~~ B. Except as provided in section 13-604.01, ~~upon conviction A~~
 21 **PERSON WHO IS CONVICTED** of a class 4, 5 or 6 felony ~~involving the intentional~~
 22 ~~or knowing infliction of serious physical injury or the discharge, use or~~
 23 ~~threatening exhibition of a deadly weapon or dangerous instrument a person~~
 24 **THAT IS FOUND TO BE A DANGEROUS OFFENSE AND** who has a historical prior felony
 25 conviction involving ~~the intentional or knowing infliction of serious~~
 26 ~~physical injury or the use or exhibition of a deadly weapon or dangerous~~
 27 ~~instrument A DANGEROUS OFFENSE~~ shall be sentenced to **A TERM OF** imprisonment
 28 ~~as prescribed in this subsection and shall not be eligible for suspension of~~
 29 ~~sentence, probation, pardon or release from confinement on any basis except~~
 30 ~~as specifically authorized by section 31-233, subsection A or B until the~~
 31 ~~sentence imposed by the court has been served, the person is eligible for~~
 32 ~~release pursuant to section 41-1604.07 or the sentence is commuted. The~~
 33 ~~presumptive term may be mitigated or aggravated within the range prescribed~~
 34 ~~under this subsection pursuant to the terms of section 13-702, subsections B,~~
 35 ~~C and D. The terms are as follows:~~

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

40 ~~H.~~ C. Except as provided in ~~subsection S of this section or~~ section
 41 13-604.01, ~~upon conviction OR 13-704, A PERSON WHO IS CONVICTED~~ of a class 4,
 42 5 or 6 felony ~~involving the intentional or knowing infliction of serious~~
 43 ~~physical injury or the discharge, use or threatening exhibition of a deadly~~
 44 ~~weapon or dangerous instrument a person THAT IS FOUND TO BE A DANGEROUS~~
 45 **OFFENSE AND** who has two or more historical prior felony convictions involving

1 ~~the intentional or knowing infliction of serious physical injury or the use~~
 2 ~~or exhibition of a deadly weapon or dangerous instrument~~ DANGEROUS OFFENSES
 3 shall be sentenced to A TERM OF imprisonment as prescribed in this subsection
 4 and shall not be eligible for suspension of sentence, probation, pardon or
 5 release from confinement on any basis except as specifically authorized by
 6 section 31-233, subsection A or B until the sentence imposed by the court has
 7 been served, the person is eligible for release pursuant to section
 8 41-1604.07 or the sentence is commuted. The presumptive term may be
 9 mitigated or aggravated within the range prescribed under this subsection
 10 pursuant to the terms of section 13-702, subsections B, C and D. The terms
 11 are as follows:

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

16 ~~I.~~ D. Except as provided in section 13-604.01, ~~upon a first~~
 17 ~~conviction~~ A PERSON WHO IS CONVICTED of a FIRST OFFENSE INVOLVING A class 2
 18 or 3 felony ~~involving discharge, use or threatening exhibition of a deadly~~
 19 ~~weapon or dangerous instrument or upon conviction of a class 2 or 3 felony~~
 20 ~~when the intentional or knowing infliction of serious physical injury upon~~
 21 ~~another has occurred, the defendant~~ THAT IS FOUND TO BE A DANGEROUS OFFENSE
 22 shall be sentenced to A TERM OF imprisonment as prescribed in this subsection
 23 and shall not be eligible for suspension of sentence, probation, pardon or
 24 release from confinement on any basis except as specifically authorized by
 25 section 31-233, subsection A or B until the sentence imposed by the court has
 26 been served, the person is eligible for release pursuant to section
 27 41-1604.07 or the sentence is commuted. The presumptive term may be
 28 mitigated or aggravated within the range prescribed under this subsection
 29 pursuant to the terms of section 13-702, subsections B, C and D. The terms
 30 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	7 years	10.5 years	21 years
Class 3	5 years	7.5 years	15 years

34 ~~J.~~ E. Except as provided in section 13-604.01, ~~upon conviction~~ A
 35 PERSON WHO IS CONVICTED of a class 2 or 3 felony ~~involving the discharge, use~~
 36 ~~or threatening exhibition of a deadly weapon or dangerous instrument or the~~
 37 ~~intentional or knowing infliction of serious physical injury upon another, a~~
 38 ~~person~~ THAT IS FOUND TO BE A DANGEROUS OFFENSE AND who has a historical prior
 39 felony conviction that is a class 1, 2 or 3 felony involving ~~the use or~~
 40 ~~exhibition of a deadly weapon or dangerous instrument or the intentional or~~
 41 ~~knowing infliction of serious physical injury on another~~ A DANGEROUS OFFENSE
 42 shall be sentenced to A TERM OF imprisonment as prescribed in this subsection
 43 and shall not be eligible for suspension of sentence, probation, pardon or
 44 release from confinement on any basis except as specifically authorized by
 45 section 31-233, subsection A or B until the sentence imposed by the court has

1 ~~been served, the person is eligible for release pursuant to section~~
2 ~~41-1604.07 or the sentence is commuted. The presumptive term may be~~
3 ~~mitigated or aggravated within the range prescribed under this subsection~~
4 ~~pursuant to the terms of section 13-702, subsections B, C and D. The terms~~
5 ~~are~~ as follows:

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

9 ~~K. F. Except as provided in subsection S of this section or section~~
10 ~~13-604.01, upon conviction for OR SECTION 13-704, A PERSON WHO IS CONVICTED~~
11 ~~OF a class 2 or 3 felony involving the discharge, use or threatening~~
12 ~~exhibition of a deadly weapon or dangerous instrument or the intentional or~~
13 ~~knowing infliction of serious physical injury upon another, a person THAT IS~~
14 ~~FOUND TO BE A DANGEROUS OFFENSE AND~~ who has two or more historical prior
15 felony convictions that are class 1, 2 or 3 felonies involving ~~the use or~~
16 ~~exhibition of a deadly weapon or dangerous instrument or the intentional or~~
17 ~~knowing infliction of serious physical injury on another DANGEROUS OFFENSES~~
18 shall be sentenced to A TERM OF imprisonment as prescribed in this subsection
19 ~~and shall not be eligible for suspension of sentence, probation, pardon or~~
20 ~~release from confinement on any basis except as specifically authorized by~~
21 ~~section 31-233, subsection A or B until the sentence imposed by the court has~~
22 ~~been served, the person is eligible for release pursuant to section~~
23 ~~41-1604.07 or the sentence is commuted. The presumptive term may be~~
24 ~~mitigated or aggravated within the range prescribed under this subsection~~
25 ~~pursuant to the terms of section 13-702, subsections B, C and D. The terms~~
26 ~~are~~ as follows:

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

30 G. A PERSON WHO IS CONVICTED OF TWO OR MORE FELONY OFFENSES THAT ARE
31 FOUND TO BE DANGEROUS OFFENSES AND THAT WERE NOT COMMITTED ON THE SAME
32 OCCASION BUT THAT EITHER ARE CONSOLIDATED FOR TRIAL PURPOSES OR ARE NOT
33 HISTORICAL PRIOR FELONY CONVICTIONS SHALL BE SENTENCED, FOR THE SECOND OR
34 SUBSEQUENT OFFENSE, PURSUANT TO THIS SUBSECTION. THE PRESUMPTIVE TERM FOR
35 PARAGRAPHS 1 AND 2 OF THIS SUBSECTION MAY BE AGGRAVATED WITHIN THE RANGE
36 UNDER THIS SECTION PURSUANT TO SECTION 13-702, SUBSECTIONS B, C AND D. THE
37 TERMS ARE AS FOLLOWS:

38 1. FOR THE SECOND DANGEROUS FELONY OFFENSE:

<u>FELONY</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
CLASS 2	10.5 YEARS	21 YEARS
CLASS 3	7.5 YEARS	15 YEARS
CLASS 4	6 YEARS	8 YEARS
CLASS 5	3 YEARS	4 YEARS
CLASS 6	2.25 YEARS	3 YEARS

2. FOR ANY DANGEROUS FELONY OFFENSE SUBSEQUENT TO THE SECOND DANGEROUS FELONY OFFENSE:

<u>FELONY</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
CLASS 2	15.75 YEARS	28 YEARS
CLASS 3	11.25 YEARS	20 YEARS
CLASS 4	10 YEARS	12 YEARS
CLASS 5	5 YEARS	6 YEARS
CLASS 6	3.75 YEARS	4.5 YEARS

H. A PERSON WHO IS SENTENCED PURSUANT TO SUBSECTION A, B, C, D, E, F OR G OF THIS SECTION IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B, UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED. THE PRESUMPTIVE TERM MAY BE MITIGATED OR AGGRAVATED PURSUANT TO THE TERMS OF SECTION 13-702, SUBSECTIONS B, C AND D.

~~I.~~ I. For the purposes of subsections ~~I, J and K~~ D, E AND F of this section in determining the applicability of the penalties provided in this section for second or subsequent class 2 or 3 felonies, the conviction for any felony committed ~~prior to~~ BEFORE October 1, 1978 which, if committed after October 1, 1978, could be a dangerous ~~felony~~ OFFENSE under this section may be designated by the state as a prior felony.

~~M.~~ J. Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for purposes of this section.

~~N.~~ K. A person who has been convicted in any court outside the jurisdiction of this state of an offense ~~which~~ THAT if committed within this state would be punishable as a felony ~~or misdemeanor~~ is subject to ~~the provisions of~~ this section. A person who has been convicted as an adult of an offense punishable as a felony ~~or a misdemeanor~~ under the provisions of any prior code in this state ~~shall be~~ IS subject to ~~the provisions of~~ this section.

~~O.~~ ~~Time spent incarcerated within the two years next preceding the date of the offense for which a person is currently being sentenced under subsection E of this section shall not be included in the two years required to be free of convictions for purposes of that subsection.~~

~~P.~~ L. The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if the previous conviction or the allegation that the defendant committed a felony while released on bond or on the defendant's own recognizance or while escaped from preconviction custody as provided in ~~subsection R of this~~ section 13-604.02, SUBSECTION D is charged in the indictment or information and admitted or found by the court or if the dangerous nature of the felony is charged in the indictment or information and admitted or found by the trier of fact. The release provisions prescribed by this section shall not be substituted for any

1 penalties required by the substantive offense or provision of law that
2 specifies a later release or completion of the sentence imposed prior to
3 release. The court shall allow the allegation of a prior conviction, the
4 dangerous ~~nature of the felony~~ OFFENSE or the allegation that the defendant
5 committed a felony while released on bond or on the defendant's own
6 recognizance or while escaped from preconviction custody at any time ~~prior to~~
7 BEFORE the date the case is actually tried unless the allegation is filed
8 fewer than twenty days before the case is actually tried and the court finds
9 on the record that the defendant was in fact prejudiced by the untimely
10 filing and states the reasons for these findings. ~~, provided that when~~ IF the
11 allegation of a prior conviction is filed, the state must make available to
12 the defendant a copy of any material or information obtained concerning the
13 prior conviction. The charge of previous conviction or the allegation that
14 the defendant committed a felony while released on bond or on the defendant's
15 own recognizance or while escaped from preconviction custody shall not be
16 read to the jury. ~~For the purposes of this subsection, "dangerous nature of~~
17 ~~the felony" means a felony involving the discharge, use or threatening~~
18 ~~exhibition of a deadly weapon or dangerous instrument or the intentional or~~
19 ~~knowing infliction of serious physical injury upon another.~~

20 ~~Q.~~ M. Intentional failure by the court to impose the mandatory
21 sentences or probation conditions provided in this title shall be deemed to
22 be malfeasance.

23 ~~R.~~ A person who is convicted of committing any felony offense, which
24 ~~felony offense is committed while the person is released on bail or on the~~
25 ~~defendant's own recognizance on a separate felony offense or while the person~~
26 ~~is escaped from preconviction custody for a separate felony offense, shall be~~
27 ~~sentenced to a term of imprisonment two years longer than would otherwise be~~
28 ~~imposed for the felony offense committed while released on bond or on the~~
29 ~~defendant's own recognizance or while escaped from preconviction custody.~~
30 ~~The additional sentence imposed under this subsection is in addition to any~~
31 ~~enhanced punishment that may be applicable under any of the other subsections~~
32 ~~of this section. The defendant is not eligible for suspension of sentence,~~
33 ~~probation, pardon or release from confinement on any basis, except as~~
34 ~~specifically authorized by section 31-233, subsection A or B, until the two~~
35 ~~years are served, the person is eligible for release pursuant to section~~
36 ~~41-1604.07 or the sentence is commuted.~~

37 ~~S.~~ A person who is at least eighteen years of age or who has been
38 ~~tried as an adult and who stands convicted of a serious offense except a drug~~
39 ~~offense, first degree murder or any dangerous crime against children, whether~~
40 ~~a completed or preparatory offense, and who has previously been convicted of~~
41 ~~two or more serious offenses not committed on the same occasion shall be~~
42 ~~sentenced to life imprisonment and is not eligible for suspension of~~
43 ~~sentence, probation, pardon or release from confinement on any basis except~~
44 ~~as specifically authorized by section 31-233, subsection A or B until the~~

1 ~~person has served not less than twenty five years or the sentence is~~
2 ~~commuted.~~

3 ~~T. A person who is convicted of committing any felony offense with the~~
4 ~~intent to promote, further or assist any criminal conduct by a criminal~~
5 ~~street gang shall not be eligible for suspension of sentence, probation,~~
6 ~~pardon or release from confinement on any basis except as authorized by~~
7 ~~section 31-233, subsection A or B until the sentence imposed by the court has~~
8 ~~been served, the person is eligible for release pursuant to section~~
9 ~~41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum~~
10 ~~sentence for the offense shall be increased by three years. The additional~~
11 ~~sentence imposed pursuant to this subsection is in addition to any enhanced~~
12 ~~sentence that may be applicable.~~

13 ~~U. A person who is convicted of intentionally or knowingly committing~~
14 ~~aggravated assault on a peace officer while the officer is engaged in the~~
15 ~~execution of any official duties pursuant to section 13-1204, subsection A,~~
16 ~~paragraph 1 or 2 shall be sentenced to imprisonment for not less than the~~
17 ~~presumptive sentence authorized under this chapter and is not eligible for~~
18 ~~suspension of sentence, commutation or release on any basis until the~~
19 ~~sentence imposed is served.~~

20 ~~V. N.~~ Except as provided in section 13-604.01 or ~~13-703~~ 13-751, if
21 the victim is an unborn child in the womb at any stage of its development,
22 the defendant shall be sentenced pursuant to this section.

23 ~~W. O.~~ For the purposes of this section:

24 ~~1. "Absconder" means a probationer who has moved from the~~
25 ~~probationer's primary place of residence without permission of the probation~~
26 ~~officer, who cannot be located within ninety days of the previous contact and~~
27 ~~against whom a petition to revoke has been filed in the superior court~~
28 ~~alleging that the probationer's whereabouts are unknown. A probationer is no~~
29 ~~longer deemed to be an absconder when voluntarily or involuntarily returned~~
30 ~~to probation service.~~

31 ~~2. "Historical prior felony conviction" means:~~

32 ~~(a) Any prior felony conviction for which the offense of conviction:~~

33 ~~(i) Mandated a term of imprisonment except for a violation of chapter~~
34 ~~34 of this title involving a drug below the threshold amount; or~~

35 ~~(ii) Involved the intentional or knowing infliction of serious~~
36 ~~physical injury; or~~

37 ~~(iii) Involved the use or exhibition of a deadly weapon or dangerous~~
38 ~~instrument; or~~

39 ~~(iv) Involved the illegal control of a criminal enterprise; or~~

40 ~~(v) Involved aggravated driving under the influence of intoxicating~~
41 ~~liquor or drugs, driving while under the influence of intoxicating liquor or~~
42 ~~drugs with a suspended, canceled, revoked or refused driver license or~~
43 ~~driving under the influence of intoxicating liquor or drugs with two or more~~
44 ~~driving under the influence of intoxicating liquor or drug convictions within~~
45 ~~a period of sixty months; or~~

1 ~~(vi) Involved any dangerous crime against children as defined in~~
2 ~~section 13-604.01.~~

3 ~~(b) Any class 2 or 3 felony, except the offenses listed in subdivision~~
4 ~~(a) of this paragraph, that was committed within the ten years immediately~~
5 ~~preceding the date of the present offense. Any time spent on absconder~~
6 ~~status while on probation or incarcerated is excluded in calculating if the~~
7 ~~offense was committed within the preceding ten years. If a court determines~~
8 ~~a person was not on absconder status while on probation that time is not~~
9 ~~excluded.~~

10 ~~(c) Any class 4, 5 or 6 felony, except the offenses listed in~~
11 ~~subdivision (a) of this paragraph, that was committed within the five years~~
12 ~~immediately preceding the date of the present offense. Any time spent on~~
13 ~~absconder status while on probation or incarcerated is excluded in~~
14 ~~calculating if the offense was committed within the preceding five years. If~~
15 ~~a court determines a person was not on absconder status while on probation~~
16 ~~that time is not excluded.~~

17 ~~(d) Any felony conviction that is a third or more prior felony~~
18 ~~conviction.~~

19 ~~3.~~ 1. "Preconviction custody" means the confinement of a person in a
20 jail in this state or another state after the person is arrested for or
21 charged with a felony offense.

22 ~~4. "Serious offense" means any of the following offenses if committed~~
23 ~~in this state or any offense committed outside this state which if committed~~
24 ~~in this state would constitute one of the following offenses:~~

25 ~~(a) First degree murder.~~

26 ~~(b) Second degree murder.~~

27 ~~(c) Manslaughter.~~

28 ~~(d) Aggravated assault resulting in serious physical injury or~~
29 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~
30 ~~dangerous instrument.~~

31 ~~(e) Sexual assault.~~

32 ~~(f) Any dangerous crime against children.~~

33 ~~(g) Arson of an occupied structure.~~

34 ~~(h) Armed robbery.~~

35 ~~(i) Burglary in the first degree.~~

36 ~~(j) Kidnapping.~~

37 ~~(k) Sexual conduct with a minor under fifteen years of age.~~

38 ~~5.~~ 2. "Substantive offense" means the felony, misdemeanor or petty
39 offense that the trier of fact found beyond a reasonable doubt the defendant
40 committed. Substantive offense does not include allegations that, if proven,
41 would enhance the sentence of imprisonment or fine to which the defendant
42 otherwise would be subject.

1 Sec. 14. Section 13-604.01, Arizona Revised Statutes, is amended to
2 read:

3 13-604.01. Dangerous crimes against children; sentences;
4 definitions

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

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

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

1 D. Except as otherwise provided in this section, a person who is at
2 least eighteen years of age or who has been tried as an adult and who ~~stands~~
3 ~~IS~~ convicted of a dangerous crime against children in the first degree
4 involving aggravated assault, molestation of a child, commercial sexual
5 exploitation of a minor, sexual exploitation of a minor, child abuse or
6 kidnapping shall be sentenced to a presumptive term of imprisonment for
7 seventeen years. If the convicted person has been previously convicted of
8 one predicate felony the person shall be sentenced to a presumptive term of
9 imprisonment for twenty-eight years.

10 E. Except as otherwise provided in this section, a person who is at
11 least eighteen years of age or who has been tried as an adult and who ~~stands~~
12 ~~IS~~ convicted of a dangerous crime against children involving sexual abuse
13 under section 13-1404 or bestiality under section 13-1411, subsection A,
14 paragraph 2 is guilty of a class 3 felony. ~~and~~ ~~IF THE PERSON IS SENTENCED TO~~
15 ~~A TERM OF IMPRISONMENT, THE PERSON~~ shall be sentenced to a presumptive term
16 of imprisonment for five years, and, unless the person has previously been
17 convicted of a predicate felony, the presumptive term may be increased or
18 decreased by up to two and one-half years pursuant to section 13-702,
19 subsections B, C and D. ~~If the person is sentenced to a term of imprisonment~~
20 The person is not eligible for release from confinement on any basis, except
21 as specifically authorized by section 31-233, subsection A or B, until the
22 sentence imposed by the court has been served, the person is eligible for
23 release pursuant to section 41-1604.07 or the sentence is commuted. If the
24 convicted person has been previously convicted of one predicate felony the
25 person shall be sentenced to a presumptive term of imprisonment for fifteen
26 years and is not eligible for suspension of sentence, probation, pardon or
27 release from confinement on any basis, except as specifically authorized by
28 section 31-233, subsection A or B, until the sentence imposed by the court
29 has been served, the person is eligible for release pursuant to section
30 41-1604.07 or the sentence is commuted.

31 F. The presumptive sentences prescribed in subsections B, C and D of
32 this section or subsection E of this section if the person has previously
33 been convicted of a predicate felony may be increased or decreased by up to
34 seven years pursuant to ~~the provisions of~~ section 13-702, subsections B, C
35 and D.

36 G. Except as provided in subsection E of this section, a person ~~WHO IS~~
37 sentenced for a dangerous crime against children in the first degree pursuant
38 to this section is not eligible for suspension of sentence, probation, pardon
39 or release from confinement on any basis, except as specifically authorized
40 by section 31-233, subsection A or B, until the sentence imposed by the court
41 has been served or commuted.

42 H. A person who ~~stands~~ ~~IS~~ convicted of any dangerous crime against
43 children in the first degree pursuant to subsection C or D of this section
44 and who has been previously convicted of two or more predicate felonies shall
45 be sentenced to life imprisonment and is not eligible for suspension of

1 sentence, probation, pardon or release from confinement on any basis, except
2 as specifically authorized by section 31-233, subsection A or B, until the
3 person has served ~~not fewer than~~ AT LEAST thirty-five years or the sentence
4 is commuted.

5 I. Notwithstanding chapter 10 of this title, a person who is at least
6 eighteen years of age or who has been tried as an adult and who ~~stands IS~~
7 convicted of a dangerous crime against children in the second degree pursuant
8 to subsection C or D of this section or luring a minor for sexual
9 exploitation pursuant to section 13-3554 is guilty of a class 3 felony. ~~and~~
10 IF THE PERSON IS SENTENCED TO A TERM OF IMPRISONMENT, THE PERSON shall be
11 sentenced to a presumptive term of imprisonment for ten years. The
12 presumptive term may be increased or decreased by up to five years pursuant
13 to section 13-702, subsections B, C and D. ~~If the person is sentenced to a~~
14 ~~term of imprisonment~~ The person is not eligible for release from confinement
15 on any basis, except as specifically authorized by section 31-233, subsection
16 A or B, until the person has served the sentence imposed by the court, the
17 person is eligible for release pursuant to section 41-1604.07 or the sentence
18 is commuted. A person who is convicted of any dangerous crime against
19 children in the second degree and who has been previously convicted of one or
20 more predicate felonies is not eligible for suspension of sentence,
21 probation, pardon or release from confinement on any basis, except as
22 specifically authorized by section 31-233, subsection A or B, until the
23 sentence imposed by the court has been served, the person is eligible for
24 release pursuant to section 41-1604.07 or the sentence is commuted.

25 J. Section 13-604, ~~subsections M and O~~ SUBSECTION J AND SECTION 13-707
26 apply to the determination of prior convictions.

27 K. The sentence imposed on a person by the court for a dangerous crime
28 against children under subsection D of this section ~~and that involves~~
29 INVOLVING child molestation or sexual abuse pursuant to subsection E of this
30 section may be served concurrently with other sentences if the offense
31 involved only one victim. The sentence imposed on a person for any other
32 dangerous crime against children in the first or second degree shall be
33 consecutive to any other sentence imposed on the person at any time,
34 including child molestation and sexual abuse of the same victim.

