

State of Arizona
Senate
Forty-fourth Legislature
First Regular Session
1999

SENATE BILL 1279

AN ACT

AMENDING SECTIONS 8-341, 8-412 AND 11-483, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 3, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-484; AMENDING SECTIONS 13-604, 13-604.01 AND 13-604.02, ARIZONA REVISED STATUTES; AMENDING SECTION 13-702, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1997, CHAPTER 213, SECTION 1; REPEALING SECTION 13-702, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 302, SECTION 9; AMENDING SECTION 13-702.02, 13-901.01, 13-905, 13-906, 13-909, 13-910, 13-1204, 13-1407, 13-1419, 13-1803 AND 13-1804, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 24, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-2401; AMENDING SECTIONS 13-2917 AND 13-2924, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 31, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3116; AMENDING SECTIONS 13-3411, 13-3419, 13-3551, 13-3552, 13-3553, 13-3554, 13-3555, 13-3821 AND 13-3827, ARIZONA REVISED STATUTES; REPEALING SECTION 13-3828, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-3905, 13-3914 AND 13-3918, ARIZONA REVISED STATUTES; REPEALING SECTION 13-3973, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-3974, 13-3989.01, 13-4041, 13-4062 AND 13-4401.01, ARIZONA REVISED STATUTES; REPEALING SECTION 13-4401.02, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-4433, 22-301, 31-412, 36-3701, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1750, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 75, SECTION 2; REPEALING SECTION 41-1750, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 113, SECTION 43, LAWS 1998, CHAPTER 270, SECTION 14, LAWS 1998, CHAPTER 289, SECTION 28 AND LAWS 1998, CHAPTER 291, SECTION 8; AMENDING TITLE 41, CHAPTER 12, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1756; AMENDING TITLE 44, CHAPTER 9, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1221; PROVIDING FOR THE DELAYED REPEAL OF SECTION 31-403, ARIZONA REVISED STATUTES; RELATING TO CRIMES.

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

2 Section 1. Section 8-341, Arizona Revised Statutes, is amended to
3 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
9 a probation department.

10 (b) To a probation department, subject to such conditions as the court
11 may impose, including a period of incarceration in a juvenile detention
12 center of 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
19 a 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 such conditions as 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
34 a probation department.

35 B. If a juvenile is placed on probation pursuant to this section, the
36 period of probation ~~shall be a maximum of~~ MAY CONTINUE UNTIL THE JUVENILE'S
37 EIGHTEENTH BIRTHDAY, EXCEPT THAT THE TERM OF PROBATION SHALL NOT EXCEED one
38 year ~~unless~~ IF ALL OF THE FOLLOWING APPLY:

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

40 2. The juvenile ~~violates~~ HAS NOT BEEN FOUND IN VIOLATIONS OF a
41 condition of probation.

1 3. The court ~~determines~~ HAS NOT MADE A DETERMINATION that it is in the
2 best interests of the juvenile or the public to require continued
3 supervision. The court shall state by minute entry or written order its
4 reasons for finding that continued supervision is required.

5 4. The ~~juvenile is adjudicated delinquent for an~~ offense ~~that involves~~
6 FOR WHICH THE JUVENILE IS PLACED ON PROBATION DOES NOT INVOLVE the DISCHARGE,
7 use or threatening exhibition of a deadly weapon or dangerous instrument or
8 the intentional or knowing infliction of serious physical injury on another.

9 5. Restitution ordered pursuant to subsection G or H of this section
10 has ~~not~~ been made.

11 C. If a juvenile is adjudicated as a first time felony juvenile
12 offender, the court shall provide the following written notice to the
13 juvenile:

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

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

35 E. If the juvenile is adjudicated as a repeat felony juvenile
36 offender, the court shall provide the following written notice to the
37 juvenile:

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

1 other offense when you are fourteen years of age or older, you
2 may be tried as an adult in the criminal division of the
3 superior court. If you are convicted as an adult, you will be
4 sentenced to a term of incarceration. If you are convicted as
5 an adult of a felony offense and you commit any other offense,
6 you will be prosecuted as an adult.

7 F. The failure or inability of the court to provide the notice
8 required under subsections C and E of this section does not preclude the use
9 of the prior adjudications for any purpose otherwise permitted.

10 G. The court shall, after considering the nature of the offense and
11 the age, physical and mental condition and earning capacity of the juvenile,
12 order the following dispositions for a delinquent juvenile, either as
13 exclusive dispositions or in addition to the dispositions provided by
14 subsection A, paragraph 2 of this section:

15 1. To make full or partial restitution to the victim of the offense
16 for which the juvenile was adjudicated delinquent. The court shall notify
17 the victim of the dispositional hearing. The court may consider a verified
18 statement from the victim concerning damages for lost wages, reasonable
19 damages for injury to or loss of property and actual expenses of medical
20 treatment for personal injury, excluding pain and suffering.

21 2. To pay a reasonable monetary assessment if the court determines
22 that an assessment is in aid of rehabilitation. If the director of the
23 department of juvenile corrections determines that enforcement of an order
24 for monetary assessment as a term and condition of conditional liberty is not
25 cost-effective, the director may require the youth to perform an equivalent
26 amount of community service in lieu of the payment ordered as a condition of
27 conditional liberty.

28 H. If after ordering restitution pursuant to subsection G of this
29 section the court subsequently finds that the earning capacity of the
30 juvenile is insufficient to pay restitution to the victim, the court, in the
31 same proceeding, may order one or both of the juvenile's custodial parents
32 to make restitution to the victim of the offense for which the juvenile was
33 adjudicated delinquent. The amount of restitution shall not exceed the
34 liability limit established pursuant to section 12-661. If the court orders
35 the juvenile's parents to make restitution pursuant to this subsection, the
36 court shall order the juvenile to make partial restitution, regardless of the
37 juvenile's insufficient earning capacity. The court shall not consider the
38 ability of the juvenile's parents to pay restitution before making a
39 restitution order. The court may consider a statement from the victim
40 concerning damage for lost wages, reasonable damages for injury to or loss
41 of property and actual expenses of medical treatment for personal injury,
42 excluding pain and suffering.

43 I. If a child is adjudicated incorrigible, the court may impose a
44 monetary assessment on the child of not more than one hundred fifty dollars.

1 J. A juvenile who is charged with unlawful purchase, possession or
2 consumption of spirituous liquor is subject to section 8-323. The monetary
3 assessment for a conviction of unlawful possession or consumption of
4 spirituous liquor by a juvenile shall not exceed five hundred dollars. The
5 court of competent jurisdiction may order a monetary assessment or equivalent
6 community service.

7 K. The court shall require the restitution or monetary assessment
8 imposed under subsection G, H or I of this section on a juvenile who is not
9 committed to the department of juvenile corrections to be satisfied in one
10 or both of the following forms:

11 1. Monetary reimbursement by the juvenile in a lump sum or installment
12 payments through the clerk of the superior court for appropriate
13 distribution.

14 2. A program of work, not in conflict with regular schooling, to
15 repair damage to the victim's property, to provide community service or to
16 provide the juvenile with a job for wages. The court order for restitution
17 or monetary assessment shall specify, according to the dispositional program,
18 the amount of reimbursement and the portion of wages of either existing or
19 provided work that is to be credited toward satisfaction of the restitution
20 or assessment, or the nature of the work to be performed and the number of
21 hours to be spent working. The number of hours to be spent working shall be
22 set by the court based on the severity of the offense but shall not be less
23 than sixteen hours.

24 L. A parent of a juvenile who is ordered to make restitution pursuant
25 to subsection H of this section shall satisfy the order through a monetary
26 reimbursement in a lump sum or installment payments through the court clerk
27 for appropriate distribution.

28 M. If a juvenile is committed to the department of juvenile
29 corrections the court shall specify the amount of monetary restitution or
30 assessment imposed pursuant to subsection G, H or I of this section.

31 N. After considering the length of stay guidelines developed pursuant
32 to section 41-2816, subsection C, the court may set forth in the order of
33 commitment the minimum period during which the juvenile shall remain in
34 secure care while in the custody of the department of juvenile corrections.
35 When the court awards a juvenile to the department of juvenile corrections
36 or an institution or agency, it shall transmit with the order of commitment
37 copies of a diagnostic psychological evaluation and educational assessment
38 if one has been administered, copies of the case report, all other
39 psychological and medical reports, restitution orders and other documents or
40 records pertaining to the case requested by the department of juvenile
41 corrections or an institution or agency. The department shall not release
42 a juvenile from secure care before the juvenile completes the length of stay
43 determined by the court in the commitment order unless the county attorney
44 in the county from which the juvenile was committed requests the committing

1 court to reduce the length of stay. The department may release the juvenile
2 from secure care without a further court order after the juvenile completes
3 the length of stay determined by the court or may retain the juvenile in
4 secure care for any period subsequent to the completion of the length of stay
5 in accordance with the law.

6 O. Written notice of the release of any juvenile pursuant to
7 subsection N of this section shall be made to any victim requesting notice,
8 the juvenile court that committed the juvenile and the county attorney of the
9 county from which the juvenile was committed.

10 P. Notwithstanding any law to the contrary, if a person is under the
11 supervision of the court as an adjudicated delinquent juvenile at the time
12 the person reaches eighteen years of age, treatment services may be provided
13 until the person reaches twenty-one years of age if the court, the person and
14 the state agree to the provision of the treatment and a motion to transfer
15 the person pursuant to section 8-327 has not been filed or has been
16 withdrawn. The court may terminate the provision of treatment services after
17 the person reaches eighteen years of age if the court determines that any of
18 the following apply:

- 19 1. The person is not progressing toward treatment goals.
- 20 2. The person terminates treatment.
- 21 3. The person commits a new offense after reaching eighteen years of
22 age.
- 23 4. Continued treatment is not required or is not in the best interests
24 of the state or the person.

25 Q. On the request of a victim of an act that may have involved
26 significant exposure as defined in section 13-1415 or that if committed by
27 an adult would be a sexual offense, the prosecuting attorney shall petition
28 the adjudicating court to require that the juvenile be tested for the
29 presence of the human immunodeficiency virus. If the victim is a minor the
30 prosecuting attorney shall file this petition at the request of the victim's
31 parent or guardian. If the act committed against a victim is an act that if
32 committed by an adult would be a sexual offense or the court determines that
33 sufficient evidence exists to indicate that significant exposure occurred,
34 it shall order the department of juvenile corrections or the department of
35 health services to test the juvenile pursuant to section 13-1415.
36 Notwithstanding any law to the contrary, the department of juvenile
37 corrections and the department of health services shall release the test
38 results only to the victim, the delinquent juvenile, the delinquent
39 juvenile's parent or guardian and a minor victim's parent or guardian and
40 shall counsel them regarding the meaning and health implications of the
41 results.

42 R. If a juvenile has been adjudicated delinquent for an offense that
43 if committed by an adult would be a felony, the court shall provide the
44 department of public safety Arizona automated fingerprint identification

1 system established in section 41-2411, with the juvenile's fingerprints,
2 personal identification data and other pertinent information. If a juvenile
3 has been committed to the department of juvenile corrections the department
4 shall provide the fingerprints and information required by this subsection
5 to the Arizona automated fingerprint identification system. If the
6 juvenile's fingerprints and information have been previously submitted to the
7 Arizona automated fingerprint identification system the information is not
8 required to be resubmitted.

9 S. Access to fingerprint records submitted to the department of public
10 safety Arizona automated fingerprint identification system pursuant to
11 subsection R of this section shall be limited to the administration of
12 criminal justice as defined in section 41-1750. Dissemination of information
13 from the Arizona automated fingerprint identification system shall be limited
14 to the name of the juvenile, juvenile case number, date of adjudication and
15 court of adjudication.

16 T. For the purposes of this section:

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

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

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

24 (b) Previously has been adjudicated a first time felony juvenile
25 offender.

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

28 Sec. 2. Section 8-412, Arizona Revised Statutes, is amended to read:

29 8-412. Victim's right to refuse an interview

30 A. Unless the victim consents, the victim shall not be compelled to
31 submit to an interview on any matter, including ~~an~~ ANY alleged delinquent act
32 witnessed by the victim AND that occurred on the same occasion as the
33 delinquent act against the victim, OR FILED IN THE SAME PETITION OR
34 CONSOLIDATED FOR AN ADJUDICATION HEARING, that is conducted by the juvenile
35 defendant, the attorney for the juvenile defendant or an agent of the
36 juvenile defendant.

37 B. The juvenile defendant, the attorney for the juvenile defendant or
38 an agent of the juvenile defendant shall only initiate contact with the
39 victim through the prosecutor's office. The prosecutor's office shall inform
40 the victim of the juvenile defendant's request for an interview within ten
41 days after the request and shall advise the victim of the victim's right to
42 refuse the interview.

1 C. The prosecutor shall not be required to forward any correspondence
2 from the juvenile defendant, the juvenile defendant's attorney or ~~another~~
3 ~~person acting on behalf~~ AN AGENT of the juvenile defendant to the victim or
4 the victim's representative.

5 D. If the victim consents to an interview, the prosecutor's office
6 shall inform the juvenile defendant, the attorney for the juvenile defendant
7 or an agent of the juvenile defendant of the time and place the victim has
8 selected for the interview. If the victim wishes to impose other conditions
9 on the interview, the prosecutor's office shall inform the juvenile
10 defendant, the attorney for the juvenile defendant or an agent of the
11 juvenile defendant of the conditions. The victim has the right to terminate
12 the interview at any time or to refuse to answer any question during the
13 interview. The prosecutor has standing at the request of the victim to
14 protect the victim from harassment, intimidation or abuse and, pursuant to
15 that standing, may seek any appropriate protective court order.

16 E. Unless otherwise directed by the victim, the prosecutor may attend
17 all interviews. If a transcript or tape RECORDING of the interview is made
18 and on request of the prosecutor, the prosecutor shall receive a copy of the
19 transcript or tape RECORDING at the prosecutor's expense.

20 F. For the purposes of this section, a peace officer shall not be
21 considered a victim if the act that would have made the officer a victim
22 occurs while the peace officer is acting in the scope of the officer's
23 official duties.

24 Sec. 3. Section 11-483, Arizona Revised Statutes, is amended to read:
25 11-483. Records maintained by county recorder; peace officers;
26 confidentiality; definitions

27 A. Notwithstanding any other provision of this article, in counties
28 with a population of more than five hundred thousand persons according to the
29 most recent United States decennial census a peace officer may request that
30 the general public be prohibited from accessing the unique identifier and the
31 recording date contained in indexes of recorded instruments maintained by the
32 county recorder and may request the recorder to prohibit access to the peace
33 officer's residential address and telephone number contained in instruments
34 or writings recorded by the county recorder and made available on the
35 internet.

36 B. A peace officer may request this action by filing an affidavit that
37 states all of the following:

38 1. The peace officer's name.

39 2. THE FULL LEGAL DESCRIPTION AND PARCEL NUMBER OF THE PEACE OFFICER'S
40 PROPERTY.

41 ~~2-~~ 3. The position the peace officer currently holds and a
42 description of the peace officer's duties.

1 ~~3.~~ 4. The reasons the peace officer reasonably believes that the
2 peace officer's life or safety or that of another person is in danger and
3 that restricting access pursuant to this section will serve to reduce the
4 danger.

5 ~~4.~~ 5. The recording number AND RECORDING DATE of each instrument for
6 which the peace officer requests access restriction pursuant to this section.

7 C. IF A PEACE OFFICER IS ALSO REQUESTING PURSUANT TO SECTION 11-484
8 THAT THE GENERAL PUBLIC BE PROHIBITED FROM ACCESSING RECORDS MAINTAINED BY
9 THE COUNTY ASSESSOR AND COUNTY TREASURER, THE PEACE OFFICER MAY COMBINE THE
10 REQUEST PURSUANT TO SUBSECTION B OF THIS SECTION WITH THE REQUEST PURSUANT
11 TO SECTION 11-484 BY FILING ONE AFFIDAVIT WITH THE OFFICER'S COMMANDING
12 OFFICER. THE AFFIDAVIT AND SUBSEQUENT ACTION BY THE APPROPRIATE AUTHORITIES
13 SHALL MEET ALL OF THE REQUIREMENTS OF THIS SECTION AND SECTION 11-484.

14 ~~C.~~ D. The affidavit shall be filed with the presiding judge of the
15 superior court in the county in which the affiant resides. To prevent a
16 multiplicity of filings, a peace officer shall deliver the affidavit to the
17 peace officer's commanding officer, who shall file the affidavits at one
18 time. In the absence of an affidavit that contains a request for immediate
19 action and that is supported by facts justifying an earlier presentation, the
20 commanding officer shall not file more often than quarterly affidavits of
21 peace officers presented to the commanding officer.

22 ~~D.~~ E. On receipt of an affidavit or affidavits, the presiding judge
23 of the superior court shall ~~cause to be filed~~ FILE with the clerk of the
24 superior court a petition on behalf of all requesting peace officers. Each
25 affidavit presented shall be attached to the petition. In the absence of an
26 affidavit that contains a request for immediate action and that is supported
27 by facts justifying an earlier consideration, the presiding judge may
28 accumulate affidavits and file a petition at the end of each quarter.

29 ~~E.~~ F. The presiding judge of the superior court shall review the
30 petition and each attached affidavit to determine whether the action
31 requested by each peace officer should be granted. If the presiding judge
32 of the superior court concludes that the action requested by the peace
33 officer will reduce a danger to the life or safety of the peace officer or
34 another person, the presiding judge of the superior court shall order that
35 the recorder prohibit access for five years to the peace officer's
36 residential address and telephone number contained in instruments or writings
37 recorded by the county recorder AND made available on the internet. If the
38 presiding judge of the superior court concludes that the peace officer or
39 another person is in actual danger of physical harm from a person or persons
40 with whom the peace officer has had official dealings and that action
41 pursuant to this section will reduce a danger to the life or safety of the
42 peace officer or another person, the presiding judge of the superior court
43 shall order that the general public be prohibited for five years from

1 accessing the unique identifier and the recording date contained in indexes
2 of recorded instruments maintained by the county recorder and identified
3 pursuant to subsection B **OF THIS SECTION**.

4 ~~F~~ **G**. On entry of the court order, the clerk of the superior court
5 shall file the court order **AND A COPY OF THE AFFIDAVIT REQUIRED BY SUBSECTION**
6 **B OF THIS SECTION** with the county recorder. No more than ten days after the
7 date **ON WHICH** the county recorder receives the court order, the county
8 recorder shall restrict access to the information as required by
9 subsection ~~E~~ **F OF THIS SECTION**.

10 ~~G~~ **H**. If the court denies an affiant's request pursuant to this
11 section, the affiant may request a court hearing. The hearing shall be
12 conducted by the court in the county where the petition was filed.

13 ~~H~~ **I**. The recorder shall remove the restrictions on all records
14 restricted pursuant to this section by January 5 in the year after the court
15 order expires.

16 ~~I~~ **J**. To include subsequent recordings in the court order, the peace
17 officer shall present to the county recorder at the time of recordation a
18 certified copy of the court order. The recorder shall insure that public
19 access shall be restricted pursuant to subsection A **OF THIS SECTION**.

20 ~~J~~ **K**. This section shall not be interpreted to restrict access to
21 public records for the purposes of perfecting a lien pursuant to title 12,
22 chapter 9, article 2.

