

REFERENCE TITLE: incapacitated or vulnerable adults; sentencing

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HB 2329**

Introduced by  
Representative Mason

AN ACT

AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-611; AMENDING SECTIONS 13-1104, 13-1105, 13-1201, 13-1204, 13-1304, 13-1307, 13-1404, 13-1406, 13-1802, 13-1815, 13-2008, 13-2009, 13-2310, 13-3204, 13-3209 AND 13-3623, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 6, Arizona Revised Statutes, is amended  
3 by adding section 13-611, to read:

4 13-611. Dangerous crimes against incapacitated or vulnerable  
5 adults; allegation; sentencing; definitions

6 A. THE ALLEGATION THAT THE DEFENDANT COMMITTED A DANGEROUS CRIME  
7 AGAINST AN INCAPACITATED ADULT OR VULNERABLE ADULT SHALL BE CHARGED IN THE  
8 INDICTMENT OR INFORMATION AND ADMITTED OR FOUND BY THE COURT. THE COURT  
9 SHALL ALLOW THE ALLEGATION THAT THE DEFENDANT COMMITTED A DANGEROUS CRIME  
10 AGAINST AN INCAPACITATED ADULT OR VULNERABLE ADULT:

11 1. IF THE ALLEGATION IS FILED TWENTY OR MORE DAYS BEFORE THE CASE IS  
12 ACTUALLY TRIED.

13 2. IF THE ALLEGATION IS FILED FEWER THAN TWENTY DAYS BEFORE THE CASE  
14 IS ACTUALLY TRIED AND THE COURT FINDS ON THE RECORD THAT THE DEFENDANT WAS IN  
15 FACT PREJUDICED BY THE UNTIMELY FILING AND STATES THE REASONS FOR THESE  
16 FINDINGS.

17 B. A PERSON WHO IS CONVICTED OF A DANGEROUS CRIME AGAINST AN  
18 INCAPACITATED ADULT OR VULNERABLE ADULT IS NOT ELIGIBLE FOR SUSPENSION OF  
19 SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT  
20 AS AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED  
21 BY THE COURT HAS BEEN SERVED OR COMMUTED.

22 C. IN IMPOSING A SENTENCE, THE COURT SHALL CONSIDER THE EVIDENCE AND  
23 OPINIONS PRESENTED BY THE VICTIM AS PROVIDED IN CHAPTER 40 OF THIS TITLE.

24 D. FOR THE PURPOSES OF THIS SECTION:

25 1. "DANGEROUS CRIME AGAINST AN INCAPACITATED ADULT OR VULNERABLE  
26 ADULT" MEANS ANY OF THE FOLLOWING OFFENSES COMMITTED AGAINST AN INCAPACITATED  
27 ADULT OR VULNERABLE ADULT:

28 (a) SECOND DEGREE MURDER.

29 (b) ATTEMPTED FIRST DEGREE MURDER.

30 (c) ENDANGERMENT INVOLVING A SUBSTANTIAL RISK OF IMMINENT DEATH.

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

34 (e) KIDNAPPING.

35 (f) SEX TRAFFICKING.

36 (g) SEXUAL ABUSE.

37 (h) SEXUAL ASSAULT.

38 (i) FELONY THEFT PURSUANT TO SECTION 13-1802, SUBSECTION B.

39 (j) FELONY UNLAWFUL USE OF POWER OF ATTORNEY.

40 (k) TAKING IDENTITY OF ANOTHER PERSON OR ENTITY.

41 (l) AGGRAVATED TAKING IDENTITY OF ANOTHER PERSON OR ENTITY.

42 (m) FRAUDULENT SCHEMES AND ARTIFICES.

43 (n) RECEIVING EARNINGS OF A PROSTITUTE.

44 (o) PANDERING.

45 (p) VULNERABLE ADULT ABUSE.

1 (q) AN OFFENSE INVOLVING FINANCIAL EXPLOITATION AS PRESCRIBED BY  
2 SECTION 46-456.