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

37 M. For the purposes of this section:

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

40 (a) Second degree murder.

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

44 (c) Sexual assault.

45 (d) Molestation of a child.

- 1 (e) Sexual conduct with a minor.
- 2 (f) Commercial sexual exploitation of a minor.
- 3 (g) Sexual exploitation of a minor.
- 4 (h) Child abuse as prescribed in section 13-3623, subsection A,
- 5 paragraph 1.
- 6 (i) Kidnapping.
- 7 (j) Sexual abuse.
- 8 (k) Taking a child for the purpose of prostitution as prescribed in
- 9 section 13-3206.
- 10 (l) Child prostitution as prescribed in section 13-3212.
- 11 (m) Involving or using minors in drug offenses.
- 12 (n) Continuous sexual abuse of a child.
- 13 (o) Attempted first degree murder.
- 14 (p) Sex trafficking.
- 15 (q) Manufacturing methamphetamine under circumstances that cause
- 16 physical injury to a minor.
- 17 (r) Bestiality as prescribed in section 13-1411, subsection A,
- 18 paragraph 2.

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

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

29 Sec. 15. Section 13-604.02, Arizona Revised Statutes, is amended to
30 read:

31 13-604.02. Offenses committed while on release

32 A. ~~Notwithstanding any law to the contrary,~~ A person WHO IS convicted
33 of ~~any felony~~ A DANGEROUS offense ~~involving the discharge, use or threatening~~
34 ~~exhibition of a deadly weapon or dangerous instrument or the intentional or~~
35 ~~knowing infliction on another of serious physical injury if~~ THAT IS committed
36 while the person is on probation, ~~for a conviction of a felony offense or~~
37 parole, work furlough, community supervision or any other release or escape
38 from confinement for conviction of a felony offense shall be sentenced to
39 imprisonment for not less than the presumptive sentence authorized under this
40 chapter and is not eligible for suspension or commutation or release on any
41 basis until the sentence imposed is served.

42 B. ~~If the~~ A person ~~committed the~~ WHO IS CONVICTED OF A DANGEROUS
43 offense THAT IS COMMITTED while THE PERSON IS on release or ~~escape~~ HAS
44 ESCAPED from confinement for a conviction of a DANGEROUS OFFENSE OR A serious
45 offense ~~as defined in section 13-604, an offense resulting in serious~~

1 ~~physical injury or an offense involving the use or exhibition of a deadly~~
2 ~~weapon or dangerous instrument, the person~~ shall be sentenced to the maximum
3 sentence authorized under this chapter and is not eligible for suspension or
4 commutation or release on any basis until the sentence imposed is served. If
5 the court finds that at least two substantial aggravating circumstances
6 listed in section 13-702, subsection C apply, the court may increase the
7 maximum sentence authorized under this chapter by up to twenty-five per cent.
8 A sentence imposed pursuant to this subsection shall revoke the convicted
9 person's release if the person was on release and shall be consecutive to any
10 other sentence from which the convicted person had been temporarily released
11 or had escaped, unless the sentence from which the convicted person had been
12 paroled or placed on probation was imposed by a jurisdiction other than this
13 state.

14 ~~B. C. Notwithstanding any law to the contrary,~~ A person WHO IS
15 convicted of any felony offense THAT IS not included in subsection A OR B of
16 this section ~~if~~ AND THAT IS committed while the person is on probation, ~~for a~~
17 ~~conviction of a felony offense or~~ parole, work furlough, community
18 supervision or any other release or escape from confinement for conviction of
19 a felony offense shall be sentenced to a term of not less than the
20 presumptive sentence authorized for the offense and the person is not
21 eligible for suspension of sentence, probation, pardon or release from
22 confinement on any basis, except as specifically authorized by section
23 31-233, subsection A or B, until the sentence imposed by the court has been
24 served, the person is eligible for release pursuant to section 41-1604.07 or
25 the sentence is commuted. The release provisions prescribed by this section
26 shall not be substituted for any penalties required by the substantive
27 offense or provision of law that specifies a later release or completion of
28 the sentence imposed ~~prior to~~ BEFORE release. A sentence imposed pursuant to
29 this subsection shall revoke the convicted person's release if the person was
30 on release and shall be consecutive to any other sentence from which the
31 convicted person had been temporarily released or had escaped, unless the
32 sentence from which the convicted person had been paroled or placed on
33 probation was imposed by a jurisdiction other than this state. For THE
34 purposes of this subsection, "substantive offense" means the felony,
35 misdemeanor or petty offense that the trier of fact found beyond a reasonable
36 doubt the defendant committed. Substantive offense does not include
37 allegations that, if proven, would enhance the sentence of imprisonment or
38 fine to which the defendant would otherwise be subject.

39 D. A PERSON WHO IS CONVICTED OF COMMITTING ANY FELONY OFFENSE THAT IS
40 COMMITTED WHILE THE PERSON IS RELEASED ON BOND OR ON THE DEFENDANT'S OWN
41 RECOGNIZANCE ON A SEPARATE FELONY OFFENSE OR WHILE THE PERSON IS ESCAPED FROM
42 PRECONVICTION CUSTODY FOR A SEPARATE FELONY OFFENSE SHALL BE SENTENCED TO A
43 TERM OF IMPRISONMENT TWO YEARS LONGER THAN WOULD OTHERWISE BE IMPOSED FOR THE
44 FELONY OFFENSE COMMITTED WHILE ON RELEASE. THE ADDITIONAL SENTENCE IMPOSED
45 UNDER THIS SUBSECTION IS IN ADDITION TO ANY ENHANCED PUNISHMENT THAT MAY BE

1 APPLICABLE UNDER SECTION 13-604, SECTION 13-703, SECTION 13-704, SUBSECTION A
2 OR SECTION 13-705, SUBSECTION A OR B. THE DEFENDANT IS NOT ELIGIBLE FOR
3 SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY
4 BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR
5 B, UNTIL THE TWO YEARS ARE SERVED, THE PERSON IS ELIGIBLE FOR RELEASE
6 PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED.

7 Sec. 16. Repeal

8 Section 13-604.03, Arizona Revised Statutes, is repealed.

9 Sec. 17. Transfer and renumber

10 Section 13-604.04, Arizona Revised Statutes, is transferred and
11 renumbered for placement in title 13, chapter 9, Arizona Revised Statutes, as
12 section 13-901.03.

13 Sec. 18. Section 13-609, Arizona Revised Statutes, is amended to read:

14 13-609. Offenses committed in school safety zone; sentences;
15 definitions

16 A. Except as otherwise prescribed in section 13-3411, a person who is
17 convicted of a felony offense that is committed in a school safety zone is
18 guilty of the same class of felony that the person would otherwise be guilty
19 of if the violation had not occurred within a school safety zone, except that
20 the court may impose a sentence that is one year longer than the minimum,
21 maximum and presumptive sentence for that violation. The additional sentence
22 imposed under this subsection is in addition to any other enhanced punishment
23 that may be applicable under section 13-604, SECTION 13-703, SECTION 13-704
24 OR SECTION 13-705, SUBSECTION A or ~~other provisions of~~ chapter 34 of this
25 title.

26 B. In addition to any other penalty prescribed by this title, the
27 court may order a person subject to ~~the provisions of~~ subsection A of this
28 section to pay a fine of not less than two thousand dollars and not more than
29 the maximum authorized by chapter 8 of this title.

30 C. Each school district governing board or its designee, or chief
31 administrative officer in the case of a nonpublic or charter school, may
32 place and maintain permanently affixed signs that are located in a visible
33 manner at the main entrance of each school and that identify the school and
34 its accompanying grounds as a school safety zone. A school may include
35 information regarding the school safety zone boundaries on a sign that
36 identifies the area as a drug free zone and not post separate school safety
37 zone signs.

38 D. For THE purposes of this section:

39 1. "School" means any public or nonpublic kindergarten program, common
40 school or high school.

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

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

44 (b) Any public property within one thousand feet of a school or its
45 accompanying grounds.

1 (c) Any school bus.

2 (d) A bus contracted to transport pupils to any school during the time
3 when the contracted vehicle is transporting pupils on behalf of the school.

4 (e) A school bus stop.

5 (f) Any bus stop where school children are awaiting, boarding or
6 exiting a bus contracted to transport pupils to any school.

7 Sec. 19. Section 13-610, Arizona Revised Statutes, is amended to read:
8 13-610. Deoxyribonucleic acid testing; exception

9 A. Within thirty days after a person is sentenced to the state
10 department of corrections or a person who is accepted under the interstate
11 compact for the supervision of parolees and probationers arrives in this
12 state, the state department of corrections shall secure a sufficient sample
13 of blood or other bodily substances for deoxyribonucleic acid testing and
14 extraction from the person if the person was convicted of an offense listed
15 in this section and was sentenced to a term of imprisonment or was convicted
16 of any offense that was committed in another jurisdiction that if committed
17 in this state would be a violation of any offense listed in this section and
18 the person is under the supervision of the state department of corrections.
19 The state department of corrections shall transmit the sample to the
20 department of public safety.

21 B. Within thirty days after a person is placed on probation and
22 sentenced to a term of incarceration in a county jail detention facility or
23 is detained in a county juvenile detention facility, the county detention
24 facility shall secure a sufficient sample of blood or other bodily substances
25 for deoxyribonucleic acid testing and extraction from the person if the
26 person was convicted of or adjudicated delinquent for an offense listed in
27 this section. The county detention facility shall transmit the sample to the
28 department of public safety.

29 C. Within thirty days after a person is convicted and placed on
30 probation without a term of incarceration or adjudicated delinquent and
31 placed on probation, the county probation department shall secure a
32 sufficient sample of blood or other bodily substances for deoxyribonucleic
33 acid testing and extraction from the person if the person was convicted of or
34 adjudicated delinquent for an offense listed in this section. The county
35 probation department shall transmit the sample to the department of public
36 safety.

37 D. Within thirty days after the arrival of a person who is accepted
38 under the interstate compact for the supervision of parolees and probationers
39 and who is under the supervision of a county probation department, the county
40 probation department shall secure a sufficient sample of blood or other
41 bodily substances for deoxyribonucleic acid testing and extraction from the
42 person if the person was convicted of an offense that was committed in
43 another jurisdiction that if committed in this state would be a violation of
44 any offense listed in this section and was sentenced to a term of probation.

1 The county probation department shall transmit the sample to the department
2 of public safety.

3 E. Within thirty days after a juvenile is committed to the department
4 of juvenile corrections, the department of juvenile corrections shall secure
5 a sufficient sample of blood or other bodily substances for deoxyribonucleic
6 acid testing and extraction from the youth if the youth was adjudicated
7 delinquent for an offense listed in this section and was committed to a
8 secure care facility. The department of juvenile corrections shall transmit
9 the sample to the department of public safety.

10 F. Within thirty days after the arrival in this state of a juvenile
11 who is accepted by the department of juvenile corrections pursuant to the
12 interstate compact on juveniles and who was adjudicated for an offense that
13 was committed in another jurisdiction that if committed in this state would
14 be a violation of any offense listed in this section, the compact
15 administrator shall request that the sending state impose as a condition of
16 supervision that the juvenile submit a sufficient sample of blood or other
17 bodily substances for deoxyribonucleic acid testing. If the sending state
18 does not impose that condition, the department of juvenile corrections shall
19 request a sufficient sample of blood or other bodily substances for
20 deoxyribonucleic acid testing within thirty days after the juvenile's arrival
21 in this state. The department of juvenile corrections shall transmit the
22 sample to the department of public safety.

23 G. Notwithstanding subsections A through F of this section, the agency
24 that is responsible for securing a sample pursuant to this section shall not
25 secure the sample if the scientific criminal analysis section of the
26 department of public safety has previously received and maintains a sample
27 sufficient for deoxyribonucleic acid testing.

28 H. The department of public safety shall do all of the following:

29 1. Conduct or oversee through mutual agreement an analysis of the
30 samples that it receives pursuant to subsection ~~N, paragraphs 1, 2 and 3 of~~
31 ~~this section and subsection 0, paragraphs 1 and 2~~ M of this section.

32 ~~2. Store the samples it receives pursuant to subsection N, paragraphs~~
33 ~~4 and 5 of this section and subsection 0, paragraphs 3 and 4 of this section~~
34 ~~and conduct an analysis of the samples on receipt of the funding necessary~~
35 ~~for this purpose.~~

36 ~~3.~~ 2. Make and maintain a report of the results of each
37 deoxyribonucleic acid analysis.

38 ~~4.~~ 3. Maintain samples of blood and other bodily substances for at
39 least thirty-five years.

40 I. Any sample and the result of any test that is obtained pursuant to
41 this section may be used only as follows:

42 1. For law enforcement identification purposes.

43 2. In a proceeding in a criminal prosecution or juvenile adjudication.

44 3. In a proceeding under title 36, chapter 37.

1 J. If the conviction of a person who is subject to this section is
2 overturned on appeal or postconviction relief and a final mandate has been
3 issued, on petition of the person to the superior court in the county in
4 which the conviction occurred, the court shall order that the person's
5 deoxyribonucleic acid profile resulting from that conviction be expunged from
6 the Arizona deoxyribonucleic acid identification system established by
7 section 41-2418 unless the person has been convicted of another offense that
8 would require the person to submit to deoxyribonucleic acid testing pursuant
9 to this section.

10 K. If the conviction of a person who is subject to this section is
11 classified as a misdemeanor pursuant to section 13-702, on petition of the
12 person to the superior court in the county in which the conviction occurred,
13 the court shall order that the person's deoxyribonucleic acid profile
14 resulting from that conviction be expunged from the Arizona deoxyribonucleic
15 acid identification system unless the person has been convicted of another
16 offense that would require the person to submit to deoxyribonucleic acid
17 testing pursuant to this section.

18 ~~L. A person who was convicted or adjudicated delinquent before the
19 applicable date provided in this section for any offense for which a
20 sufficient sample of blood or other bodily substance for deoxyribonucleic
21 acid testing and extraction is required to be secured shall have a sample
22 secured if the person is in the custody of the state department of
23 corrections, the department of juvenile corrections or a county jail
24 detention facility or is under the supervision of a probation department on
25 the applicable date listed in subsection N or O of this section. The sample
26 shall be secured within one hundred eighty days after the applicable date
27 listed in subsection N or O of this section.~~

28 ~~M.~~ L. If any sample that is submitted to the department of public
29 safety under this section is found to be unacceptable for analysis and use or
30 cannot be used by the department, the department shall require that another
31 sample of blood or other bodily substances be secured pursuant to this
32 section.

33 ~~N.~~ M. This section applies to persons who are:

34 1. Convicted of ~~the following offenses:~~

35 ~~1. A violation of or an attempt to violate any offense in chapter 11
36 of this title, any felony offense in chapter 14 or 35.1 of this title or
37 section 13-1507, 13-1508 or 13-3608.~~

38 ~~2. Any offense for which a person is required to register pursuant to
39 section 13-3821.~~

40 ~~3. Any offense involving the discharge, use or threatening exhibition
41 of a deadly weapon or dangerous instrument or the intentional or knowing
42 infliction of serious physical injury as provided in section 13-604.~~

43 ~~4. A violation of any felony offense in chapter 34 of this title.~~

44 ~~5. Beginning on January 1, 2004, a violation of any felony offense.~~

45 ~~0. This section applies to persons who are~~

- 1 2. Adjudicated delinquent for the following offenses:
2 ~~1-~~ (a) A violation or an attempt to violate any offense in chapter 11
3 of this title, any felony offense in chapter 14 or 35.1 of this title or
4 section 13-1507, 13-1508 or 13-3608.
5 ~~2-~~ (b) Any offense for which a person is required to register
6 pursuant to section 13-3821.
7 ~~3-~~ (c) A violation of any felony offense in chapter 34 of this title
8 that may be prosecuted pursuant to section 13-501, subsection B, paragraph 2.
9 ~~4-~~ (d) ~~Beginning on January 1, 2004,~~ A violation of any felony
10 offense that is listed in section 13-501.

11 Sec. 20. Title 13, chapter 6, Arizona Revised Statutes, is amended by
12 adding section 13-611, to read:

13 13-611. Class 6 felony; designation

14 A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A PERSON IS
15 CONVICTED OF ANY CLASS 6 FELONY NOT INVOLVING A DANGEROUS OFFENSE AND IF THE
16 COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE
17 HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT IT WOULD BE
18 UNDULY HARSH TO SENTENCE THE DEFENDANT FOR A FELONY, THE COURT MAY ENTER
19 JUDGMENT OF CONVICTION FOR A CLASS 1 MISDEMEANOR AND MAKE DISPOSITION
20 ACCORDINGLY OR MAY PLACE THE DEFENDANT ON PROBATION IN ACCORDANCE WITH
21 CHAPTER 9 OF THIS TITLE AND REFRAIN FROM DESIGNATING THE OFFENSE AS A FELONY
22 OR MISDEMEANOR UNTIL THE PROBATION IS TERMINATED. THE OFFENSE SHALL BE
23 TREATED AS A FELONY FOR ALL PURPOSES UNTIL THE COURT ENTERS AN ORDER
24 DESIGNATING THE OFFENSE A MISDEMEANOR. THIS SUBSECTION DOES NOT APPLY TO ANY
25 PERSON WHO IS CONVICTED OF A CLASS 6 FELONY AND WHO HAS PREVIOUSLY BEEN
26 CONVICTED OF TWO OR MORE FELONIES.

27 B. IF A CRIME OR PUBLIC OFFENSE IS PUNISHABLE IN THE DISCRETION OF THE
28 COURT BY A SENTENCE AS A CLASS 6 FELONY OR A CLASS 1 MISDEMEANOR, THE OFFENSE
29 SHALL BE DEEMED A MISDEMEANOR IF THE PROSECUTING ATTORNEY:

30 1. FILES AN INFORMATION IN SUPERIOR COURT DESIGNATING THE OFFENSE AS A
31 MISDEMEANOR.

32 2. FILES A COMPLAINT IN JUSTICE COURT OR MUNICIPAL COURT DESIGNATING
33 THE OFFENSE AS A MISDEMEANOR WITHIN THE JURISDICTION OF THE RESPECTIVE COURT.

34 3. FILES A COMPLAINT, WITH THE CONSENT OF THE DEFENDANT, BEFORE OR
35 DURING THE PRELIMINARY HEARING AMENDING THE COMPLAINT TO CHARGE A
36 MISDEMEANOR.

37 Sec. 21. Repeal

38 Sections 13-702.02 and 13-711, Arizona Revised Statutes, are repealed.

39 Sec. 22. Transfer and renumber

40 The following Arizona Revised Statutes sections are transferred and
41 renumbered for placement in title 13, chapter 7.1, Arizona Revised Statutes,
42 as added by this act, as follows:

43 1. Section 13-703 as section 13-751.

44 2. Section 13-703.01, as amended by Laws 2005, chapter 325, section 3,
45 as section 13-752, as amended by section 34 of this act.

- 1 3. Section 13-703.01, as amended by Laws 2005, chapter 325, section 4,
- 2 as section 13-752, as amended by section 35 of this act.
- 3 4. Section 13-703.02 as section 13-753.
- 4 5. Section 13-703.03 as section 13-754.
- 5 6. Section 13-703.04 as section 13-755.
- 6 7. Section 13-703.05 as section 13-756.
- 7 8. Section 13-704 as section 13-757.
- 8 9. Section 13-705 as section 13-758.
- 9 10. Section 13-706 as section 13-759.

10 Sec. 23. Renumber

11 A. Section 13-712, Arizona Revised Statutes, is renumbered as section
12 13-706.

13 B. Section 13-713, Arizona Revised Statutes, is renumbered as section
14 13-704.

15 Sec. 24. Section 13-702, Arizona Revised Statutes, is amended to read:
16 13-702. Sentencing; definition

17 A. Sentences provided in section 13-701 for a first conviction of a
18 felony, except those felonies involving ~~the discharge, use or threatening~~
19 ~~exhibition of a deadly weapon or dangerous instrument or the intentional or~~
20 ~~knowing infliction of serious physical injury upon another~~ A DANGEROUS
21 OFFENSE or if a specific sentence is otherwise provided, may be increased or
22 reduced by the court within the ranges set by this subsection. Any reduction
23 or increase shall be based on the aggravating and mitigating circumstances
24 contained in subsections C and D of this section and shall be within the
25 following ranges:

	<u>Minimum</u>	<u>Maximum</u>
26 1. For a class 2 felony	4 years	10 years
27 2. For a class 3 felony	2.5 years	7 years
28 3. For a class 4 felony	1.5 years	3 years
29 4. For a class 5 felony	9 months	2 years
30 5. For a class 6 felony	6 months	1.5 years

31 B. The upper or lower term imposed pursuant to section 13-604,
32 13-604.01, 13-604.02, 13-702.01, 13-703 or 13-710 or subsection A of this
33 section may be imposed only if one or more of the circumstances alleged to be
34 in aggravation of the crime are found to be true by the trier of fact beyond
35 a reasonable doubt or are admitted by the defendant, except that an alleged
36 aggravating circumstance under subsection C, paragraph 11 of this section
37 shall be found to be true by the court, or in mitigation of the crime are
38 found to be true by the court, on any evidence or information introduced or
39 submitted to the court or the trier of fact before sentencing or any evidence
40 presented at trial, and factual findings and reasons in support of such
41 findings are set forth on the record at the time of sentencing.

42 C. For the purpose of determining the sentence pursuant to section
43 13-710 and subsection A of this section, the trier of fact shall determine
44 and the court shall consider the following aggravating circumstances, except
45

1 that the court shall determine an aggravating circumstance under paragraph 11
2 of this subsection:

3 1. Infliction or threatened infliction of serious physical injury,
4 except if this circumstance is an essential element of the offense of
5 conviction or has been utilized to enhance the range of punishment under
6 section 13-604.

7 2. Use, threatened use or possession of a deadly weapon or dangerous
8 instrument during the commission of the crime, except if this circumstance is
9 an essential element of the offense of conviction or has been utilized to
10 enhance the range of punishment under section 13-604.

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

13 4. Presence of an accomplice.

14 5. Especially heinous, cruel or depraved manner in which the offense
15 was committed.

16 6. The defendant committed the offense as consideration for the
17 receipt, or in the expectation of the receipt, of anything of pecuniary
18 value.

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

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

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

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

29 11. The defendant was previously convicted of a felony within the ten
30 years immediately preceding the date of the offense. A conviction outside
31 the jurisdiction of this state for an offense that if committed in this state
32 would be punishable as a felony is a felony conviction for the purposes of
33 this paragraph.

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

35 13. The victim of the offense is at least sixty-five years of age or is
36 a disabled person as defined by section 38-492.

37 14. The defendant was appointed pursuant to title 14 as a fiduciary and
38 the offense involved conduct directly related to the defendant's duties to
39 the victim as fiduciary.

40 15. Evidence that the defendant committed the crime out of malice
41 toward a victim because of the victim's identity in a group listed in section
42 41-1750, subsection A, paragraph 3 or because of the defendant's perception
43 of the victim's identity in a group listed in section 41-1750, subsection A,
44 paragraph 3.

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

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

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

12 19. The offense was committed in retaliation for a victim's either
13 reporting criminal activity or being involved in an organization, other than
14 a law enforcement agency, that is established for the purpose of reporting or
15 preventing criminal activity.

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

18 21. The defendant was in violation of 8 United States Code section
19 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

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

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

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

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

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

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

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

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

41 24. Any other factor that the state alleges is relevant to the
42 defendant's character or background or to the nature or circumstances of the
43 crime.

