

REFERENCE TITLE: driving while intoxicated; homicide; sentencing

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

HB 2534

Introduced by
Representative Farnsworth

AN ACT

AMENDING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 248, SECTION 1; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 287, SECTION 1; AMENDING SECTIONS 13-1103, 13-4062, 31-412, 41-1604.11 AND 41-1604.13; BLENDING MULTIPLE ENACTMENTS; RELATING TO HOMICIDE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-604, Arizona Revised Statutes, as amended by
3 Laws 2007, chapter 248, section 1, is amended to read:

4 13-604. Dangerous and repetitive offenders; definitions

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

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
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

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

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years

38 C. Except as provided in subsection F, G, H or S of this section or
39 section 13-604.01, a person who is at least eighteen years of age or who has
40 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,
41 whether a completed or preparatory offense, and who has two or more
42 historical prior felony convictions shall be sentenced to imprisonment as
43 prescribed in this subsection and shall not be eligible for suspension of
44 sentence, probation, pardon or release from confinement on any basis except
45 as specifically authorized by section 31-233, subsection A or B until the

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

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

10 D. Except as provided in subsection I, J, K or S of this section or
11 section 13-604.01, a person who is at least eighteen years of age or who has
12 been tried as an adult and who stands convicted of a class 2 or 3 felony, and
13 who has two or more historical prior felony convictions, shall be sentenced
14 to imprisonment as prescribed in this subsection and shall not be eligible
15 for suspension of sentence, probation, pardon or release from confinement on
16 any basis except as specifically authorized by section 31-233, subsection A
17 or B until the sentence imposed by the court has been served, the person is
18 eligible for release pursuant to section 41-1604.07 or the sentence is
19 commuted. The presumptive term may be mitigated or aggravated within the
20 range prescribed under this subsection pursuant to the terms of section
21 13-702, subsections B, C and D. The terms are as follows:

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

25 E. A person who is at least eighteen years of age or who has been
26 tried as an adult and who stands convicted of any misdemeanor or petty
27 offense, other than a traffic offense, and who has been convicted of one or
28 more of the same misdemeanors or petty offenses within two years next
29 preceding the date of the present offense shall be sentenced for the next
30 higher class of offense than that for which such person currently stands
31 convicted.

32 F. Except as provided in section 13-604.01, a person who is at least
33 eighteen years of age or who has been tried as an adult and who stands
34 convicted of a class 4, 5 or 6 felony involving the intentional or knowing
35 infliction of serious physical injury or the discharge, use or threatening
36 exhibition of a deadly weapon or dangerous instrument without having
37 previously been convicted of any felony shall be sentenced to imprisonment as
38 prescribed in this subsection and shall not be eligible for suspension of
39 sentence, probation, pardon or release from confinement on any basis except
40 as specifically authorized by section 31-233, subsection A or B until the
41 sentence imposed by the court has been served, the person is eligible for
42 release pursuant to section 41-1604.07 or the sentence is commuted. The
43 presumptive term may be mitigated or aggravated within the range prescribed
44 under this subsection pursuant to the terms of section 13-702, subsections B,
45 C and D. The terms are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
1				
2	Class 4	4 years	6 years	8 years
3	Class 5	2 years	3 years	4 years
4	Class 6	1.5 years	2.25 years	3 years

5 G. Except as provided in section 13-604.01, upon conviction of a class
6 4, 5 or 6 felony involving the intentional or knowing infliction of serious
7 physical injury or the discharge, use or threatening exhibition of a deadly
8 weapon or dangerous instrument a person who has a historical prior felony
9 conviction involving the intentional or knowing infliction of serious
10 physical injury or the use or exhibition of a deadly weapon or dangerous
11 instrument shall be sentenced to imprisonment as prescribed in this
12 subsection and shall not be eligible for suspension of sentence, probation,
13 pardon or release from confinement on any basis except as specifically
14 authorized by section 31-233, subsection A or B until the sentence imposed by
15 the court has been served, the person is eligible for release pursuant to
16 section 41-1604.07 or the sentence is commuted. The presumptive term may be
17 mitigated or aggravated within the range prescribed under this subsection
18 pursuant to the terms of section 13-702, subsections B, C and D. The terms
19 are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
20				
21	Class 4	8 years	10 years	12 years
22	Class 5	4 years	5 years	6 years
23	Class 6	3 years	3.75 years	4.5 years

