

Senate Engrossed House Bill

mandatory sentences; children; trafficking; smuggling

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

# HOUSE BILL 2696

AN ACT

AMENDING SECTIONS 13-705, 13-1308, 13-1428, 13-2323, 13-3205, 13-3207, 13-3554, 13-3560, 13-3625, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. 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:

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

39  
40  
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 attempted first degree murder of a minor who is twelve, thirteen  
45 or fourteen years of age, second degree murder of a minor who is twelve,

1 thirteen or fourteen years of age, sexual assault of a minor who is  
2 twelve, thirteen or fourteen years of age, taking a child for the purpose  
3 of prostitution, child sex trafficking, commercial sexual exploitation of  
4 a minor, sexual conduct with a minor who is twelve, thirteen or fourteen  
5 years of age, ~~continuous sexual abuse of a child~~ or manufacturing  
6 methamphetamine under circumstances that cause physical injury to a minor  
7 who is twelve, thirteen or fourteen years of age or involving or using  
8 minors in drug offenses shall be sentenced to a term of imprisonment as  
9 follows:

10	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
11	13 years	20 years	27 years

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

14	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
15	23 years	30 years	37 years

16 E. Except as otherwise provided in this section, a person who is at  
17 least eighteen years of age or who has been tried as an adult and who is  
18 convicted of a dangerous crime against children in the first degree  
19 involving aggravated assault, unlawful mutilation, molestation of a child,  
20 sexual exploitation of a minor, aggravated luring a minor for sexual  
21 exploitation, child abuse or kidnapping shall be sentenced to a term of  
22 imprisonment as follows:

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

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

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

29 F. Except as otherwise provided in this section, if a person is at  
30 least eighteen years of age or has been tried as an adult and is convicted  
31 of a dangerous crime against children involving luring a minor for sexual  
32 exploitation, sexual extortion or unlawful age misrepresentation and is  
33 sentenced to a term of imprisonment, the term of imprisonment is as  
34 follows and the person is not eligible for release from confinement on any  
35 basis except as specifically authorized by section 31-233, subsection A or  
36 B until the sentence imposed by the court has been served **OR IS COMMUTED,**  
37 **EXCEPT THAT IF THE PERSON IS CONVICTED OF UNLAWFUL AGE MISREPRESENTATION**  
38 the person is eligible for release pursuant to section 41-1604.07 ~~or the~~  
39 ~~sentence is commuted~~:

40	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
41	5 years	10 years	15 years

42 A person who has been previously convicted of one predicate felony shall  
43 be sentenced to a term of imprisonment as follows and the person is not  
44 eligible for suspension of sentence, probation, pardon or release from  
45 confinement on any basis except as specifically authorized by section

1 31-233, subsection A or B until the sentence imposed by the court has been  
2 served OR IS COMMUTED, EXCEPT THAT IF THE PERSON IS CONVICTED OF UNLAWFUL  
3 AGE MISREPRESENTATION the person is eligible for release pursuant to  
4 section 41-1604.07 ~~or the sentence is commuted:~~

5	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
6	8 years	15 years	22 years

7 G. Except as otherwise provided in this section, if a person is at  
8 least eighteen years of age or has been tried as an adult and is convicted  
9 of a dangerous crime against children involving sexual abuse or bestiality  
10 under section 13-1411, subsection A, paragraph 2 and is sentenced to a  
11 term of imprisonment, the term of imprisonment is as follows and the  
12 person is not eligible for release from confinement on any basis except as  
13 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:

16	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
17	2.5 years	5 years	7.5 years

18 A person who has been previously convicted of one predicate felony shall  
19 be sentenced to a term of imprisonment as follows and the person is not  
20 eligible for suspension of sentence, probation, pardon or release from  
21 confinement on any basis except as specifically authorized by section  
22 31-233, subsection A or B until the sentence imposed by the court has been  
23 served, the person is eligible for release pursuant to section 41-1604.07  
24 or the sentence is commuted:

25	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
26	8 years	15 years	22 years