3 2. "INCAPACITATED ADULT" MEANS A PERSON WHO IS AT LEAST EIGHTEEN YEARS  
4 OF AGE AND WHO LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR  
5 COMMUNICATE INFORMED DECISIONS CONCERNING HIMSELF BECAUSE OF AN IMPAIRMENT BY  
6 REASON OF MENTAL ILLNESS, MENTAL DEFICIENCY, MENTAL DISORDER, PHYSICAL  
7 ILLNESS OR DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS, CHRONIC  
8 INTOXICATION OR OTHER CAUSE.

9 3. "VULNERABLE ADULT" MEANS A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF  
10 AGE AND WHO IS UNABLE TO PROTECT HIMSELF FROM ABUSE, NEGLECT OR EXPLOITATION  
11 BY OTHERS BECAUSE OF A PHYSICAL OR MENTAL IMPAIRMENT.

12 Sec. 2. Section 13-1104, Arizona Revised Statutes, is amended to read:  
13 13-1104. Second degree murder; classification

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

15 1. The person intentionally causes the death of another person,  
16 including an unborn child or, as a result of intentionally causing the death  
17 of another person, causes the death of an unborn child; or

18 2. Knowing that the person's conduct will cause death or serious  
19 physical injury, the person causes the death of another person, including an  
20 unborn child or, as a result of knowingly causing the death of another  
21 person, causes the death of an unborn child; or

22 3. Under circumstances manifesting extreme indifference to human life,  
23 the person recklessly engages in conduct that creates a grave risk of death  
24 and thereby causes the death of another person, including an unborn child or,  
25 as a result of recklessly causing the death of another person, causes the  
26 death of an unborn child.

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

30 1. The person was performing an abortion for which the consent of the  
31 pregnant woman, or a person authorized by law to act on the pregnant woman's  
32 behalf, has been obtained or for which the consent was implied or authorized  
33 by law.

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

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

37 C. Second degree murder is a class 1 felony and is punishable as  
38 provided by section 13-604, subsection S, section 13-604.01 if the victim is  
39 under fifteen years of age or is an unborn child, SECTION 13-611 IF THE  
40 VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT or section 13-710.

41 Sec. 3. Section 13-1105, Arizona Revised Statutes, is amended to read:  
42 13-1105. First degree murder; classification

43 A. A person commits first degree murder if:

44 1. Intending or knowing that the person's conduct will cause death,  
45 the person causes the death of another person, including an unborn child,

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

3 2. Acting either alone or with one or more other persons the person  
4 commits or attempts to commit sexual conduct with a minor under section  
5 13-1405, sexual assault under section 13-1406, molestation of a child under  
6 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under  
7 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under  
8 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under  
9 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory  
10 threshold amount for each offense or combination of offenses, involving or  
11 using minors in drug offenses under section 13-3409, kidnapping under section  
12 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under  
13 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or  
14 13-1904, escape under section 13-2503 or 13-2504, child abuse under section  
15 13-3623, subsection A, paragraph 1, or unlawful flight from a pursuing law  
16 enforcement vehicle under section 28-622.01 and in the course of and in  
17 furtherance of the offense or immediate flight from the offense, the person  
18 or another person causes the death of any person.

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

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

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

29 1. The person was performing an abortion for which the consent of the  
30 pregnant woman, or a person authorized by law to act on the pregnant woman's  
31 behalf, has been obtained or for which the consent was implied or authorized  
32 by law.

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

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

36 D. IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT,  
37 ATTEMPTED FIRST DEGREE MURDER IS PUNISHABLE PURSUANT TO SECTION 13-611.

38 ~~D.~~ E. First degree murder is a class 1 felony and is punishable by  
39 death or life imprisonment as provided by sections 13-703 and 13-703.01.

40 Sec. 4. Section 13-1201, Arizona Revised Statutes, is amended to read:  
41 13-1201. Endangerment; classification

42 A. A person commits endangerment by recklessly endangering another  
43 person with a substantial risk of imminent death or physical injury.

1 B. Endangerment involving a substantial risk of imminent death is a  
2 class 6 felony, AND IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE  
3 ADULT IT IS PUNISHABLE PURSUANT TO SECTION 13-611. In all other cases, it is  
4 a class 1 misdemeanor.