23 ~~K~~ **L**. This section ~~shall~~ **DOES** not prohibit access to the records of
24 the county recorder by a title insurer, a title insurance agent or an escrow
25 agent licensed by the department of insurance or the department of banking.

26 ~~L~~ **M**. For the purposes of this section:

27 1. "Indexes" means only those indexes **THAT ARE** maintained by and
28 located in the office of the county recorder, that are accessed
29 electronically and that contain information beginning from and after January
30 1, 1987.

31 2. "Peace officer" means any person vested by law, or formerly vested
32 by law, with a duty to maintain public order and make arrests.

33 Sec. 4. Title 11, chapter 3, article 3, Arizona Revised Statutes, is
34 amended by adding section 11-484, to read:

35 **11-484. Records maintained by county assessor and county**
36 **treasurer; peace officers; redaction; definition**

37 **A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, IN COUNTIES**
38 **WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PERSONS ACCORDING TO THE**
39 **MOST RECENT UNITED STATES DECENNIAL CENSUS A PEACE OFFICER MAY REQUEST THAT**
40 **THE GENERAL PUBLIC BE PROHIBITED FROM ACCESSING THE PEACE OFFICER'S**
41 **RESIDENTIAL ADDRESS AND TELEPHONE NUMBER THAT ARE CONTAINED IN INSTRUMENTS,**
42 **WRITINGS AND INFORMATION MAINTAINED BY THE COUNTY ASSESSOR AND THE COUNTY**
43 **TREASURER.**

1 B. A PEACE OFFICER MAY REQUEST THIS ACTION BY FILING AN AFFIDAVIT THAT
2 STATES ALL OF THE FOLLOWING:

3 1. THE PEACE OFFICER'S NAME.

4 2. THE FULL LEGAL DESCRIPTION AND PARCEL NUMBER OF THE PEACE OFFICER'S
5 PROPERTY.

6 3. THE POSITION THE PEACE OFFICER CURRENTLY HOLDS AND A DESCRIPTION
7 OF THE PEACE OFFICER'S DUTIES.

8 4. THE REASONS THE PEACE OFFICER REASONABLY BELIEVES THAT THE PEACE
9 OFFICER'S LIFE OR SAFETY OR THAT OF ANOTHER PERSON IS IN DANGER AND THAT
10 REDACTING THE RESIDENTIAL ADDRESS AND TELEPHONE NUMBER WILL SERVE TO REDUCE
11 THE DANGER.

12 C. IF A PEACE OFFICER IS ALSO REQUESTING PURSUANT TO SECTION 11-483
13 THAT THE GENERAL PUBLIC BE PROHIBITED FROM ACCESSING RECORDS MAINTAINED BY
14 THE COUNTY RECORDER, THE PEACE OFFICER MAY COMBINE THE REQUEST PURSUANT TO
15 SUBSECTION B OF THIS SECTION WITH THE REQUEST PURSUANT TO SECTION 11-483 BY
16 FILING ONE AFFIDAVIT WITH THE OFFICER'S COMMANDING OFFICER. THE AFFIDAVIT
17 AND SUBSEQUENT ACTION BY THE APPROPRIATE AUTHORITIES SHALL MEET ALL OF THE
18 REQUIREMENTS OF THIS SECTION AND SECTION 11-483.

19 D. THE AFFIDAVIT SHALL BE FILED WITH THE PRESIDING JUDGE OF THE
20 SUPERIOR COURT IN THE COUNTY IN WHICH THE AFFIANT RESIDES. TO PREVENT A
21 MULTIPLICITY OF FILINGS, A PEACE OFFICER SHALL DELIVER THE AFFIDAVIT TO THE
22 PEACE OFFICER'S COMMANDING OFFICER, WHO SHALL FILE THE AFFIDAVITS AT ONE
23 TIME. IN THE ABSENCE OF AN AFFIDAVIT THAT CONTAINS A REQUEST FOR IMMEDIATE
24 ACTION AND THAT IS SUPPORTED BY FACTS JUSTIFYING AN EARLIER PRESENTATION, THE
25 COMMANDING OFFICER SHALL NOT FILE MORE OFTEN THAN QUARTERLY AFFIDAVITS OF
26 PEACE OFFICERS PRESENTED TO THE COMMANDING OFFICER.

27 E. ON RECEIPT OF AN AFFIDAVIT OR AFFIDAVITS, THE PRESIDING JUDGE OF
28 THE SUPERIOR COURT SHALL FILE WITH THE CLERK OF THE SUPERIOR COURT A PETITION
29 ON BEHALF OF ALL REQUESTING PEACE OFFICERS. EACH AFFIDAVIT PRESENTED SHALL
30 BE ATTACHED TO THE PETITION. IN THE ABSENCE OF AN AFFIDAVIT THAT CONTAINS
31 A REQUEST FOR IMMEDIATE ACTION AND THAT IS SUPPORTED BY FACTS JUSTIFYING AN
32 EARLIER CONSIDERATION, THE PRESIDING JUDGE MAY ACCUMULATE AFFIDAVITS AND FILE
33 A PETITION AT THE END OF EACH QUARTER.

34 F. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL REVIEW THE PETITION
35 AND EACH ATTACHED AFFIDAVIT TO DETERMINE WHETHER THE ACTION REQUESTED BY EACH
36 PEACE OFFICER SHOULD BE GRANTED. IF THE PRESIDING JUDGE OF THE SUPERIOR
37 COURT CONCLUDES THAT THE ACTION REQUESTED BY THE PEACE OFFICER WILL REDUCE
38 A DANGER TO THE LIFE OR SAFETY OF THE PEACE OFFICER OR ANOTHER PERSON, THE
39 PRESIDING JUDGE OF THE SUPERIOR COURT SHALL ORDER THE REDACTION OF THE PEACE
40 OFFICER'S RESIDENTIAL ADDRESS AND TELEPHONE NUMBER THAT ARE CONTAINED IN
41 INSTRUMENTS, WRITINGS AND INFORMATION MAINTAINED BY THE COUNTY ASSESSOR AND
42 THE COUNTY TREASURER. THE REDACTION SHALL BE IN EFFECT FOR FIVE YEARS.

43 G. ON ENTRY OF THE COURT ORDER, THE CLERK OF THE SUPERIOR COURT SHALL
44 FILE THE COURT ORDER AND A COPY OF THE AFFIDAVIT REQUIRED BY SUBSECTION B OF

1 THIS SECTION WITH THE COUNTY ASSESSOR AND THE COUNTY TREASURER. NO MORE THAN
2 TEN DAYS AFTER THE DATE ON WHICH THE COUNTY ASSESSOR AND THE COUNTY TREASURER
3 RECEIVE THE COURT ORDER, THE COUNTY ASSESSOR AND THE COUNTY TREASURER SHALL
4 RESTRICT ACCESS TO THE INFORMATION AS REQUIRED BY SUBSECTION F OF THIS
5 SECTION.

6 H. IF THE COURT DENIES AN AFFIANT’S REQUEST PURSUANT TO THIS SECTION,
7 THE AFFIANT MAY REQUEST A COURT HEARING. THE HEARING SHALL BE CONDUCTED BY
8 THE COURT IN THE COUNTY WHERE THE PETITION WAS FILED.

9 I. THE COUNTY ASSESSOR AND THE COUNTY TREASURER SHALL REMOVE THE
10 RESTRICTIONS ON ALL RECORDS THAT ARE REDACTED PURSUANT TO THIS SECTION BY
11 JANUARY 5 IN THE YEAR AFTER THE COURT ORDER EXPIRES.

12 J. "PEACE OFFICER" MEANS ANY PERSON VESTED BY LAW, OR FORMERLY VESTED
13 BY LAW, WITH A DUTY TO MAINTAIN PUBLIC ORDER AND MAKE ARRESTS.

14 Sec. 5. Section 13-604, Arizona Revised Statutes, is amended to read:
15 13-604. Dangerous and repetitive offenders; definitions

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

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

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

5
 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
 18 B, C and D. The terms are as follows:

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

22
 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:

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

37
 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. Except as provided in section 13-604.01, a person who is at least
 2 eighteen years of age or who has been tried as an adult and who stands
 3 convicted of a class 4, 5 or 6 felony involving the intentional or knowing
 4 infliction of serious physical injury or the discharge, use or threatening
 5 exhibition of a deadly weapon or dangerous instrument without having
 6 previously been convicted of any felony shall be sentenced to imprisonment
 7 as prescribed in this subsection and shall not be eligible for suspension of
 8 sentence, probation, pardon or release from confinement on any basis except
 9 as specifically authorized by section 31-233, subsection A or B until the
 10 sentence imposed by the court has been served, the person is eligible for
 11 release pursuant to section 41-1604.07 or the sentence is commuted. The
 12 presumptive term may be mitigated or aggravated within the range prescribed
 13 under this subsection pursuant to the terms of section 13-702, subsections
 14 B, 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

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

38 H. Except as provided in subsection S of this section or section
 39 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the
 40 intentional or knowing infliction of serious physical injury or the
 41 discharge, use or threatening exhibition of a deadly weapon or dangerous
 42 instrument a person who has two or more historical prior felony convictions
 43 involving the intentional or knowing infliction of serious physical injury
 44 or the use or exhibition of a deadly weapon or dangerous instrument shall be

1 sentenced to imprisonment as prescribed in this subsection and shall not be
2 eligible for suspension of sentence, probation, pardon or release from
3 confinement on any basis except as specifically authorized by section 31-233,
4 subsection A or B until the sentence imposed by the court has been served,
5 the person is eligible for release pursuant to section 41-1604.07 or the
6 sentence is commuted. The presumptive term may be mitigated or aggravated
7 within the range prescribed under this subsection pursuant to the terms of
8 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 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

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13 I. Except as provided in section 13-604.01, upon a first conviction
14 of a class 2 or 3 felony involving discharge, use or threatening exhibition
15 of a deadly weapon or dangerous instrument or upon conviction of a class 2
16 or 3 felony when the intentional or knowing infliction of serious physical
17 injury upon another has occurred, the defendant shall be sentenced to
18 imprisonment as prescribed in this subsection and shall not be eligible for
19 suspension of sentence, probation, pardon or release from confinement on any
20 basis except as specifically authorized by section 31-233, subsection A or
21 B until the sentence imposed by the court has been served, the person is
22 eligible for release pursuant to section 41-1604.07 or the sentence is
23 commuted. The presumptive term may be mitigated or aggravated within the
24 range prescribed under this subsection pursuant to the terms of section
25 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	7 years	10.5 years	21 years
Class 3	5 years	7.5 years	15 years

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29 J. Except as provided in section 13-604.01, upon conviction of a class
30 2 or 3 felony involving the discharge, use or threatening exhibition of a
31 deadly weapon or dangerous instrument or the intentional or knowing
32 infliction of serious physical injury upon another, a person who has a
33 historical prior felony conviction that is a class 1, 2 or 3 felony involving
34 the use or exhibition of a deadly weapon or dangerous instrument or the
35 intentional or knowing infliction of serious physical injury on another shall
36 be sentenced to imprisonment as prescribed in this subsection and shall not
37 be eligible for suspension of sentence, probation, pardon or release from
38 confinement on any basis except as specifically authorized by section 31-233,
39 subsection A or B until the sentence imposed by the court has been served,
40 the person is eligible for release pursuant to section 41-1604.07 or the
41 sentence is commuted. The presumptive term may be mitigated or aggravated
42 within the range prescribed under this subsection pursuant to the terms of
43 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

4 K. Except as provided in subsection S of this section or section
5 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge,
6 use or threatening exhibition of a deadly weapon or dangerous instrument or
7 the intentional or knowing infliction of serious physical injury upon
8 another, a person who has two or more historical prior felony convictions
9 that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly
10 weapon or dangerous instrument or the intentional or knowing infliction of
11 serious physical injury on another shall be sentenced to imprisonment as
12 prescribed in this subsection and shall not be eligible for suspension of
13 sentence, probation, pardon or release from confinement on any basis except
14 as specifically authorized by section 31-233, subsection A or B until the
15 sentence imposed by the court has been served, the person is eligible for
16 release pursuant to section 41-1604.07 or the sentence is commuted. The
17 presumptive term may be mitigated or aggravated within the range prescribed
18 under this subsection pursuant to the terms of section 13-702, subsections
19 B, C and D. The terms 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

23 L. For the purposes of subsections I, J and K of this section in
24 determining the applicability of the penalties provided in this section for
25 second or subsequent class 2 or 3 felonies, the conviction for any felony
26 committed prior to October 1, 1978 which, if committed after October 1, 1978,
27 could be a dangerous felony under this section may be designated by the state
28 as a prior felony.

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

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

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

41 P. The penalties prescribed by this section shall be substituted for
42 the penalties otherwise authorized by law if the previous conviction or the
43 allegation that the defendant committed a felony while released on bond or
44 on the defendant's own recognizance or while escaped from preconviction

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

25 Q. Intentional failure by the court to impose the mandatory sentences
26 or probation conditions provided in this title shall be deemed to be
27 malfeasance.

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

42 S. A person who is at least eighteen years of age or who has been
43 tried as an adult and who stands convicted of a serious offense except a drug

1 offense, first degree murder or any dangerous crime against children, whether
2 a completed or preparatory offense, and who has previously been convicted of
3 two or more serious offenses not committed on the same occasion shall be
4 sentenced to life imprisonment and is not eligible for suspension of
5 sentence, probation, pardon or release from confinement on any basis except
6 as specifically authorized by section 31-233, subsection A or B until the
7 person has served not less than twenty-five years or the sentence is
8 commuted.

9 T. A person WHO IS convicted of committing any felony offense with the
10 intent to promote, further or assist any criminal conduct by a criminal
11 street gang shall not be eligible for suspension of sentence, probation,
12 pardon or release from confinement on any basis except as authorized by
13 section 31-233, subsection A or B until the sentence imposed by the court has
14 been served, the person is eligible for release pursuant to section
15 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum
16 sentence for the offense shall be increased by three years. The additional
17 sentence imposed pursuant to this subsection is in addition to any enhanced
18 sentence that may be applicable.

19 U. A PERSON WHO IS CONVICTED OF INTENTIONALLY OR KNOWINGLY COMMITTING
20 AGGRAVATED ASSAULT ON A PEACE OFFICER WHILE THE OFFICER IS ENGAGED IN THE
21 EXECUTION OF ANY OFFICIAL DUTIES PURSUANT TO SECTION 13-1204, SUBSECTION A,
22 PARAGRAPH 1 OR 2 SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN THE
23 PRESUMPTIVE SENTENCE AUTHORIZED UNDER THIS CHAPTER AND IS NOT ELIGIBLE FOR
24 SUSPENSION OF SENTENCE, COMMUTATION OR RELEASE ON ANY BASIS UNTIL THE
25 SENTENCE IMPOSED IS SERVED.

26 ~~U.~~ V. As used in this section:

27 1. "Historical prior felony conviction" means:

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

29 (i) Mandated a term of imprisonment except for a violation of chapter
30 34 of this title involving a drug below the threshold amount; or

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

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

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

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

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

1 (b) Any class 2 or 3 felony, except the offenses listed in subdivision
2 (a) of this paragraph, that was committed within the ten years immediately
3 preceding the date of the present offense. Any time spent incarcerated is
4 excluded in calculating if the offense was committed within the preceding ten
5 years.

6 (c) Any class 4, 5 or 6 felony, except the offenses listed in
7 subdivision (a) of this paragraph, that was committed within the five years
8 immediately preceding the date of the present offense. Any time spent
9 incarcerated is excluded in calculating if the offense was committed within
10 the preceding five years.

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

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

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

19 (a) First degree murder.

20 (b) Second degree murder.

21 (c) Manslaughter.

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

25 (e) Sexual assault.

26 (f) Any dangerous crime against children.

27 (g) Arson of an occupied structure.

28 (h) Armed robbery.

29 (i) Burglary in the first degree.

30 (j) Kidnapping.

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

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

37 Sec. 6. Section 13-604.01, Arizona Revised Statutes, is amended to
38 read:

39 13-604.01. Dangerous crimes against children; sentences;
40 definitions

41 A. A person who is at least eighteen years of age AND who stands
42 convicted of a dangerous crime against children in the first degree involving
43 sexual assault of a minor who is twelve years of age or younger or sexual

1 conduct with a minor who is twelve years of age or younger shall be sentenced
2 to life imprisonment and is not eligible for suspension of sentence,
3 probation, pardon or release from confinement on any basis except as
4 specifically authorized by section 31-233, subsection A or B until the person
5 has served thirty-five years or the sentence is commuted. This subsection
6 does not apply to masturbatory contact.

7 B. Except as otherwise provided in this section, a person who is at
8 least eighteen years of age or who has been tried as an adult and who stands
9 convicted of a dangerous crime against children in the first degree involving
10 attempted first degree murder of a minor who is under twelve years of age or
11 second degree murder of a minor who is under twelve years of age or sexual
12 assault of a minor who is under twelve years of age or sexual conduct with
13 a minor who is under twelve years of age may be sentenced to life
14 imprisonment and is not eligible for suspension of sentence, probation,
15 pardon or release from confinement on any basis except as specifically
16 authorized by section 31-233, subsection A or B until the person has served
17 thirty-five years or the sentence is commuted. If a life sentence is not
18 imposed pursuant to this subsection, the person shall be sentenced to a
19 presumptive term of imprisonment for twenty years.

20 C. Except as otherwise provided in this section, a person who is at
21 least eighteen years of age or who has been tried as an adult and who stands
22 convicted of a dangerous crime against children in the first degree involving
23 attempted first degree murder of a minor who is twelve, thirteen or fourteen
24 years of age, second degree murder of a minor who is twelve, thirteen or
25 fourteen years of age, sexual assault of a minor who is twelve, thirteen or
26 fourteen years of age, taking a child for the purpose of prostitution, child
27 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen
28 years of age or continuous sexual abuse of a child or involving or using
29 minors in drug offenses shall be sentenced to a presumptive term of
30 imprisonment for twenty years. If the convicted person has been previously
31 convicted of one predicate felony the person shall be sentenced to a
32 presumptive term of imprisonment for thirty years.

33 D. Except as otherwise provided in this section, a person who is at
34 least eighteen years of age or who has been tried as an adult and who stands
35 convicted of a dangerous crime against children in the first degree involving
36 aggravated assault, molestation of a child, commercial sexual exploitation
37 of a minor, sexual exploitation of a minor, child abuse or kidnapping shall
38 be sentenced to a presumptive term of imprisonment for seventeen years. If
39 the convicted person has been previously convicted of one predicate felony
40 the person shall be sentenced to a presumptive term of imprisonment for
41 twenty-eight years.

42 E. Except as otherwise provided in this section, a person who is at
43 least eighteen years of age or who has been tried as an adult and who stands
44 convicted of a dangerous crime against children involving sexual abuse under

1 section 13-1404 is guilty of a class 3 felony and shall be sentenced to a
2 presumptive term of imprisonment for five years, and unless the person has
3 previously been convicted of a predicate felony, the presumptive term may be
4 increased or decreased by up to two and one-half years pursuant to section
5 13-702, subsections C, D and E. If the person is sentenced to a term of
6 imprisonment the person is not eligible for release from confinement on any
7 basis except as specifically authorized by section 31-233, subsection A or
8 B until the sentence imposed by the court has been served, the person is
9 eligible for release pursuant to section 41-1604.07 or the sentence is
10 commuted. If the convicted person has been previously convicted of one
11 predicate felony the person shall be sentenced to a presumptive term of
12 imprisonment for fifteen years and is not eligible for suspension of
13 sentence, probation, pardon or release from confinement on any basis except
14 as specifically authorized by section 31-233, subsection A or B until the
15 sentence imposed by the court has been served, the person is eligible for
16 release pursuant to section 41-1604.07 or the sentence is commuted.

