REFERENCE TITLE: children; sex trafficking

State of Arizona House of Representatives Fifty-sixth Legislature Second Regular Session 2024

HB 2550

Introduced by Representative Payne

AN ACT

AMENDING SECTIONS 13-705, 13-909, 13-1405 AND 13-3212, ARIZONA REVISED STATUTES; RELATING TO SEX OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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 Be it enacted by the Legislature of the State of Arizona: Section 1. Section 13-705, Arizona Revised Statutes, is amended to read:

13-705. <u>Dangerous crimes against children; sentences;</u> definitions

- A. A person who is at least eighteen years of age and who is convicted of a dangerous crime against children in the first degree involving commercial sexual exploitation of a minor or child sex trafficking and the person has previously been convicted of a dangerous crime against children in the first degree shall be sentenced to imprisonment in the custody of the state department of corrections for natural life. A person who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis for the remainder of the person's natural life.
- B. A person who is at least eighteen years of age and who is convicted of a dangerous crime against children in the first degree involving sexual assault of a minor who is twelve years of age or younger UNDER EIGHTEEN YEARS OF AGE or sexual conduct with a minor who is twelve years of age or younger UNDER EIGHTEEN YEARS OF AGE shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. This subsection does not apply to masturbatory contact.
- C. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is under twelve EIGHTEEN years of age, sexual assault of a minor who is under twelve EIGHTEEN years of age, sexual conduct with a minor who is under twelve EIGHTEEN years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is under twelve EIGHTEEN years of age may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. If a life sentence is not imposed pursuant to this subsection, the person shall be sentenced to a term of imprisonment as follows:

MinimumPresumptiveMaximum13 years20 years27 years

D. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving second degree murder of a minor who is under fifteen years of age may be sentenced to life imprisonment and is not eligible for

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suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. If a life sentence is not imposed pursuant to this subsection, the person shall be sentenced to a term of imprisonment as follows:

MinimumPresumptiveMaximum25 years30 years35 years

E. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is twelve, thirteen or fourteen UNDER EIGHTEEN years of age, sexual assault of a minor who is twelve, thirteen or fourteen UNDER EIGHTEEN years of age, taking a child for the purpose of prostitution, child sex trafficking, commercial sexual exploitation of a minor, sexual conduct with a minor who is twelve, thirteen or fourteen UNDER EIGHTEEN years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is twelve, thirteen or fourteen UNDER EIGHTEEN years of age or involving or using minors in drug offenses shall be sentenced to a term of imprisonment as follows:

MinimumPresumptiveMaximum13 years20 years27 years

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

MinimumPresumptiveMaximum23 years30 years37 years

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

MinimumPresumptiveMaximum10 years17 years24 years

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

MinimumPresumptiveMaximum21 years28 years35 years

G. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving luring a minor for sexual exploitation, sexual extortion or unlawful age misrepresentation and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any

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basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or is commuted, except that if the person is convicted of unlawful age misrepresentation the person is eligible for release pursuant to section 41-1604.07:

MinimumPresumptiveMaximum5 years10 years15 years

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

MinimumPresumptiveMaximum8 years15 years22 years

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

MinimumPresumptiveMaximum2.5 years5 years7.5 years

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

MinimumPresumptiveMaximum8 years15 years22 years

I. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving continuous sexual abuse of a child shall be sentenced to a term of imprisonment as follows:

42MinimumPresumptiveMaximum4339 years60 years81 years

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

MinimumPresumptiveMaximum69 years90 years111 years

- J. The presumptive sentences prescribed in subsections C, D, E, and F and I of this section or subsections G and H of this section if the person has previously been convicted of a predicate felony may be increased or decreased pursuant to section 13-701, subsections C, D and E.
- K. Except as provided in subsections G, H, M and N of this section, a person who is sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted.
- L. A person who is convicted of any dangerous crime against children in the first degree pursuant to subsection C, D, E, or F or I of this section and who has been previously convicted of two or more predicate felonies shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served not fewer than thirty-five years or the sentence is commuted.
- M. Notwithstanding chapter 10 of this title, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the second degree pursuant to subsection B, C, E, or F or I of this section is guilty of a class 3 felony and if the person is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

MinimumPresumptiveMaximum5 years10 years15 years

- N. A person who is convicted of any dangerous crime against children in the second degree and who has been previously convicted of one or more predicate felonies is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.
- 0. Section 13-704, subsection J and section 13-707, subsection B apply to the determination of prior convictions.
- P. The sentence imposed on a person by the court for a dangerous crime against children under subsection H of this section involving sexual

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abuse may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed on a person for any other dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time, including sexual abuse of the same victim.

- Q. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.
- R. A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.
- S. It is not a defense to a dangerous crime against children that the minor is a person posing as a minor or is otherwise fictitious if the defendant knew or had reason to know the purported minor was under fifteen EIGHTEEN years of age.
 - T. For the purposes of this section:
- 1. "Dangerous crime against children" means any of the following that is committed against a minor who is under $\frac{\text{fifteen}}{\text{fifteen}}$ EIGHTEEN years of age:
 - (a) Second degree murder.
- (b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
 - (c) Sexual assault.
 - (d) Molestation of a child.
 - (e) Sexual conduct with a minor.
 - (f) Commercial sexual exploitation of a minor.
 - (g) Sexual exploitation of a minor.
- (h) Child abuse as prescribed in section 13-3623, subsection A, paragraph 1.
 - (i) Kidnapping.
 - (j) Sexual abuse.
- (k) Taking a child for the purpose of prostitution as prescribed in section 13-3206.
 - (1) Child sex trafficking as prescribed in section 13-3212.
 - (m) Involving or using minors in drug offenses.
 - (n) Continuous sexual abuse of a child.
 - (o) Attempted first degree murder.
 - (p) Sex trafficking.
- (q) Manufacturing methamphetamine under circumstances that cause physical injury to a minor.
- 42 (r) Bestiality as prescribed in section 13-1411, subsection A, 43 paragraph 2.
 - (s) Luring a minor for sexual exploitation.
 - (t) Aggravated luring a minor for sexual exploitation.