5 Sec. 5. Section 13-1204, Arizona Revised Statutes, is amended to read:  
6 13-1204. Aggravated assault; classification; definition

7 A. A person commits aggravated assault if the person commits assault  
8 as prescribed by section 13-1203 under any of the following circumstances:

9 1. If the person causes serious physical injury to another.

10 2. If the person uses a deadly weapon or dangerous instrument.

11 3. If the person commits the assault by any means of force that causes  
12 temporary but substantial disfigurement, temporary but substantial loss or  
13 impairment of any body organ or part or a fracture of any body part.

14 4. If the person commits the assault while the victim is bound or  
15 otherwise physically restrained or while the victim's capacity to resist is  
16 substantially impaired.

17 5. If the person commits the assault after entering the private home  
18 of another with the intent to commit the assault.

19 6. If the person is eighteen years of age or older and commits the  
20 assault on a child who is fifteen years of age or under.

21 7. If the person commits assault as prescribed by section 13-1203,  
22 subsection A, paragraph 1 or 3 and the person is in violation of an order of  
23 protection issued against the person pursuant to section 13-3602 or 13-3624.

24 8. If the person commits the assault knowing or having reason to know  
25 that the victim is any of the following:

26 (a) A peace officer, or a person summoned and directed by the officer  
27 while engaged in the execution of any official duties.

28 (b) A firefighter, fire investigator, fire inspector, emergency  
29 medical technician or paramedic engaged in the execution of any official  
30 duties, or a person summoned and directed by such individual while engaged in  
31 the execution of any official duties.

32 (c) A teacher or other person employed by any school and the teacher  
33 or other employee is on the grounds of a school or grounds adjacent to the  
34 school or is in any part of a building or vehicle used for school purposes,  
35 any teacher or school nurse visiting a private home in the course of the  
36 teacher's or nurse's professional duties or any teacher engaged in any  
37 authorized and organized classroom activity held on other than school  
38 grounds.

39 (d) A ~~licensed~~ health care practitioner who is certified or licensed  
40 pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and  
41 directed by the licensed health care practitioner while engaged in the  
42 person's professional duties. This subdivision does not apply if the person  
43 who commits the assault is seriously mentally ill, as defined in section  
44 36-550, or is afflicted with alzheimer's disease or related dementia.

45 (e) A prosecutor.

1           9. If the person knowingly takes or attempts to exercise control over  
2 any of the following:

3           (a) A peace officer's or other officer's firearm and the person knows  
4 or has reason to know that the victim is a peace officer or other officer  
5 employed by one of the agencies listed in paragraph 10, subdivision (a), item  
6 (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the  
7 execution of any official duties.

8           (b) Any weapon other than a firearm that is being used by a peace  
9 officer or other officer or that the officer is attempting to use, and the  
10 person knows or has reason to know that the victim is a peace officer or  
11 other officer employed by one of the agencies listed in paragraph 10,  
12 subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is  
13 engaged in the execution of any official duties.

14           (c) Any implement that is being used by a peace officer or other  
15 officer or that the officer is attempting to use, and the person knows or has  
16 reason to know that the victim is a peace officer or other officer employed  
17 by one of the agencies listed in paragraph 10, subdivision (a), item (i),  
18 (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution  
19 of any official duties. For the purposes of this ~~paragraph~~ SUBDIVISION,  
20 "implement" means an object that is designed for or that is capable of  
21 restraining or injuring an individual. Implement does not include handcuffs.

22           10. If the person meets both of the following conditions:

23           (a) Is imprisoned or otherwise subject to the custody of any of the  
24 following:

25           (i) The state department of corrections.

26           (ii) The department of juvenile corrections.

27           (iii) A law enforcement agency.

28           (iv) A county or city jail or an adult or juvenile detention facility  
29 of a city or county.

30           (v) Any other entity that is contracting with the state department of  
31 corrections, the department of juvenile corrections, a law enforcement  
32 agency, another state, any private correctional facility, a county, a city or  
33 the federal bureau of prisons or other federal agency that has responsibility  
34 for sentenced or unsentenced prisoners.

35           (b) Commits an assault knowing or having reason to know that the  
36 victim is acting in an official capacity as an employee of any of the  
37 entities listed in subdivision (a) of this paragraph.