17 F. The presumptive sentences prescribed in subsections B, C and D of
18 this section or subsection E of this section if the person has previously
19 been convicted of a predicate felony may be increased or decreased by up to
20 seven years pursuant to the provisions of section 13-702, subsections B, C
21 and D.

22 G. Except as provided in subsection E of this section, a person
23 sentenced for a dangerous crime against children in the first degree pursuant
24 to this section is not eligible for suspension of sentence, probation,
25 pardon, or release from confinement on any basis except as specifically
26 authorized by section 31-233, subsection A or B until the sentence imposed
27 by the court has been served or commuted.

28 H. A person who stands convicted of any dangerous crime against
29 children in the first degree pursuant to subsection C or D of this section
30 having been previously convicted of two or more predicate felonies shall be
31 sentenced to life imprisonment and is not eligible for suspension of
32 sentence, probation, pardon or release from confinement on any basis except
33 as specifically authorized by section 31-233, subsection A or B until the
34 person has served not fewer than thirty-five years or the sentence is
35 commuted.

36 I. Notwithstanding chapter 10 of this title, a person who is at least
37 eighteen years of age or who has been tried as an adult and who stands
38 convicted of a dangerous crime against children in the second degree pursuant
39 to subsection C or D of this section is guilty of a class 3 felony and shall
40 be sentenced to a presumptive term of imprisonment for ten years. The
41 presumptive term may be increased or decreased by up to five years pursuant
42 to section 13-702, subsections B, C and D. If the person is sentenced to a
43 term of imprisonment the person is not eligible for release from confinement
44 on any basis except as specifically authorized by section 31-233, subsection

1 A or B until the person has served the sentence imposed by the court, the
2 person is eligible for release pursuant to section 41-1604.07 or the sentence
3 is commuted. A person who is convicted of any dangerous crime against
4 children in the second degree having been previously convicted of one or more
5 predicate felonies is not eligible for suspension of sentence, probation,
6 pardon or release from confinement on any basis except as specifically
7 authorized by section 31-233, subsection A or B until the sentence imposed
8 by the court has been served, the person is eligible for release pursuant to
9 section 41-1604.07 or the sentence is commuted.

10 J. Section 13-604, subsections M and O apply to the determination of
11 prior convictions.

12 K. The sentence imposed on a person by the court for a dangerous crime
13 against children under subsection D of this section involving child
14 molestation or sexual abuse pursuant to subsection E of this section may be
15 served concurrently with other sentences if the offense involved only one
16 victim. The sentence imposed on a person for any other dangerous crime
17 against children in the first or second degree shall be consecutive to any
18 other sentence imposed on the person at any time, including child molestation
19 and sexual abuse of the same victim.

20 L. In this section:

21 1. "Dangerous crime against children" means any of the following
22 committed against a minor under fifteen years of age:

23 (a) Second degree murder.

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

27 (c) Sexual assault.

28 (d) Molestation of a child.

29 (e) Sexual conduct with a minor.

30 (f) Commercial sexual exploitation of a minor.

31 (g) Sexual exploitation of a minor.

32 (h) Child abuse as ~~defined~~ PRESCRIBED in section 13-3623, subsection
33 ~~A- B~~, paragraph 1.

34 (i) Kidnapping.

35 (j) Sexual abuse.

36 (k) Taking a child for the purpose of prostitution as defined in
37 section 13-3206.

38 (l) Child prostitution as defined in section 13-3212.

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

40 (n) Continuous sexual abuse of a child.

41 (o) Attempted first degree murder.

42 A dangerous crime against children is in the first degree if it is a
43 completed offense and is in the second degree if it is a preparatory offense,

1 except attempted first degree murder is a dangerous crime against children
2 in the first degree.

3 2. "Predicate felony" means any felony involving child abuse pursuant
4 to section 13-3623, subsection ~~A~~ B, paragraph 1, a sexual offense, conduct
5 involving the intentional or knowing infliction of serious physical injury
6 or the discharge, use or threatening exhibition of a deadly weapon or
7 dangerous instrument, or a dangerous crime against children in the first or
8 second degree.

9 Sec. 7. Section 13-604.02, Arizona Revised Statutes, is amended to
10 read:

11 13-604.02. Offenses committed while released from confinement

12 A. Notwithstanding any law to the contrary, a person convicted of any
13 felony offense involving the discharge, use or threatening exhibition of a
14 deadly weapon or dangerous instrument or the intentional or knowing
15 infliction on another of serious physical injury if committed while the
16 person is on probation for a conviction of a felony offense or parole, work
17 furlough, community supervision or any other release or escape from
18 confinement for conviction of a felony offense shall be sentenced to
19 imprisonment for not less than the presumptive sentence authorized under this
20 chapter and is not eligible for suspension or commutation or release on any
21 basis until the sentence imposed is served. If the person committed the
22 offense while on release or escape from confinement for a conviction of a
23 serious offense as defined in section 13-604, an offense resulting in serious
24 physical injury or an offense involving the use or exhibition of a deadly
25 weapon or dangerous instrument, the person shall be sentenced to the maximum
26 sentence authorized under this chapter and is not eligible for suspension or
27 commutation or release on any basis until the sentence imposed is served.
28 If the court finds that at least two substantial aggravating circumstances
29 listed in section 13-702, subsection C apply, the court may increase the
30 maximum sentence authorized under this chapter by up to twenty-five per cent.
31 A sentence imposed pursuant to this subsection shall revoke the convicted
32 person's release if the person was on release and shall be consecutive to any
33 other sentence from which the convicted person had been temporarily released
34 or had escaped, unless the sentence from which the convicted person had been
35 paroled or placed on probation was imposed by a jurisdiction other than this
36 state.

37 B. Notwithstanding any law to the contrary, a person convicted of any
38 felony offense not included in subsection A of this section if committed
39 while the person is on probation for a conviction of a felony offense or
40 parole, work furlough, community supervision **OR ANY OTHER RELEASE** or escape
41 from confinement for conviction of a felony offense shall be sentenced to a
42 term of not less than the presumptive sentence authorized for the offense and
43 the person is not eligible for suspension of sentence, probation, pardon or

1 release from confinement on any basis except as specifically authorized by
2 section 31-233, subsection A or B until the sentence imposed by the court has
3 been served, the person is eligible for release pursuant to section
4 41-1604.07 or the sentence is commuted. The release provisions prescribed
5 by this section shall not be substituted for any penalties required by the
6 substantive offense or provision of law that specifies a later release or
7 completion of the sentence imposed prior to release. A sentence imposed
8 pursuant to this subsection shall revoke the convicted person's release if
9 the person was on release and shall be consecutive to any other sentence from
10 which the convicted person had been temporarily released or had escaped,
11 unless the sentence from which the convicted person had been paroled or
12 placed on probation was imposed by a jurisdiction other than this state. For
13 purposes of this subsection, "substantive offense" means the felony,
14 misdemeanor or petty offense that the trier of fact found beyond a reasonable
15 doubt the defendant committed. Substantive offense does not include
16 allegations that, if proven, would enhance the sentence of imprisonment or
17 fine to which the defendant would otherwise be ~~exposed~~ SUBJECT.

18 Sec. 8. Section 13-702, Arizona Revised Statutes, as amended by Laws
19 1997, chapter 213, section 1, is amended to read:

20 13-702. Sentencing

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

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

34 B. The upper or lower term imposed pursuant to section 13-604,
35 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may
36 be imposed only if the circumstances alleged to be in aggravation or
37 mitigation of the crime are found to be true by the trial judge upon any
38 evidence or information introduced or submitted to the court prior to
39 sentencing or any evidence previously heard by the judge at the trial, and
40 factual findings and reasons in support of such findings are set forth on the
41 record at the time of sentencing.
42

1 C. 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 aggravating circumstances:

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

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

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

14 4. Presence of an accomplice.

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

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

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

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

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

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

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

35 12. The defendant was wearing a ~~bulletproof vest~~ BODY ARMOR AS DEFINED
36 IN SECTION 13-3116.

37 13. If the victim of the offense is sixty-five or more years of age or
38 is a handicapped person as defined by section 38-492.

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

1 15. 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 0.18 OR MORE. FOR
6 THE PURPOSES OF THIS PARAGRAPH, "ALCOHOL CONCENTRATION" HAS THE SAME MEANING
7 PRESCRIBED IN SECTION 28-101.

8 16. LYING IN WAIT FOR THE VICTIM OR AMBUSHING THE VICTIM DURING THE
9 COMMISSION OF ANY FELONY.

1 ~~15.~~ 17. Any other factors which the court may deem appropriate to the
2 ends of justice.

3 D. For the purpose of determining the sentence pursuant to section
4 13-710 and subsection A of this section, the court shall consider the
5 following mitigating circumstances:

6 1. The age of the defendant.

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

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

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

15 5. Any other factors which the court may deem appropriate to the ends
16 of justice.

17 In determining what sentence to impose, the court shall take into account the
18 amount of aggravating circumstances and whether the amount of mitigating
19 circumstances is sufficiently substantial to call for the lesser term. If
20 the court finds aggravating circumstances and does not find any mitigating
21 circumstances, the court shall impose an aggravated sentence.

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

25 F. Nothing in this section shall affect any provision of law which
26 imposes the death penalty, which expressly provides for imprisonment for life
27 or which authorizes or restricts the granting of probation and suspending the
28 execution of sentence.

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

1 public offense is punishable in the discretion of the court by a sentence as
2 a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a
3 misdemeanor if the prosecuting attorney:

4 1. Files an information in superior court designating the offense as
5 a misdemeanor; or

6 2. Files a complaint in justice court or municipal court designating
7 the offense as a misdemeanor within the jurisdiction of the respective court;
8 or

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

12 Sec. 9. Repeal

13 Section 13-702, Arizona Revised Statutes, as amended by Laws 1998,
14 chapter 302, section 9, is repealed.

15 Sec. 10. Section 13-702.02, Arizona Revised Statutes, is amended to
16 read:

17 13-702.02. Multiple offenses not committed on the same
18 occasion; sentencing

19 A. A person who is convicted of two or more felony offenses that were
20 not committed on the same occasion but that either are consolidated for trial
21 purposes or are not historical prior felony convictions as defined in section
22 13-604, ~~subsection U, paragraph 1~~ shall be sentenced, for the second or
23 subsequent offense, pursuant to this section.

24 B. A person sentenced pursuant to this section shall not be eligible
25 for suspension of sentence, probation, pardon, or release from confinement
26 on any basis except as specifically authorized by section 31-233, subsection
27 A or B until the sentence imposed by the court has been served, the person
28 is eligible for release pursuant to section 41-1604.07 or the sentence is
29 commuted. The presumptive term for paragraphs 1 through 4 of this subsection
30 may be aggravated within the range under this section pursuant to section
31 13-702, subsections B, C and D. The presumptive term for paragraph 3 or 4
32 of this subsection may be mitigated within the range under this section
33 pursuant to section 13-702, subsections B, C and D. The terms are as
34 follows:

35 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

42 2. For any dangerous felony offense subsequent to the second dangerous
43 felony offense:

	<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>
1			
2	Class 2	15.75 years	28 years
3	Class 3	11.25 years	20 years
4	Class 4	10 years	12 years
5	Class 5	5 years	6 years
6	Class 6	3.75 years	4.5 years

7 3. For the second nondangerous felony offense:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8				
9	Class 2	4 years	5 years	10 years
10	Class 3	2.5 years	3.5 years	7 years
11	Class 4	1.5 years	2.5 years	3 years
12	Class 5	.75 years	1.5 years	2 years
13	Class 6	.5 years	1 year	1.5 years

14 4. For any nondangerous felony offense subsequent to the second felony
15 offense:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
16				
17	Class 2	6 years	9.25 years	18.5 years
18	Class 3	4.5 years	6.5 years	13 years
19	Class 4	3 years	4.5 years	6 years
20	Class 5	1.5 years	2.25 years	3 years
21	Class 6	1 year	1.75 years	2.25 years

22 C. For a person sentenced pursuant to subsection B, paragraph 1 or 2
23 of this section, the minimum term prescribed shall be the presumptive term.

24 D. For a person sentenced pursuant to subsection B, ~~paragraphs 1~~
25 ~~through 4~~ PARAGRAPH 1, 2, 3 OR 4 of this section, the court may increase the
26 maximum sentence otherwise authorized by up to twenty-five per cent.

27 E. For a person sentenced pursuant to subsection B, paragraph 3 or 4
28 of this section the court may decrease the minimum sentence otherwise
29 authorized by up to twenty-five per cent.

30 F. If the court increases or decreases a sentence pursuant to this
31 section, the court shall state on the record the reasons for the increase or
32 decrease.

33 G. The court shall inform all of the parties before the sentencing
34 occurs of its intent to increase or decrease a sentence pursuant to this
35 section. If the court fails to inform the parties, a party waives its right
36 to be informed unless the party timely objects at the time of sentencing.

37 Sec. 11. Section 13-901.01, Arizona Revised Statutes, is amended to
38 read:

39 13-901.01. Probation for persons convicted of personal
40 possession and use of controlled substances;
41 treatment; prevention; education

42 A. Notwithstanding any law to the contrary, any person who is
43 convicted of the personal possession or use of a controlled substance as

1 defined in section 36-2501 is eligible for probation. The court shall
2 suspend the imposition or execution of sentence and place such person on
3 probation.

4 B. Any person who has been convicted of or indicted for a violent
5 crime as defined in section ~~41-1604.15, subsection B~~ 13-604.04 is not
6 eligible for probation as provided for in this section but instead shall be
7 sentenced pursuant to the other provisions of chapter 34 of this title.

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

11 D. If a person is convicted of personal possession or use of a
12 controlled substance as defined in section 36-2501, as a condition of
13 probation, the court shall require participation in an appropriate drug
14 treatment or education program administered by a qualified agency or
15 organization that provides such programs to persons who abuse controlled
16 substances. Each person enrolled in a drug treatment or education program
17 shall be required to pay for participation in the program to the extent of
18 the person's financial ability.

19 E. A person who has been placed on probation under the provisions of
20 this section and who is determined by the court to be in violation of
21 probation shall have new conditions of probation established by the court.
22 The court shall select the additional conditions it deems necessary,
23 including intensified drug treatment, community service, intensive probation,
24 home arrest, or any other such sanctions short of incarceration.

25 F. If a person is convicted a second time of personal possession or
26 use of a controlled substance as defined in section 36-2501, the court may
27 include additional conditions of probation it deems necessary, including
28 intensified drug treatment, community service, intensive probation, home
29 arrest, or any other action within the jurisdiction of the court.

30 G. A person who has been convicted three times of personal possession
31 or use of a controlled substance as defined in section 36-2501 is not
32 eligible for probation under the provisions of this section but instead shall
33 be sentenced pursuant to the other provisions of chapter 34 of this title.

34 Sec. 12. Section 13-905, Arizona Revised Statutes, is amended to read:
35 13-905. Restoration of civil rights; persons completing
36 probation

37 A. A person who has been convicted of two or more felonies and whose
38 period of probation has been completed may have any civil rights which were
39 lost or suspended by his felony conviction restored by the judge who
40 discharges him at the end of the term of probation.

41 B. Upon proper application, a person who has been discharged from
42 probation either prior to or after adoption of this chapter may have any
43 civil rights which were lost or suspended by his felony conviction restored

1 by the superior court judge by whom the person was sentenced or his
2 successors in office from the county in which he was originally convicted.
3 The clerk of such superior court shall have the responsibility for processing
4 the application upon request of the person involved or his attorney. The
5 superior court shall cause a copy of the application to be served upon the
6 county attorney.

7 C. If the person was convicted of a dangerous offense under section
8 13-604, the person may not file for the restoration of his right to possess
9 or carry a gun or firearm. If the person was convicted of a serious offense
10 as defined in section 13-604, ~~subsection U~~, the person may not file for the
11 restoration of his right to possess or carry a gun or firearm for ten years
12 from the date of his discharge from probation. If the person was convicted
13 of any other felony offense, the person may not file for the restoration of
14 his right to possess or carry a gun or firearm for two years from the date
15 of his discharge from probation.

16 Sec. 13. Section 13-906, Arizona Revised Statutes, is amended to read:
17 13-906. Applications by persons discharged from prison

18 A. Upon proper application, a person who has been convicted of two or
19 more felonies and who has received an absolute discharge from imprisonment
20 may have any civil rights which were lost or suspended by his conviction
21 restored by the superior court judge by whom the person was sentenced or his
22 successors in office from the county in which he was originally sentenced.

23 B. A person who is subject to the provisions of subsection A of this
24 section may file, no sooner than two years from the date of his absolute
25 discharge, an application for restoration of civil rights that shall be
26 accompanied by a certificate of absolute discharge from the director of the
27 state department of corrections. The clerk of the superior court that
28 sentenced the applicant shall have the responsibility for processing
29 applications for restoration of civil rights upon request of the person
30 involved, his attorney or a representative of the state department of
31 corrections. The superior court shall cause a copy of the application to be
32 served upon the county attorney.

33 C. If the person was convicted of a dangerous offense under section
34 13-604, the person may not file for the restoration of his right to possess
35 or carry a gun or firearm. If the person was convicted of a serious offense
36 as defined in section 13-604, ~~subsection U~~, the person may not file for the
37 restoration of his right to possess or carry a ~~weapon~~ GUN OR FIREARM for ten
38 years from the date of his absolute discharge from imprisonment. If the
39 person was convicted of any other felony offense, the person may not file for
40 the restoration of his right to possess or carry a gun or firearm for two
41 years from the date of his absolute discharge from imprisonment.

42 Sec. 14. Section 13-909, Arizona Revised Statutes, is amended to read:

1 13-909. Restoration of civil rights: persons completing
2 probation for federal offense

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

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

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

25 Sec. 15. Section 13-910, Arizona Revised Statutes, is amended to read:
26 13-910. Applications by persons discharged from federal prison

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

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

41 C. If the person was convicted of an offense which would be a
42 dangerous offense under section 13-604, the person may not file for the
43 restoration of his right to possess or carry a gun or firearm. If the person
44 was convicted of an offense which would be a serious offense as defined in

1 section 13-604, ~~subsection U~~, the person may not file for the restoration of
2 his right to possess or carry a gun or firearm for ten years from the date
3 of his absolute discharge from imprisonment. If the person was convicted of
4 any other felony offense, the person may not file for the restoration of his
5 right to possess or carry a gun or firearm for two years from the date of his
6 absolute discharge from imprisonment.

7 Sec. 16. Section 13-1204, Arizona Revised Statutes, is amended to
8 read:

9 13-1204. Aggravated assault; classification

10 A. A person commits aggravated assault if the person commits assault
11 as defined in section 13-1203 under any of the following circumstances:

- 12 1. If the person causes serious physical injury to another.
- 13 2. If the person uses a deadly weapon or dangerous instrument.
- 14 3. If the person commits the assault after entering the private home
15 of another with the intent to commit the assault.

