

**Joint Legislative Study Committee
on the Criminal Code Revision Study**

Final Report

February 1992

JOINT LEGISLATIVE STUDY COMMITTEE ON THE CRIMINAL CODE REVISION STUDY

FINAL REPORT

INTRODUCTION

PURPOSE

According to Laws 1991, chapter 235, section 1, the Joint Legislative Study Committee on the Criminal Code Revision Study was established to:

1. Study the reports submitted by the consultants authorized pursuant to laws 1989, first special session, chapter 5, section 2, to review the corrections system and criminal code of this state.

2. Develop a written report including findings and recommendations for programmatic changes and legislative action.

3. Submit its report to the governor, the president of the senate and the speaker of the house of representatives.

MEMBERSHIP

The committee was comprised of the following eighteen legislators:

Senate

Senator Chuck Blanchard, Co-chair
Senator David Bartlett
Senator Jim Buster
Senator Ann Day
Senator Bob Denny
Senator Stan Furman
Senator John Greene
Senator Nancy Hill
Senator Victor Soltero

House

Representative Patti Noland, Co-chair
Representative Ernie Baird
Representative Frank "Art" Celaya
Representative Benjamin Hanley
Representative Phillip Hubbard
Representative Mark Killian
Representative John Kromko
Representative Dave McCarroll
Representative Bob Williams

MEETINGS

The Joint Legislative Study Committee on the Criminal Code Revision Study met ten times on the following dates. Meetings were held on September 11, October 10, October 16, October 31, November 13, November 14, November 21, January 2, January 14 and January 27. The minutes for each meeting are attached as Appendix A.¹

¹ Formal minutes were not taken for the meeting held on November 21 in Tucson, thus no minutes for this meeting are attached.

RECOMMENDATIONS

The Joint Legislative Study Committee on the Criminal Code Revision Study made the following recommendations. Those recommendations that amend statutory sections are set out in a bill draft which is attached as Appendix B. Each recommendation contains citations to particular sections of the bill draft where appropriate.

RECOMMENDATION 1.

THE COMMITTEE RECOMMENDS THAT A STATUTORY CHANGE BE MADE AS DESCRIBED BELOW TO STATE THAT ONE OF THE PURPOSES OF THE CRIMINAL CODE IS TO PROVIDE THE OPPORTUNITY FOR REHABILITATION FOR PERSONS WHO COMMIT UNLAWFUL ACTS. (A.R.S. 13-101)

The language recommended by the Committee amends the statutory section that sets out the purposes of the criminal code. Specifically, the section is amended to state that one of the purposes of the criminal code is to provide the opportunity for rehabilitation for persons who commit unlawful acts. The language also makes clear that nothing in the statute creates a cause of action by inmates if they are not being rehabilitated. This was added to prevent lawsuits by prisoners or others claiming the statute was not being followed.

RECOMMENDATION 2.

THE COMMITTEE RECOMMENDS THE STATUTES RELATING TO OFFENSES COMMITTED WHILE ON RELEASE FROM CONFINEMENT BE AMENDED AS FOLLOWS. (A.R.S 13-602.02)

1. Persons convicted of any felony offense involving 1) the use of a deadly weapon or dangerous instrument to create a reasonable risk of serious physical injury to another person in the course of committing another offense or 2) the intentional or knowing infliction upon another of serious physical injury that creates a risk of death should, if the act is committed while the person is on probation for a conviction of a felony offense or on any other release mechanism, be sentenced to life imprisonment with no chance of release until the person has served 25 years. (A.R.S. 13-602.02, subsection A)

Currently, commission of any of the following offenses while a person is on release status requires the person to be given a life sentence: 1) use or exhibition of a deadly weapon or dangerous instrument; 2) a felony violation of the statutes relating to precursor chemicals II; 3) a violation of the marijuana statutes involving eight pounds or more of marijuana at the time of the seizure, 4) any felony violation of the statutes relating to prescription-only drugs; 4) any violation of the statutes relating to dangerous and narcotic drugs; and 5) the use or involvement of a minor in the commission of any drug offense.

2. Persons convicted of any felony offense, other than those contained in paragraph 1, involving discharge, use or threatening exhibition of a deadly weapon or dangerous instrument for a use other than self defense, the intentional or knowing infliction of serious physical injury upon another, sexual assault,

a violation of the statutes relating to marijuana, dangerous drugs or narcotic drugs that involves an amount of drugs greater than the threshold amount (as specified in A.R.S. 13-3401), or an offense involving the use of minors in a drug offense or possession or sale of drugs on or near a school zone should, if the person is on probation or any other release status because of the commission of a felony, be sentenced to the presumptive sentence for that offense and should be required to serve the entire sentence before being eligible for release. (A.R.S. 604.02, subsection B)

Currently, many of these offenses fall under the life sentence requirement contained in paragraph 1.

3. Any person convicted of committing any felony offense not included in paragraphs 1 or 2 above, while the person is on release status, should be sentenced to a term of imprisonment and should not be released until at least two-thirds of the sentence imposed has been served. (13-604.02, subsection C)

Currently, all other felony violations require the person to be sentenced to the presumptive term and to serve the entire sentence imposed by the court.

RECOMMENDATION 3.

THE COMMITTEE RECOMMENDS THAT THE USE OF "HANNAH PRIORS" BE ELIMINATED BY ENACTING LANGUAGE TO DO THE FOLLOWING. (A.R.S. 13-604)

Statutory language is deleted that allowed two or more felonies not committed on the same occasion but consolidated for trial purposes to be counted as prior convictions for the purpose of enhancing the person's sentence. The language also makes clear that prior convictions may only be alleged if the sentence was imposed or suspended before the commission of the offense for which enhanced punishment is sought.

The recommendation to eliminate "hannah priors" is in response to the Committee's concern that it is used as a prosecutorial tool to obtain plea bargains from accused persons.

RECOMMENDATION 4.

THE COMMITTEE RECOMMENDS THE DANGEROUS CRIMES AGAINST CHILDREN STATUTES BE AMENDED AS FOLLOWS. (A.R.S. 13-604.01)

1. The Court should have the discretion to increase or decrease the presumptive sentences in paragraphs 1 and 2 by seven years. (13-604.01, subsection C)

Currently, the court can increase or decrease the sentences by five years.

2. Persons who are convicted of a dangerous crime against children in the second degree or of sexual abuse as defined in A.R.S. 13-1404 are guilty of a class 3 felony and may be sentenced to a presumptive term of imprisonment of ten years. (13-604.01, subsection F)

Currently, such persons shall be sentenced to a presumptive term of ten years.

3. The sentence imposed on persons convicted of a dangerous crime against children should be consecutive to any other sentence imposed provided the offenses occurred on separate and distinct occasions or involved more than one victim.

Currently, the sentences are consecutive with no requirement that the offenses occurred on separate and distinct occasions or involved more than one victim.

4. The definition of "predicate felony" should be changed to mean any felony conviction involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree for which a person has been convicted on a separate occasion.

Currently, the definition includes any felony (conviction is not specified) involving child abuse, a sexual offense and all of the others listed above. The definition does contain the language "for which the person has been convicted on a separate occasion."

RECOMMENDATION 5.

THE COMMITTEE RECOMMENDS THAT JUDGES BE GIVEN ADDITIONAL AUTHORITY TO INCREASE OR DECREASE A DEFENDANT'S SENTENCE BASED ON AGGRAVATING AND MITIGATING CIRCUMSTANCES. (A.R.S. 13-604.03)

The court should be allowed to increase a defendant's sentence by up to 50 per cent if three or more aggravating circumstances are found. This latitude should apply to all sentences except sentences of life imprisonment. (A.R.S. 13-604.03, subsection A)

Similarly, the court should be able to decrease the defendant's sentence by up to 25 per cent, or by up to 50 per cent if the state concurs, if the court finds at least two mitigating factors. The authority to decrease sentences should not apply to cases involving dangerous crimes against children (13-604.01), serious offenses committed while released from confinement (13-604.02, subsections A and B), or to felony offenses that create a reasonable risk of death or involve the use of a dangerous weapon or deadly instrument to create a reasonable risk of serious physical injury to another in the course of committing another offense. (A.R.S. 13-604.03, subsection B)

If the court chooses to increase or decrease a sentence, it should state on the record its reasons. All parties shall be informed prior to the time of sentencing if the court intends to increase or decrease a sentence. (A.R.S. 13-604.03, subsections C and D)

Currently, the court has some authority to increase or decrease a sentence but the discretion is quite limited.

RECOMMENDATION 6.

THE COMMITTEE RECOMMENDS THAT THE COURT BE GIVEN THE AUTHORITY TO SENTENCE A PERSON WHO HAS VIOLATED THE TERMS OF HIS PROBATION TO JAIL. (A.R.S. 13-902)

The court should have the option of sentencing a person who violates the terms of his probation to jail.

Currently, the court can sentence such a person to jail as long as the person has not or will not serve more than 365 days in jail.

RECOMMENDATION 7.

THE COMMITTEE RECOMMENDS STATUTORY LANGUAGE BE ADOPTED THAT PROVIDES THAT A PERSON WHO KIDNAPS A CHILD WITH THE INTENT TO COMMIT SEXUAL ABUSE IS NOT SUBJECT TO SENTENCING UNDER THE DANGEROUS CRIMES AGAINST CHILDREN STATUTES. (A.R.S. 13-1304)

The language is in response to a concern raised during the committee that a person who lays on a child with the intent to commit sexual abuse may be convicted of kidnapping (a class 2 felony), and punished under the dangerous crimes against children statutes. These statutes carry mandatory penalties.

RECOMMENDATION 8.

THE COMMITTEE RECOMMENDS THAT THE STATUTES RELATING TO SEXUAL OFFENSES BE AMENDED AS FOLLOWS (A.R.S 13-1401, 13-1404, 13-1407, AND 13-1410):

- 1. THE DEFINITIONS SECTION SHOULD BE AMENDED TO CLARIFY AND CLEARLY DISTINGUISH EACH OFFENSE.**
- 2. CHANGES SHOULD BE MADE THROUGHOUT THE SEXUAL OFFENSES STATUTES TO INCORPORATE THE NEW DEFINITIONS.**

1. The definition section of the statutes relating to sexual offenses should include the following terms as defined below. (A.R.S. 13-1401)

A. "Direct sexual contact" means any direct touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or any object.

B. "Indirect sexual contact" means any indirect touching, fondling or manipulation of the outer clothing or similar covering of any part of the genitals, anus or female breast by any part of the body or by any object.

C. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object.

2. The crime of sexual abuse should be defined to mean intentionally or knowingly engaging in or causing a person to engage in direct or indirect sexual contact with a person fifteen or more years of age without the consent of the person, and indirect sexual contact or the direct touching of the female breast with a person less than fifteen years of age.

Indirect sexual contact with a person fifteen or older should be a class 6 felony (1.5 yrs/\$150,000); direct sexual contact with a person fifteen or older should be a class 5 felony (2 yrs/\$150,000); and indirect sexual contact or touching the female breast with a person under fifteen years of age should be a class 3 felony (5 yrs/\$150,000). (A.R.S. 13-1404)

Currently, the penalties for sexual abuse are similar but the term and others in this chapter are defined in such a way that the same act could be prosecuted under more than one statute. The proposed amendments to this chapter seek to eliminate overlapping terms and definitions and to create a specific offense and punishment for each violation.

3. Molestation of a child should be defined to mean intentionally or knowingly engaging in or causing a person to engage in direct sexual contact with a child under fifteen years of age, excluding direct sexual contact with the female breast. Molestation of a child should be a class 3 felony (5 yrs/\$150,000). (A.R.S. 13-1410)

Currently, molestation of a child is a class 2 felony (7 yrs/\$150,000) and is defined as knowingly molesting a child under fourteen years of age by directly or indirectly touching the private parts of the child or by causing the child to directly or indirectly touch the private parts of the perpetrator.

4. It should be a defense to a prosecution for child molestation or child abuse if both the defendant and the victim were between the ages of fourteen and eighteen and the conduct was consensual. (A.R.S. 13-1407)

Currently, the age range for consent being a defense does not include persons who are eighteen years of age.

NOTE: The Committee recommended adopting the Washington age gradations for determining when consensual sexual conduct could be used as a defense to a prosecution. Unfortunately, Washington's gradations could not be easily incorporated into Arizona's statutory provisions. Thus the bill draft does not contain this portion of the Committee's recommendation. It is the hope of the Committee that this issue will be addressed as the bill proceeds through the legislative process.

RECOMMENDATION 9.

THE COMMITTEE RECOMMENDS THAT THE STATUTES BE AMENDED TO DISTINGUISH SHOPLIFTING OFFENSES FROM BURGLARY OFFENSES AS DESCRIBED BELOW. (A.R.S. 13-1501)

A person commits burglary in the third degree by entering or remaining unlawfully in a nonresidential structure or in a fenced commercial or residential yard with the intent to commit a theft or felony. Because of this definition, if a person forms the intent to shoplift after he has entered a store, he can be charged with burglary, which exposes the person to a higher penalty than shoplifting. Therefore, charging burglary may be used as a tool to gain a plea bargain from the accused.

The language recommended by the committee amends the definition of "enter or remain unlawfully" to exclude a person who enters a premises that is open to the public during normal business hours and does not enter an unauthorized area of the premises. This would prevent a person who shoplifts from being charged with burglary.

RECOMMENDATION 10.

THE COMMITTEE RECOMMENDS THAT THE CLASSES OF THEFT BE AMENDED AS DESCRIBED BELOW (A.R.S. 13-1802):

Theft of property or services should be punishable as follows (A.R.S. 13-1802):

1. With a value of \$25,000 or more, class 2 felony (7 yrs/\$150,000).
2. With a value of \$3,000 or more but less than \$25,000, class 3 felony (5 yrs/\$150,000).
3. With a value of \$2,000 or more but less than \$3,000, class 4 felony (4 yrs/\$150,000).
4. With a value of \$1,000 or more but less than \$2,000, class 5 felony (2 yrs/\$150,000).
5. With a value of \$500 or more but less than \$1,000, class 6 felony (1.5 yrs/\$150,000).
6. With a value of less than \$500, class 1 misdemeanor (6 mos/\$2,500) unless such property is taken from the person of another or is a motor vehicle or firearm, in which case the theft is a class 6 felony (1.5 yrs/\$150,000)

A person who is convicted of theft of property or services with a value of \$100,000 or more should be prohibited from being released until he has serve at least half of the sentence imposed by the court. (A.R.S. 13-1802, subsection D)

Currently, the classes of theft are as follows:

1. With a value of \$1,500 or more, class 3 felony (5 yrs/\$150,000).
2. With a value of \$750 or more but less than \$1,500, class 4 felony (4 yrs/\$150,000).

3. With a value of \$500 or more but less than \$750, class 5 felony (2 yrs/\$150,000).

4. With a value of \$250 or more but less than \$500, class 6 felony (1.5 yrs/\$150,000).

5. With a value of less than \$250, class 1 misdemeanor (6 mos/\$2,500) unless such property is taken from the person of another or is a motor vehicle or firearm, in which case the theft is a class 6 felony (1.5 yrs/\$150,000)

There are no provisions requiring a person to serve a specified portion of the sentence for high-dollar thefts.

RECOMMENDATION 11.

THE COMMITTEE RECOMMENDS THAT AN ENHANCED PENALTY BE ESTABLISHED FOR PERSONS WHO RECEIVE A BENEFIT OF MORE THAN \$100,000 FROM A FRAUDULENT SCHEME OR ARTIFICE TO DEFRAUD (A.R.S. 13-2310)

Persons who receive a benefit of \$100,000 or more from a fraudulent scheme or artifice to defraud should be required to serve at least half of the sentence imposed by the court before they are eligible for release from confinement. (A.R.S. 13-2310)

Currently, there are no provisions requiring a person to serve a specified portion of the sentence for receiving a high-dollar benefit from a fraudulent scheme or artifice to defraud.

RECOMMENDATION 12.

THE COMMITTEE RECOMMENDS THE STATUTES RELATING TO DRUG OFFENSES BE AMENDED AS FOLLOWS. (A.R.S 13-3401, 13-3405, 13-3407 AND 13-3408)

Currently, there is no gradation in sentencing with respect to dangerous and narcotic drug offenses similar to the ones in marijuana cases. In cases involving marijuana offenses, the felony classification depends on the weight of the marijuana. Also, a person is not exposed to a mandatory sentence unless the marijuana weighs at least eight pounds. With respect to cocaine and other drugs, there is no such threshold.

The language recommended by the committee places into statute threshold weights for dangerous and narcotic drugs, while leaving the threshold for marijuana at eight pounds. Therefore, if a person is convicted of an offense involving a dangerous or narcotic drug, a mandatory sentence will not apply unless the offense involves an amount over the threshold.

RECOMMENDATION 13.

WITH RESPECT TO THE ISSUE OF EXAMINING THE SENTENCES OF THOSE PEOPLE IN PRISON FOR CRIMES COMMITTED UNDER A PREVIOUS CRIMINAL CODE, THE COMMITTEE RECOMMENDED THAT THIS BE DEALT WITH THROUGH THE NORMAL LEGISLATIVE PROCESS OR THROUGH A STUDY COMMITTEE.

RECOMMENDATION 14.

THE COMMITTEE EXPRESSED INTEREST IN THE ISSUE OF ESTABLISHING A SENTENCING GUIDELINE COMMISSION TO ADOPT SENTENCING GUIDELINES AND POSSIBLY SERVE AS AN ONGOING BODY TO CONTINUOUSLY EXAMINE THE CRIMINAL CODE, BUT FELT THAT THIS WOULD TAKE MUCH MORE STUDY THAN WAS POSSIBLE AT THIS TIME.

RECOMMENDATION 15.

THE COMMITTEE RECOMMENDS THAT THE JOINT SELECT COMMITTEE ON CORRECTIONS REVIEW THE METHOD IN WHICH THE SYSTEM HANDLES PRISONERS WHILE THEY ARE IN PRISON AND WHEN THEY ARE RELEASED

The Joint Select Committee on Corrections should review and make recommendations for improvements to the programs that are available to inmates while they are incarcerated in the Department of Corrections system and the programs available to inmates at the time of and immediately following their release.

The Joint Select Committee on Corrections is comprised of twenty legislators: ten senators appointed by the President of the Senate and ten representatives appointed by the Speaker of the House of Representatives.

APPENDIX A

**Minutes from Criminal Code Study
Committee Meetings**

ARIZONA HOUSE OF REPRESENTATIVES
Fortieth Legislature - First Regular Session
Interim Committee Meeting

JOINT LEGISLATIVE STUDY COMMITTEE
ON THE
CRIMINAL CODE REVISION STUDY

Minutes of Meeting
Wednesday, October 16, 1991
Senate Hearing Room 1 - 9:00 a.m.

Cochairman Noland called the meeting to order at 9:05 a.m. and the attendance was noted.

Members Present

Senator Bartlett	Representative Baird
Senator Buster	Representative Celaya
Senator Day	Representative Hubbard
Senator Denny	Representative Kromko
Senator Furman	Representative McCarroll
Senator Greene	Representative Williams
Senator Hill	Representative Noland, Cochairman
Senator Soltero	
Senator Blanchard, Cochairman	

Members Absent

Representative Killian	Representative Hanley
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Speakers Present

Terry Stewart, Assistant Director, Human Resources, Department of Corrections (DOC)

Dr. Daryl Fisher, Manager, Research Unit, Department of Corrections (DOC)

Dr. Michael Block, Professor of Economics and Law, University of Arizona

Guest List (Attachment 1)

PRESENTATIONS:

Terry Stewart, Assistant Director, Human Resources, Department of Corrections (DOC), presented the Department of Corrections' response to some comments made in previous meetings on mandatory sentencing and its impact on prison population. He directed the Members's attention to the commentaries contained in the Arizona Department of Corrections Briefing dated October 1991 (Attachment 2). He said that if after discussion and study, the Committee determines that the mandatory sentencing provisions in the criminal code should remain unchanged, there needs to be a recognition and commitment to the resources to support the resulting prison population.

JOINT LEGISLATIVE STUDY COMMITTEE ON
THE CRIMINAL CODE REVISION STUDY
10/16/91

Mr. Stewart said his comments are directed toward the following reports: the Knapp report published by the Institute for Rational Public Policy, Inc. (Attachment 3), the Block report published by the Arizona Prosecuting Attorneys' Advisory Council (Attachment 4), and the Mandatory Sentencing report published by the Arizona Department of Corrections.

Mr. Stewart related that DOC is extremely concerned about assertions made on prison projections, additional prison beds, and specification of the number of mandatory sentences which are contained in the Knapp report.

He said DOC will comment on the concepts contained in the Block report which maintain that those sentenced to mandatory terms deserve to be sentenced, that the indications are that those with prior felony convictions deserve to be sent to prison and that Arizona is not among the most punitive in sentencing.

Mr. Stewart said he feels that to date, there have been no comprehensive analyses that define how mandatory sentencing affects the Arizona prison system and which presents objective data describing the impact of mandatory sentencing on the entire prison system. He said he will present an outline of the Mandatory Sentencing report which DOC has prepared and will distribute it when available.

Senator Bartlett asked Mr. Stewart if the data contained in the DOC study indicates there is a correlation between mandatory sentencing and the number of felony convictions and incarcerations in the State and would it make much difference in terms of growth in prison population.

Mr. Stewart answered that DOC has attempted to isolate offenses by class and look at mandatory provisions versus nonmandatory provisions.

He said that Dr. Daryl Fisher analyzed the Knapp report and indicated that the Institute for Rational Public Policy responded to Dr. Fisher's comments in a letter dated September 19, 1991 (Attachment 5).

Senator Bartlett, along with other Members of the Committee, commented that he had not seen the letter from the Institute. Staff was directed to provide copies to the Members.

Mr. Stewart summarized the DOC Briefing report on its commentary on the Knapp report on prison population projections, prison construction programs and mandatory sentencing. He also discussed adult institutional population growth trends and projections.

Cochairman Noland asked Mr. Stewart if DWIs are included in the DOC projections and he answered in the affirmative.

Representative Williams pointed out that Ms Knapp indicated that DWIs, etc., had been omitted from her report and had they been included, the figures might have coincided with DOC's figures.

Mr. Stewart declared that DWIs account for approximately seven per month of the total and therefore would not significantly revise the numbers.

Representative Williams said that the issue is confusing because Ms Knapp did not clearly identify the minor offenses which were excluded from her report.

Senator Bartlett noted that the DOC chart on prison population and construction does not take into consideration any changes in the sentencing guidelines or changes in the post conviction relief system that might impact on the need for additional prison space. Mr. Stewart said he agrees with Senator Bartlett's comments that fewer beds would be required if something is done to mitigate the prison population increase. He added, however, that until the impact of that is felt, beds would still be needed.

Senator Greene asked Mr. Stewart if DOC regards the Knapp report as seriously deficient and Mr. Stewart answered that with regard to the issues with which DOC is concerned, the report does not contain the necessary rigor to substantiate the assertions and conclusions made.

Senator Bartlett asked if DOC has any recommendations on effective rehabilitation of repeat offenders. Mr. Stewart responded that the recidivism rate for the Arizona state prison system is approximately 34 percent which is very close to the national average. He noted that the prison system cannot rehabilitate anyone; the only thing that can be done is to provide the opportunity for an individual to rehabilitate himself. To that end, in the budget this year, emphasis has been placed on education and substance abuse prevention.

Representative Baird said he thinks there is some misunderstanding that the 7,915 offenders in prison under mandatory sentences would not be there without mandatory sentencing. Because of the seriousness of the crimes committed, he asked Mr. Stewart if, in his judgment, these offenders would be in prison even if they were sentenced under some other provision where the judge had discretion. After Mr. Stewart answered in the affirmative, Representative Baird commented that it would be inaccurate to suggest that there would be an immediate huge reduction in the prison population if the offenders had not been sentenced under mandatory sentencing. Mr. Stewart commented that he does not agree. He said that based on the length of time that is being served by those on mandatory sentences, it has resulted in a 24 percent increase in the prison population.

Representative Kromko said the emphasis should be whether mandatory sentencing reduces crime, not if it reduces the prison population. He said the proposal when presented to the Legislature by the Institute of Rational Public Policy inferred that the crime rate would be reduced as soon as mandatory sentences were imposed. He said that, in his opinion, if the crime rate does not substantially change, then mandatory sentencing has to be judged a failure.

Representative Hubbard noted that there appear to be wide discrepancies in the figures in the different reports. Mr. Stewart replied that every study except the DOC report represents sampling as opposed to a review of the entire prison population.

In reply to Representative Hubbard's question of whether those serving time under mandatory sentences will serve their full sentence, Mr. Stewart answered that there are many release provisions available.

Dr. Daryl Fisher, Manager, Research Unit, Department of Corrections (DOC), announced that he has been with DOC since August 1988. He said his background includes a Ph.D. in mathematics from Iowa State University, employment with the Iowa Department of Corrections as research supervisor, with the Iowa Statistical Analysis Center and with the Arizona Board of Pardons and Paroles as planning director. He advised that while he was with the Iowa system, he received a grant from the Bureau of Justice Statistics to travel around the country to discuss the concept of risk assessment.

Dr. Fisher advised that in the study conducted by DOC, as of June 30, 1991, there were 15,150 inmates and 7,915 of those inmates were serving mandatory sentences. This figure differs from the figure of 4,200 that is published in the Knapp report and is the result of the number of mandatory categories that were considered and also the number of offenders who were counted in the individual category. In the DOC analysis, Dr. Fisher mentioned that the categories overlap in some cases.

Dr. Fisher noted that in terms of length of sentence for the same category of inmates, analyses by DOC show that on the average, mandatory sentences result in maximum sentences twice as long for those with mandatories as those without, that minimum sentences are three times as long, and that the expected lengths of stay are 2.3 times as long. He said this data is validated by historical comparison and shows that those inmates with mandatories are doing more time and are building up in the prison population. He said if not for mandatory sentences 24.4 percent of the prison population would be released. Additionally, analysis of data indicates that those inmates sentenced under the new code are doing 25.5 percent more time than those inmates sentenced under the old code.

Dr. Michael Block, Professor of Economics and Law, University of Arizona, said that in 1985 he was appointed by President Ronald Reagan and confirmed by the Senate as a voting member of the United States Sentencing Commission and served on that Commission until 1989 and that he is the co-author of the Federal Sentencing Guidelines that are now in place. He advised that he has a Ph.D. in economics from Stanford University.