38           **B. IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT,  
39 AGGRAVATED ASSAULT PURSUANT TO SUBSECTION A, PARAGRAPH 1 OR 2 OF THIS SECTION  
40 IS PUNISHABLE PURSUANT TO SECTION 13-611 IF THE VICTIM IS AN INCAPACITATED  
41 ADULT OR VULNERABLE ADULT.**

42           ~~B-~~ C. Except pursuant to subsections ~~C~~ and D AND E of this section,  
43 aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9,  
44 subdivision (a) of this section is a class 3 felony except if the victim is  
45 under fifteen years of age in which case it is a class 2 felony punishable

1 pursuant to section 13-604.01. Aggravated assault pursuant to subsection A,  
2 paragraph 3 of this section is a class 4 felony. Aggravated assault pursuant  
3 to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section  
4 is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph  
5 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6  
6 felony.

7 ~~C.~~ D. Aggravated assault pursuant to subsection A, paragraph 1 or 2  
8 of this section committed on a peace officer while the officer is engaged in  
9 the execution of any official duties is a class 2 felony. Aggravated assault  
10 pursuant to subsection A, paragraph 3 of this section committed on a peace  
11 officer while the officer is engaged in the execution of any official duties  
12 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph  
13 8, subdivision (a) of this section resulting in any physical injury to a  
14 peace officer while the officer is engaged in the execution of any official  
15 duties is a class 5 felony.

16 ~~D.~~ E. Aggravated assault pursuant to:

17 1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony  
18 if committed on a prosecutor.

19 2. Subsection A, paragraph 3 of this section is a class 3 felony if  
20 committed on a prosecutor.

21 3. Subsection A, paragraph 8, subdivision (e) of this section is a  
22 class 5 felony if the assault results in physical injury to a prosecutor.

23 ~~E.~~ F. For the purposes of this section, "prosecutor" means a county  
24 attorney, a municipal prosecutor or the attorney general and includes an  
25 assistant or deputy county attorney, municipal prosecutor or attorney  
26 general.

27 Sec. 6. Section 13-1304, Arizona Revised Statutes, is amended to read:  
28 13-1304. Kidnapping; classification; consecutive sentence

29 A. A person commits kidnapping by knowingly restraining another person  
30 with the intent to:

31 1. Hold the victim for ransom, as a shield or hostage; or

32 2. Hold the victim for involuntary servitude; or

33 3. Inflict death, physical injury or a sexual offense on the victim,  
34 or to otherwise aid in the commission of a felony; or

35 4. Place the victim or a third person in reasonable apprehension of  
36 imminent physical injury to the victim or ~~such~~ THE third person. ~~— ; OR~~

37 5. Interfere with the performance of a governmental or political  
38 function. ~~— ; OR~~

39 6. Seize or exercise control over any airplane, train, bus, ship or  
40 other vehicle.

41 B. Kidnapping is a class 2 felony unless the victim is released  
42 voluntarily by the defendant without physical injury in a safe place ~~prior to~~  
43 ~~BEFORE~~ arrest and ~~prior to~~ ~~BEFORE~~ accomplishing any of the further enumerated  
44 offenses in subsection A of this section in which case it is a class 4  
45 felony. If the victim is released pursuant to an agreement with the state

1 and without any physical injury, it is a class 3 felony. If the victim is  
2 under fifteen years of age kidnapping is a class 2 felony punishable pursuant  
3 to section 13-604.01. The sentence for kidnapping of a victim under fifteen  
4 years of age shall run consecutively to any other sentence imposed on the  
5 defendant and to any undischarged term of imprisonment of the defendant. **IF**  
6 **THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT, KIDNAPPING IS**  
7 **PUNISHABLE PURSUANT TO SECTION 13-611.**

8 Sec. 7. Section 13-1307, Arizona Revised Statutes, is amended to read:  
9 13-1307. Sex trafficking; classification

10 A. It is unlawful for a person to knowingly recruit, entice, harbor,  
11 transport, provide or obtain by any means another person who is eighteen  
12 years of age or older with the intent of causing the other person to engage  
13 in prostitution by force, fraud or coercion.