16 4. If the person is eighteen years of age or more and commits the
17 assault upon a child the age of fifteen years or under.

18 5. If the person commits the assault knowing or having reason to know
19 that the victim is a peace officer, or a person summoned and directed by the
20 officer while engaged in the execution of any official duties.

21 6. If the person commits the assault knowing or having reason to know
22 the victim is a teacher or other person employed by any school and the
23 teacher or other employee is upon the grounds of a school or grounds adjacent
24 to the school or is in any part of a building or vehicle used for school
25 purposes, or any teacher or school nurse visiting a private home in the
26 course of the teacher's or nurse's professional duties, or any teacher
27 engaged in any authorized and organized classroom activity held on other
28 than school grounds.

29 7. If the person meets both of the following conditions:

30 (a) Is imprisoned or otherwise subject to the custody of any of the
31 following:

- 32 (i) The state department of corrections.
- 33 (ii) The department of juvenile corrections.
- 34 (iii) A law enforcement agency.
- 35 (iv) A county or city jail or an adult or juvenile detention facility
36 of a city or county.

37 (v) Any other entity that is contracting with the state department of
38 corrections, the department of juvenile corrections, a law enforcement
39 agency, another state, any private correctional facility, a county, a city
40 or the federal bureau of prisons or other federal agency that has
41 responsibility for sentenced or unsentenced prisoners.

42 (b) Commits an assault knowing or having reason to know that the
43 victim is acting in an official capacity as an employee of any of the
44 entities prescribed by subdivision (a) of this paragraph.

1 8. If the person commits the assault while the victim is bound or
2 otherwise physically restrained or while the victim's capacity to resist is
3 substantially impaired.

4 9. If the person commits the assault knowing or having reason to know
5 that the victim is a fire fighter, fire investigator, fire inspector,
6 emergency medical technician or paramedic engaged in the execution of any
7 official duties, or a person summoned and directed by such individual while
8 engaged in the execution of any official duties.

9 10. If the person commits the assault knowing or having reason to know
10 that the victim is a licensed health care practitioner who is certified or
11 licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned
12 and directed by the licensed health care practitioner while engaged in the
13 person's professional duties. The provisions of this paragraph do not apply
14 if the person who commits the assault is seriously mentally ill, as defined
15 in section 36-550 or is afflicted with Alzheimer's disease or related
16 dementia.

17 11. If the person commits assault by any means of force which causes
18 temporary but substantial disfigurement, temporary but substantial loss or
19 impairment of any body organ or part, or a fracture of any body part.

20 12. IF THE PERSON COMMITS ASSAULT AS PRESCRIBED BY SECTION 13-1203,
21 SUBSECTION A, PARAGRAPH 1 OR 3 AND THE PERSON IS IN VIOLATION OF AN ORDER OF
22 PROTECTION ISSUED AGAINST THE PERSON PURSUANT TO SECTION 13-3602 OR 13-3624.

23 B. Except pursuant to subsection C of this section, aggravated assault
24 pursuant to subsection A, paragraph 1 or 2 of this section is a class 3
25 felony except if the victim is under fifteen years of age in which case it
26 is a class 2 felony punishable pursuant to section 13-604.01. Aggravated
27 assault pursuant to subsection A, paragraph 11 of this section is a class 4
28 felony. Aggravated assault pursuant to subsection A, paragraph 7 of this
29 section is a class 5 felony. Aggravated assault pursuant to subsection A,
30 paragraph 3, 4, 5, 6, 8, 9, ~~or~~ 10 OR 12 of this section is a class 6 felony.

31 C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of
32 this section committed on a peace officer while the officer is engaged in the
33 execution of any official duties is a class 2 felony. Aggravated assault
34 pursuant to subsection A, paragraph 11 of this section committed on a peace
35 officer while the officer is engaged in the execution of any official duties
36 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph
37 5 of this section resulting in any physical injury to a peace officer while
38 the officer is engaged in the execution of any official duties is a class 5
39 felony.

40 Sec. 17. Section 13-1407, Arizona Revised Statutes, is amended to
41 read:

42 13-1407. Defenses

1 A. It is a defense to a prosecution pursuant to sections 13-1404 and
2 13-1405, ~~in~~ involving a minor, if the act was done in furtherance of lawful
3 medical practice.

4 B. It is a defense to a prosecution pursuant to sections 13-1404 and
5 13-1405, ~~in~~ in which the victim's lack of consent is based on incapacity to
6 consent because the victim was ~~fourteen,~~ fifteen, sixteen or seventeen years
7 of age, if at the time the defendant engaged in the conduct constituting the
8 offense the defendant did not know and could not reasonably have known the
9 age of the victim.

10 C. It is a defense to a prosecution pursuant to section 13-1402,
11 13-1404, 13-1405 or 13-1406, if the act was done by a duly licensed physician
12 or registered nurse or a person acting under his or her direction, or any
13 other person who renders emergency care at the scene of an emergency
14 occurrence, and consisted of administering a recognized and lawful form of
15 treatment which was reasonably adapted to promoting the physical or mental
16 health of the patient and the treatment was administered in an emergency when
17 the duly licensed physician or registered nurse or a person acting under his
18 or her direction, or any other person rendering emergency care at the scene
19 of an emergency occurrence, reasonably believed that no one competent to
20 consent could be consulted and that a reasonable person, wishing to safeguard
21 the welfare of the patient, would consent.

22 D. It is a defense to a prosecution pursuant to section 13-1404,
23 13-1405 or 13-1406 that the person was the spouse of the other person at the
24 time of commission of the act. It is not a defense to a prosecution pursuant
25 to section 13-1406.01 that the defendant was the spouse of the victim at the
26 time of commission of the act.

27 E. It is a defense to prosecution pursuant to section 13-1404 or
28 13-1410 that the defendant was not motivated by a sexual interest. It is a
29 defense to prosecution pursuant to section 13-1404 involving a victim under
30 ~~fourteen~~ FIFTEEN years of age that the defendant was not motivated by a
31 sexual interest.

32 F. It is a defense to prosecution pursuant to section 13-1405 if the
33 victim is of the age of fifteen, sixteen or seventeen, the defendant is less
34 than nineteen years of age or attending high school and is no more than
35 twenty-four months older than the victim and the conduct is consensual.

36 Sec. 18. Section 13-1419, Arizona Revised Statutes, is amended to
37 read:

38 13-1419. Unlawful sexual conduct; correctional employees;
39 prisoners; classification

40 A. A person who is employed by the state department of corrections,
41 ~~or~~ a private prison facility OR A CITY OR COUNTY JAIL or who contracts to
42 provide services with the state department of corrections, ~~or~~ a private
43 prison facility OR A CITY OR COUNTY JAIL commits unlawful sexual conduct by

1 engaging in oral sexual contact, sexual contact or sexual intercourse with
2 a prisoner who is in the custody of the department, ~~or in the custody of~~ a
3 private prison facility OR A CITY OR COUNTY JAIL or with an offender who is
4 under the supervision of the department OR A CITY OR COUNTY.

5 B. A prisoner who is in the custody of the state department of
6 corrections, ~~or in the custody of~~ a private prison facility OR A CITY OR
7 COUNTY JAIL or an offender who is on release status and who is under the
8 supervision of the state department of corrections OR A CITY OR COUNTY
9 commits unlawful sexual conduct by engaging in oral sexual contact, sexual
10 contact or sexual intercourse with a person who is employed by the state
11 department of corrections, ~~or~~ a private prison facility OR A CITY OR COUNTY
12 JAIL or who contracts to provide services with the state department of
13 corrections, ~~or~~ a private prison facility OR A CITY OR COUNTY JAIL.

14 C. This section does not apply to:

15 1. A person who is employed by the state department of corrections,
16 ~~or~~ a private prison facility OR A CITY OR COUNTY JAIL or who contracts to
17 provide services with the state department of corrections, ~~or~~ a private
18 prison facility OR A CITY OR COUNTY JAIL or an offender who is on release
19 status if the person was lawfully married to the prisoner or offender on
20 release status before the prisoner or offender was sentenced to the state
21 department of corrections OR WAS INCARCERATED IN A CITY OR COUNTY JAIL.

22 2. An offender who is on release status and who was lawfully married
23 to a person who is employed by the state department of corrections, ~~or~~ a
24 private prison facility OR A CITY OR COUNTY JAIL or who contracts to provide
25 services with the state department of corrections, ~~or~~ a private prison
26 facility OR A CITY OR COUNTY JAIL if the marriage occurred prior to the
27 offender being sentenced to the state department of corrections OR
28 INCARCERATED IN A CITY OR COUNTY JAIL.

29 D. Unlawful sexual conduct is a class 5 felony.

30 Sec. 19. Section 13-1803, Arizona Revised Statutes, is amended to
31 read:

32 13-1803. Unlawful use of means of transportation;
33 classification

34 A. A person commits unlawful use of means of transportation if,
35 without intent permanently to deprive, the person either:

36 1. Knowingly takes unauthorized control over another person's means
37 of transportation.

38 2. Knowingly is transported or physically located in a vehicle that
39 the person knows or has reason to know is in the unlawful possession of
40 another person pursuant to paragraph 1 ~~of this subsection~~ or section ~~13-1813~~
41 13-1814.

42 B. A violation of subsection A, paragraph 1 of this section is a class
43 5 felony.

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1 C. A violation of subsection A, paragraph 2 of this section is a class
2 6 felony.
3 Sec. 20. Section 13-1804, Arizona Revised Statutes, is amended to
4 read:

13-1804. Theft by extortion; classification

A. A person commits theft by extortion by knowingly obtaining or seeking to obtain property or services by means of a threat to do in the future any of the following:

1. Cause physical injury to anyone by means of a deadly weapon or dangerous instrument.

2. Cause physical injury to anyone except as provided in paragraph 1 OF THIS SUBSECTION.

3. Cause damage to property.

4. Engage in other conduct constituting an offense.

5. Accuse anyone of a crime or bring criminal charges against anyone.

6. Expose a secret or an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule or to impair ~~his~~ THE PERSON'S credit or business.

7. Take or withhold action as a public servant or cause a public servant to take or withhold action.

~~8. Perform or cause to be performed any other act which would not in itself materially benefit the defendant but which is calculated to harm another person materially with respect to his wealth, safety, business calling, career, financial condition, reputation or personal relationships.~~

8. CAUSE ANYONE TO PART WITH ANY PROPERTY.

B. IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER SUBSECTION A, PARAGRAPH 5, 6 OR 7 THAT THE PROPERTY OBTAINED BY THREAT OF THE ACCUSATION, EXPOSURE, LAWSUIT OR OTHER INVOCATION OF OFFICIAL ACTION WAS LAWFULLY CLAIMED EITHER AS:

1. RESTITUTION OR INDEMNIFICATION FOR HARM DONE UNDER CIRCUMSTANCES TO WHICH THE ACCUSATION, EXPOSURE, LAWSUIT OR OTHER OFFICIAL ACTION RELATES.

2. COMPENSATION FOR PROPERTY THAT WAS LAWFULLY OBTAINED OR FOR LAWFUL SERVICES.

~~B.~~ C. Theft by extortion, as defined in subsection A, paragraph 1 is a class 2 felony. Otherwise, theft by extortion is a class 4 felony.

Sec. 21. Title 13, chapter 24, Arizona Revised Statutes, is amended by adding section 13-2401, to read:

13-2401. Peace officer personal information on the world wide web; classification; exception; definitions

A. IT IS UNLAWFUL FOR A PERSON TO KNOWINGLY MAKE AVAILABLE ON THE WORLD WIDE WEB THE PERSONAL INFORMATION OF A PEACE OFFICER IF THE DISSEMINATION OF THE PERSONAL INFORMATION POSES AN IMMINENT AND SERIOUS THREAT TO THE PEACE OFFICER'S SAFETY OR THE SAFETY OF THE PEACE OFFICER'S IMMEDIATE FAMILY AND THE THREAT IS REASONABLY APPARENT TO THE PERSON MAKING THE INFORMATION AVAILABLE ON THE WORLD WIDE WEB TO BE SERIOUS AND IMMINENT.

B. A VIOLATION OF SUBSECTION A IS A CLASS 5 FELONY.

1 C. IT IS NOT A VIOLATION OF THIS SECTION IF AN EMPLOYEE OF A COUNTY
2 RECORDER, COUNTY TREASURER OR COUNTY ASSESSOR PUBLISHES PERSONAL INFORMATION,
3 IN GOOD FAITH, ON THE WEB SITE OF THE COUNTY RECORDER, COUNTY TREASURER OR
4 COUNTY ASSESSOR IN THE ORDINARY COURSE OF CARRYING OUT ITS PUBLIC FUNCTIONS.

5 D. FOR THE PURPOSES OF THIS SECTION:

6 1. "IMMEDIATE FAMILY" MEANS A PEACE OFFICER'S SPOUSE, CHILD OR PARENT
7 AND ANY BLOOD RELATIVE WHO LIVES IN THE SAME RESIDENCE AS THE PEACE OFFICER.

8 2. "PERSONAL INFORMATION" MEANS A PEACE OFFICER'S HOME ADDRESS, HOME
9 TELEPHONE NUMBER, PAGER NUMBER, PERSONAL PHOTOGRAPH, DIRECTIONS TO A PEACE
10 OFFICER'S HOME OR PHOTOGRAPHS OF A PEACE OFFICER'S HOME OR VEHICLE.

11 Sec. 22. Section 13-2917, Arizona Revised Statutes, is amended to
12 read:

13 13-2917. Public nuisance; abatement; classification

14 A. IT IS A PUBLIC NUISANCE, AND IS NO LESS A NUISANCE BECAUSE THE
15 EXTENT OF THE ANNOYANCE OR DAMAGE INFLICTED IS UNEQUAL, FOR anything ~~which~~
16 ~~is:~~

17 1. TO BE injurious to health, ~~or is~~ indecent, ~~or~~ offensive to the
18 senses, ~~or~~ an obstruction to the free use of property, ~~so as to interfere~~
19 THAT INTERFERES with the comfortable enjoyment of life or property by an
20 entire community or neighborhood, ~~or~~ by a considerable number of persons,
21 ~~or which.~~

22 2. TO unlawfully ~~obstructs~~ OBSTRUCT the free passage or use, in the
23 customary manner, of any navigable lake, river, bay, stream, canal or basin,
24 or any public park, square, street or highway, ~~is a public nuisance, and is~~
25 ~~no less a nuisance because the extent of the annoyance or damage inflicted~~
26 ~~is unequal.~~

27 B. It is a public nuisance for any person to sell, offer to sell,
28 transfer, trade or disseminate any item which is obscene as defined ~~by~~ IN
29 section 13-3501, within two thousand feet, measured in a straight line, of
30 the nearest boundary line of any OF THE FOLLOWING:

31 1. ANY building used as a private or public elementary or high
32 school, ~~or.~~

33 2. Any public park, ~~or of.~~

34 3. Any residence district as defined ~~by~~ IN section 28-101.

35 C. THE COUNTY ATTORNEY, THE ATTORNEY GENERAL OR THE CITY ATTORNEY MAY
36 BRING AN ACTION IN SUPERIOR COURT TO ABATE, ENJOIN AND PREVENT THE ACTIVITY
37 DESCRIBED IN SUBSECTIONS A AND B OF THIS SECTION.

38 ~~C.~~ D. Any person who knowingly maintains or commits a public nuisance
39 or who knowingly fails or refuses to perform any legal duty relating to the
40 removal of a public nuisance is guilty of a class 2 misdemeanor.

41 Sec. 23. Section 13-2924, Arizona Revised Statutes, is amended to
42 read:

1 13-2924. Unlawful solicitation of tort victims: classification:
2 definitions

3 A. Except as otherwise provided by law, a person commits unlawful
4 solicitation of a tort victim if the person knowingly does any of the
5 following at the scene of any accident that may result in a civil action,
6 criminal action or claim for tort damages by or against another person:

7 1. Solicits a tort victim if the person receives or expects to receive
8 compensation as a result of the solicitation.

9 2. Offers or provides compensation to another person for the
10 solicitation of a tort victim.

11 3. Requests or accepts compensation for the solicitation of a tort
12 victim.

13 B. This section does not prohibit or restrict any of the following:

14 1. The solicitation of motor vehicle repair or storage services by a
15 towing company.

16 2. Police, fire or emergency medical personnel who are engaged in
17 activity which is within the normal scope of duty for their respective
18 occupation or profession.

19 3. The tort victim from communicating with ~~their~~ THE TORT VICTIM'S
20 insurer regarding the investigation of a claim or settlement of any property
21 damage claim.

22 C. The tort victim may void any contract, agreement or obligation that
23 is made, obtained, procured or incurred in violation of this section.

24 D. A person who violates this section is guilty of a class 1
25 misdemeanor.

26 E. For the purposes of this section:

27 1. "Compensation" means the direct or indirect promise or payment of
28 any fee, salary, wage, commission, bonus, rebate, refund, dividend or
29 discount.

30 2. "Solicit" or "solicitation" means directly or indirectly either:

31 (a) Touting, promoting, recommending, suggesting or offering services
32 or goods to a tort victim.

33 (b) Selecting, obtaining or procuring services or goods for a tort
34 victim.

35 3. "Tort victim" means any of the following:

36 (a) A person whose property has been damaged as a result of any
37 accident ~~or other incident~~ that may result in a civil action, criminal action
38 or claim for tort damages by or against another person.

39 (b) A person who has been injured or killed as a result of any
40 accident ~~or other incident~~ that may result in a civil action, criminal action
41 or claim for tort damages by or against another person.

42 (c) A parent, guardian, spouse, sibling or child of a person who has
43 died as a result of any accident ~~or other incident~~ that may result in a civil

1 action, criminal action or claim for tort damages by or against another
2 person.

3 Sec. 24. Title 13, chapter 31, Arizona Revised Statutes, is amended
4 by adding section 13-3116, to read:

5 13-3116. Misconduct involving body armor; classification;
6 definition

7 A. A PERSON COMMITS MISCONDUCT INVOLVING BODY ARMOR BY KNOWINGLY
8 WEARING OR OTHERWISE USING BODY ARMOR DURING THE COMMISSION OF ANY FELONY
9 OFFENSE.

10 B. MISCONDUCT INVOLVING BODY ARMOR IS A CLASS 4 FELONY.

11 C. FOR PURPOSES OF THIS SECTION, "BODY ARMOR" MEANS ANY CLOTHING OR
12 EQUIPMENT DESIGNED IN WHOLE OR IN PART TO MINIMIZE THE RISK OF INJURY FROM
13 A DEADLY WEAPON.

14 Sec. 25. Section 13-3411, Arizona Revised Statutes, is amended to
15 read:

16 13-3411. Possession, use or sale of marijuana, peyote,
17 prescription drugs, dangerous drugs or narcotic
18 drugs or manufacture of dangerous drugs in a drug
19 free school zone; violation; classification;
20 definitions

21 A. ~~Any of the following are~~ IT IS unlawful FOR A PERSON TO DO ANY OF
22 THE FOLLOWING:

23 1. ~~For a person to~~ Intentionally be present in a drug free school zone
24 to sell OR TRANSFER marijuana, peyote, prescription-only drugs, dangerous
25 drugs or narcotic drugs.