Dr. Block presented an overview of his report on felony sentencing which was sponsored by the Arizona Prosecuting Attorneys' Advisory Council (Attachment 4). He covered several myths that he said his report invalidates.

- "getting tough" doesn't work - that essentially our sentencing policy doesn't make much difference

Dr. Block said the scientific evidence on sentencing is that getting tough works. The crucial question is how much does it work, how much does it cost, and how much should we do.

Senator Bartlett informed Dr. Block that his study skipped over the main thrust of both the Knapp and the DOC comments, that people getting mandatory sentences are getting longer sentences than are necessary which in turn is building up the prison population without any correlation to any issue of public safety.

Dr. Block commented that studies show that the crime rate in Arizona was lower in 1990 than it was in 1978 when the Code became effective. He said scientific evidence shows that when you get tough, the crime rates decline.

In looking at the Arizona Supreme Court's data on the proportion of felony sentencings and imprisonment, Dr. Block noted that in 1978 before the Code was in effect, 30 percent of all felony sentencings involved prison terms. In 1990, 30 percent still involve prison terms.

In his report, Dr. Block said he took a random sample of 1800 offenders sentenced in 1989 which showed that four out of five offenders going to prison have priors. He said his sampling shows that 68 percent of people being sent to prison, excluding DWIs, are exposed to mandatorics because of their prior felony behavior.

- sentences in Arizona are chaotic and nonproportional

Dr. Block said this myth has been perpetrated in part by the Knapp report and said it is his opinion that the study is flawed in its estimate of the impacts of the mandatory sentencing on the disparity of sentencing because it includes only a selected set of mandatorics. In his sample, Dr. Block said he arrived at an average for mandatorics of 30 months, as opposed to 67 months as reported in the Knapp report. He said that evidence indicates that sentences are what one would expect in terms of the structure and that overall they are proportional.

- The Arizona criminal code with its mandatory provisions, imprisons huge numbers of first time nondangerous offenders

Dr. Block maintained that analysis of sample data indicates that nondangerous, nonrepeat offenders are given the lightest sentences and that sentences increase with repetitiveness and dangerousness, so that dangerous repeat offenders receive sentences over five times as long as nondangerous, nonrepeat offenders.

- imprisonments in Arizona are excessive and sentences in Arizona are widely excessive relative to the rest of the nation

Dr. Block claimed that his sampling indicates that there is no evidence to validate this.

- sentencing guidelines, especially the Minnesota guidelines, will solve all of our prison problems

Dr. Block claimed that guidelines combined with a system of mandatorics may solve some technical problems with the structure of the system but will not solve the prison overcrowding problem.

Dr. Block announced that many people lean toward the Minnesota guidelines as a system that reduces manipulation of convictions by prosecutors and also reduces the prison population. He noted that the Minnesota guidelines are based on sentencing on real behavior independent of conviction offense.

This has resulted in a higher proportion of incarcerations in jail and a smaller proportion of incarcerations in prison. It should be pointed out that Minnesota is restructuring its system to include mandatories for certain convictions.

Cochairman Blanchard asked Dr. Block about the correlation between the commitment rate and the crime rate, and whether it is better law enforcement, rather than the code, which is attributable to a decrease in the crime rate. Dr. Block replied that it's both. He indicated that the absence of a code, as in Minnesota, makes prosecutors less likely to file on some crimes and said if you increase the likelihood of going to prison, you'll get less crime.

Cochairman Blanchard commented on the chart which assesses what people are initially charged with as compared to what they are ultimately convicted of and asked Dr. Block if this is a way to get around mandatory sentencing. Dr. Block contended there was no way to determine this and said the evidence indicates that difficulty of proof and the way the Code is written leads to plea bargaining.

Dr. Fisher summarized DOC's position by announcing that the Department's analysis on mandatory sentencing indicates there is definitely an effect on the population growth rate by the imposition of mandatory sentencing. The quantifying data addresses the issue of where the prison population would be today if there were no mandatory sentencing provisions in the statutes. He said the preliminary estimate is that approximately one-fourth of the population is due to the presence of the mandatory sentences above and beyond the normal provisions of the code, controlling for the type of offender, whether violent or nonviolent, the class of the offense, and the prior record. He contended that historical data tends to support this in terms of differences in time served patterns between the old and new code and that extensive data will be presented in the final report covering the profile of the active population, data on admissions and data on releases.

In response to Cochairman Blanchard's request that DOC do a multi-variate analysis similar to that done by Dr. Block, Dr. Fisher answered that a multi-variate analysis was done and that he will consult with Dr. Block to try to replicate his analysis with his technique.

Cochairman Noland announced the dates and times of the next hearings:

October 31	- 2:00 p.m.	- presentation by judges
November 6	- 6:00 to 9:30 p.m.	- public testimony
November 7	- 9:00 a.m.	- public testimony
November 21	- 2:00 to 5:00 p.m.	- public testimony (Tucson)
	6:00 to 8:00 p.m.	- public testimony (Tucson)

In answer to Representative Hubbard's question, Dr. Block said that the Arizona Prosecuting Attorneys' Advisory Council (APAAC) funded the report at a cost of \$40,000. Representative Hubbard announced that he will investigate the use of APAAC funds for such a report.

Representative Hubbard asked about "hannah priors" in other states and whether they are the result of a legislative or judicial decision. Dr. Block replied

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that he does not know how many states have "hannah priors" but that Minnesota, a guideline state, has something similar which was the result of a judicial decision implemented by the sentencing commission.

In answer to Representative Hubbard's question, Dr. Block said that in his opinion, given our crime rate, the punishment levels of people in prison are not out of line with the rest of the nation. He inferred that scientific evidence done on a cross-section indicates that with all things equal, higher sentences lead to lower crime rates and that higher punishments deter crime.

Senator Furman said that from all indications, "hannah priors" are used in a very small percentage of cases, that there's an inherent unfairness and injustice in "hannah priors", and that they have been used as a club to essentially force those threatened with it to plea bargain. He asked if Dr. Block would recommend eliminating the use of "hannah priors". Dr. Block answered that used alone, they don't change things much, however, "hannah priors" are generally used in conjunction with other mandatories. He stated that every system has some way of dealing with multiple offenses sentenced at the same time.

In response to Senator Soltero's questions, Dr. Block said he feels that mandatories have a place in the system in many instances to discipline judicial decisions and that his recommendation for changing the criminal code would be to have shorter definite sentences for some crimes and substitute incarceration for intensive probation.

Representative Williams stated that, in his opinion, the Block report almost nullifies the Knapp report. He said that people are not willing to pay for more prisons and that he is not convinced that increased sentences would deter crime or drive the prison rate down.

Without objection, the meeting was adjourned at 12:22 p.m.


Joanne Bell, Secretary

(Attachments on file in the Office of the Chief Clerk. Tapes on file in the Office of the Chief Clerk.)

C O R R E C T E D

ARIZONA STATE SENATE

MINUTES OF THE JOINT LEGISLATIVE STUDY COMMITTEE ON THE CRIMINAL CODE REVISION STUDY

DATE: Thursday, October 31, 1991 TIME: 2:00 p.m. PLACE: SHR 1

MEMBERS PRESENT

Co-Chairman Blanchard
Senator Bartlett
Senator Furman
Senator Hill
Senator Soltero
Senator Buster
Senator Day
Senator Denny
Senator Greene

Co-Chairman Noland
Representative Baird
Representative Williams
Representative Celaya
Representative McCarroll
Representative Hubbard

MEMBERS ABSENT

Representative Killian
Representative Hanley
Representative Kromko

Co-Chairman Blanchard called the meeting to order at 2:15 p.m.

Judge Keddie, Yuma County, Superior Court, explained who would be testifying before the Committee today on behalf of the judges and probation officers. He then further explained that he felt it would be beneficial for the committee to know some of these individuals backgrounds in regards to their experience in the area of the Criminal Code Revisions.

Judge Keddie felt that the system is "out of whack" as a result of policies on mandatory sentencing. He felt that the Code has given great discretion to the prosecutors of this state, in turn the reduction of discretion of the judges. He further felt that it is rationally applied at most times, and commended the County Attorney in Yuma County for not exercising undue power in that area. He felt that the judges should be able to exercise more discretion in the area of sentencing in particular.

Judge Keddie stated the following are specific areas that he felt should be examined:

1. The practice of charging Hannah priors, which can result in enormous penalties with consequent pleading by some persons who might otherwise go to trial.

2. Mandatory sentencing ought to be examined. Not opposed to all mandatory sentences, but it should be reexamined in particular areas. For example, the area of drugs, possible gradation of the amount of drugs involved in an arrest. He felt that more discretion should be given the judges in sentencing offenders. He felt that no judge was reluctant to exercise the discretion in sentencing people to prison.

Judge Scholl, Presiding Judge, Criminal Bench, Pima County, gave some of his background. He felt that certain areas of the Code are unfair and that the state is not wise to continue enforcing them. He reiterated that these comments are his own opinion, but that opinion is shared by a majority of the judges in Pima County. He felt that the greatest unfairness to the people concerning the sentencing under the existing Criminal Code is that some offenders are receiving prison sentences in cases where prison alternatives should be first utilized and some offenders are receiving prison sentences far greater than that which is fair and appropriate. He then gave two examples of real cases to support his opinion on mandatory sentencing. His suggestion was that greater sentencing and discretion should be shifted to the judge. A necessary revision of the criminal code is a mechanism which allows the judge to remedy an inappropriate sentence by departing from the mandatory sentencing requirements. He felt that the present system did not provide sufficient safeguards to insure fairness.

Judge Reinstein, Presiding Criminal Judge, Maricopa County, gave some of his background. He spoke briefly about the last revisions to the Criminal Code, which was done 13 years ago. He felt that at that time the Code was a move in the right direction. However, the Code today does not resemble the one that was adopted in 1978. Every year a new mandatory sentencing provision has been added, usually to address certain community concerns. After 13 years, he feels it is time to take another look at the Code and commended the Committee for doing so. Judge Reinstein said that he felt that the Legislature should ask themselves what is right for the State of Arizona and is the Criminal Code doing that. He does not oppose all mandatory sentencing. He felt that the system is totally controlled by the prosecution. The court usually only has discretion when the prosecution allows it. He felt that the prosecutors, for the most part, in Maricopa County do a good job and try to be fair. However, he felt that they get in the habit of using the heavy leverage that the Code allows them to use because of the burdens they are under. He spoke briefly about the possibility of using a guideline system, much like the State of Washington.

He also felt that other areas that the Committee should look at are Hannah priors and the drug code. He felt that there should be some differentiation in the Code as to the amount of drugs that are sold or possessed for sale. He also felt that the dangerous crimes against children should be reexamined. He felt that the mandatory sentencing did not necessarily need to be looked at, but that the minimum sentence should be reexamined. He felt that some of the provisions in the Code create an inequity. He stated that shoplifting in Arizona is not only shoplifting, but also burglary. Judge Reinstein said that the Committee should look at the "Truth in Sentencing" provisions. He felt that the judges should be able to exercise more discretion for some of the mandatory sentences, for example, the offenses that are non-dangerous in nature. He then discussed

intermediate sanctions, explaining that they are punishments. He said that many people will reject probation and elect to go to prison because they know that prison is easier and that they will get out in a lot less time in the Department of Corrections system.

He closed his remarks by stating that the Criminal Code is a plea bargaining tool for the prosecution. He felt that most prosecutors were fair, but others are not. It has been 13 years and time for a serious review of the Code. He offered the Committee any help that he could offer. He further stated that he has examples, but for the sake of time would wait until they were asked for.

Mr. Gary Graham, Administrative Office of Supreme Court, Division Director, Adult Services Division, gave some background information about his experiences. He stated that his comments are coming from the perspective of the probation system in Arizona. He gave the basic functions of the adult probation system in Arizona.

He stated that public safety is the paramount concern of all of those in the criminal justice system. No program, policy or law should be considered or implemented that would compromise public safety. There are crimes and criminals for which imprisonment is both necessary and appropriate.

Mr. Graham spoke of the Knapp report in accordance to the recommendations of intermediate sanctions. He felt that development of a range of intermediate sanctions for the nonviolent, nonrepetitive and nonpredatory offenders is meritorious. He stated that he did not know if these intermediate sanctions were necessarily cheaper or would reduce overcrowding. He discussed, as an example, the issue of illiteracy or addiction in the area of criminals that are criminals by trade because of their illiteracy or addiction. He felt that the investment in intermediate sanctions is an attempt to treat the illness not the symptoms of criminal behavior.

Mr. Don Stiles, Chief Probation Officer, Pima County Adult Probation, gave some of his background. He stated that intermediate sanctions were punishment options considered on a continuum to fall between traditional probation and traditional incarceration. It is envisioned that if the Committee chooses to enact additional intermediate sanctions in Arizona that those programs would be administered by probation. He sees the primary responsibility the protection of the public. Any intermediate sanctions should be structured in such a way so that they can carefully screen and evaluate and determine which of the offenders may be safely dealt with in the community sanctions without increasing the risk and danger to the public. Few programs and treatment services exist outside the metropolitan areas. He felt that the services available in the metropolitan areas were not adequate to meet the needs of the numbers of people that come under their supervision. If the Legislature makes the policy decision to invest further in intermediate sanctions, there are a number of actions that he would recommend. First, funding be provided to reduce the case load of probation officers to a level of no more than 50 per officer. He felt that as a result of that it would increase public protection. Secondly, expand special case loads and team supervision for special needs probationers. There are

increasing numbers of people coming under supervision with both alcohol and drug addiction problems. He would recommend that there be funding for presentence and assessment activity of probation. The presentence investigation not only involves the courts decision and sentencing but also a major tool in the probation officers development of a realistic supervision plan.

He spoke of the intermediate sanction referred to a day-reporting centers. These programs are set up in such a way that the probationer that is unemployed is required to report to that center each morning at an appropriate time just as they would report to a job. There day is planned for them and they are involved in counseling, education programs, vocational training and whatever programs can be provided that meet the needs of that particular probationer and are at the same time referred out for job interviews and placement opportunities.

Mr. Stiles further explained other forms of intermediate sanctions including daytime centers, home arrest and drug treatment centers.

Representative Williams asked Mr. Stiles asked about the number of probationers per probation officer. Mr. Stiles stated that he feels that 50 is a reasonable amount to ask for, however, an even smaller number would be best. Mr. Stiles also explained some of the ratios involved in special cases.

Representative Noland asked Mr. Stiles if it is the probation officers or the surveillance officers who actually go out and see probationers. Mr. Stiles stated that it is both. The surveillance officers typically work a shift from 3:00 p.m. to 11:00 p.m., and the probation officers will not see the offender as often as the surveillance officer, but they also make home visits.

There was discussion between Senator Day and Mr. Stiles regarding electronic surveillance, such as home arrest. Mr. Stiles explained that it takes more probation officers to handle electronic monitoring due to the fact that it requires response during the night time hours.

Mr. Norman Helber, Chief Probation Officer, Maricopa County Adult Probation, gave background about his experience. He discussed investments in intermediate sanctions. He agreed with Mr. Stiles regarding the necessity for this sanctions. He then fully explained the handout that was distributed to Committee members. (Handout filed with original minutes)

Representative Hubbard, addressing Judge Scholl, stated that one of the major reasons in doing the revision in 1978 was due to the discrepancies in the way that like-offenders with like-histories were getting treated by the courts and a response to those people who felt the discrepancy was due to liberal judges or racial sentences and the changes were made so that there would be more uniform sentencing. He stated that Judge Scholl made a statement that our state Code is not being given uniformity. That was the entire idea of the change. Judge Scholl explained that when a person commits one crime in Pima County and the same crime in Maricopa County, they may not be treated the same, therefore, no, it is not uniform throughout the state, much less within each county.

Representative Hubbard asked Judge Scholl, if he were able, what two big changes would he make to the Code. Judge Scholl stated that more discretion should be given to the judges and then make them accountable for their decisions.

There was then discussion between Representative Williams, Judge Scholl, Judge Keddie and Judge Reinstein regarding sentencing guidelines. Judge Keddie said that he does not oppose sentencing guidelines as such, given some conditions. Judge Reinstein stated that if Arizona would go to Federal sentencing guidelines, he would oppose it; however, if Arizona went to guidelines such as Washington's, he would favor it. He felt that what the Committee needed to do is what is right for Arizona. There are things that can be done right now within the current Code.

Senator Blanchard asked Judge Reinstein to give some examples of the cases that he was referring to earlier in his testimony. Judge Reinstein gave the Committee several examples.

There was some discussion between Senator Denny and Judge Reinstein regarding the flexibility of the Judge in the cases that Judge Reinstein cited.

There was discussion between Senator Bartlett and Judge Reinstein regarding the differences in the views of the prosecutors verses the judges. Senator Bartlett stated that he felt that it came down to a matter of justice. He stated that he felt that the prosecutors would say that the system is working because we are incarcerating more people. Judge Reinstein stated that he didn't feel that was case. He felt that maybe we are catching more people, but didn't feel that the crime rate was being reduced.

There was additional discussion about the power struggle between the prosecutors and judges. Judge Reinstein stated that when he goes into the courtroom, he takes it by a case by case basis. He felt that the criminal bench is a lot different from 1978. He further stated that in the State of Arizona, a prosecutor has the ability to change judges if they are assigned to a judge that they do not like. He also stated that the statistics do not show how when a prosecutor comes into the office and the judges reject their plea agreements because they were too lenient.

Senator Bartlett asked Judge Reinstein if he agreed with Bill Scholl's position of wanting the judges to make the determination on sentencing and they make them accountable. Judge Reinstein said that he does agree for non-violent crimes, but is not so sure about murder, rape, heinous crimes.

Judge Reinstein explained that the Legislature was able to resolve the victims' rights legislation, when there was a lot of opposition and a lot of different sides to consider. He felt that the criminal code could be handled in the same manner.

There was discussion between Representative Williams and Judge Reinstein regarding plea bargaining and the cases that are bargained down from violent to nonviolent crimes.

Senator Soltero asked Judge Reinstein if he felt that stronger sentences were a deterrent to crime. Judge Reinstein stated that he felt that in some instances that is true. He stated that DUI statutes have really made an impact on driving drunk. He further stated that when people set out to commit a crime such as murder, rape, etc., they do not think about the sentencing they may receive.

Mr. Stephen Neely, Pima County Attorney, stated that he had been a prosecutor for 22 years. He also gave additional background. He stated that he has four chief deputies and they average 14 years between them. There is nothing that goes through his department that does not go through those four deputies.

He stated that he is an advocate for public safety. He also added that the judges are also advocates. He stated that people in the prison system have been convicted beyond a reasonable doubt. He stated that he looks to see if he is effective is in the streets, not the courthouse.

Mr. Neely brought with him a 9-1-1 recording in order to show the Committee what his office is all about, what protecting the victim is all about. (The transcript from this recording is filed with original minutes.) He invited the Committee to consider that the focus of the conversation should be about victims, like the woman on the tape that we should be protecting. He further gave other details about the case on the tape. He stated that the person that was arrested for breaking into the woman's home had been arrested previously and was out on the streets again. This is the type of person that needs to be put into prison.

Mr. Neely then gave the Committee several examples of cases where offenders were convicted and then released early to then go on and commit other heinous crimes.

Mr. Neely stated that at the point that mandatory sentences became effective that the crime rate stopped climbing. He stated that he knew that the present date judges cannot be accountable for what the judges did before the mandatory sentencing became effective. He further spoke about how there are administrative policies in place in the prosecutors office that cannot be in place in the courtroom - each judge is entitled to run their courtrooms the way they see fit. Therefore, that leaves a lot of room for discrepancies in each courtroom.

Mr. Neely then discussed accountability. He stated that he is re-elected every four years. The judges do not have that accountability. He further stated that his only goal is to protect the public. He also said that he felt that the Committee's job is to create a policy that is to protect the State of Arizona. In closing, he invited the Committee to visit his office and actually see the role that he plays.

There was discussion between Senator Buster and Mr. Neely regarding the Arizona crime rate in comparison to other states.

Mr. Richard Romley, Maricopa County Attorney, stated that after hearing the previous testimony he is concerned about the way the meetings are proceeding. He stated that he is not sure what the issue is that the Committee is looking

at. He would hope that the issue be public safety. He stated that this should not be a mandatory sentencing issue, it should be a revision of the criminal code issue. Mandatory sentencing is not the only thing in the code.

Mr. Romley supported what Mr. Neely had stated regarding the fact that there are 200 Superior Court judges that do what they want to do. He stated that he felt it would be impossible under those circumstances to have uniform public policy or accountability.

He felt that the system was not broken, yes, it needs some fine tuning, but it is not broken. He further explained other things that the Criminal Code held. He brought up diversion programs, probation activities, day fines, and others. He stated that he does believe in intermediate sanctions, the question is whether the people in the prisons are deserving of these programs. He felt that there are very few intermediate sanctions that Arizona does not have already. But, the bottom line is that are we effective in carrying out public policy. In closing he stated that Sam Lewis, in answering a question of who should be let out of prison, said that nobody should be let out of prison, he didn't want any of them as neighbors.

Mr. Romley wanted to go on record saying that if this Code works and the right guys are in prison and we are running out of prison space then we have to build more prisons.

Senator Bartlett and Mr. Romley discussed the durational issue of sentencing. Mr. Romley stressed that the long term solutions should be looked at. Senator Bartlett stated that he agreed and that he felt there should be more programs for mental health, drug addictions and similar issues.

There was extensive discussion between Senator Bartlett and Mr. Neely concerning prison space, and alternatives to incarceration. Mr. Neely stated that for one he felt that there should be degrees of dangerous crimes against children.

Mr. Romley stated that he felt that looking at gradation would be a good idea. He stated that he felt that the back end of the system should be looked at. He felt that the Board of Pardons and Parole should be discontinued. People are choosing prison because they will get one sentence and be out in a considerably less amount of time. He does not feel that plea bargaining is serving justice.

Senator Bartlett asked Mr. Romley if he agreed with any of the suggestions offered by the judges. Mr. Romley stated that he felt that some of their suggestions were very valid. He felt that a lot of the mandatory sentencing was in need of fine tuning in the code.

Senator Bartlett asked Mr. Neely the same question. Mr. Neely stated that a lot of the drug violation proposals were very valid. He said that he is opposed to the philosophical debate that is oriented about protecting one half of one percent of the population at the expense of the other 99 and one half percent.

Senator Furman stated that he felt that public safety is a primary factor, but

it is not the only factor. He felt that when there is a sentencing discrepancy of 5 years or 35 years for the same crime that it needed to be looked at. There was discussion between Senator Furman and Mr. Neely concerning plea bargaining and how mandatory sentencing has affected plea bargaining. Mr. Neely stated that he would like to talk with Senator Furman at another time concerning plea bargaining.

Mr. Hubbard and Mr. Romley discussed using Criminal Justice Enhancement Fund (CJEF) monies to discredit reports. Mr. Romley feels that the CJEF money is there to enhance prosecutorial efforts and when dealing with a subject as important as the entire criminal code, it is definitely appropriate.

Mr. Hubbard stated to Mr. Neely that he recently read an article that stated that in order to help Mr. Neely, Mr. Twist was hired and was being paid \$35,000 and the money is coming out of CJEF funds. Mr. Neely stated that he has hired Mr. Twist to advise him on a wide array of subjects. He was not hired to be a lobbyist. Mr. Neely stated that he would provide Mr. Hubbard with a copy of Mr. Twist's contract. Mr. Romley stated that he has also hired Mr. Twist to help in some areas, and he is serving as a consultant not a lobbyist.

There was discussion between Senator Buster and Mr. Neely concerning the costs of incarceration versus not incarcerating criminals.

Chairman Blanchard apologized to Mr. Skelly who will not be heard today.

Chairman Blanchard adjourned the committee.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jan V. Stapleton". The signature is written in dark ink and includes a long, sweeping flourish at the end.

Jan V. Stapleton
Committee Secretary

ARIZONA STATE LEGISLATURE
Fortieth Legislature - First Regular Session
Joint Interim Committee Meeting

JOINT LEGISLATIVE STUDY COMMITTEE ON THE
CRIMINAL CODE REVISION STUDY

Minutes of Meeting
Wednesday, November 13, 1991 and Thursday, November 14, 1991
Senate Hearing Room 1 - 6:00 p.m. and 8:30 a.m.

Cochairman Blanchard called the meeting to order at 6:13 p.m. and attendance was noted.

Members Present

Senator Bartlett	Representative Baird
Senator Buster	Representative Celaya
Senator Furman	Representative Hubbard
Senator Greene	Representative Kromko
Senator Hill	Representative McCarroll
Senator Soltero	Representative Williams
Senator Blanchard, Cochairman	

Members Absent

Senator Day	Representative Hanley
Senator Denny	Representative Killian
	Representative Noland, Cochairman

Speakers Present

John Wright, Citizen, representing himself, Phoenix
James Skelly, Lobbyist, representing the Arizona Prosecuting Attorneys' and Sheriffs' Association
Louis Rhodes, Executive Director, Arizona Civil Liberties Union (ACLU)
Rhonda Jensen, Citizen, representing herself, Phoenix
Georgia Marr, Middle Ground
Carmen Brown, Middle Ground
Pat Matthews, Citizen, representing herself, Phoenix
Donna Hamm, Director, Middle Ground
Bruce Milton, Citizen, representing himself, Phoenix
Paul Eller, Citizen, representing himself, Sun City West
Jerry Orcutt, Citizen, representing himself, Tucson
Robert Tucker, Chairman, Arizona Board of Pardons and Paroles
Cynthia Ahumada, Citizen, representing herself, Phoenix
Pat Wilson, Director, Ex-offender Services
Tiny Phillips, Vocational Rehabilitation Counselor
Charlotte Ward, Middle Ground

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THE CRIMINAL CODE REVISION STUDY
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Guest List (Attachment 1)

John Wright, Citizen, Phoenix, related his experience as a former Deputy Warden at Florence and his thirty-one years being involved in correctional work, the past eighteen years of which were dealing with juvenile offenders.

Mr. Wright noted that the current approach in the criminal system is toward punishment rather than changing choices from wrong to right by changing an inmate's thinking, valuing and behavior. He said that many offenders are the type who do not fear arrest and, in fact, it is their expectation or even right of passage. He submitted that criminals know that crime pays, with minimal risk. He further contended that prosecution and confinement do not deter future crime. He noted that Arizona is near the top of the list in incarceration numbers, and needs to change the focus from retribution to public safety. He said that the current Arizona criminal justice system services the need for punishment without any effort to change the offender. He added that what happens to the offender while in prison is at issue and if the concern is for public safety, then assessing who should be confined and who should be subjected to moral conversion should be addressed. Mr. Wright suggested that the time incarcerated be spent in a rehabilitation exercise aimed at changing the thinking process by changing thinking, valuing and behavior.

