

REFERENCE TITLE: prostitution; children; trafficking

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1701

Introduced by
Senator Gonzales

AN ACT

AMENDING SECTIONS 13-3208, 13-3211, 13-3212 AND 13-3214, ARIZONA REVISED
STATUTES; RELATING TO PROSTITUTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-3208, Arizona Revised Statutes, is amended to
3 read:

4 13-3208. Entering a house of prostitution; engaging a
5 prostitution enterprise; operating or maintaining
6 a house of prostitution or prostitution
7 enterprise; classification

8 A. A person who knowingly ~~is an employee at~~ ENTERS a house of
9 prostitution or WHO ENGAGES A prostitution enterprise FOR THE PURPOSE OF
10 PAYING MONEY OR OTHER VALUABLE CONSIDERATION FOR SEXUAL CONDUCT is guilty
11 of a class 1 misdemeanor.

12 B. A person who knowingly operates or maintains a house of
13 prostitution or prostitution enterprise is guilty of a class 5 felony.

14 Sec. 2. Section 13-3211, Arizona Revised Statutes, is amended to
15 read:

16 13-3211. Definitions

17 In this chapter, unless the context otherwise requires:

18 ~~1. "Employee" means a person who conducts lawful or unlawful~~
19 ~~business for another person under a master-servant relationship or as an~~
20 ~~independent contractor and who is compensated by wages, commissions, tips~~
21 ~~or other valuable consideration.~~

22 ~~2.~~ 1. "House of prostitution" means any building, structure or
23 place that is used for the purpose of prostitution or lewdness or where
24 acts of prostitution occur.

25 ~~3.~~ 2. "Operate and maintain" means to organize, design, perpetuate
26 or control. Operate and maintain includes providing financial support by
27 paying utilities, rent, maintenance costs or advertising costs,
28 supervising activities or work schedules, and directing or furthering the
29 aims of the enterprise.

30 ~~4.~~ 3. "Oral sexual contact" means oral contact with the penis,
31 vulva or anus.

32 ~~5.~~ 4. "Prostitution" means engaging in or agreeing or offering to
33 engage in sexual conduct under a fee arrangement with any person for money
34 or any other valuable consideration.

35 ~~6.~~ 5. "Prostitution enterprise" means any corporation,
36 partnership, association or other legal entity or any group of individuals
37 associated in fact although not a legal entity engaged in providing
38 prostitution services.

39 ~~7.~~ 6. "Sodomasochistic abuse" means flagellation or torture by or
40 on a person who is nude or clad in undergarments or in revealing or
41 bizarre costume or the condition of being fettered, bound or otherwise
42 physically restrained on the part of one so clothed.

43 ~~8.~~ 7. "Sexual conduct" means sexual contact, sexual intercourse,
44 oral sexual contact or sodomasochistic abuse.

1 ~~9.~~ 8. "Sexual contact" means any direct or indirect fondling or
2 manipulating of any part of the genitals, anus or female breast.

3 ~~10.~~ 9. "Sexual intercourse" means penetration into the penis, vulva
4 or anus by any part of the body or by any object.

5 Sec. 3. Section 13-3212, Arizona Revised Statutes, is amended to
6 read:

7 13-3212. Child sex trafficking; classification; increased
8 punishment; definition

9 A. A person commits child sex trafficking by knowingly:

10 1. Causing any minor to engage in prostitution.

11 2. Using any minor for the purposes of prostitution.

12 3. ~~Permitting~~ ALLOWING a minor who is under the person's custody or
13 control to engage in prostitution.

14 4. Receiving any benefit for or on account of procuring or placing
15 a minor in any place or in the charge or custody of any person for the
16 purpose of prostitution.

17 5. Receiving any benefit pursuant to an agreement to participate in
18 the proceeds of prostitution of a minor.

19 6. Financing, managing, supervising, controlling or owning, either
20 alone or in association with others, prostitution activity involving a
21 minor.

22 7. Transporting or financing the transportation of any minor with
23 the intent that the minor engage in prostitution.