24 H. Except as provided in subsection S of this section or section
25 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the
26 intentional or knowing infliction of serious physical injury or the
27 discharge, use or threatening exhibition of a deadly weapon or dangerous
28 instrument a person who has two or more historical prior felony convictions
29 involving the intentional or knowing infliction of serious physical injury or
30 the use or exhibition of a deadly weapon or dangerous instrument shall be
31 sentenced to imprisonment as prescribed in this subsection and shall not be
32 eligible for suspension of sentence, probation, pardon or release from
33 confinement on any basis except as specifically authorized by section 31-233,
34 subsection A or B until the sentence imposed by the court has been served,
35 the person is eligible for release pursuant to section 41-1604.07 or the
36 sentence is commuted. The presumptive term may be mitigated or aggravated
37 within the range prescribed under this subsection pursuant to the terms of
38 section 13-702, subsections B, C and D. The terms are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
39				
40	Class 4	12 years	14 years	16 years
41	Class 5	6 years	7 years	8 years
42	Class 6	4.5 years	5.25 years	6 years

43 I. Except as provided in section 13-604.01, upon a first conviction of
44 a class 2 or 3 felony involving discharge, use or threatening exhibition of a
45 deadly weapon or dangerous instrument or upon conviction of a class 2 or 3

1 felony when the intentional or knowing infliction of serious physical injury
2 upon another has occurred, the defendant shall be sentenced to imprisonment
3 as prescribed in this subsection and shall not be eligible for suspension of
4 sentence, probation, pardon or release from confinement on any basis except
5 as specifically authorized by section 31-233, subsection A or B until the
6 sentence imposed by the court has been served, the person is eligible for
7 release pursuant to section 41-1604.07 or the sentence is commuted. The
8 presumptive term may be mitigated or aggravated within the range prescribed
9 under this subsection pursuant to the terms of section 13-702, subsections B,
10 C and D. The terms 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

14 J. Except as provided in section 13-604.01, upon conviction of a class
15 2 or 3 felony involving the discharge, use or threatening exhibition of a
16 deadly weapon or dangerous instrument or the intentional or knowing
17 infliction of serious physical injury upon another, a person who has a
18 historical prior felony conviction that is a class 1, 2 or 3 felony involving
19 the use or exhibition of a deadly weapon or dangerous instrument or the
20 intentional or knowing infliction of serious physical injury on another shall
21 be sentenced to imprisonment as prescribed in this subsection and shall not
22 be eligible for suspension of sentence, probation, pardon or release from
23 confinement on any basis except as specifically authorized by section 31-233,
24 subsection A or B until the sentence imposed by the court has been served,
25 the person is eligible for release pursuant to section 41-1604.07 or the
26 sentence is commuted. The presumptive term may be mitigated or aggravated
27 within the range prescribed under this subsection pursuant to the terms of
28 section 13-702, subsections B, C and D. The terms 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

32 K. Except as provided in subsection S of this section or section
33 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge,
34 use or threatening exhibition of a deadly weapon or dangerous instrument or
35 the intentional or knowing infliction of serious physical injury upon
36 another, a person who has two or more historical prior felony convictions
37 that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly
38 weapon or dangerous instrument or the intentional or knowing infliction of
39 serious physical injury on another shall be sentenced to imprisonment as
40 prescribed in this subsection and shall not be eligible for suspension of
41 sentence, probation, pardon or release from confinement on any basis except
42 as specifically authorized by section 31-233, subsection A or B until the
43 sentence imposed by the court has been served, the person is eligible for
44 release pursuant to section 41-1604.07 or the sentence is commuted. The
45 presumptive term may be mitigated or aggravated within the range prescribed

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

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

6 L. For the purposes of subsections I, J and K of this section in
 7 determining the applicability of the penalties provided in this section for
 8 second or subsequent class 2 or 3 felonies, the conviction for any felony
 9 committed before October 1, 1978 which, if committed after October 1, 1978,
 10 could be a dangerous felony under this section may be designated by the state
 11 as a prior felony.