Mr. Kromko asked Mr. Wright if his suggestions are really feasible. Mr. Wright responded that he is not referring to rehabilitation of the entire 15,000 prison population, but thinks there needs to be a reassessment of who goes to prison. He said that he believes prisons are necessary for some people but isn't sure all the people there now are the ones who should be there.

Mr. Hubbard asked Mr. Wright for elaboration on what changes he would suggest. Mr. Wright replied that punishment for punishment's sake is usually counter productive and has become a luxury taxpayers can no longer afford. He recommended, instead, that rehabilitation would effect greater public safety.

Mr. Williams wondered at what point in the system there would be enough information to profile an offender and if it should be made available to a judge. Mr. Wright remarked that risk assessment should be driving a system focused on public safety and should be incorporated prior to trial as well as after trial, and made available to the prosecutor, defense and judge. He said that by focusing on public safety, something other than punishment is being addressed. He added that if a person is at high risk as a repeat offender, and his risk assessment points toward incarceration, then he should be incarcerated.

Senator Greene agreed that rehabilitation probably makes sense, but said that previous testimony has indicated that regardless of rehabilitation, recidivism does not decrease. He asked Mr. Wright to explain the types of offenders he feels should not be in prison. Mr. Wright cited property offenders with no history of violence or people-related offenses as being worthy of consideration for alternatives to incarceration.

Senator Greene said that while rehabilitation sounds right, he wonders if there have been any studies indicating it has been successful. Although Mr. Wright did not have that information, he submitted that the current criminal system is not working and recommended trying something new.

Senator Greene repeated his comment that previous testimony indicates that rehabilitation does not decrease recidivism and said that he is concerned about the conflicting information being given out.

Mr. Williams stressed what an enormous commitment it would take to rehabilitate even a portion of the 15,000 prison population and asked how successful rehabilitation would be for people who may not want to be rehabilitated. Mr. Wright responded that he believes it is the State's responsibility to try to effect rehabilitation rather than do nothing.

Senator Hill asked for Mr. Wright's comments about incarceration of drunk drivers. Mr. Wright said that he believes there are other ways of dealing with drunk drivers rather than incarcerating them. He suggested that a monitoring program would be one way.

Mr. Celaya questioned whether shock incarceration has been effective in reducing recidivism. Mr. Wright said that while he has not had much experience in this area, he doesn't believe shock incarceration is living up to people's expectations and that recidivism is no lower than otherwise.

James Skelly, Lobbyist, Arizona Prosecuting Attorneys' and Sheriffs' Association, disagreed with previous testimony regarding risk assessment and suggested that it could result in unintended consequences. He submitted that rehabilitation programs throughout the nation have resulted in no change in the recidivism rate. He further suggested that if there wasn't a question of money, the State would be building more prisons, but because of tough times in the economy, it has been decided alternatives to incarceration should be studied. He said that when it comes to public safety, it is wrong to follow this trend. Commenting on mandatory sentencing, Mr. Skelly noted that there has been a decrease in robberies in both Phoenix and Scottsdale since the mandatory sentencing laws went into effect and emphasized that mandatory sentencing is definitely a deterrent to crime.

(Tape 1, Side 2)

Mr. Skelly spoke in opposition to returning to the practice of using judicial discretion in sentencing, and suggested that in light of bad decisions made by some judges, it would not be advisable to return to that system. He added that he believes there are already alternatives to incarceration and while he agrees prisons are expensive, he feels the answer is to build cheaper prisons because the more people who are incarcerated, the more the crime rate is reduced. He conceded that building more prisons will take more money, but said he feels public safety warrants the expense. He submitted that government has an obligation to spend the money to incarcerate people who need to be incarcerated.

Senator Blanchard suggested that in attempts to evade mandatory sentencing, plea bargaining is being used to reduce the offense, which in turn affects the statistics.

Mr. Williams asked Mr. Skelly if the public shares his views about building more prisons, to which Mr. Skelly answered affirmatively. He said that the average Arizonian wants to see repeat offenders incarcerated for their crimes. He noted that there are roughly 8,000 of the total 15,000 prisoners who are not repeat offenders. He added that risk assessment is difficult because of the plea bargains which alter the true offense and said that some offenders labeled as non-repetitive may actually be repetitive but not identified because of the plea bargain to a lesser offense.

Mr. Hubbard remarked that the Director of the Department of Corrections has indicated he is in favor of changes to the criminal system. Mr. Skelly reasoned that the Director's main concern as an administrator is efficient operation of the prisons and not the public safety and his roll as administrator of the Department of Corrections is to get sufficient money from the Legislature to run the prisons effectively. Mr. Hubbard disagreed that the Director is not concerned with public safety. Mr. Skelly explained that what he meant was that while the Director may personally be concerned about public safety, from an administrator's standpoint, his major concern is running the prisons efficiently.

Senator Furman suggested that justice is as important as public safety and disagreed that mandatory sentencing is working, because the system is not honest when it permits plea bargaining.

(Tape 2, Side 1)

Mr. Skelly stated that he thinks offenders should have to serve 90 percent of their sentence in prison and not be released in as little as a third of the time. He urged the committee members to remember that the more people who are incarcerated, the less crime there is. He added that there is less crime today in proportion to the population in Arizona than before the mandatory sentencing laws were passed.

Senator Furman commented that judges are complaining that mandatory sentencing laws have taken sentencing out of their hands. Mr. Skelly disagreed and pointed out that judges can either accept or reject plea bargains.

Louis Rhodes, Executive Director, Arizona Civil Liberties Union, (ACLU), suggested that a person can find statistics to substantiate any position, depending on who is reading the statistics and what they are looking for. He expressed support for judges making sentencing decisions rather than prosecutors because he believes it is important to maintain the balance of power among the executive, legislative and judicial branches.

Mr. Baird suggested a solution might be to modify mandatory sentencing by having a minimum and maximum range for sentencing and then a judge could determine what the appropriate sentence would be. Mr. Rhodes agreed that the suggestion has

possibility and said that he is not unhappy with that theory, but would prefer not to have any plea bargains.

Rhonda Jensen, Citizen, Phoenix, testified as the wife of an inmate serving a life sentence and expressed her belief that prison sentences breed criminals and that for the betterment of the community, there should be shorter prison sentences. She suggested that there needs to be a system whereby judges can consider both the crime and the offender and assess each case individually. She urged committee members to rethink the current mandated twenty-five to life sentences to bring them more in line with the national average of eighteen years and be made retroactive for all the inmates serving life sentences in Arizona prisons.

(Tape 2, Side 2)

Georgia Marr, Middle Ground, testified in opposition to the existing sentencing code and the unfairness in sentencing first-time offenders.

Carmen Brown, Middle Ground, stated that something is not working right. She advised that the people making out the presentencing reports are inexperienced and have the power to determine a person's life in a very short time without understanding different cultures or knowing anything about the person they're judging. She advised that once an offender is in the prison system, he needs a lot of help, whether with alcohol or drug counseling, therapy or education. She noted that many prisoners do not know how or have the means to improve themselves and many lives of smart people are being wasted away. She suggested that money should be put into education and therapy rather than building more prisons. She agreed with previous testimony regarding the unfairness of sentencing first-time offenders.

Mr. Baird disagreed that presentencing reports are being completed by inexperienced people.

Pat Matthews, Citizen, Phoenix, testified as the wife of a long-term inmate. She reported that Arizona locks up more people per capita than any other state, but submitted citizens are still no safer. She emphasized the need to address seeking ways to help inmates develop skills to help them live in the community when they're released from prison. She contended that rehabilitation programs do work and education, meaningful work experience and treatment for substance abuse problems do affect recidivism. She admonished that Arizona has no serious commitment toward education and inmates are forced to be idle because of the discontinuation of work programs. Also, there are almost no drug treatment programs in Arizona prisons, which means that most of the inmates incarcerated for drug usage will return to that lifestyle when released from prison. She urged committee members to look at community supervision with the ability to pay restitution as an alternative to incarceration. She concluded by saying that in other states inmates are paid a minimum wage or more for performing meaningful work, which allows them to make restitution and support families who otherwise would be on welfare. She said that this prepares the inmate for living a useful

life once he is out of prison. She urged committee members to seek programs that work and not put the criminal back on the streets with no change to their life.

Donna Hamm, Director, Middle Ground, distributed a statistical report to committee members (Attachment 2). She related her background as a Justice of the Peace, director of a juvenile treatment agency and wife of an inmate serving a life sentence. She said that since this is such a serious subject to consider, she recommends that the committee continue to study revisions to the criminal code and conduct hearings to gather maximum information. She stated that some laws punish so severely they cause bitterness, and inmates are given no opportunity to become responsible people. She also suggested that home arrest be made an option for judges to consider and that the causes of crime be attacked by providing education and treatment programs, as well as training inmates with marketable skills for future employment.

(Tape 3, Side 1)

THE MEETING WAS RECESSED AT 9:30 P.M. COCHAIRMAN BLANCHARD RECONVENED THE MEETING ON NOVEMBER 14, 1991 AT 8:35 A.M. WITH THE FOLLOWING MEMBERS ABSENT:

Senator Day
Representative Hanley
Representative Noland, Cochairman

Representative Killian
Representative Kromko

Bruce Milton, Citizen, Phoenix, related the circumstances of his brother-in-law's incarceration and what he feels is the unfairness of the length of the sentence. He said that his brother-in-law was arrested for drugs, and although he did not possess any drugs himself and was only with a group that had drugs, he was sentenced to five years in prison with no possibility of parole. He submitted that after a two-to three-year time period, the government is wasting money by continuing to incarcerate his brother-in-law and five years is excessive for the nature of the offense. He said that as a taxpayer he is not interested in more prison beds and favors individual review rather than mandatory sentencing.

Paul Eller, Citizen, Sun City West, cited statistics attributed to Sam Lewis, Director of the Department of Corrections, that 80 percent of the prisoners in Arizona prisons are nonviolent, nonrepeating offenders. He suggested that it would be better to have these prisoners doing something productive and making restitution and paying taxes, rather than costing the state \$17,000 per prisoner each year.

Mr. Baird reminded Mr. Eller that many of these prisoners labeled nonviolent, nonrepetitive offenders have plea bargained to reduced charges, so the statistics cited don't actually reflect the true picture. He further contended that some white-collar crimes warrant prison time because of the public's expectations.

Mr. Williams suggested that the cost of \$17,000 per prisoner per year might be a savings over the cost of the crimes that would be committed if the inmate were

released. Mr. Eller responded that he believes the answer is individual assessment of each case.

Senator Bartlett stated that the fact must be faced that there will be a tax increase to build more prisons unless the code is changed, but the determination must be made as to which is necessary.

Jerry Orcutt, Citizen, Tucson, related the circumstances of his son's sentencing for child molestation. He said that because of the circumstances involved, the mandatory sentence of sixty-four years is too severe.

Robert Tucker, Chairman, Arizona Board of Pardons and Paroles, read a position paper prepared by the Arizona Board of Pardons and Paroles regarding the Arizona Criminal Code and Corrections Study (Attachment 3).

Senator Blanchard asked Mr. Tucker if the Board has a position on the value of retaining a parole decision versus the truth in sentencing approach. Mr. Tucker replied that the Board feels parole hearings are a necessary function that should continue.

In response to questions, Mr. Tucker stated that the current criminal system is too complicated and there are too many codes and too much disparity in the codes. He said that many cases are miscertified and it is not infrequent that eligibility is in question. He repeated that the largest problem faced by the Board is too many codes.

(Tape 3, Side 2)

Mr. Williams asked Mr. Tucker if the Board is able to keep up with their case load or if it is behind. Mr. Tucker said that currently the Board is keeping up with its load, but if cases continue to escalate like they have in the past few years, the Board will not be able to keep up with two-member panels and said that he would recommend an increase to three-member panels.

Cynthia Ahumada, Citizen, Phoenix, spoke about the fallacy that prison rehabilitates criminals and emphasized the need for job training so inmates will be prepared to secure employment when they are released from prison. She commented on the necessity of doing something about nonrepetitive prisoners being given long-term sentences. In response to questions, Mrs. Ahumada recommended that opportunities in education and work skills be provided.

Pat Wilson, Director, Ex-Offender Services, commented on his twelve years in state and federal prisons and the problems inmates face when released with only \$50, no family and no contacts. He said they do not know where to go or what to do. He stressed the value of education and training for job skills. He also contended that mandatory sentencing results in innocent people being locked up because they confess to something they didn't do and accept a shorter sentence because they're afraid of taking a chance on getting convicted and receiving a longer sentence. Mr. Wilson pointed out the need for half-way houses and admonished that prisoners are human beings too.

Tiny Phillips, Vocational Rehabilitation Counselor, described her work with people with emotional disabilities. She emphasized the need for psychological and vocational evaluation in the criminal system, which would aid counselors in guiding inmates into areas of education where they can be successful. She said that she thinks the current system is cycling prisoners through without giving them any sense of direction. She suggested that a twelve-step program would be extremely beneficial in the prisons and is available at no cost.

Senator Hill asked how the functionally illiterate can be reached. Ms Phillips said that she thinks much can be learned by reviewing the forms prisoners fill out, which can indicate proficiency in grammar, spelling, punctuation, etc. She also suggested that the sooner the process of identifying the functionally illiterate begins, the sooner it becomes clear what to do with the person.

Charlotte Ward, Middle Ground, spoke about her son who was sentenced to Florence for five years and who is now in the Yuma prison. She said that she agrees with the idea of house arrest and feels that double-bunking aggravates problems. She concluded by stressing the importance of alternatives to building more prisons.

The meeting was adjourned at 9:55 a.m.



Carolyn Richter, Secretary

(Attachments on file in the Office of the Chief Clerk and with the Committee Secretary. Tapes on file in the Office of the Chief Clerk.)

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11/14/91

JOINT LEGISLATION STUDY COMMITTEE ON
THE CRIMINAL CODE REVISION STUDY
11/13/91

MINUTES OF THE
JOINT LEGISLATIVE STUDY COMMITTEE ON THE
CRIMINAL CODE REVISION

DATE: Thursday, January 2, 1992

TIME: 9:30 a.m.

PLACE: House Hearing Room 3

Cochairman Noland called the meeting to order at 9:40 a.m. and attendance was noted.

Members Present

Senator Bartlett	Representative Baird
Senator Denny	Representative Celaya
Senator Furman	Representative Hubbard
Senator Greene	Representative Killian
Senator Hill	Representative Kromko
Senator Soltero	Representative Noland, Cochairman
Senator Blanchard, Cochairman	

Members Absent

Senator Buster	Representative Hanley
Senator Day	Representative McCarroll
	Representative Williams

Representative Noland stated the purpose of this meeting was to have general discussion among the Committee members regarding significant areas in the criminal code revision study and to determine if there was a consensus among the Committee members. Representative Noland said the Committee would take additional public testimony at a later date.

Senator Blanchard informed the Committee there was a "rump group" formed that included judges, prosecutors and defense counsel from the criminal justice system. Senator Blanchard said this group was meeting to determine other areas of consensus that needed revision in the Criminal Code. Senator Blanchard informed the Committee that Judge Ronald Reinstein and Steve Twist were present to answer questions from the Committee regarding the rump group's work, but at this time they were not ready to make recommendations to the Committee.

Representative Noland noted the Committee was working beyond their original timeframe for completion of the report and that legislation would need to be drafted, but it was important for the Committee to allow adequate time to hear from every segment involved in the study.

The following area was presented to the Committee by Representative Noland for discussion:

- I. Need for gradation of sentencing based on the severity of the offense for drug offenses.

Senator Blanchard informed the Committee that currently, if a person is charged with possession for sale of any drug other than marijuana, there is no quantity requirement before the mandatory sentence was imposed. Senator Blanchard informed the Committee that the quantity requirement for marijuana is eight pounds. Senator Blanchard said there was a different problem with the commercial seller that had a profit motive and dealt with much larger amounts than the addict seller. Senator Blanchard suggested the Committee consider a threshold amount before the mandatory sentence was imposed for drug crimes such as possession for sale, similar to what is in place for marijuana. Senator Blanchard said in this manner, judges could divert first-time addict sellers and treat them differently than the big commercial sellers.

Representative Noland clarified that the threshold amount to be set would not be limited to addicts. Senator Blanchard agreed and explained the federal sentencing model also had thresholds before a mandatory prison term was imposed and that a judge could still impose a lengthy prison term, but the issue was whether there should be a mandatory sentence.

In response to Representative Kromko, Senator Blanchard said that possession for use is treated very differently than possession for sale and the mandatory penalties in the code do not apply for use. Senator Blanchard said that his focus was on the mandatory penalties and when they apply. Senator Blanchard informed the Committee that in the federal system a mandatory prison term was imposed based on the sale of 12 pounds of marijuana and then a conversion chart was used to deal with other drugs. Senator Blanchard informed the Committee that Arizona adopted an eight pound system and one approach would be to take the federal equivalency charts and distinguish what the threshold should be for a mandatory prison term to be imposed for possession of cocaine or other drugs.

Representative Noland suggested the Staff provide for the Committee a chart with the eight pound guideline and the Federal conversion level on a gradation basis.

Senator Bartlett expressed the need for the Committee to proceed with caution in addressing changes to the structure of the criminal code and that it appeared the Committee was "tinkering on the edges of mandatory sentencing." Senator Bartlett questioned the role of the Legislature trying to "micromanage" the circumstance of a crime and its punishment.

Senator Greene stated that there was some feeling that the Committee did not need to make a fundamental change in the criminal code. Senator Greene emphasized that the drug area was a particularly difficult one and agreed with Senator Blanchard's suggested approach.

Representative Hubbard questioned if the Committee wanted to "tinker" with the criminal code or if significant changes were planned.

Representative Noland reminded the Committee members that this meeting and future meetings were to get the Committee members' suggestions and to look at the main areas where change would eliminate problems. Representative Noland said the Committee heard public testimony and she had talked to people in the

criminal justice system to determine the areas that needed revision, but the Committee needed to have further discussion in order to make some decisions. Representative Noland said one concern was how to create a method of accountability for judges, once sentencing discretion was given to the judges.

Representative Baird questioned whether the Committee should decide on "wholesale changes" and go to a simple guideline system and give the discretion entirely back to the judges. Representative Baird recommended the Committee move cautiously and take care of the problems that existed. Representative Baird stated that he was not opposed to making drastic changes in some areas, but he felt that some mandatory sentencing needed to be retained.

Senator Bartlett said with the present system, there was an enormous amount of money spent on a few people and that could distort the analysis of what the Committee needed to do. Senator Bartlett added that he would like to see some type of forum to allow for a continuing discussion that included the people involved in the criminal justice system.

Representative Hubbard said he felt the thrust of the problem with the criminal code was that legislators were held too immediately accountable to the public. Representative Hubbard stressed there were spikes of severity in the sentencing structure. Representative Hubbard said that the Legislature legislates to the few and not to the many. Representative Hubbard concluded there was a lack of continuity within the criminal code.

The next area for discussion was:

II. Need for gradation of sentencing based on the severity of the offense for sex offenses.

Representative Noland said the Committee received a lot of testimony regarding this area and suggested the Committee consider a more severe level of punishment for sex offenses committed against children that are of a heinous nature and for repeat offenders. Representative Noland said those offenses should be handled in a different manner than "touching" offenses.

Senator Bartlett stated there was a need to make some distinction between the true pedophile and those persons that were capable of change. Senator Bartlett acknowledged the difficulty of making that distinction in the law but said that he had conversations with various people and they felt the distinction should be less with the repeat offender and more with the nature of the relationship and the circumstances surrounding an offense.

Representative Noland said this issue was examined in the oversight committee on Child Protective Services and the Committee should consider involving people from the juvenile court system for some input regarding this area.

Representative Baird informed the Committee that because of the severity of mandatory sentencing, there was no intervention from family members to bring in the authorities when an offense took place. Representative Baird said the

Committee was going to have to take some political risks and make the necessary decisions to protect the children.

Representative Noland said that in the Tucson prison complex, almost half of the inmates were sex offenders and one problem was there was no transition for the prisoners before their release from prison back into the community. Representative Noland informed the Committee that she had information from the Department of Corrections (DOC) regarding three minimum security facilities and an order had been issued to begin reducing the number of beds that were taken by sex offenders in the Tucson facility.

Senator Greene cautioned the Committee against making a distinction between a pedophile and a sex offender because this area was not an exact science. Senator Greene suggested the Committee focus on the appropriate punishment for behavior that was offensive to society and not become psychologists.

Ronald Reinstein, Presiding Criminal Judge of Maricopa County Superior Court, informed the Committee that the rump group had met several times and included representatives from the criminal justice system and will include representatives from DOC and the Parole Board at future meetings. Judge Reinstein said that there was some positive give and take within the group, especially in the area of sex crimes. Judge Reinstein said he and Gary Husk, from the Attorney General's Office were working together on this issue, and they found there were portions of the code where there were problems with the definitions because there could be the same type of conduct for various offenses. Judge Reinstein gave the Committee some examples of the problems the definitions could cause.

In response to questions from Senator Bartlett in regard to making a distinction between offenders, Judge Reinstein gave an example of a sexual offense that involved sexual intercourse and how society demanded there be some punishment, but the issue was whether there was a need for the mandatory flat time or "15 year bottom" for that offense. Judge Reinstein said it may require another look at the range of sentences for that type of offender.

In response to Representative Noland, Judge Reinstein said the rump group had two meetings scheduled for next week and some of the issues should be "crystallized." Judge Reinstein emphasized that the rump group did not have all the answers and this was a legislative determination and they could only make recommendations to the Committee based on their experience.

Representative Noland informed everyone present, if they had recommendations for these areas or any other areas, to submit them to the Committee.

The next area for discussion was:

III. Prohibition against charging shoplifting offenses as burglary.

Senator Blanchard stated that this area came from testimony received in Tucson regarding the current wording of the burglary statute. Senator Blanchard said the way the burglary statute is currently written, it simply required an entry

into the business or residence with the intent to either commit a theft or a felony. Senator Blanchard informed the Committee that technically, to go into a business with the intent to shoplift is considered a burglary. Senator Blanchard suggested a distinction be made between burglary and shoplifting.

Representative Noland said that if the person is on probation or parole and committed a shoplifting offense, a big sentence could be handed down, thus taking up prison space that was needed for more serious offenders.

Representative Hubbard agreed and said he would like to see something in writing for the categories they were discussing. Representative Noland requested the Staff provide copies to the Committee of the appropriate statute sections.

Senator Greene agreed with the discussion for this area, but recommended leaving the definition for burglary as broad as possible.

Representative Killian commented the Committee should not make it easier for the people who commit a crime while on parole or probation. Representative Noland agreed and discussion was held regarding the difficulty of accomplishing that objective.

The next area for discussion was:

IV. Modification or elimination of "Hannah priors."

Representative Noland distributed to the Committee members copies of the court cases on Hannah (copies on file in Senate Secretary's Office). Representative Noland stated the Committee had heard so much about the use of Hannah priors and the Committee needed to discuss what should be done.

Judge Reinstein said that he was not sure if anyone knew what the original intention was regarding Hannah priors. Judge Reinstein said that Judge Hannah thought it was one thing, the Legislature had another idea and the Supreme Court thought something else. In addition, Judge Reinstein said there are prosecutors and defense judges that still do not know. Judge Reinstein gave an example of a person stealing a car stereo from one parking lot and then stealing another stereo from a car in a parking lot down the street and whether that would be considered a "spree offense" and would not qualify as a Hannah or whether that would be considered as two separate distinct acts in two separate distinct areas and points of time and would qualify for a Hannah. In addition, Judge Reinstein said if you were dealing with three times, there was also a "wrap around" provision. Judge Reinstein explained this can be mind boggling in that one count can act as a prior for the other two counts.

Judge Reinstein stated that this area probably triggered the most discussion within the rump group and there was some agreement that there needed to be some change regarding the use of Hannah priors, but there was a lot of disagreement as to what that change should be. Judge Reinstein said the prosecutors felt they need it in some instances for purposes of decreasing litigation and he felt that was appropriate because of the cost of litigation. Judge Reinstein said there was interest from the prosecution and also from the judges and defense

representatives that if someone had committed multiple offenses against multiple victims they should be treated differently than someone that is not really the true repeat offender.

Judge Reinstein, in regard to the area of drug offenses and property crimes, informed the Committee there was discussion by the rump group to set a threshold amount for a quantity of drugs or a certain amount of money for incidents where Hannah priors would not apply and the judge would be given some discretion. Judge Reinstein said there was some feeling within the group to do away with Hannah priors completely and to look at the true repeat offenders that have already been through the system. Judge Reinstein said there was concern that use of Hannah priors really takes away the right to a jury trial. Judge Reinstein said representatives of the defense bar also recognized there were certain instances when the use of Hannah priors would be appropriate, for example, when dealing with the true predatory offender or when a person commits fraud against many people for a great amount of money.

In response to Senator Blanchard, Judge Reinstein said the rump group had not reached a complete agreement on how to treat Hannah priors different than regular priors, but discussed a recommendation that if some Hannah priors was going to be used, to increase the range at both ends of the sentencing. Judge Reinstein said that would still not answer the question of proportionality and consistency in sentencing.

Judge Reinstein said it would be instructive for the Committee to examine section 13-101, Arizona Revised Statutes, which gives the purpose of the criminal code and sets forth the public policy of the State. In addition, Judge Reinstein suggested the Committee look at the criminal code from other states and their public policy. Judge Reinstein briefly reviewed for the Committee Washington's criminal code.

Discussion was held in regard to criteria for the court to determine a Hannah prior and what would be considered a spree offense. Judge Reinstein explained that a spree offense is when multiple separate crimes occur at one place.

Representative Hubbard commented that our criminal code was a good example of a good idea that was out of control and abused. Representative Hubbard stated that a prior offense should be considered a prior offense and that Hannah prior was being used as a hammer. Representative Hubbard said he felt the justice system was being bartered rather than administered. In conclusion, Representative Hubbard stressed that this was the main area that needed revision.

Senator Blanchard informed the Committee that the rump group had discussed a proposal that would lessen the hammer effect of Hannah priors. Senator Blanchard explained the idea was if a person had committed several crimes, to take the least serious offense the person was convicted of and make the minimum sentence the minimum mitigated sentence for that crime. At Senator Blanchard's request, Judge Reinstein further explained this proposal for the Committee.