1 D. For the purpose of determining the sentence pursuant to section
2 13-710 and subsection A of this section, the court shall consider the
3 following mitigating circumstances:

4 1. The age of the defendant.

5 2. The defendant's capacity to appreciate the wrongfulness of the
6 defendant's conduct or to conform the defendant's conduct to the requirements
7 of law was significantly impaired, but not so impaired as to constitute a
8 defense to prosecution.

9 3. The defendant was under unusual or substantial duress, although not
10 such as to constitute a defense to prosecution.

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

13 5. During or immediately following the commission of the offense, the
14 defendant complied with all duties imposed under sections 28-661, 28-662 and
15 28-663.

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

19 If the trier of fact finds at least one aggravating circumstance, the trial
20 court may find by a preponderance of the evidence additional aggravating
21 circumstances. In determining what sentence to impose, the court shall take
22 into account the amount of aggravating circumstances and whether the amount
23 of mitigating circumstances is sufficiently substantial to call for the
24 lesser term. If the trier of fact finds aggravating circumstances and the
25 court does not find any mitigating circumstances, the court shall impose an
26 aggravated sentence.

27 E. The court in imposing a sentence shall consider the evidence and
28 opinions presented by the victim or the victim's immediate family at any
29 aggravation or mitigation proceeding or in the presentence report.

30 F. Nothing in this section affects any provision of law that imposes
31 the death penalty, that expressly provides for imprisonment for life or that
32 authorizes or restricts the granting of probation and suspending the
33 execution of sentence.

34 ~~G. Notwithstanding any other provision of this title, if a person is~~
35 ~~convicted of any class 6 felony not involving the intentional or knowing~~
36 ~~infliction of serious physical injury or the discharge, use or threatening~~
37 ~~exhibition of a deadly weapon or dangerous instrument and if the court,~~
38 ~~having regard to the nature and circumstances of the crime and to the history~~
39 ~~and character of the defendant, is of the opinion that it would be unduly~~
40 ~~harsh to sentence the defendant for a felony, the court may enter judgment of~~
41 ~~conviction for a class 1 misdemeanor and make disposition accordingly or may~~
42 ~~place the defendant on probation in accordance with chapter 9 of this title~~
43 ~~and refrain from designating the offense as a felony or misdemeanor until the~~
44 ~~probation is terminated. The offense shall be treated as a felony for all~~
45 ~~purposes until such time as the court may actually enter an order designating~~

1 ~~the offense a misdemeanor. This subsection does not apply to any person who~~
2 ~~stands convicted of a class 6 felony and who has previously been convicted of~~
3 ~~two or more felonies. If a crime or public offense is punishable in the~~
4 ~~discretion of the court by a sentence as a class 6 felony or a class 1~~
5 ~~misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting~~
6 ~~attorney:~~

7 ~~1. Files an information in superior court designating the offense as a~~
8 ~~misdemeanor.~~

9 ~~2. Files a complaint in justice court or municipal court designating~~
10 ~~the offense as a misdemeanor within the jurisdiction of the respective court.~~

11 ~~3. Files a complaint, with the consent of the defendant, before or~~
12 ~~during the preliminary hearing amending the complaint to charge a~~
13 ~~misdemeanor.~~

14 ~~H. G.~~ For the purposes of this section, "trier of fact" means a jury,
15 unless the defendant and the state waive a jury, in which case the trier of
16 fact means the court.

17 Sec. 25. Section 13-702.01, Arizona Revised Statutes, is amended to
18 read:

19 13-702.01. Exceptional circumstances; aggravation; mitigation;
20 definition

21 A. Notwithstanding section 13-702, subsection A, if a person is
22 convicted of a felony without having previously been convicted of any felony
23 and if at least two aggravating factors listed in section 13-702, subsection
24 C apply, the court may increase the maximum term of imprisonment otherwise
25 authorized for that offense up to the following maximum terms:

- 26 1. For a class 2 felony 12.5 years
- 27 2. For a class 3 felony 8.75 years
- 28 3. For a class 4 felony 3.75 years
- 29 4. For a class 5 felony 2.5 years
- 30 5. For a class 6 felony 2 years

31 B. Notwithstanding section 13-702, subsection A, if a person is
32 convicted of a felony without having previously been convicted of any felony
33 and if the court finds that at least two mitigating factors listed in section
34 13-702, subsection D apply, the court may decrease the minimum term of
35 imprisonment otherwise authorized for that offense down to the following
36 minimum terms:

- 37 1. For a class 2 felony 3 years
- 38 2. For a class 3 felony 2 years
- 39 3. For a class 4 felony 1 year
- 40 4. For a class 5 felony 6 months
- 41 5. For a class 6 felony 4 months

42 C. Notwithstanding section ~~13-604, subsection A or B~~ 13-703,
43 **SUBSECTION B, PARAGRAPH 2**, if a person is convicted of a felony offense and
44 has one historical prior felony conviction and if at least two aggravating
45 factors listed in section 13-702, subsection C apply, the court may increase

1 the maximum term of imprisonment otherwise authorized for that offense up to
2 the following maximum terms:

- 3 1. Class 2 felony 23.25 years
- 4 2. Class 3 felony 16.25 years
- 5 3. Class 4 felony 7.5 years
- 6 4. Class 5 felony 3.75 years
- 7 5. Class 6 felony 2.75 years

8 D. Notwithstanding section ~~13-604, subsection A or B~~ 13-703,
9 **SUBSECTION B, PARAGRAPH 2**, if a person is convicted of a felony offense and
10 has one historical prior felony conviction and if the court finds that at
11 least two mitigating factors listed in section 13-702, subsection D apply,
12 the court may decrease the minimum term of imprisonment otherwise authorized
13 for that offense down to the following minimum terms:

- 14 1. Class 2 felony 4.5 years
- 15 2. Class 3 felony 3.5 years
- 16 3. Class 4 felony 2.25 years
- 17 4. Class 5 felony 1 year
- 18 5. Class 6 felony 9 months

19 E. Notwithstanding section ~~13-604, subsection C or D~~ 13-703,
20 **SUBSECTION C**, if a person is convicted of a felony offense and has two or
21 more historical prior felony convictions and at least two aggravating factors
22 listed in section 13-702, subsection C apply, the court may increase the
23 maximum term of imprisonment otherwise authorized for that offense up to the
24 following maximum terms:

- 25 1. Class 2 felony 35 years
- 26 2. Class 3 felony 25 years
- 27 3. Class 4 felony 15 years
- 28 4. Class 5 felony 7.5 years
- 29 5. Class 6 felony 5.75 years

30 F. Notwithstanding section ~~13-604, subsection C or D~~ 13-703,
31 **SUBSECTION C**, if a person is convicted of a felony offense and has two or
32 more historical prior felony convictions and if the court finds that at least
33 two mitigating factors listed in section 13-702, subsection D apply, the
34 court may decrease the minimum term of imprisonment otherwise authorized for
35 that offense down to the following minimum terms:

- 36 1. Class 2 felony 10.5 years
- 37 2. Class 3 felony 7.5 years
- 38 3. Class 4 felony 6 years
- 39 4. Class 5 felony 3 years
- 40 5. Class 6 felony 2.25 years

41 G. The upper or lower term imposed pursuant to this section may be
42 imposed only if at least two of the aggravating circumstances are found
43 beyond a reasonable doubt to be true by the trier of fact or are admitted by
44 the defendant, except that an aggravating circumstance under section 13-702,
45 subsection C, paragraph 11 shall be found to be true by the court, or in

1 mitigation of the crime are found to be true by the court, on any evidence or
2 information introduced or submitted to the court or the trier of fact before
3 sentencing or any evidence presented at trial, and factual findings and
4 reasons in support of these findings are set forth on the record at the time
5 of sentencing.

6 H. The court in imposing sentence shall consider the evidence and
7 opinions presented by the victim or the victim's immediate family at any
8 aggravation or mitigation proceeding or in the presentence report.

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

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

16 Sec. 26. Title 13, chapter 7, Arizona Revised Statutes, is amended by
17 adding a new section 13-703, to read:

18 13-703. Repetitive offenders; sentencing; definition

19 A. A PERSON SHALL BE SENTENCED AS A CATEGORY ONE REPETITIVE OFFENDER
20 PURSUANT TO THIS SECTION IF THE PERSON IS CONVICTED OF TWO FELONY OFFENSES
21 THAT WERE NOT COMMITTED ON THE SAME OCCASION BUT THAT EITHER ARE CONSOLIDATED
22 FOR TRIAL PURPOSES OR ARE NOT HISTORICAL PRIOR FELONY CONVICTIONS.

23 B. A PERSON SHALL BE SENTENCED AS A CATEGORY TWO REPETITIVE OFFENDER
24 IF THE PERSON EITHER:

25 1. IS CONVICTED OF THREE OR MORE FELONY OFFENSES THAT WERE NOT
26 COMMITTED ON THE SAME OCCASION BUT THAT EITHER ARE CONSOLIDATED FOR TRIAL
27 PURPOSES OR ARE NOT HISTORICAL PRIOR FELONY CONVICTIONS.

28 2. EXCEPT AS PROVIDED IN SECTION 13-604 OR 13-604.01, IS CONVICTED OF
29 A FELONY AND HAS A HISTORICAL PRIOR FELONY CONVICTION.

30 C. EXCEPT AS PROVIDED IN SECTION 13-604 OR 13-604.01, A PERSON SHALL
31 BE SENTENCED AS A CATEGORY THREE REPETITIVE OFFENDER IF THE PERSON IS
32 CONVICTED OF A FELONY AND HAS TWO OR MORE HISTORICAL PRIOR FELONY
33 CONVICTIONS.

34 D. CONVICTIONS FOR TWO OR MORE OFFENSES COMMITTED ON THE SAME OCCASION
35 SHALL BE COUNTED AS ONLY ONE CONVICTION FOR PURPOSES OF THIS SECTION.

36 E. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE
37 JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE
38 WOULD BE PUNISHABLE AS A FELONY IS SUBJECT TO THIS SECTION. A PERSON WHO HAS
39 BEEN CONVICTED AS AN ADULT OF AN OFFENSE PUNISHABLE AS A FELONY UNDER THE
40 PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO THIS SECTION.

41 F. THE PENALTIES PRESCRIBED BY THIS SECTION SHALL BE SUBSTITUTED FOR
42 THE PENALTIES OTHERWISE AUTHORIZED BY LAW IF THE PREVIOUS CONVICTION IS
43 CHARGED IN THE INDICTMENT OR INFORMATION AND ADMITTED OR FOUND BY THE COURT.
44 THE RELEASE PROVISIONS PRESCRIBED BY THIS SECTION SHALL NOT BE SUBSTITUTED
45 FOR ANY PENALTIES REQUIRED BY THE SUBSTANTIVE OFFENSE OR PROVISION OF LAW

1 THAT SPECIFIES A LATER RELEASE OR COMPLETION OF THE SENTENCE IMPOSED BEFORE
2 RELEASE. THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION AT ANY
3 TIME BEFORE THE DATE THE CASE IS ACTUALLY TRIED UNLESS THE ALLEGATION IS
4 FILED FEWER THAN TWENTY DAYS BEFORE THE CASE IS ACTUALLY TRIED AND THE COURT
5 FINDS ON THE RECORD THAT THE DEFENDANT WAS IN FACT PREJUDICED BY THE UNTIMELY
6 FILING AND STATES THE REASONS FOR THESE FINDINGS. IF THE ALLEGATION OF A
7 PRIOR CONVICTION IS FILED, THE STATE MUST MAKE AVAILABLE TO THE DEFENDANT A
8 COPY OF ANY MATERIAL OR INFORMATION OBTAINED CONCERNING THE PRIOR CONVICTION.
9 THE CHARGE OF PREVIOUS CONVICTION SHALL NOT BE READ TO THE JURY.

10 G. THE INTENTIONAL FAILURE BY THE COURT TO IMPOSE THE MANDATORY
11 SENTENCES OR PROBATION CONDITIONS PROVIDED IN THIS TITLE IS MALFEASANCE.

12 H. THE PRESUMPTIVE TERM SET BY THIS SECTION MAY BE AGGRAVATED WITHIN
13 THE RANGE UNDER THIS SECTION PURSUANT TO SECTION 13-702, SUBSECTIONS B, C
14 AND D.

15 I. A CATEGORY TWO OR THREE REPETITIVE OFFENDER IS NOT ELIGIBLE FOR
16 SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY
17 BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR
18 B, UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS
19 ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS
20 COMMUTED.

21 J. A CATEGORY ONE REPETITIVE OFFENDER SHALL BE SENTENCED AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
22	CLASS 2	4 YEARS	5 YEARS	10 YEARS
23	CLASS 3	2.5 YEARS	3.5 YEARS	7 YEARS
24	CLASS 4	1.5 YEARS	2.5 YEARS	3 YEARS
25	CLASS 5	.75 YEARS	1.5 YEARS	2 YEARS
26	CLASS 6	.5 YEARS	1 YEAR	1.5 YEARS

27 K. A CATEGORY TWO REPETITIVE OFFENDER SHALL BE SENTENCED AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
28	CLASS 2	6 YEARS	9.25 YEARS	18.5 YEARS
29	CLASS 3	4.5 YEARS	6.5 YEARS	13 YEARS
30	CLASS 4	3 YEARS	4.5 YEARS	6 YEARS
31	CLASS 5	1.5 YEARS	2.25 YEARS	3 YEARS
32	CLASS 6	1 YEAR	1.75 YEARS	2.25 YEARS

33 L. A CATEGORY THREE REPETITIVE OFFENDER SHALL BE SENTENCED AS FOLLOWS:

	<u>FELONY</u>	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
34	CLASS 2	14 YEARS	15.75 YEARS	28 YEARS
35	CLASS 3	10 YEARS	11.25 YEARS	20 YEARS
36	CLASS 4	8 YEARS	10 YEARS	12 YEARS
37	CLASS 5	4 YEARS	5 YEARS	6 YEARS
38	CLASS 6	3 YEARS	3.75 YEARS	4.5 YEARS

39 M. FOR THE PURPOSES OF THIS SECTION, "SUBSTANTIVE OFFENSE" MEANS THE
40 FELONY OFFENSE THAT THE TRIER OF FACT FOUND BEYOND A REASONABLE DOUBT THE
41 DEFENDANT COMMITTED. SUBSTANTIVE OFFENSE DOES NOT INCLUDE ALLEGATIONS THAT,
42
43
44

1 IF PROVEN, WOULD ENHANCE THE SENTENCE OF IMPRISONMENT OR FINE TO WHICH THE
2 DEFENDANT OTHERWISE WOULD BE SUBJECT.

3 Sec. 27. Section 13-704, Arizona Revised Statutes, as renumbered by
4 this act, is amended to read:

5 13-704. Serious or aggravated offenders: sentencing: life
6 imprisonment: definition

7 A. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN
8 TRIED AS AN ADULT AND WHO IS CONVICTED OF A SERIOUS OFFENSE, FIRST DEGREE
9 MURDER OR ANY DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION
10 13-604.01, WHETHER A COMPLETED OR PREPARATORY OFFENSE, AND WHO HAS PREVIOUSLY
11 BEEN CONVICTED OF TWO OR MORE SERIOUS OFFENSES NOT COMMITTED ON THE SAME
12 OCCASION SHALL BE SENTENCED TO LIFE IMPRISONMENT AND IS NOT ELIGIBLE FOR
13 SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY
14 BASIS, EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR
15 B, UNTIL THE PERSON HAS SERVED AT LEAST TWENTY-FIVE YEARS OR THE SENTENCE IS
16 COMMUTED.

17 ~~A-~~ B. Unless a longer term of imprisonment or death is the prescribed
18 penalty and notwithstanding any provision that establishes a shorter term of
19 imprisonment, a person who has been convicted of committing or attempting or
20 conspiring to commit any ~~violent-or~~ aggravated felony and who has previously
21 been convicted on separate occasions of two or more ~~violent-or~~ aggravated
22 felonies not committed on the same occasion shall be sentenced to
23 imprisonment for life and is not eligible for suspension of sentence,
24 probation, pardon or release on any basis except that the person may be
25 eligible for commutation after the person has served at least thirty-five
26 years.

27 ~~B-~~ C. In order for the penalty under subsection ~~A-~~ B of this section
28 to apply, both of the following must occur:

29 1. The aggravated ~~or-violent~~ felonies that comprise the prior
30 convictions shall have been entered within fifteen years of the conviction
31 for the third offense, not including time spent in custody or on probation
32 for an offense or while the person is an absconder.

33 2. The sentence for the first aggravated ~~or-violent~~ felony conviction
34 shall have been imposed before the conduct occurred that gave rise to the
35 second conviction, and the sentence for the second aggravated ~~or-violent~~
36 ~~felony~~ conviction shall have been imposed before the conduct occurred that
37 gave rise to the third conviction.

38 ~~C-~~ D. Chapter 3 of this title applies to all offenses under this
39 section.

40 ~~D-~~ E. For the purposes of this section, if a person has been
41 convicted of an offense committed in another jurisdiction that if committed
42 in this state would be a violation or attempted violation of any of the
43 offenses listed in this section and that has the same elements of an offense
44 listed in this section, the offense committed in another jurisdiction is
45 considered an offense committed in this state.

1 ~~E.~~ F. For the purposes of this section, "~~violent or~~ aggravated
2 felony" means any of the following offenses:

- 3 1. First degree murder.
- 4 2. Second degree murder.
- 5 3. Aggravated assault resulting in serious physical injury or
6 involving the discharge, use or threatening exhibition of a deadly weapon or
7 dangerous instrument.
- 8 4. Dangerous or deadly assault by prisoner.
- 9 5. Committing assault with intent to incite to riot or participate in
10 riot.
- 11 6. Drive by shooting.
- 12 7. Discharging a firearm at a residential structure if the structure
13 is occupied.
- 14 8. Kidnapping.
- 15 9. Sexual conduct with a minor that is a class 2 felony.
- 16 10. Sexual assault.
- 17 11. Molestation of a child.
- 18 12. Continuous sexual abuse of a child.
- 19 13. Violent sexual assault.
- 20 14. Burglary in the first degree committed in a residential structure
21 if the structure is occupied.
- 22 15. Arson of an occupied structure.
- 23 16. Arson of an occupied jail or prison facility.
- 24 17. Armed robbery.
- 25 18. Participating in or assisting a criminal syndicate or leading or
26 participating in a criminal street gang.
- 27 19. Terrorism.
- 28 20. Taking a child for the purpose of prostitution.
- 29 21. Child prostitution.
- 30 22. Commercial sexual exploitation of a minor.
- 31 23. Sexual exploitation of a minor.
- 32 24. Unlawful introduction of disease or parasite as prescribed by
33 section 13-2912, subsection A, paragraph 2 or 3.

34 Sec. 28. Title 13, chapter 7, Arizona Revised Statutes, is amended by
35 adding a new section 13-705, to read:

36 13-705. Special sentencing provisions

37 A. A PERSON WHO IS CONVICTED OF COMMITTING ANY FELONY OFFENSE WITH THE
38 INTENT TO PROMOTE, FURTHER OR ASSIST ANY CRIMINAL CONDUCT BY A CRIMINAL
39 STREET GANG IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR
40 RELEASE FROM CONFINEMENT ON ANY BASIS, EXCEPT AS AUTHORIZED BY SECTION
41 31-233, SUBSECTION A OR B, UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN
42 SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR
43 THE SENTENCE IS COMMUTED. THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCE FOR
44 THE OFFENSE SHALL BE INCREASED BY THREE YEARS. THE ADDITIONAL SENTENCE

1 IMPOSED PURSUANT TO THIS SUBSECTION IS IN ADDITION TO ANY ENHANCED SENTENCE
2 THAT MAY BE APPLICABLE.

3 B. A PERSON WHO IS CONVICTED OF INTENTIONALLY OR KNOWINGLY COMMITTING
4 AGGRAVATED ASSAULT ON A PEACE OFFICER WHILE THE OFFICER IS ENGAGED IN THE
5 EXECUTION OF ANY OFFICIAL DUTIES PURSUANT TO SECTION 13-1204, SUBSECTION A,
6 PARAGRAPH 1 OR 2 SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN THE
7 PRESUMPTIVE SENTENCE AUTHORIZED UNDER THIS CHAPTER AND IS NOT ELIGIBLE FOR
8 SUSPENSION OF SENTENCE, COMMUTATION OR RELEASE ON ANY BASIS UNTIL THE
9 SENTENCE IMPOSED IS SERVED.

10 C. IF A PERSON IS CONVICTED OF AN OFFENSE INVOLVING DOMESTIC VIOLENCE
11 AND THE VICTIM WAS PREGNANT AT THE TIME OF THE COMMISSION OF THE OFFENSE, AT
12 THE TIME OF SENTENCING THE COURT SHALL TAKE INTO CONSIDERATION THE FACT THAT
13 THE VICTIM WAS PREGNANT AND MAY INCREASE THE SENTENCE.

14 Sec. 29. Section 13-706, Arizona Revised Statutes, as renumbered by
15 this act, is amended to read:

16 13-706. Sentencing; methamphetamine

17 A. A person who ~~stands~~ IS convicted of a violation of section 13-3407,
18 subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine shall be
19 sentenced to a presumptive term of ten calendar years. The presumptive term
20 imposed pursuant to this subsection may be mitigated or aggravated by up to
21 five years pursuant to section 13-702, subsections C and D.

22 B. A person who ~~stands~~ IS convicted of a violation of section 13-3407,
23 subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine and who has
24 previously been convicted of a violation of section 13-3407, subsection A,
25 paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01 shall
26 be sentenced to a presumptive term of fifteen calendar years. The
27 presumptive term imposed pursuant to this subsection may be mitigated or
28 aggravated by up to five years pursuant to section 13-702, subsections C
29 and D.

30 Sec. 30. Section 13-707, Arizona Revised Statutes, is amended to read:

31 13-707. Sentencing for misdemeanors

32 A. A sentence of imprisonment for a misdemeanor shall be for a
33 definite term to be served other than a place within custody of the state
34 department of corrections. The court shall fix the term of imprisonment
35 within the following maximum limitations:

- 36 1. For a class 1 misdemeanor, six months.
- 37 2. For a class 2 misdemeanor, four months.
- 38 3. For a class 3 misdemeanor, thirty days.

39 B. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN
40 TRIED AS AN ADULT AND WHO IS CONVICTED OF ANY MISDEMEANOR OR PETTY OFFENSE,
41 OTHER THAN A TRAFFIC OFFENSE, AND WHO HAS BEEN CONVICTED OF ONE OR MORE OF
42 THE SAME MISDEMEANORS OR PETTY OFFENSES WITHIN TWO YEARS NEXT PRECEDING THE
43 DATE OF THE PRESENT OFFENSE SHALL BE SENTENCED FOR THE NEXT HIGHER CLASS OF
44 OFFENSE THAN THAT FOR WHICH THE PERSON CURRENTLY IS CONVICTED.

1 C. TIME SPENT INCARCERATED WITHIN THE TWO YEARS NEXT PRECEDING THE
2 DATE OF THE OFFENSE FOR WHICH A PERSON IS CURRENTLY BEING SENTENCED UNDER
3 SUBSECTION B OF THIS SECTION SHALL NOT BE INCLUDED IN THE TWO YEARS REQUIRED
4 TO BE FREE OF CONVICTIONS FOR PURPOSES OF THAT SUBSECTION.