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

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

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

24 P. The penalties prescribed by this section shall be substituted for
 25 the penalties otherwise authorized by law if the previous conviction or the
 26 allegation that the defendant committed a felony while released on bond or on
 27 the defendant's own recognizance or while escaped from preconviction custody
 28 as provided in subsection R of this section is charged in the indictment or
 29 information and admitted or found by the court or if the dangerous nature of
 30 the felony is charged in the indictment or information and admitted or found
 31 by the trier of fact. The release provisions prescribed by this section
 32 shall not be substituted for any penalties required by the substantive
 33 offense or provision of law that specifies a later release or completion of
 34 the sentence imposed prior to release. The court shall allow the allegation
 35 of a prior conviction, the dangerous nature of the felony or the allegation
 36 that the defendant committed a felony while released on bond or on the
 37 defendant's own recognizance or while escaped from preconviction custody at
 38 any time prior to the date the case is actually tried unless the allegation
 39 is filed fewer than twenty days before the case is actually tried and the
 40 court finds on the record that the defendant was in fact prejudiced by the
 41 untimely filing and states the reasons for these findings, provided that when
 42 the allegation of a prior conviction is filed, the state must make available
 43 to the defendant a copy of any material or information obtained concerning
 44 the prior conviction. The charge of previous conviction or the allegation
 45 that the defendant committed a felony while released on bond or on the

1 defendant's own recognizance or while escaped from preconviction custody
2 shall not be read to the jury. For the purposes of this subsection,
3 "dangerous nature of the felony" means a felony involving the discharge, use
4 or threatening exhibition of a deadly weapon or dangerous instrument or the
5 intentional or knowing infliction of serious physical injury upon another.

6 Q. Intentional failure by the court to impose the mandatory sentences
7 or probation conditions provided in this title shall be deemed to be
8 malfeasance.

9 R. A person who is convicted of committing any felony offense, which
10 felony offense is committed while the person is released on bail or on the
11 defendant's own recognizance on a separate felony offense or while the person
12 is escaped from preconviction custody for a separate felony offense, shall be
13 sentenced to a term of imprisonment two years longer than would otherwise be
14 imposed for the felony offense committed while released on bond or on the
15 defendant's own recognizance or while escaped from preconviction custody.
16 The additional sentence imposed under this subsection is in addition to any
17 enhanced punishment that may be applicable under any of the other subsections
18 of this section. The defendant is not eligible for suspension of sentence,
19 probation, pardon or release from confinement on any basis except as
20 specifically authorized by section 31-233, subsection A or B until the two
21 years are served, the person is eligible for release pursuant to section
22 41-1604.07 or the sentence is commuted.

23 S. A person who is at least eighteen years of age or who has been
24 tried as an adult and who stands convicted of a serious offense except a drug
25 offense, first degree murder or any dangerous crime against children, whether
26 a completed or preparatory offense, and who has previously been convicted of
27 two or more serious offenses not committed on the same occasion shall be
28 sentenced to life imprisonment and is not 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 person has served not less than twenty-five years or the sentence is
32 commuted.

33 T. A person who is convicted of committing any felony offense with the
34 intent to promote, further or assist any criminal conduct by a criminal
35 street gang shall not be eligible for suspension of sentence, probation,
36 pardon or release from confinement on any basis except as authorized by
37 section 31-233, subsection A or B until the sentence imposed by the court has
38 been served, the person is eligible for release pursuant to section
39 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum
40 sentence for the offense shall be increased by three years **IF THE OFFENSE IS**
41 **CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE IS**
42 **A CLASS 2 OR 3 FELONY.** The additional sentence imposed pursuant to this
43 subsection is in addition to any enhanced sentence that may be applicable.

44 U. A person who is convicted of intentionally or knowingly committing
45 aggravated assault on a peace officer while the officer is engaged in the

1 execution of any official duties pursuant to section 13-1204, subsection A,
2 paragraph 1 or 2 shall be sentenced to imprisonment for not less than the
3 presumptive sentence authorized under this chapter and is not eligible for
4 suspension of sentence, commutation or release on any basis until the
5 sentence imposed is served.

6 V. Except as provided in section 13-604.01 or 13-703, if the victim is
7 an unborn child in the womb at any stage of its development, the defendant
8 shall be sentenced pursuant to this section.