Rob Carey, Attorney General's Office, informed the Committee that he wanted to testify not so much as a member of the rump group, but as a member of the Office of the Attorney General. Mr. Carey stated that he disagreed with Representative Hubbard's remarks that the use of Hannah priors had been abused by every prosecutor, but there were some circumstances when it was abused. Mr. Carey said that in the Attorney General's Office, before filing a Hannah allegation, the Attorney General had to approve it. Mr. Carey said there are certain cases in which Hannahs can be used effectively to achieve justice, but there was a problem when it was used to achieve an unjust result. In regard to the extent of the abuse of Hannahs, Mr. Carey referred to Dr. Block's report that less than two per cent of persons incarcerated had "Hannah exposure." In conclusion, Mr. Carey said problems that involved Hannahs actually affected a small segment of the case load.

Representative Hubbard questioned why the Attorney General felt it was necessary to give his approval to use Hannahs, although he agreed with that procedure. Mr. Carey said there was potential for abuse of Hannahs, but there was potential for abuse of a number of prosecutorial tools. Mr. Carey said there was recognition of the problems, but possibly through prosecutorial guidelines, and statewide guidelines on Hannah application, a middle ground could be found. Mr. Carey explained that this method of approval by the Attorney General was a "short-term fix" and in the long term, after guidelines were developed, he hoped that prosecutors could make that decision on their own and in a fair manner.

Representative Hubbard said that he was out of step if he implied that "all" prosecutors abused the use of Hannahs, but he felt that "many" of the prosecutors had abused the use of Hannahs.

Representative Kromko remarked that if the Committee is not going to do away with Hannah priors, then there was a lot of work to be done to the criminal code. Representative Kromko said at the time the current criminal code was adopted, the Legislature did not know about Hannah priors and it was not their original intention. Representative Kromko recommended either doing away with Hannah priors or to rewrite the sentencing structure.

Representative Noland said she heard differently from other people in regard to this area and the Attorney General had expressed concern over the fraud and the white collar crime that takes place.

Senator Furman asked Judge Reinstein if prosecutors used Hannah priors to bolster their cases. Judge Reinstein said that does occur and that some prosecutors file a Hannah for every case and some prosecutors never use it. Judge Reinstein said in Maricopa County, it was used frequently because of the number of cases they handled and it was found to be a valuable plea bargaining tool.

Senator Furman said he could understand some use of Hannahs, but the concept of using it for plea bargaining he found to be abhorrent. Senator Furman commented there is no truth in the justice system. Senator Furman stated that the Committee had heard testimony in regard to sting operations when the undercover officer did not arrest someone for purchase of drugs because they wanted to

build the case to qualify for a Hannah priors. Judge Reinstein said on one hand it was good law enforcement to build a case by showing the offender had a predisposition toward committing the offense and any good narcotics detective is not going to go on one "buy bust" situation, but will go on at least one more. In addition, Judge Reinstein said there are officers that know if you get two or more separate incidents, there will likely be a better sentencing possibility. In conclusion, Judge Reinstein said that it is proper law enforcement technique, however, it could be abused at times.

The next area for discussion was:

V. Modification of repetitive offender statutes so the punishment fits the severity of the offense.

Senator Blanchard said one issue regarding the repeat offender statutes, was there was no time limit on application of "real" priors, which was appropriate for some crimes, such as property crimes, but not for violent crimes. Senator Blanchard gave the Committee some example situations and reviewed the issues to be considered. Senator Blanchard said one issue was the threshold issue, which would take into consideration the amount of damage done with a prior offense. Senator Blanchard said another issue to be considered was automatic enhancement to sentences. Senator Blanchard referred to Senator Bartlett's previous comments that the certainty of a person going to prison is probably more important than the actual time to be spent in prison. Senator Blanchard said a different approach to the repetitive offender statute would be a mandatory disposition to prison, but the prison term would be set at the judge's discretion.

The next area for discussion was:

VI. Review of offenses that result in a mandatory life sentence if committed while a person is on probation.

Senator Blanchard asked Rob Carey to describe this area.

Rob Carey explained there are no distinctions made in the criminal code between very minor drug transactions that involve a minimal amount of drugs and those that involve a large amount of dangerous drugs. Mr. Carey said the movement was to distinguish between those groups to allow for proportional and just punishment. Mr. Carey said the other issue was when a person was on release status -- probation or parole and they were charged with selling a dangerous drug, the criminal code called for a mandatory life sentence. Mr. Carey said if marijuana was involved, it did not call for a mandatory life sentence and that was a common misperception.

Representative Noland questioned whether there could be a gradation and threshold amount translated along the lines of the Federal level. Mr. Carey said it could be translated in the manner that he understood the term "gradation" but the issues were what was a real prior and if the appropriate punishment was being given right now.

Representative Hubbard said if a person is on probation, he would like to know what type of crimes qualify for a life sentence. Representative Noland said the Staff would be providing that information.

Senator Blanchard referred the Committee to section 13-604.02, Arizona Revised Statutes and said the amount of marijuana was eight pounds or more.

Judge Reinstein stated this particular provision was probably the most heinous as far as what happens in the system. Judge Reinstein said technically, if a person was on probation for any offense, for example, shoplifting and that person was caught with a narcotic drug, that called for mandatory life imprisonment. Judge Reinstein said that type of "hammer" was not needed by the criminal justice system and that many people in the criminal justice system did not want to see a mandatory sentence given to the addict user who was making an effort to change.

The last area for discussion was:

- VII. Consideration of parity (equalization of sentences given under different codes) in cases other than capital cases and first degree murder cases where sentences of life without parole were imposed and how parity could be accomplished.

Representative Noland said there was testimony given regarding the issue of parity if the criminal code was changed and whether the people that were sentenced under the "old" code would be given a review and if so, how it could be accomplished. Representative Noland said there could be three criminal codes in effect for the people in the criminal justice system.

Representative Greene said this issue warranted consideration but advised against trying to make the criminal code equal, as it was a natural process where criminal laws and penalties change, but that the Parole Board would be the logical place to go for any review of sentencing.

Representative Baird suggested a review of the people sentenced under the 1978 code and to consider their record and conduct while in prison.

Senator Bartlett said he had proposed legislation last year that related to this issue, but the bill did not get heard in the Judiciary Committee. Senator Bartlett suggested that the Committee not bypass a legitimate judicial process that had already occurred and possibly allow a review by the Parole Board regarding sentence modification and then have that action approved by the court of origin with opportunity for various parties to be heard.

Representative Hubbard said that times change and laws change and advised against a review of sentencing, unless it was very limited.

Representative Noland said for clarification, the question on parity she referred to earlier was if someone was sentenced prior to 1973 for first degree murder, would that person under parity then be subject to the death penalty.

Representative Noland said there was a review on the capital punishment cases, but not on other cases.

Representative Baird said constitutionally, the punishment cannot be increased once it was pronounced. Representative Baird suggested the Committee could look at the criminal code since 1978 and determine if the mandatory sentencing was unjust and then decide whether consideration should be given to those people who were sentenced under the 1978 code, but in no event should any punishment be increased.

Senator Blanchard stated that he agreed with Senators Greene and Bartlett to proceed with caution, recognizing that some of the sentences were the result of plea bargaining.

Representative Noland asked the rump group and the Parole Board and any others involved in the criminal justice system, to consider this area and give their input to the Committee.

Judge Reinstein explained to the Committee that currently, the mandatory sentencing provided no release on any basis and that included commutation. Judge Reinstein said if a decision was made to delete commutation from that, the authority could be given to the Governor to commute sentences. Judge Reinstein referred to current case law State vs. Rutherford.

Representative Noland reviewed for the Committee what they would consider at their next meeting. Representative Noland again reminded everyone to have recommendations ready for the Committee and to let her or Senator Blanchard know of other areas that needed to be addressed.

Discussion was held by the Committee regarding the date of the next meeting.

Representative Noland said the next meeting would be on Tuesday, January 14 at 1:30 p.m. and asked the Committee if there were other areas to be considered.

Representative Kromko suggested some areas for future Committee discussion. One area was felony murder rule and to look at the purpose of that law. In addition, Representative Kromko said in 1975, the Legislature did away with a provision that a person could not be convicted based on testimony of an accomplice. Representative Kromko stated that was a "gross injustice" and suggested the Committee consider that issue. Representative Kromko also gave the area of police seizures, because the police are allowed to keep the proceeds of the seizures and there should be some accountability. Representative Kromko recommended the Committee take a more "creative" look at drugs and that plea bargaining should be controlled. Representative Kromko said most importantly, the Committee should consider what happens to prisoners after they are released.

Senator Blanchard suggested the Committee consider the concept of truth in sentencing and also consider post release supervision. In addition, Senator Blanchard said if there was going to be a mandatory sentencing system or sentencing guidelines, for the Committee to consider whether the sentencing range should be increased at both ends. Senator Blanchard recommended

consideration of a "safety valve" system that allowed the judges, in extraordinary cases, to vary with the sentencing either upwards or downwards, if the judge can articulate on the record why the case was truly extraordinary. Senator Blanchard said the rump group had some discussions regarding a safety valve system. In conclusion, Senator Blanchard emphasized the issue of sentencing guidelines. Senator Blanchard said one approach would be to replace the present system altogether with a sentencing guideline system. Senator Blanchard said another possible approach to sentencing guidelines that was discussed by the rump group, would be to change Hannah priors and increase the range of sentencing a judge could apply. Senator Blanchard said that mandatory sentencing was needed in order to have more certainty in the sentencing system. Senator Blanchard said it would be appropriate to have a larger sentencing range but to have an overlay of guidelines that told the judge what the sentencing should be. Senator Blanchard emphasized that this would not be a replacement of the mandatory sentencing system, but an overlay onto a revised mandatory sentencing system.

Representative Hubbard stated that he would like to see the establishment of an ongoing sentencing commission with representatives from the various groups.

Representative Noland encouraged everyone to submit their suggestions in writing to the Committee as soon as possible.

The meeting adjourned at 12:30 p.m.

Respectfully submitted,



Charmion Billington
Secretary

ARIZONA STATE LEGISLATURE
Fortieth Legislature - Fifth Regular Session
Joint Interim Committee Meeting

JOINT LEGISLATIVE STUDY COMMITTEE ON THE
CRIMINAL CODE REVISION STUDY

Minutes of Meeting
Tuesday, January 14, 1992
Senate Hearing Room 1 - 1:30 p.m.

(Tape 1, Side A)

Cochairman Blanchard called the meeting to order at 1:40 p.m. and attendance was noted.

Members Present

Senator Bartlett	Representative Celaya
Senator Buster	Representative Hubbard
Senator Day	Representative Kromko
Senator Denny	Representative McCarroll
Senator Furman	Representative Williams
Senator Greene	Representative Noland, Cochairman
Senator Hill	
Senator Soltero	
Senator Blanchard, Cochairman	

Members Absent

Representative Baird	Representative Hanley
Representative Killian	

Speakers Present

Judge Ronald Reinstein, Ad Hoc Committee Member
Dave Derickson, Ad Hoc Committee Member

Guest List (Attachment 1)

Cochairman Blanchard explained that the focus of today's meeting would be on the issues outlined on the handout titled "Criminal Code Issues." (Attachment 2)

Issue #1 - Need for Gradation of Sentencing based on the Severity of the Offense for Drug Offenses:

Senator Bartlett moved that the Committee adopt Issue #1. He said that he believes the range of sentences available within all classifications should be expanded, and aggravating situations be considered by the judge. He added that

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he thinks there should be distinctions between one-time drug offenses and repeat offenses.

Questions were raised on how threshold amounts for mandatory sentencing would be determined. Senator Blanchard advised that a proposal is being drafted which would address specific amounts.

Mrs. Noland stated that she has a problem with adopting Issue #1 as a blanket statement until more information is available, and would prefer to address specifics.

Senator Bartlett said that he only proposes endorsing some broad guidelines.

Mrs. Noland stated that she just wants to be sure all Committee Members have the same understanding of what they are agreeing to.

Senator Furman suggested that it would be confusing to consider both broad and specific guidelines at the same time.

Senator Greene concurred with Mrs. Noland's comments and said that he thinks the Committee should decide on whether to adopt broad or specific guidelines before voting.

Senator Blanchard explained that formal recommendations with specifics would not be available until the deadline for introduction of bills, so the Committee does not have the time to wait.

Judge Ronald Reinstein, Ad Hoc Committee Member, explained that the Ad Hoc Committee feels more comfortable with basing sentencing on quantity of drugs rather than dollar amounts. He explained that using quantity as a basis would be less questionable than a dollar amount because a determination of dollar amount is dependent on who is making the assessment.

Dave Derickson, Ad Hoc Committee Member, reported that based on federal guidelines, the Ad Hoc Committee came up with thresholds for mandatory sentencing of 3.75 grams for heroin, 18.75 grams for cocaine, 175.5 milligrams for crack cocaine, 3.75 grams for PCP, 3.75 grams for methamphetamine, 3.75 milligrams for LSD and less than \$2,000 for other drugs. These quantities would be a floor before mandatory sentencing would apply.

Senator Soltero said that his hope is that the Committee would address the issues being considered and at a later time the Ad Hoc Committee could present a paper covering specifics.

Senator Greene suggested that the Committee focus on general areas and give the Ad Hoc Committee a sense of direction.

Senator Day moved a substitute motion that the Committee recommend having a quantitative threshold before the mandatory sentencing for drug sales applies. The motion carried.

Issue #2 - Need for Gradation of Sentencing Based on the Severity of the Offense for Sex Offenses:

Senator Bartlett moved that the Committee adopt Issue #2.

Mrs. Noland seconded the motion but requested that the issue be discussed and gradation defined further at the next meeting.

The motion carried.

Issue #3 - Prohibition Against Charging Shoplifting Offenses as Burglary:

Senator Furman moved that the Committee adopt Issue #3.

Senator Bartlett moved a substitute motion changing the wording to "Distinguishing Shoplifting Offenses from Burglary." The motion carried.

Issue #4 - Modification or Elimination of "Hannah Priors":

Senator Bartlett moved that the Committee adopt Issue #4 with "Modification or" being stricken. Discussion followed as to the merits of striking the first two words.

(Tape 1, Side B)

Senator Bartlett withdrew his motion and moved that the Committee adopt Issue #4 as written. Senator Furman seconded. The motion carried.

Issue #5 - Modification of Repetitive Offender Statutes so the Punishment Fits the Severity of the Offense:

Senator Furman moved that the Committee adopt Issue #5. Senator Bartlett seconded. The motion carried.

Issue #6 - Review of Offenses that Result in a Mandatory Life Sentence if Committed While a Person is on Probation:

Mrs. Noland moved that the Committee adopt Issue #6. Senator Bartlett seconded. Senator Blanchard suggested amending the motion by adding "or parole." The motion carried with the suggested amendment.

Issue #7 - Consideration of Parity in Cases other than Capital Cases and First Degree Murder Cases where Sentences of Life Without Parole were Imposed and How Parity Could be Accomplished:

Senator Bartlett moved that the Committee adopt Issue #7.

Senators Greene and Day favored having a study committee review this issue.

Discussion arose as to what effect this issue would have on people already in prison under the old sentencing laws and how the courts would be impacted with requests for review.

Mrs. Noland moved a substitute motion that consideration be given to options of reviewing cases that fall under the mandatory sentence enhancements and where specific changes have been made, and that at least one option be the two-step process of the Board of Pardons and Paroles and then the Court to hear the case.

Judge Ronald Reinstein disagreed with the Noland motion.

Mrs. Noland amended her motion to include the proposals submitted by Scott Smith, Research Analyst for the Public Institutions Committee (Attachment #3) and Representative Williams (Attachment #4).

Senators Day and Soltero recommended that this issue be put on hold until further information is obtained.

Mr. Hubbard expressed confusion about whether this issue includes all cases other than capital offenses or only pertains to individuals who have committed offenses under the categories being changed. He said that he would need more information before voting.

(Tape 2, Side 1)

Senator Blanchard explained that the motion is that only those cases directly affected by the changes made to the criminal code will be reviewed.

Senators Greene and Furman questioned the broadness of this issue.

Senator Greene moved a substitute motion to consider a mechanism to review sentences imposed under the current code. Following brief discussion, Senator Greene withdrew his motion.

Senator Day repeated her suggestion that this issue be put on hold until the Ad Hoc Committee makes recommendations.

Senator Bartlett moved a substitute motion to drop this issue for consideration at this meeting and consider it at the next meeting.

Mrs. Noland moved an amendment that this issue be the last issue considered by the Committee.

The motion as amended carried.

Issue #8 - Felony Murder Rule (13-1105):

Mr. Kromko stated that the purpose of this Committee is to correct injustices and one of the most unjust areas in the whole criminal code is the felony murder rule and he would like to have it removed.

Senator Blanchard remarked that he thinks the Committee should address the issues already discussed and since felony murder is such a major issue, it should not be addressed at this time.

Mr. Hubbard argued that the felony murder issue should be looked at and is certainly within the bounds of this Committee to do so. He added that perhaps it might not be appropriate to consider this issue at this time, but it should be considered at a later time.

Mr. Kromko moved that the felony murder rule either be eliminated or modified by the Committee.

Senator Bartlett said that he doesn't mind discussing this issue, but he doesn't think it should be part of the criminal code revision bill. He suggested, instead, that it be considered separately.

Mr. Kromko submitted that this is a relatively easy issue to understand which would address injustices that are occurring and he would like the Committee to have testimony.

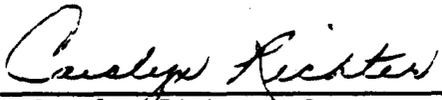
Senator Day concurred that this should be a separate issue from the ones being dealt with at this time.

Senator Furman disagreed and said that he thinks the Committee can look at any part of the criminal code. He said that rather than the felony murder rule being modified or eliminated, he would like to hear testimony on it and said that although he considers Mr. Kromko's motion to be legitimate, he would prefer it be amended that the Committee consider the felony murder rule.

Mrs. Noland noted that the public testimony is past and she thinks it is too late in the proceedings to consider this subject.

Mr. Hubbard moved a substitute motion that the Committee consider modifications to the felony murder rule. Senator Furman seconded. The motion carried by a hand vote of 8 ayes and 4 nays.

The meeting was adjourned at 3:33 p.m.



Carolyn Richter, Secretary

(Attachments on file in the Office of the Chief Clerk and with the Committee Secretary. Tapes on file in the Office of the Chief Clerk.)

ARIZONA STATE LEGISLATURE
Fortieth Legislature - First Regular Session
Joint Interim Committee Meeting

JOINT LEGISLATIVE STUDY COMMITTEE ON THE
CRIMINAL CODE REVISION STUDY

Minutes of Meeting
Monday, January 27, 1992
Senate Hearing Room 1 - 5:00 p.m.

(Tape 1, Side A)

Cochairman Blanchard called the meeting to order at 5:17 p.m. and attendance was noted by the secretary.

Members Present

Senator Bartlett	Representative Baird
Senator Buster	Representative Celaya
Senator Day	Representative Hanley
Senator Furman	Representative Hubbard
Senator Greene	Representative Kromko
Senator Hill	Representative Williams
Senator Soltero	Representative Noland, Cochairman
Senator Blanchard, Cochairman	

Members Absent

Senator Denny	Representative Killian
	Representative McCarroll

Speakers Present

Grant Woods, Arizona Attorney General
Rob Carey, Attorney General's Office
Judge Ronald Reinstein, Ad Hoc Committee Member
Gary Husk, Attorney General's Office
Dave Derickson, Ad Hoc Committee Member
Jim Skelly, Lobbyist, representing the Sheriffs and County Attorneys Association

Guest List (Attachment 1)

Cochairman Blanchard expressed his hope that the Committee would be able to go through the recommendations being considered and adopt language to be included in an omnibus bill to revise the criminal code.

Grant Woods, Arizona Attorney General, reported on the results of the Ad Hoc Committee which he chaired. He said that although the task the Ad Hoc Committee

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faced was almost impossible, a consensus has been reached that will dramatically change the criminal code and meet all criteria, such as protecting the public while making the code fairer. Mr. Woods stated that the recommendations before this Joint Interim Committee are a joint effort of the Arizona Criminal Justice Commission (ACJC) and the Ad Hoc Committee (Attachment 2). He summarized some of the changes made to the criminal code, such as reducing the severity of mandatory sentences, reserving mandatory life sentences for the worst of situations when someone actually causes physical injury with the risk of death, and setting thresholds for drug offenses. Mr. Woods noted that a key factor agreed upon by the ACJC and Ad Hoc Committee is that judges will be able to vary sentencing in certain circumstances. He added though that a consensus was not reached regarding "Hannah priors," leaving this issue to the Legislature to deal with.

Mr. Woods urged the Committee to realize that the changes made to the criminal code will be a model piece of work and a revolution in many respects, and if the result is a criminal code that protects the public but is fairer, then the Committee will have accomplished a great deal. Mr. Woods concluded by saying that the recommendations of the ACJC and Ad Hoc Committee are a product of much give and take and urged the Committee to take them as an honest, sincere effort to be of assistance to the Legislature from the people who practice daily in the criminal justice system. Mr. Woods referred to page 26 of the recommendations and said that the ACJC does not make this recommendation and would prefer that the Legislature not act on this section at this time; however, if the Committee chooses to go ahead with changes, this is the language suggested.

Mr. Williams asked Mr. Woods for his personal position on "Hannah priors." Mr. Woods replied that the Attorney General's Office takes the position that a modified "Hannah priors" is appropriate rather than elimination. He conceded that there have been abuses of "Hannah priors" in the past, but said he would hope that with recognition of abuses and with modification, "Hannah priors" will not be abused in the future. Mr. Woods submitted that unless "Hannah priors" are available, there is no assurance repeat offenders will be punished.

Mr. Hubbard asked if Mr. Woods' testimony is that the ACJC and the Ad Hoc Committee are in agreement on everything but "Hannah priors." Mr. Woods replied that, basically, agreement was reached on almost everything, but not on "Hannah priors" or the parity issue.

Cochairman Blanchard referred the Committee to the handout from Cindy Kappler and Joni Hoffman, House and Senate Research Analysts, titled "Issues adopted for further review by the Committee" (Attachment 3) and explained that each issue would be voted on separately.

Issue #1 - Sentence gradations based on the severity of the offense for drug offenses (Page 22 of the ACJC recommendations):

Rob Carey, Attorney General's Office, summarized the information contained in subsection A on page 22.

(Tape 1, Side B)

Mr. Kromko questioned the meaning of the second paragraph relating to a mixture of substance and asked for an explanation of why this language was included. Mr. Carey stated that the federal government uses this approach and the language was taken from their statutes.

Senator Bartlett moved the adoption of the ACJC recommendation relating to Issue #1.

Mr. Kromko repeated his concern about weight determinations being made on mixtures containing unlawful substances rather than making weight determinations on the unlawful substance only.

Senator Noland asked for clarification as to the areas of dispute between the ACJC and the Ad Hoc Committee. Mr. Carey responded that not including "Hannah priors" and the parity issue, the recommendations as a package were voted on and adopted unanimously by both the ACJC and the Ad Hoc Committee.

Cochairman Noland expressed surprise that involvement of the ACJC was not made known prior to this meeting and requested that points of dissension between the ACJC and the Ad Hoc Committee be identified as the issues are discussed.

Judge Ronald Reinstein, Ad Hoc Committee Member, advised that the Ad Hoc Committee can live with all the recommendations except for the issues of "Hannah priors."

Mr. Kromko moved an amendment that item g in subsection A be changed from 8 pounds to 12 pounds of marijuana.

Senator Furman noted that his vote on this issue will be based on intuition and on information obtained to date, but said that he reserves the right to change his mind as specifics are presented.

Mr. Kromko withdrew his amendment.

Senator Bartlett amended his motion to adopt the recommendations for Issue #1, with the exception of item g in subsection A on page 22. The motion carried.

Mrs. Noland moved that item g be considered at the end of the agenda.

Following brief discussion, Cochairman Blanchard ruled that item g will be held until last in the meeting.

Issue #2 - Sentence gradations based on the severity of the offense for sex offenses (Pages 12 through 17 of the ACJC recommendations):

Judge Ronald Reinstein, Ad Hoc Committee Member, summarized the recommendations contained in pages 12 through 17.

Discussion ensued regarding appropriate age guidelines as contained in the language on page 13.

Gary Husk, Attorney General's Office, summarized the information regarding registration of sex offenders of children on page 14.

Mr. Kromko wondered why all offenders, and not just sex offenders, aren't registered. Mr. Husk said that it is felt offenses against children warrant more serious consideration than other offenses.

Mr. Kromko stressed the need to have an age span of at least five years between two minors involved in a sexual encounter before prosecuting.

Mrs. Noland moved that the recommendations contained in pages 12 through 17 be adopted.

Senator Furman raised the question of what would happen in the event of sexual activity between a 17 year old and a 19 year old, or perhaps a 17 year old and a 20 year old, and said that he is interested in seeing gradations in this respect.

Mr. Kromko moved a substitute motion to adopt the recommendations on pages 12 through 17 with the inclusion of the Washington approach to age differential (Attachment 4). Mrs. Noland seconded the motion. The motion carried.

Issue #3 - Distinguish shoplifting offenses from burglary offenses (Pages 18 through 20 of the ACJC recommendations):

Rob Carey, Attorney General's Office, summarized the information contained in pages 18 through 20 of the ACJC recommendations.

Senator Bartlett contended that the only language within the scope of the Committee's assignment is in subsection A on page 18. Senator Bartlett moved that the language in subsection A on page 18 be adopted. Discussion followed as to the appropriateness of including page 20 in the motion. Senator Blanchard observed that the issues on both page 18 and page 20 are linked and should be considered together.

(Tape 2, Side A)

Senator Greene questioned whether or not someone hiding in a restroom would be considered to be in an unauthorized place. Discussion followed to this point.

Mr. Baird moved a substitute motion that the language in subsection A on page 18 and the language on page 20, with the exception of "(1)" on line 14 and "or (2) the intent of shoplifting" on lines 15 and 16, be adopted. Senator Bartlett seconded the motion.

Mr. Kromko maintained that a purse could be construed as a shoplifting device.

Mr. Baird suggested that perhaps the words "not including a purse" could be added.

Rob Carey, Attorney General's Office, proposed that the words "specifically designed to conceal property" could be inserted after "article" on line 15 and the remainder of the sentence be stricken.

Mr. Baird added Mr. Carey's suggested language to his motion.

Senator Bartlett argued that a purse could still be included in this description.