5 D. IF A PERSON IS CONVICTED OF A MISDEMEANOR OFFENSE AND THE OFFENSE
6 REQUIRES ENHANCED PUNISHMENT BECAUSE IT IS A SECOND OR SUBSEQUENT OFFENSE,
7 THE EXISTENCE OF THE PREVIOUS CONVICTION SHALL BE DETERMINED BY THE COURT.
8 THE COURT SHALL ALLOW THE ALLEGATION OF A PRIOR CONVICTION TO BE MADE IN THE
9 SAME MANNER AS THE ALLEGATION PRESCRIBED BY SECTION 28-1387, SUBSECTION A.

10 E. A PERSON WHO HAS BEEN CONVICTED IN ANY COURT OUTSIDE THE
11 JURISDICTION OF THIS STATE OF AN OFFENSE THAT IF COMMITTED IN THIS STATE
12 WOULD BE PUNISHABLE AS A MISDEMEANOR IS SUBJECT TO THIS SECTION. A PERSON
13 WHO HAS BEEN CONVICTED AS AN ADULT OF AN OFFENSE PUNISHABLE AS A MISDEMEANOR
14 UNDER THE PROVISIONS OF ANY PRIOR CODE IN THIS STATE IS SUBJECT TO THIS
15 SECTION.

16 ~~B.~~ F. The court may, ~~pursuant to this section,~~ direct that the person
17 sentenced shall not be released on any basis until the sentence imposed by
18 the court has been served.

19 Sec. 31. Section 13-710, Arizona Revised Statutes, is amended to read:
20 13-710. Sentence for second degree murder

21 A. Except as provided in ~~section 13-604, subsection S or~~ section
22 13-604.01 OR SECTION 13-704, SUBSECTION A, a person who ~~stands~~ IS convicted
23 of second degree murder as defined by section 13-1104 shall be sentenced to a
24 presumptive term of sixteen calendar years. The presumptive term imposed
25 pursuant to this subsection may be mitigated or aggravated by up to six years
26 pursuant to the terms of section 13-702, subsections C and D.

27 B. Except as provided in ~~section 13-604, subsection S or~~ section
28 13-604.01 OR SECTION 13-704, SUBSECTION A, a person who ~~stands~~ IS convicted
29 of second degree murder as defined by section 13-1104 and who has previously
30 been convicted of second degree murder or a class 2 or 3 felony involving the
31 use or exhibition of a deadly weapon or dangerous instrument or the
32 intentional or knowing infliction of serious physical injury on another shall
33 be sentenced to a presumptive term of twenty calendar years. The presumptive
34 term imposed pursuant to this subsection may be mitigated or aggravated by up
35 to five years pursuant to the terms of section 13-702, subsections C and D.

36 Sec. 32. Title 13, Arizona Revised Statutes, is amended by adding
37 chapter 7.1, to read:

38 CHAPTER 7.1
39 CAPITAL SENTENCING

40 Sec. 33. Section 13-751, Arizona Revised Statutes, as transferred and
41 renumbered by this act, is amended to read:

42 13-751. Sentence of death or life imprisonment; aggravating and
43 mitigating circumstances; definition

44 A. If the state has filed a notice of intent to seek the death penalty
45 and the defendant is convicted of first degree murder as defined in section

1 13-1105, the defendant shall be sentenced to death or imprisonment in the
2 custody of the state department of corrections for life or natural life as
3 determined and in accordance with the procedures provided in section
4 ~~13-703.01~~ 13-752. A defendant who is sentenced to natural life is not
5 eligible for commutation, parole, work furlough, work release or release from
6 confinement on any basis. If the defendant is sentenced to life, the
7 defendant shall not be released on any basis until the completion of the
8 service of twenty-five calendar years if the murdered person was fifteen or
9 more years of age and thirty-five years if the murdered person was under
10 fifteen years of age or was an unborn child. In this section, for purposes
11 of punishment an unborn child shall be treated like a minor who is under
12 twelve years of age.

13 B. At the aggravation phase of the sentencing proceeding that is held
14 pursuant to section ~~13-703.01~~ 13-752, the admissibility of information
15 relevant to any of the aggravating circumstances set forth in subsection F of
16 this section shall be governed by the rules of evidence applicable to
17 criminal trials. The burden of establishing the existence of any of the
18 aggravating circumstances set forth in subsection F of this section is on the
19 prosecution. The prosecution must prove the existence of the aggravating
20 circumstances beyond a reasonable doubt.

21 C. At the penalty phase of the sentencing proceeding that is held
22 pursuant to section ~~13-703.01~~ 13-752, the prosecution or the defendant may
23 present any information that is relevant to any of the mitigating
24 circumstances included in subsection G of this section, regardless of its
25 admissibility under the rules governing admission of evidence at criminal
26 trials. The burden of establishing the existence of the mitigating
27 circumstances included in subsection G of this section is on the defendant.
28 The defendant must prove the existence of the mitigating circumstances by a
29 preponderance of the evidence. If the trier of fact is a jury, the jurors do
30 not have to agree unanimously that a mitigating circumstance has been proven
31 to exist. Each juror may consider any mitigating circumstance found by that
32 juror in determining the appropriate penalty.

33 D. Evidence that is admitted at the trial and that relates to any
34 aggravating or mitigating circumstances shall be deemed admitted as evidence
35 at a sentencing proceeding if the trier of fact considering that evidence is
36 the same trier of fact that determined the defendant's guilt. The
37 prosecution and the defendant shall be permitted to rebut any information
38 received at the aggravation or penalty phase of the sentencing proceeding and
39 shall be given fair opportunity to present argument as to whether the
40 information is sufficient to establish the existence of any of the
41 circumstances included in subsections F and G of this section.

42 E. In determining whether to impose a sentence of death or life
43 imprisonment, the trier of fact shall take into account the aggravating and
44 mitigating circumstances that have been proven. The trier of fact shall
45 impose a sentence of death if the trier of fact finds one or more of the

1 aggravating circumstances enumerated in subsection F of this section and then
2 determines that there are no mitigating circumstances sufficiently
3 substantial to call for leniency.

4 F. The trier of fact shall consider the following aggravating
5 circumstances in determining whether to impose a sentence of death:

6 1. The defendant has been convicted of another offense in the United
7 States for which under Arizona law a sentence of life imprisonment or death
8 was imposable.

9 2. The defendant has been or was previously convicted of a serious
10 offense, whether preparatory or completed. Convictions for serious offenses
11 committed on the same occasion as the homicide, or not committed on the same
12 occasion but consolidated for trial with the homicide, shall be treated as a
13 serious offense under this paragraph.

14 3. In the commission of the offense the defendant knowingly created a
15 grave risk of death to another person or persons in addition to the person
16 murdered during the commission of the offense.

17 4. The defendant procured the commission of the offense by payment, or
18 promise of payment, of anything of pecuniary value.

19 5. The defendant committed the offense as consideration for the
20 receipt, or in expectation of the receipt, of anything of pecuniary value.

21 6. The defendant committed the offense in an especially heinous, cruel
22 or depraved manner.

23 7. The defendant committed the offense while:

24 (a) In the custody of or on authorized or unauthorized release from
25 the state department of corrections, a law enforcement agency or a county or
26 city jail.

27 (b) On probation for a felony offense.

28 8. The defendant has been convicted of one or more other homicides, as
29 defined in section 13-1101, that were committed during the commission of the
30 offense.

31 9. The defendant was an adult at the time the offense was committed or
32 was tried as an adult and the murdered person was under fifteen years of age,
33 was an unborn child in the womb at any stage of its development or was
34 seventy years of age or older.

35 10. The murdered person was an on duty peace officer who was killed in
36 the course of performing the officer's official duties and the defendant
37 knew, or should have known, that the murdered person was a peace officer.

38 11. The defendant committed the offense with the intent to promote,
39 further or assist the objectives of a criminal street gang or criminal
40 syndicate or to join a criminal street gang or criminal syndicate.

41 12. The defendant committed the offense to prevent a person's
42 cooperation with an official law enforcement investigation, to prevent a
43 person's testimony in a court proceeding, in retaliation for a person's
44 cooperation with an official law enforcement investigation or in retaliation
45 for a person's testimony in a court proceeding.

1 13. The offense was committed in a cold, calculated manner without
2 pretense of moral or legal justification.

3 14. The defendant used a remote stun gun or an authorized remote stun
4 gun in the commission of the offense. For the purposes of this paragraph:

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

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

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

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

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

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

22 G. The trier of fact shall consider as mitigating circumstances any
23 factors proffered by the defendant or the state that are relevant in
24 determining whether to impose a sentence less than death, including any
25 aspect of the defendant's character, propensities or record and any of the
26 circumstances of the offense, including but not limited to the following:

27 1. The defendant's capacity to appreciate the wrongfulness of his
28 conduct or to conform his conduct to the requirements of law was
29 significantly impaired, but not so impaired as to constitute a defense to
30 prosecution.

31 2. The defendant was under unusual and substantial duress, although
32 not such as to constitute a defense to prosecution.

33 3. The defendant was legally accountable for the conduct of another
34 under ~~the provisions of~~ section 13-303, but his participation was relatively
35 minor, although not so minor as to constitute a defense to prosecution.

36 4. The defendant could not reasonably have foreseen that his conduct
37 in the course of the commission of the offense for which the defendant was
38 convicted would cause, or would create a grave risk of causing, death to
39 another person.

40 5. The defendant's age.

41 H. For purposes of determining whether a conviction of any dangerous
42 crime against children is a serious offense pursuant to this section, an
43 unborn child shall be treated like a minor who is under twelve years of age.

44 I. For the purposes of this section, "serious offense" means any of
45 the following offenses if committed in this state or any offense committed

1 outside this state that if committed in this state would constitute one of
2 the following offenses:

- 3 1. First degree murder.
- 4 2. Second degree murder.
- 5 3. Manslaughter.
- 6 4. Aggravated assault resulting in serious physical injury or
7 committed by the use, threatened use or exhibition of a deadly weapon or
8 dangerous instrument.
- 9 5. Sexual assault.
- 10 6. Any dangerous crime against children.
- 11 7. Arson of an occupied structure.
- 12 8. Robbery.
- 13 9. Burglary in the first degree.
- 14 10. Kidnapping.
- 15 11. Sexual conduct with a minor under fifteen years of age.
- 16 12. Burglary in the second degree.
- 17 13. Terrorism.

18 Sec. 34. Section 13-752, Arizona Revised Statutes, as amended by Laws
19 2005, chapter 325, section 3 and as transferred and renumbered by this act,
20 is amended to read:

21 13-752. Sentences of death, life imprisonment or natural life;
22 imposition; sentencing proceedings; definitions

23 A. If the state has filed a notice of intent to seek the death penalty
24 and the defendant is convicted of first degree murder, the trier of fact at
25 the sentencing proceeding shall determine whether to impose a sentence of
26 death in accordance with the procedures provided in this section. If the
27 trier of fact determines that a sentence of death is not appropriate, or if
28 the state has not filed a notice of intent to seek the death penalty, and the
29 defendant is convicted of first degree murder, the court shall determine
30 whether to impose a sentence of life or natural life.

31 B. Before trial, the prosecution shall notice one or more of the
32 aggravating circumstances under section ~~13-703~~ 13-751, subsection F.

33 C. If the trier of fact finds the defendant guilty of first degree
34 murder, the trier of fact shall then immediately determine whether one or
35 more alleged aggravating circumstances have been proven. This proceeding is
36 the aggravation phase of the sentencing proceeding.

37 D. If the trier of fact finds that one or more of the alleged
38 aggravating circumstances have been proven, the trier of fact shall then
39 immediately determine whether the death penalty should be imposed. This
40 proceeding is the penalty phase of the sentencing proceeding.

41 E. At the aggravation phase, the trier of fact shall make a special
42 finding on whether each alleged aggravating circumstance has been proven
43 based on the evidence that was presented at the trial or at the aggravation
44 phase. If the trier of fact is a jury, a unanimous verdict is required to
45 find that the aggravating circumstance has been proven. If the trier of fact

1 unanimously finds that an aggravating circumstance has not been proven, the
2 defendant is entitled to a special finding that the aggravating circumstance
3 has not been proven. If the trier of fact unanimously finds no aggravating
4 circumstances, the court shall then determine whether to impose a sentence of
5 life or natural life on the defendant.

6 F. The penalty phase shall be held immediately after the trier of fact
7 finds at the aggravation phase that one or more of the aggravating
8 circumstances under section ~~13-703~~ 13-751, subsection F have been proven. A
9 finding by the trier of fact that any of the remaining aggravating
10 circumstances alleged has not been proven or the inability of the trier of
11 fact to agree on the issue of whether any of the remaining aggravating
12 circumstances alleged has been proven shall not prevent the holding of the
13 penalty phase.

14 G. At the penalty phase, the defendant and the state may present any
15 evidence that is relevant to the determination of whether there is mitigation
16 that is sufficiently substantial to call for leniency. In order for the
17 trier of fact to make this determination, the state may present any evidence
18 that demonstrates that the defendant should not be shown leniency.

19 H. The trier of fact shall determine unanimously whether death is the
20 appropriate sentence. If the trier of fact is a jury and the jury
21 unanimously determines that the death penalty is not appropriate, the court
22 shall determine whether to impose a sentence of life or natural life.

23 I. If the trier of fact at any prior phase of the trial is the same
24 trier of fact at the subsequent phase, any evidence that was presented at any
25 prior phase of the trial shall be deemed admitted as evidence at any
26 subsequent phase of the trial.

27 J. At the aggravation phase, if the trier of fact is a jury, the jury
28 is unable to reach a verdict on any of the alleged aggravating circumstances
29 and the jury has not found that at least one of the alleged aggravating
30 circumstances has been proven, the court shall dismiss the jury and shall
31 impanel a new jury. The new jury shall not retry the issue of the
32 defendant's guilt or the issue regarding any of the aggravating circumstances
33 that the first jury found not proved by unanimous verdict. If the new jury
34 is unable to reach a unanimous verdict, the court shall impose a sentence of
35 life or natural life on the defendant.

36 K. At the penalty phase, if the trier of fact is a jury and the jury
37 is unable to reach a verdict, the court shall dismiss the jury and shall
38 impanel a new jury. The new jury shall not retry the issue of the
39 defendant's guilt or the issue regarding any of the aggravating circumstances
40 that the first jury found by unanimous verdict to be proved or not proved.
41 If the new jury is unable to reach a unanimous verdict, the court shall
42 impose a sentence of life or natural life on the defendant.

43 L. If the jury that rendered a verdict of guilty is not the jury first
44 impaneled for the aggravation phase, the jury impaneled in the aggravation
45 phase shall not retry the issue of the defendant's guilt. If the jury

1 impaneled in the aggravation phase is unable to reach a verdict on any of the
2 alleged aggravating circumstances and the jury has not found that at least
3 one of the alleged aggravating circumstances has been proven, the court shall
4 dismiss the jury and shall impanel a new jury. The new jury shall not retry
5 the issue of the defendant's guilt or the issue regarding any of the
6 aggravating circumstances that the first jury found not proved by unanimous
7 verdict. If the new jury is unable to reach a unanimous verdict, the court
8 shall impose a sentence of life or natural life on the defendant.

9 M. Alternate jurors who are impaneled for the trial in a case in which
10 the offense is punishable by death shall not be excused from the case until
11 the completion of the sentencing proceeding.

12 N. If the sentence of a person who was sentenced to death is
13 overturned, the person shall be resentenced pursuant to this section by a
14 jury that is specifically impaneled for this purpose as if the original
15 sentencing had not occurred.

16 O. In any case that requires sentencing or resentencing in which the
17 defendant has been convicted of an offense that is punishable by death and in
18 which the trier of fact was a judge or a jury that has since been discharged,
19 the defendant shall be sentenced or resentenced pursuant to this section by a
20 jury that is specifically impaneled for this purpose.

21 P. The trier of fact shall make all factual determinations required by
22 this section or the Constitution of the United States or this state to impose
23 a death sentence. If the defendant bears the burden of proof, the issue
24 shall be determined in the penalty phase. If the state bears the burden of
25 proof, the issue shall be determined in the aggravation phase.

26 Q. If the death penalty was not alleged or was alleged but not
27 imposed, the court shall determine whether to impose a sentence of life or
28 natural life. In determining whether to impose a sentence of life or natural
29 life, the court:

30 1. May consider any evidence introduced before sentencing or at any
31 other sentencing proceeding.

32 2. Shall consider the aggravating and mitigating circumstances listed
33 in section 13-702 and any statement made by a victim.

34 R. Subject to ~~the provisions of~~ section ~~13-703~~ 13-751, subsection B, a
35 victim has the right to be present at the aggravation phase and to present
36 any information that is relevant to the proceeding. A victim has the right
37 to be present and to present information at the penalty phase. At the
38 penalty phase, the victim may present information about the murdered person
39 and the impact of the murder on the victim and other family members and may
40 submit a victim impact statement in any format to the trier of fact.

41 S. For the purposes of this section:

42 1. "Trier of fact" means a jury unless the defendant and the state
43 waive a jury, in which case the trier of fact shall be the court.

44 2. "Victim" means the murdered person's spouse, parent, child,
45 grandparent or sibling, any other person related to the murdered person by

1 consanguinity or affinity to the second degree or any other lawful
2 representative of the murdered person, except if the spouse, parent, child,
3 grandparent, sibling, other person related to the murdered person by
4 consanguinity or affinity to the second degree or other lawful representative
5 is in custody for an offense or is the accused.

6 Sec. 35. Section 13-752, Arizona Revised Statutes, as amended by Laws
7 2005, chapter 325, section 4 and as transferred and renumbered by this act,
8 is amended to read:

9 13-752. Sentences of death, life imprisonment or natural life;
10 imposition; sentencing proceedings; definitions

11 A. If the state has filed a notice of intent to seek the death penalty
12 and the defendant is convicted of first degree murder, the trier of fact at
13 the sentencing proceeding shall determine whether to impose a sentence of
14 death in accordance with the procedures provided in this section. If the
15 trier of fact determines that a sentence of death is not appropriate, or if
16 the state has not filed a notice of intent to seek the death penalty, and the
17 defendant is convicted of first degree murder, the court shall determine
18 whether to impose a sentence of life or natural life.

19 B. Before trial, the prosecution shall notice one or more of the
20 aggravating circumstances under section ~~13-703~~ 13-751, subsection F.

21 C. If the trier of fact finds the defendant guilty of first degree
22 murder, the trier of fact shall then immediately determine whether one or
23 more alleged aggravating circumstances have been proven. This proceeding is
24 the aggravation phase of the sentencing proceeding.

25 D. If the trier of fact finds that one or more of the alleged
26 aggravating circumstances have been proven, the trier of fact shall then
27 immediately determine whether the death penalty should be imposed. This
28 proceeding is the penalty phase of the sentencing proceeding.

29 E. At the aggravation phase, the trier of fact shall make a special
30 finding on whether each alleged aggravating circumstance has been proven
31 based on the evidence that was presented at the trial or at the aggravation
32 phase. If the trier of fact is a jury, a unanimous verdict is required to
33 find that the aggravating circumstance has been proven. If the trier of fact
34 unanimously finds that an aggravating circumstance has not been proven, the
35 defendant is entitled to a special finding that the aggravating circumstance
36 has not been proven. If the trier of fact unanimously finds no aggravating
37 circumstances, the court shall then determine whether to impose a sentence of
38 life or natural life on the defendant.

39 F. The penalty phase shall be held immediately after the trier of fact
40 finds at the aggravation phase that one or more of the aggravating
41 circumstances under section ~~13-703~~ 13-751, subsection F have been proven. A
42 finding by the trier of fact that any of the remaining aggravating
43 circumstances alleged has not been proven or the inability of the trier of
44 fact to agree on the issue of whether any of the remaining aggravating

1 circumstances alleged has been proven shall not prevent the holding of the
2 penalty phase.

3 G. At the penalty phase, the defendant and the state may present any
4 evidence that is relevant to the determination of whether there is mitigation
5 that is sufficiently substantial to call for leniency. In order for the
6 trier of fact to make this determination, the state may present any evidence
7 that demonstrates that the defendant should not be shown leniency.

8 H. The trier of fact shall determine unanimously whether death is the
9 appropriate sentence. If the trier of fact is a jury and the jury
10 unanimously determines that the death penalty is not appropriate, the court
11 shall determine whether to impose a sentence of life or natural life.

12 I. If the trier of fact at any prior phase of the trial is the same
13 trier of fact at the subsequent phase, any evidence that was presented at any
14 prior phase of the trial shall be deemed admitted as evidence at any
15 subsequent phase of the trial.

16 J. At the aggravation phase, if the trier of fact is a jury, the jury
17 is unable to reach a verdict on any of the alleged aggravating circumstances
18 and the jury has not found that at least one of the alleged aggravating
19 circumstances has been proven, the court shall dismiss the jury and shall
20 impanel a new jury. The new jury shall not retry the issue of the
21 defendant's guilt or the issue regarding any of the aggravating circumstances
22 that the first jury found not proved by unanimous verdict. If the new jury
23 is unable to reach a unanimous verdict, the court shall impose a sentence of
24 life or natural life on the defendant.

25 K. At the penalty phase, if the trier of fact is a jury and the jury
26 is unable to reach a verdict, the court shall dismiss the jury and shall
27 impanel a new jury. The new jury shall not retry the issue of the
28 defendant's guilt or the issue regarding any of the aggravating circumstances
29 that the first jury found by unanimous verdict to be proved or not
30 proved. If the new jury is unable to reach a unanimous verdict, the court
31 shall impose a sentence of life or natural life on the defendant.

32 L. If the jury that rendered a verdict of guilty is not the jury first
33 impaneled for the aggravation phase, the jury impaneled in the aggravation
34 phase shall not retry the issue of the defendant's guilt. If the jury
35 impaneled in the aggravation phase is unable to reach a verdict on any of the
36 alleged aggravating circumstances and the jury has not found that at least
37 one of the alleged aggravating circumstances has been proven, the court shall
38 dismiss the jury and shall impanel a new jury. The new jury shall not retry
39 the issue of the defendant's guilt or the issue regarding any of the
40 aggravating circumstances that the first jury found not proved by unanimous
41 verdict. If the new jury is unable to reach a unanimous verdict, the court
42 shall impose a sentence of life or natural life on the defendant.

43 M. Alternate jurors who are impaneled for the trial in a case in which
44 the offense is punishable by death shall not be excused from the case until
45 the completion of the sentencing proceeding.

1 N. If the sentence of a person who was sentenced to death is
2 overturned, the person shall be resentenced pursuant to this section by a
3 jury that is specifically impaneled for this purpose as if the original
4 sentencing had not occurred.

5 O. In any case that requires sentencing or resentencing in which the
6 defendant has been convicted of an offense that is punishable by death and in
7 which the trier of fact was a judge or a jury that has since been discharged,
8 the defendant shall be sentenced or resentenced pursuant to this section by a
9 jury that is specifically impaneled for this purpose.

10 P. The trier of fact shall make all factual determinations required by
11 this section or the Constitution of the United States or this state to impose
12 a death sentence. If the defendant bears the burden of proof, the issue
13 shall be determined in the penalty phase. If the state bears the burden of
14 proof, the issue shall be determined in the aggravation phase.

15 Q. If the death penalty was not alleged or was alleged but not
16 imposed, the court shall determine whether to impose a sentence of life or
17 natural life. In determining whether to impose a sentence of life or natural
18 life, the court:

19 1. May consider any evidence introduced before sentencing or at any
20 other sentencing proceeding.