26 2. ~~For a person to~~ Possess or use marijuana, peyote, dangerous drugs
27 or narcotic drugs in a drug free school zone.

28 3. ~~For a person to~~ Manufacture dangerous drugs in a drug free school
29 zone.

30 B. A person who violates subsection A of this section is guilty of the
31 same class of felony that the person would otherwise be guilty of had the
32 violation not occurred within a drug free school zone, but the minimum,
33 maximum and presumptive sentence for that violation shall be increased by one
34 year. A person convicted of violating subsection A of this section shall IS
35 not be eligible for suspension of sentence, probation, pardon or release from
36 confinement on any basis except pursuant to section 31-233, subsection A or
37 B until the sentence imposed by the court has been served or commuted. The
38 additional sentence imposed under this subsection is in addition to any
39 enhanced punishment that may be applicable under section 13-604 or other
40 provisions of this chapter.

41 C. In addition to any other penalty prescribed by this title, the
42 court shall order a person convicted of a violation of this section to pay
43 a fine of not less than two thousand dollars or three times the value as

1 determined by the court of the drugs involved in or giving rise to the
2 charge, whichever is greater, and not more than the maximum authorized by
3 chapter 8 of this title. A judge shall not suspend any part or all of the
4 imposition of any fine required by this subsection.

5 D. Each school district's governing board or its designee, or **THE**
6 chief administrative officer in the case of a nonpublic school, shall place
7 and maintain permanently affixed signs located in a visible manner at the
8 main entrance of each school that identifies the school and its accompanying
9 grounds as a drug free school zone.

10 E. The drug free school zone map prepared pursuant to title 15 shall
11 constitute an official record as to the location and boundaries of each drug
12 free school zone. The school district's governing board or its designee, or
13 the chief administrative officer in the case of any nonpublic school, shall
14 promptly notify the county attorney of any changes in the location and
15 boundaries of any school property and shall file with the county recorder the
16 original map prepared pursuant to title 15.

17 F. All school personnel who observe a violation of this section shall
18 immediately report the violation to a school administrator. The
19 administrator shall immediately report the violation to a peace officer. It
20 is unlawful for any school personnel or school administrator to fail to
21 report a violation as prescribed in this section.

22 G. School personnel having custody or control of school records of a
23 student involved in an alleged violation of this section shall make the
24 records available to a peace officer upon written request signed by a
25 magistrate. Records disclosed pursuant to this subsection are confidential
26 and may be used only in a judicial or administrative proceeding. A person
27 furnishing records required under this subsection or a person participating
28 in a judicial or administrative proceeding or investigation resulting from
29 the furnishing of records required under this subsection ~~shall be~~ **IS** immune
30 from **any** civil or criminal liability by reason of such action unless the
31 person acted with malice.

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

34 I. For purposes of this section:

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

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

41 Sec. 26. Section 13-3419, Arizona Revised Statutes, is amended to
42 read:

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

A. Except for a person convicted of possession offenses pursuant to section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A, paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is convicted of two or more offenses under this chapter that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions as defined in section 13-604, ~~subsection U, paragraph 1~~ shall be sentenced for the second or subsequent offense pursuant to this section. The person shall not be 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, except that a person sentenced pursuant to paragraph 1 of this subsection shall be eligible for probation. The presumptive term for ~~paragraphs~~ PARAGRAPH 1 through, 2, 3 OR 4 of this subsection may be aggravated within the range under this section pursuant to section 13-702, subsections B, C and D. The presumptive term for paragraph 1, 2 or 3 of this subsection may be mitigated within the range under this section pursuant to section 13-702, subsections B, C and D. The terms are as follows:

1. For two offenses for which the aggregate amount of drugs involved in one offense or both of the offenses is less than the statutory 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	.75 years	1.5 years	2 years

2. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses is less than the 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	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

3. For two offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory 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

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	1.5 years	2.5 years	3 years
Class 5	9 months	1.5 years	2 years

4. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the 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	2.5 years	4 years

B. For offenders sentenced pursuant to subsection A, paragraphs 1 through 4 of this section the court may increase the maximum sentence otherwise authorized by up to twenty-five per cent.

C. For offenders sentenced pursuant to subsection A, paragraph 1, 2 or 3 of this section the court may decrease the minimum sentence otherwise authorized by up to twenty-five per cent.

D. If the court increases or decreases a sentence pursuant to this section, the court shall state on the record the reasons for the increase or decrease.

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

Sec. 27. Section 13-3551, Arizona Revised Statutes, is amended to read:

13-3551. Definitions

In this chapter, unless the context otherwise requires:

1. "Exploitive exhibition" means the actual or simulated exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

2. "Producing" means financing, directing, manufacturing, issuing, publishing or advertising for pecuniary gain.

3. "Sexual conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.

(b) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(c) Sexual bestiality.

(d) Masturbation, for the purpose of sexual stimulation of the viewer.

(e) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

1 (f) Defecation or urination for the purpose of sexual stimulation of
2 the viewer.

3 4. "Simulated" means any depicting of the genitals or rectal areas
4 which gives the appearance of sexual conduct or incipient sexual conduct.

5 ~~5. "Visual or print medium" means:~~

6 ~~(a) Any film, photograph, videotape, negative, slide, compact or laser~~
7 ~~disc, computer diskette or computer tape; or~~

8 ~~(b) Any book, magazine or other form of publication or photographic~~
9 ~~reproduction containing or incorporating in any manner any film, photograph,~~
10 ~~videotape, negative, slide or computer generated image of a minor.~~

11 5. "VISUAL DEPICTION" INCLUDES EACH VISUAL IMAGE THAT IS CONTAINED IN
12 AN UNDEVELOPED FILM, VIDEOTAPE OR PHOTOGRAPH OR DATA STORED IN ANY FORM AND
13 THAT IS CAPABLE OF CONVERSION INTO A VISUAL IMAGE.

14 Sec. 28. Section 13-3552, Arizona Revised Statutes, is amended to
15 read:

16 13-3552. Commercial sexual exploitation of a minor;
17 classification

18 A. A person commits commercial sexual exploitation of a minor by
19 knowingly:

20 1. Using, employing, persuading, enticing, inducing or coercing a
21 minor to engage in or assist others to engage in exploitive exhibition or
22 other sexual conduct for the purpose of producing any visual, ~~electronic or~~
23 ~~print medium~~ DEPICTION or live act depicting such conduct.

24 2. Using, employing, persuading, enticing, inducing or coercing a
25 minor to expose the genitals or anus or the areola or nipple of the female
26 breast for financial or commercial gain.

27 3. Permitting a minor under such person's custody or control to engage
28 in or assist others to engage in exploitive exhibition or other sexual
29 conduct for the purpose of producing any visual ~~or print medium~~ DEPICTION or
30 live act depicting such conduct.

31 4. Transporting or financing the transportation of any minor through
32 or across this state with the intent that ~~such~~ THE minor engage in
33 prostitution, exploitive exhibition or other sexual conduct for the purpose
34 of producing a visual ~~or print medium~~ DEPICTION or live act depicting such
35 conduct.

36 B. Commercial sexual exploitation of a minor is a class 2 felony and
37 if the minor is under fifteen years of age it is punishable pursuant to
38 section 13-604.01.

39 Sec. 29. Section 13-3553, Arizona Revised Statutes, is amended to
40 read:

41 13-3553. Sexual exploitation of a minor; classification

42 A. A person commits sexual exploitation of a minor by knowingly:

1 1. Recording, filming, photographing, developing or duplicating any
2 visual ~~or print medium~~ DEPICTION in which minors are engaged in exploitive
3 exhibition or other sexual conduct.

4 2. Distributing, transporting, exhibiting, receiving, selling,
5 purchasing, electronically transmitting, possessing or exchanging any visual
6 ~~or print medium~~ DEPICTION in which minors are engaged in exploitive
7 exhibition or other sexual conduct.

8 B. Sexual exploitation of a minor is a class 2 felony and if the minor
9 is under fifteen years of age it is punishable pursuant to section 13-604.01.

10 Sec. 30. Section 13-3554, Arizona Revised Statutes, is amended to
11 read:

12 13-3554. Portraying adult as minor; classification

13 A. It is unlawful for any person depicted in a visual ~~or print medium~~
14 DEPICTION or live act as a participant in ANY EXPLOITIVE EXHIBITION OR sexual
15 conduct to masquerade as a minor.

16 B. It is unlawful for any person knowingly to produce, record, film,
17 photograph, develop, duplicate, distribute, transport, exhibit,
18 electronically transmit, sell, purchase or exchange any visual ~~or print~~
19 ~~medium~~ DEPICTION whose text, title or visual representation depicts a
20 participant in ANY EXPLOITIVE EXHIBITION OR sexual conduct as a minor even
21 though any such participant is an adult.

22 C. Any person who violates this section is guilty of a class 1
23 misdemeanor.

24 Sec. 31. Section 13-3555, Arizona Revised Statutes, is amended to
25 read:

26 13-3555. Permissible inferences

27 In a prosecution relating to the sexual exploitation of children, the
28 trier of fact may draw the inference that a participant is a minor if the
29 visual ~~or print medium~~ DEPICTION or live act through its title, text or
30 visual representation depicts the participant as a minor.

31 Sec. 32. Section 13-3821, Arizona Revised Statutes, is amended to
32 read:

33 13-3821. Persons required to register; procedure;
34 identification card

35 A. A person who has been convicted of a violation or attempted
36 violation of any of the following offenses or who has been convicted of an
37 offense committed in another jurisdiction which if committed in this state
38 would be a violation or attempted violation of any of the following offenses
39 shall, within ten days after the conviction or within ten days after entering
40 and remaining in any county of this state, register with the sheriff of that
41 county:

1 1. Unlawful imprisonment pursuant to section 13-1303 if the victim is
2 under eighteen years of age and the unlawful imprisonment was not committed
3 by the child's parent.

4 2. Kidnapping pursuant to section 13-1304 if the victim is under
5 eighteen years of age and the kidnapping was not committed by the child's
6 parent.

7 3. Sexual abuse pursuant to section 13-1404 if the victim is under
8 eighteen years of age.

9 4. Sexual conduct with a minor pursuant to section 13-1405.

10 5. Sexual assault pursuant to section 13-1406.

11 6. Sexual assault of a spouse pursuant to section 13-1406.01.

12 7. Molestation of a child pursuant to section 13-1410.

13 8. Continuous sexual abuse of a child pursuant to section 13-1417.

14 9. Taking a child for the purpose of prostitution pursuant to section
15 13-3206.

16 10. Child prostitution pursuant to section 13-3212.

17 11. Commercial sexual exploitation of a minor pursuant to section
18 13-3552.

19 12. Sexual exploitation of a minor pursuant to section 13-3553.

20 13. A second or subsequent violation of indecent exposure to a person
21 under the age of fifteen years pursuant to section 13-1402, subsection B.

22 14. A second or subsequent violation of public sexual indecency to a
23 minor under the age of fifteen years pursuant to section 13-1403,
24 subsection B.

25 15. A third or subsequent violation of indecent exposure pursuant to
26 section 13-1402.

27 16. A third or subsequent violation of public sexual indecency pursuant
28 to section 13-1403.

29 17. A violation of section 13-3822 or 13-3824.

30 B. Notwithstanding subsection A of this section, the judge who
31 sentences a defendant for any violation of chapter 14 or 35.1 of this title
32 or for an offense for which there was a finding of sexual motivation pursuant
33 to section 13-118 may require the person who committed the offense to
34 register pursuant to this section.

35 C. The court may require a person who has been adjudicated delinquent
36 for an act that would constitute an offense specified in subsection A or B
37 of this section to register pursuant to this section. Any duty to register
38 under this subsection shall terminate when the person reaches the age of
39 twenty-five.

40 D. At the time of registering, the person shall sign a statement in
41 writing giving such information as required by the director of the department
42 of public safety, including all names by which the person is known. The
43 sheriff shall fingerprint and photograph the person and within three days
44 thereafter shall send copies of the statement, fingerprints and photographs

1 to the criminal identification section within the department of public safety
2 and the chief of police, if any, of the place where the person resides.

3 E. Upon the person's initial registration and every year after the
4 person's initial registration, the person shall obtain a nonoperating
5 identification license or a driver license from the motor vehicle division
6 in the department of transportation. Notwithstanding ~~section~~ **SECTIONS**
7 **28-3165 AND** 28-3171, the license shall be valid for one year from the date
8 of issuance, and the person shall submit to the department of transportation
9 proof of the person's address. The motor vehicle division shall make a copy
10 of the photograph available to the criminal identification section of the
11 department of public safety or to any law enforcement agency.

12 F. Except as provided in subsection G, the clerk of the superior court
13 in the county in which a person has been convicted of a violation of any
14 offense listed under subsection A of this section or has been ordered to
15 register pursuant to subsection B or C of this section shall notify the
16 sheriff in that county of the conviction within ten days after entry of the
17 judgment.

18 G. Within ten days after entry of judgment, a court not of record
19 shall notify the arresting law enforcement agency of an offender's conviction
20 of a violation of section 13-1402. Within ten days after receiving this
21 information, the law enforcement agency shall determine if the offender is
22 required to register pursuant to this section. If the law enforcement agency
23 determines that the offender is required to register, the law enforcement
24 agency shall provide the information required by section 13-3825 to the
25 department of public safety and shall make community notification as required
26 by law.

27 H. A person who is required to register pursuant to this section
28 because of a conviction for the unlawful imprisonment of a minor or the
29 kidnapping of a minor is required to register, absent additional or
30 subsequent convictions, for a period of ten years from the date that the
31 person is released from prison, jail, probation, community supervision or
32 parole and the person has fulfilled all restitution obligations.

33 Sec. 33. Section 13-3827, Arizona Revised Statutes, is amended to
34 read:

35 13-3827. Internet sex offender web site; investigation of
36 records; immunity

37 A. The department of public safety shall establish and maintain an
38 internet sex offender web site for offenders whose risk assessment has been
39 determined to be a level ~~2~~ **TWO** or level ~~3~~ **THREE**. The purpose of the
40 internet sex offender web site is to provide sex offender information to the
41 public.

1 B. The internet sex offender web site shall include **THE FOLLOWING**
2 **INFORMATION** for each convicted sex offender in this state who is required to
3 register pursuant to section 13-3821:

4 1. **THE OFFENDER'S** name, address and date of birth.

5 2. A current photograph.

6 3. The offense committed and notification level pursuant to section
7 13-3826, subsection E, if a risk assessment has been completed pursuant to
8 section 13-3825.

9 C. The department of public safety shall annually update on the web
10 site the name, address and photograph of each sex offender.

11 D. The motor vehicle division of the department of transportation
12 shall send copies of each sex offender's nonoperating identification license
13 or driver license photograph to the department of public safety for inclusion
14 on the sex offender web site.

15 E. Before including the address of a sex offender on the web site, the
16 department of public safety shall confirm that the address is correct. To
17 confirm a sex offender's address, the department shall conduct a search of
18 the Arizona criminal justice information system. If this search does not
19 provide the necessary confirmation, the department shall use alternative
20 public and private sector resources that are currently used for criminal
21 investigation purposes to confirm the address. The department of public
22 safety is prohibited from using or releasing the information from the
23 alternative public and private sector resources except pursuant to this
24 section. A custodian or public or private sector resource that releases
25 information pursuant to this subsection is not civilly or criminally liable
26 in any action alleging a violation of confidentiality.

27 F. The department of public safety may petition the superior court for
28 enforcement of **SUBSECTION E OF** this section if a public or private sector
29 resource refuses to comply. The court shall grant enforcement if the
30 department has reasonable grounds to believe the records sought to be
31 inspected are relevant to confirming the identity and address of a sex
32 offender.

33 **G. A PERSON WHO PROVIDES OR FAILS TO PROVIDE INFORMATION REQUIRED BY**
34 **THIS SECTION IS NOT CIVILLY OR CRIMINALLY LIABLE UNLESS THE ACT OR OMISSION**
35 **IS WANTON OR WILFUL.**

36 Sec. 34. Repeal

37 Section **13-3828**, Arizona Revised Statutes, is repealed.

38 Sec. 35. Section 13-3905, Arizona Revised Statutes, is amended to
39 read:

40 **13-3905. Detention for obtaining evidence of identifying**
41 **physical characteristics**

42 A. A peace officer who is engaged, within the scope of ~~his~~ **THE**
43 **OFFICER'S** authority, in the investigation of ~~an alleged criminal offense~~

1 ~~punishable by at least one year in the state prison,~~ A FELONY may make
2 written application upon oath or affirmation to a magistrate for an order
3 authorizing the temporary detention, for the purpose of obtaining evidence
4 of identifying physical characteristics, of an identified or particularly
5 described individual residing in or found in the jurisdiction over which the
6 magistrate presides. The order shall require the presence of the identified
7 or particularly described individual at such time and place as the court
8 shall direct for obtaining the identifying physical characteristic evidence.

9 ~~Such order may be issued by~~ The magistrate ~~upon~~ MAY ISSUE THE ORDER ON a
10 showing of all of the following:

11 1. Reasonable cause for belief that a ~~specifically described criminal~~
12 ~~offense punishable by at least one year in the state prison~~ FELONY has been
13 committed.

14 2. Procurement of evidence of identifying physical characteristics
15 from an identified or particularly described individual may contribute to the
16 identification of the individual who committed such offense.

17 3. ~~Such~~ THE evidence cannot otherwise be obtained by the investigating
18 officer from either the law enforcement agency employing the affiant or the
19 criminal identification division of the ~~Arizona~~ department of public safety.

20 B. Any order issued pursuant to ~~the provisions of~~ this section shall
21 specify the following:

22 1. The alleged criminal offense which is the subject of the
23 application.

24 2. The specific type of identifying physical characteristic evidence
25 which is sought.

26 3. The relevance of ~~such~~ THE evidence to the particular investigation.

27 4. The identity or description of the individual who ~~may~~ IS TO be
28 detained for obtaining ~~such~~ THE evidence.

29 5. The name and official status of the investigative officer
30 authorized to ~~effectuate such detention~~ DETAIN THE INDIVIDUAL and obtain ~~such~~
31 THE evidence.

32 6. The place at which ~~the obtaining of such~~ THE evidence ~~shall be~~
33 ~~effectuated~~ WILL BE OBTAINED.

34 7. The time that ~~such~~ THE evidence shall be taken, except that no
35 person may be detained for a period of more than three hours for the purpose
36 of taking ~~such~~ evidence.

37 8. The period of time, not exceeding fifteen days, during which the
38 order shall continue in force and effect. If the order is not executed
39 within fifteen days ~~AND IS NOT EXTENDED BY THE MAGISTRATE~~, a new order may
40 be issued, pursuant to ~~the provisions of~~ this section. ~~THE MAGISTRATE MAY~~
41 ~~EXTEND THE TIME FOR EXECUTION OF THE ORDER FOR NO LONGER THAN FIFTEEN DAYS.~~

42 C. The order issued pursuant to this section shall be returned to the
43 court not later than thirty days after its date of issuance and shall be

1 accompanied by a sworn statement indicating the type of evidence taken. The
2 court shall give to the person from whom ~~such~~ THE evidence was taken a copy
3 of the order and a copy of the sworn statement indicating what type of
4 evidence was taken, if any.