Mr. Baird withdrew his motion and moved to adopt subsection A on page 18, and amend page 20 by inserting "designed to facilitate the commission of shoplifting, not including a purse" after "article" on line 15 and the remainder of the sentence being stricken. The motion failed.

The Bartlett motion to adopt subsection A on page 18 carried.

Judge Ronald Reinstein, Ad Hoc Committee Member, offered his opinion that the words "specifically designed to conceal property" would be sufficient in subsection B on page 20.

Issue #4 - Modification or elimination of "Hannah priors":

Judge Ronald Reinstein, Ad Hoc Committee Member, addressed the concerns of Attorney General Grant Woods concerning "Hannah priors" and said that he feels utilizing "Hannah priors" in offenses involving amounts of money in excess of \$100,000 would alleviate Mr. Woods' concerns. Judge Reinstein added that the criminal bench in Maricopa County agrees with elimination of "Hannah priors."

Rob Carey, Attorney General's Office, contended that while not perfect, "Hannah priors" are valuable to the Attorney General when prosecuting white-collar criminals, but conceded that they need to be modified.

Mr. Baird remarked that he is aware there have been abuses with "Hannah priors," but is uncomfortable with eliminating them entirely.

Senator Bartlett said that he feels it would make sense to get rid of "Hannah priors" as they've been known, and then look at some other method of addressing white-collar crime.

Mrs. Noland moved the Blanchard proposal (Attachment 5).

Dave Derickson, Ad Hoc Committee Member, stated his opposition to modifications of "Hannah priors" and emphasized the need to have them eliminated entirely because of the numerous unintended consequences from their application.

Senator Blanchard commented that most prosecutors agree they don't really need "Hannah priors."

Senator Greene said that he thinks a message needs to be sent that if someone commits multiple crimes, they will go to jail, and suggested that the issue of "Hannah priors" should go before the full bodies of the House and Senate.

Senator Furman concurred with the potential for abuse with "Hannah priors" and said that he thinks white-collar crime should be addressed in some other manner.

(Tape 2, Side B)

Mr. Carey disagreed that prosecutors don't want "Hannah priors."

Senator Buster said that he thinks everyone will agree there have been abuses with "Hannah priors," but he doesn't think they should be eliminated completely.

Mrs. Noland stated that she is not in favor of total elimination of "Hannah priors," but hasn't seen anything else that works.

Jim Skelly, Lobbyist, representing the Sheriffs and County Attorneys Association, testified in support of "Hannah priors," and suggested that they be determined by the class of felony.

Mr. Williams submitted that the majority of people want to eliminate "Hannah priors."

The Noland motion to adopt the Blanchard proposal carried.

Issue #5 - Modification of repetitive offender statutes so the punishment fits the severity of the offense (Pages 1 through 7 of the ACJC recommendations):

Rob Carey, Attorney General's Office, summarized the recommendations presented in pages 1 through 7.

Senator Bartlett moved to adopt the language in pages 1 through 7 of the ACJC recommendations with the exception of changing language in the last line on page 4 to read "felony violations of A.R.S. Section 28-692.02...."

Following brief discussion, Senator Bartlett withdrew his motion, with the understanding that the Committee will consider a dangerous and repetitive offenses statute.

Cochairman Blanchard said that without objection, this issue will be dealt with later.

Issue #6 - Review of offenses that result in a mandatory life sentence if committed while a person is on parole, probation, work furlough or any other release status or escape from confinement (Page 8 of the ACJC recommendations):

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Rob Carey, Attorney General's Office, summarized the information contained on page 8 of the ACJC recommendations.

Mrs. Noland asked for clarification of the language pertaining to discharge of a deadly weapon in subsection A on page 8. She wondered if someone intoxicated and shooting out of a car window could be a case for mandatory life imprisonment. Judge Ronald Reinstein, Ad Hoc Committee Member, affirmed that could happen.

Mr. Williams suggested inserting "intentional discharge" to address Mrs. Noland's concerns.

Mrs. Noland said that she would like to know why the discharge language is in this section.

Mrs. Noland moved to adopt the language on page 8, with the insertion after "involving" on the second line in subsection A of "the use of a deadly weapon or dangerous instrument so as to create a reasonable risk of serious physical injury upon another." The motion carried.

THE MEETING WAS RECESSED AT 8:10 P.M. AND RECONVENED AT 8:25 P.M.

Issue #7 - Discussion of issue of parity including consideration of mechanism for reviewing sentences and review of the manner in which other states have handled parity:

Senator Blanchard said that hearing no objections, this issue will be skipped at this time and dealt with in session by committee.

(Tape 3, Side A)

Mr. Hubbard observed that this is a serious issue that will take a lot of thought and he wants assurance that it will be dealt with in session.

Issue #8 - Consider modification of the felony murder rule:

Mr. Kromko related several cases of miscarriage of justice and reported that there are judges that advocate the abolishment of the felony murder rule. He added that only three states in the nation have abolished the felony murder rule; however, no other countries in the world have it. He distributed a copy of New York and Oregon statutes regarding the felony murder rule (Attachment 6).

Mrs. Noland moved that the Committee not consider the felony murder rule.

Mr. Kromko disagreed with the Noland motion and said that he thinks the felony murder rule is as bad as "Hannah priors," or maybe worse.

Mr. Hubbard commented that while he believes the felony murder rule could use some tightening down, it should not be eliminated.

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Judge Ronald Reinstein, Ad Hoc Committee Member, noted that the Ad Hoc Committee voted not to discuss this issue because of time constraints and would take no position at this time.

Rob Carey, Attorney General's Office, stated that the Attorney General's position is that there is nothing wrong with the felony murder rule and that it's fine as it is.

Senators Bartlett and Buster and Mrs. Noland objected to including this issue in the omnibus bill and stated their opinions that it is not within the scope of the Committee's guidelines for revising the criminal code.

Mr. Williams disagreed with the felony murder rule not being considered by the Committee and said that he thinks it will look bad to have a bill appear later addressing this subject and questions will be raised as to why the Committee didn't deal with it.

Mr. Hubbard also supported consideration of revision to the felony murder rule and said that he thinks this issue has enough merit to be discussed.

Senator Soltero made a substitute motion that the modification or elimination of the felony murder rule be a topic charged to any ongoing sentencing commission established.

Senator Furman said that he thinks this issue is clearly within the Committee's scope and doesn't think the issue is that complicated and should be addressed by the Committee.

Mr. Kromko moved a substitute motion to adopt the Oregon language regarding the felony murder rule. The motion failed by a hand vote of 5 ayes and 6 nays.

Mr. Baird concurred that this issue has merit, but also agreed that it is not appropriate to discuss it at this time because of possibly jeopardizing the omnibus bill.

Senator Blanchard recommended that the Committee move on to the next issue and not make a decision at this time about assigning it to an, as yet, unnamed commission.

Senator Soltero withdrew his motion.

Mrs. Noland withdrew her motion.

Issue #9 - Modify sentence ranges (Page 10 in ACJC recommendations):

Rob Carey, Attorney General's Office, summarized the information on page 10 of the ACJC recommendations.

Senator Bartlett questioned the requirement that the state concur to a fifty percent decrease in a minimum sentence and moved that the Committee adopt the language on page 10 with the exception that on line 9, subsection B, "up to twenty-five percent (25%), or by up to" be stricken, and on line 10, striking "when the state concurs."

Senator Greene objected to the removal of language in subsection B.

Mr. Carey also opposed the motion to remove language in subsection B and said that to remove the language pertaining to the state is inappropriate and would not be supported by the ACJC.

Judge Ronald Reinstein, Ad Hoc Member, reminded the Committee that these recommendations were agreed to by both the ACJC and the Ad Hoc Committee and said that he is not offended by the requirement for the state to concur in a sentence reduction on the additional twenty-five percent.

Senator Bartlett withdrew his motion and moved to adopt the recommendation on page 10 as written. The motion carried.

Issue #10 - Consideration of sentencing guidelines to work in conjunction with a revised system of mandatory sentencing and the establishment of an ongoing body to continuously meet and review the criminal code:

Senator Blanchard recommended that instead of adopting any particular type of sentencing framework, this issue be postponed to a later time. Without objection, the Committee moved to the next issue.

(Tape 3, Side B)

Senator Bartlett said that he would like to see a joint study done by staff on criminal justice.

Issue #11 - Review statutes regarding convictions based on accomplice testimony:

Mr. Kromko commented on the unfairness of basing a conviction on an accomplice's testimony and noted that this was not allowed prior to 1977, when the law was repealed that stated a conviction could not be based on the testimony of an accomplice unless the accomplice was corroborated by other evidence (Attachment 7). Mr. Kromko added that because of the controversial nature of this issue, he will withdraw it from the agenda.

Issue #12 - Include language under the purpose statement in 13-101 that states that one of the purposes of sentencing people in the criminal justice system is to rehabilitate them and to provide them with the opportunity for rehabilitation:

Mr. Baird concurred that rehabilitation should be one of the goals of our correctional system, but stated a concern that the Bartlett proposal

(Attachment 8) might result in a rash of lawsuits by prisoners who see this as a guarantee of rehabilitation.

Senator Bartlett assured the Committee that there is no intent for that to happen. He said that the intent is not to require that there be some specific provisions, but that the court, in determining sentences, be able to give consideration to rehabilitation for those for whom it is appropriate.

Senator Day wondered if the state might be in jeopardy if a prisoner failed to be rehabilitated.

Senator Blanchard disagreed that this will create a cause of action and recommended that no implication be made by way of amendments that there is a problem. Discussion followed.

Mr. Baird disagreed with Senator Blanchard and said that Senator Bartlett's proposal might create a right to rehabilitation and he would like to have it noted that is not the intent.

Mr. Baird moved the Bartlett proposal and the insertion after "7. TO PROVIDE," of "NOTHING IN THIS SECTION SHALL BE CONSTRUED AS CREATING A CAUSE OF ACTION BY INMATES OR OTHERS ALLEGING THAT INMATES HAVE NOT OR ARE NOT BEING REHABILITATED." The motion carried.

Issue #13 - Recommend that the Joint Select Committee on Corrections review the method in which the system handles prisoners while they are in prison and when they are released:

Senator Furman moved the language contained in the memo from Cindy Kappler dated January 27, 1992 (Attachment 9). The motion carried.

Judge Ronald Reinstein, Ad Hoc Committee Member, summarized the changes made by the language on page 11 of the ACJC recommendations.

Senator Bartlett moved that the language on page 11 be adopted. The motion carried.

Rob Carey, Attorney General's Office, referred to subsections B and C on page 18 of the ACJC recommendations and commented on the dispute of whether residential burglars should go to jail or prison. He said that prosecutors don't care which, as long as there is mandatory sentencing. He added that he thinks the Attorney General would prefer prison sentences because of the outcry that would come from sheriffs because of lack of jail space.

Judge Reinstein expressed a preference for jail sentences if possible, and said that he supports leaving the option of prison or jail to the judges.

Mrs. Noland moved that the Committee not consider subsections B and C on page 18 at this time, but to address this as a separate issue from the omnibus bill.

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Senator Bartlett questioned if a fiscal note has been prepared as to the cost impact and source of revenue of subsection B and said that he would like to have such information made available.

The Noland motion carried.

Mr. Carey explained that the language on page 19 of the ACJC recommendations modifies the dollar amounts in theft statutes because of inflation.

Mr. Baird moved to adopt the language on page 19. The motion carried.

Mr. Carey addressed the language in subsection G on page 24 of the ACJC recommendations. Discussion followed as to whether this language is necessary.

Mrs. Noland said that she doesn't think this recommendation is consistent with what the Committee is trying to do with gradation.

Senator Furman moved that the Committee not at this time accept this recommendation. The motion carried.

Judge Reinstein addressed the recommendations on page 21 of the ACJC recommendations.

Senator Bartlett moved to adopt the language on page 21. The motion carried.

Mr. Celaya distributed a list of recommendations to the Committee (Attachment 10) and moved adoption of Section 13-902 on page 1.

Judge Reinstein advised that he already has the authority provided in subsection D. He explained that 365 days is the maximum time a person can be sentenced to jail and cautioned the Committee to consider the overcrowding conditions of jails and how much this will cost. He suggested that this language might just be transferring costs from the Department of Corrections to the county jails.

The motion to adopt Section 13-902 carried.

Mr. Celaya noted that the changes suggested to Section 13-1204 are cleanup. Mr. Carey disagreed.

Senator Greene commented that this might be a legitimate issue to consider, but he doesn't think it is consistent with what the Committee is addressing and moved to not include it in the omnibus bill. The motion carried.

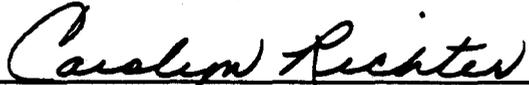
Mr. Celaya summarized the changes proposed to Section 28-692.02.

Senator Buster questioned whether Mr. Celaya's proposal is germane to the scope of the Committee and disagreed with adding it to the recommendations for an omnibus bill.

Senator Day moved that the Committee not adopt the language proposed in Section 28-692.02. The motion carried by a hand vote of 9 ayes and 5 nays.

Mrs. Noland moved that the recommendations adopted by the Committee at this meeting be the Committee's report and structure for the omnibus criminal code bill. The motion carried.

The meeting adjourned at 10:20 p.m.



Carolyn Richter, Committee Secretary

(Attachments on file in the Office of the Chief Clerk, Senate Secretary and with the Committee Secretary. Tapes on file in the Office of the Chief Clerk.)

ARIZONA STATE LEGISLATURE
Fortieth Legislature - First Regular Session
Joint Interim Committee Meeting

JOINT LEGISLATIVE STUDY COMMITTEE ON THE
CRIMINAL CODE REVISION STUDY

Minutes of Meeting
Thursday, October 10, 1991
House Hearing Room 3 - 9:00 a.m.

Chairman Blanchard called the meeting to order at 9:06 a.m. and the attendance was noted.

Members Present

Senator Bartlett	Representative Celaya
Senator Buster	Representative Hubbard
Senator Day	Representative Killian
Senator Denny	Representative McCarroll
Senator Furman	Representative Williams
Senator Greene	
Senator Hill	
Senator Soltero	
Senator Blanchard, Cochairman	

Members Absent

Representative Baird (excused)	Representative Kromko (excused)
Representative Hanley	Representative Noland, Cochairman (excused)

Speakers Present

Dave Derickson, Attorney, Phoenix
Russ Born, Deputy Public Defender, Maricopa County
Debra Bernini, Assistant Public Defender, Pima County
Donna Hamm, Director, Middle Ground
Rhonda Jensen, Prisoner Family Connection
Marilyn Krausch, DISMAS, Tucson
Deana Baker, Citizen, Mesa
Diana Varela, Citizen, Tucson
Cynthia Ahumada, Citizen, Phoenix
Jonnie Reasoner, Citizen, Phoenix
Sharon Harrington, Citizen, Mesa
Virginia Panek, Middle Ground

*(The following are those who had requested to speak but who were not present when called upon by Chairman Blanchard)

Maria Milton, Citizen, Phoenix
Julie Boyce, Middle Ground
Charlene Nosenko, Citizen

Guest List (Attachment 1)

JOINT LEGISLATIVE STUDY COMMITTEE ON
THE CRIMINAL CODE REVISION STUDY
10/10/91

Dave Derickson, Attorney, Phoenix, stated the Arizona Attorneys for Criminal Justice (AACJ) was formed several years ago to be a collective voice for a large group of professionals who see the application of the criminal code on a daily basis. The AACJ believes the current criminal code is unreasonably harsh in its sentencing formulas. This code is overbearing with the threat of mandatory sentencing with the use of "hannah priors" which force innocent people or those with legitimate defenses into taking plea bargains in order to get a reduced sentence. It also forces tax dollars to be spent on buildings instead of rehabilitation and prevention programs. The present code is ineffective in curbing crime. Mr. Derickson stated the AACJ recommends that the Legislature eliminate "hannah priors", decrease the use of mandatory sentencing, develop and support alternatives to imprisonment, fund programs designed to integrate inmates into society without reoffending and implement a parity review for persons who have been sentenced under the present criminal code.

He contended the prosecutor has the power to make prison mandatory or optional. That power has always belonged to the judges who are supposed to be impartial, objective decision makers who impose prison or probation in the right circumstances. Mr. Derickson noted there is an overwhelming prison population problem. Something needs to be done to reduce the load on the taxpayers without reducing public safety. Mr. Derickson stated in 1983 the Criminal Justice Group unanimously approved a resolution which states the Criminal Justice Group recognizes that a crisis exists and the causes are attributable to the growing population of the state's strict sentencing practices of judges, increased punishment and mandatory sentencing under the 1978 criminal code.

Mr. Derickson cited a recent article in the The Arizona Republic by Van O'Stein which referred to a hypothetical case involving the possible misuse of mandatory sentencing. He then read quotes from G. Thomas Meehan, Presiding Judge, Pima County Superior Court; Clarence Dupnik, Pima County Sheriff; Sam Lewis, Director, Arizona Department of Corrections; Grant Woods, Arizona Attorney General; Karen Duffy, Vice President and cofounder of We the People; and an anonymous judge in Coconino County regarding the problems with mandatory sentencing.

In response to Mr. Hubbard's request for real cases, Mr. Derickson stated his client was arrested for selling one hundred hits of LSD to an undercover narcotic agent in Flagstaff. He was a first offender with no prior record. The officer asked him if he could get some drugs; his client said "I don't have any but I can get some from my connection." He did and made probably \$20 from that transaction along with exposure to a possible prison sentence of 5 years and 3 months, which the prosecutor intends to require as a plea agreement. He noted the federal sentencing guidelines require a 6-month sentence maximum.

Senator Denny requested written names and cases of juveniles and adults who have received sentences and are in prison.

In response to Senator Greene's statement regarding prosecutorial abuse, Mr. Derickson stated our judicial system is being used and abused regularly by prosecutors in cases where they should not, as a matter of principle, ethics or morality, attempt to extort a plea of guilty by threatening the use of "hannah priors" and mandatory sentencing. He noted judges have discretion and the whole picture; the prosecutors do not have the whole picture and are not objective.

There is a problem in the system that can easily be remedied, which will restore balance by giving the power of the decision making back to the judiciary.

Senator Bartlett stated the Knapp Report suggests that alternatives to incarceration be explored but with caution, because it can be more expensive than prison. He questioned if Mr. Derickson was advocating alternatives to prison as another tool for judges or as a way to save money.

Mr. Derickson responded by stating he advocates alternatives to incarceration as an additional tool for judges and as a tool for the legislature to address the crime rate by permitting alternative programs. He noted the Knapp Report indicated that in each individual case a cost analysis on an alternative program, imprisonment or probation could be conducted as is presently done in every federal case. Judges could then see the cost benefit in each case.

Senator Bartlett stated he sent to the Members of this Committee copies of a court proceeding from Greenlee County which reveal a tale of distortion of the purpose for having these types of enhancements and mandatory sentences. He noted the question that needs to be addressed is whether or not the system is just, not how much it costs.

Representative Williams commented that mandatory sentencing was instituted as a rebellion against what was conceived as judges being too lenient. He added what is seen in the press are the bad examples, not necessarily the routine cases.

(Tape 1, Side 2)

In response to questions Mr. Derickson stated that in cases involving homicide, premeditated murder, sexual abuse involving children and possible armed robbery the Legislature would consider mandatory sentencing appropriate. The sexual abuse area should be dealt with on an individual case level. He added the sentences are very long; and if there is more than one violation, sentences are consecutive.

Representative Killian commented if one of the goals and objectives of this Committee is to drive down the costs, it can be done by constructing less expensive buildings. He noted Colorado has used modular buildings, butler steel buildings and other types of construction which are less expensive and more effective in housing than brick. He stated he believes in protecting the public but time and money are wasted if an effort is not made to rehabilitate people while they are in the system. Mr. Killian concurred with Senator Denny's earlier request for actual cases, stating there are too many lives at stake to make decisions based on well intended testimony without facts.

Russ Born, Deputy Public Defender, Maricopa County, stated in the past judges were too lenient, but the Legislature by passage of mandatory sentencing has taken all discretion away from judges and given it to the prosecutors. He gave the following examples of real cases:

1. A young man who was on probation for possession of narcotics with an obvious drug problem, who had not yet entered the probation drug program, stole from his parents. After much soul searching his parents called the

police in an effort to acquire help for their son, which is noted in the police report. The response of the County Attorney in this case, since the man was on probation and committed another felony, was that he be given consecutive time following the original sentence. The parents came to the Public Defender's Office and said they did not want to press charges; they wanted him to get help from the probation department, not a prison sentence. Although the parents signed affidavits stating they did not want to press charges in this case, the prosecutor refused. To avoid bad press the prosecutor cut the case down from burglary to a Class 6 felony. The young man went to prison because his parents were told by the prosecutor that if they did not come to court on their own, they would be subpoenaed or if necessary arrested and forced to testify against their son.

2. A case involving a woman who had previous problems with her husband. Her husband came home after drinking and she pulled a knife on him. He got angry and tried to take the knife away and she cut him in the shoulder. Someone heard the yelling and called the police. When the police arrived, they charged her with aggravated assault dangerous, a Class 3 felony because a dangerous instrument was used. At the preliminary hearing her husband said he did not want to press charges. He told the prosecutor he was trying to get the knife away from her and got cut and the prosecutor said "No", we have a policy; this case involved a weapon, someone could have been hurt, we want a felony conviction. My client wanted to go to trial but I had to tell her that if we go to trial and she is convicted the judge has no choice but to sentence her to a minimum of 5 years hard time, probably 7 years, 5 months hard time because it is a Class 3 dangerous crime.
3. My client allegedly used a gun to hit someone in the jaw. He did break the man's jaw. He was charged with aggravated assault dangerous. Through investigation with the prosecutor present it was found the victim was living with my client and admitted to the county attorney that after this incident he broke into my client's house and then went to my client's girlfriend while my client was in jail and told her if she would sign over the title to her truck to him, he would not testify in this case. She gave him the title to the truck and he did testify. We had a doctor who said the broken jaw was not caused by a gun, but could have been caused by a punch. If we went to a jury trial, the prosecutor would go on the aggravated assault dangerous charge. My client who had no prior record, if convicted, would be faced with a minimum prison sentence of 5 years. The prosecutor knew this was not a good case and said we will drop the allegation of dangerous if we don't go to jury trial, which meant that if we went to trial before a judge and lost, there was at least a chance for probation. This is how mandatory sentencing is used. They file these dangerous enhancements, and if the case starts looking bad for the prosecutor, they recommend you waive your right to a jury trial to remove the enhancement, but you are still facing a trial before a judge. In this case my client was found not guilty.
4. My client and his son were sitting on his front porch when a car drove by and some shots were fired. My client shot back at the car. His aim and sights were bad and the bullets went into the house across the street. The bullets did not hit anyone but embedded in the house. He was charged

with endangerment of three people who were in the house and criminal damage dangerous to the house because he used a gun, which is a Class 6 felony. My client had no previous record. If convicted under the criminal damage charge alone my client would still be sentenced to prison.

Mr. Born stated he is looking for fairness and discretion. He suggested it is better to have the discretion in the hands of the judges who have had some life experience instead of that discretion being in the hands of young, eager, inexperienced prosecutors.

Chairman Blanchard stated any written information on these and other cases would be greatly appreciated.

Senator Denny questioned if a judge has the authority to reject plea agreements.

Chairman Blanchard commented judges have told him that it does little or no good to reject a plea because the judge will receive notice by either the prosecution or defense, and they will take the pleas to another judge.

Representative Hubbard asked Mr. Born what changes he would like to see.

Mr. Born stated certain crimes require mandatory sentences where probation is not appropriate, but not all crimes. He contended judges should be allowed to look at criminal history, weigh the defendant's background and use discretion when sentencing. He added judges should be allowed to look at lower case felonies and decide if the priors are relevant before imposing sentences.

Mr. Born stated the Dangerous Crimes Against Children statute, as passed by the Legislature to prevent sexual assaults against children, is being used for example in DWI accident cases. When a child under the age of 14 is seriously injured, not necessarily a permanent injury, the defendant is now being charged with dangerous crimes against children in addition to whatever other charges are made for the accident. If convicted, any sentence issued for the dangerous crimes against children charge has to be a prison sentence consecutive to any other sentence imposed regarding the accident portion of the case.

Senator Furman voiced frustration regarding the statistics the Legislature views regarding charges and sentencing because of plea bargains.

Mr. Born gave an example of a woman who broke-up with her husband or boyfriend. She was physically kicked out of the house. She wrote checks on their joint checking account over a 15-day period. There was no money in the account. Even though Mr. Born felt this should have been a misdemeanor, she could have been charged with a Class 4 felony for forgery because her boyfriend/husband removed her from the account. Technically she forged the checks. If viewed as a fraudulent scheme, she could be charged with a Class 2 felony. Each check written could be used as "hannah priors", and if convicted she could be in the highest sentencing code, other than for murder, in this state. He added this happens every day. The prosecutor will usually file the forgery charge and say "If you do not take the plea agreement, we will then file the "hannah priors" for each check written."

Representative Williams asked if sentencing guidelines will stabilize the judicial system and whether judges will follow them.

Mr. Derickson responded that the concept of guidelines makes sense to him as a defense attorney, since it would make the sentences more predictable and it would require judges to look at cases with similar circumstances when imposing sentences. He noted Washington and Minnesota have sentencing guidelines which allow for departures upward and downward from the guidelines in instances where the judge deems appropriate. As a matter of record the judge must indicate the circumstances that warrant the departure. Mr. Derickson contended there seems to be a benefit of imposing a particular sentence for a particular crime, yet it allows the circumstances of an individual to be taken into account.

(Tape 2, Side 1)

Mr. Born indicated another problem area is mandatory fine cases. He stated there is no room for adjustment in the amount of the payment or the length of time given to pay the fine.

Senator Day stated the Legislature needs to decide who they really want to go to prison and who belongs there. She questioned if the problem is with the criminal code or with elected chief prosecutors.

Mr. Derickson opined it is the institution of the prosecutor that has the power which belongs in the judicial institution. He recommended the criminal code be changed to return the power of sentencing to the judges.

Debra Bernini, Assistant Public Defender, Pima County, stated she has been an attorney for 11 years, an adjunct professor of law at the University of Arizona College of Law and for the past 6 years she has primarily focused on the defense of indigent individuals accused of crime. She explained the perspective of the public defender is different from the county attorneys and lobbyists for the following reasons:

1. Information presented is nonpolitical.
2. Public defenders do not have a financial stake in criminal code legislation.
3. Information provided is from actual cases for case files, not hypothetical.