21 2. Shall consider the aggravating and mitigating circumstances listed
22 in section 13-702 and any statement made by a victim.

23 R. Subject to ~~the provisions of~~ section ~~13-703~~ 13-751, subsection B, a
24 victim has the right to be present at the aggravation phase and to present
25 any information that is relevant to the proceeding. A victim has the right
26 to be present at the penalty phase. At the penalty phase, the victim has the
27 right to be heard pursuant to section 13-4426.

28 S. For the purposes of this section:

29 1. "Trier of fact" means a jury unless the defendant and the state
30 waive a jury, in which case the trier of fact shall be the court.

31 2. "Victim" means the murdered person's spouse, parent, child,
32 grandparent or sibling, any other person related to the murdered person by
33 consanguinity or affinity to the second degree or any other lawful
34 representative of the murdered person, except if the spouse, parent, child,
35 grandparent, sibling, other person related to the murdered person by
36 consanguinity or affinity to the second degree or other lawful representative
37 is in custody for an offense or is the accused.

38 Sec. 36. Section 13-755, Arizona Revised Statutes, as transferred and
39 renumbered by this act, is amended to read:

40 13-755. Death sentences; supreme court review

41 A. The supreme court shall review all death sentences. On review, the
42 supreme court shall independently review the trial court's findings of
43 aggravation and mitigation and the propriety of the death sentence.

44 B. If the supreme court determines that an error was made regarding a
45 finding of aggravation or mitigation, the supreme court shall independently

1 determine if the mitigation the supreme court finds is sufficiently
2 substantial to warrant leniency in light of the existing aggravation. If the
3 supreme court finds that the mitigation is not sufficiently substantial to
4 warrant leniency, the supreme court shall affirm the death sentence. If the
5 supreme court finds that the mitigation is sufficiently substantial to
6 warrant leniency, the supreme court shall impose a life sentence pursuant to
7 section ~~13-703~~ 13-751, subsection A.

8 C. The independent review required by subsection A does not preclude
9 the supreme court from remanding a case for further action if the trial court
10 erroneously excluded evidence or if the appellate record does not adequately
11 reflect the evidence presented.

12 Sec. 37. Section 13-901.01, Arizona Revised Statutes, is amended to
13 read:

14 13-901.01. Probation for persons convicted of possession or use
15 of controlled substances or drug paraphernalia;
16 treatment; prevention; education; exceptions;
17 definition

18 A. Notwithstanding any law to the contrary, any person who is
19 convicted of the personal possession or use of a controlled substance or drug
20 paraphernalia is eligible for probation. The court shall suspend the
21 imposition or execution of sentence and place the person on probation.

22 B. Any person who has been convicted of or indicted for a violent
23 crime as defined in section ~~13-604.04~~ 13-901.03 is not eligible for probation
24 as provided for in this section but instead shall be sentenced pursuant to
25 chapter 34 of this title.

26 C. Personal possession or use of a controlled substance pursuant to
27 this section shall not include possession for sale, production, manufacturing
28 or transportation for sale of any controlled substance.

29 D. If a person is convicted of personal possession or use of a
30 controlled substance or drug paraphernalia, as a condition of probation, the
31 court shall require participation in an appropriate drug treatment or
32 education program administered by a qualified agency or organization that
33 provides such programs to persons who abuse controlled substances. Each
34 person who is enrolled in a drug treatment or education program shall be
35 required to pay for participation in the program to the extent of the
36 person's financial ability.

37 E. A person who has been placed on probation pursuant to this section
38 and who is determined by the court to be in violation of probation shall have
39 new conditions of probation established by the court. The court shall select
40 the additional conditions it deems necessary, including intensified drug
41 treatment, community restitution, intensive probation, home arrest or any
42 other sanctions except that the court shall not impose a term of
43 incarceration unless the court determines that the person violated probation
44 by committing an offense listed in chapter 34 or 34.1 of this title or an act
45 in violation of an order of the court relating to drug treatment.

1 F. If a person is convicted a second time of personal possession or
2 use of a controlled substance or drug paraphernalia, the court may include
3 additional conditions of probation it deems necessary, including intensified
4 drug treatment, community restitution, intensive probation, home arrest or
5 any other action within the jurisdiction of the court.

6 G. At any time while the defendant is on probation, if after having a
7 reasonable opportunity to do so the defendant fails or refuses to participate
8 in drug treatment, the probation department or the prosecutor may petition
9 the court to revoke the defendant's probation. If the court finds that the
10 defendant refused to participate in drug treatment, the defendant shall no
11 longer be eligible for probation under this section but instead shall be
12 sentenced pursuant to chapter 34 of this title.

13 H. A person is not eligible for probation under this section but
14 instead shall be sentenced pursuant to chapter 34 of this title if the court
15 finds the person either:

16 1. Had been convicted three times of personal possession of a
17 controlled substance or drug paraphernalia.

18 2. Refused drug treatment as a term of probation.

19 3. Rejected probation.

20 4. Was convicted of the personal possession or use of a controlled
21 substance or drug paraphernalia and the offense involved methamphetamine.

22 I. Subsections G and H of this section do not prohibit the defendant
23 from being placed on probation pursuant to section 13-901 if the defendant
24 otherwise qualifies for probation under that section.

25 J. For the purposes of this section, "controlled substance" has the
26 same meaning prescribed in section 36-2501.

27 Sec. 38. Section 13-901.03, Arizona Revised Statutes, as transferred
28 and renumbered by this act, is amended to read:

29 13-901.03. Violent crimes; allegation; definition

30 A. **FOR THE PURPOSES OF SECTION 13-901.01**, the allegation that ~~the~~ A
31 defendant committed a violent crime shall be charged in the indictment or
32 information and admitted or found by the court. The court shall allow the
33 allegation that the defendant committed a violent crime at any time before
34 the date the case is actually tried unless the allegation is filed fewer than
35 twenty days before the case is actually tried and the court finds on the
36 record that the defendant was in fact prejudiced by the untimely filing and
37 states the reasons for these findings.

38 B. For the ~~purpose~~ **PURPOSES** of this section, "violent crime" includes
39 any criminal act that results in death or physical injury or any criminal use
40 of a deadly weapon or dangerous instrument.

41 Sec. 39. Section 13-905, Arizona Revised Statutes, is amended to read:

42 13-905. Restoration of civil rights; persons completing
43 probation

44 A. A person who has been convicted of two or more felonies and whose
45 period of probation has been completed may have any civil rights which were

1 lost or suspended by ~~his~~ THE felony conviction restored by the judge who
2 discharges him at the end of the term of probation.

3 B. ~~Upon~~ ON proper application, a person who has been discharged from
4 probation either ~~prior to~~ BEFORE or after adoption of this chapter may have
5 any civil rights which were lost or suspended by ~~his~~ THE felony conviction
6 restored by the superior court judge by whom the person was sentenced or ~~his~~
7 THE JUDGE'S successors in office from the county in which ~~he~~ THE PERSON was
8 originally convicted. The clerk of ~~such~~ THE superior court shall have the
9 responsibility for processing the application ~~upon~~ ON request of the person
10 involved or ~~his~~ THE PERSON'S attorney. The superior court shall ~~cause~~ SERVE
11 a copy of the application ~~to be served upon~~ ON the county attorney.

12 C. If the person was convicted of a dangerous offense ~~under section~~
13 ~~13-604~~, the person may not file for the restoration of ~~his~~ THE right to
14 possess or carry a gun or firearm. If the person was convicted of a serious
15 offense ~~as defined in section 13-604~~, the person may not file for the
16 restoration of ~~his~~ THE right to possess or carry a gun or firearm for ten
17 years from the date of his discharge from probation. If the person was
18 convicted of any other felony offense, the person may not file for the
19 restoration of ~~his~~ THE right to possess or carry a gun or firearm for two
20 years from the date of his discharge from probation.

21 Sec. 40. Section 13-906, Arizona Revised Statutes, is amended to read:
22 13-906. Applications by persons discharged from prison

23 A. ~~Upon~~ ON proper application, a person who has been convicted of two
24 or more felonies and who has received an absolute discharge from imprisonment
25 may have any civil rights which were lost or suspended by his conviction
26 restored by the superior court judge by whom the person was sentenced or ~~his~~
27 THE JUDGE'S successors in office from the county in which ~~he~~ THE PERSON was
28 originally sentenced.

29 B. A person who is subject to ~~the provisions of~~ subsection A of this
30 section may file, no sooner than two years from the date of his absolute
31 discharge, an application for restoration of civil rights that shall be
32 accompanied by a certificate of absolute discharge from the director of the
33 state department of corrections. The clerk of the superior court that
34 sentenced the applicant shall have the responsibility for processing
35 applications for restoration of civil rights ~~upon~~ ON request of the person
36 involved, ~~his~~ THE PERSON'S attorney or a representative of the state
37 department of corrections. The superior court shall ~~cause~~ SERVE a copy of
38 the application ~~to be served upon~~ ON the county attorney.

39 C. If the person was convicted of a dangerous offense ~~under section~~
40 ~~13-604~~, the person may not file for the restoration of ~~his~~ THE right to
41 possess or carry a gun or firearm. If the person was convicted of a serious
42 offense ~~as defined in section 13-604~~, the person may not file for the
43 restoration of ~~his~~ THE right to possess or carry a gun or firearm for ten
44 years from the date of his absolute discharge from imprisonment. If the
45 person was convicted of any other felony offense, the person may not file for

1 the restoration of ~~his~~ THE right to possess or carry a gun or firearm for two
2 years from the date of his absolute discharge from imprisonment.

3 Sec. 41. Section 13-909, Arizona Revised Statutes, is amended to read:

4 13-909. Restoration of civil rights; persons completing
5 probation for federal offense

6 A. A person who has been convicted of two or more felonies and whose
7 period of probation has been completed may have any civil rights which were
8 lost or suspended by ~~his~~ THE felony conviction in a United States district
9 court restored by the presiding judge of the superior court in the county in
10 which ~~he~~ THE PERSON now resides, ~~upon~~ ON filing of an affidavit of discharge
11 from the judge who discharged him at the end of the term of probation.

12 B. ~~Upon~~ ON proper application, a person who has been discharged from
13 probation either ~~prior to~~ BEFORE or after adoption of this chapter may have
14 any civil rights which were lost or suspended by ~~his~~ THE felony conviction
15 restored by an application filed with the clerk of the superior court in the
16 county in which ~~he~~ THE PERSON now resides. The clerk of the superior court
17 shall process the application ~~upon~~ ON request of the person involved or ~~his~~
18 THE PERSON'S attorney.

19 C. If the person was convicted of an offense which would be a
20 dangerous offense ~~under section 13-604~~, the person may not file for the
21 restoration of ~~his~~ THE right to possess or carry a gun or firearm. If the
22 person was convicted of an offense which would be a serious offense ~~as~~
23 ~~defined in section 13-604~~, the person may not file for the restoration of ~~his~~
24 THE right to possess or carry a gun or firearm for ten years from the date of
25 his discharge from probation. If the person was convicted of any other
26 felony offense, the person may not file for the restoration of ~~his~~ THE right
27 to possess or carry a gun or firearm for two years from the date of his
28 discharge from probation.

29 Sec. 42. Section 13-910, Arizona Revised Statutes, is amended to read:

30 13-910. Applications by persons discharged from federal prison

31 A. ~~Upon~~ ON proper application, a person who has been convicted of two
32 or more felonies and who has received an absolute discharge from imprisonment
33 in a federal prison may have any civil rights which were lost or suspended by
34 ~~his~~ THE conviction restored by the presiding judge of the superior court in
35 the county in which ~~he~~ THE PERSON now resides.

36 B. A person who is subject to ~~the provisions of~~ subsection A of this
37 section may file, no sooner than two years from the date of his absolute
38 discharge, an application for restoration of civil rights that shall be
39 accompanied by a certificate of absolute discharge from the director of the
40 federal bureau of prisons, unless it is shown to be impossible to obtain such
41 certificate. Such application shall be filed with the clerk of the superior
42 court in the county in which the person now resides, and such clerk shall be
43 responsible for processing applications for restoration of civil rights upon
44 request of the person involved or ~~his~~ THE PERSON'S attorney.

1 C. If the person was convicted of an offense which would be a
2 dangerous offense ~~under section 13-604~~, the person may not file for the
3 restoration of ~~his~~ THE right to possess or carry a gun or firearm. If the
4 person was convicted of an offense which would be a serious offense ~~as~~
5 ~~defined in section 13-604~~, the person may not file for the restoration of ~~his~~
6 THE right to possess or carry a gun or firearm for ten years from the date of
7 his absolute discharge from imprisonment. If the person was convicted of any
8 other felony offense, the person may not file for the restoration of ~~his~~ THE
9 right to possess or carry a gun or firearm for two years from the date of his
10 absolute discharge from imprisonment.

11 Sec. 43. Section 13-912.01, Arizona Revised Statutes, is amended to
12 read:

13 13-912.01. Restoration of civil rights; persons adjudicated
14 delinquent

15 A. A person who was adjudicated delinquent and whose period of
16 probation has been completed may have ~~his~~ THE right to possess or carry a gun
17 or firearm restored by the judge who discharges the person at the end of his
18 term of probation.

19 B. A person who was adjudicated delinquent and who has been discharged
20 from probation, on proper application, may have his right to carry or possess
21 a gun or firearm restored by the judge of the juvenile court in the county
22 where the person was adjudicated delinquent or ~~his~~ THE JUDGE'S successors.
23 The clerk of the superior court shall process the application on the request
24 of the person involved or the person's attorney. The applicant shall serve a
25 copy of the application on the county attorney.

26 C. If the person's adjudication was for a dangerous offense ~~under~~
27 ~~section 13-604~~, a serious offense ~~as defined in section 13-604~~, burglary in
28 the first degree, burglary in the second degree or arson, the person may not
29 file for the restoration of ~~his~~ THE right to possess or carry a gun or
30 firearm until the person attains thirty years of age. If the person's
31 adjudication was for any other felony offense, the person may not file for
32 the restoration of ~~his~~ THE right to possess or carry a gun or firearm for two
33 years from the date of his discharge.

34 Sec. 44. Section 13-921, Arizona Revised Statutes, is amended to read:

35 13-921. Probation for defendants under eighteen years of age;
36 dual adult juvenile probation

37 A. The court may enter a judgment of guilt and place the defendant on
38 probation pursuant to this section if all of the following apply:

39 1. The defendant is under eighteen years of age at the time the
40 offense is committed.

41 2. The defendant is convicted of a felony offense.

42 3. The defendant is not sentenced to a term of imprisonment.

43 4. The defendant does not have a historical prior felony conviction ~~as~~
44 ~~defined in section 13-604~~.

1 B. If the court places a defendant on probation pursuant to this
2 section, all of the following apply:

3 1. Except as provided in paragraphs 2, 3 and 4 of this subsection, if
4 the defendant successfully completes the terms and conditions of probation,
5 the court may set aside the judgment of guilt, dismiss the information or
6 indictment, expunge the defendant's record and order the person to be
7 released from all penalties and disabilities resulting from the conviction.
8 The clerk of the court in which the conviction occurred shall notify each
9 agency to which the original conviction was reported that all penalties and
10 disabilities have been discharged and that the defendant's record has been
11 expunged.

12 2. The conviction may be used as a conviction if it would be
13 admissible pursuant to section 13-604 OR 13-703 as if it had not been set
14 aside and the conviction may be pleaded and proved as a prior conviction in
15 any subsequent prosecution of the defendant.

16 3. The conviction is deemed to be a conviction for the purposes of
17 sections 28-3304, 28-3305, 28-3306 and 28-3320.

18 4. The defendant shall comply with sections 13-3821 and 13-3822.

19 C. A defendant who is placed on probation pursuant to this section is
20 deemed to be on adult probation.

21 D. If a defendant is placed on probation pursuant to this section, the
22 court as a condition of probation may order the defendant to participate in
23 services that are available to the juvenile court.

24 E. The court may order that a defendant who is placed on probation
25 pursuant to this section be incarcerated in a county jail at whatever time or
26 intervals, consecutive or nonconsecutive, that the court determines. The
27 incarceration shall not extend beyond the period of court ordered probation,
28 and the length of time the defendant actually spends in a county jail shall
29 not exceed one year.

30 F. In addition to the provisions of this section, the court may apply
31 any of the provisions of section 13-901.

32 Sec. 45. Section 13-1104, Arizona Revised Statutes, is amended to
33 read:

34 13-1104. Second degree murder; classification

35 A. A person commits second degree murder if without premeditation:

36 1. The person intentionally causes the death of another person,
37 including an unborn child or, as a result of intentionally causing the death
38 of another person, causes the death of an unborn child; or

39 2. Knowing that the person's conduct will cause death or serious
40 physical injury, the person causes the death of another person, including an
41 unborn child or, as a result of knowingly causing the death of another
42 person, causes the death of an unborn child; or

43 3. Under circumstances manifesting extreme indifference to human life,
44 the person recklessly engages in conduct that creates a grave risk of death
45 and thereby causes the death of another person, including an unborn child or,

1 as a result of recklessly causing the death of another person, causes the
2 death of an unborn child.

3 B. An offense under this section applies to an unborn child in the
4 womb at any stage of its development. A person may not be prosecuted under
5 this section if any of the following applies:

6 1. The person was performing an abortion for which the consent of the
7 pregnant woman, or a person authorized by law to act on the pregnant woman's
8 behalf, has been obtained or for which the consent was implied or authorized
9 by law.

10 2. The person was performing medical treatment on the pregnant woman
11 or the pregnant woman's unborn child.

12 3. The person was the unborn child's mother.

13 C. Second degree murder is a class 1 felony and is punishable as
14 provided by ~~section 13-604, subsection S,~~ section 13-604.01 if the victim is
15 under fifteen years of age or is an unborn child, SECTION 13-704, SUBSECTION
16 A or section 13-710.

17 Sec. 46. Section 13-1105, Arizona Revised Statutes, is amended to
18 read:

19 13-1105. First degree murder; classification

20 A. A person commits first degree murder if:

21 1. Intending or knowing that the person's conduct will cause death,
22 the person causes the death of another person, including an unborn child,
23 with premeditation or, as a result of causing the death of another person
24 with premeditation, causes the death of an unborn child.

25 2. Acting either alone or with one or more other persons the person
26 commits or attempts to commit sexual conduct with a minor under section
27 13-1405, sexual assault under section 13-1406, molestation of a child under
28 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under
29 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under
30 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under
31 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory
32 threshold amount for each offense or combination of offenses, involving or
33 using minors in drug offenses under section 13-3409, kidnapping under section
34 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under
35 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or
36 13-1904, escape under section 13-2503 or 13-2504, child abuse under section
37 13-3623, subsection A, paragraph 1, ~~or~~ unlawful flight from a pursuing law
38 enforcement vehicle under section 28-622.01 and, in the course of and in
39 furtherance of the offense or immediate flight from the offense, the person
40 or another person causes the death of any person.

41 3. Intending or knowing that the person's conduct will cause death to
42 a law enforcement officer, the person causes the death of a law enforcement
43 officer who is in the line of duty.

1 B. Homicide, as prescribed in subsection A, paragraph 2 of this
2 section, requires no specific mental state other than what is required for
3 the commission of any of the enumerated felonies.

4 C. An offense under subsection A, paragraph 1 of this section applies
5 to an unborn child in the womb at any stage of its development. A person
6 shall not be prosecuted under subsection A, paragraph 1 of this section if
7 any of the following applies:

8 1. The person was performing an abortion for which the consent of the
9 pregnant woman, or a person authorized by law to act on the pregnant woman's
10 behalf, has been obtained or for which the consent was implied or authorized
11 by law.

12 2. The person was performing medical treatment on the pregnant woman
13 or the pregnant woman's unborn child.

14 3. The person was the unborn child's mother.

15 D. First degree murder is a class 1 felony and is punishable by death
16 or life imprisonment as provided by sections ~~13-703~~ 13-751 and ~~13-703.01~~
17 13-752.

18 Sec. 47. Section 13-1406, Arizona Revised Statutes, is amended to
19 read:

20 ~~13-1406.~~ Sexual assault; classification; increased punishment

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

24 B. Sexual assault is a class 2 felony, and the person convicted shall
25 be sentenced pursuant to this section and the person is not eligible for
26 suspension of sentence, probation, pardon or release from confinement on any
27 basis except as specifically authorized by section 31-233, subsection A or B,
28 until the sentence imposed by the court has been served or commuted. If the
29 victim is under fifteen years of age, sexual assault is punishable pursuant
30 to section 13-604.01. The presumptive term may be aggravated or mitigated
31 within the range under this section pursuant to section 13-702, subsections
32 B, C and D. If the sexual assault involved the intentional or knowing
33 administration of flunitrazepam, gamma hydroxy butyrate or ketamine
34 hydrochloride without the victim's knowledge, the presumptive, minimum and
35 maximum sentence for the offense shall be increased by three years. The
36 additional sentence imposed pursuant to this subsection is in addition to any
37 enhanced sentence that may be applicable. The term for a first offense is as
38 follows:

39	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
40	5.25 years	7 years	14 years

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

43	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
44	7 years	10.5 years	21 years

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

3 <u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4 14 years	15.75 years	28 years

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

8 D. Notwithstanding ~~sections~~ SECTION 13-604, ~~and~~ SECTION 13-604.01,
9 SECTION 13-703 AND SECTION 13-704, SUBSECTION A, if the sexual assault
10 involved the intentional or knowing infliction of serious physical injury,
11 the person may be sentenced to life imprisonment and is not eligible for
12 suspension of sentence, probation, pardon or release from confinement on any
13 basis, except as specifically authorized by section 31-233, subsection A or
14 B, until at least twenty-five years have been served or the sentence is
15 commuted. If the person was at least eighteen years of age and the victim
16 was twelve years of age or younger, the person shall be sentenced pursuant to
17 section 13-604.01, subsection A.

18 Sec. 48. Section 13-1423, Arizona Revised Statutes, is amended to
19 read:

20 13-1423. Violent sexual assault; natural life sentence

21 A. A person is guilty of violent sexual assault if in the course of
22 committing an offense under section 13-1404, 13-1405, 13-1406 or 13-1410 the
23 offense involved the discharge, use or threatening exhibition of a deadly
24 weapon or dangerous instrument or involved the intentional or knowing
25 infliction of serious physical injury and the person has a historical prior
26 felony conviction for a sexual offense under this chapter or any offense
27 committed outside this state that if committed in this state would constitute
28 a sexual offense under this chapter.

29 B. Notwithstanding ~~sections~~ SECTION 13-604, ~~and~~ SECTION 13-604.01,
30 SECTION 13-703 AND SECTION 13-704, SUBSECTION A, a person who is guilty of a
31 violent sexual assault shall be sentenced to life imprisonment and the court
32 shall order that the person not be released on any basis for the remainder of
33 the person's natural life.

34 Sec. 49. Section 13-3107, Arizona Revised Statutes, is amended to
35 read:

36 13-3107. Unlawful discharge of firearms; exceptions;
37 classification; definitions

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

40 B. Notwithstanding the fact that the offense involves the discharge of
41 a deadly weapon, unless the dangerous nature of the felony is charged and
42 proven pursuant to section 13-604, subsection P- L, ~~the provisions of~~ section
43 ~~13-702, subsection G apply~~ 13-611 APPLIES to this offense.

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

- 45 1. As allowed pursuant to ~~the provisions of~~ chapter 4 of this title.