27 H. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO IS AT  
28 LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO IS  
29 CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN IN THE FIRST DEGREE  
30 INVOLVING CONTINUOUS SEXUAL ABUSE OF A CHILD SHALL BE SENTENCED TO A TERM  
31 OF IMPRISONMENT AS FOLLOWS:

32	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
33	39 YEARS	60 YEARS	81 YEARS

34 A PERSON WHO HAS BEEN PREVIOUSLY CONVICTED OF ONE PREDICATE FELONY SHALL  
35 BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

36	<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
37	69 YEARS	90 YEARS	111 YEARS

38 ~~H.~~ I. The presumptive sentences prescribed in subsections C, D,  
39 ~~and~~ E AND H of this section or subsections F and G of this section if the  
40 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 F, G, L AND M  
43 of this section, a person who is sentenced for a dangerous crime against  
44 children 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 H 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 H 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 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 13-1308, Arizona Revised Statutes, is amended to  
2 read:

3           13-1308. Trafficking of persons for forced labor or services;  
4                                   classification; definitions

5           A. It is unlawful for a person to either:

6           1. Knowingly traffic another person with the intent to or knowledge  
7 that the other person will be subject to forced labor or services.

8           2. Knowingly benefit, financially or by receiving anything of  
9 value, from participation in a venture that has engaged in an act in  
10 violation of section 13-1306, section 13-1307, this section or section  
11 13-3212, subsection A, paragraph 9 or 10.

12           B. A violation of this section is a class 2 felony **AND THE PERSON**  
13 **IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE**  
14 **FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION**  
15 **31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN**  
16 **SERVED OR COMMUTED.**

17           C. For the purposes of this section:

18           1. "Forced labor or services":

19           (a) Means labor or services that are performed or provided by  
20 another person and that are obtained through a person's either:

21           (i) Causing or threatening to cause serious physical injury to any  
22 person.

23           (ii) Restraining or threatening to physically restrain another  
24 person.

25           (iii) Knowingly destroying, concealing, removing, confiscating,  
26 possessing or withholding another person's actual or purported passport or  
27 other immigration document, government issued identification document,  
28 government record or personal property.

29           (iv) Abusing or threatening to abuse the law or the legal system.

30           (v) Extortion.

31           (vi) Causing or threatening to cause financial harm to any person.

32           (vii) Facilitating or controlling another person's access to a  
33 controlled substance.

34           (b) Does not include ordinary household chores and reasonable  
35 disciplinary measures between a parent or legal guardian and the parent's  
36 or legal guardian's child.

37           2. "Traffic" means to entice, recruit, harbor, provide, transport  
38 or otherwise obtain another person by deception, coercion or force.

39           Sec. 3. Section 13-1428, Arizona Revised Statutes, is amended to  
40 read:

41           13-1428. Sexual extortion; classification; definition

42           A. A person commits sexual extortion by knowingly communicating a  
43 threat with the intent to coerce another person to do any of the  
44 following:

45           1. Engage in sexual contact or sexual intercourse.

1           2. Allow the other person's genitals, anus or female breast to be  
2 photographed, filmed, videotaped or digitally recorded.

3           3. Exhibit the other person's genitals, anus or female breast.

4           B. Sexual extortion is a class 3 felony AND THE PERSON IS NOT  
5 ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM  
6 CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION  
7 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN  
8 SERVED OR COMMUTED. ~~Unless~~ IF the victim is under fifteen years of age,  
9 ~~in which case~~ sexual extortion is a class 2 felony AND IS punishable  
10 pursuant to section 13-705.

11           C. For the purposes of this section, "communicating a threat" means  
12 a threat to do any of the following:

13           1. Damage the property of the other person.

14           2. Harm the reputation of the other person.

15           3. Produce or distribute a photograph, film, videotape or digital  
16 recording that depicts the other person engaging in sexual contact or  
17 sexual intercourse or the exhibition of the other person's genitals, anus  
18 or female breast.