She noted these example cases are not the worst cases but are the typical scenarios seen on a daily basis.

Ms Bernini gave her case examples, categorized as follows:

1. The average Arizona resident does not know how harsh the sentencing laws are.
- A. An 18-year-old young man with no previous record, shared a hit of acid with his 13-year-old girlfriend. The case went to trial and no plea was offered. The judge realized before the trial that under ARS 604.01A, Dangerous Crimes Against Children, if this young man was convicted he had

to sentence him to 20 years flat time in prison. The judge asked the prosecutor in chambers if there was any way a plea could be arranged. He did not want to send this man to prison. The prosecutor said it has nothing to do with this man's background, but under the policy of his Office, at the present time, he could not offer a deal to this man. He was convicted. Afterwards the jury in discussion with the prosecutor and defense attorney said they did not feel any better about the young woman, but under the law and the direction they were given, felt they had no other choice. The jurors stated they were sure the judge would be able to use leniency when sentencing this young man. The judge did not have that choice.

- B. A 22-year-old young man who had too much to drink caused an accident with another individual. As a result of the car accident, the individual was not at fault sustained a broken hip from which he completely recovered. The 22-year-old man sustained such serious injuries to his head and body he was in a coma for a week. He was hospitalized for 2 months and the trial was delayed for 9 months before he was physically able to come to trial. No plea was offered. He was charged with 2 counts of aggravated assault dangerous nature, because of the use of a dangerous weapon or instrument, which in this case was his car. The judge knew that if convicted he would have to sentence this man to a mandatory prison sentence of 5 to 15 years. This young man had a memory retention span of only 30 minutes, yet he was found competent by the court clinic psychologist to assist me with his own defense. He was convicted. The jury was not told the extent of his injuries and he was not able to testify because he has no memory of what he did. No plea was offered. Sentencing in this case has been postponed because both the Probation Department and the Department of Corrections have been working to find a place to put him. He has a brain lesion that will never heal; he is susceptible to seizures and he needs constant medication. There is no place for him in the system, yet he has been sentenced to a minimum of 5 years with parole after 3 years.
2. Use of harsh penalties as a deterrent. Deterrence is not a realistic goal under the present sentencing code.
- A. Ms Bernini state she has names of at least ten individuals who have no prior felony records who were arrested for purchasing small amounts of cocaine from undercover police officers. These buys were conducted on 3 different occasions on the same day or one day after another. The police are aware that under "hannah priors" as they can be alleged, if you have three offenses and you "hannah prior" them, individuals if convicted are facing maximum sentences of 14 to 28 years flat time under the present code. These people have accepted plea offers to plead as a first time offender, ignoring the "hannah priors", which is a sentence of 5½ to 14 years.

Ms Bernini noted the worst offenders are not feeling the impact of this sentencing code. Statistics show the Pima County's Public Defenders Office represent 90 to 95 percent of all persons accused of felony crimes in Pima County. She contended these people cannot afford an attorney; they are on the bottom of the narcotic food chain. People who simply use drugs are being targeted instead of those who are supplying the drugs.

- B. A heroin addict ran into an undercover policeman who was watching the house he was going for his daily hit of heroin. His supplier was not there and the officer befriended him and asked where he could get some heroin. They went to another house; the officer watched him shoot-up heroin. The officer did not arrest him at that time and then accompanied him to two other residences where three separate buys were made. This happened on successive days. As a result, this man was arrested and "hannah priored" even though he had no prior felony record. He faces a 14-to 28-year sentence, not based on anything in his background. He was offered no plea bargain. He was convicted. Another person who had been selling at one of the residences was given a plea offer, even though he was on probation for a drug offense and was clearly selling narcotics. He was offered a plea because he was able to give names of other individuals higher on the narcotic food chain who might be able to lead the police to other drug sales.
- C. A mentally ill person who was on probation decided one night that he would break into a restaurant where he thought he could get some lobster. He went in through the vents. He did not find any lobster and he could not get out. He was found and arrested the next morning. As a result of being on probation, if convicted he would be facing a sentence of 6 years flat time. No plea was offered. This man went to trial and was convicted and is now serving 6 years in prison even though everyone knew about his mental state, because that is not a defense for this crime.
3. Sex crimes are the toughest area to find any fact situation that people might feel sympathy for. She urged the Committee to consider changing the sentencing laws because as they are written now, a person who fondles a child over his clothes is susceptible to the same punishment as a person who forces a child with anal intercourse. She noted cases are typically overcharged; shoplifting is charged as burglary and drug busts are made in series of three, so people can be "hannah priored".
- A. A father of two went to his bowling league and had too much to drink. When he came home, his wife said no more beer. Since he was the caretaker of the premises he went to the upstairs apartment and had a few more beers. He lit a cigarette and the apartment caught fire. He realized it had caught fire but since he was intoxicated he ran without doing anything about it until the entire building had caught fire. He was the first person to dial 911. This man was facing a Class 2 felony dangerous nature, at a minimum sentence of 7 to 21 years. His defense would have been intoxication, but intoxication is not a defense for arson. A plea offer was made for him to plead as a first time offender to a Class 2 felony with a sentence of 5½ to 14 years. The prosecutor decided that a year in jail was mandatory, otherwise no plea would be offered. He took the plea. His family have lost their home and are now receiving public assistance.

Ms Bernini contended innocent people are frequently in the position of having to plead guilty to lesser charges rather than risk going to trial.

- B. The 13-year-old niece of an 18-year-old woman with a juvenile record took a marijuana cigarette out of her aunt's purse and took it to school. The

13-year-old niece was caught immediately. When she was told she would be taken to juvenile court, instead of saying she stole it, she said her aunt gave it to her. The 18-year-old aunt was arrested and charged with dangerous crimes against children, looking at a mandatory minimum sentence of 20 years in prison. Other than the juvenile record she had no other problems. A plea offer was made where probation would be available. Her sister took her daughter and left the county avoiding the prosecutor who will force the niece to testify against her aunt. This case has been placed on hold for approximately one year.

Representative Hubbard stated he feels stiff sentences are a deterrent. He suggested that as a deterrent the State of Arizona should execute the people who are on death row. He added this is a very debatable subject.

Ms Bernini stated routinely jurors are screened at the end of trials. The jurors are usually shocked when they find out that there was a mandatory enhancement that would go along with the decision they rendered.

(Tape 2, Side 2)

Senator Greene suggested the jurors be advised of what the punishments are if enhancements are proved but noted he was not suggesting jury nullification.

Donna Hamm, Director, Middle Ground, Prison Reform and Prison/Family Advocacy, distributed "Reclaiming the Vision", a report prepared by Middle Ground (Attachment 2). Ms Hamm went through the report and explained Middle Ground supports the Knapp Report and its findings in general. She noted Middle Ground disagrees with some of the Knapp Report recommendations. She added everyone would like to see immediate change, but tinkering will not solve the overall problem. She concluded that a thorough reworking of the criminal code could not take place in less than two years. Ms Hamm then read and defined the 16 recommendations of the "Reclaiming the Vision" report.

(Tape 3, Side 1 - item 12 of the report)

Rhonda Jensen, Prisoner Family Connection Agency, read from her prepared statement (Attachment 3). She distributed "Arizona Criminal Code Study", prepared by Prisoner Family Connection Agency (Attachment 4). There were no questions from the Committee.

THE MEETING RECESSED AT 12 NOON.

THE MEETING RECONVENED AT 1:25 P.M. All members were present except Senator Day, Senator Denny, Senator Hall, Senator Soltero, Representative Baird (excused), Representative Hanley, Representative Hubbard, Representative Killian, Representative Kromko (excused), Representative McCarroll, Representative Williams and Representative Noland (excused).

Marilyn Krausch, Dismas, read from her prepared statement (Attachment 5). There were no questions from the Committee.

Deana Baker, Citizen, Mesa, related her experience regarding her 18-year-old son who, due to family problems with an ongoing divorce, went with two other boys

out drinking. The two other boys decided to rob a Circle K; her son did not want to participate so he waited in the truck. She noted her husband was a DPS officer and with his influence her son received only a few weekends in jail, some community service and probation. Ms Baker stated that was 15 years ago and now her son is a manager at McDonnell Douglas. She contended this could have been anyone's son, and not everyone is in a position to manipulate the system. Ms Baker stated it is her belief that kids will do stupid things and it is not right to lock them up mandatorily for many years. She stated the present judicial system is dysfunctional and counterproductive for the progress of the state.

Diana Varela, Citizen, Tucson, related her husband's story, stating that without a high school education it is difficult to make a living for a family, and due to financial hardship he was in the wrong place at the wrong time. She stated for that reason he was found guilty. He is a man with a good heart and is not wasting this time in prison. He has earned his General Education Diploma (GED) and is learning carpentry. Due to the mandatory sentencing the judge was required to impose a 5-year sentence, even though he had no prior record. Letters were sent stating the type of person he was, but it did not help. She suggested more money be spent to keep people from going to prison. Ms Varela maintained it costs the State more than \$125,000 to keep someone in prison for 5 years because the family usually requires assistance during that time. She noted rehabilitative programs are necessary to help prisoners return to society.

Cynthia Ahumada, Citizen, Phoenix, communicated her experience of her husband who is in prison. He was convicted under mandatory sentencing. His trial only had one piece of evidence which was used three times to convict him. He has served 5 years of his 21-year sentence. At the time of his conviction he did not know a word of English. He was born in Colombia, South America, and has learned English in prison. She explained the hardship of returning to school and providing for her children.

(Tape 3, Side 2)

Jonnie Reasoner, Citizen, Phoenix, stated as an ex-felon she can tell the Committee first hand of her and her husband's trial. Ms Reasoner stated she was the first woman to get work furlough, has completed her parole and now owns her own business. In response to a prior statement that alternatives to incarceration sometimes cost three times more. She questioned if someone goes to prison to be punished, how long he should be kept there. She explained that she and her husband were co-defendants in a 1984 auto theft. They had different attorneys and were offered different plea bargains. She noted she was offered a plea bargain of no prison time if she would plead guilty to a racketeering charge. She went to trial. Ms Reasoner noted when they offer you a plea agreement you don't get to choose what you are going to plead guilty to. When you take a plea bargain you lose all your rights. She questioned how long someone should be punished for auto theft. She noted that although the charges, crime and indictment were exactly the same she received 3 concurrent terms of 5 years, yet her husband was sentenced to 3 consecutive 10-year terms. Again Ms Reasoner asked how long should someone be punished. Ms Reasoner stated she has served her sentence and has taken responsibility of her actions, but she is still serving time because her husband is still in prison. She urged the Committee to use their best wisdom and consider that everyone of the numbers at

Florence or other prisons have names and faces. She noted you only have one life.

Senator Bartlett encouraged the speakers to come again to speak before the Legislature and not feel that this is their only chance to speak out.

Sharon Harrington, Citizen, Mesa, stated she has no family member in prison but felt it was necessary for her to speak on behalf of a family in jail. Ms Harrington stated in America a person is presumed innocent before proven guilty, a right protected by our constitution. Under mandatory sentencing a person is guilty until proven innocent. She contended you must have money to find justice in this system. She added we don't need more jails we need to keep the violent criminals in jail and let the poor out. Ms Harrington stated she believes the system releases violent repeat offenders in order to scare society into building more jails. She suggested spending tax dollars on education and rearranging the judicial system to work for justice, feeding the homeless and providing homes and job skills and education for those people so they won't turn to crime. Ms Harrington stated if a felony is determined by the amount of money involved and not by the amount of harm done to an individual, then the system is the problem not the solution.

Ms Harrington referred to a family who is facing prison for growing marijuana between the cotton in their fields. Due to hardships many farmers are doing this. She contended it is ridiculous to group this offense with crack or cocaine which hold 25 year sentences. She then gave some history on hemp and stated a personal experience with a family member's medical need for marijuana tea. She then stated marijuana should be decriminalized for industrial and medical uses.

Virginia Panek, Middle Ground, spoke of her personal experience regarding her son who in 1988 while on probation burglarized his boss' home. Everything was restored and his boss said he would withdraw the charges. Due to mandatory sentencing he received a 7½ year term with no chance for parole for 4 years, 8 months. She noted while in Tower Jail her son, Jeff, took his first step to recovery. He has taken his GED test and is currently taking college courses at Fort Grant. He should earn his Associate of Arts degree in December of this year. He conducts Alcohol Anonymous (AA) meetings for the inmates and has also restructured the AA program to encourage inmates to improve their self esteem. She contended that mandatory sentencing causes overcrowding and requires overly harsh sentences for nonviolent crimes. Rehabilitation is needed to help these men help themselves. She noted the Block Study indicated that 80 percent of prison inmates are incarcerated due to drug and alcohol related crimes. This should tell us that we need mandatory drug and alcohol programs in prison, not voluntary programs.

Without objection, the meeting adjourned at 2:25 p.m.


Cheryl Laube, Secretary

(Attachments on file in the Office of the Chief Clerk and with the Committee Secretary. Tapes on file in the Office of the Chief Clerk.)

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10/24/91

JOINT LEGISLATIVE STUDY COMMITTEE ON
THE CRIMINAL CODE REVISION STUDY

**JOINT LEGISLATIVE STUDY COMMITTEE
ON THE CRIMINAL CODE REVISION STUDY**

DATE: Wednesday, September 11, 1991

TIME: 10:30 a.m.

PLACE: Senate Hearing Room 1

Co-chairman Blanchard called the meeting to order and the following roll call was noted:

Members Present

Senator Bartlett
Senator Day
Senator Denny
Senator Furman
Senator Greene
Senator Hill
Senator Soltero
Senator Blanchard, Co-chairman
Representative Baird
Representative Celaya
Representative Hubbard
Representative Killian
Representative McCarroll
Representative Williams
Representative Noland, Co-chairman

Members Absent

Senator Buster
Representative Hanley
Representative Kromko

Senator Blanchard stated there would be an opportunity for public testimony at the meetings scheduled for October 10th at 9:00 a.m. and October 16th at 1:30 p.m.

Senator Blanchard explained that the formation of the Committee was motivated by many factors including the fact that too much money is being spent on the corrections budget. Other issues, such as what the criminal justice system intends to accomplish, equal application of the criminal code, and whether or not the system is cost effective will also be addressed.

Representative Noland agreed with Senator Blanchard's comments and added that she hoped the Committee would also address the parity issue of persons sentenced under different codes.

Senator Blanchard distributed material given to him by Professor Block at the University of Arizona relating to felony sentences throughout the country

entitled Felony Sentences in State Courts, 1988 (copy filed with original minutes).

Presentation on the Arizona Criminal Code and Corrections Study Final Report to the Legislative Council - June 30, 1991

Kay Knapp, Director of the Institute for Rational Public Policy, Inc.

Ms. Knapp explained that they were charged with examining the 1978 Criminal Code and penalty structure in that Code, prosecutorial and sentencing practices under that Code, and prison administration and operation. The goal was to try to meet legislative needs and answer questions posed by Legislators.

Ms. Knapp stated the primary question from Legislators was what kind of sentences were actually being imposed. The information used to provide the data base was gathered by studying approximately 4,500 offenders who were sentenced in Arizona, approximately 2,000 offenders imprisoned in 1990 and offenders whose probation had been revoked for technical violations and sentenced to the Department of Corrections (DOC).

Ms. Knapp stated that since the conclusion of this report, all of the data, computer hardware and software, was transferred to the Joint Legislative Budget Committee so that they can further analyze the data to respond to legislator's questions.

Ms. Knapp explained the Final Report contains recommendations that are structural in nature regarding the Criminal Code system and its operation. One of the motivating factors for compiling the Report was to find a way to give the Legislature more effective control over policy and its implementation regarding criminal penalties. She noted that not many substantive recommendations were made because they would be policy judgments that society and the Legislature have to decide for themselves and people vary greatly around the State on their views on allocating correctional resources. The Report recommends a sentencing system that allows the Legislature to articulate policies and their implementation and accountability of those persons applying the Criminal Code.

Ms. Knapp noted that, prior to the 1978 Criminal Code, there were numerous complaints about the enormous disparity in sentencing and the Criminal Code was designed to provide a more equitable punishment system for similar offenders committing similar crimes.

Ms. Knapp stated data demonstrates the Code has failed and few people in the system deny that failure. She explained the Code transferred discretion from judges to prosecutors and therefore prosecutorial practices were studied to determine how the Code was being implemented. Two key mechanisms in the Code that prosecutors use to influence and affect sentences are the charging or not charging of mandatory enhancements and preparatory status.

Ms. Knapp, with respect to mandatory enhancements, stated that 9,000 of the almost 16,000 felony offenders in a given year are eligible for mandatory enhancements because of the way the Code is written. It is the rule rather than the exception. Of the 9,000, only about 1,300 are convicted with mandatory enhancements resulting in a lack of proportionality in terms of sentences imposed.

Ms. Knapp, referring specifically to repetitive enhancements, stated there were almost 7,500 offenders eligible, 1,200 of whom were eligible on the basis of Hannah Priors. 3,000 of the 7,500 offenders received probation in spite of the mandatory sentences for repetitive offenders and of the almost 4,000 of the 7,500 who were initially charged with the repetitive enhancement, only 939 were convicted. Many offenders who were eligible only received probationary sentences.

Ms. Knapp stated the pattern is repeated throughout the mandatory sentencing structure, however, dangerous crimes against children offenders are charged mandatory enhancement more frequently. Mandatory sentencing that addresses crimes committed by an offender who is released from confinement - probation or parole - is the least used mandatory sentencing.

Ms. Knapp summarized that the Code, as written, is not an effective set of standards in terms of the policies being implemented. There is no consistency in the application of the Code. She added that in spite of the inconsistency in applying the Code, it has made a significant effect on the prison population where there is almost four years difference in time served for those offenders with mandatory sentences and those without.

Ms. Knapp explained another area that affects sentencing greatly is preparatory status, the charging and conviction of attempt, solicitation, facilitation and conspiracy. The way the Code is written, for those convicted of an attempt status the penalty level is lowered by one class; for solicitation by two classes; for facilitation by three or four classes, depending on where the offender starts out; and conspiracy by not lowering the penalty structure by class but in most instances relieving the obligation of the mandatory sentence. Preparatory status is commonly used in dangerous offenses against children and for drug offenses.

Ms. Knapp stated that as a result of using both mandatorics and preparatorics the Code structure is not substantially useful and has been undermined, with no real utility at this point.

In addition to other recommendations contained in the report regarding prison administration and operations, Ms. Knapp recommended the following structural changes:

- Development of sentencing guidelines presumptive for the typical case.
- Increasing the sentencing range for each class.

Representative Williams stated he had read the Report and had received a letter from Sam Lewis, Director of DOC, disagreeing with the figures contained in the Report. Ms. Knapp stated she had not received any correspondence from Mr. Lewis, however, she did some quick checking and the 4,200 figure in question was based on repetitive offenders, dangerous offenders and dangerous offenses against children offenders and did not include other mandatorics such as DUI's, drug offenses, etc. She explained the reason they did it that way was because the DOC Annual Report reported population figures by breaking out repetitive and dangerous offenders and they wanted to correspond with those classifications. She stated the 1990 DOC Annual Report reported approximately 3,900 dangerous and repetitive offenders and her Report added in the dangerous crimes against children offenders because those offenders receive such enormous sentences when they do end up going to prison.

Senator Blanchard stated that House of Representatives Speaker Jane Hull requested Ms. Knapp compile a written response to the DOC Report.

In response to Representative Williams, Ms. Knapp explained her Report regarding mandatory sentences, when looked at by class and record, found the same pattern in terms of doubling of the sentence imposed.

Representative Williams stated he noticed the emphasis in the whole study was on prosecuting attorneys and asked what role the defense attorneys play. Ms. Knapp explained the Criminal Code clearly transfers sentencing discretion to the prosecutors, not the defense attorneys.

Senator Furman, in referring to Mr. Lewis' letter stating the Knapp report severely underestimated the projected prison population, asked if mandatory sentencing was applied to its fullest if there would be a huge prison population ten years from now. Ms. Knapp stated her prison population projections were determined very conservatively. They did not consider an increase in the volume or nature of the cases and were liberal in terms of release time. She stated they were shocked with the result. There are so many "long termers" in the prison population that it can be expected that the prison population will continue to increase and never level off given that accumulation.

In response to Senator Greene, Representative Noland stated that Ms. Knapp would not be available for every meeting.

Senator Greene expressed concern with the Knapp Report, noting the conclusions did not seem to match the data. He added he thought something was either missing or the Report was flawed. He questioned why property crimes were defined differently than the standard and whether burglaries were included in the figures for property crimes.

Ms. Knapp stated her intention and desire in compiling the Report was to have a group of legislators, judges and prosecutors work together in analyzing the data so those kinds of issues could be raised as the Report was being compiled. She added that in spite of enormous effort on her part, they were not able to set that up and were left on their own without the benefit of that interaction.

Senator Blanchard explained that the availability of Ms. Knapp was a leadership and budget issue and he and Representative Noland would request permission from leadership that she address the Committee one more time. Senator Green suggested questions be in writing and questioned whether the contract required that the Report be explained in detail and added he did not consider this meeting an adequate explanation.

Senator Greene questioned why the Report did not thoroughly address what he thought was the motivating factor for the Report, namely prison overcrowding. Ms. Knapp explained the question could not be answered because of the many factors involved and they found that mandatory sentencing contributes significantly to the prison population problem.

Senator Greene stated he did not think the goal of crime deterrence was addressed in the Report and that the Report contained more questions than answers. Ms. Knapp explained that in terms of deterrence, certain things are required such as the certainty of application which the present Code does not have. She stated they recommended that the Legislature devise a system of what they want in regard to sentencing.

In response to Senator Bartlett, Ms. Knapp stated that even with changes in the Code there would not be a significant change in the prison population right away and it would take some time to make an impact. She also responded that she did not believe the present system was just.

Representative Noland questioned whether Ms. Knapp thought the crime rate would decrease with a better defined system. Ms. Knapp responded that a more predictable sentencing structure would not necessarily result in a decrease in the crime rate because crime rates fluctuate for different reasons, however, a more predictable system provides legislative advantages in planning for future correctional needs.

Ms. Knapp explained they were reluctant to make recommendations regarding the site selection issue for economic development purposes. Prisoner access to families is important, however that is outweighed by the correctional interest. She stated that if the Legislature wants to allocate money to other resources, they should consider putting those resources into the transition process when prisoners leave prison and go back into the community where services are not available.

Senator Blanchard, in reference to the Minnesota guidelines, questioned whether sentencing guidelines result in more trials and whether the crime rate goes up or down. Ms. Knapp stated that in Minnesota the trial rate went down and the prison population had been rising steadily and continued to rise, but in a planned way because they knew what the costs would be and it didn't result in a crisis situation. She added that in Minnesota, across the board, the crime rate went down.

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Senator Blanchard questioned if Minnesota's guidelines were comparable to federal sentencing guidelines. Ms. Knapp stated Minnesota's guidelines gave more discretion to judges than the federal guidelines do.

Senator Blanchard stated there is extensive media coverage crying out for more resources for controlling crime and he expressed concern that the Criminal Code not be changed just to save some money.

Representative Williams stated that only six percent of those persons who committed felonies prior to 1978 ever went to prison because a lack of sentencing guidelines.

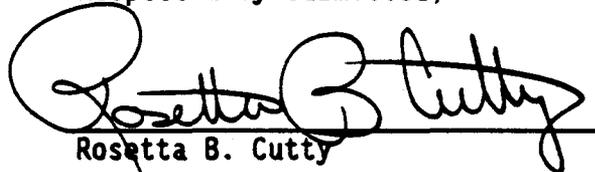
Representative Baird expressed concern that the same problems encountered prior to 1978 still exist because people want offenders put in prison but they don't want any money expended to accomplish that.

In response to Senator Soltero, Ms. Knapp stated she was not aware of another state with a criminal code system that Arizona would want to model theirs after, however she thought there were mechanisms available in other states giving legislators more control over monitoring criminal justice systems.

Representative Hubbard read a prepared statement concerning prison population compared to the present general population and changes to be addressed in the next legislative session.

Senator Blanchard stated the next meetings would be on October 10th at 9:00 a.m. and October 16th at 1:30 p.m. and adjourned the meeting at 12:33 p.m.

Respectfully submitted,


Rosetta B. Cutty

APPENDIX B

Proposed Amendments to the Criminal Code (Legislative Proposal)

REFERENCE TITLE: criminal code revisions

State of Arizona
Senate
Fortieth Legislature
Second Regular Session
1992

S. B. _____

Introduced by _____

AN ACT

AMENDING SECTIONS 13-101, 13-604, 13-604.01, 13-604.02, 13-902, 13-1304, 13-1401, 13-1403, 13-1404, 13-1407, 13-1410, 13-1501, 13-1802, 13-2310 AND 13-3401, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-604.03; AMENDING SECTION 13-3405, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1991, CHAPTER 316, SECTION 5; AMENDING SECTION 13-3405, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1990, CHAPTER 366, SECTION 8; AMENDING SECTION 13-3407, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1991, CHAPTER 316, SECTION 7; AMENDING SECTION 13-3407, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1990, CHAPTER 366, SECTION 12; REPEALING SECTION 13-3407, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1991, CHAPTER 316, SECTION 8; AMENDING SECTION 13-3408, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1991, CHAPTER 316, SECTION 9; AMENDING SECTION 13-3408, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1990, CHAPTER 366, SECTION 14; AMENDING TITLE 13, CHAPTER 34, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3419; RELATING TO THE CRIMINAL CODE.

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

2 Section 1. Section 13-101, Arizona Revised Statutes, is amended to
3 read:

4 13-101. Purposes

5 A. It is declared that the public policy of this state and the
6 general purposes of the provisions of this title are:

7 1. To proscribe conduct that unjustifiably and inexcusably causes
8 or threatens substantial harm to individual or public interests;

9 2. To give fair warning of the nature of the conduct proscribed and
10 of the sentences authorized upon conviction;

1 3. To define the act or omission and the accompanying mental state
2 which constitute each offense and limit the condemnation of conduct as
3 criminal when it does not fall within the purposes set forth;

4 4. To differentiate on reasonable grounds between serious and minor
5 offenses and to prescribe proportionate penalties for each;

6 5. To insure the public safety by preventing the commission of
7 offenses through the deterrent influence of the sentences authorized; and

8 6. To impose just and deserved punishment on those whose conduct
9 threatens the public peace—; AND

10 7. TO PROVIDE THE OPPORTUNITY FOR THE REHABILITATION OF PERSONS WHO
11 COMMIT UNLAWFUL ACTS.