- 1 2. On a properly supervised range.
- 2 3. In an area recommended as a hunting area by the Arizona game and
- 3 fish department, approved and posted as required by the chief of police, but
- 4 any such area may be closed when deemed unsafe by the chief of police or the
- 5 director of the ARIZONA game and fish department.
- 6 4. For the control of nuisance wildlife by permit from the Arizona
- 7 game and fish department or the United States fish and wildlife service.
- 8 5. By special permit of the chief of police of the municipality.
- 9 6. As required by an animal control officer in the performance of
- 10 duties as specified in section 9-499.04.
- 11 7. Using blanks.
- 12 8. More than one mile from any occupied structure as defined in
- 13 section 13-3101.
- 14 9. In self-defense or defense of another person against an animal
- 15 attack if a reasonable person would believe that deadly physical force
- 16 against the animal is immediately necessary and reasonable under the
- 17 circumstances to protect oneself or the other person.
- 18 D. For the purposes of this section:
- 19 1. "Municipality" means any city or town and includes any property
- 20 that is fully enclosed within the city or town.
- 21 2. "Properly supervised range" means a range that is ~~operated~~ ANY OF
- 22 THE FOLLOWING:
- 23 (a) OPERATED by a club affiliated with the national rifle association
- 24 of America, the amateur trapshooting association, the national skeet
- 25 association or any other nationally recognized shooting organization, or by
- 26 any public or private school. ~~, or~~
- 27 (b) Approved by any agency of the federal government, this state, ~~OR~~
- 28 a county or city within which the range is located. ~~or~~
- 29 (c) OPERATED with adult supervision for shooting air or carbon dioxide
- 30 gas operated guns, or for shooting in underground ranges on private or public
- 31 property.
- 32 Sec. 50. Section 13-3113, Arizona Revised Statutes, is amended to
- 33 read:
- 34 13-3113. Adjudicated delinquents; firearm possession;
- 35 classification
- 36 A person who was previously adjudicated delinquent for an offense that
- 37 would be a felony if committed by an adult and who possesses, uses or carries
- 38 a firearm within ten years from the date of his adjudication or his release
- 39 or escape from custody is guilty of a class 5 felony for a first offense and
- 40 a class 4 felony for a second or subsequent offense if the person was
- 41 previously adjudicated for an offense that if committed as an adult would
- 42 constitute:
- 43 1. Burglary in the first degree.
- 44 2. Burglary in the second degree.
- 45 3. Arson.

1 4. Any felony offense involving the use or threatening exhibition of a
2 deadly weapon or dangerous instrument.

3 5. A serious offense ~~as defined in section 13-604.~~

4 Sec. 51. Section 13-3407, Arizona Revised Statutes, is amended to
5 read:

6 13-3407. Possession, use, administration, acquisition, sale,
7 manufacture or transportation of dangerous drugs;
8 classification

9 A. A person shall not knowingly:

10 1. Possess or use a dangerous drug.

11 2. Possess a dangerous drug for sale.

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

14 4. Manufacture a dangerous drug.

15 5. Administer a dangerous drug to another person.

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

18 7. Transport for sale, import into this state or offer to transport
19 for sale or import into this state, sell, transfer or offer to sell or
20 transfer a dangerous drug.

21 B. A person who violates:

22 1. Subsection A, paragraph 1 of this section is guilty of a class 4
23 felony. Unless the drug involved is lysergic acid diethylamide,
24 methamphetamine, amphetamine or phencyclidine or the person was previously
25 convicted of a felony offense or a violation of this section or section
26 13-3408, the court on motion of the state, considering the nature and
27 circumstances of the offense, for a person not previously convicted of any
28 felony offense or a violation of this section or section 13-3408 may enter
29 judgment of conviction for a class 1 misdemeanor and make disposition
30 accordingly or may place the defendant on probation in accordance with
31 chapter 9 of this title and refrain from designating the offense as a felony
32 or misdemeanor until the probation is successfully terminated. The offense
33 shall be treated as a felony for all purposes until the court enters an order
34 designating the offense a misdemeanor.

35 2. Subsection A, paragraph 2 of this section is guilty of a class 2
36 felony.

37 3. Subsection A, paragraph 3 of this section is guilty of a class 3
38 felony, except that if the offense involved methamphetamine, the person is
39 guilty of a class 2 felony.

40 4. Subsection A, paragraph 4 of this section is guilty of a class 2
41 felony.

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

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

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

3 C. Except as provided in subsection E of this section, a person who is
4 convicted of a violation of subsection A, paragraph 1, 3 or 6 and who has not
5 previously been convicted of any felony or who has not been sentenced
6 pursuant to section 13-604 OR 13-703 or any other law making the convicted
7 person ineligible for probation is eligible for probation.

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

17 E. If the person is convicted of a violation of subsection A,
18 paragraph 2, 3, 4 or 7 of this section and the drug involved is
19 methamphetamine, the person shall be sentenced pursuant to section ~~13-712~~
20 13-706.

21 F. A person who is convicted of a violation of subsection A, paragraph
22 4 of this section or subsection A, paragraph 2, 3 or 7 of this section
23 involving methamphetamine is not eligible for suspension of sentence,
24 probation, pardon or release from confinement on any basis until the person
25 has served the sentence imposed by the court, the person is eligible for
26 release pursuant to section 41-1604.07 or the sentence is commuted.

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

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

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

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

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

14 Sec. 52. Section 13-3408, Arizona Revised Statutes, is amended to
15 read:

16 13-3408. Possession, use, administration, acquisition, sale,
17 manufacture or transportation of narcotic drugs;
18 classification

19 A. A person shall not knowingly:

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

31 B. A person who violates:

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

1 C. A person who is convicted of a violation of subsection A, paragraph
2 1, 3 or 6 of this section and who has not previously been convicted of any
3 felony or who has not been sentenced pursuant to section 13-604 OR 13-703 or
4 any other provision of law making the convicted person ineligible for
5 probation is eligible for probation.

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

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

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

26 G. A person who is convicted of a violation of ~~a provision of~~ this
27 section for which probation or release before the expiration of the sentence
28 imposed by the court is authorized is prohibited from using any marijuana,
29 dangerous drug, narcotic drug or prescription-only drug except as lawfully
30 administered by a health care practitioner and as a condition of any
31 probation or release shall be required to submit to drug testing administered
32 under the supervision of the probation department of the county or the state
33 department of corrections, as appropriate, during the duration of the term of
34 probation or before the expiration of the sentence imposed.

35 H. If a person who is convicted of a violation of this section is
36 granted probation, the court shall order that as a condition of probation the
37 person perform not less than three hundred sixty hours of community
38 restitution with an agency or organization that provides counseling,
39 rehabilitation or treatment for alcohol or drug abuse, an agency or
40 organization that provides medical treatment to persons who abuse controlled
41 substances, an agency or organization that serves persons who are victims of
42 crime or any other appropriate agency or organization.

1 Sec. 53. Section 13-3411, Arizona Revised Statutes, is amended to
2 read:

3 13-3411. Possession, use, sale or transfer of marijuana,
4 peyote, prescription drugs, dangerous drugs or
5 narcotic drugs or manufacture of dangerous drugs in
6 a drug free school zone; classification; definitions

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

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

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

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

14 B. A person who violates subsection A of this section is guilty of the
15 same class of felony that the person would otherwise be guilty of had the
16 violation not occurred within a drug free school zone, but the minimum,
17 maximum and presumptive sentence for that violation shall be increased by one
18 year. A person WHO IS convicted of violating subsection A of this section is
19 not eligible for suspension of sentence, probation, pardon or release from
20 confinement on any basis, except pursuant to section 31-233, subsection A or
21 B, until the sentence imposed by the court has been served or commuted. The
22 additional sentence imposed under this subsection is in addition to any
23 enhanced punishment that may be applicable under section 13-604 OR 13-703 or
24 other provisions of this chapter.

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

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

37 E. The drug free school zone map prepared pursuant to title 15 shall
38 constitute an official record as to the location and boundaries of each drug
39 free school zone. The school district's governing board or its designee, or
40 the chief administrative officer in the case of any nonpublic school, shall
41 promptly notify the county attorney of any changes in the location and
42 boundaries of any school property and shall file with the county recorder the
43 original map prepared pursuant to title 15.

44 F. All school personnel who observe a violation of this section shall
45 immediately report the violation to a school administrator. The

1 administrator shall immediately report the violation to a peace officer. It
2 is unlawful for any school personnel or school administrator to fail to
3 report a violation as prescribed in this section.

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

14 H. A person who violates subsection F of this section is guilty of a
15 class 3 misdemeanor.

16 I. For THE purposes of this section:

17 1. "Drug free school zone" means the area within three hundred feet of
18 a school or its accompanying grounds, any public property within one thousand
19 feet of a school or its accompanying grounds, a school bus stop or on any
20 school bus or bus contracted to transport pupils to any school.

21 2. "School" means any public or nonpublic kindergarten program, common
22 school or high school.

23 Sec. 54. Section 13-3419, Arizona Revised Statutes, is amended to
24 read:

25 13-3419. Multiple drug offenses not committed on the same
26 occasion; sentencing

27 A. Except for a person convicted of possession offenses pursuant to
28 section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A,
29 paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is
30 convicted of two or more offenses under this chapter that were not committed
31 on the same occasion but that either are consolidated for trial purposes or
32 are not historical prior felony convictions ~~as defined in section 13-604~~
33 shall be sentenced for the second or subsequent offense pursuant to this
34 section. The person shall not be eligible for suspension of sentence,
35 probation, pardon or release from confinement on any basis, except as
36 specifically authorized by section 31-233, subsection A or B, until the
37 sentence imposed by the court has been served, the person is eligible for
38 release pursuant to section 41-1604.07 or the sentence is commuted, except
39 that a person sentenced pursuant to paragraph 1 of this subsection shall be
40 eligible for probation. The presumptive term for paragraph 1, 2, 3 or 4 of
41 this subsection may be aggravated within the range under this section
42 pursuant to section 13-702, subsections B, C and D. The presumptive term for
43 paragraph 1, 2 or 3 of this subsection may be mitigated within the range
44 under this section pursuant to section 13-702, subsections B, C and D. The
45 terms are as follows:

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

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	4 years	5 years	10 years
Class 3	2.5 years	3.5 years	7 years
Class 4	1.5 years	2.5 years	3 years
Class 5	.75 years	1.5 years	2 years

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

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	4 years	5 years	10 years
Class 3	2.5 years	3.5 years	7 years
Class 4	1.5 years	2.5 years	3 years
Class 5	.75 years	1.5 years	2 years

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

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	4 years	5 years	10 years
Class 3	2.5 years	3.5 years	7 years
Class 4	1.5 years	2.5 years	3 years
Class 5	9-months .75 YEARS	1.5 years	2 years

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

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	4 years	7 years	12 years
Class 3	2.5 years	5 years	9 years
Class 4	1.5 years	3 years	5 years
Class 5	9-months .75 YEARS	2.5 years	4 years

33 B. For offenders WHO ARE sentenced pursuant to subsection A,
34 ~~paragraphs 1 through 4~~ of this section, the court may increase the maximum
35 sentence otherwise authorized by up to twenty-five per cent.

36 C. For offenders WHO ARE sentenced pursuant to subsection A, paragraph
37 1, 2 or 3 of this section, the court may decrease the minimum sentence
38 otherwise authorized by up to twenty-five per cent.

39 D. If the court increases or decreases a sentence pursuant to this
40 section, the court shall state on the record the reasons for the increase or
41 decrease.

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

1 Sec. 55. Section 13-3422, Arizona Revised Statutes, is amended to
2 read:

3 13-3422. Drug court program; establishment; participation

4 A. The presiding judge of the superior court in each county may
5 establish a drug court program as defined in section 13-3401.

6 B. Cases assigned to the drug court program may consist of defendants
7 who are drug dependent persons and who are charged with a probation eligible
8 offense under this chapter, including preparatory offenses.

9 C. A defendant may be admitted into the drug court program prior to a
10 guilty plea or a trial only on the agreement of the court and the prosecutor.

11 D. A defendant is not eligible for entry into the drug court program
12 pursuant to subsections F and H of this section if any of the following
13 applies:

14 1. The defendant has been convicted of a serious offense ~~as defined in~~
15 ~~section 13-604.~~

16 2. The defendant has been convicted of an offense under chapter 14 of
17 this title.

18 3. The defendant has been convicted of ~~an~~ **A DANGEROUS** offense
19 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~
20 ~~dangerous instrument or the intentional or knowing infliction of serious~~
21 ~~physical injury.~~

22 4. The defendant has completed or previously been terminated from a
23 drug court program other than a juvenile drug court program.

24 5. The defendant has completed or previously been terminated from a
25 drug diversion program other than a juvenile drug diversion program for an
26 offense in violation of this chapter.

27 E. For the purposes of subsection D of this section, the age of the
28 conviction does not matter.

29 F. Notwithstanding any law to the contrary, if a defendant who is
30 assigned to the drug court program is subsequently found guilty of the
31 offense and probation is otherwise available, the court, without entering a
32 judgment of guilt and with the concurrence of the defendant, may defer
33 further proceedings and place the defendant on probation. The terms and
34 conditions of probation shall provide for the treatment of the drug dependent
35 person and shall include any other conditions and requirements that the court
36 deems appropriate, including the imposition of a fine, payment of fees and
37 any other terms and conditions as provided by law which are not in violation
38 of section 13-901.01.

39 G. If the defendant is placed on probation pursuant to subsection F of
40 this section and the defendant violates a term or condition of probation, the
41 court may terminate the defendant's participation in the drug court program,
42 enter an adjudication of guilt and revoke the defendant's probation.

43 H. If the defendant is convicted of an offense listed in subsection I
44 of this section and is placed on probation pursuant to subsection F of this
45 section, on fulfillment of the terms and conditions of probation, the court

1 may discharge the defendant and dismiss the proceedings against the defendant
2 or may dispose of the case as provided by law.

3 I. A defendant is eligible for dismissal of proceedings as provided in
4 subsection H of this section if the defendant is convicted of any of the
5 following offenses:

6 1. Possession or use of marijuana in violation of section 13-3405,
7 subsection A, paragraph 1.

8 2. Possession or use of a prescription-only drug in violation of
9 section 13-3406, subsection A, paragraph 1.

10 3. Possession or use of a dangerous drug in violation of section
11 13-3407, subsection A, paragraph 1.

12 4. Possession or use of a narcotic drug in violation of section
13 13-3408, subsection A, paragraph 1.

14 5. Possession or use of drug paraphernalia in violation of section
15 13-3415, subsection A.

16 6. Any preparatory offense, as prescribed in chapter 10 of this title,
17 to an offense listed in this subsection.

18 J. If the defendant is placed on probation pursuant to subsection F of
19 this section and the defendant fails to fulfill the terms and conditions of
20 probation, the court shall enter an adjudication of guilt and sentence the
21 defendant as provided by law.

22 K. If a defendant chooses not to participate in the drug court
23 program, the defendant shall be prosecuted as provided by law.

24 L. This section does not prohibit the presiding judge of the superior
25 court from establishing a drug court program other than as defined in section
26 13-3401 with other terms and conditions, including requiring a defendant to
27 participate in a drug court program subsequent to the entry of judgment of
28 guilt and sentencing.

29 Sec. 56. Section 13-3994, Arizona Revised Statutes, is amended to
30 read:

31 13-3994. Commitment; hearing; jurisdiction; definition

32 A. A person who is found guilty except insane pursuant to section
33 13-502 shall be committed to a secure state mental health facility under the
34 department of health services for a period of treatment.

35 B. If the criminal act of the person committed pursuant to subsection
36 A of this section did not cause the death or serious physical injury of or
37 the threat of death or serious physical injury to another person, the court
38 shall set a hearing date within seventy-five days after the person's
39 commitment to determine if the person is entitled to release from confinement
40 or if the person meets the standards for civil commitment pursuant to title
41 36, chapter 5. The court shall notify the medical director of the mental
42 health facility, the attorney general, the county attorney, the victim and
43 the attorney representing the person, if any, of the date of the hearing.
44 Fourteen days before the hearing the director of the mental health facility

1 shall submit to the court a report addressing the person's mental health and
2 dangerousness.

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

4 1. If the person proves by clear and convincing evidence that the
5 person no longer suffers from a mental disease or defect and is not
6 dangerous, the court shall order the person's release and the person's
7 commitment ordered pursuant to section 13-502, subsection D shall terminate.
8 Before determining to release a person pursuant to this paragraph, the court
9 shall consider the entire criminal history of the person and shall not order
10 the person's release if the court determines that the person has a propensity
11 to reoffend.

12 2. If the court finds that the person still suffers from a mental
13 disease or defect, may present a threat of danger to self or others, is
14 gravely disabled, is persistently or acutely disabled or has a propensity to
15 reoffend, it shall order the county attorney to institute civil commitment
16 proceedings pursuant to title 36, and the person's commitment ordered
17 pursuant to section 13-502, subsection D shall terminate.

18 D. If the court finds that the criminal act of the person committed
19 pursuant to subsection A of this section caused the death or serious physical
20 injury of or the threat of death or serious physical injury to another
21 person, the court shall place the person under the jurisdiction of the
22 psychiatric security review board. The court shall state the beginning date,
23 length and ending date of the board's jurisdiction over the person. The
24 length of the board's jurisdiction over the person is equal to the sentence
25 the person could have received pursuant to ~~section 13-703, subsection A or~~
26 section 13-707 or SECTION 13-751, SUBSECTION A OR the presumptive sentence
27 the defendant could have received pursuant to section 13-604, section
28 13-604.01, section 13-701, subsection C, SECTION 13-703, SECTION 13-705,
29 SUBSECTION A, section 13-710 or section 13-1406. In making this
30 determination the court shall not consider the sentence enhancements for
31 prior convictions under section 13-604 OR 13-703.

32 E. A person who is placed under the jurisdiction of the psychiatric
33 security review board pursuant to subsection D of this section is not
34 eligible for discharge from the board's jurisdiction until the board's
35 jurisdiction over the person expires.

36 F. A person who is placed under the jurisdiction of the psychiatric
37 security review board pursuant to subsection D of this section is not
38 entitled to a hearing before the board earlier than one hundred twenty days
39 after the person's initial commitment. A request for a subsequent release
40 hearing may be made pursuant to subsection G of this section. After the
41 hearing, the board may take one of the following actions:

42 1. If the psychiatric security review board finds that the person
43 still suffers from a mental disease or defect and is dangerous, the person
44 shall remain committed at the secure state mental health facility.

1 2. If the person proves by clear and convincing evidence that the
2 person no longer suffers from a mental disease or defect and is not
3 dangerous, the psychiatric security review board shall order the person's
4 release. The person shall remain under the jurisdiction of the board.
5 Before determining to release a person pursuant to this paragraph, the board
6 shall consider the entire criminal history of the person and shall not order
7 the person's release if the board determines that the person has a propensity
8 to reoffend.

9 3. If the psychiatric security review board finds that the person
10 still suffers from a mental disease or defect or that the mental disease or
11 defect is in stable remission but the person is no longer dangerous, the
12 board shall order the person's conditional release. The person shall remain
13 under the board's jurisdiction. The board in conjunction with the state
14 mental health facility and behavioral health community providers shall
15 specify the conditions of the person's release. The board shall continue to
16 monitor and supervise a person who is released conditionally. Before the
17 conditional release of a person, a supervised treatment plan shall be in
18 place, including the necessary funding to implement the plan.

19 G. A person who is placed under the jurisdiction of the psychiatric
20 security review board pursuant to subsection D of this section may not seek a
21 new release hearing earlier than twenty months after a prior release hearing,
22 except that the medical director of the state mental health facility may
23 request a new release hearing for a person under the jurisdiction of the
24 psychiatric security review board at any time. The person shall not be held
25 in confinement for more than two years without a hearing before the board to
26 determine if the person should be released or conditionally released.

27 H. At any hearing for release or conditional release pursuant to this
28 section:

29 1. Public safety and protection are primary.

30 2. The applicant has the burden of proof by clear and convincing
31 evidence.

32 I. At least fifteen days before a hearing is scheduled to consider a
33 person's release, or before the expiration of the board's jurisdiction over
34 the person, the state mental health facility or supervising agency shall
35 submit to the psychiatric security review board a report on the person's
36 mental health. The psychiatric security review board shall determine whether
37 to release the person or to order the county attorney to institute civil
38 commitment proceedings pursuant to title 36.

39 J. The procedures for civil commitment govern the continued commitment
40 of the person after the expiration of the jurisdiction of the psychiatric
41 security review board.

42 K. Before a person is released or conditionally released, at least
43 three of the five psychiatric security review board members shall vote for
44 the release or conditional release.

1 L. If at any time while the person remains under the jurisdiction of
2 the psychiatric security review board it appears to the board, the chairman
3 or vice-chairman of the board or the medical director of the state mental
4 health facility that the person has failed to comply with the terms of the
5 person's conditional release or that the mental health of the person has
6 deteriorated, the board or the chairman or vice-chairman of the board for
7 good cause or the medical director of the state mental health facility may
8 order that the person be returned to a secure state mental health facility
9 for evaluation or treatment. A written order of the board, the chairman or
10 vice-chairman of the board or the medical director is sufficient warrant for
11 any law enforcement officer to take the person into custody and to transport
12 the person accordingly. Any sheriff or other peace officer shall execute the
13 order and shall immediately notify the board of the person's return to the
14 facility. Within twenty days after the person's return to a secure state
15 mental health facility the board shall conduct a hearing and shall give
16 notice within five days before the hearing of the time and place of the
17 hearing to the person, the victim, the attorney representing the person, the
18 county attorney and the attorney general.

19 M. The director of a facility that is providing treatment to a person
20 on conditional release or any other person who is responsible for the
21 supervision of the person may take the person or request that the person be
22 taken into custody if there is reasonable cause to believe that the person's
23 mental health has deteriorated to the point that the person's conditional
24 release should be revoked and that the person is in need of immediate care,
25 custody or treatment or that deterioration is likely because of noncompliance
26 with a treatment program. A person who is taken into custody pursuant to
27 this subsection shall be transported immediately to a secure state mental
28 health facility and shall have the same rights as any person appearing before
29 the psychiatric security review board.

30 N. Before the initial hearing or any other hearing before the
31 psychiatric security review board on the release or conditional release of
32 the person, the person, the attorney who is representing the person and the
33 attorney general or county attorney who is representing the state may choose
34 a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a
35 psychologist licensed pursuant to title 32, chapter 19.1 to examine the
36 person. All costs in connection with the examination shall be approved and
37 paid by the county of the sentencing court. The written examination results
38 shall be filed with the board and shall include an opinion as to:

- 39 1. The mental condition of the person.
- 40 2. Whether the person is dangerous.

41 O. Notwithstanding subsection N of this section, the board or the
42 chairman of the board for good cause may order an independent mental health
43 evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17
44 or a psychologist licensed pursuant to title 32, chapter 19.1. The written

1 examination results shall be filed with the board pursuant to subsection N of
2 this section.

3 P. If a person is found guilty except insane pursuant to section
4 13-502, the department of health services shall assume custody of the person
5 within ten days after receiving the order committing the person pursuant to
6 subsection A of this section. The Arizona state hospital shall collect
7 census data for guilty except insane treatment programs to establish maximum
8 capacity and the allocation formula required pursuant to section 36-206,
9 subsection D. If the Arizona state hospital reaches its funded capacity for
10 forensic programs, the department of health services may defer the admission
11 of the person found guilty except insane for up to an additional twenty days.
12 The department of health services shall reimburse the county for the actual
13 costs of each day the admission is deferred. If the department of health
14 services is not able to admit the person found guilty except insane at the
15 conclusion of the twenty day deferral period, the department of health
16 services shall notify the sentencing court, the prosecutor and the defense
17 counsel of this fact. On receipt of this notification, the prosecutor or the
18 person's defense counsel may request a hearing to determine the likely length
19 of time admission will continue to be deferred and whether any other action
20 should be taken. On receipt of the request for hearing, the court shall set
21 a hearing within ten days.

