

REFERENCE TITLE: **second degree murder; sentencing**

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2355

Introduced by
Representatives Biasiucci: Burges, Parker

AN ACT

AMENDING SECTIONS 13-705, 13-3409, 13-3560, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; RELATING TO SECOND DEGREE MURDER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section. 1. Section 13-705, Arizona Revised Statutes, is amended to
3 read:

4 13-705. Dangerous crimes against children; sentences;
5 definitions

6 A. A person who is at least eighteen years of age and who is
7 convicted of a dangerous crime against children in the first degree
8 involving commercial sexual exploitation of a minor or child sex
9 trafficking and the person has previously been convicted of a dangerous
10 crime against children in the first degree shall be sentenced to
11 imprisonment in the custody of the state department of corrections for
12 natural life. A person who is sentenced to natural life is not eligible
13 for commutation, parole, work furlough, work release or release from
14 confinement on any basis for the remainder of the person's natural life.

15 B. A person who is at least eighteen years of age and who is
16 convicted of a dangerous crime against children in the first degree
17 involving sexual assault of a minor who is twelve years of age or younger
18 or sexual conduct with a minor who is twelve years of age or younger shall
19 be sentenced to life imprisonment and is not eligible for suspension of
20 sentence, probation, pardon or release from confinement on any basis
21 except as specifically authorized by section 31-233, subsection A or B
22 until the person has served thirty-five years or the sentence is commuted.
23 This subsection does not apply to masturbatory contact.

24 C. Except as otherwise provided in this section, a person who is at
25 least eighteen years of age or who has been tried as an adult and who is
26 convicted of a dangerous crime against children in the first degree
27 involving attempted first degree murder of a minor who is under twelve
28 years of age, ~~second degree murder of a minor who is under twelve years of~~
29 ~~age~~, sexual assault of a minor who is under twelve years of age, sexual
30 conduct with a minor who is under twelve years of age or manufacturing
31 methamphetamine under circumstances that cause physical injury to a minor
32 who is under twelve years of age may be sentenced to life imprisonment and
33 is not eligible for suspension of sentence, probation, pardon or release
34 from confinement on any basis except as specifically authorized by section
35 31-233, subsection A or B until the person has served thirty-five years or
36 the sentence is commuted. If a life sentence is not imposed pursuant to
37 this subsection, the person shall be sentenced to a term of imprisonment
38 as follows:

39 <u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
40 13 years	20 years	27 years

41 D. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO IS AT
42 LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO IS
43 CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN IN THE FIRST DEGREE
44 INVOLVING SECOND DEGREE MURDER OF A MINOR WHO IS UNDER FIFTEEN YEARS OF
45 AGE MAY BE SENTENCED TO LIFE IMPRISONMENT AND IS NOT ELIGIBLE FOR

1 SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON
2 ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION
3 A OR B UNTIL THE PERSON HAS SERVED THIRTY-FIVE YEARS OR THE SENTENCE IS
4 COMMUTED. IF A LIFE SENTENCE IS NOT IMPOSED PURSUANT TO THIS SUBSECTION,
5 THE PERSON SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
25 YEARS	30 YEARS	35 YEARS

8 ~~D.~~ E. Except as otherwise provided in this section, a person who
9 is at least eighteen years of age or who has been tried as an adult and
10 who is convicted of a dangerous crime against children in the first degree
11 involving attempted first degree murder of a minor who is twelve, thirteen
12 or fourteen years of age, ~~second degree murder of a minor who is twelve,~~
13 ~~thirteen or fourteen years of age,~~ sexual assault of a minor who is
14 twelve, thirteen or fourteen years of age, taking a child for the purpose
15 of prostitution, child sex trafficking, commercial sexual exploitation of
16 a minor, sexual conduct with a minor who is twelve, thirteen or fourteen
17 years of age, continuous sexual abuse of a child or manufacturing
18 methamphetamine under circumstances that cause physical injury to a minor
19 who is twelve, thirteen or fourteen years of age or involving or using
20 minors in drug offenses shall be sentenced to a term of imprisonment as
21 follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13 years	20 years	27 years