24 8. Providing a means by which a minor engages in prostitution.

25 9. Enticing, recruiting, harboring, providing, transporting, making
26 available to another or otherwise obtaining a minor with the intent to
27 cause the minor to engage in prostitution or any sexually explicit
28 performance.

29 10. Enticing, recruiting, harboring, providing, transporting,
30 making available to another or otherwise obtaining a minor with the
31 knowledge that the minor will engage in prostitution or any sexually
32 explicit performance.

33 B. A person who is at least eighteen years of age commits child sex
34 trafficking by knowingly:

35 1. Engaging in prostitution with a minor who is under fifteen years
36 of age.

37 2. Engaging in prostitution with a minor who the person knows or
38 should have known is fifteen, sixteen or seventeen years of age.

39 3. Engaging in prostitution with a minor who is fifteen, sixteen or
40 seventeen years of age.

41 C. It is not a defense to a prosecution under subsection A and
42 subsection B, paragraphs 1 and 2 of this section that the other person is
43 a peace officer posing as a minor or a person assisting a peace officer
44 posing as a minor.

1 D. Notwithstanding any other law, a sentence imposed on a person
2 for a violation of this section shall be consecutive to any other sentence
3 imposed on the person at any time.

4 E. Child sex trafficking pursuant to subsection A of this section
5 is a class 2 felony if the minor is under fifteen years of age and is
6 punishable pursuant to section 13-705.

7 F. Child sex trafficking pursuant to subsection B, paragraph 1 of
8 this section is a class 2 felony and is punishable pursuant to section
9 13-705.

10 G. Except as provided in subsection H of this section, if the minor
11 is fifteen, sixteen or seventeen years of age, child sex trafficking
12 pursuant to subsection A of this section is a class 2 felony, the person
13 convicted shall be sentenced pursuant to this section and the person is
14 not eligible for suspension of sentence, probation, pardon or release from
15 confinement on any basis except as specifically authorized by section
16 31-233, subsection A or B until the sentence imposed by the court has been
17 served or commuted. The presumptive term may be aggravated or mitigated
18 within the range under this section pursuant to section 13-701,
19 subsections C, D and E. The terms are as follows:

20 1. The term for a first offense is as follows:

21	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
22	13 years	20 years	27 years

23 2. The term for a defendant who has one historical prior felony
24 conviction is as follows:

25	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
26	25 years	35 years	45 years

27 3. The term for a defendant who has two or more historical prior
28 felony convictions is as follows:

29	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
30	30 years	40 years	50 years

31 H. If the person has previously been convicted of child sex
32 trafficking involving a minor who is fifteen, sixteen or seventeen years
33 of age, child sex trafficking pursuant to subsection A of this section is
34 a class 2 felony, the person convicted shall be sentenced pursuant to this
35 section and the person shall be sentenced to imprisonment in the custody
36 of the state department of corrections for natural life. A person who is
37 sentenced to natural life is not eligible for commutation, parole, work
38 furlough, work release or release from confinement on any basis for the
39 remainder of the person's natural life.

40 I. If the minor is fifteen, sixteen or seventeen years of age,
41 child sex trafficking pursuant to subsection B, paragraph 2 of this
42 section is a class 2 felony, the person convicted shall be sentenced
43 pursuant to this section and the person is not eligible for suspension of
44 sentence, probation, pardon or release from confinement on any basis
45 except as specifically authorized by section 31-233, subsection A or B

1 until the sentence imposed by the court has been served or commuted. The
2 presumptive term may be aggravated or mitigated within the range under
3 this section pursuant to section 13-701, subsections C, D and E. The
4 terms are as follows:

5 1. The term for a first offense is as follows:

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

8 2. The term for a defendant who has one historical prior felony
9 conviction is as follows:

10	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
11	14 years	15.75 years	28 years

12 3. The term for a defendant who has two or more historical prior
13 felony convictions is as follows:

14	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
15	21 years	28 years	35 years

16 J. Except as provided in subsection K of this section, child sex
17 trafficking pursuant to subsection B, paragraph 3 of this section is a
18 class 5 felony. If the court sentences the person to a term of probation,
19 the court shall order that as an initial term of probation the person be
20 imprisoned in the county jail for not less than one hundred eighty
21 consecutive days. This jail term shall commence on the date of
22 sentencing. The court may suspend ninety days of the jail sentence if the
23 person has not previously been convicted of a violation of this section, a
24 violation of section 13-3214 or a violation of any city or town ordinance
25 that prohibits prostitution and that has the same or substantially similar
26 elements as section 13-3214 and the person successfully completes an
27 appropriate court ordered education or treatment program.