12 B. THIS SECTION DOES NOT CREATE A CAUSE OF ACTION ON THE PART OF
13 ANY INMATE OR OTHER PERSON FOR THE FAILURE TO BE REHABILITATED.

14 Sec. 2. Section 13-604, Arizona Revised Statutes, is amended to
15 read:

16 13-604. Dangerous and repetitive offenders; definition

17 A. Except as provided in subsection F of this section or section
18 13-604.01, a person who is at least eighteen years of age or who has been
19 tried as an adult and who stands convicted of a class 4, 5 or 6 felony,
20 whether a completed or preparatory offense, and who has previously been
21 convicted of any felony within ten years next preceding the date of the
22 present offense shall be sentenced to imprisonment for not less than the
23 sentence and not more than twice the sentence authorized by section 13-701
24 for the offense for which the person currently stands convicted and shall
25 not be eligible for suspension or commutation of sentence, probation,
26 pardon or parole, work furlough or release from confinement on any other
27 basis except as specifically authorized by section 31-233, subsection A or
28 B until not less than one-half of the sentence imposed by the court has
29 been served. Upon imposing a sentence pursuant to this subsection the
30 court shall impose as a presumptive term the median of the allowable
31 range. The presumptive term may be mitigated or aggravated within the
32 range prescribed under this subsection pursuant to the terms of section
33 13-702, subsections C, D and E.

34 B. Except as provided in subsection G of this section or section
35 13-604.01, a person who is at least eighteen years of age or who has been
36 tried as an adult and who stands convicted of a class 2 or 3 felony,
37 whether a completed or preparatory offense, and who has previously been
38 convicted of any felony shall be sentenced to imprisonment for not less
39 than the sentence and not more than three times the sentence authorized by
40 section 13-701 for the offense for which the person currently stands
41 convicted and shall not be eligible for suspension or commutation of
42 sentence, probation, pardon or parole, work furlough or release from
43 confinement on any other basis except as specifically authorized by
44 section 31-233, subsection A or B until not less than two-thirds of the
45 sentence imposed by the court has been served. Upon imposing a sentence
46 pursuant to this subsection the court shall impose as a presumptive term
47 three-fourths of the median of the allowable range. The presumptive term
48 may be mitigated or aggravated within the range prescribed under this

1 subsection pursuant to the terms of section 13-702, subsections C, D
2 and E.

3 C. Except as provided in subsection F or N of this section or
4 section 13-604.01, a person who is at least eighteen years of age or who
5 has been tried as an adult and who stands convicted of a class 4, 5 or 6
6 felony, whether a completed or preparatory offense, and who has been
7 previously convicted of two or more felonies shall be sentenced to
8 imprisonment for at least twice the sentence and not more than three times
9 the sentence authorized by section 13-701 for the offense for which the
10 person currently stands convicted and shall not be eligible for suspension
11 or commutation of sentence, probation, pardon or parole, work furlough or
12 release from confinement on any other basis except as specifically
13 authorized by section 31-233, subsection A or B until not less than
14 two-thirds of the sentence imposed by the court has been served. Upon
15 imposing a sentence pursuant to this subsection the court shall impose as
16 a presumptive term the median of the allowable range. The presumptive
17 term may be mitigated or aggravated within the range prescribed under this
18 subsection pursuant to the terms of section 13-702, subsections C, D
19 and E.

20 D. Except as provided in subsection G or N of this section or
21 section 13-604.01, a person who is at least eighteen years of age or who
22 has been tried as an adult and who stands convicted of a class 2 or 3
23 felony, and who has been previously convicted of two or more felonies,
24 shall be sentenced to imprisonment for at least twice the sentence and not
25 more than four times the sentence authorized by section 13-701 for the
26 offense for which the person currently stands convicted and shall not be
27 eligible for suspension or commutation of sentence, probation, pardon or
28 parole, work furlough or release from confinement on any other basis
29 except as specifically authorized by section 31-233, subsection A or B
30 until not less than two-thirds of the sentence imposed by the court has
31 been served. Upon imposing a sentence pursuant to this subsection the
32 court shall impose as a presumptive term three-fourths of the median of
33 the allowable range. The presumptive term may be mitigated or aggravated
34 within the range prescribed under this subsection pursuant to the terms of
35 section 13-702, subsections C, D and E.

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

43 F. Except as provided in section 13-604.01, a person who is at
44 least eighteen years of age or who has been tried as an adult and who
45 stands convicted of a class 4, 5 or 6 felony involving the intentional or
46 knowing infliction of serious physical injury or the use or exhibition of
47 a deadly weapon or dangerous instrument without having previously been
48 convicted of any felony shall be sentenced to imprisonment for not less

1 than the sentence and not more than twice the sentence authorized in
2 section 13-701 for the offense for which the person currently stands
3 convicted and shall not be eligible for suspension or commutation of
4 sentence, probation, pardon, parole, work furlough or release from
5 confinement on any other basis except as specifically authorized by
6 section 31-233, subsection A or B until not less than one-half of the
7 sentence imposed by the court has been served. Except as provided in
8 section 13-604.01, upon conviction of a class 4, 5 or 6 felony involving
9 the intentional or knowing infliction of serious physical injury or the
10 use or exhibition of a deadly weapon or dangerous instrument a person who
11 has once previously been convicted of any felony involving the intentional
12 or knowing infliction of serious physical injury or the use or exhibition
13 of a deadly weapon or dangerous instrument shall be sentenced to
14 imprisonment for twice the sentence and not more than three times the
15 sentence authorized in section 13-701 for the offense for which the person
16 currently stands convicted and shall not be eligible for suspension or
17 commutation of sentence, probation, pardon, parole, work furlough or
18 release from confinement on any other basis except as specifically
19 authorized by section 31-233, subsection A or B until not less than
20 two-thirds of the sentence imposed by the court has been served. Except
21 as provided in subsection N of this section or section 13-604.01, upon
22 conviction of a class 4, 5 or 6 felony involving the intentional or
23 knowing infliction of serious physical injury or the use or exhibition of
24 a deadly weapon or dangerous instrument a person who has been previously
25 convicted of two or more felonies involving the intentional or knowing
26 infliction of serious physical injury or the use or exhibition of a deadly
27 weapon or dangerous instrument shall be sentenced to imprisonment for
28 three times the sentence and not more than four times the sentence
29 authorized in section 13-701 for the offense for which the person
30 currently stands convicted and shall not be eligible for suspension or
31 commutation of sentence, probation, pardon, parole, work furlough or
32 release from confinement on any other basis except as specifically
33 authorized by section 31-233, subsection A or B until not less than
34 two-thirds of the sentence imposed by the court has been served. Upon
35 imposing a sentence pursuant to this subsection the court shall impose as
36 a presumptive term the median of the allowable range. The presumptive
37 term may be mitigated or aggravated within the range prescribed under this
38 subsection pursuant to the terms of section 13-702, subsections C, D
39 and E.

40 G. Except as provided in section 13-604.01, upon a first conviction
41 of a class 2 or 3 felony involving use or exhibition of a deadly weapon or
42 dangerous instrument or upon conviction of a class 2 or 3 felony when the
43 intentional or knowing infliction of serious physical injury upon another
44 has occurred, the defendant shall be sentenced to imprisonment for not
45 less than the sentence and not more than three times the sentence
46 authorized in section 13-701 for the offense for which the person
47 currently stands convicted and shall not be eligible for suspension or
48 commutation of sentence, probation, pardon or parole, work furlough or

1 release from confinement on any other basis except as specifically
2 authorized by section 31-233, subsection A or B until not less than
3 two-thirds of the sentence imposed by the court has been served. Except
4 as provided in section 13-604.01, upon conviction of a class 2 or 3 felony
5 involving the use or exhibition of a deadly weapon or dangerous instrument
6 or the intentional or knowing infliction of serious physical injury upon
7 another, a person who has once previously been convicted of a class 1, 2
8 or 3 felony involving the use or exhibition of a deadly weapon or
9 dangerous instrument or the intentional or knowing infliction of serious
10 physical injury on another shall be sentenced to imprisonment for twice
11 the sentence and not more than four times the sentence authorized in
12 section 13-701 for the offense for which the person currently stands
13 convicted and shall not be eligible for suspension or commutation of
14 sentence, probation, pardon or parole, work furlough or release from
15 confinement on any other basis except as specifically authorized by
16 section 31-233, subsection A or B until not less than two-thirds of the
17 sentence imposed by the court has been served. Except as provided in
18 subsection N of this section or section 13-604.01, upon conviction for a
19 class 2 or 3 felony involving the use or exhibition of a deadly weapon or
20 dangerous instrument or the intentional or knowing infliction of serious
21 physical injury upon another, a person who has been previously convicted
22 of two or more class 1, 2 or 3 felonies involving the use or exhibition of
23 a deadly weapon or dangerous instrument or the intentional or knowing
24 infliction of serious physical injury on another shall be sentenced to
25 imprisonment for three times the sentence and not more than five times the
26 sentence authorized in section 13-701 for the offense for which the person
27 currently stands convicted, and shall not be eligible for suspension or
28 commutation of sentence, probation, pardon or parole, work furlough or
29 release from confinement on any other basis except as specifically
30 authorized by section 31-233, subsection A or B until not less than
31 two-thirds of the sentence imposed by the court has been served. Upon
32 imposing a sentence pursuant to this subsection the court shall impose as
33 a presumptive term three-fourths of the median of the allowable range,
34 except in the case of a person with two or more class 1, 2 or 3 felony
35 convictions in which case the presumptive term shall be the median of the
36 allowable range. The presumptive term may be mitigated or aggravated
37 within the range prescribed under this subsection pursuant to the terms of
38 section 13-702, subsections C, D and E. For the purposes of this
39 subsection in determining the applicability of the penalties provided
40 herein for second or subsequent class 2 or 3 felonies, the conviction for
41 any felony committed prior to October 1, 1978 which, if committed after
42 October 1, 1978, could be a dangerous felony under this section may be
43 designated by the state as a prior felony.

44 H. ~~Convictions for two or more FELONY offenses not committed on the~~
45 ~~same occasion but consolidated for trial purposes~~ may, at the discretion
46 of the state, be counted as prior convictions for purposes of this section
47 CHAPTER IF, FOR EACH OFFENSE ALLEGED AS A PRIOR CONVICTION, SENTENCE WAS
48 IMPOSED OR SUSPENDED BEFORE THE COMMISSION OF THE OFFENSE FOR WHICH

1 ENHANCED PUNISHMENT IS SOUGHT. Convictions for two or more offenses
2 committed on the same occasion shall be counted as only one conviction for
3 purposes of this section.

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

11 J. Time spent incarcerated within the ten years next preceding the
12 date of the offense for which a person is currently being sentenced under
13 subsection A of this section and time spent incarcerated within the two
14 years next preceding the date of the offense for which a person is
15 currently being sentenced under subsection E of this section shall not be
16 included in the ten years or two years required to be free of convictions
17 for purposes of those subsections.

18 K. The penalties prescribed by this section shall be substituted
19 for the penalties otherwise authorized by law if the previous conviction,
20 the dangerous nature of the felony or the allegation that the defendant
21 committed a felony while released on bond or on his own recognizance as
22 provided in subsection M of this section is charged in the indictment or
23 information and admitted or found by the trier of fact. The court shall
24 allow the allegation of a prior conviction, the dangerous nature of the
25 felony or the allegation that the defendant committed a felony while
26 released on bond or on his own recognizance at any time prior to the date
27 the case is actually tried unless the allegation is filed fewer than
28 twenty days before the case is actually tried and the court finds on the
29 record that the defendant was in fact prejudiced by the untimely filing
30 and states the reasons for these findings, provided that when the
31 allegation of a prior conviction is filed, the state must make available
32 to the defendant a copy of any material or information obtained concerning
33 the prior conviction. Before the trial on the charge of the previous
34 conviction or the allegation that the defendant committed a felony while
35 released on bond or on his own recognizance, the charge of previous
36 conviction or the allegation that the defendant committed a felony while
37 released on bond or on his own recognizance shall not be read to the jury.
38 For the purposes of this subsection, "dangerous nature of the felony"
39 means a felony involving the use or exhibition of a deadly weapon or
40 dangerous instrument or the intentional or knowing infliction of serious
41 physical injury upon another.

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

45 M. A person convicted of committing any felony offense, which
46 felony offense is committed while the person is released on bail or on his
47 own recognizance on a separate felony offense, shall be sentenced to a
48 term of imprisonment two years longer than would otherwise be imposed for

1 the felony offense committed while released on bond or on his own
2 recognizance. The additional sentence imposed under this subsection is in
3 addition to any enhanced punishment that may be applicable under any of
4 the other subsections of this section.

5 N. A person who is at least eighteen years of age or who has been
6 tried as an adult and who stands convicted of a serious offense except
7 first degree murder or any dangerous crime against children, whether a
8 completed or preparatory offense, and who has previously been convicted of
9 two or more serious offenses not committed on the same occasion shall be
10 sentenced to life imprisonment and is not eligible for suspension or
11 commutation of sentence, probation, pardon, parole, work furlough or
12 release from confinement on any other basis except as specifically
13 authorized by section 31-233, subsection A or B until the person has
14 served not less than twenty-five years.

15 O. As used in this section, "serious offense" means any of the
16 following offenses if committed in this state or any offense committed
17 outside this state which if committed in this state would constitute one
18 of the following offenses:

- 19 1. First degree murder.
- 20 2. Second degree murder.
- 21 3. Manslaughter.
- 22 4. Aggravated assault resulting in serious physical injury or
23 committed by the use of a deadly weapon or dangerous instrument.
- 24 5. Sexual assault.
- 25 6. Any dangerous crime against children.
- 26 7. Arson of an occupied structure.
- 27 8. Armed robbery.
- 28 9. Burglary in the first degree.
- 29 10. Kidnapping.
- 30 11. Sexual conduct with a minor under fifteen years of age.
- 31 12. A drug related felony offense pursuant to section 13-3404.01, a
32 violation of section 13-3405 involving an amount of marijuana having a
33 weight at the time of seizure of eight pounds or more, a felony violation
34 of section 13-3406 or any violation of sections 13-3407 through 13-3409.

35 Sec. 3. Section 13-604.01, Arizona Revised Statutes, is amended to
36 read:

37 13-604.01. Dangerous crimes against children; sentences;
38 definitions

39 A. Except as otherwise provided in this section, a person who is at
40 least eighteen years of age or who has been tried as an adult and who
41 stands convicted of a dangerous crime against children in the first degree
42 involving second degree murder, sexual assault, taking a child for the
43 purpose of prostitution, child prostitution or sexual conduct with a minor
44 ~~or involving or using minors in drug offenses~~ shall be sentenced to a
45 presumptive term of imprisonment for twenty years. If the convicted
46 person has been previously convicted of one predicate felony the person
47 shall be sentenced to a presumptive term of imprisonment for thirty years.

1 B. Except as otherwise provided in this section, a person who is at
2 least eighteen years of age or who has been tried as an adult and who
3 stands convicted of a dangerous crime against children in the first degree
4 involving aggravated assault, molestation of a child, commercial sexual
5 exploitation of a minor, sexual exploitation of a minor, child abuse or
6 kidnapping OR INVOLVING OR USING A MINOR IN DRUG OFFENSES shall be
7 sentenced to a presumptive term of imprisonment for ~~seventeen~~ FOURTEEN
8 years. If the convicted person has been previously convicted of one
9 predicate felony the person shall be sentenced to a presumptive term of
10 imprisonment for ~~twenty-eight~~ TWENTY-FOUR years.

11 ~~G. Except as otherwise provided in this section, a person who is at~~
12 ~~least eighteen years of age or who has been tried as an adult and who~~
13 ~~stands convicted of a dangerous crime against children in the first degree~~
14 ~~involving sexual abuse shall be sentenced to a presumptive term of~~
15 ~~imprisonment for ten years. If the convicted person has been previously~~
16 ~~convicted of one predicate felony the person shall be sentenced to a~~
17 ~~presumptive term of imprisonment for fifteen years.~~

18 ~~B. C. The presumptive sentences prescribed in subsections A, B and~~
19 ~~C of this section may be increased or decreased by up to five SEVEN~~
20 ~~years pursuant to the provisions of section 13-702, subsections C, D~~
21 ~~and E.~~

22 ~~E. D. A person sentenced for a dangerous crime against children in~~
23 ~~the first degree pursuant to this section is not eligible for suspension~~
24 ~~or commutation of sentence, probation, pardon, parole, work furlough or~~
25 ~~release from confinement on any other basis except as specifically~~
26 ~~authorized by section 31-233, subsection A or B until the sentence imposed~~
27 ~~by the court has been served.~~

28 ~~F. E. A person who stands convicted of any dangerous crime against~~
29 ~~children in the first degree having been previously convicted of two or~~
30 ~~more predicate felonies shall be sentenced to life imprisonment and is not~~
31 ~~eligible for suspension or commutation of sentence, probation, pardon,~~
32 ~~parole, work furlough or release from confinement on any other basis~~
33 ~~except as specifically authorized by section 31-233, subsection A or B~~
34 ~~until the person has served not fewer than thirty-five years.~~

35 ~~G. F. Notwithstanding chapter 10 of this title, a person who is at~~
36 ~~least eighteen years of age or who has been tried as an adult and who~~
37 ~~stands convicted of a dangerous crime against children in the second~~
38 ~~degree OR SEXUAL ABUSE UNDER SECTION 13-1404 is guilty of a class 3 felony~~
39 ~~and shall MAY be sentenced to a presumptive term of imprisonment for ten~~
40 ~~years. The presumptive term may be increased or decreased by up to five~~
41 ~~years pursuant to section 13-702, subsections C, D and E. If the person~~
42 ~~is sentenced to a term of imprisonment the person is not eligible for~~
43 ~~release from confinement on any basis until the person has served not less~~
44 ~~than one-half the sentence imposed by the court.~~

45 ~~H. G. Section 13-604, subsections H and I apply to the~~
46 ~~determination of prior convictions.~~

47 ~~I. H. In addition to the term of imprisonment imposed pursuant to~~
48 ~~this section and notwithstanding any other law, the court shall order that~~

1 ~~a person convicted of any dangerous crime against children in the first~~
2 ~~degree be supervised on parole after release from confinement on such~~
3 ~~conditions as the court or the board of pardons and paroles deems~~
4 ~~appropriate for the rest of the person's life. If the A person is~~
5 convicted of any dangerous crime against children in the second degree the
6 court, in addition to any term of imprisonment imposed or in lieu of the
7 term if probation is otherwise authorized, may order that the person
8 convicted be supervised on probation or on parole after release from
9 confinement on such conditions as the court or board of pardons and
10 paroles deems appropriate for any term up to the rest of the person's
11 life.

12 ~~d-~~ I. The sentence imposed on a person by the court for a
13 dangerous crime against children ~~in the first or second degree~~ UNDER
14 SUBSECTION A OF THIS SECTION shall be consecutive to any other sentence
15 imposed on the person at any time IF THE OFFENSES OCCURRED ON SEPARATE AND
16 DISTINCT OCCASIONS OR INVOLVED MORE THAN ONE VICTIM.

17 ~~k-~~ J. In this section:

18 1. "Dangerous crime against children" means any of the following
19 committed against a minor under fifteen years of age:

- 20 (a) Second degree murder.
21 (b) Aggravated assault resulting in serious physical injury or
22 committed by the use of a deadly weapon or dangerous instrument.
23 (c) Sexual assault.
24 (d) Molestation of a child.
25 (e) Sexual conduct with a minor.
26 (f) Commercial sexual exploitation of a minor.
27 (g) Sexual exploitation of a minor.
28 (h) Child abuse as defined in section 13-3623, subsection B,
29 paragraph 1.

30 (i) Kidnapping.

31 ~~(j) Sexual abuse.~~

32 ~~(k)~~ (j) Taking a child for the purpose of prostitution as defined
33 in section 13-3206.

34 ~~(l)~~ (k) Child prostitution as defined in section 13-3212.

35 ~~(m)~~ (l) Involving or using minors in drug offenses.

36 A dangerous crime against children is in the first degree if it is a
37 completed offense and is in the second degree if it is a preparatory
38 offense.

39 2. "Predicate felony" means any felony ~~involving child abuse, a~~
40 ~~sexual offense, conduct~~ CONVICTION involving the intentional or knowing
41 infliction of serious physical injury or the use or exhibition of a deadly
42 weapon or dangerous instrument, or a dangerous crime against children in
43 the first or second degree FOR WHICH THE PERSON HAS BEEN CONVICTED ON A
44 SEPARATE OCCASION.

45 Sec. 4. Section 13-604.02, Arizona Revised Statutes, is amended to
46 read:

1 C. NOTWITHSTANDING ANY LAW TO THE CONTRARY, A PERSON CONVICTED OF
2 ANY FELONY OFFENSE NOT INCLUDED IN SUBSECTION A OR B OF THIS SECTION IF
3 COMMITTED WHILE THE PERSON IS ON PROBATION FOR A CONVICTION OF A FELONY
4 OFFENSE OR PAROLE, WORK FURLOUGH OR ANY OTHER RELEASE OR ESCAPE FROM
5 CONFINEMENT FOR CONVICTION OF A FELONY OFFENSE SHALL BE SENTENCED TO A
6 TERM OF IMPRISONMENT AUTHORIZED FOR THE OFFENSE, AND THE PERSON IS NOT
7 ELIGIBLE FOR SUSPENSION OR COMMUTATION OF SENTENCE, PROBATION, PARDON,
8 PAROLE, WORK FURLOUGH OR RELEASE FROM CONFINEMENT ON ANY OTHER BASIS
9 EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B
10 UNTIL TWO-THIRDS OF THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED. A
11 SENTENCE IMPOSED PURSUANT TO THIS SUBSECTION REVOKES THE CONVICTED
12 PERSON'S RELEASE IF THE PERSON WAS ON RELEASE AND IS CONSECUTIVE TO ANY
13 OTHER SENTENCE FROM WHICH THE CONVICTED PERSON HAD BEEN TEMPORARILY
14 RELEASED OR HAS ESCAPED, UNLESS THE SENTENCE FROM WHICH THE CONVICTED
15 PERSON HAD BEEN PAROLED OR PLACED ON PROBATION WAS IMPOSED BY A
16 JURISDICTION OTHER THAN THIS STATE.

17 Sec. 5. Title 13, chapter 6, Arizona Revised Statutes, is amended
18 by adding section 13-604.03, to read:

19 13-604.03. Exceptional circumstances; aggravation;
20 mitigation

21 A. NOTWITHSTANDING ANY LAW TO THE CONTRARY AND EXCEPT FOR SENTENCES
22 OF LIFE IMPRISONMENT, ON CONVICTION OF ANY FELONY OFFENSE THE COURT MAY
23 INCREASE BY UP TO FIFTY PER CENT THE MAXIMUM SENTENCE OTHERWISE AUTHORIZED
24 FOR THAT OFFENSE IF THE COURT FINDS THAT AT LEAST THREE OF THE AGGRAVATING
25 FACTORS LISTED IN SECTION 13-702, SUBSECTION D APPLY.

26 B. NOTWITHSTANDING ANY LAW TO THE CONTRARY AND EXCEPT FOR SENTENCES
27 OF LIFE IMPRISONMENT, SENTENCES IMPOSED PURSUANT TO SECTION 13-604,
28 SUBSECTION N, SECTION 13-604.01, SECTION 13-604.02, SUBSECTION A OR B,
29 SECTION 13-1406 AND SECTION 13-1409 OR PURSUANT TO SECTION 13-604 FOR
30 FELONY OFFENSES THAT CREATE A REASONABLE RISK OF DEATH OR THAT INVOLVE THE
31 USE OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT TO CREATE A REASONABLE RISK
32 OF SERIOUS PHYSICAL INJURY TO ANOTHER PERSON IN THE COURSE OF COMMITTING
33 AN OFFENSE, ON CONVICTION OF ANY FELONY OFFENSE THE COURT MAY DECREASE THE
34 MINIMUM SENTENCE OTHERWISE AUTHORIZED FOR THAT OFFENSE BY UP TO
35 TWENTY-FIVE PER CENT OR UP TO FIFTY PER CENT IF THE STATE CONCURS AND THE
36 COURT FINDS THAT AT LEAST TWO OF MITIGATING FACTORS LISTED IN SECTION
37 13-702, SUBSECTION E APPLY.

38 C. IF THE COURT INCREASES OR DECREASES A SENTENCE PURSUANT TO THIS
39 SECTION, THE COURT SHALL STATE ON THE RECORD THE REASONS FOR THE INCREASE
40 OR DECREASE.

41 D. THE COURT SHALL INFORM ALL OF THE PARTIES BEFORE SENTENCING
42 OCCURS OF ITS INTENT TO INCREASE OR DECREASE A SENTENCE PURSUANT TO THIS
43 SECTION. IF THE COURT FAILS TO INFORM THE PARTIES, A PARTY WAIVES ITS
44 RIGHT TO BE INFORMED UNLESS THE PARTY TIMELY OBJECTS AT THE TIME OF
45 SENTENCING.