14 B. It is unlawful for a person to recruit, entice, harbor, transport,  
15 provide or obtain by any means another person who is under eighteen years of  
16 age with the intent of causing the other person to engage in prostitution.

17 C. Notwithstanding any other law, a sentence imposed on a person for a  
18 violation of subsection B of this section shall be consecutive to any other  
19 sentence imposed on the person at any time.

20 D. A person who violates this section is guilty of a class 2 felony,  
21 except that if the offense is committed against a person who is under fifteen  
22 years of age, the offense is a dangerous crime against children punishable  
23 pursuant to section 13-604.01.

24 **E. IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT, SEX**  
25 **TRAFFICKING IS PUNISHABLE PURSUANT TO SECTION 13-611.**

26 Sec. 8. Section 13-1404, Arizona Revised Statutes, is amended to read:  
27 13-1404. Sexual abuse; classification

28 A. A person commits sexual abuse by intentionally or knowingly  
29 engaging in sexual contact with any person **WHO IS** fifteen or more years of  
30 age without consent of that person or with any person who is under fifteen  
31 years of age if the sexual contact involves only the female breast.

32 B. Sexual abuse is a class 5 felony unless the victim is under fifteen  
33 years of age in which case sexual abuse is a class 3 felony punishable  
34 pursuant to section 13-604.01.

35 **C. IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT, SEXUAL**  
36 **ABUSE IS PUNISHABLE PURSUANT TO SECTION 13-611.**

37 Sec. 9. Section 13-1406, Arizona Revised Statutes, is amended to read:  
38 13-1406. Sexual assault; classification; increased punishment

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

42 B. Sexual assault is a class 2 felony, and the person convicted shall  
43 be sentenced pursuant to this section and the person is not eligible for  
44 suspension of sentence, probation, pardon or release from confinement on any  
45 basis except as specifically authorized by section 31-233, subsection A or B



1 until the sentence imposed by the court has been served or commuted. If the  
2 victim is under fifteen years of age, sexual assault is punishable pursuant  
3 to section 13-604.01. **IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE**  
4 **ADULT, SEXUAL ASSAULT IS PUNISHABLE PURSUANT TO SECTION 13-611.** The  
5 presumptive term may be aggravated or mitigated within the range under this  
6 section pursuant to section 13-702, subsections B, C and D. If the sexual  
7 assault involved the intentional or knowing administration of flunitrazepam,  
8 gamma hydroxy butyrate or ketamine hydrochloride without the victim's  
9 knowledge, the presumptive, minimum and maximum sentence for the offense  
10 shall be increased by three years. The additional sentence imposed pursuant  
11 to this subsection is in addition to any enhanced sentence that may be  
12 applicable. The term for a first offense is as follows:

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

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

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

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

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

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

26 D. Notwithstanding sections 13-604 and 13-604.01, if the sexual  
27 assault involved the intentional or knowing infliction of serious physical  
28 injury, the person may be sentenced to life imprisonment and is not eligible  
29 for suspension of sentence, probation, pardon or release from confinement on  
30 any basis except as specifically authorized by section 31-233, subsection A  
31 or B until at least twenty-five years have been served or the sentence is  
32 commuted. If the person was at least eighteen years of age and the victim  
33 was twelve years of age or younger, the person shall be sentenced pursuant to  
34 section 13-604.01, subsection A.

35 Sec. 10. Section 13-1802, Arizona Revised Statutes, is amended to  
36 read:

37 **13-1802. Theft; classification**

38 A. A person commits theft if, without lawful authority, the person  
39 knowingly:

- 40 1. Controls property of another with the intent to deprive the other  
41 person of such property; or
- 42 2. Converts for an unauthorized term or use services or property of  
43 another entrusted to the defendant or placed in the defendant's possession  
44 for a limited, authorized term or use; or

1           3. Obtains services or property of another by means of any material  
2 misrepresentation with intent to deprive the other person of such property or  
3 services; or

4           4. Comes into control of lost, mislaid or misdelivered property of  
5 another under circumstances providing means of inquiry as to the true owner  
6 and appropriates such property to the person's own or another's use without  
7 reasonable efforts to notify the true owner; or

8           5. Controls property of another knowing or having reason to know that  
9 the property was stolen; or

10          6. Obtains services known to the defendant to be available only for  
11 compensation without paying or an agreement to pay the compensation or  
12 diverts another's services to the person's own or another's benefit without  
13 authority to do so.