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- (u) Unlawful age misrepresentation.
- (v) Unlawful mutilation.
- (w) Sexual extortion as prescribed in section 13-1428.
- 2. "Predicate felony" means any felony involving child abuse pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.
- Sec. 2. Section 13-909, Arizona Revised Statutes, is amended to read:

13-909. <u>Vacating the conviction of a sex trafficking victim;</u> requirements

- A. A person who was convicted of a violation of section 13-3214 or a city or town ordinance that has the same or substantially similar elements as section 13-3214 committed before July 24, 2014 may apply to the court that pronounced sentence to vacate the person's conviction. The court shall grant the application and vacate the conviction if the court finds by clear and convincing evidence that the person's participation in the offense was a direct result of being a victim of sex trafficking pursuant to section 13-1307.
- B. If the prosecutor does not oppose the application, the court may grant the application and vacate the conviction without a hearing.
- C. If the prosecutor opposes the application, the court shall hold a hearing on the application.
 - D. On vacating the conviction, the court shall:
- 1. Release the applicant from all penalties and disabilities resulting from the conviction.
- 2. Enter an order that a notation be made in the court file and in law enforcement and prosecution records that the conviction has been vacated and the person was the victim of a crime.
- 3. Transmit the order vacating the conviction to the arresting agency, the prosecutor and the department of public safety.
- E. A conviction vacated pursuant to this section does not qualify as a historical prior felony conviction and cannot be alleged for any purpose pursuant to section 13-703 or 13-707.
- F. Except on an application for employment that requires a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1, a person whose conviction is vacated under this section may in all instances state that the person has never been arrested for, charged with or convicted of the crime that is the subject of the conviction, including in response to questions on employment, housing, financial aid or loan applications.

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Sec. 3. Section 13-1405, Arizona Revised Statutes, is amended to read:

13-1405. Sexual conduct with a minor; classification

- A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.
- B. Sexual conduct with a minor who is under fifteen EIGHTEEN years of age is a class 2 felony and is punishable pursuant to section 13-705. Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is or was in a position of trust and the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed has been served or commuted.
- Sec. 4. Section 13-3212, Arizona Revised Statutes, is amended to read:

13-3212. Child sex trafficking: classification: increased punishment: definition

- A. A person commits child sex trafficking by knowingly:
- 1. Causing any minor to engage in prostitution ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY.
- 2. Using any minor for the purposes MEANS of prostitution ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY.
- 3. Permitting ALLOWING a minor who is under the person's custody or control to engage in prostitution ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY.
- 4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY.
- 5. Receiving any benefit pursuant to an agreement to participate in the proceeds of $\frac{1}{2}$ ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY of a minor.
- 6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY involving a minor.
- 7. Transporting or financing the transportation of any minor with the intent that the minor engage in $\frac{1}{100}$ ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY.
- 8. Providing a means by which a minor engages in prostitution ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY.
- 9. Enticing, recruiting, harboring, providing, transporting, making available to another or otherwise obtaining a minor with the intent to cause the minor to engage in prostitution or any sexually explicit performance ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY.

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10. Enticing, recruiting, harboring, providing, transporting, making available to another or otherwise obtaining a minor with the knowledge that the minor will engage in prostitution or any sexually explicit performance ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY.
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- B. A person who is at least eighteen years of age commits child sex trafficking by knowingly:
- 1. engaging in prostitution ANY SEXUAL ACT IN PERSON, VIRTUALLY OR DIGITALLY with a minor who is under fifteen EIGHTEEN years of age.
- 2. Engaging in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age.
- 3. Engaging in prostitution with a minor who is fifteen, sixteen or seventeen years of age.
- C. It is not a defense to a prosecution under subsection SUBSECTIONS A and subsection B, paragraphs 1 and 2 of this section that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor.
- D. Notwithstanding any other law, a sentence imposed on a person for a violation of this section shall be consecutive to any other sentence imposed on the person at any time.
- E. Child sex trafficking pursuant to subsection A of this section is a class 2 felony if the minor is under fifteen years of age and is punishable pursuant to section 13-705.
- F. E. Child sex trafficking pursuant to subsection B, paragraph 1 of this section is a class 2 felony and is punishable pursuant to section 13-705.
- G. Except as provided in subsection H of this section, if the minor is fifteen, sixteen or seventeen years of age, child sex trafficking pursuant to subsection A of this section is a class 2 felony, the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. The terms are as follows:
 - 1. The term for a first offense is as follows:

MinimumPresumptiveMaximum13 years20 years27 years

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

MinimumPresumptiveMaximum25 years35 years45 years

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

Minimum Presumptive Maximum

30 years 40 years 50 years

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

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

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

 Minimum
 Presumptive
 Maximum

 7 years
 10.5 years
 21 years

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

MinimumPresumptiveMaximum14 years15.75 years28 years

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

Minimum Presumptive Maximum 21 years 28 years 35 years

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

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elements as section 13-3214 and the person successfully completes an appropriate court ordered education or treatment program.

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

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

M. G. For the purposes of this section, "sexually explicit performance" means a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interest of patrons. "CHILD" OR "MINOR" MEANS A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE.

Sec. 5. Conforming legislation

The legislative council staff shall prepare proposed legislation conforming the Arizona Revised Statutes to the provisions of this act for consideration in the fifty-seventh legislature, first regular session.

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