28 K. If the person has previously been convicted of child sex
29 trafficking or attempted child sex trafficking pursuant to this section,
30 child sex trafficking pursuant to subsection B, paragraph 3 of this
31 section is a class 2 felony and the person is not eligible for suspension
32 of sentence, probation, pardon or release from confinement on any basis
33 except as specifically authorized by section 31-233, subsection A or B
34 until the sentence imposed has been served or commuted.

35 L. This section does not preclude the state from alleging and
36 proving any other sentencing enhancements as provided by law.

37 M. A MINOR WHO IS A VICTIM OF CHILD PROSTITUTION SHALL NOT BE
38 CHARGED WITH A VIOLATION OF THIS SECTION OR SECTION 13-3214.

39 ~~M.~~ N. For the purposes of this section, "sexually explicit
40 performance" means a live or public act or show intended to arouse or
41 satisfy the sexual desires or appeal to the prurient interest of patrons.

1 Sec. 4. Section 13-3214, Arizona Revised Statutes, is amended to
2 read:

3 13-3214. Prostitution; classification

4 A. It is unlawful for a person to knowingly engage in prostitution.

5 B. This section does not prohibit cities or towns from enacting and
6 enforcing ordinances to suppress and prohibit prostitution that provide a
7 punishment for misdemeanor violations that is at least as stringent as
8 provided in this section, EXCEPT THAT AN ORDINANCE THAT APPLIES TO A MINOR
9 SHALL NOT PROVIDE A PUNISHMENT THAT IS GREATER THAN ANY PUNISHMENT
10 PROVIDED BY STATE LAW.

11 C. For the purposes of sentencing under this section, a previous
12 violation of any city or town ordinance that prohibits prostitution and
13 that has the same or substantially similar elements as this section shall
14 be deemed to be a previous violation of this section.

15 D. THIS SECTION DOES NOT APPLY TO A MINOR WHO ENGAGES IN OR AGREES
16 TO OR OFFERS TO ENGAGE IN SEXUAL CONDUCT FOR MONEY OR OTHER VALUABLE
17 CONSIDERATION.

18 ~~E.~~ E. It is an affirmative defense to a prosecution under this
19 section that the defendant committed the acts constituting prostitution as
20 a direct result of being a victim of sex trafficking.

21 ~~F.~~ F. A person who violates this section is guilty of a class 1
22 misdemeanor, except that:

23 1. A person who is convicted of a first violation of this section
24 shall be sentenced to serve not less than fifteen consecutive days in jail
25 and is not eligible for probation or suspension of execution of sentence
26 until the entire sentence is served.

27 2. A person who is convicted of a second violation of this section
28 shall be sentenced to serve not less than thirty consecutive days in jail
29 and is not eligible for probation or suspension of execution of sentence
30 until the entire sentence is served.

31 3. A person who is convicted of a third violation of this section
32 shall be sentenced to serve not less than sixty consecutive days in jail,
33 is not eligible for probation or suspension of execution of sentence until
34 the entire sentence is served and shall complete an appropriate court
35 ordered education or treatment program.

36 4. A person who has previously been convicted of three or more
37 violations of this section and who commits a subsequent violation of this
38 section is guilty of a class 5 felony, shall be sentenced to serve not
39 less than one hundred eighty consecutive days in jail and is not eligible
40 for probation or suspension of execution of sentence until the entire
41 sentence is served. This paragraph does not prohibit a person from being
42 sentenced to serve a period of incarceration in the state department of
43 corrections.