22 Q. For the purposes of this section, "state mental health facility"
23 means a secure state mental health facility under the department of health
24 services.

25 Sec. 57. Section 13-4032, Arizona Revised Statutes, is amended to
26 read:

27 13-4032. Appeal by state

28 An appeal may be taken by the state from:

29 1. An order dismissing an indictment, information or complaint or
30 count of an indictment, information or complaint.

31 2. An order granting a new trial.

32 3. A ruling on a question of law adverse to the state when the
33 defendant was convicted and appeals from the judgment.

34 4. An order made after judgment affecting the substantial rights of
35 the state or a victim, except that the state shall only take an appeal on an
36 order affecting the substantial rights of a victim at the victim's request.

37 5. A sentence on the grounds that it is illegal, or if the sentence
38 imposed is other than the presumptive sentence authorized by section 13-604,
39 ~~or~~ SECTION 13-701, SECTION 13-703 OR SECTION 13-705, SUBSECTION A.

40 6. An order granting a motion to suppress the use of evidence.

41 7. A judgment of acquittal of one or more offenses charged in an
42 indictment, information or complaint or count of an indictment, information
43 or complaint that is entered after a verdict of guilty on the offense or
44 offenses.

1 Sec. 58. Section 13-4062, Arizona Revised Statutes, is amended to
2 read:

3 13-4062. Anti-marital fact privilege; other privileged
4 communications

5 A person shall not be examined as a witness in the following cases:

6 1. A husband for or against his wife without her consent, nor a wife
7 for or against her husband without his consent, as to events occurring during
8 the marriage, nor can either, during the marriage or afterwards, without
9 consent of the other, be examined as to any communication made by one to the
10 other during the marriage. These exceptions do not apply in a criminal
11 action or proceeding for a crime committed by the husband against the wife,
12 or by the wife against the husband, nor in a criminal action or proceeding
13 against the husband for abandonment, failure to support or provide for or
14 failure or neglect to furnish the necessities of life to the wife or the
15 minor children. Either spouse, at his or her request, but not otherwise, may
16 be examined as a witness for or against the other in a prosecution for ~~an~~ A
17 SERIOUS offense ~~listed in section 13-604, subsection W, paragraph 4,~~ for
18 bigamy or adultery, committed by either spouse, or for sexual assault
19 committed by the husband.

20 2. An attorney, without consent of the attorney's client, as to any
21 communication made by the client to the attorney, or the attorney's advice
22 given in the course of professional employment.

23 3. A clergyman or priest, without consent of the person making the
24 confession, as to any confession made to the clergyman or priest in his
25 professional character in the course of discipline enjoined by the church to
26 which the clergyman or priest belongs.

27 4. A physician or surgeon, without consent of the physician's or
28 surgeon's patient, as to any information acquired in attending the patient
29 which was necessary to enable the physician or surgeon to prescribe or act
30 for the patient.

31 Sec. 59. Section 13-4511, Arizona Revised Statutes, is amended to
32 read:

33 13-4511. Competency to refuse treatment; length of sentence

34 If the court finds that a defendant is incompetent to stand trial, the
35 court shall determine:

36 1. If the defendant is incompetent to refuse treatment, including
37 medication, and should be subject to involuntary treatment.

38 2. The maximum sentence the defendant could have received pursuant to
39 section 13-604, SECTION 13-604.01, SECTION 13-604.02, SUBSECTION D, SECTION
40 13-702, SECTION 13-703, SECTION 13-705, SUBSECTION A, SECTION 13-707, SECTION
41 13-710 or SECTION 13-1406 or the sentence the defendant could have received
42 pursuant to section ~~13-703~~ 13-751, subsection A or any section for which a
43 specific sentence is authorized. In making this determination the court
44 shall not consider the sentence enhancements for prior convictions under
45 section 13-604 OR 13-703.

1 Sec. 60. Section 13-4515, Arizona Revised Statutes, is amended to
2 read:

3 13-4515. Duration of order; notice of dismissed charge or
4 voided order; petitions

5 A. An order or combination of orders that is issued pursuant to
6 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
7 months or the maximum possible sentence the defendant could have received
8 pursuant to section 13-604, SECTION 13-604.01, SECTION 13-604.02, SUBSECTION
9 D, SECTION 13-702, SECTION 13-703, ~~OR~~ SECTION 13-705, SUBSECTION A OR SECTION
10 13-751 OR any section for which a specific sentence is authorized, whichever
11 is less. In making this determination the court shall not consider the
12 sentence enhancements under section 13-604 OR 13-703 for prior convictions.

13 B. The court shall notify the prosecutor, the defense attorney, the
14 medical supervisor and the treating facility if the charges against the
15 defendant are dismissed or if an order is voided by the court. No charges
16 shall be dismissed without a hearing prior to the dismissal.

17 C. If a defendant is discharged or released on the expiration of an
18 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
19 supervisor may file a petition stating that the defendant requires further
20 treatment pursuant to title 36, chapter 5, ~~or~~ or appointment of a guardian
21 pursuant to title 14.

22 Sec. 61. Section 15-341, Arizona Revised Statutes, is amended to read:
23 15-341. General powers and duties; immunity; delegation

24 A. The governing board shall:

25 1. Prescribe and enforce policies and procedures for the governance of
26 the schools, not inconsistent with law or rules prescribed by the state board
27 of education.

28 2. Maintain the schools established by it for the attendance of each
29 pupil for a period of not less than one hundred seventy-five school days or
30 two hundred school days, as applicable, or its equivalent as approved by the
31 superintendent of public instruction for a school district operating on a
32 year-round operation basis, to offer an educational program on the basis of a
33 four day school week or to offer an alternative kindergarten program on the
34 basis of a three day school week, in each school year, and if the funds of
35 the district are sufficient, for a longer period, and as far as practicable
36 with equal rights and privileges.

37 3. Exclude from schools all books, publications, papers or audiovisual
38 materials of a sectarian, partisan or denominational character.

39 4. Manage and control the school property within its district.

40 5. Acquire school furniture, apparatus, equipment, library books and
41 supplies for the use of the schools.

42 6. Prescribe the curricula and criteria for the promotion and
43 graduation of pupils as provided in sections 15-701 and 15-701.01.

44 7. Furnish, repair and insure, at full insurable value, the school
45 property of the district.

- 1 8. Construct school buildings on approval by a vote of the district
2 electors.
- 3 9. Make in the name of the district conveyances of property belonging
4 to the district and sold by the board.
- 5 10. Purchase school sites when authorized by a vote of the district at
6 an election conducted as nearly as practicable in the same manner as the
7 election provided in section 15-481 and held on a date prescribed in section
8 15-491, subsection E, but such authorization shall not necessarily specify
9 the site to be purchased and such authorization shall not be necessary to
10 exchange unimproved property as provided in section 15-342, paragraph 23.
- 11 11. Construct, improve and furnish buildings used for school purposes
12 when such buildings or premises are leased from the national park service.
- 13 12. Purchase school sites or construct, improve and furnish school
14 buildings from the proceeds of the sale of school property only on approval
15 by a vote of the district electors.
- 16 13. Hold pupils to strict account for disorderly conduct on school
17 property.
- 18 14. Discipline students for disorderly conduct on the way to and from
19 school.
- 20 15. Except as provided in section 15-1224, deposit all monies received
21 by the district as gifts, grants and devises with the county treasurer who
22 shall credit the deposits as designated in the uniform system of financial
23 records. If not inconsistent with the terms of the gifts, grants and devises
24 given, any balance remaining after expenditures for the intended purpose of
25 the monies have been made shall be used for reduction of school district
26 taxes for the budget year, except that in the case of accommodation schools
27 the county treasurer shall carry the balance forward for use by the county
28 school superintendent for accommodation schools for the budget year.
- 29 16. Provide that, if a parent or legal guardian chooses not to accept a
30 decision of the teacher as provided in section 15-521, paragraph 3, the
31 parent or legal guardian may request in writing that the governing board
32 review the teacher's decision. Nothing in this paragraph shall be construed
33 to release school districts from any liability relating to a child's
34 promotion or retention.
- 35 17. Provide for adequate supervision over pupils in instructional and
36 noninstructional activities by certificated or noncertificated personnel.
- 37 18. Use school monies received from the state and county school
38 apportionment exclusively for payment of salaries of teachers and other
39 employees and contingent expenses of the district.
- 40 19. Make an annual report to the county school superintendent on or
41 before October 1 each year in the manner and form and on the blanks
42 prescribed by the superintendent of public instruction or county school
43 superintendent. The board shall also make reports directly to the county
44 school superintendent or the superintendent of public instruction whenever
45 required.

1 20. Deposit all monies received by school districts other than student
2 activities monies or monies from auxiliary operations as provided in sections
3 15-1125 and 15-1126 with the county treasurer to the credit of the school
4 district except as provided in paragraph 21 of this subsection and sections
5 15-1223 and 15-1224, and the board shall expend the monies as provided by law
6 for other school funds.

7 21. Establish a bank account in which the board during a month may
8 deposit miscellaneous monies received directly by the district. The board
9 shall remit monies deposited in the bank account at least monthly to the
10 county treasurer for deposit as provided in paragraph 20 of this subsection
11 and in accordance with the uniform system of financial records.

12 22. Employ an attorney admitted to practice in this state whose
13 principal practice is in the area of commercial real estate, or a real estate
14 broker who is licensed by this state and who is employed by a reputable
15 commercial real estate company, to negotiate a lease of five or more years
16 for the school district if the governing board decides to enter into a lease
17 of five or more years as lessor of school buildings or grounds as provided in
18 section 15-342, paragraph 7 or 10. Any lease of five or more years
19 negotiated pursuant to this paragraph shall provide that the lessee is
20 responsible for payment of property taxes pursuant to the requirements of
21 section 42-11104.

22 23. Prescribe and enforce policies and procedures for disciplinary
23 action against a teacher who engages in conduct that is a violation of the
24 policies of the governing board but that is not cause for dismissal of the
25 teacher or for revocation of the certificate of the teacher. Disciplinary
26 action may include suspension without pay for a period of time not to exceed
27 ten school days. Disciplinary action shall not include suspension with pay
28 or suspension without pay for a period of time longer than ten school days.
29 The procedures shall include notice, hearing and appeal provisions for
30 violations that are cause for disciplinary action. The governing board may
31 designate a person or persons to act on behalf of the board on these matters.

32 24. Prescribe and enforce policies and procedures for disciplinary
33 action against an administrator who engages in conduct that is a violation of
34 the policies of the governing board regarding duties of administrators but
35 that is not cause for dismissal of the administrator or for revocation of the
36 certificate of the administrator. Disciplinary action may include suspension
37 without pay for a period of time not to exceed ten school days. Disciplinary
38 action shall not include suspension with pay or suspension without pay for a
39 period of time longer than ten school days. The procedures shall include
40 notice, hearing and appeal provisions for violations that are cause for
41 disciplinary action. The governing board may designate a person or persons
42 to act on behalf of the board on these matters. For violations that are
43 cause for dismissal, the provisions of notice, hearing and appeal in chapter
44 5, article 3 of this title shall apply. The filing of a timely request for a

1 hearing suspends the imposition of a suspension without pay or a dismissal
2 pending completion of the hearing.

3 25. Notwithstanding section 13-3108, prescribe and enforce policies and
4 procedures that prohibit a person from carrying or possessing a weapon on
5 school grounds unless the person is a peace officer or has obtained specific
6 authorization from the school administrator.

7 26. Prescribe and enforce policies and procedures relating to the
8 health and safety of all pupils participating in district sponsored practice
9 sessions, games or other interscholastic athletic activities, including the
10 provision of water.

11 27. Prescribe and enforce policies and procedures regarding the smoking
12 of tobacco within school buildings. The policies and procedures shall be
13 adopted in consultation with school district personnel and members of the
14 community and shall state whether smoking is prohibited in school buildings.
15 If smoking in school buildings is not prohibited, the policies and procedures
16 shall clearly state the conditions and circumstances under which smoking is
17 permitted, those areas in a school building that may be designated as smoking
18 areas and those areas in a school building that may not be designated as
19 smoking areas.

20 28. Establish an assessment, data gathering and reporting system as
21 prescribed in chapter 7, article 3 of this title.

22 29. Provide special education programs and related services pursuant to
23 section 15-764, subsection A to all children with disabilities as defined in
24 section 15-761.

25 30. Administer competency tests prescribed by the state board of
26 education for the graduation of pupils from high school.

27 31. Secure insurance coverage for all construction projects for
28 purposes of general liability, property damage and workers' compensation and
29 secure performance and payment bonds for all construction projects.

30 32. Keep on file the resumes of all current and former employees who
31 provide instruction to pupils at a school. Resumes shall include an
32 individual's educational and teaching background and experience in a
33 particular academic content subject area. A school district shall inform
34 parents and guardians of the availability of the resume information and shall
35 make the resume information available for inspection on request of parents
36 and guardians of pupils enrolled at a school. Nothing in this paragraph
37 shall be construed to require any school to release personally identifiable
38 information in relation to any teacher or employee including the teacher's or
39 employee's address, salary, social security number or telephone number.

40 33. Report to local law enforcement agencies any suspected crime
41 against a person or property that is a serious offense ~~as defined in section~~
42 ~~13-604~~ or that involves a deadly weapon or dangerous instrument or serious
43 physical injury and any conduct that poses a threat of death or serious
44 physical injury to employees, students or anyone on the property of the
45 school. This paragraph does not limit or preclude the reporting by a school

1 district or an employee of a school district of suspected crimes other than
2 those required to be reported by this paragraph. For the purposes of this
3 paragraph, "dangerous instrument", "deadly weapon", "SERIOUS OFFENSE" and
4 "serious physical injury" have the same ~~meaning~~ MEANINGS prescribed in
5 section 13-105.

6 34. In conjunction with local law enforcement agencies and local
7 medical facilities, develop an emergency response plan for each school in the
8 school district in accordance with minimum standards developed jointly by the
9 department of education and the division of emergency management within the
10 department of emergency and military affairs.

11 35. Annually assign at least one school district employee to
12 participate in a multihazard crisis training program developed or selected by
13 the governing board.

14 36. Provide written notice to the parents or guardians of all students
15 affected in the school district at least thirty days prior to a public
16 meeting to discuss closing a school within the school district. The notice
17 shall include the reasons for the proposed closure and the time and place of
18 the meeting. The governing board shall fix a time for a public meeting on
19 the proposed closure no less than thirty days before voting in a public
20 meeting to close the school. The school district governing board shall give
21 notice of the time and place of the meeting. At the time and place
22 designated in the notice, the school district governing board shall hear
23 reasons for or against closing the school. The school district governing
24 board is exempt from this paragraph if it is determined by the governing
25 board that the school shall be closed because it poses a danger to the health
26 or safety of the pupils or employees of the school.

27 37. Incorporate instruction on Native American history into appropriate
28 existing curricula.

29 38. Prescribe and enforce policies and procedures allowing pupils who
30 have been diagnosed with anaphylaxis by a health care provider licensed
31 pursuant to title 32, chapter 13, 14, 17 or 25 or by a registered nurse
32 practitioner licensed and certified pursuant to title 32, chapter 15 to carry
33 and self-administer emergency medications including auto-injectable
34 epinephrine while at school and at school sponsored activities. The pupil's
35 name on the prescription label on the medication container or on the
36 medication device and annual written documentation from the pupil's parent or
37 guardian to the school that authorizes possession and self-administration is
38 sufficient proof that the pupil is entitled to the possession and
39 self-administration of the medication. The policies shall require a pupil
40 who uses auto-injectable epinephrine while at school and at school sponsored
41 activities to notify the nurse or the designated school staff person of the
42 use of the medication as soon as practicable. A school district and its
43 employees are immune from civil liability with respect to all decisions made
44 and actions taken that are based on good faith implementation of the
45 requirements of this paragraph, except in cases of wanton or wilful neglect.

1 39. Allow the possession and self-administration of prescription
2 medication for breathing disorders in handheld inhaler devices, by pupils who
3 have been prescribed that medication by a health care professional licensed
4 pursuant to title 32. The pupil's name on the prescription label on the
5 medication container or on the handheld inhaler device and annual written
6 documentation from the pupil's parent or guardian to the school that
7 authorizes possession and self-administration shall be sufficient proof that
8 the pupil is entitled to the possession and self-administration of the
9 medication. A school district and its employees are immune from civil
10 liability with respect to all decisions made and actions taken that are based
11 on a good faith implementation of the requirements of this paragraph.

12 40. Prescribe and enforce policies and procedures to prohibit pupils
13 from harassing, intimidating and bullying other pupils on school grounds, on
14 school property, on school buses, at school bus stops and at school sponsored
15 events and activities that include the following components:

16 (a) A procedure for pupils to confidentially report to school
17 officials incidents of harassment, intimidation or bullying.

18 (b) A procedure for parents and guardians of pupils to submit written
19 reports to school officials of suspected incidents of harassment,
20 intimidation or bullying.

21 (c) A requirement that school district employees report suspected
22 incidents of harassment, intimidation or bullying to the appropriate school
23 official.

24 (d) A formal process for the documentation of reported incidents of
25 harassment, intimidation or bullying, except that no documentation shall be
26 maintained unless the harassment, intimidation or bullying has been proven.

27 (e) A formal process for the investigation by the appropriate school
28 officials of suspected incidents of harassment, intimidation or bullying.

29 (f) Disciplinary procedures for pupils who have admitted or been found
30 to have committed incidents of harassment, intimidation or bullying.

31 (g) A procedure that sets forth consequences for submitting false
32 reports of incidents of harassment, intimidation or bullying.

33 B. Notwithstanding subsection A, paragraphs 8, 10 and 12 of this
34 section, the county schoolsuperintendent may construct, improve and furnish
35 school buildings or purchase or sell school sites in the conduct of an
36 accommodation school.

37 C. If any school district acquires real or personal property, whether
38 by purchase, exchange, condemnation, gift or otherwise, the governing board
39 shall pay to the county treasurer any taxes on the property that were unpaid
40 as of the date of acquisition, including penalties and interest. The lien
41 for unpaid delinquent taxes, penalties and interest on property acquired by a
42 school district:

43 1. Is not abated, extinguished, discharged or merged in the title to
44 the property.

45 2. Is enforceable in the same manner as other delinquent tax liens.

1 D. The governing board may not locate a school on property that is
2 less than one-fourth mile from agricultural land regulated pursuant to
3 section 3-365, except that the owner of the agricultural land may agree to
4 comply with the buffer zone requirements of section 3-365. If the owner
5 agrees in writing to comply with the buffer zone requirements and records the
6 agreement in the office of the county recorder as a restrictive covenant
7 running with the title to the land, the school district may locate a school
8 within the affected buffer zone. The agreement may include any stipulations
9 regarding the school, including conditions for future expansion of the school
10 and changes in the operational status of the school that will result in a
11 breach of the agreement.

12 E. A school district, its governing board members, its school council
13 members and its employees are immune from civil liability for the
14 consequences of adoption and implementation of policies and procedures
15 pursuant to subsection A of this section and section 15-342. This waiver
16 does not apply if the school district, its governing board members, its
17 school council members or its employees are guilty of gross negligence or
18 intentional misconduct.

19 F. A governing board may delegate in writing to a superintendent,
20 principal or head teacher the authority to prescribe procedures that are
21 consistent with the governing board's policies.

22 G. Notwithstanding any other provision of this title, a school
23 district governing board shall not take any action that would result in an
24 immediate reduction or a reduction within three years of pupil square footage
25 that would cause the school district to fall below the minimum adequate gross
26 square footage requirements prescribed in section 15-2011, subsection C,
27 unless the governing board notifies the school facilities board established
28 by section 15-2001 of the proposed action and receives written approval from
29 the school facilities board to take the action. A reduction includes an
30 increase in administrative space that results in a reduction of pupil square
31 footage or sale of school sites or buildings, or both. A reduction includes
32 a reconfiguration of grades that results in a reduction of pupil square
33 footage of any grade level. This subsection does not apply to temporary
34 reconfiguration of grades to accommodate new school construction if the
35 temporary reconfiguration does not exceed one year. The sale of equipment
36 that results in an immediate reduction or a reduction within three years that
37 falls below the equipment requirements prescribed in section 15-2011,
38 subsection B is subject to commensurate withholding of school district
39 capital outlay revenue limit monies pursuant to the direction of the school
40 facilities board. Except as provided in section 15-342, paragraph 10,
41 proceeds from the sale of school sites, buildings or other equipment shall be
42 deposited in the school plant fund as provided in section 15-1102.

43 H. Subsections C through G of this section apply to a county board of
44 supervisors and a county school superintendent when operating and
45 administering an accommodation school.

1 I. Until the state board of education and the auditor general adopt
2 rules pursuant to section 15-213, subsection ~~I~~, a school district may
3 procure construction services, including services for new school construction
4 pursuant to section 15-2041, by the construction-manager-at-risk,
5 design-build and job-order-contracting methods of project delivery as
6 provided in title 41, chapter 23, except that the rules adopted by the
7 director of the department of administration do not apply to procurements
8 pursuant to this subsection. Any procurement commenced pursuant to this
9 subsection may be completed pursuant to this subsection.

10 Sec. 62. Section 31-403, Arizona Revised Statutes, is amended to read:

11 31-403. Commutation; restrictions on consideration

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

18 1. Death in violation of section 13-1104 or 13-1105.

19 2. Serious physical injury if the person was sentenced pursuant to
20 section 13-604 OR 13-704.

21 3. A dangerous crime against children as defined in section 13-604.01.

22 4. A felony offense in violation of title 13, chapter 14 or 35.1.

23 B. Notwithstanding subsection A, paragraph 2 of this section, if, in
24 its sole discretion, the board determines that the person committed an
25 offense that involved serious physical injury as defined in section 13-105
26 and that the person was not sentenced pursuant to section 13-604 OR 13-704,
27 the board may order that the person shall not petition or be considered by
28 the board for commutation of that sentence for a period of five years
29 following the date of the board's denial of the commutation recommendation.

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

37 1. A majority affirmative vote if four or more members consider the
38 action.

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

40 3. A unanimous affirmative vote if two members consider the action
41 pursuant to section 31-401, subsection I and the chairman concurs after
42 reviewing the information considered by the two members. If the chairman is
43 one of the two members constituting a two member quorum under section 31-401,
44 subsection I, and both the chairman and the other member vote to lengthen the
45 five year period to a period of time greater than ten years, no further

1 action shall be taken and the decision on whether to lengthen the five year
2 period shall be considered by the board at a meeting at which at least three
3 members are present and voting.

4 D. The board may waive the provisions of subsections A, B and C of
5 this section if any of the following applies:

6 1. The person is in imminent danger of death due to a medical
7 condition, as determined by the board.

8 2. The person is the subject of a warrant of execution.

9 3. The sentence for which commutation is sought is the subject of a
10 special order issued by the court pursuant to section 13-603, subsection L.

11 E. This section applies only to offenses that are committed on or
12 after ~~the effective date of this section~~ JANUARY 1, 2006.

