

**Arizona**

13-604. Dangerous and repetitive offenders; definitions

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

| Felony  | Minimum   | Presumptive | Maximum    |
|---------|-----------|-------------|------------|
| Class 4 | 3 years   | 4.5 years   | 6 years    |
| Class 5 | 1.5 years | 2.25 years  | 3 years    |
| Class 6 | 1 year    | 1.75 years  | 2.25 years |

B. Except as provided in subsection I, J or K of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 2 or 3 felony, whether a completed or preparatory offense, and who has a historical prior felony conviction shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

| Felony  | Minimum   | Presumptive | Maximum    |
|---------|-----------|-------------|------------|
| Class 2 | 6 years   | 9.25 years  | 18.5 years |
| Class 3 | 4.5 years | 6.5 years   | 13 years   |

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

| Felony  | Minimum | Presumptive | Maximum   |
|---------|---------|-------------|-----------|
| Class 4 | 8 years | 10 years    | 12 years  |
| Class 5 | 4 years | 5 years     | 6 years   |
| Class 6 | 3 years | 3.75 years  | 4.5 years |

D. Except as provided in subsection I, J, K or S of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 2 or 3 felony, and who has two or more historical prior felony convictions, shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated

within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

| Felony  | Minimum  | Presumptive | Maximum  |
|---------|----------|-------------|----------|
| Class 2 | 14 years | 15.75 years | 28 years |
| Class 3 | 10 years | 11.25 years | 20 years |

E. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor or petty offense, other than a traffic offense, and who has been convicted of one or more of the same misdemeanors or petty offenses within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which such person currently stands convicted.

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

| Felony  | Minimum   | Presumptive | Maximum |
|---------|-----------|-------------|---------|
| Class 4 | 4 years   | 6 years     | 8 years |
| Class 5 | 2 years   | 3 years     | 4 years |
| Class 6 | 1.5 years | 2.25 years  | 3 years |

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

| Felony  | Minimum | Presumptive | Maximum   |
|---------|---------|-------------|-----------|
| Class 4 | 8 years | 10 years    | 12 years  |
| Class 5 | 4 years | 5 years     | 6 years   |
| Class 6 | 3 years | 3.75 years  | 4.5 years |

H. Except as provided in subsection S of this section or section 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument a person who has two or more historical prior felony convictions involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated

within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

| Felony  | Minimum   | Presumptive | Maximum  |
|---------|-----------|-------------|----------|
| Class 4 | 12 years  | 14 years    | 16 years |
| Class 5 | 6 years   | 7 years     | 8 years  |
| Class 6 | 4.5 years | 5.25 years  | 6 years  |

I. Except as provided in section 13-604.01, upon a first conviction of a class 2 or 3 felony involving discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or upon conviction of a class 2 or 3 felony when the intentional or knowing infliction of serious physical injury upon another has occurred, the defendant shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

| Felony  | Minimum | Presumptive | Maximum  |
|---------|---------|-------------|----------|
| Class 2 | 7 years | 10.5 years  | 21 years |
| Class 3 | 5 years | 7.5 years   | 15 years |

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

| Felony  | Minimum  | Presumptive | Maximum  |
|---------|----------|-------------|----------|
| Class 2 | 14 years | 15.75 years | 28 years |
| Class 3 | 10 years | 11.25 years | 20 years |

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

| Felony  | Minimum  | Presumptive | Maximum  |
|---------|----------|-------------|----------|
| Class 2 | 21 years | 28 years    | 35 years |
| Class 3 | 15 years | 20 years    | 25 years |

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

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

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

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

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

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

R. A person who is convicted of committing any felony offense, which felony offense is committed while the person is released on bail or on the defendant's own recognizance on a separate felony offense or while the person is escaped from preconviction custody for a separate felony offense, shall be sentenced to a term of imprisonment two years longer than would otherwise be imposed for the felony offense committed while released on bond or on the defendant's own recognizance or while escaped from preconviction custody. The additional sentence imposed under this subsection is in addition to any enhanced punishment that may be applicable under any of the other subsections of this section. The defendant 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 two years are served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

S. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a serious offense except a drug offense, first degree murder or any dangerous crime against

children, whether a completed or preparatory offense, and who has previously been convicted of two or more serious offenses not committed on the same occasion 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 less than twenty-five years or the sentence is commuted.

T. A person who is convicted of committing any felony offense with the intent to promote, further or assist any criminal conduct by a criminal street gang shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as 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. The presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable.

U. A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer while the officer is engaged in the execution of any official duties pursuant to section 13-1204, subsection A, paragraph 1 or 2 shall be sentenced to imprisonment for not less than the presumptive sentence authorized under this chapter and is not eligible for suspension of sentence, commutation or release on any basis until the sentence imposed is served.

V. As used in this section:

1. "Absconder" means a probationer who has moved from the probationer's primary place of residence without permission of the probation officer and cannot be located within ninety days of the previous contact, and a petition to revoke has been filed in the superior court alleging that the probationer's whereabouts are unknown. A probationer is no longer deemed to be an absconder when voluntarily or involuntarily returned to probation service.

2. "Historical prior felony conviction" means:

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

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

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

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

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

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

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

(b) Any class 2 or 3 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the ten years immediately preceding the date of the present offense. Any time spent on absconder status while on probation or incarcerated is excluded in calculating if the offense was committed within the preceding ten years. If a court determines a person was not on absconder status while on probation that time is not excluded.

(c) Any class 4, 5 or 6 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the five years immediately preceding the date of the present offense. Any time spent on absconder status while on probation or incarcerated is excluded in calculating if the offense was committed within the preceding five years. If a court determines a person was not on absconder status while on probation that time is not excluded.

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

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

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

(a) First degree murder.

(b) Second degree murder.

(c) Manslaughter.

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

(e) Sexual assault.

(f) Any dangerous crime against children.

(g) Arson of an occupied structure.

(h) Armed robbery.

(i) Burglary in the first degree.

(j) Kidnapping.

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

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

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13-118. Sexual motivation special allegation; procedures; definition

A. In each criminal case involving an offense other than a sexual offense, the prosecutor may file a special allegation of sexual motivation if sufficient admissible evidence exists that would justify a finding of sexual motivation by a reasonable and objective finder of fact.

B. If the prosecutor files a special allegation of sexual motivation, the state shall prove beyond a reasonable doubt that the defendant committed the offense with a sexual motivation. The trier of fact shall find a special verdict as to whether the defendant committed the offense with a sexual motivation.

C. For purposes of this section "sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