5 D. IN LIEU OF, OR IN ADDITION TO, A WRITTEN APPLICATION AS PROVIDED
6 IN SUBSECTION A, THE MAGISTRATE MAY TAKE AN ORAL STATEMENT UNDER OATH WHICH
7 SHALL BE RECORDED ON TAPE, WIRE OR OTHER COMPARABLE METHOD. THIS STATEMENT
8 MAY BE GIVEN IN PERSON TO A MAGISTRATE OR BY TELEPHONE, RADIO OR OTHER MEANS
9 OF ELECTRONIC COMMUNICATION. THIS STATEMENT IS DEEMED AN APPLICATION FOR THE
10 PURPOSE OF ISSUANCE OF AN ORDER AUTHORIZING THE TEMPORARY DETENTION FOR THE
11 PURPOSE OF OBTAINING EVIDENCE OF IDENTIFYING PHYSICAL CHARACTERISTICS. IF
12 A RECORDING OF THE SWORN STATEMENT IS MADE, THE STATEMENT SHALL BE
13 TRANSCRIBED AT THE REQUEST OF THE COURT OR EITHER PARTY AND CERTIFIED BY THE
14 MAGISTRATE AND FILED WITH THE COURT.

15 E. THE MAGISTRATE MAY ORALLY AUTHORIZE A PEACE OFFICER TO SIGN THE
16 MAGISTRATE'S NAME ON AN APPLICATION IF THE PEACE OFFICER APPLYING FOR THE
17 APPLICATION IS NOT IN THE PRESENCE OF THE MAGISTRATE. THE APPLICATION SHALL
18 BE CALLED A DUPLICATE ORIGINAL APPLICATION AND SHALL BE DEEMED AN APPLICATION
19 FOR THE PURPOSE OF THIS SECTION. IN SUCH CASES THE MAGISTRATE SHALL CAUSE
20 TO BE MADE AN ORIGINAL APPLICATION AND SHALL ENTER THE EXACT TIME OF THE
21 ISSUANCE OF THE DUPLICATE APPLICATION ON THE FACE OF THE ORIGINAL
22 APPLICATION. ON THE RETURN OF THE DUPLICATE ORIGINAL APPLICATION, THE
23 MAGISTRATE SHALL FILE THE ORIGINAL APPLICATION AND THE DUPLICATE ORIGINAL
24 APPLICATION AS PROVIDED FOR IN THIS SECTION.

25 F. A MAGISTRATE MAY AFFIX THE MAGISTRATE'S SIGNATURE ON A
26 TELEFACSIMILE OF AN ORIGINAL APPLICATION. THE TELEFACSIMILE OF THE ORIGINAL
27 APPLICATION IS DEEMED TO BE AN APPLICATION FOR THE PURPOSES OF THIS SECTION.
28 ON RETURN OF THE TELEFACSIMILE OF THE ORIGINAL APPLICATION, THE MAGISTRATE
29 SHALL FILE THE ORIGINAL APPLICATION AND THE TELEFACSIMILE OF THE ORIGINAL
30 APPLICATION AS PROVIDED IN THIS SECTION.

31 ~~D.~~ G. For the purposes of this section, "identifying physical
32 characteristics" includes, but is not limited to, the fingerprints, palm
33 prints, footprints, measurements, handwriting, handprinting, sound of voice,
34 blood samples, urine samples, saliva samples, hair samples, comparative
35 personal appearance, ~~or~~ or photographs of an individual.

36 Sec. 36. Section 13-3914, Arizona Revised Statutes, is amended to
37 read:

38 13-3914. Examination on oath; affidavits

39 A. ~~The magistrate may,~~ Before issuing ~~the~~ A warrant, THE MAGISTRATE
40 MAY examine on oath the person or persons, ~~seeking~~ the warrant, and any
41 witnesses produced, and must take his affidavit, or their affidavits, in
42 writing, ~~and~~ and cause the ~~same~~ AFFIDAVIT to be subscribed by the party or
43 parties making the affidavit. ~~The magistrate may also,~~ Before issuing the

1 warrant, **THE MAGISTRATE MAY ALSO** examine any other sworn affidavit submitted
2 to him which sets forth facts tending to establish probable cause for the
3 issuance of the warrant.

4 B. The affidavit or affidavits must set forth the facts tending to
5 establish the grounds of the application, or probable cause for believing
6 ~~they~~ **THE GROUNDS** exist.

7 C. In lieu of, or in addition to, a written affidavit, or affidavits,
8 as provided in subsection A, the magistrate may take an oral statement under
9 oath which shall be recorded on tape, wire,~~—~~ or other comparable method.
10 This statement may be given in person to the magistrate,~~—~~ or by telephone,
11 radio,~~—~~ or other means of electronic communication. This statement ~~shall be~~
12 **IS** deemed to be an affidavit for the purposes of issuance of a search
13 warrant. ~~In such cases~~ If a recording of the sworn statement ~~has been made,~~
14 ~~the magistrate shall direct that~~ **IS MADE**, the statement **SHALL** be transcribed
15 **AT THE REQUEST OF THE COURT OR EITHER PARTY** and certified by the magistrate
16 and filed with the court.

17 Sec. 37. Section 13-3918, Arizona Revised Statutes, is amended to
18 read:

19 **13-3918. Time of execution and return**

20 A. A search warrant shall be executed and returned to ~~the issuing~~ **A**
21 magistrate within five days after its date. Upon expiration of that time,
22 the warrant, unless it is executed or unless the time is extended by a
23 magistrate, is void. The time for execution and return of the warrant may
24 be extended for no longer than five days. The documents and records of the
25 court relating to the search warrant need not be open to the public until the
26 execution and return of the warrant or the expiration of the five day period
27 after issuance. Thereafter, if the warrant has been served, such documents
28 and records shall be open to the public as a judicial record.

29 B. If a duplicate original search warrant has been executed, the peace
30 officer who executed the warrant shall enter the exact time of its execution
31 on its face.

32 Sec. 38. **Repeal**

33 Section **13-3973**, Arizona Revised Statutes, is repealed.

34 Sec. 39. Section 13-3974, Arizona Revised Statutes, is amended to
35 read:

36 **13-3974. Exoneration of appearance bond**

37 ~~A.~~ A surety may be relieved from liability on an appearance bond if
38 the surety~~:-~~

39 ~~1.~~ surrenders the defendant into the custody of the sheriff of the
40 county in which the prosecution is pending and the sheriff reports the
41 surrender to the court.

42 ~~2. Delivers to the sheriff of the county in which the prosecution is~~
43 ~~pending an affidavit which states that the defendant is in the custody of the~~

1 ~~federal government, this or any other state or any county of this or any~~
2 ~~other state. On receipt of the affidavit, the sheriff shall confirm the~~
3 ~~custodial status of the defendant and shall report this status to the court.~~

4 ~~B. Upon report by the sheriff as provided in this section, the court~~
5 ~~may exonerate the bond and discharge the surety from further liability on the~~
6 ~~bond.~~

7 Sec. 40. Section 13-3989.01, Arizona Revised Statutes, is amended to
8 read:

9 13-3989.01. Admissibility; 911 emergency service records and
10 recordings; definition

11 A. The records and recordings of 911 emergency service telephone calls
12 are admissible in evidence in any action without testimony from a custodian
13 of records if the records and recordings are accompanied by the following
14 signed form:

15 The accompanying records and recordings and explanatory
16 material are from the (name of agency) ~~pubic~~ PUBLIC safety
17 answering point communications facility. This form authenticates
18 (number) pages. This form authenticates (number) tapes. These
19 documents and tapes pertain to: case number _____,
20 department report number _____, call receipt date
21 and time _____, caller name _____,
22 call origination location address _____,
23 originating telephone number _____, dispatch
24 time _____, arrival time _____.

25 Signed: _____ Custodian of records.

26 B. 911 emergency records and recordings and any copies of the records
27 and recordings that comply with subsection A of this section are deemed to
28 be authenticated pursuant to rule 901(b)(10) of the Arizona rules of
29 evidence.

30 C. Nothing in this section affects the confidentiality of medical
31 records as provided in section 12-2292.

32 D. For the purposes of this section, "records and recordings" includes
33 telephone calls, data compilation from and copies of 911 emergency records
34 and recordings and accompanying explanatory materials.

35 Sec. 41. Section 13-4041, Arizona Revised Statutes, is amended to
36 read:

37 13-4041. Fee of counsel assigned in criminal proceeding or
38 insanity hearing on appeal or in post-conviction
39 relief proceedings; reimbursement; definitions

40 A. Except pursuant to subsection G of this section, if counsel is
41 appointed by the court to represent the defendant in either a criminal
42 proceeding or insanity hearing on appeal, ~~counsel shall be paid by~~ the county
43 in which the court from which the appeal is taken presides, ~~provided~~ SHALL

1 PAY COUNSEL, EXCEPT that in those appeals where the defendant is represented
2 by a public defender or other publicly funded office, ~~no~~ compensation shall
3 NOT be set or paid. Compensation for ~~such~~ services rendered on appeal shall
4 be ~~such~~ IN AN amount as the supreme court in its discretion deems reasonable,
5 considering the services performed.

6 B. After the ~~mandate affirming~~ SUPREME COURT HAS AFFIRMED a
7 defendant's conviction and sentence in a capital case ~~is issued~~, the supreme
8 court, or if authorized by the supreme court, the presiding judge of the
9 county from which the case originated shall appoint counsel to represent the
10 capital defendant in the state post-conviction relief proceeding. Counsel
11 shall meet the following qualifications:

12 1. ~~Has been a member~~ MEMBERSHIP in good standing of the state bar of
13 Arizona for at least five years immediately preceding the appointment.

14 2. ~~Has practiced~~ PRACTICE in the area of state criminal appeals or
15 post-conviction proceedings for at least three years immediately preceding
16 the appointment.

17 3. ~~Did not previously represent~~ NO PREVIOUS REPRESENTATION OF the
18 capital defendant in the case either in the trial court or in the direct
19 appeal, unless the defendant and counsel expressly request continued
20 representation and waive all potential issues that are foreclosed by
21 continued representation.

22 C. ~~By January 1, 1997,~~ The supreme court shall establish and maintain
23 a list of qualified candidates. In addition to the qualifications prescribed
24 in subsection B of this section, the supreme court may establish by rule more
25 stringent standards of competency for the appointment of post-conviction
26 counsel in capital cases. The supreme court may refuse to certify an
27 attorney on the list who meets the qualifications established under
28 subsection B of this section or may remove an attorney from the list who
29 meets the qualifications established under subsection B of this section if
30 the supreme court determines that the attorney is incapable or unable to
31 adequately represent a capital defendant. The court shall appoint counsel
32 pursuant to subsection B of this section from the list.

33 D. Notwithstanding subsection C of this section, the court may appoint
34 counsel pursuant to subsection B of this section from outside the list of
35 qualified candidates if either:

36 1. No counsel meets the qualifications under subsections B and C of
37 this section.

38 2. No qualified counsel is available to serve.

39 E. Before filing a petition, the capital defendant may personally
40 appear before the trial court and waive counsel. If the trial court finds
41 that the waiver is knowing and voluntary, appointed counsel may withdraw.
42 The time limits in which to file a petition shall not be extended due solely
43 to the change from appointed counsel to self-representation.

1 F. If at any time the trial court determines that the capital
2 defendant is not indigent, appointed counsel shall no longer be compensated
3 by public monies and may withdraw.

4 G. Unless counsel is employed by a publicly funded office, counsel
5 appointed to represent a capital defendant in state post-conviction relief
6 proceedings shall be paid an hourly rate of not to exceed one hundred dollars
7 per hour for up to two hundred hours of work, whether or not a petition is
8 filed. Monies shall not be paid to court appointed counsel unless either:

9 1. A petition is timely filed.

10 2. If a petition is not filed, a notice is timely filed stating that
11 counsel has reviewed the record and found no meritorious claim.

12 H. On a showing of good cause, the trial court shall compensate
13 appointed counsel from county funds in addition to the amount of compensation
14 prescribed by subsection G of this section by paying an hourly rate in an
15 amount that does not exceed one hundred dollars per hour. The attorney may
16 establish good cause for additional fees by demonstrating that the attorney
17 spent over two hundred hours representing the defendant in the proceedings.
18 The court shall review and approve additional reasonable fees and costs. If
19 the attorney believes that the court has set an unreasonably low hourly rate
20 or if the court finds that the hours the attorney spent over the two hundred
21 hour threshold are unreasonable, the attorney may file a special action ~~to~~
22 WITH the Arizona supreme court. If counsel is appointed in successive
23 post-conviction relief proceedings, compensation shall be paid pursuant to
24 section 13-4013, subsection A.

25 I. The county shall request reimbursement for fees it incurs pursuant
26 to subsections G, ~~and H AND J~~ of this section arising out of the appointment
27 of counsel to represent an indigent capital defendant in a state post-
28 conviction relief proceeding. The state shall pay fifty per cent of the
29 fees incurred by the county out of monies appropriated to the supreme court
30 for these purposes. The supreme court shall approve county requests for
31 reimbursement after certification that the amount requested is owed.

32 J. The trial court may authorize additional monies ~~pursuant to section~~
33 ~~13-4013, subsection B~~ to pay for investigative and expert services that are
34 reasonably necessary to adequately litigate those claims that are not
35 precluded by section 13-4232.

36 Sec. 42. Section 13-4062, Arizona Revised Statutes, is amended to
37 read:

38 13-4062. Anti-marital fact privilege; other privileged
39 communications

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

41 1. A husband for or against his wife without her consent, nor a wife
42 for or against her husband without his consent, as to events occurring during
43 the marriage, nor can either, during the marriage or afterwards, without

1 consent of the other, be examined as to any communication made by one to the
2 other during the marriage. These exceptions do not apply in a criminal
3 action or proceeding for a crime committed by the husband against the wife,
4 or by the wife against the husband, nor in a criminal action or proceeding
5 against the husband for abandonment, failure to support or provide for or
6 failure or neglect to furnish the necessities of life to the wife or the
7 minor children. Either spouse ~~may~~, at his or her request, but not otherwise,
8 **MAY** be examined as a witness for or against the other in a prosecution for
9 an offense listed in section 13-604, subsection ~~U~~ **V**, paragraph ~~2~~ **3**, for
10 bigamy or adultery, committed by either spouse, or for sexual assault the
11 crime against nature or any similar offense, committed by the husband.

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

15 3. A clergyman or priest, without consent of the person making the
16 confession, as to any confession made to the clergyman or priest in his
17 professional character in the course of discipline enjoined by the church to
18 which the clergyman or priest belongs.

19 4. A physician or surgeon, without consent of the physician's or
20 surgeon's patient, as to any information acquired in attending the patient
21 which was necessary to enable the physician or surgeon to prescribe or act
22 for the patient.

23 Sec. 43. Section 13-4401.01, Arizona Revised Statutes, is amended to
24 read:

25 **13-4401.01. Victims' rights for neighborhood associations**

26 A. A neighborhood association may register with the city, town or
27 county **IN** which the neighborhood association is located to invoke the rights
28 that are afforded pursuant to this article. The city, town or county shall
29 establish procedures for the registration of neighborhood associations
30 pursuant to this section. The procedures shall require the neighborhood
31 association to provide to the city, town or county the name and telephone
32 number of one person who shall act on behalf of the neighborhood association
33 and who may receive notice or invoke rights pursuant to this section. The
34 neighborhood association shall notify the city, town or county of any changes
35 to this information. If the neighborhood association fails to keep this
36 information current, the neighborhood association is deemed to have waived
37 its rights under this section.

38 B. ~~From and after April 30, 1997,~~ Notwithstanding any law to the
39 contrary, if a person commits an act in violation of section 13-3201 or
40 13-3204, section 13-3208, subsection B, ~~OR~~ **OR** section 13-3209, 13-3405,
41 13-3407, 13-3408, 13-3409, 13-3421 or 13-4702, a neighborhood association
42 that is registered with a city, town or county pursuant to subsection A of

1 this section may receive notice or may invoke rights pursuant to the
2 following sections:

3 1. Section 13-4409.

4 2. Section 13-4420.

5 3. Section 13-4426.

6 C. Sections 13-4428, 13-4434 and 13-4436 apply to all matters in which
7 a neighborhood association invokes rights under this section.

8 D. If the neighborhood association wishes to invoke victims' rights
9 for a crime as prescribed in subsection B of this section that resulted in
10 an arrest, the person who is registered with the city, town or county
11 pursuant to subsection A of this section shall contact the law enforcement
12 agency responsible for the arrest. The law enforcement agency shall fill out
13 the form prescribed by section 13-4405. Thereafter the neighborhood
14 association, through the contact person, shall be afforded all of the rights
15 listed under subsection B of this section.

1 Sec. 44. Repeal

2 Section 13-4401.02, Arizona Revised Statutes, is repealed.

3 Sec. 45. Section 13-4433, Arizona Revised Statutes, is amended to
4 read:

5 13-4433. Victim's right to refuse an interview

6 A. Unless the victim consents, the victim shall not be compelled to
7 submit to an interview on any matter, including ~~a~~ ANY charged criminal
8 offense witnessed by the victim AND that occurred on the same occasion as the
9 offense against the victim, OR FILED IN THE SAME INDICTMENT OR INFORMATION
10 OR CONSOLIDATED FOR TRAIL, that is conducted by the defendant, the
11 defendant's attorney or an agent of the defendant.

12 B. The defendant, the defendant's attorney or ~~another person acting~~
13 ~~on behalf~~ AN AGENT of the defendant shall only initiate contact with the
14 victim through the prosecutor's office. The prosecutor's office shall
15 promptly inform the victim of the defendant's request for an interview and
16 shall advise the victim of ~~his~~ THE VICTIM'S right to refuse the interview.

17 C. The prosecutor shall not be required to forward any correspondence
18 from the defendant, the defendant's attorney or ~~another person acting on~~
19 ~~behalf~~ AN AGENT of the defendant to the victim or the victim's
20 representative.

21 D. If the victim consents to an interview, the prosecutor's office
22 shall inform the defendant, the defendant's attorney or an agent of the
23 defendant of the time and place the victim has selected for the interview.
24 If the victim wishes to impose other conditions on the interview, the
25 prosecutor's office shall inform the defendant, the defendant's attorney or
26 an agent of the defendant of the conditions. The victim has the right to
27 terminate the interview at any time or to refuse to answer any question
28 during the interview. The prosecutor has standing at the request of the
29 victim to protect the victim from harassment, intimidation or abuse and,
30 pursuant to that standing, may seek any appropriate protective court order.

31 E. Unless otherwise directed by the victim, the prosecutor may attend
32 all interviews. If a transcript or tape recording of the interview is made
33 and on request of the prosecutor, the prosecutor shall receive a copy of the
34 transcript or tape recording at the prosecutor's expense.

35 F. If the defendant or the defendant's attorney comments at trial on
36 the victim's refusal to be interviewed, the court shall instruct the jury
37 that the victim has the right to refuse an interview under the Arizona
38 Constitution.

39 G. For the purposes of this section, a peace officer shall not be
40 considered a victim if the act that would have made ~~him~~ THE OFFICER a victim
41 occurs while the peace officer is acting in the scope of ~~his~~ THE OFFICER'S
42 official duties.