13 Sec. 63. Section 31-412, Arizona Revised Statutes, is amended to read:

14 31-412. Criteria for release on parole; release; custody of
15 parolee; definition

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

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

44 C. A prisoner who is otherwise eligible for parole, who is not on home
45 arrest or work furlough and who is currently serving a sentence for a

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

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

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

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

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

12 E. Payment of restitution by the prisoner in accordance with
13 subsection D of this section shall be made through the clerk of the superior
14 court in the county in which the prisoner was sentenced for the offense for
15 which the prisoner has been imprisoned in the same manner as restitution is
16 paid as a condition of probation. The clerk of the superior court shall
17 report to the board monthly whether or not restitution has been paid for that
18 month by the prisoner.

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

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

24 1. A serious offense as defined in section ~~13-604, subsection W,~~
25 ~~paragraph 4~~ 13-105, PARAGRAPH 37, subdivision (a), (b), (c), (d), (e), (g),
26 (h), (i), (j) or (k).

27 2. A dangerous crime against children as defined in section 13-604.01.
28 The citation of section 13-604.01 is not a necessary element for a serious
29 offense designation.

30 3. A conviction under a prior criminal code for any offense that
31 possesses reasonably equivalent offense elements as the offense elements that
32 are listed under section ~~13-604, subsection W, paragraph 4~~ 13-105, PARAGRAPH
33 37 and section 13-604.01, subsection M, paragraph 1.

34 Sec. 64. Section 41-1604.10, Arizona Revised Statutes, is amended to
35 read:

36 41-1604.10. Earned release credits; forfeiture; restoration;
37 applicability

38 A. Each prisoner classified as parole eligible, class one, pursuant to
39 section 41-1604.09, shall be allowed the following release credits:

40 1. If sentenced upon a first conviction other than pursuant to section
41 ~~13-703~~ 13-751 or other than for a ~~felony involving the use or exhibition of a~~
42 ~~deadly weapon or dangerous instrument or the intentional or knowing~~
43 ~~infliction of serious physical injury upon another~~ DANGEROUS OFFENSE AS
44 DEFINED IN SECTION 13-105, every two days served within class one shall be
45 counted as an earned release credit of one day.

1 2. If sentenced pursuant to ~~the provisions of~~ section ~~13-604,~~
2 ~~subsection A~~ 13-703, SUBSECTION B, PARAGRAPH 2, or upon first conviction of a
3 class 4, 5 or 6 felony involving ~~the use or exhibition of a deadly weapon or~~
4 ~~dangerous instrument or the intentional or knowing infliction of serious~~
5 ~~physical injury~~ A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105 or any other
6 provisions of law which prohibits release on any basis until serving not less
7 than one-half the sentence imposed by the court, every two days served within
8 class one shall be counted as an earned release credit of one day.

9 3. If sentenced ~~according~~ PURSUANT to any other ~~of the provisions~~
10 PROVISION of section 13-604 OR 13-703 or any other provision of law which
11 prohibits release on any basis until serving not less than two-thirds the
12 sentence imposed by the court, every three days served within class one shall
13 be counted as an earned release credit of one day.

14 B. Release credits earned by a prisoner pursuant to subsection A of
15 this section shall not reduce the term of imprisonment imposed by the court
16 on such prisoner, nor reduce the sentence imposed on the prisoner for the
17 purpose of determining such prisoner's parole eligibility.

18 C. Upon reclassification of a prisoner resulting from the prisoner's
19 failure to adhere to the rules of the department or failure to demonstrate a
20 continual willingness to volunteer for or successfully participate in a work,
21 educational, treatment or training program, the director may declare any and
22 all release credits earned by the prisoner forfeited. In the discretion of
23 the director the release credits may subsequently be restored. The director
24 shall maintain an account of release credits earned by each prisoner.

25 D. The director, according to rules ~~promulgated~~ ADOPTED by the
26 department, may authorize the release of any prisoner who has earned release
27 credits which, when added to the time served by the prisoner, equal the
28 sentence imposed by the court which shall be the prisoner's earned release
29 credit date. A prisoner on earned release credit release is not under the
30 control of the department and the department is not required to provide
31 parole services or otherwise supervise any prisoner released, except that the
32 department may revoke the release of the prisoner until the final expiration
33 of his sentence if the department has reason to believe that the released
34 prisoner has engaged in criminal conduct during the term of his release. If
35 a prisoner has a term of probation to be completed or served, the probation
36 department shall begin supervision of the prisoner when the prisoner is
37 released on the earned release credit date. If the prisoner's term of
38 probation equals or exceeds the prisoner's final expiration date, the
39 director OF THE STATE DEPARTMENT OF CORRECTIONS shall issue the prisoner an
40 absolute discharge on the prisoner's earned release credit date. The prisoner
41 is not under the control of the department and the department is not required
42 to provide parole services or otherwise supervise the prisoner. If the
43 prisoner's term of probation is less than the prisoner's final expiration
44 date, the prisoner is not under the control of the department and the
45 department is not required to provide parole services or otherwise supervise

1 the prisoner, except that the department may revoke the release at any time
2 between the earned release credit date and the final expiration date if the
3 department has reason to believe that the released prisoner has engaged in
4 criminal conduct during the term of release. The director may issue the
5 prisoner an absolute discharge from the sentence of imprisonment if it
6 appears that the prisoner will live and remain at liberty without violating
7 the law and it is in the best interest of the state. The STATE department of
8 corrections shall provide reasonable notice to the probation department of
9 the scheduled release of the prisoner from confinement by the STATE
10 department OF CORRECTIONS.

11 E. A prisoner shall forfeit five days of the prisoner's earned release
12 credits if the court finds or a disciplinary hearing held after a review by
13 and recommendations from the attorney general's office determines that the
14 prisoner does any of the following:

- 15 1. Brings a claim without substantial justification.
- 16 2. Unreasonably expands or delays a proceeding.
- 17 3. Testifies falsely or otherwise presents false information or
18 material to the court.
- 19 4. Submits a claim that is intended solely to harass the party it is
20 filed against.

21 F. If the prisoner does not have five days of earned release credits,
22 the prisoner shall forfeit the prisoner's existing earned release credits and
23 be ineligible from accruing earned release credits until the number of earned
24 release credits the prisoner would have otherwise accrued equals the
25 difference between five days and the number of existing earned release credit
26 days the prisoner forfeits pursuant to this section.

27 G. This section applies only to persons who commit felonies before
28 January 1, 1994.

29 Sec. 65. Section 41-1604.11, Arizona Revised Statutes, is amended to
30 read:

31 41-1604.11. Order for removal; purposes; duration; work
32 furlough; notice; failure to return;
33 classification; applicability; definition

34 A. The director of the state department of corrections may authorize
35 the temporary removal under custody from prison or any other institution for
36 the detention of adults under the jurisdiction of the state department of
37 corrections of any inmate for the purpose of employing that inmate in any
38 work directly connected with the administration, management or maintenance of
39 the prison or institution in which the inmate is confined, for purposes of
40 cooperating voluntarily in medical research that cannot be performed at the
41 prison or institution, or for participating in community action activities
42 directed toward delinquency prevention and community betterment programs.
43 The removal shall not be for a period longer than one day.

44 B. Under specific rules established by the director for the selection
45 of inmates, the director may also authorize furlough, temporary removal or

1 temporary release of any inmate for compassionate leave, for the purpose of
2 furnishing to the inmate medical treatment not available at the prison or
3 institution, for purposes preparatory to a return to the community within
4 ninety days of the inmate's release date or for disaster aid, including local
5 mutual aid and state emergencies. When an inmate is temporarily removed or
6 temporarily released for a purpose preparatory to return to the community or
7 for compassionate leave, the director may require the inmate to reimburse the
8 state, in whole or part, for expenses incurred by the state in connection
9 with the temporary removal or release.

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

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

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

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

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

34 E. Before holding a hearing on the work furlough under consideration,
35 the board ~~shall~~, on request, **SHALL** notify and afford an opportunity to be
36 heard to the presiding judge of the superior court in the county in which the
37 inmate requesting a work furlough was sentenced, the prosecuting attorney,
38 the director of the arresting law enforcement agency and the victim of the
39 offense for which the inmate is incarcerated. The notice shall state the
40 name of the inmate requesting the work furlough, the offense for which the
41 inmate was sentenced, the length of the sentence and the date of admission to
42 the custody of the state department of corrections. The notice to the victim
43 shall also inform the victim of the victim's right to be present and submit a
44 written report to the board expressing the victim's opinion concerning the
45 inmate's release. No hearing concerning work furlough shall be held until

1 fifteen days after the date of giving the notice. On mailing the notice, the
2 board shall file a hard copy of the notice as evidence that notification was
3 sent.

4 F. The board shall require that every inmate released on work furlough
5 comply with the terms and conditions of release as the board may impose,
6 including that the inmate be gainfully employed while on work furlough and
7 that the inmate make restitution to the victim of the offense for which the
8 inmate was incarcerated.

9 G. If the board finds that an inmate has failed to comply with the
10 terms and conditions of release or that the best interests of this state
11 would be served by revocation of an inmate's work furlough, the board may
12 issue a warrant for retaking the inmate before the expiration of the inmate's
13 maximum sentence. After return of the inmate, the board may revoke the
14 inmate's work furlough after the inmate has been given an opportunity to be
15 heard.

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

19 I. The director shall transmit a monthly report containing the name,
20 date of birth, offense for which the inmate was sentenced, length of the
21 sentence and date of admission to the state department of corrections of each
22 inmate on work furlough or home arrest to the chairperson of the house of
23 representatives judiciary committee or its successor committee and the
24 chairperson of the senate judiciary committee or its successor committee.
25 The director shall also submit a report containing this information for any
26 inmate released on work furlough or home arrest within a jurisdiction to the
27 county attorney, sheriff and chief of police for the jurisdiction in which
28 the inmate is released on work furlough or home arrest.

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

32 K. At any given time if the director declares there is a shortage of
33 beds available for inmates within the state department of corrections, the
34 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
35 suspended for any inmate who has served not less than six months of the
36 sentence imposed by the court, who has not been previously convicted of a
37 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
38 a sexual offense, the use or exhibition of a deadly weapon or dangerous
39 instrument or the infliction of serious physical injury pursuant to section
40 13-604, and the inmate shall be continuously eligible for parole, home arrest
41 or work furlough.

42 L. Prisoners who have served at least one calendar year and are
43 serving a sentence for conviction of a crime committed on or after October 1,
44 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02
45 or 36-1002.03, and who are sentenced to the custody of the state department

1 of corrections, may be temporarily released, according to the rules of the
2 department, at the discretion of the director, one hundred eighty calendar
3 days prior to expiration of the term imposed and shall remain under the
4 control of the state department of corrections until expiration of the
5 maximum sentence specified. If an offender released under this section or
6 pursuant to section 31-411, subsection B violates the rules, the offender may
7 be returned to custody and shall be classified to a parole class as provided
8 by the rules of the department.

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

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

13 1. A serious offense as defined in section ~~13-604, subsection W,~~
14 ~~paragraph 4~~ 13-105, PARAGRAPH 37, subdivision (a), (b), (c), (d), (e), (g),
15 (h), (i), (j) or (k).

16 2. A dangerous crime against children as defined in section
17 13-604.01. The citation of section 13-604.01 is not a necessary element for
18 a serious offense designation.

19 3. A conviction under a prior criminal code for any offense that
20 possesses reasonably equivalent offense elements as the offense elements that
21 are listed under section ~~13-604, subsection W, paragraph 4~~ 13-105, PARAGRAPH
22 37 or section 13-604.01, subsection M, paragraph 1.

23 Sec. 66. Section 41-1604.13, Arizona Revised Statutes, is amended to
24 read:

25 41-1604.13. Home arrest; eligibility; victim notification;
26 conditions; applicability; definitions

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

29 1. Meets the following criteria:

30 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
31 ~~the intentional or knowing infliction of serious physical injury or the use~~
32 ~~or exhibition of a deadly weapon or dangerous instrument~~ A DANGEROUS OFFENSE.

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

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

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

37 3. Is eligible for work furlough.

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

39 B. The board of executive clemency shall determine which inmates are
40 released to the home arrest program based on the criteria in subsection A of
41 this section and based on a determination that there is a substantial
42 probability that the inmate will remain at liberty without violating the law
43 and that the release is in the best interests of the state after considering
44 the offense for which the inmate is presently incarcerated, the prior record
45 of the inmate, the conduct of the inmate while incarcerated and any other

1 information concerning the inmate which is in the possession of the state
2 department of corrections, including any presentence report. The board
3 maintains the responsibility of revocation as applicable to all parolees.

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

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

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

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

17 D. Home arrest is conditioned on the following:

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

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

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

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

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

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

32 7. Compliance with all other conditions of supervision.

33 E. Before holding a hearing on home arrest, the board on request shall
34 notify and afford an opportunity to be heard to the presiding judge of the
35 superior court in the county in which the inmate requesting home arrest was
36 sentenced, the prosecuting attorney and the director of the arresting law
37 enforcement agency. The board shall notify the victim of the offense for
38 which the inmate is incarcerated. The notice shall state the name of the
39 inmate requesting home arrest, the offense for which the inmate was
40 sentenced, the length of the sentence and the date of admission to the
41 custody of the state department of corrections. The notice to the victim
42 shall also inform the victim of the victim's right to be present and to
43 submit a written report to the board expressing the victim's opinion
44 concerning the inmate's release. No hearing concerning home arrest may be
45 held until fifteen days after the date of giving the notice. On mailing the

1 notice, the board shall file a hard copy of the notice as evidence that
2 notification was sent.

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

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

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

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

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

18 K. For the purposes of this section:

19 1. "DANGEROUS OFFENSE" HAS THE SAME MEANING PRESCRIBED IN SECTION
20 13-105.

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

22 ~~1-~~ (a) A serious offense as defined in section ~~13-604, subsection W,~~
23 ~~paragraph 4~~ 13-105, PARAGRAPH 37, subdivision (a), (b), (c), (d), (e), (g),
24 (h), (i), (j) or (k).

25 ~~2-~~ (b) A dangerous crime against children as defined in section
26 13-604.01. The citation of section 13-604.01 is not a necessary element for
27 a serious offense designation.

28 ~~3-~~ (c) A conviction under a prior criminal code for any offense that
29 possesses reasonably equivalent offense elements as the offense elements that
30 are listed under section ~~13-604, subsection W, paragraph 4~~ 13-105, PARAGRAPH
31 37 and section 13-604.01, subsection M, paragraph 1.

32 Sec. 67. Section 41-1604.14, Arizona Revised Statutes, is amended to
33 read:

34 41-1604.14. Release of prisoners with detainers; eligibility;
35 revocation of release

36 A. Notwithstanding any law to the contrary, the director may release a
37 prisoner to the custody and control of the United States immigration and
38 naturalization service if all of the following requirements are satisfied:

39 1. The department receives an order of deportation for the prisoner
40 from the United States immigration and naturalization service.

41 2. The prisoner has served at least one-half of the sentence imposed
42 by the court.

43 3. The prisoner was convicted of a class 3, 4, 5 or 6 felony offense.

44 4. The prisoner was not convicted of an offense under title 13,
45 chapter 11.

1 5. The prisoner was not convicted of a sexual offense pursuant to
2 ~~sections~~ SECTION 13-1404, 13-1405, 13-1406 or 13-1410.

3 6. The prisoner was not sentenced pursuant to section 13-604, SECTION
4 13-604.02, SUBSECTION D, SECTION 13-703, SECTION 13-704 OR SECTION 13-705.

5 B. If a prisoner who is released pursuant to this section returns
6 illegally to the United States, on notification from any federal or state law
7 enforcement agency that the prisoner is in custody, the director shall revoke
8 the prisoner's release. The prisoner shall not be eligible for parole,
9 community supervision or any other release from confinement until the
10 remainder of the sentence of imprisonment is served, except pursuant to
11 section 31-233, subsection A or B.

12 Sec. 68. Section 41-1604.15, Arizona Revised Statutes, is amended to
13 read:

14 41-1604.15. Probation or other release noneligibility; violent
15 crime; under the influence of marijuana, a
16 dangerous drug or a narcotic drug

17 Notwithstanding any law to the contrary, any person who is convicted of
18 a violent crime as defined in section ~~13-604.04~~ 13-901.03 that is committed
19 while the person is under the influence of marijuana, a dangerous drug or a
20 narcotic drug as defined in section 13-3401 is not eligible for probation or
21 release on any basis until the entire sentence has been served. Pursuant to
22 section 41-1604.07, the director shall include any such person in a
23 noneligible earned release credit class and the prisoner is not eligible for
24 placement in an eligible earned release credit class.

25 Sec. 69. Section 41-1604.16, Arizona Revised Statutes, is amended to
26 read:

27 41-1604.16. Parole or community supervision eligibility for
28 persons previously convicted of possession or use
29 of marijuana, a dangerous drug or a narcotic drug

30 A. Notwithstanding any law to the contrary, if a prisoner has been
31 convicted of the possession or use of marijuana pursuant to section 13-3405,
32 subsection A, paragraph 1, possession or use of a dangerous drug pursuant to
33 section 13-3407, subsection A, paragraph 1 or possession or use of a narcotic
34 drug pursuant to section 13-3408, subsection A, paragraph 1 and the prisoner
35 is not concurrently serving another sentence, the prisoner is eligible for
36 parole or if the offense for which the prisoner was incarcerated was
37 committed on or after January 1, 1994, the prisoner is eligible for community
38 supervision.

39 B. Any person who has previously been convicted of a violent crime as
40 defined in section ~~13-604.04~~ 13-901.03 or who has previously been convicted
41 and sentenced in any jurisdiction in the United States of any felony offense
42 is not eligible for parole or community supervision pursuant to this section.
43 If the department is unable to determine if a person has a prior felony
44 conviction, the department shall refer the inmate record to the sentencing
45 court. The sentencing court shall determine if the person has a prior felony

1 conviction. For the purposes of this subsection, the age of the conviction
2 does not matter.

3 C. On or before June 3, 1997, the director of the state department of
4 corrections shall prepare a list that identifies each person who is eligible
5 for parole or community supervision pursuant to this section and shall
6 deliver the list to the board of executive clemency.

7 D. An offense **THAT IS** committed in another jurisdiction **AND THAT IS**
8 not classified as a felony in Arizona is not a felony offense for purposes of
9 this section.

10 Sec. 70. Section 41-1609.05, Arizona Revised Statutes, is amended to
11 read:

12 41-1609.05. Community accountability pilot program; fund;
13 program termination; definition

14 A. The department shall contract with an experienced private or
15 nonprofit entity to operate a community accountability pilot program to
16 provide eligible inmates with supervision and treatment services. The
17 department shall procure community accountability services pursuant to
18 chapter 23 of this title.

19 B. The pilot program shall initially provide services to not more than
20 one thousand eligible inmates. At the end of the second year of the pilot
21 program, the program shall provide services to not more than two thousand
22 eligible inmates. The program shall provide services that are designed to
23 lower recidivism rates by providing intensive monitoring and specific
24 treatment. Inmates shall enroll in the program for at least ninety days
25 unless removed by the director pursuant to subsection E of this section.

26 C. The goals of the community accountability pilot program include:

- 27 1. Reducing recidivism.
- 28 2. Providing treatment and rehabilitation services.
- 29 3. Providing supervision through electronic monitoring.
- 30 4. Preparing eligible inmates for independent living following
31 community supervision.
- 32 5. Enhancing public safety.

33 D. The community accountability pilot program may provide the
34 following community based services to eligible inmates:

- 35 1. Substance abuse education and treatment.
- 36 2. Random mandatory drug testing.
- 37 3. Electronic monitoring, remote alcohol testing, global positioning
38 system tracking and voice identification community tracking.
- 39 4. Life skills programming.
- 40 5. Employment preparation.
- 41 6. Anger management.
- 42 7. Parenting skills and family orientation.
- 43 8. Cognitive skills training.
- 44 9. General equivalency diplomas and adult basic education.
- 45 10. Housing assistance.

1 11. Health care and stress management.

2 12. Transportation planning.

3 13. Group and individual counseling.

4 E. The director shall identify inmates who are eligible for the
5 community accountability pilot program and shall determine all supervision,
6 admission and termination requirements. The director may remove an inmate
7 from the program. The director may order an eligible inmate to participate in
8 the program in lieu of parole or community supervision revocation.

9 F. The contracting entity shall operate the program, including the
10 management of any facility and its staff, the design of the program and the
11 installation and maintenance of all equipment necessary for operation of any
12 facility. Facilities that are established and operated under the pilot
13 program shall be known as community accountability reporting centers. The
14 contracting entity shall use existing risk assessment scores utilized by the
15 department to establish three levels of behavior modification and treatment
16 services. On initial entrance into the program, an eligible inmate shall be
17 placed in level one. Case managers shall provide monthly reports to the
18 eligible inmate's supervising officer, except that a violation shall be
19 reported within twenty-four hours.

20 G. The contracting entity shall not provide housing for eligible
21 inmates who participate in the pilot program. The department may require the
22 contracting entity to provide guidance and counseling to participating
23 eligible inmates who require assistance in locating and obtaining housing.

24 H. After an eligible inmate has been in the program for sixty days or
25 more, the department may require as a condition of program participation that
26 the eligible inmate pay a supervision fee, unless the inmate is determined to
27 be indigent. The case manager shall monitor the collection of the fee.
28 Monies collected pursuant to this subsection shall be deposited, pursuant to
29 sections 35-146 and 35-147, in the community accountability fund established
30 pursuant to subsection I of this section.

31 I. The community accountability fund is established consisting of fees
32 collected pursuant to subsection H of this section. The director shall
33 administer the fund for the purposes of this section. Monies in this fund
34 are continuously appropriated.

35 J. During the first year of operation of the pilot program, the
36 contracting entity shall provide monthly reports to the department and the
37 joint legislative budget committee. Beginning in the second year of the
38 pilot program, the contracting entity shall report at least annually to the
39 department and the joint legislative budget committee.

40 K. The pilot program established by this section ends on July 1, 2009
41 pursuant to section 41-3102.

42 L. This section does not prohibit the department from offering housing
43 to eligible inmates.

44 M. For the purposes of this section, "eligible inmate" means an inmate
45 who is on community supervision or who is eligible for community supervision

1 and who has not been convicted of a violent ~~offense~~ CRIME as defined in
2 section ~~13-604.04~~ 13-901.03, a dangerous crime against children as defined in
3 section 13-604.01 or a sexual offense pursuant to title 13, chapter 14 or
4 35.1.

5 Sec. 71. Laws 2003, chapter 255, section 8 is amended to read:

6 Sec. 8. Conditional enactment

7 A. The following do not become effective unless on or before June 30,
8 2013 the Arizona supreme court or the supreme court of the United States
9 rules that it is constitutional for a crime victim in a capital case to make
10 a sentencing recommendation:

11 1. Section ~~13-703.01~~ 13-752, Arizona Revised Statutes, as amended by
12 ~~section 3 of this act~~ LAWS 2005, CHAPTER 325, SECTION 4, AS TRANSFERRED AND
13 RENUMBERED BY SECTION 22 OF THIS ACT AND AS AMENDED BY SECTION 35 OF THIS
14 ACT.

15 2. LAWS 2003, CHAPTER 255, section 4 ~~of this act~~.

16 3. Section 13-4426, Arizona Revised Statutes, ~~as added by this act~~.

17 B. The attorney general shall notify in writing the director of the
18 Arizona legislative council of the date on which the condition is met or if
19 the condition is not met.

20 Sec. 72. Effective date

21 Except as provided by Laws 2003, chapter 255, section 8, as amended by
22 this act, this act is effective from and after December 31, 2007.