9 W. A PERSON WHO IS CONVICTED OF COMMITTING A VIOLATION OF SECTION
10 13-1102, 13-1103 OR 13-1104, WHICH OFFENSE WAS COMMITTED WHILE THE PERSON WAS
11 DRIVING A MOTOR VEHICLE AND THE PERSON'S ALCOHOL CONCENTRATION AT THE TIME OF
12 COMMITTING THE OFFENSE WAS 0.20 OR MORE, SHALL BE SENTENCED TO A TERM OF
13 IMPRISONMENT THAT IS AT LEAST FIVE YEARS MORE THAN THE PRESUMPTIVE SENTENCE
14 AUTHORIZED UNDER THIS CHAPTER AND THE PERSON IS NOT ELIGIBLE FOR SUSPENSION
15 OF SENTENCE, COMMUTATION OR RELEASE ON ANY BASIS UNTIL THE SENTENCE IMPOSED
16 IS SERVED. FOR THE PURPOSES OF THIS SUBSECTION, "ALCOHOL CONCENTRATION" HAS
17 THE SAME MEANING PRESCRIBED IN SECTION 28-101.

18 ~~W.~~ X. For the purposes of this section:

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

26 2. "Historical prior felony conviction" means:

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

28 (i) Mandated a term of imprisonment except for a violation of chapter
29 34 of this title involving a drug below the threshold amount; or

30 (ii) Involved the intentional or knowing infliction of serious
31 physical injury; or

32 (iii) Involved the use or exhibition of a deadly weapon or dangerous
33 instrument; or

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

35 (v) Involved aggravated driving under the influence of intoxicating
36 liquor or drugs, driving while under the influence of intoxicating liquor or
37 drugs with a suspended, canceled, revoked or refused driver license or
38 driving under the influence of intoxicating liquor or drugs with two or more
39 driving under the influence of intoxicating liquor or drug convictions within
40 a period of eighty-four months; or

41 (vi) Involved any dangerous crime against children as defined in
42 section 13-604.01.

43 (b) Any class 2 or 3 felony, except the offenses listed in subdivision

44 (a) of this paragraph, that was committed within the ten years immediately
45 preceding the date of the present offense. Any time spent on absconder

1 status while on probation or incarcerated is excluded in calculating if the
2 offense was committed within the preceding ten years. If a court determines
3 a person was not on absconder status while on probation that time is not
4 excluded.

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

12 (d) Any felony conviction that is a third or more prior felony
13 conviction.

14 3. "Preconviction custody" means the confinement of a person in a jail
15 in this state or another state after the person is arrested for or charged
16 with a felony offense.

17 4. "Serious offense" means any of the following offenses if committed
18 in this state or any offense committed outside this state which if committed
19 in this state would constitute one of the following offenses:

20 (a) First degree murder.

21 (b) Second degree murder.

22 (c) Manslaughter.

23 (d) Aggravated assault resulting in serious physical injury or
24 involving the discharge, use or threatening exhibition of a deadly weapon or
25 dangerous instrument.

26 (e) Sexual assault.

27 (f) Any dangerous crime against children.

28 (g) Arson of an occupied structure.

29 (h) Armed robbery.

30 (i) Burglary in the first degree.

31 (j) Kidnapping.

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

33 (l) Child prostitution.

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

39 Sec. 2. Repeal

40 Section 13-604, Arizona Revised Statutes, as amended by Laws 2007,
41 chapter 287, section 1, is repealed.

42 Sec. 3. Section 13-1103, Arizona Revised Statutes, is amended to read:
43 13-1103. Manslaughter; classification

44 A. A person commits manslaughter by:

45 1. Recklessly causing the death of another person. ~~or~~

1 2. Committing second degree murder as defined in section 13-1104,
2 subsection A upon a sudden quarrel or heat of passion resulting from adequate
3 provocation by the victim. ~~;~~~~or~~

4 3. Intentionally aiding another to commit suicide. ~~;~~~~or~~

5 4. Committing second degree murder as defined in section 13-1104,
6 subsection A, paragraph 3, while being coerced to do so by the use or
7 threatened immediate use of unlawful deadly physical force upon such person
8 or a third person which a reasonable person in his situation would have been
9 unable to resist. ~~;~~~~or~~

10 5. Knowingly or recklessly causing the death of an unborn child by any
11 physical injury to the mother.

12 6. CAUSING AN ACCIDENT WHILE DRIVING A MOTOR VEHICLE THAT RESULTS IN
13 THE DEATH OF ANOTHER PERSON IF THE PERSON DRIVING THE MOTOR VEHICLE IS IN
14 VIOLATION OF SECTION 28-1381, 28-1382 OR 28-1383.