24 A person who has been previously convicted of one predicate felony shall
25 be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23 years	30 years	37 years

28 ~~E.~~ F. Except as otherwise provided in this section, a person who
29 is at least eighteen years of age or who has been tried as an adult and
30 who is convicted of a dangerous crime against children in the first degree
31 involving aggravated assault, unlawful mutilation, molestation of a child,
32 sexual exploitation of a minor, aggravated luring a minor for sexual
33 exploitation, child abuse or kidnapping shall be sentenced to a term of
34 imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 years	17 years	24 years

37 A person who has been previously convicted of one predicate felony shall
38 be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
21 years	28 years	35 years

41 ~~F.~~ G. Except as otherwise provided in this section, if a person is
42 at least eighteen years of age or has been tried as an adult and is
43 convicted of a dangerous crime against children involving luring a minor
44 for sexual exploitation, sexual extortion or unlawful age
45 misrepresentation and is sentenced to a term of imprisonment, the term of

1 imprisonment is as follows and the person is not eligible for release from
2 confinement on any basis except as specifically authorized by section
3 31-233, subsection A or B until the sentence imposed by the court has been
4 served, the person is eligible for release pursuant to section 41-1604.07
5 or the sentence is commuted:

6	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7	5 years	10 years	15 years

8 A person who has been previously convicted of one predicate felony shall
9 be sentenced to a term of imprisonment as follows and the person is not
10 eligible for suspension of sentence, probation, pardon or release from
11 confinement on any basis except as specifically authorized by section
12 31-233, subsection A or B until the sentence imposed by the court has been
13 served, the person is eligible for release pursuant to section 41-1604.07
14 or the sentence is commuted:

15	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
16	8 years	15 years	22 years

17 ~~G.~~ H. Except as otherwise provided in this section, if a person is
18 at least eighteen years of age or has been tried as an adult and is
19 convicted of a dangerous crime against children involving sexual abuse or
20 bestiality under section 13-1411, subsection A, paragraph 2 and is
21 sentenced to a term of imprisonment, the term of imprisonment is as
22 follows and the person is not eligible for release from confinement on any
23 basis except as specifically authorized by section 31-233, subsection A or
24 B until the sentence imposed by the court has been served, the person is
25 eligible for release pursuant to section 41-1604.07 or the sentence is
26 commuted:

27	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
28	2.5 years	5 years	7.5 years

29 A person who has been previously convicted of one predicate felony shall
30 be sentenced to a term of imprisonment as follows and the person is not
31 eligible for suspension of sentence, probation, pardon or release from
32 confinement on any basis except as specifically authorized by section
33 31-233, subsection A or B until the sentence imposed by the court has been
34 served, the person is eligible for release pursuant to section 41-1604.07
35 or the sentence is commuted:

36	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
37	8 years	15 years	22 years

38 ~~H.~~ I. The presumptive sentences prescribed in subsections C, D,
39 ~~and~~ E AND F of this section or subsections ~~F and~~ G AND H of this section
40 if the person has previously been convicted of a predicate felony may be
41 increased or decreased pursuant to section 13-701, subsections C, D and E.

42 ~~I.~~ J. Except as provided in ~~subsection~~ SUBSECTIONS G AND H of this
43 section, a person who is sentenced for a dangerous crime against children
44 in the first degree pursuant to this section is not eligible for
45 suspension of sentence, probation, pardon or release from confinement on

1 any basis except as specifically authorized by section 31-233, subsection
2 A or B until the sentence imposed by the court has been served or
3 commuted.

4 ~~J.~~ K. A person who is convicted of any dangerous crime against
5 children in the first degree pursuant to subsection C, D, ~~or~~ E OR F of
6 this section and who has been previously convicted of two or more
7 predicate felonies shall be sentenced to life imprisonment and is not
8 eligible for suspension of sentence, probation, pardon or release from
9 confinement on any basis except as specifically authorized by section
10 31-233, subsection A or B until the person has served not fewer than
11 thirty-five years or the sentence is commuted.