19           Sec. 4. Section 13-2323, Arizona Revised Statutes, is amended to  
20 read:

21           13-2323. Participating in a human smuggling organization or  
22 operation; classification

23           A. A person commits participating in a human smuggling organization  
24 OR OPERATION by any of the following:

25           1. Intentionally OR KNOWINGLY organizing, managing, directing,  
26 supervising, COORDINATING, FACILITATING, LEADING, ASSISTING, PARTICIPATING  
27 IN or financing a human smuggling organization ~~with the intent to promote~~  
28 ~~or further~~ OR OPERATION THAT FURTHERS the criminal objectives of the human  
29 smuggling organization OR OPERATION.

30           2. Knowingly directing or instructing others to engage in violence  
31 or intimidation to promote or further the criminal objectives of a human  
32 smuggling organization OR OPERATION.

33           3. Furnishing advice or direction in the conduct, financing or  
34 management of a human smuggling organization's OR OPERATION'S affairs with  
35 the intent to promote or further the criminal objectives of a human  
36 smuggling organization OR OPERATION.

37           4. Intentionally promoting or furthering the criminal objectives of  
38 a human smuggling organization OR OPERATION by inducing or committing any  
39 act or omission by a public servant in violation of the public servant's  
40 official duty.

41           5. KNOWINGLY ASSISTING A HUMAN SMUGGLING ORGANIZATION OR OPERATION  
42 BY TRANSPORTING A PERSON, OR PROCURING THE TRANSPORTATION FOR A PERSON,  
43 WITH THE INTENT TO DO EITHER OF THE FOLLOWING:



1 (a) CONCEAL THE PERSON FROM A PEACE OFFICER.

2 (b) ASSIST THE PERSON WITH FLEEING FROM A PEACE OFFICER WHO IS  
3 ATTEMPTING TO LAWFULLY ARREST OR DETAIN THE PERSON.

4 ~~B. A person commits assisting a human smuggling organization by~~  
5 ~~committing any felony offense, whether completed or preparatory, at the~~  
6 ~~direction of or in association with any human smuggling organization.~~

7 ~~C.~~ B. Participating in a human smuggling organization OR OPERATION  
8 is a class 2 felony.

9 ~~D. Assisting a human smuggling organization is a class 3 felony.~~

10 C. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION IS NOT  
11 ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM  
12 CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION  
13 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN  
14 SERVED OR COMMUTED.

15 Sec. 5. Section 13-3205, Arizona Revised Statutes, is amended to  
16 read:

17 13-3205. Causing spouse to become prostitute; classification

18 A person who knowingly by force, fraud, intimidation or  
19 threats, causes his or her spouse to live in a house of prostitution or  
20 to lead a life of prostitution, is guilty of a class 5 felony AND THE  
21 PERSON IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR  
22 RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY  
23 SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT  
24 HAS BEEN SERVED OR COMMUTED.

25 Sec. 6. Section 13-3207, Arizona Revised Statutes, is amended to  
26 read:

27 13-3207. Detention of persons in house of prostitution for  
28 debt; classification

29 A person who knowingly detains any person in a house of prostitution  
30 because of a debt ~~such~~ THAT person has contracted or is said to have  
31 contracted, is guilty of a class 5 felony AND THE PERSON IS NOT ELIGIBLE  
32 FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT  
33 ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233,  
34 SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED  
35 OR COMMUTED.

36 Sec. 7. Section 13-3554, Arizona Revised Statutes, is amended to  
37 read:

38 13-3554. Luring a minor for sexual exploitation;  
39 classification

40 A. A person commits luring a minor for sexual exploitation by  
41 offering or soliciting sexual conduct with another person knowing or  
42 having reason to know that the other person is a minor.

43 B. It is not a defense to a prosecution for a violation of this  
44 section that the other person is not a minor.

1 C. Luring a minor for sexual exploitation is a class 3 felony, and  
2 if the minor is under fifteen years of age it is punishable pursuant to  
3 section 13-705. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION  
4 IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE  
5 FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION  
6 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN  
7 SERVED OR COMMUTED.