43 Sec. 46. Section 22-301, Arizona Revised Statutes, is amended to read:

1 22-301. Jurisdiction of criminal actions

2 A. The justice of the peace courts shall have jurisdiction of the
3 following offenses committed within their respective precincts in which such
4 courts are established, subject only to the right to change of venue as
5 provided by law:

6 ~~1. Petty theft.~~

7 ~~2. Assault or battery not charged to have been committed upon a public~~
8 ~~officer in the discharge of his duties, or to have been committed with such~~
9 ~~intent as to render the offense a felony.~~

10 ~~3. Breaches of the peace, routs, affrays and committing a wilful~~
11 ~~injury to property.~~

12 ~~4.~~ 1. Misdemeanors and criminal offenses punishable by a fine not
13 exceeding two thousand five hundred dollars, or imprisonment in the county
14 jail for not to exceed six months, or by both ~~such~~ A fine and imprisonment.
15 A penalty assessment levied pursuant to section ~~41-2403~~ 12-116.01 OR
16 12-116.02 shall not be considered as part of the fine for purposes of
17 determining jurisdiction. The amount of restitution or incarceration costs
18 levied pursuant to section 13-804, 13-809 or ~~13-814~~ 28-1444 shall not be
19 considered as part of the fine for purposes of determining jurisdiction.

20 ~~5.~~ 2. Felonies, but only for the purpose of commencing action and
21 conducting proceedings through preliminary examinations and ~~to hold~~ HOLDING
22 the defendant to answer to the superior court or to discharge the defendant
23 if it appears that there is not probable cause to believe the defendant is
24 guilty of an offense.

25 B. For purposes of subsection A of this section, an offense is
26 committed within the precinct of a justice of the peace court if conduct
27 constituting any element of the offense or a result of such conduct occurs
28 within the precinct.

29 Sec. 47. Section 31-412, Arizona Revised Statutes, is amended to read:

30 31-412. Criteria for release on parole; release; custody of
31 parolee; definition

32 A. If a prisoner is certified as eligible for parole pursuant to ~~the~~
33 ~~provisions of~~ section 41-1604.09 the board of executive clemency shall
34 authorize the release of the applicant upon parole if the applicant has
35 reached the applicant's earliest parole eligibility date pursuant to section
36 41-1604.09, subsection D and it appears to the board, in its sole discretion,
37 that there is a substantial probability that the applicant will remain at
38 liberty without violating the law and that the release is in the best
39 interests of the state. The applicant shall thereupon be allowed to go upon
40 parole in the legal custody and under the control of the state department of
41 corrections, until the board revokes the parole or grants an absolute
42 discharge from parole or until the prisoner reaches the prisoner's individual
43 earned release credit date pursuant to section 41-1604.10. When the prisoner

1 reaches the prisoner's individual earned release credit date the prisoner's
2 parole shall be terminated and the prisoner shall no longer be under the
3 authority of the board but shall be subject to revocation under section
4 41-1604.10.

5 B. Notwithstanding ~~the provisions of~~ subsection A of this section, the
6 director of the state department of corrections may certify as eligible for
7 parole any prisoner, regardless of the classification of the prisoner, who
8 has reached the prisoner's parole eligibility date pursuant to section
9 41-1604.09, subsection D, unless an increased term has been imposed pursuant
10 to section 41-1604.09, subsection F, for the sole purpose of parole to the
11 custody of any other jurisdiction to serve a term of imprisonment imposed by
12 the other jurisdiction or to stand trial on criminal charges in the other
13 jurisdiction or for the sole purpose of parole to the custody of the state
14 department of corrections to serve any consecutive term imposed on the
15 prisoner. Upon review of an application for parole pursuant to the
16 provisions of this subsection the board may authorize parole if, in its
17 discretion, parole appears to be in the best interests of the state.

18 C. ~~An inmate~~ A PRISONER who is otherwise eligible for parole, who is
19 not on home arrest or work furlough and who is currently serving a sentence
20 for a conviction of a serious offense or conspiracy to commit or attempt to
21 commit a serious offense shall not be granted parole or absolute discharge
22 from imprisonment except by one of the following votes:

23 1. A majority affirmative vote if four or more members consider the
24 action.

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

26 3. A unanimous affirmative vote if two members consider the action
27 pursuant to section 31-401, subsection I, paragraph 2 and the chairman
28 concurs after reviewing the information considered by the two members.

29 D. The board shall as a condition of parole order a prisoner to make
30 any court-ordered restitution.

31 E. Payment of restitution by the prisoner in accordance with the
32 provisions of subsection D of this section shall be made through the clerk
33 of the superior court in the county in which the prisoner was sentenced for
34 the offense for which the prisoner has been imprisoned in the same manner as
35 restitution is paid as a condition of probation. The clerk of the superior
36 court shall report to the board monthly whether or not restitution has been
37 paid for that month by the prisoner.

38 F. The board shall not disclose the address of the victim or the
39 victim's immediate family to any party without the written consent of the
40 victim or the victim's family.

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

1 1. A serious offense as defined in section 13-604, subsection ~~U~~ V,
2 paragraph 3, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

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

6 3. A conviction under a prior criminal code for any offense that
7 possesses reasonably equivalent offense elements as the offense elements that
8 are listed under section 13-604, subsection ~~U~~ V, paragraph 3 and section
9 13-604.01, subsection L, paragraph 1.

10 Sec. 48. Section 36-3701, Arizona Revised Statutes, is amended to
11 read:

12 36-3701. Definitions

13 In this article, unless the context otherwise requires:

14 1. "Agency" means any agency that is authorized to direct the release
15 of a person who is serving a sentence or term of confinement or who is
16 receiving treatment, including a state or federal prison, a county jail and
17 the Arizona state hospital.

18 2. "Competent professional" means a person who is:

19 (a) Familiar with the state's sexually violent persons statutes and
20 sexual offender treatment programs available in this state.

21 (b) Approved by the superior court as meeting court approved
22 guidelines.

23 3. "Conviction" includes a finding of guilt at any time for a sexually
24 violent offense or an order of the juvenile court adjudicating the person
25 delinquent for any sexually violent offense.

26 4. "Less restrictive alternative" means court ordered treatment in a
27 setting that is less restrictive than total confinement and ~~which~~ THAT is
28 conducted in a setting approved by the superintendent of the state hospital.

29 5. "Mental disorder" means a paraphilia, personality disorder or
30 conduct disorder or any combination of paraphilia, personality disorder and
31 conduct disorder that predisposes a person to commit sexual acts to such a
32 degree as to render the person a danger to the health and safety of others.

33 6. "Sexually violent offense" means any of the following:

34 (a) Sexual conduct with a minor pursuant to section 13-1405, sexual
35 assault pursuant to section 13-1406, sexual assault of a spouse pursuant to
36 section 13-1406.01, molestation of a child pursuant to section 13-1410 or
37 continuous sexual abuse of a child pursuant to section 13-1417.

38 (b) Second degree murder pursuant to section 13-1104, first degree
39 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
40 aggravated assault pursuant to section 13-1204, unlawful imprisonment
41 pursuant to section 13-1303, kidnaping pursuant to section 13-1304 or
42 burglary in the first degree pursuant to section 13-1508 if the court at the
43 time of sentencing or civil commitment proceedings determines beyond a

1 reasonable doubt that the act was sexually motivated pursuant to section
2 13-118.

3 (c) An attempt, a solicitation, a facilitation or a conspiracy to
4 commit an offense listed in subdivision (a) or (b) of this paragraph.

5 (d) An act committed in another jurisdiction that if committed in this
6 state would be a sexually violent offense LISTED IN SUBDIVISION (a) OR (b)
7 OF THIS PARAGRAPH.

8 (e) A CONVICTION FOR A FELONY OFFENSE THAT WAS IN EFFECT BEFORE
9 SEPTEMBER 1, 1978, THAT IF COMMITTED ON OR AFTER SEPTEMBER 1, 1978 WOULD BE
10 COMPARABLE TO A SEXUALLY VIOLENT OFFENSE LISTED IN SUBDIVISION (a) OR (b) OF
11 THIS PARAGRAPH.

12 7. "Sexually violent person" means a person to whom both of the
13 following apply:

14 (a) Has ever been convicted of or found guilty but insane of a
15 sexually violent offense or ~~who~~ was charged with a sexually violent offense
16 and ~~who~~ was determined incompetent to stand trial.

17 (b) Has a mental disorder that makes the person likely to engage in
18 acts of sexual violence.

19 Sec. 49. Section 41-1604.11, Arizona Revised Statutes, is amended to
20 read:

21 41-1604.11. Order for removal; purposes; duration; work
22 furlough; notice; failure to return;
23 classification; applicability; definition

24 A. The director of the state department of corrections may authorize
25 the temporary removal under custody from prison or any other institution for
26 the detention of adults under the jurisdiction of the state department of
27 corrections of any inmate for the purpose of employing ~~such person~~ THAT
28 INMATE in any work directly connected with the administration, management or
29 maintenance of the prison or institution in which the inmate is confined, for
30 purposes of cooperating voluntarily in medical research which cannot be
31 performed at the prison or institution, or for participating in community
32 action activities directed toward delinquency prevention and community
33 betterment programs. The removal shall not be for a period longer than one
34 day.

35 B. Under specific rules established by the director for the selection
36 of inmates, the director may also authorize furlough, temporary removal or
37 temporary release of any inmate for compassionate leave, for the purpose of
38 furnishing to the inmate medical treatment not available at the prison or
39 institution, for purposes preparatory to a return to the community within
40 ninety days of the inmate's release date or for disaster aid, including local
41 mutual aid and state emergencies. When an inmate is temporarily removed or
42 temporarily released for a purpose preparatory to return to the community or
43 for compassionate leave, the director may require the inmate to reimburse the

1 state, in whole or part, for expenses incurred by the state in connection
2 with the temporary removal or release.

3 C. The board of executive clemency, under specific rules established
4 for the selection of inmates, if it appears to the board, in its sole
5 discretion, that there is a substantial probability that the inmate will
6 remain at liberty without violating the law and that the release is in the
7 best interests of the state, may authorize the release of an inmate on work
8 furlough if the inmate has served not less than six months of the sentence
9 imposed by the court, is within twelve months of the inmate's parole
10 eligibility date and has not been convicted of a sexual offense. The
11 director shall provide information as the board requests concerning any
12 inmate eligible for release on work furlough. The inmate shall not be
13 released on work furlough unless the release is approved by the board.

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

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

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

23 3. A unanimous affirmative vote if two members of the board of
24 executive clemency consider the action pursuant to section 31-401, subsection
25 I, paragraph 2 and the chairman of the board concurs after reviewing the
26 information considered by the two members.

27 E. Before holding a hearing on the work furlough under consideration,
28 the board shall, on request, notify and afford an opportunity to be heard to
29 the presiding judge of the superior court in the county in which the inmate
30 requesting a work furlough was sentenced, the prosecuting attorney, the
31 director of the arresting law enforcement agency and the victim of the
32 offense for which the inmate is incarcerated. The notice shall state the
33 name of the inmate requesting the work furlough, the offense for which the
34 inmate was sentenced, the length of the sentence and the date of admission
35 to the custody of the state department of corrections. The notice to the
36 victim shall also inform the victim of the victim's right to be present and
37 submit a written report to the board expressing the victim's opinion
38 concerning the inmate's release. No hearing concerning work furlough shall
39 be held until fifteen days after the date of giving the notice. On mailing
40 the notice, the board shall file a hard copy of the notice as evidence that
41 notification was sent.

42 F. The board shall require that every inmate released on work furlough
43 comply with the terms and conditions of release as the board may impose,
44 including that the inmate be gainfully employed while on work furlough and

1 that the inmate make restitution to the victim of the offense for which the
2 inmate was incarcerated.

3 G. If the board finds that an inmate has failed to comply with the
4 terms and conditions of release or that the best interests of this state
5 would be served by revocation of an inmate's work furlough, the board may
6 issue a warrant for retaking the inmate before the expiration of the inmate's
7 maximum sentence. After return of the inmate, the board may revoke the
8 inmate's work furlough after the inmate has been given an opportunity to be
9 heard.

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

13 I. The director shall transmit a monthly report containing the name,
14 date of birth, offense for which the inmate was sentenced, length of the
15 sentence and date of admission to the state department of corrections of each
16 ~~person~~ INMATE on work furlough or home arrest to the chairperson of the house
17 of representatives judiciary committee or its successor committee and the
18 chairperson of the senate judiciary committee or its successor committee. The
19 director shall also submit a report containing this information for any
20 ~~person~~ INMATE released on work furlough or home arrest within a jurisdiction
21 to the county attorney, sheriff and chief of police for the jurisdiction in
22 which the inmate is released on work furlough or home arrest.

23 J. Any inmate who knowingly fails to return from furlough, home
24 arrest, work furlough or temporary removal or temporary release granted under
25 the provisions of this section is guilty of a class 5 felony.

26 K. At any given time if the director declares there is a shortage of
27 beds available for inmates within the state department of corrections, the
28 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
29 suspended for any inmate who has served not less than six months of the
30 sentence imposed by the court, who has not been previously convicted of a
31 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
32 a sexual offense, the use or exhibition of a deadly weapon or dangerous
33 instrument or the infliction of serious physical injury pursuant to section
34 13-604, and the inmate shall be continuously eligible for parole, home arrest
35 or work furlough.

36 L. Prisoners who have served at least one calendar year and are
37 serving a sentence for conviction of a crime committed on or after October
38 1, 1978, under the provisions of section 13-604, 13-1406, 13-1410, 13-3406,
39 36-1002.01, 36-1002.02 or 36-1002.03, and who are sentenced to the custody
40 of the state department of corrections, may be temporarily released,
41 according to the rules of the department, at the discretion of the director,
42 one hundred eighty calendar days prior to expiration of the term imposed and
43 shall remain under the control of the state department of corrections until

1 expiration of the maximum sentence specified. If an offender released under
2 this section or pursuant to section 31-411, subsection B violates the rules,
3 the offender may be returned to custody and shall be classified to a parole
4 class as provided by the rules of the department.

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

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

9 1. A serious offense as defined in section 13-604, subsection ~~U~~ V,
10 paragraph 3, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

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

14 3. A conviction under a prior criminal code for any offense that
15 possesses reasonably equivalent offense elements as the offense elements that
16 are listed under section 13-604, subsection ~~U~~ V, paragraph 3 or section
17 13-604.01, subsection L, paragraph 1.

18 Sec. 50. Section 41-1604.13, Arizona Revised Statutes, is amended to
19 read:

20 41-1604.13. Home arrest; eligibility; victim notification;
21 conditions; applicability; definition

22 A. ~~A prisoner~~ AN INMATE who has served not less than six months of the
23 sentence imposed by the court is eligible for the home arrest program if the
24 prisoner:

25 1. Meets the following criteria:

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

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

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

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

33 3. Is eligible for work furlough.

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

35 B. The board of executive clemency shall determine which ~~prisoners~~
36 INMATES are released to the home arrest program based on the criteria in
37 subsection A of this section and based on a determination that there is a
38 substantial probability that the inmate will remain at liberty without
39 violating the law and that the release is in the best interests of the state
40 after considering the offense for which the inmate is presently incarcerated,
41 the prior record of the inmate, the conduct of the inmate while incarcerated
42 and any other information concerning the inmate which is in the possession
43 of the state department of corrections, including any presentence report.

1 The board maintains the responsibility of revocation as applicable to all
2 parolees.

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

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

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

12 3. A unanimous affirmative vote if two members of the board of
13 executive clemency consider the action pursuant to section 31-401, subsection
14 I, paragraph 2 and the chairman of the board concurs after reviewing the
15 information considered by the two members.

16 D. Home arrest is conditioned on the following:

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

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

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

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

27 5. Remaining at the ~~prisoner's~~ INMATE'S place of residence at all
28 times except for movement out of the residence according to mandated
29 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

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

5 F. ~~A prisoner~~ AN INMATE WHO IS placed on home arrest is on inmate
6 status, is subject to all the limitations of rights and movement and is
7 entitled only to due process rights of return.

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

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

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

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

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

22 1. A serious offense as defined in section 13-604, subsection ~~U~~ V,
23 paragraph 3, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

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

27 3. A conviction under a prior criminal code for any offense that
28 possesses reasonably equivalent offense elements as the offense elements that
29 are listed under section 13-604, subsection ~~U~~ V, paragraph 3 and section
30 13-604.01, subsection L, paragraph 1.

31 Sec. 51. Section 41-1750, Arizona Revised Statutes, as amended by Laws
32 1998, chapter 75, section 2, is amended to read:

33 41-1750. Central state repository; department of public safety;
34 duties; funds; accounts; violation; classification;
35 definitions

36 A. Notwithstanding section 41-2205, the department is responsible for
37 the effective operation of the central state repository in order to collect,
38 store and disseminate complete and accurate Arizona criminal history records
39 and related criminal justice information. The department shall:

40 1. Procure from all criminal justice agencies in this state accurate
41 and complete personal identification data, fingerprints, charges, ~~PROCESS~~
42 ~~CONTROL NUMBERS~~ and dispositions and such other information as may be
43 pertinent to all persons who have been ~~CHARGED WITH~~, arrested for, ~~or~~

1 convicted of OR SUMMONED TO COURT AS A CRIMINAL DEFENDANT FOR a felony
2 OFFENSE or ~~misdemeanor offense, except offenses for which incarceration or~~
3 ~~fingerprinting of the person did not occur~~ AN OFFENSE INVOLVING DOMESTIC
4 VIOLENCE AS DEFINED IN SECTION 13-3601 OR A VIOLATION OF TITLE 13, CHAPTER
5 14 OR TITLE 28, CHAPTER 4.

6 2. Collect information concerning the number and nature of offenses
7 known to have been committed in this state and of the legal steps taken in
8 connection with these offenses, such other information that is useful in the
9 study of crime and in the administration of criminal justice and all other
10 information deemed necessary to operate the statewide uniform crime reporting
11 program and to cooperate with the federal government uniform crime reporting
12 program.

13 3. Collect information concerning criminal offenses that manifest
14 evidence of prejudice based on race, color, religion, national origin, sexual
15 orientation, gender or disability.

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

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

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

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

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

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

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

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

1 12. PROVIDE CRIMINAL HISTORY RECORD INFORMATION TO THE FINGERPRINTING
2 DIVISION FOR THE PURPOSE OF SCREENING APPLICANTS FOR FINGERPRINT CLEARANCE
3 CARDS.

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

7 C. The chief officers of criminal justice agencies of this state or
8 its political subdivisions shall provide to the central state repository
9 fingerprints and information concerning personal identification data,
10 descriptions, crimes for which persons are arrested, PROCESS CONTROL NUMBERS
11 and dispositions and such other information as may be pertinent to all
12 persons who have been CHARGED WITH, arrested for, ~~or~~ convicted of OR SUMMONED
13 TO COURT AS CRIMINAL DEFENDANTS FOR felony ~~or misdemeanor~~ offenses OR
14 OFFENSES INVOLVING DOMESTIC VIOLENCE AS DEFINED IN SECTION 13-3601 OR
15 VIOLATIONS OF TITLE 13, CHAPTER 14 OR TITLE 28, CHAPTER 4 that have occurred
16 in this state, ~~except if the arrestee was not incarcerated or fingerprinted~~
17 ~~as a result of the charge.~~

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

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

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

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

36 1. With criminal justice agencies of the federal government, Indian
37 tribes, this state or its political subdivisions and other states, upon
38 request by the chief officers of such agencies or their designated
39 representatives, specifically for the purposes of the administration of
40 criminal justice and for evaluating the fitness of current and prospective
41 criminal justice employees.