12 ~~K.~~ L. Notwithstanding chapter 10 of this title, a person who is at
13 least eighteen years of age or who has been tried as an adult and who is
14 convicted of a dangerous crime against children in the second degree
15 pursuant to subsection B, C, ~~D or~~ E OR F of this section is guilty of a
16 class 3 felony and if the person is sentenced to a term of imprisonment,
17 the term of imprisonment is as follows and the person is not eligible for
18 release from confinement on any basis except as specifically authorized by
19 section 31-233, subsection A or B until the person has served the sentence
20 imposed by the court, the person is eligible for release pursuant to
21 section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 years	10 years	15 years

24 ~~L.~~ M. A person who is convicted of any dangerous crime against
25 children in the second degree and who has been previously convicted of one
26 or more predicate felonies is not eligible for suspension of sentence,
27 probation, pardon or release from confinement on any basis except as
28 specifically authorized by section 31-233, subsection A or B until the
29 sentence imposed by the court has been served, the person is eligible for
30 release pursuant to section 41-1604.07 or the sentence is commuted.

31 ~~M.~~ N. Section 13-704, subsection J and section 13-707, subsection
32 B apply to the determination of prior convictions.

33 ~~N.~~ O. The sentence imposed on a person by the court for a
34 dangerous crime against children under subsection ~~G~~ H of this section
35 involving sexual abuse may be served concurrently with other sentences if
36 the offense involved only one victim. The sentence imposed on a person
37 for any other dangerous crime against children in the first or second
38 degree shall be consecutive to any other sentence imposed on the person at
39 any time, including sexual abuse of the same victim.

40 ~~O.~~ P. In this section, for purposes of punishment an unborn child
41 shall be treated like a minor who is under twelve years of age.

42 ~~P.~~ Q. A dangerous crime against children is in the first degree if
43 it is a completed offense and is in the second degree if it is a
44 preparatory offense, except attempted first degree murder is a dangerous
45 crime against children in the first degree.

1 ~~R.~~ R. It is not a defense to a dangerous crime against children
2 that the minor is a person posing as a minor or is otherwise fictitious if
3 the defendant knew or had reason to know the purported minor was under
4 fifteen years of age.

5 ~~R.~~ S. For the purposes of this section:

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

8 (a) Second degree murder.

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

12 (c) Sexual assault.

13 (d) Molestation of a child.

14 (e) Sexual conduct with a minor.

15 (f) Commercial sexual exploitation of a minor.

16 (g) Sexual exploitation of a minor.

17 (h) Child abuse as prescribed in section 13-3623, subsection A,
18 paragraph 1.

19 (i) Kidnapping.

20 (j) Sexual abuse.

21 (k) Taking a child for the purpose of prostitution as prescribed in
22 section 13-3206.

23 (l) Child sex trafficking as prescribed in section 13-3212.

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

25 (n) Continuous sexual abuse of a child.

26 (o) Attempted first degree murder.

27 (p) Sex trafficking.

28 (q) Manufacturing methamphetamine under circumstances that cause
29 physical injury to a minor.

30 (r) Bestiality as prescribed in section 13-1411, subsection A,
31 paragraph 2.

32 (s) Luring a minor for sexual exploitation.

33 (t) Aggravated luring a minor for sexual exploitation.

34 (u) Unlawful age misrepresentation.

35 (v) Unlawful mutilation.

36 (w) Sexual extortion as prescribed in section 13-1428.

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

1 Sec. 2. Section 13-3409, Arizona Revised Statutes, is amended to
2 read:

3 13-3409. Involving or using minors in drug offenses;
4 classification

5 A. A person shall not knowingly:

6 1. Hire, employ or use a minor to engage in any conduct, completed
7 or preparatory, that is prohibited by sections 13-3404, 13-3404.01,
8 13-3405, 13-3406, 13-3407 and 13-3408.

9 2. Sell, transfer or offer to sell or transfer to a minor any
10 substance if its possession is prohibited by sections 13-3404, 13-3404.01,
11 13-3405, 13-3407 and 13-3408.

12 B. A person who violates this section is guilty of a class 2 felony
13 and is not eligible for suspension of sentence, probation, pardon or
14 release from confinement on any basis until the sentence imposed by the
15 court has been served or commuted, and if the minor is under fifteen years
16 of age it is punishable pursuant to section 13-705, subsection ~~D~~ E.