14          B. A person commits theft if the person knowingly takes control,  
15 title, use or management of an incapacitated or vulnerable adult's assets or  
16 property through intimidation or deception, as defined in section 46-456,  
17 while acting in a position of trust and confidence and with the intent to  
18 deprive the incapacitated or vulnerable adult of the asset or property.

19          C. The inferences set forth in section 13-2305 apply to any  
20 prosecution under subsection A, paragraph 5 of this section.

21          D. At the conclusion of any grand jury proceeding, hearing or trial,  
22 the court shall preserve any trade secret that is admitted in evidence or any  
23 portion of a transcript that contains information relating to the trade  
24 secret pursuant to section 44-405.

25          E. Theft of property or services with a value of twenty-five thousand  
26 dollars or more is a class 2 felony. Theft of property or services with a  
27 value of four thousand dollars or more but less than twenty-five thousand  
28 dollars is a class 3 felony. Theft of property or services with a value of  
29 three thousand dollars or more but less than four thousand dollars is a class  
30 4 felony, except that theft of any vehicle engine or transmission is a class  
31 4 felony regardless of value. Theft of property or services with a value of  
32 two thousand dollars or more but less than three thousand dollars is a class  
33 5 felony. Theft of property or services with a value of one thousand dollars  
34 or more but less than two thousand dollars is a class 6 felony. Theft of any  
35 property or services valued at less than one thousand dollars is a class 1  
36 misdemeanor, unless the property is taken from the person of another, is a  
37 firearm or is a dog taken for the purpose of dog fighting in violation of  
38 section 13-2910.01, in which case the theft is a class 6 felony.

39          F. A person who is convicted of a violation of subsection A, paragraph  
40 1 or 3 of this section that involved property with a value of one hundred  
41 thousand dollars or more is not eligible for suspension of sentence,  
42 probation, pardon or release from confinement on any basis except pursuant to  
43 section 31-233, subsection A or B until the sentence imposed by the court has  
44 been served, the person is eligible for release pursuant to section  
45 41-1604.07 or the sentence is commuted.

1 G. IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT, THEFT  
2 PURSUANT TO SUBSECTION B OF THIS SECTION IS PUNISHABLE PURSUANT TO SECTION  
3 13-611.

4 Sec. 11. Section 13-1815, Arizona Revised Statutes, is amended to  
5 read:

6 13-1815. Unlawful use of power of attorney; classification

7 A. An agent who holds a principal's power of attorney pursuant to  
8 title 14, chapter 5, article 5 and who uses or manages the principal's assets  
9 or property with the intent to unlawfully deprive that person of the asset or  
10 property is guilty of theft.

11 B. A violation of this section carries the same classification as  
12 theft pursuant to section 13-1802, AND IF THE VICTIM IS AN INCAPACITATED  
13 ADULT OR VULNERABLE ADULT, IT IS PUNISHABLE PURSUANT TO SECTION 13-611.

14 Sec. 12. Section 13-2008, Arizona Revised Statutes, is amended to  
15 read:

16 13-2008. Taking identity of another person or entity;  
17 classification

18 A. A person commits taking the identity of another person or entity if  
19 the person knowingly takes, purchases, manufactures, records, possesses or  
20 uses any personal identifying information or entity identifying information  
21 of another person or entity, including a real or fictitious person or entity,  
22 without the consent of that other person or entity, with the intent to obtain  
23 or use the other person's or entity's identity for any unlawful purpose or to  
24 cause loss to a person or entity whether or not the person or entity actually  
25 suffers any economic loss as a result of the offense.

26 B. On the request of a person or entity, a peace officer in any  
27 jurisdiction in which an element of the offense is committed, a result of the  
28 offense occurs or the person or entity whose identity is taken resides or is  
29 located shall take a report. The peace officer may provide a copy of the  
30 report to any other law enforcement agency that is located in a jurisdiction  
31 in which a violation of this section occurred.