15 B. An offense under subsection A, paragraph 5 of this section applies
16 to an unborn child in the womb at any stage of its development. A person
17 shall not be prosecuted under subsection A, paragraph 5 of this section if
18 any of the following applies:

19 1. The person was performing an abortion for which the consent of the
20 pregnant woman, or a person authorized by law to act on the pregnant woman's
21 behalf, has been obtained or for which the consent was implied or authorized
22 by law.

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

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

26 C. Manslaughter is a class 2 felony.

27 Sec. 4. Section 13-4062, Arizona Revised Statutes, is amended to read:
28 13-4062. Anti-marital fact privilege; other privileged
29 communications

30 A person shall not be examined as a witness in the following cases:

31 1. A husband for or against his wife without her consent, nor a wife
32 for or against her husband without his consent, as to events occurring during
33 the marriage, nor can either, during the marriage or afterwards, without
34 consent of the other, be examined as to any communication made by one to the
35 other during the marriage. These exceptions do not apply in a criminal
36 action or proceeding for a crime committed by the husband against the wife,
37 or by the wife against the husband, nor in a criminal action or proceeding
38 against the husband for abandonment, failure to support or provide for or
39 failure or neglect to furnish the necessities of life to the wife or the
40 minor children. Either spouse, at his or her request, but not otherwise, may
41 be examined as a witness for or against the other in a prosecution for an
42 offense listed in section 13-604, subsection ~~W~~ X, paragraph 4, for bigamy or
43 adultery, committed by either spouse, or for sexual assault committed by the
44 husband.

1 2. An attorney, without consent of the attorney's client, as to any
2 communication made by the client to the attorney, or the attorney's advice
3 given in the course of professional employment.

4 3. A clergyman or priest, without consent of the person making the
5 confession, as to any confession made to the clergyman or priest in his
6 professional character in the course of discipline enjoined by the church to
7 which the clergyman or priest belongs.

8 4. A physician or surgeon, without consent of the physician's or
9 surgeon's patient, as to any information acquired in attending the patient
10 which was necessary to enable the physician or surgeon to prescribe or act
11 for the patient.

12 Sec. 5. Section 31-412, Arizona Revised Statutes, is amended to read:
13 31-412. Criteria for release on parole; release; custody of
14 parolee; definition

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

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

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

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

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

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

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

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

11 E. Payment of restitution by the prisoner in accordance with
12 subsection D of this section shall be made through the clerk of the superior
13 court in the county in which the prisoner was sentenced for the offense for
14 which the prisoner has been imprisoned in the same manner as restitution is
15 paid as a condition of probation. The clerk of the superior court shall
16 report to the board monthly whether or not restitution has been paid for that
17 month by the prisoner.

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

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

23 1. A serious offense as defined in section 13-604, subsection ~~W~~ X,
24 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

25 2. A dangerous crime against children as defined in section 13-604.01.
26 The citation of section 13-604.01 is not a necessary element for a serious
27 offense designation.

28 3. 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~~ X, paragraph 4 and section
31 13-604.01, subsection N, paragraph 1.

32 Sec. 6. Section 41-1604.11, Arizona Revised Statutes, is amended to
33 read:

34 41-1604.11. Order for removal; purposes; duration; work
35 furlough; notice; failure to return;
36 classification; applicability; definition

37 A. The director of the state department of corrections may authorize
38 the temporary removal under custody from prison or any other institution for
39 the detention of adults under the jurisdiction of the state department of
40 corrections of any inmate for the purpose of employing that inmate in any
41 work directly connected with the administration, management or maintenance of
42 the prison or institution in which the inmate is confined, for purposes of
43 cooperating voluntarily in medical research that cannot be performed at the
44 prison or institution, or for participating in community action activities

1 directed toward delinquency prevention and community betterment programs.
2 The removal shall not be for a period longer than one day.

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

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

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

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

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

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

38 E. Before holding a hearing on the work furlough under consideration,
39 the board, on request, shall notify and afford an opportunity to be heard to
40 the presiding judge of the superior court in the county in which the inmate
41 requesting a work furlough was sentenced, the prosecuting attorney, the
42 director of the arresting law enforcement agency and the victim of the
43 offense for which the inmate is incarcerated. The notice shall state the
44 name of the inmate requesting the work furlough, the offense for which the
45 inmate was sentenced, the length of the sentence and the date of admission to

1 the custody of the state department of corrections. The notice to the victim
2 shall also inform the victim of the victim's right to be present and submit a
3 written report to the board expressing the victim's opinion concerning the
4 inmate's release. No hearing concerning work furlough shall be held until
5 fifteen days after the date of giving the notice. On mailing the notice, the
6 board shall file a hard copy of the notice as evidence that notification was
7 sent.