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

24 Sec. 3. Section 13-3560, Arizona Revised Statutes, is amended to
25 read:

26 13-3560. Aggravated luring a minor for sexual exploitation;
27 classification; definitions

28 A. A person commits aggravated luring a minor for sexual
29 exploitation if the person does both of the following:

30 1. Knowing the character and content of the depiction, uses an
31 electronic communication device to transmit at least one visual depiction
32 of material that is harmful to minors for the purpose of initiating or
33 engaging in communication with a recipient who the person knows or has
34 reason to know is a minor.

35 2. By means of the communication, offers or solicits sexual conduct
36 with the minor. The offer or solicitation may occur before,
37 contemporaneously with, after or as an integrated part of the transmission
38 of the visual depiction.

39 B. It is not a defense to a prosecution for a violation of this
40 section that the other person is not a minor or that the other person is a
41 peace officer posing as a minor.

42 C. Aggravated luring a minor for sexual exploitation is a class 2
43 felony, and if the minor is under fifteen years of age it is punishable
44 pursuant to section 13-705, subsection ~~E~~ F.

1 D. The defense prescribed in section 13-1407, subsection E applies
2 to a prosecution pursuant to this section.

3 E. For the purposes of this section:

4 1. "Electronic communication device" means any electronic device
5 that is capable of transmitting visual depictions and includes any of the
6 following:

7 (a) A computer, computer system or network as defined in section
8 13-2301.

9 (b) A cellular TELEPHONE or wireless telephone as defined in
10 section 13-4801.

11 2. "Harmful to minors" has the same meaning prescribed in section
12 13-3501.

13 Sec. 4. Section 31-412, Arizona Revised Statutes, is amended to
14 read:

15 31-412. Criteria for release on parole; release; custody of
16 parolee; definition

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

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

1 C. A prisoner who is otherwise eligible for parole, who is not on
2 home arrest or work furlough and who is currently serving a sentence for a
3 conviction of a serious offense or conspiracy to commit or attempt to
4 commit a serious offense shall not be granted parole or absolute discharge
5 from imprisonment except by one of the following votes:

6 1. A majority affirmative vote if four or more members consider the
7 action.

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

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

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

15 E. Payment of restitution by the prisoner in accordance with
16 subsection D of this section shall be made through the clerk of the
17 superior court in the county in which the prisoner was sentenced for the
18 offense for which the prisoner has been imprisoned in the same manner as
19 restitution is paid as a condition of probation. The clerk of the
20 superior court, on request, shall make the prisoner's restitution payment
21 history available to the board, victim, victim's attorney and department
22 without cost.

23 F. The board shall not disclose the address of the victim or the
24 victim's immediate family to any party without the written consent of the
25 victim or the victim's family.

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

28 1. A serious offense as defined in section 13-706, subsection F,
29 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j)
30 or (k).

31 2. A dangerous crime against children as defined in section
32 13-705. The citation of section 13-705 is not a necessary element for a
33 serious offense designation.

34 3. A conviction under a prior criminal code for any offense that
35 possesses reasonably equivalent offense elements as the offense elements
36 that are listed under section 13-705, subsection ~~R~~ S, paragraph 1 or
37 section 13-706, subsection F, paragraph 1.

38 Sec. 5. Section 41-1604.11, Arizona Revised Statutes, is amended to
39 read:

40 41-1604.11. Order for removal; purposes; duration; work
41 furlough; notice; failure to return;
42 classification; applicability; definition

43 A. The director of the state department of corrections may
44 authorize the temporary removal under custody from prison or any other
45 institution for the detention of adults under the jurisdiction of the

1 state department of corrections of any inmate for the purpose of employing
 2 that inmate in any work directly connected with the administration,
 3 management or maintenance of the prison or institution in which the inmate
 4 is confined, for purposes of cooperating voluntarily in medical research
 5 that cannot be performed at the prison or institution, or for
 6 participating in community action activities directed toward delinquency
 7 prevention and community betterment programs. The removal shall not be
 8 for a period longer than one day.