42 2. With any noncriminal justice agency pursuant to a statute,
43 ordinance or executive order that specifically authorizes the noncriminal

1 justice agency to receive criminal history record information for the purpose
2 of evaluating the fitness of current or prospective licensees, employees,
3 contract employees or volunteers, on submission of the subject's fingerprints
4 and the prescribed fee. Each statute, ordinance, or executive order that
5 authorizes noncriminal justice agencies to receive criminal history record
6 information for these purposes shall identify the specific categories of
7 licensees, employees, contract employees or volunteers, and shall require
8 that fingerprints of the specified individuals be submitted in conjunction
9 with such requests for criminal history record information.

10 **3. WITH THE BOARD OF FINGERPRINTING FOR THE PURPOSE OF CONDUCTING GOOD**
11 **CAUSE EXCEPTION HEARINGS PURSUANT TO SECTION 41-619.55.**

12 ~~3~~ 4. With any individual for any lawful purpose on submission of the
13 subject of record's fingerprints and the prescribed fee.

14 ~~4~~ 5. With the governor, if the governor elects to become actively
15 involved in the investigation of criminal activity or the administration of
16 criminal justice in accordance with the governor's constitutional duty to
17 ensure that the laws are faithfully executed or as needed to carry out the
18 other responsibilities of the governor's office.

19 ~~5~~ 6. With regional computer centers that maintain authorized
20 computer-to-computer interfaces with the department, that are criminal
21 justice agencies or under the management control of a criminal justice agency
22 and that are established by a statute, ordinance or executive order to
23 provide automated data processing services to criminal justice agencies
24 specifically for the purposes of the administration of criminal justice or
25 evaluating the fitness of regional computer center employees who have access
26 to the Arizona criminal justice information system and the national crime
27 information center system.

28 ~~6~~ 7. With an individual who asserts a belief that criminal history
29 record information relating to the individual is maintained by an agency or
30 in an information system in this state that is subject to the provisions of
31 this section. On submission of fingerprints, the individual may review this
32 information for the purpose of determining its accuracy and completeness by
33 making application to the agency operating the system. Rules adopted under
34 this section shall include provisions for administrative review and necessary
35 correction of any inaccurate or incomplete information. The review and
36 challenge process authorized by this paragraph is limited to criminal history
37 record information.

38 ~~7~~ 8. With individuals and agencies pursuant to a specific agreement
39 with a criminal justice agency to provide services required for the
40 administration of criminal justice pursuant to that agreement if the
41 agreement specifically authorizes access to data, limits the use of data to
42 purposes for which given and ensures the security and confidentiality of the
43 data consistent with the provisions of this section.

1 ~~8.~~ 9. With individuals and agencies for the express purpose of
2 research, evaluative or statistical activities pursuant to an agreement with
3 a criminal justice agency if the agreement specifically authorizes access to
4 data, limits the use of data to research, evaluative or statistical purposes
5 and ensures the confidentiality and security of the data consistent with the
6 provisions of this section.

7 ~~9.~~ 10. With the auditor general for audit purposes.

8 ~~10.~~ 11. With central state repositories of other states for
9 noncriminal justice purposes for dissemination in accordance with the laws
10 of those states.

11 ~~11.~~ 12. On submission of the fingerprint card, with the department of
12 economic security to provide criminal history record information on
13 prospective adoptive parents for the purpose of conducting the preadoption
14 certification investigation under title 8, chapter 1, article 1 if the
15 department of economic security is conducting the investigation, or with an
16 agency or a person appointed by the court, if the agency or person is
17 conducting the investigation. Information received under this paragraph
18 shall only be used for the purposes of the preadoption certification
19 investigation.

20 ~~12.~~ 13. With the department of economic security and the superior
21 court for the purpose of evaluating the fitness of custodians or prospective
22 custodians of juveniles including parents, relatives and prospective
23 guardians. Information received under this paragraph shall only be used for
24 the purposes of that evaluation. The information shall be provided on
25 submission of either:

26 (a) The fingerprint card.

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

28 ~~13.~~ 14. On submission of a fingerprint card, provide criminal history
29 record information to the superior court for the purpose of evaluating the
30 fitness of investigators appointed under section 14-5303 or 14-5407, or
31 guardians appointed under section 14-5206.

32 ~~14.~~ 15. With the supreme court to provide criminal history record
33 information on prospective private fiduciaries pursuant to section 14-5651.

34 ~~15.~~ 16. On submission of the fingerprint card, provide criminal
35 history record information to the Arizona peace officer standards and
36 training board or a board certified law enforcement academy to evaluate the
37 fitness of prospective cadets.

38 17. WITH THE INTERNET SEX OFFENDER WEB SITE DATA BASE ESTABLISHED
39 PURSUANT TO SECTION 13-3827.

40 H. The director shall adopt rules necessary to execute the provisions
41 of this section.

1 I. The director, in the manner prescribed by law, shall remove and
2 destroy records that the director determines are no longer of value in the
3 detection or prevention of crime.

4 J. The director shall establish a fee in an amount necessary to cover
5 the cost of federal noncriminal justice fingerprint processing for criminal
6 history record information checks that are authorized by law for noncriminal
7 justice employment, licensing or other lawful purposes. An additional fee
8 may be charged by the department beginning on July 1, 1999 for state
9 noncriminal justice fingerprint processing. Fees submitted to the department
10 for state noncriminal justice fingerprint processing are not refundable.

11 K. The director shall establish a fee in an amount necessary to cover
12 the cost of processing copies of department reports, eight by ten inch black
13 and white photographs or eight by ten inch color photographs of traffic
14 accident scenes.

15 L. Except as provided in subsection 0 of this section, each agency
16 authorized by this section may charge a fee, in addition to any other fees
17 prescribed by law, in an amount necessary to cover the cost of state and
18 federal noncriminal justice fingerprint processing for criminal history
19 record information checks that are authorized by law for noncriminal justice
20 employment, licensing or other lawful purposes.

21 M. A fingerprint account within the records processing fund is
22 established for the purpose of separately accounting for the collection and
23 payment of fees for noncriminal justice fingerprint processing by the
24 department. Monies collected for this purpose shall be credited to the
25 account, and payments by the department to the United States for federal
26 noncriminal justice fingerprint processing shall be charged against the
27 account. Monies in the account not required for payment to the United States
28 shall be used by the department in support of the department's noncriminal
29 justice fingerprint processing duties. At the end of each fiscal year, any
30 balance in the account not required for payment to the United States or to
31 support the department's noncriminal justice fingerprint processing duties
32 reverts to the state general fund.

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

42 O. The department of economic security may pay from appropriated
43 monies the cost of federal fingerprint processing or federal criminal history
44 record information checks that are authorized by law for employees and

1 volunteers of the department, guardians pursuant to section 46-134,
2 subsection A, paragraph 15, the licensing of foster parents or the
3 certification of adoptive parents.

4 P. The director shall adopt rules that provide for:

5 1. The collection and disposition of fees pursuant to this section.

6 2. The refusal of service to those agencies that are delinquent in
7 paying these fees.

8 Q. The director shall ensure that the following limitations are
9 observed regarding dissemination of criminal justice information obtained
10 from the central state repository or through the Arizona criminal justice
11 information system:

12 1. Any criminal justice agency that obtains criminal justice
13 information from the central state repository or through the Arizona criminal
14 justice information system assumes responsibility for the security of the
15 information and shall not secondarily disseminate this information to any
16 individual or agency not authorized to receive this information directly from
17 the central state repository or originating agency.

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

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

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

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

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

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

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

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

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

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

11 4. Announcements of executive clemency or pardon.

12 5. Computer data bases other than the Arizona criminal justice
13 information system, which are specifically designed for community
14 notification of an offender's presence in the community pursuant to section
15 13-3825 OR FOR PUBLIC INFORMATIONAL PURPOSES AUTHORIZED BY SECTION 13-3827.

16 T. Nothing in this section prevents a criminal justice agency from
17 disclosing to the public criminal history record information that is
18 reasonably contemporaneous to the event for which an individual is currently
19 within the criminal justice system, including information noted on traffic
20 accident reports concerning citations, blood alcohol tests, intoxilyzer tests
21 or arrests made in connection with the traffic accident being investigated.

22 U. In order to ensure that complete and accurate criminal history
23 record information is maintained and disseminated by the central state
24 repository:

25 1. The arresting authority shall take legible fingerprints of all
26 persons arrested for offenses specified in subsection C of this section and,
27 within ten days of the arrest, the arresting authority shall forward the
28 fingerprints to the department in the manner or form required by the
29 department. ON THE ISSUANCE AND SERVICE OF A SUMMONS FOR A DEFENDANT WHO IS
30 CHARGED WITH A FELONY OFFENSE, A VIOLATION OF TITLE 13, CHAPTER 14 OR TITLE
31 28, CHAPTER 4 OR A DOMESTIC VIOLENCE OFFENSE AS DEFINED IN SECTION 13-3601,
32 THE COURT SHALL ORDER THAT THE DEFENDANT BE FINGERPRINTED BY THE APPROPRIATE
33 LAW ENFORCEMENT AGENCY AND THAT THE DEFENDANT APPEAR AT A DESIGNATED TIME AND
34 PLACE FOR FINGERPRINTING. AT THE INITIAL APPEARANCE OR ON THE ARRAIGNMENT
35 OF A SUMMONED DEFENDANT WHO IS CHARGED WITH A FELONY OFFENSE, A VIOLATION OF
36 TITLE 13, CHAPTER 14 OR TITLE 28, CHAPTER 4 OR A DOMESTIC VIOLENCE OFFENSE
37 AS DEFINED IN SECTION 13-3601, THE COURT SHALL ORDER THAT THE DEFENDANT BE
38 FINGERPRINTED AT A DESIGNATED TIME AND PLACE BY THE APPROPRIATE LAW
39 ENFORCEMENT AGENCY IF THE COURT HAS REASONABLE CAUSE TO BELIEVE THAT THE
40 DEFENDANT WAS NOT PREVIOUSLY FINGERPRINTED.

41 2. In every criminal case in which the defendant is incarcerated or
42 fingerprinted as a result of the charge, an originating law enforcement
43 agency or prosecutor, within forty days of the disposition, shall advise the

1 central state repository of all dispositions concerning the termination of
2 criminal proceedings against an individual arrested for an offense specified
3 in subsection C of this section. This information shall be submitted on a
4 form or in a manner required by the department.

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

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

21 5. Each criminal justice agency shall query the central state
22 repository before dissemination of any criminal history record information
23 to ensure the completeness of the information. Inquiries shall be made
24 before any dissemination except in those cases in which time is of the
25 essence and the repository is technically incapable of responding within the
26 necessary time period. If time is of the essence, the inquiry shall still
27 be made and the response shall be provided as soon as possible.

28 V. The director shall adopt rules specifying that any agency that
29 collects, stores or disseminates criminal justice information that is subject
30 to the provisions of this section shall establish effective security measures
31 to protect the information from unauthorized access, disclosure, modification
32 or dissemination. The rules shall include reasonable safeguards to protect
33 the affected information systems from fire, flood, wind, theft, sabotage or
34 other natural or man-made hazards or disasters.

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

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

43 ~~Y. A person who knowingly or recklessly permits unauthorized access~~
44 ~~or releases or procures the release of criminal history record information,~~

~~other than as provided in this section, or who uses such information for a purpose other than as provided by this section is guilty of a class 6 felony.~~

~~Z.~~ Y. For purposes of this section:

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

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

3. "Arizona criminal justice information system" or "system" means the statewide information system managed by the director for the collection, processing, preservation, dissemination and exchange of criminal justice information and includes the electronic equipment, facilities, procedures and agreements necessary to exchange this information.

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

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

6. "Criminal justice agency" means either:

(a) A court at any governmental level with criminal or equivalent jurisdiction, including courts of any foreign sovereignty duly recognized by the federal government.

(b) A government agency or subunit of a government agency that is specifically authorized to perform as its principal function the administration of criminal justice pursuant to a statute, ordinance or executive order and that allocates more than fifty per cent of its annual budget to the administration of criminal justice. This subdivision includes

1 agencies of any foreign sovereignty duly recognized by the federal
2 government.

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

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

15 9. "Dissemination" means the written, oral or electronic communication
16 or transfer of criminal justice information to individuals and agencies other
17 than the criminal justice agency that maintains the information.
18 Dissemination includes the act of confirming the existence or nonexistence
19 of criminal justice information.

20 10. "Management control":

21 (a) Means the authority to set and enforce:

22 (i) Priorities regarding development and operation of criminal justice
23 information systems and programs.

24 (ii) Standards for the selection, supervision and termination of
25 personnel involved in the development of criminal justice information systems
26 and programs and in the collection, maintenance, analysis and dissemination
27 of criminal justice information.

28 (iii) Policies governing the operation of computers, circuits and
29 telecommunications terminals used to process criminal justice information to
30 the extent that the equipment is used to process, store or transmit criminal
31 justice information.

32 (b) Includes the supervision of equipment, systems design, programming
33 and operating procedures necessary for the development and implementation of
34 automated criminal justice information systems.

35 11. "PROCESS CONTROL NUMBER" MEANS THE ARIZONA AUTOMATED FINGERPRINT
36 IDENTIFICATION SYSTEM NUMBER THAT ATTACHES TO EACH ARREST EVENT AT THE TIME
37 OF FINGERPRINTING AND THAT IS ASSIGNED TO THE ARREST FINGERPRINT CARD,
38 DISPOSITION FORM AND OTHER PERTINENT DOCUMENTS.

39 ~~11~~ 12. "Secondary dissemination" means the dissemination of criminal
40 justice information from an individual or agency that originally obtained the
41 information from the central state repository or through the Arizona criminal
42 justice information system to another individual or agency.

1 ~~12.~~ 13. "Sexual orientation" means consensual homosexuality or
2 heterosexuality.

3 ~~13.~~ 14. "Subject of record" means the person who is the primary
4 subject of a criminal justice record.

5 Sec. 52. Repeal

6 Section 41-1750, Arizona Revised Statutes, as amended by Laws 1998,
7 chapter 113, section 43, Laws 1998, chapter 270, section 14, Laws 1998,
8 chapter 289, section 28 and Laws 1998, chapter 291, section 8, is repealed.

9 Sec. 53. Title 41, chapter 12, article 3, Arizona Revised Statutes,
10 is amended by adding section 41-1756, to read:

11 41-1756. Unauthorized access to criminal history;
12 classification; definitions

13 A. EXCEPT AS PROVIDED BY SECTION 41-1750, A PERSON COMMITS
14 UNAUTHORIZED ACCESS TO CRIMINAL HISTORY IF THE PERSON INTENTIONALLY,
15 KNOWINGLY OR RECKLESSLY DOES ANY OF THE FOLLOWING:

16 1. PERMITS UNAUTHORIZED ACCESS TO THE ARIZONA CRIMINAL JUSTICE
17 INFORMATION SYSTEM OR TO CRIMINAL HISTORY RECORD INFORMATION.

18 2. USES THE ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM OR CRIMINAL
19 HISTORY RECORD INFORMATION FOR A PURPOSE OTHER THAN AS PROVIDED BY SECTION
20 41-1750.

21 3. RELEASES OR PROCURES THE RELEASE OF CRIMINAL HISTORY INFORMATION.

22 B. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

23 C. FOR THE PURPOSES OF THIS SECTION:

24 1. "ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM" HAS THE SAME MEANING
25 PRESCRIBED IN SECTION 41-1750.

26 2. "CRIMINAL HISTORY RECORD INFORMATION" HAS THE SAME MEANING
27 PRESCRIBED IN SECTION 41-1750.

28 Sec. 54. Title 44, chapter 9, article 2, Arizona Revised Statutes, is
29 amended by adding section 44-1221, to read:

30 44-1221. Deceptive use of name; classification; attorney
31 general

32 A. IT IS UNLAWFUL FOR A PERSON TO DECEIVE ANOTHER PERSON BY
33 MISREPRESENTING THE GEOGRAPHICAL ORIGIN OR LOCATION OF THE PERSON'S BUSINESS
34 IN THE CONDUCT OF THE PERSON'S BUSINESS.

35 B. A PERSON WHO INTENTIONALLY OR KNOWINGLY VIOLATES SUBSECTION A OF
36 THIS SECTION IS GUILTY OF A CLASS 2 MISDEMEANOR.

37 C. AN ACT OR PRACTICE IN VIOLATION OF THIS SECTION IS AN UNLAWFUL
38 PRACTICE UNDER SECTION 44-1522 AND SUBJECT TO ENFORCEMENT THROUGH PRIVATE
39 ACTION AND PROSECUTION BY THE ATTORNEY GENERAL. THE ATTORNEY GENERAL MAY
40 INVESTIGATE AND TAKE APPROPRIATE ACTION AS PRESCRIBED BY CHAPTER 10, ARTICLE
41 7 OF THIS TITLE.

1 Sec. 55. Minority youth overrepresentation in the criminal
2 justice system study committee; membership; duties;
3 report

4 A. The minority youth overrepresentation in the criminal justice
5 system study committee is established consisting of the following members:

6 1. Three members of the house of representatives who are appointed by
7 the speaker of the house of representatives and not more than two of whom
8 represent the same political party.

9 2. Three members of the senate who are appointed by the president of
10 the senate and not more than two of whom represent the same political party.

11 3. One prosecutor who has experience with juvenile justice issues and
12 who is appointed by the speaker of the house of representatives.

13 4. One public defender who has experience with juvenile justice issues
14 and who is appointed by the president of the senate.

15 5. One juvenile court judge who is appointed by the speaker of the
16 house of representatives.

17 6. One representative of the administrative office of the courts who
18 has experience with the provision of juvenile services and who is appointed
19 by the president of the senate.

20 7. One juvenile probation officer who is appointed by the speaker of
21 the house of representatives.

22 8. One law enforcement officer who is appointed by the president of
23 the senate.

24 9. The director of the state department of corrections or the
25 director's designee.

26 10. The director of the department of juvenile corrections or the
27 director's designee.

28 11. Three members of the general public who represent community-based
29 organizations that work with youths in the criminal justice system and who
30 are appointed by the speaker of the house of representatives.

31 B. Appointed members serve at the pleasure of the person who made the
32 appointment.

33 C. The committee shall:

34 1. Study issues related to the overrepresentation of minority youth
35 in the criminal justice system in this state, including the number of
36 minority youths who are incarcerated or detained.

37 2. Review and analyze juvenile justice programs and policies that have
38 been implemented by this state and counties, cities and towns in this state
39 and the impact those programs and policies have on minority youth.

40 3. Prepare and submit a report regarding the committee's activities,
41 findings and recommendations on or before December 31, 1999 to the speaker
42 of the house of representatives, the president of the senate and the
43 governor. The committee shall forward a copy of this report to the director

1 of the department of library, archives and public records and the secretary
2 of state.

3 Sec. 56. Delayed repeal

4 Section 55 of this act relating to the minority youth
5 overrepresentation in the criminal justice system study committee is repealed
6 from and after December 31, 1999.

7 Sec. 57. Delayed repeal

8 Section 31-403, Arizona Revised Statutes, as added by this act, is
9 repealed from and after December 31, 2000.