8 Sec. 8. Section 13-3560, Arizona Revised Statutes, is amended to  
9 read:

10 13-3560. Aggravated luring a minor for sexual exploitation:  
11 classification; definitions

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

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

19 2. By means of the communication, offers or solicits sexual conduct  
20 with the minor. The offer or solicitation may occur before,  
21 contemporaneously with, after or as an integrated part of the transmission  
22 of the visual depiction.

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

26 C. Aggravated luring a minor for sexual exploitation is a class 2  
27 felony, and if the minor is under fifteen years of age it is punishable  
28 pursuant to section 13-705, subsection E. A PERSON WHO IS CONVICTED OF A  
29 VIOLATION OF THIS SECTION IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE,  
30 PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS  
31 SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE  
32 SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED.

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

35 E. For the purposes of this section:

36 1. "Electronic communication device" means any electronic device  
37 that is capable of transmitting visual depictions and includes any of the  
38 following:

39 (a) A computer, computer system or network as defined in section  
40 13-2301.

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

42 2. "Harmful to minors" has the same meaning prescribed in section  
43 13-3501.

1           Sec. 9. Section 13-3625, Arizona Revised Statutes, is amended to  
2 read:

3           13-3625. Unlawful sale or purchase of children;  
4                                   classification

5           A. Except for adoptions pursuant to title 8, chapter 1 and  
6 guardianships pursuant to title 14, chapter 5, a person shall not sell or  
7 offer to sell a child for money or other valuable consideration and shall  
8 not purchase or offer to purchase a child in exchange for money or other  
9 valuable consideration.

10          B. A person who violates this section is guilty of a class 5 felony  
11 AND THE PERSON IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION,  
12 PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY  
13 AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED  
14 BY THE COURT HAS BEEN SERVED OR COMMUTED.

15           Sec. 10. Section 31-412, Arizona Revised Statutes, is amended to  
16 read:

17           31-412. Criteria for release on parole; release; custody of  
18                                   parolee; definition

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

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

1 parole pursuant to this subsection the board may authorize parole if, in  
2 its discretion, parole appears to be in the best interests of the state.

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

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

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

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

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

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

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

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

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

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

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

1           Sec. 11. Section 41-1604.11, Arizona Revised Statutes, is amended  
2 to read:

3           41-1604.11. Order for removal; purposes; duration; work  
4                                   furlough; notice; failure to return;  
5                                   classification; applicability; definition

6           A. The director of the state department of corrections may  
7 authorize the temporary removal under custody from prison or any other  
8 institution for the detention of adults under the jurisdiction of the  
9 state department of corrections of any inmate for the purpose of employing  
10 that inmate in any work directly connected with the administration,  
11 management or maintenance of the prison or institution in which the inmate  
12 is confined, for purposes of cooperating voluntarily in medical research  
13 that cannot be performed at the prison or institution, or for  
14 participating in community action activities directed toward delinquency  
15 prevention and community betterment programs. The removal shall not be  
16 for a period longer than one day.

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

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

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

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

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

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

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

25           F. The board shall require that every inmate released on work  
26 furlough comply with the terms and conditions of release as the board may  
27 impose, including that the inmate be gainfully employed while on work  
28 furlough and that the inmate make restitution to the victim of the offense  
29 for which the inmate was incarcerated.

30           G. If the board finds that an inmate has failed to comply with the  
31 terms and conditions of release or that the best interests of this state  
32 would be served by revocation of an inmate's work furlough, the board may  
33 issue a warrant for retaking the inmate before the expiration of the  
34 inmate's maximum sentence. After return of the inmate, the board may  
35 revoke the inmate's work furlough after the inmate has been given an  
36 opportunity to be heard.