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

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

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

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

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

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

1 E. Before holding a hearing on the work furlough under
2 consideration, the board, on request, shall notify and afford an
3 opportunity to be heard to the presiding judge of the superior court in
4 the county in which the inmate requesting a work furlough was sentenced,
5 the prosecuting attorney, the director of the arresting law enforcement
6 agency and the victim of the offense for which the inmate is incarcerated.
7 The notice shall state the name of the inmate requesting the work
8 furlough, the offense for which the inmate was sentenced, the length of
9 the sentence and the date of admission to the custody of the state
10 department of corrections. The notice to the victim shall also inform the
11 victim of the victim's right to be present and submit a written report to
12 the board expressing the victim's opinion concerning the inmate's release.
13 ~~NO~~ A hearing concerning work furlough shall NOT be held until fifteen days
14 after the date of giving the notice. On mailing the notice, the board
15 shall file a hard copy of the notice as evidence that notification was
16 sent.

17 F. The board shall require that every inmate released on work
18 furlough comply with the terms and conditions of release as the board may
19 impose, including that the inmate be gainfully employed while on work
20 furlough and that the inmate make restitution to the victim of the offense
21 for which the inmate was incarcerated.

22 G. If the board finds that an inmate has failed to comply with the
23 terms and conditions of release or that the best interests of this state
24 would be served by revocation of an inmate's work furlough, the board may
25 issue a warrant for retaking the inmate before the expiration of the
26 inmate's maximum sentence. After return of the inmate, the board may
27 revoke the inmate's work furlough after the inmate has been given an
28 opportunity to be heard.

29 H. If the board denies the release of an inmate on work furlough or
30 home arrest, ~~it~~ THE BOARD may prescribe that the inmate not be recommended
31 again for release on work furlough or home arrest for a period of up to
32 one year.

33 I. The director shall transmit a monthly report containing the
34 name, date of birth, offense for which the inmate was sentenced, length of
35 the sentence and date of admission to the state department of corrections
36 of each inmate on work furlough or home arrest to the chairperson of the
37 house of representatives judiciary committee or its successor committee
38 and the chairperson of the senate judiciary committee or its successor
39 committee. The director shall also submit a report containing this
40 information for any inmate released on work furlough or home arrest within
41 a jurisdiction to the county attorney, sheriff and chief of police for the
42 jurisdiction in which the inmate is released on work furlough or home
43 arrest.

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

4 K. At any given time if the director declares there is a shortage
5 of beds available for inmates within the state department of corrections,
6 the parole eligibility as set forth in sections 31-411 and 41-1604.09 may
7 be suspended for any inmate who has served not less than six months of the
8 sentence imposed by the court, who has not been previously convicted of a
9 felony and who has been sentenced for a class 4, 5 or 6 felony, not
10 involving a sexual offense, the use or exhibition of a deadly weapon or
11 dangerous instrument or the infliction of serious physical injury pursuant
12 to section 13-704, and the inmate shall be continuously eligible for
13 parole, home arrest or work furlough.

14 L. Prisoners who have served at least one calendar year and who are
15 serving a sentence for conviction of a crime committed on or after October
16 1, 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01,
17 36-1002.02 or 36-1002.03, and who are sentenced to the custody of the
18 state department of corrections, may be temporarily released, according to
19 the rules of the department, at the discretion of the director, one
20 hundred eighty calendar days ~~prior to~~ BEFORE expiration of the term
21 imposed and shall remain under the control of the state department of
22 corrections until expiration of the maximum sentence specified. If an
23 offender released under this section or pursuant to section 31-411,
24 subsection B violates the rules, the offender may be returned to custody
25 and shall be classified to a parole class as provided by the rules of the
26 department.

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

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

31 1. A serious offense as defined in section 13-706, subsection F,
32 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or
33 (k).

34 2. A dangerous crime against children as defined in section 13-705.
35 The citation of section 13-705 is not a necessary element for a serious
36 offense designation.

37 3. A conviction under a prior criminal code for any offense that
38 possesses reasonably equivalent offense elements as the offense elements
39 that are listed under section 13-705, subsection ~~R~~ S, paragraph 1 or
40 section 13-706, subsection F, paragraph 1.