32 C. If a defendant is alleged to have committed multiple violations of  
33 this section within the same county, the prosecutor may file a complaint  
34 charging all of the violations and any related charges under other sections  
35 that have not been previously filed in any precinct in which a violation is  
36 alleged to have occurred. If a defendant is alleged to have committed  
37 multiple violations of this section within the state, the prosecutor may file  
38 a complaint charging all of the violations and any related charges under  
39 other sections that have not been previously filed in any county in which a  
40 violation is alleged to have occurred.

41 D. This section does not apply to a violation of section 4-241 by a  
42 person who is under twenty-one years of age.

43 E. Taking the identity of another person or entity is a class 4  
44 felony, AND IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT, IT  
45 IS PUNISHABLE PURSUANT TO SECTION 13-611.



1 C. A person who is convicted of a violation of this section that  
2 involved a benefit with a value of one hundred thousand dollars or more is  
3 not eligible for suspension of sentence, probation, pardon or release from  
4 confinement on any basis except pursuant to section 31-233, subsection A or B  
5 until the sentence imposed by the court has been served, the person is  
6 eligible for release pursuant to section 41-1604.07 or the sentence is  
7 commuted.

8 D. IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT,  
9 FRAUDULENT SCHEMES AND ARTIFICES PURSUANT TO SUBSECTION A OF THIS SECTION IS  
10 PUNISHABLE PURSUANT TO SECTION 13-611.

11 ~~D.~~ E. The state shall apply the aggregation prescribed by section  
12 13-1801, subsection B to violations of this section in determining the  
13 applicable punishment.

14 ~~E.~~ F. ~~As used in~~ FOR THE PURPOSES OF this section, "scheme or  
15 artifice to defraud" includes a scheme or artifice to deprive a person of the  
16 intangible right of honest services.

17 Sec. 15. Section 13-3204, Arizona Revised Statutes, is amended to  
18 read:

19 13-3204. Receiving earnings of prostitute; classification

20 A. A person who knowingly receives money or other valuable thing from  
21 the earnings of a person engaged in prostitution, ~~is~~ is guilty of a class 5  
22 felony.

23 B. IF THE PERSON WHO ENGAGED IN THE PROSTITUTION IS AN INCAPACITATED  
24 ADULT OR VULNERABLE ADULT, RECEIVING EARNINGS OF A PROSTITUTE IS PUNISHABLE  
25 PURSUANT TO SECTION 13-611.

26 Sec. 16. Section 13-3209, Arizona Revised Statutes, is amended to  
27 read:

28 13-3209. Pandering; classification

29 A. A person is guilty of a class 5 felony who knowingly:

30 1. Places any person in the charge or custody of any other person for  
31 purposes of prostitution.

32 2. Places any person in a house of prostitution with the intent that  
33 such person lead a life of prostitution.

34 3. Compels, induces or encourages any person to reside with that  
35 person, or with any other person, for the purpose of prostitution.

36 4. Compels, induces or encourages any person to lead a life of  
37 prostitution.

38 B. IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT,  
39 PANDERING IS PUNISHABLE PURSUANT TO SECTION 13-611.

40 Sec. 17. Section 13-3623, Arizona Revised Statutes, is amended to  
41 read:

42 13-3623. Child or vulnerable adult abuse; emotional abuse;  
43 classification; exceptions; definitions

44 A. Under circumstances likely to produce death or serious physical  
45 injury, any person who causes a child or vulnerable adult to suffer physical

1 injury or, having the care or custody of a child or vulnerable adult, who  
2 causes or permits the person or health of the child or vulnerable adult to be  
3 injured or who causes or permits a child or vulnerable adult to be placed in  
4 a situation where the person or health of the child or vulnerable adult is  
5 endangered is guilty of an offense as follows:

6 1. If done intentionally or knowingly, the offense is a class 2 felony  
7 and if the victim is under fifteen years of age it is punishable pursuant to  
8 section 13-604.01.

9 2. If done recklessly, the offense is a class 3 felony.

10 3. If done with criminal negligence, the offense is a class 4 felony.