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

41           I. The director shall transmit a monthly report containing the  
42 name, date of birth, offense for which the inmate was sentenced, length of  
43 the sentence and date of admission to the state department of corrections  
44 of each inmate on work furlough or home arrest to the chairperson of the  
45 house of representatives judiciary committee or its successor committee

1 and the chairperson of the senate judiciary committee or its successor  
2 committee. The director shall also submit a report containing this  
3 information for any inmate released on work furlough or home arrest within  
4 a jurisdiction to the county attorney, sheriff and chief of police for the  
5 jurisdiction in which the inmate is released on work furlough or home  
6 arrest.

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

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

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

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

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

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

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

43 3. A conviction under a prior criminal code for any offense that  
44 possesses reasonably equivalent offense elements as the offense elements

1 that are listed under section 13-705, subsection ~~R~~ S, paragraph 1 or  
2 section 13-706, subsection F, paragraph 1.

3 Sec. 12. Section 41-1604.13, Arizona Revised Statutes, is amended  
4 to read:

5 41-1604.13. Home arrest; eligibility; victim notification;  
6 conditions; applicability; definitions

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

10 1. Meets the following criteria:

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

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

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

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

17 3. Is eligible for work furlough.

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

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

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

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

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

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

43 D. Home arrest is conditioned on the following:

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



- 1           2. Participation in gainful employment or other beneficial  
2 activities.
- 3           3. Submission to alcohol and drug tests as mandated.
- 4           4. Payment of the electronic monitoring fee in an amount determined  
5 by the board of not less than ~~one dollar~~ \$1 per day and not more than the  
6 total cost of the electronic monitoring unless, after determining the  
7 inability of the inmate to pay the fee, the board requires payment of a  
8 lesser amount. The fees collected shall be returned to the department's  
9 home arrest program to offset operational costs of the program.
- 10          5. Remaining at the inmate's place of residence at all times except  
11 for movement out of the residence according to mandated conditions.
- 12          6. Adherence to any other conditions imposed by the court, board of  
13 executive clemency or supervising corrections officers.
- 14          7. Compliance with all other conditions of supervision.
- 15          8. Payment of a monthly home arrest supervision fee of at least  
16 ~~sixty-five dollars~~ \$65 unless, after determining the inability of the  
17 inmate to pay the fee, the department requires payment of a lesser amount.  
18 The supervising corrections officer shall monitor the collection of the  
19 fee. Monies collected shall be deposited, pursuant to sections 35-146 and  
20 35-147, in the community corrections enhancement fund established by  
21 section 31-418.
- 22          9. Payment of a drug testing fee in an amount to be determined by  
23 the board and not to exceed the costs of the drug testing program. The  
24 fees collected pursuant to this paragraph by the department may only be  
25 used to offset the costs of the drug testing program.
- 26          E. Before holding a hearing on home arrest, the board on request  
27 shall notify and afford an opportunity to be heard to the presiding judge  
28 of the superior court in the county in which the inmate requesting home  
29 arrest was sentenced, the prosecuting attorney and the director of the  
30 arresting law enforcement agency. The board shall notify the victim of  
31 the offense for which the inmate is incarcerated. The notice shall state  
32 the name of the inmate requesting home arrest, the offense for which the  
33 inmate was sentenced, the length of the sentence and the date of admission  
34 to the custody of the state department of corrections. The notice to the  
35 victim shall also inform the victim of the victim's right to be present  
36 and to submit a written report to the board expressing the victim's  
37 opinion concerning the inmate's release. ~~No~~ A hearing concerning home  
38 arrest may NOT be held until fifteen days after the date of giving the  
39 notice. On mailing the notice, the board shall file a hard copy of the  
40 notice as evidence that notification was sent.
- 41          F. An inmate who is placed on home arrest is on inmate status, is  
42 subject to all the limitations of rights and movement and is entitled only  
43 to due process rights of return.

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

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

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

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

13 K. For the purposes of this section:

14 1. "Dangerous offense" has the same meaning prescribed in section  
15 13-105.

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

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

20 (b) A dangerous crime against children as defined in section  
21 13-705. The citation of section 13-705 is not a necessary element for a  
22 serious offense designation.

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