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

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

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

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

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

36 K. At any given time if the director declares there is a shortage of
37 beds available for inmates within the state department of corrections, the
38 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
39 suspended for any inmate who has served not less than six months of the
40 sentence imposed by the court, who has not been previously convicted of a
41 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
42 a sexual offense, the use or exhibition of a deadly weapon or dangerous
43 instrument or the infliction of serious physical injury pursuant to section
44 13-604, and the inmate shall be continuously eligible for parole, home arrest
45 or work furlough.

1 L. Prisoners who have served at least one calendar year and who are
2 serving a sentence for conviction of a crime committed on or after October 1,
3 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02
4 or 36-1002.03, and who are sentenced to the custody of the state department
5 of corrections, may be temporarily released, according to the rules of the
6 department, at the discretion of the director, one hundred eighty calendar
7 days prior to expiration of the term imposed and shall remain under the
8 control of the state department of corrections until expiration of the
9 maximum sentence specified. If an offender released under this section or
10 pursuant to section 31-411, subsection B violates the rules, the offender may
11 be returned to custody and shall be classified to a parole class as provided
12 by the rules of the department.

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

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

17 1. A serious offense as defined in section 13-604, subsection ~~W~~ X,
18 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

19 2. A dangerous crime against children as defined in section 13-604.01.
20 The citation of section 13-604.01 is not a necessary element for a serious
21 offense designation.

22 3. A conviction under a prior criminal code for any offense that
23 possesses reasonably equivalent offense elements as the offense elements that
24 are listed under section 13-604, subsection ~~W~~ X, paragraph 4 or section
25 13-604.01, subsection N, paragraph 1.

26 Sec. 7. Section 41-1604.13, Arizona Revised Statutes, is amended to
27 read:

28 41-1604.13. Home arrest; eligibility; victim notification;
29 conditions; applicability; definition

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

32 1. Meets the following criteria:

33 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
34 the intentional or knowing infliction of serious physical injury or the use
35 or exhibition of a deadly weapon or dangerous instrument.

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

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

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

40 3. Is eligible for work furlough.

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

42 B. The board of executive clemency shall determine which inmates are
43 released to the home arrest program based on the criteria in subsection A of
44 this section and based on a determination that there is a substantial
45 probability that the inmate will remain at liberty without violating the law

1 and that the release is in the best interests of the state after considering
2 the offense for which the inmate is presently incarcerated, the prior record
3 of the inmate, the conduct of the inmate while incarcerated and any other
4 information concerning the inmate that is in the possession of the state
5 department of corrections, including any presentence report. The board
6 maintains the responsibility of revocation as applicable to all parolees.

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

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

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

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

20 D. Home arrest is conditioned on the following:

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

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

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

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

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

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

35 7. Compliance with all other conditions of supervision.

36 E. Before holding a hearing on home arrest, the board on request shall
37 notify and afford an opportunity to be heard to the presiding judge of the
38 superior court in the county in which the inmate requesting home arrest was
39 sentenced, the prosecuting attorney and the director of the arresting law
40 enforcement agency. The board shall notify the victim of the offense for
41 which the inmate is incarcerated. The notice shall state the name of the
42 inmate requesting home arrest, the offense for which the inmate was
43 sentenced, the length of the sentence and the date of admission to the
44 custody of the state department of corrections. The notice to the victim
45 shall also inform the victim of the victim's right to be present and to

1 submit a written report to the board expressing the victim's opinion
2 concerning the inmate's release. No hearing concerning home arrest may be
3 held until fifteen days after the date of giving the notice. On mailing the
4 notice, the board shall file a hard copy of the notice as evidence that
5 notification was sent.

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

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

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

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

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

21 K. For the purposes of this section, "serious offense" includes any of
22 the following:

23 1. A serious offense as defined in section 13-604, subsection ~~W~~ X,
24 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

25 2. A dangerous crime against children as defined in section 13-604.01.
26 The citation of section 13-604.01 is not a necessary element for a serious
27 offense designation.

28 3. 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~~ X, paragraph 4 and section
31 13-604.01, subsection N, paragraph 1.