11 B. Under circumstances other than those likely to produce death or  
12 serious physical injury to a child or vulnerable adult, any person who causes  
13 a child or vulnerable adult to suffer physical injury or abuse or, having the  
14 care or custody of a child or vulnerable adult, who causes or permits the  
15 person or health of the child or vulnerable adult to be injured or who causes  
16 or permits a child or vulnerable adult to be placed in a situation where the  
17 person or health of the child or vulnerable adult is endangered is guilty of  
18 an offense as follows:

19 1. If done intentionally or knowingly, the offense is a class 4  
20 felony.

21 2. If done recklessly, the offense is a class 5 felony.

22 3. If done with criminal negligence, the offense is a class 6 felony.

23 C. For the purposes of subsections A and B of this section, the terms  
24 endangered and abuse include but are not limited to circumstances in which a  
25 child or vulnerable adult is permitted to enter or remain in any structure or  
26 vehicle in which volatile, toxic or flammable chemicals are found or  
27 equipment is possessed by any person for the purpose of manufacturing a  
28 dangerous drug in violation of section 13-3407, subsection A, ~~paragraphs~~  
29 ~~PARAGRAPH~~ 3 or 4. Notwithstanding any other provision of this section, a  
30 violation committed under the circumstances described in this subsection does  
31 not require that a person have care or custody of the child or vulnerable  
32 adult.

33 D. A person who intentionally or knowingly engages in emotional abuse  
34 of a vulnerable adult who is a patient or resident in any setting in which  
35 health care, health-related services or assistance with one or more of the  
36 activities of daily living is provided or, having the care or custody of a  
37 vulnerable adult, who intentionally or knowingly subjects or permits the  
38 vulnerable adult to be subjected to emotional abuse is guilty of a class 6  
39 felony.

40 E. IF THE VICTIM IS AN INCAPACITATED ADULT OR VULNERABLE ADULT, A  
41 VIOLATION OF SUBSECTION A, B OR C OF THIS SECTION IS PUNISHABLE PURSUANT TO  
42 SECTION 13-611.

43 ~~E.~~ F. This section does not apply to:

44 1. A health care provider as defined in section 36-3201 who permits a  
45 patient to die or the patient's condition to deteriorate by not providing

1 health care if that patient refuses that care directly or indirectly through  
2 a health care directive as defined in section 36-3201, through a surrogate  
3 pursuant to section 36-3231 or through a court appointed guardian as provided  
4 for in title 14, chapter 5, article 3.

5 2. A vulnerable adult who is being furnished spiritual treatment  
6 through prayer alone and who would not otherwise be considered to be abused,  
7 neglected or endangered if medical treatment were being furnished.

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

9 1. "Abuse", when used in reference to a child, means abuse as defined  
10 in section 8-201, except for those acts in the definition that are declared  
11 unlawful by another statute of this title and, when used in reference to a  
12 vulnerable adult, means:

13 (a) Intentional infliction of physical harm.

14 (b) Injury caused by criminally negligent acts or omissions.

15 (c) Unlawful imprisonment, as described in section 13-1303.

16 (d) Sexual abuse or sexual assault.

17 2. "Child" means an individual who is under eighteen years of age.

18 3. "Emotional abuse" means a pattern of ridiculing or demeaning a  
19 vulnerable adult, making derogatory remarks to a vulnerable adult, verbally  
20 harassing a vulnerable adult or threatening to inflict physical or emotional  
21 harm on a vulnerable adult.

22 4. "Physical injury" means the impairment of physical condition and  
23 includes any skin bruising, pressure sores, bleeding, failure to thrive,  
24 malnutrition, dehydration, burns, fracture of any bone, subdural hematoma,  
25 soft tissue swelling, injury to any internal organ or any physical condition  
26 that imperils health or welfare.

27 5. "Serious physical injury" means physical injury that creates a  
28 reasonable risk of death or that causes serious or permanent disfigurement,  
29 serious impairment of health or loss or protracted impairment of the function  
30 of any bodily organ or limb.

31 6. "Vulnerable adult" means an individual who is eighteen years of age  
32 or older and who is unable to protect himself from abuse, neglect or  
33 exploitation by others because of a mental or physical impairment.