1 Sec. 6. Section 41-1604.13, Arizona Revised Statutes, is amended to
2 read:

3 41-1604.13. Home arrest; eligibility; victim notification;
4 conditions; applicability; definitions

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

8 1. Meets the following criteria:

9 (a) Was convicted of committing a class 4, 5 or 6 felony not
10 involving a dangerous offense.

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

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

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

15 3. Is eligible for work furlough.

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

17 B. The board of executive clemency shall determine which inmates
18 are released to the home arrest program based on the criteria in
19 subsection A of this section and based on a determination that there is a
20 substantial probability that the inmate will remain at liberty without
21 violating the law and that the release is in the best interests of the
22 state after considering the offense for which the inmate is presently
23 incarcerated, the prior record of the inmate, the conduct of the inmate
24 while incarcerated and any other information concerning the inmate that is
25 in the possession of the state department of corrections, including any
26 presentence report. The board maintains the responsibility of revocation
27 as applicable to all parolees.

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

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

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

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

41 D. Home arrest is conditioned on the following:

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

44 2. Participation in gainful employment or other beneficial
45 activities.

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

2 4. Payment of the electronic monitoring fee in an amount determined
3 by the board of not less than ~~one-dollar~~ \$1 per day and not more than the
4 total cost of the electronic monitoring unless, after determining the
5 inability of the inmate to pay the fee, the board requires payment of a
6 lesser amount. The fees collected shall be returned to the department's
7 home arrest program to offset operational costs of the program.

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

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

12 7. Compliance with all other conditions of supervision.

13 8. Payment of a monthly home arrest supervision fee of at least
14 ~~sixty-five dollars~~ \$65 unless, after determining the inability of the
15 inmate to pay the fee, the department requires payment of a lesser amount.
16 The supervising corrections officer shall monitor the collection of the
17 fee. Monies collected shall be deposited, pursuant to sections 35-146 and
18 35-147, in the community corrections enhancement fund established by
19 section 31-418.

20 9. Payment of a drug testing fee in an amount to be determined by
21 the board and not to exceed the costs of the drug testing program. The
22 fees collected pursuant to this paragraph by the department may only be
23 used to offset the costs of the drug testing program.

24 E. Before holding a hearing on home arrest, the board on request
25 shall notify and afford an opportunity to be heard to the presiding judge
26 of the superior court in the county in which the inmate requesting home
27 arrest was sentenced, the prosecuting attorney and the director of the
28 arresting law enforcement agency. The board shall notify the victim of
29 the offense for which the inmate is incarcerated. The notice shall state
30 the name of the inmate requesting home arrest, the offense for which the
31 inmate was sentenced, the length of the sentence and the date of admission
32 to the custody of the state department of corrections. The notice to the
33 victim shall also inform the victim of the victim's right to be present
34 and to submit a written report to the board expressing the victim's
35 opinion concerning the inmate's release. ~~No~~ A hearing concerning home
36 arrest may NOT be held until fifteen days after the date of giving the
37 notice. On mailing the notice, the board shall file a hard copy of the
38 notice as evidence that notification was sent.

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

42 G. If an inmate violates a condition of home arrest that poses any
43 threat or danger to the community, or commits an additional felony
44 offense, the board shall revoke the home arrest and return the inmate to

1 the custody of the state department of corrections to complete the term of
2 imprisonment as authorized by law.

3 H. The ratio of supervising corrections officers to supervisees in
4 the home arrest program shall NOT be ~~no~~ greater than one officer for every
5 twenty-five supervisees.

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

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

10 K. For the purposes of this section:

11 1. "Dangerous offense" has the same meaning prescribed in section
12 13-105.

13 2. "Serious offense" includes any of the following:

14 (a) A serious offense as defined in section 13-706, subsection F,
15 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or
16 (k).

17 (b) A dangerous crime against children as defined in section
18 13-705. The citation of section 13-705 is not a necessary element for a
19 serious offense designation.

20 (c) A conviction under a prior criminal code for any offense that
21 possesses reasonably equivalent offense elements as the offense elements
22 that are listed under section 13-705, subsection ~~R~~ S, paragraph 1 or
23 section 13-706, subsection F, paragraph 1.