46 Sec. 6. Section 13-902, Arizona Revised Statutes, is amended to
47 read:

1 13-902. Periods of probation
2 A. Unless terminated sooner, probation may continue for the
3 following periods:
4 1. For a class 2, 3 or 4 felony, the term authorized by section
5 13-701, subsection C.
6 2. For a class 5 or 6 felony, three years.
7 3. For a class 1 misdemeanor, three years.
8 4. For a class 2 misdemeanor, two years.
9 5. For a class 3 misdemeanor, one year.
10 B. When the court has required, as a condition of probation, that
11 the defendant make restitution for any economic loss related to his
12 offense and that condition has not been satisfied, the court at any time
13 prior to the termination or expiration of probation may extend the period
14 within the following limits:
15 1. For a felony, not more than three years.
16 2. For a misdemeanor, not more than one year.
17 C. Notwithstanding any other provision of law, justice courts and
18 magistrate courts may impose the probation periods specified in subsection
19 A, paragraphs 3, 4 and 5 of this section.
20 D. ON FINDING THAT THE DEFENDANT HAS VIOLATED A TERM OF HIS
21 PROBATION, THE COURT MAY TERMINATE PROBATION AND SENTENCE THE DEFENDANT TO
22 JAIL PURSUANT TO CHAPTER 7 OF THIS TITLE.
23 Sec. 7. Section 13-1304, Arizona Revised Statutes, is amended to
24 read:
25 13-1304. Kidnapping; classification; consecutive sentence
26 A. A person commits kidnapping by knowingly restraining another
27 person with the intent to:
28 1. Hold the victim for ransom, as a shield or hostage; or
29 2. Hold the victim for involuntary servitude; or
30 3. Inflict death, physical injury or a sexual offense on the
31 victim, or to otherwise aid in the commission of a felony; or
32 4. Place the victim or a third person in reasonable apprehension of
33 imminent physical injury to the victim or such third person—; OR
34 5. Interfere with the performance of a governmental or political
35 function—; OR
36 6. Seize or exercise control over any airplane, train, bus, ship or
37 other vehicle.
38 B. Kidnapping is a class 2 felony unless the victim is released
39 voluntarily by the defendant without physical injury in a safe place prior
40 to arrest and prior to accomplishing any of the further enumerated
41 offenses in subsection A of this section in which case it is a class 4
42 felony. If the victim is released pursuant to an agreement with the state
43 and without any physical injury, it is a class 3 felony. If the victim is
44 under fifteen years of age kidnapping is a class 2 felony AND, EXCEPT FOR
45 KIDNAPPING COMMITTED WITH INTENT TO VIOLATE SECTION 13-1404, IS
46 punishable pursuant to section 13-604.01. The sentence for kidnapping of
47 a victim under fifteen years of age shall run consecutively to any other
48 sentence imposed on the defendant and to any undischarged term of

1 imprisonment of the defendant FOR ANY OFFENSE NOT COMMITTED ON THE SAME
2 OCCASION BUT CONSOLIDATED FOR TRIAL PURPOSES AND TO ANY UNDISCHARGED TERM
3 OF IMPRISONMENT OF THE DEFENDANT.

4 Sec. 8. Section 13-1401, Arizona Revised Statutes, is amended to
5 read:

6 13-1401. Definitions

7 In this chapter, unless the context otherwise requires:

8 ~~2.~~ 1. "DIRECT sexual contact" means any direct or ~~indirect~~
9 TOUCHING, fondling or manipulating of any part of the genitals, anus or
10 female breast BY ANY PART OF THE BODY OR BY ANY OBJECT.

11 2. "INDIRECT SEXUAL CONTACT" MEANS ANY INDIRECT TOUCHING, FONDLING
12 OR MANIPULATING OF THE OUTER CLOTHING COVERING ANY PART OF THE GENITALS,
13 ANUS OR FEMALE BREAST BY ANY PART OF THE BODY OR BY ANY OBJECT.

14 ~~1.~~ 3. "Oral sexual contact" means oral contact with the penis,
15 vulva or anus.

16 ~~3.~~ 4. "Sexual intercourse" means penetration into the penis, vulva
17 or anus by any part of the body or by any object or ~~manual masturbatory~~
18 ~~contact with the penis or vulva.~~

19 ~~4.~~ 5. "Spouse" means a person who is legally married and
20 cohabiting.

21 ~~5.~~ 6. "Without consent" includes any of the following:

22 (a) The victim is coerced by the immediate use or threatened use of
23 force against a person or property.

24 (b) The victim is incapable of consent by reason of mental
25 disorder, drugs, alcohol, sleep or any other similar impairment of
26 cognition and such condition is known or should have reasonably been known
27 to the defendant.

28 (c) The victim is intentionally deceived as to the nature of the
29 act.

30 (d) The victim is intentionally deceived to erroneously believe
31 that the person is the victim's spouse.

32 Sec. 9. Section 13-1403, Arizona Revised Statutes, is amended to
33 read:

34 13-1403. Public sexual indecency; public sexual indecency
35 to a minor; classifications

36 A. A person commits public sexual indecency by intentionally or
37 knowingly engaging in any of the following acts, if another person is
38 present, and the defendant is reckless about whether such other person, as
39 a reasonable person, would be offended or alarmed by the act:

40 1. An act of DIRECT sexual contact.

41 2. An act of oral sexual contact.

42 3. An act of sexual intercourse.

43 4. An act involving contact between the person's mouth, vulva or
44 genitals and the anus or genitals of an animal.

45 B. A person commits public sexual indecency to a minor if he
46 intentionally or knowingly engages in any of the acts listed in subsection
47 A and such person is reckless ABOUT whether a minor under the age of
48 fifteen years is present.

1 C. Public sexual indecency is a class 1 misdemeanor. Public sexual
2 indecency to a minor is a class 5 felony.

3 Sec. 10. Section 13-1404, Arizona Revised Statutes, is amended to
4 read:

5 13-1404. Sexual abuse; classifications

6 A. A person commits sexual abuse by intentionally or knowingly
7 engaging in ~~sexual contact with any person fourteen or more years of age~~
8 ~~without consent of that person or with any person who is under fourteen~~
9 ~~years of age if the sexual contact involves only the female breast.~~ THE
10 FOLLOWING ACTS:

11 1. DIRECT SEXUAL CONTACT WITH A PERSON FIFTEEN OR MORE YEARS OF AGE
12 WITHOUT THE CONSENT OF THAT PERSON.

13 2. INDIRECT SEXUAL CONTACT WITH A PERSON FIFTEEN OR MORE YEARS OF
14 AGE WITHOUT THE CONSENT OF THAT PERSON.

15 3. INDIRECT SEXUAL CONTACT WITH A PERSON LESS THAN FIFTEEN YEARS OF
16 AGE.

17 4. TOUCHING, FONDLING OR MANIPULATING ANY PART OF THE FEMALE BREAST
18 BY ANY PART OF THE BODY OR BY ANY OBJECT WITH A PERSON LESS THAN FIFTEEN
19 YEARS OF AGE.

20 B. Sexual abuse COMMITTED PURSUANT TO SUBSECTION A, PARAGRAPH 1 is
21 a class 5- 6 felony ~~unless the victim is under fourteen years of age in~~
22 ~~which case sexual abuse is a class 3 felony punishable pursuant to section~~
23 ~~13-604.01.~~ SEXUAL ABUSE COMMITTED PURSUANT TO SUBSECTION A, PARAGRAPH 2
24 IS A CLASS 5 FELONY. SEXUAL ABUSE COMMITTED PURSUANT TO SUBSECTION A,
25 PARAGRAPH 3 OR 4 IS A CLASS 3 FELONY.

26 Sec. 11. Section 13-1407, Arizona Revised Statutes, is amended to
27 read:

28 13-1407. Defenses

29 A. It is a defense to a prosecution pursuant to sections 13-1404
30 and 13-1405, involving a minor, if the act was done in furtherance of
31 lawful medical practice.

32 B. It is a defense to a prosecution pursuant to sections 13-1404
33 and 13-1405, in which the victim's lack of consent is based on incapacity
34 to consent because the victim was fourteen, fifteen, sixteen or seventeen
35 years of age, if at the time the defendant engaged in the conduct
36 constituting the offense the defendant did not know and could not
37 reasonably have known the age of the victim.

38 C. It is a defense to a prosecution pursuant to section 13-1402,
39 13-1404, 13-1405 or 13-1406, if the act was done by a duly licensed
40 physician or registered nurse or a person acting under his or her
41 direction, or any other person who renders emergency care at the scene of
42 an emergency occurrence, and consisted of administering a recognized and
43 lawful form of treatment which was reasonably adapted to promoting the
44 physical or mental health of the patient and the treatment was
45 administered in an emergency when the duly licensed physician or
46 registered nurse or a person acting under his or her direction, or any
47 other person rendering emergency care at the scene of an emergency
48 occurrence, reasonably believed that no one competent to consent could be

1 consulted and that a reasonable person, wishing to safeguard the welfare
2 of the patient, would consent.

3 D. It is a defense to a prosecution pursuant to section 13-1404,
4 13-1405 or 13-1406 that the person was the spouse of the other person at
5 the time of commission of the act. It is not a defense to a prosecution
6 pursuant to section 13-1406.01 that the defendant was the spouse of the
7 victim at the time of commission of the act.

8 E. It is a defense to prosecution pursuant to section 13-1404 OR
9 13-1410 that the defendant was not motivated by a sexual interest. It is
10 a defense to prosecution pursuant to section 13-1404 involving a victim
11 under fourteen years of age that the defendant was not motivated by a
12 sexual interest.

13 F. It is a defense to prosecution pursuant to sections 13-1404 and
14 13-1410 if both the defendant and the victim are of the age of
15 fourteen, ~~fifteen, sixteen or seventeen~~ AND EIGHTEEN and the conduct is
16 consensual.

17 Sec. 12. Section 13-1410, Arizona Revised Statutes, is amended to
18 read:

19 13-1410. Molestation of child; classification

20 A. ~~A person who knowingly molests a child under the age of fourteen~~
21 ~~years by directly or indirectly touching the private parts of such child~~
22 ~~or who causes a child under the age of fourteen years to directly or~~
23 ~~indirectly touch the private parts of such person is guilty of a class 2~~
24 ~~felony and is punishable pursuant to section 13-604.01~~ COMMITS MOLESTATION
25 OF A CHILD BY INTENTIONALLY OR KNOWINGLY ENGAGING IN OR CAUSING A PERSON
26 TO ENGAGE IN DIRECT SEXUAL CONTACT, EXCEPT DIRECT SEXUAL CONTACT WITH THE
27 FEMALE BREAST, WITH A CHILD UNDER FIFTEEN YEARS OF AGE.

28 B. MOLESTATION OF A CHILD IS A CLASS 3 FELONY THAT IS PUNISHABLE
29 PURSUANT TO SECTION 13-604.01.

30 Sec. 13. Section 13-1501, Arizona Revised Statutes, is amended to
31 read:

32 13-1501. Definitions

33 In this chapter, unless the context otherwise requires:

34 1. "Enter or remain unlawfully" means an act of a person who enters
35 or remains on premises when such person's intent for so entering or
36 remaining is not licensed, authorized or otherwise privileged EXCEPT IF
37 THE ENTRY IS DURING NORMAL BUSINESS HOURS WHEN THE PREMISES ARE OPEN TO
38 THE PUBLIC AND THE PERSON DOES NOT ENTER ANY UNAUTHORIZED AREAS OF THE
39 PREMISES.

40 2. "Entry" means the intrusion of any part of any instrument or any
41 part of a person's body inside the external boundaries of a structure or
42 unit of real property.

43 3. "Fenced commercial yard" means a unit of real property
44 surrounded completely by either fences, walls, buildings, or similar
45 barriers, or any combination thereof, and used primarily for business
46 operations or where livestock, produce or other commercial items are
47 located.

1 4. "Fenced residential yard" means a unit of real property
2 immediately surrounding or adjacent to a residential structure and
3 enclosed by a fence, wall, building or similar barrier, or any combination
4 thereof.

5 5. "In the course of committing" means any acts performed by an
6 intruder from the moment of entry to and including flight from the scene
7 of a crime.

8 6. "Nonresidential structure" means any structure other than a
9 residential structure.

10 7. "Residential structure" means any structure, movable or
11 immovable, permanent or temporary, adapted for both human residence and
12 lodging whether occupied or not.

13 8. "Structure" means any building, object, vehicle, railroad car or
14 place with sides and a floor, separately securable from any other
15 structure attached to it and used for lodging, business, transportation,
16 recreation or storage.

17 Sec. 14. Section 13-1802, Arizona Revised Statutes, is amended to
18 read:

19 13-1802. Theft; classification

20 A. A person commits theft if, without lawful authority, such person
21 knowingly:

22 1. Controls property of another with the intent to deprive him of
23 such property; or

24 2. Converts for an unauthorized term or use services or property of
25 another entrusted to the defendant or placed in the defendant's possession
26 for a limited, authorized term or use; or

27 3. Obtains property or services of another by means of any material
28 misrepresentation with intent to deprive him of such property or services;
29 or

30 4. Comes into control of lost, mislaid or misdelivered property of
31 another under circumstances providing means of inquiry as to the true
32 owner and appropriates such property to his own or another's use without
33 reasonable efforts to notify the true owner; or

34 5. Controls property of another knowing or having reason to know
35 that the property was stolen; or

36 6. Obtains services known to the defendant to be available only for
37 compensation without paying or an agreement to pay such compensation or
38 diverts another's services to his own or another's benefit without
39 authority to do so.

40 B. The inferences set forth in section 13-2305 shall apply to any
41 prosecution under the provisions of subsection A, paragraph 5 of this
42 section.

43 C. Theft of property or services with a value of one TWENTY-FIVE
44 thousand ~~five hundred~~ dollars or more is a class 3 2 felony. THEFT OF
45 PROPERTY OR SERVICES WITH A VALUE OF THREE THOUSAND DOLLARS OR MORE BUT
46 LESS THAN TWENTY-FIVE THOUSAND DOLLARS IS A CLASS 3 FELONY. Theft of
47 property or services with a value of ~~seven hundred fifty~~ TWO THOUSAND
48 dollars or more but less than ~~one thousand five hundred~~ THREE THOUSAND

1 dollars is a class 4 felony. Theft of property or services with a value
2 of ~~five hundred~~ ONE THOUSAND dollars or more but less than ~~seven hundred~~
3 ~~fifty~~ TWO THOUSAND dollars is a class 5 felony. Theft of property or
4 services with a value of ~~two~~ FIVE hundred ~~fifty~~ dollars or more but less
5 than ~~five hundred~~ ONE THOUSAND dollars is a class 6 felony. Theft of any
6 property or services valued at less than ~~two~~ FIVE hundred ~~fifty~~ dollars
7 is a class 1 misdemeanor, unless such property is taken from the person of
8 another or is a motor vehicle or a firearm, in which case the theft is a
9 class 6 felony.

10 D. A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A,
11 PARAGRAPH 1 OF THIS SECTION THAT INVOLVED PROPERTY OR SERVICES WITH A
12 VALUE OF ONE HUNDRED THOUSAND DOLLARS OR MORE IS NOT ELIGIBLE FOR
13 SUSPENSION OR COMMUTATION OF SENTENCE, PROBATION, PARDON, PAROLE, WORK
14 FURLOUGH OR RELEASE FROM CONFINEMENT ON ANY OTHER BASIS EXCEPT PURSUANT TO
15 SECTION 31-233, SUBSECTION A OR B UNTIL NOT LESS THAN ONE-HALF OF THE
16 SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED.

17 Sec. 15. Section 13-2310, Arizona Revised Statutes, is amended to
18 read:

19 13-2310. Fraudulent schemes and artifices;
20 classification; definition

21 A. Any person who, pursuant to a scheme or artifice to defraud,
22 knowingly obtains any benefit by means of false or fraudulent pretenses,
23 representations, promises or material omissions is guilty of a class 2
24 felony.

25 B. Reliance on the part of any person shall not be a necessary
26 element of the offense described in subsection A OF THIS SECTION.

27 C. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION THAT
28 INVOLVED A BENEFIT WITH A VALUE OF ONE HUNDRED THOUSAND DOLLARS OR MORE IS
29 NOT ELIGIBLE FOR SUSPENSION OR COMMUTATION OF SENTENCE, PROBATION, PARDON,
30 PARLE, WORK FURLOUGH OR RELEASE FROM CONFINEMENT ON ANY OTHER BASIS EXCEPT
31 PURSUANT TO SECTION 31-233, SUBSECTION A OR B UNTIL NOT LESS THAN ONE-HALF
32 OF THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED.

33 ~~E.~~ D. As used in this section, "scheme or artifice to defraud"
34 includes a scheme or artifice to deprive a person of the intangible right
35 of honest services.

36 Sec. 16. Section 13-3401, Arizona Revised Statutes, is amended to
37 read:

38 13-3401. Definitions

39 In this chapter, unless the context otherwise requires:

40 1. "Administer" means to apply, inject or facilitate the inhalation
41 or ingestion of a substance to the body of a person.

42 2. "Amidone" means any substance identified chemically as
43 (4-4-diphenyl-6-dimethylamine-heptanone-3), or any salt of such substance,
44 by whatever trade name designated.

45 3. "Board" means the Arizona state board of pharmacy.

46 4. "Cannabis" means the following substances under whatever names
47 they may be designated:

1 (a) The resin extracted from any part of a plant of the genus
2 cannabis, and every compound, manufacture, salt, derivative, mixture or
3 preparation of such plant, its seeds or its resin. Cannabis does not
4 include oil or cake made from the seeds of such plant, any fiber,
5 compound, manufacture, salt, derivative, mixture or preparation of the
6 mature stalks of such plant except the resin extracted from the stalks or
7 any fiber, oil or cake or the sterilized seed of such plant which is
8 incapable of germination.

9 (b) Every compound, manufacture, salt, derivative, mixture or
10 preparation of such resin or tetrahydrocannabinol.

11 5. "Coca leaves" means cocaine, its optical isomers and any
12 compound, manufacture, salt, derivative, mixture or preparation of coca
13 leaves, except derivatives of coca leaves which do not contain cocaine,
14 ecgonine or substances from which cocaine or ecgonine may be synthesized
15 or made.

16 6. "Dangerous drug" means the following by whatever official,
17 common, usual, chemical or trade name designated:

18 (a) Any material, compound, mixture or preparation which contains
19 any quantity of the following hallucinogenic substances,— AND their salts,
20 isomers and salts of isomers, unless specifically excepted, whenever the
21 existence of such salts, isomers and salts of isomers is possible within
22 the specific chemical designation:

23 (i) 4-bromo-2, 5-dimethoxyamphetamine.

24 (ii) Bufotenine.

25 (iii) Diethyltryptamine.

26 (iv) 2, 5-dimethoxyamphetamine.

27 (v) Dimethyltryptamine.

28 (vi) 5-methoxy-3, 4-methylenedioxyamphetamine.

29 (vii) 4-methyl-2, 5-dimethoxyamphetamine.

30 (viii) Ibogaine.

31 (ix) Lysergic acid amide.

32 (x) Lysergic acid diethylamide.

33 (xi) Mescaline.

34 (xii) Methoxymethylenedioxyamphetamine (MMDA).

35 (xiii) Methylenedioxyamphetamine (MDA).

36 (xiv) 3,4-methylenedioxymethamphetamine.

37 (xv) 3,4-methylenedioxy-n-ethylamphetamine.

38 (xvi) N-ethyl-3-piperidyl benzilate (JB-318).

39 (xvii) N-hydroxy-3,4-methylenedioxyamphetamine.

40 (xviii) N-methyl-3-piperidyl benzilate (JB-336).

41 (xix) N-(1-phenylcyclohexyl) ethylamine (PCE).

42 (xx) Nabilone.

43 (xxi) 1-(1-phenylcyclohexyl) pyrrolidine (PHP).

44 (xxii) 1-(1-(2-thienyl)-cyclohexyl) piperidine (TCP).

45 (xxiii) 1-(1-(2-thienyl)-cyclohexyl) pyrrolidine.

46 (xxiv) Para-methoxyamphetamine (PMA).

47 (xxv) Psilocybin.

48 (xxvi) Psilocyn.

- 1 (xxvii) Synhexyl.
2 (xxviii) Trimethoxyamphetamine (TMA).
3 (b) Any material, compound, mixture or preparation which contains
4 any quantity of the following substances,— AND their salts, optical
5 isomers, and salts of optical isomers,— having a potential for abuse
6 associated with a stimulant effect on the central nervous system:
7 (i) Amphetamine.
8 (ii) Benzphetamine.
9 (iii) Cathine (+(4)-norpseudoephedrine).
10 (iv) Chlorphentermine.
11 (v) Clortermine.
12 (vi) Diethylpropion.
13 (vii) Fencamfamin.
14 (viii) Fenethylline.
15 (ix) Fenproporex.
16 (x) Mazindol.
17 (xi) Mefenorex.
18 (xii) Methamphetamine.
19 (xiii) 4-methylaminorex.
20 (xiv) Methylphenidate.
21 (xv) N-ethylamphetamine.
22 (xvi) N,N-dimethylamphetamine.
23 (xvii) Pemoline.
24 (xviii) Phendimetrazine.
25 (xix) Phenmetrazine.
26 (xx) Phentermine.
27 (xxi) Pipradol.
28 (xxii) Propylhexedrine.
29 (xxiii) Pyrovalerone.
30 (xxiv) Spa ((-)-1-dimethylamino-1,2-diphenylethane).
31 (c) Any material, compound, mixture or preparation which contains
32 any quantity of the following substances having a potential for abuse
33 associated with a depressant effect on the central nervous system:
34 (i) Any substance which contains any quantity of a derivative of
35 barbituric acid, or any salt of a derivative of barbituric acid, unless
36 specifically excepted.
37 (ii) Alprazolam.
38 (iii) Bromazepam.
39 (iv) Camazepam.
40 (v) Chloral betaine.
41 (vi) Chloral hydrate.
42 (vii) Chlordiazepoxide.
43 (viii) Chlorhexadol.
44 ~~(ix) Clobazepam.~~
45 (ix) CLOBAZAM.
46 (x) Clonazepam.
47 (xi) Clorazepate.
48 (xii) Clotiazepam.

1 (xiii) Cloxazolam.
2 (xiv) Delorazepam.
3 (xv) Diazepam.
4 (xvi) Estazolam.
5 (xvii) Ethchlorvynol.
6 (xviii) Ethinamate.
7 (xix) Ethyl loflazepate.
8 (xx) Fenfluramine.
9 (xxi) Fludiazepam.
10 (xxii) Flunitrazepam.
11 (xxiii) Flurazepam.
12 (xxiv) Glutethimide.
13 (xxv) Halazepam.
14 (xxvi) Haloxazolam.
15 (xxvii) Ketamine.
16 (xxviii) Ketazolam.
17 (xxix) Loprazolam.
18 (xxx) Lorazepam.
19 (xxxi) Lormetazepam.
20 (xxxii) Lysergic acid.
21 (xxxiii) Mebutamate.
22 (xxxiv) Mecloqualone.
23 (xxxv) Medazepam.
24 (xxxvi) Meproamate.
25 (xxxvii) Methaqualone.
26 (xxxviii) Methypylon.
27 (xxxix) Midazolam.
28 (xl) Nimetazepam.
29 (xli) Nitrazepam.
30 (xlii) Nordiazepam.
31 (xliii) Oxazepam.
32 (xliv) Oxazolam.
33 (xlv) Paraldehyde.
34 (xlvi) Petrichloral.
35 (xlvii) Phencyclidine.
36 (xlviii) Pinazepam.
37 (xlix) Prazepam.
38 (l) Scopolamine.
39 (li) Sulfondiethylmethane.
40 (lii) Sulfonethylmethane.
41 (liii) Sulfonmethane.
42 (liv) Quazepam.
43 (lv) Temazepam.
44 (lvi) Tetrazepam.
45 (lvii) Tiletamine.
46 (lviii) Triazolam.
47 (lix) Zolazepam.

1 (d) ANY MATERIAL, COMPOUND, MIXTURE OR PREPARATION WHICH CONTAINS
2 ANY QUANTITY OF THE FOLLOWING ANABOLIC STERIODS AND THEIR SALTS, ISOMERS
3 OR ESTERS:

- 4 (i) BOLDENONE.
5 (ii) CLOSTEBOL (4-CHLOROTESTOSTERONE).
6 (iii) DEHYDROCHLOROMETHYLTESTOSTERONE.
7 (iv) DROSTANOLONE.
8 (v) ETHYLESTRENOL.
9 (vi) FLUOXYMESTERONE.
10 (vii) FORMEBULONE (FORMEBOLONE).
11 (viii) MESTEROLONE.
12 (ix) METHANDRIOL.
13 (x) METHANDROSTENOLONE (METHANDIENONE).
14 (xi) METHENOLONE.
15 (xii) METHYLTESTOSTERONE.
16 (xiii) MIBOLERONE.
17 (xiv) NANDROLONE.
18 (xv) NORETHANDROLONE.
19 (xvi) OXANDROLONE.
20 (xvii) OXYMESTERONE.
21 (xviii) OXYMETHOLONE.
22 (xix) STANOLONE (4-DIHYDROTTESTOSTERONE).
23 (xx) STANOZOLOL.
24 (xxi) TESTOLACTONE.
25 (xxii) TESTOSTERONE.
26 (xxiii) TRENBOLONE.

27 7. "Deliver" means the actual, constructive or attempted exchange
28 from one person to another, whether or not there is an agency
29 relationship.

30 8. "Director" means the director of the department of health
31 services.

32 9. "Dispense" means distribute, leave with, give away, dispose of
33 or deliver.

34 10. "Isoamidone" means any substance identified chemically as
35 (4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3), or any salt of such
36 substance, by whatever trade name designated.

37 11. "Isonipecaïne" means any substance identified chemically as
38 (1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester), or any salt
39 of such substance, by whatever trade name designated.

40 12. "Ketobemidone" means any substance identified chemically as
41 (4-(3-hydroxyphenyl)-1-methyl-4-piperidylethyl ketone hydrochloride), or
42 any salt of such substance, by whatever trade name designated.

43 13. "Licensed" means authorized by the laws of this state to do
44 certain things.

45 14. "Manufacture" means produce, prepare, propagate, compound, mix
46 or process, directly or indirectly, by extraction from substances of
47 natural origin or independently by means of chemical synthesis, or by a
48 combination of extraction and chemical synthesis. Manufacture includes

1 any packaging or repackaging or labeling or relabeling of containers.
2 Manufacture does not include any producing, preparing, propagating,
3 compounding, mixing, processing, packaging or labeling done in conformity
4 with applicable state and local laws and rules by a licensed practitioner
5 incident to and in the course of his licensed practice.
6 15. "Manufacturer" means a person who manufactures a narcotic or
7 dangerous drug or other substance controlled by this chapter.
8 16. "Marijuana" means all parts of any plant of the genus cannabis,
9 from which the resin has not been extracted, whether growing or not, and
10 the seeds of such plant. Marijuana does not include the mature stalks of
11 such plant or the sterilized seed of such plant which is incapable of
12 germination.
13 17. "Narcotic drugs" means the following, whether of natural or
14 synthetic origin and any substance neither chemically nor physically
15 distinguishable from them:
16 (a) Acetyl-alpha-methylfentanyl.
17 (b) Acetylmethadol.
18 (c) Alfentanil.
19 (d) Allylprodine.
20 (e) Alphacetylmethadol.
21 (f) Alphameprodine.
22 (g) Alphamethadol.
23 (h) Alpha-methylfentanyl.
24 (i) Alpha-methylthiofentanyl.
25 (j) Alphaprodine.
26 (k) Amidone (methadone).
27 (l) Anileridine.
28 (m) Benzethidine.
29 (n) Benzylfentanyl.
30 (o) Betacetylmethadol.
31 (p) Beta-hydroxyfentanyl.
32 (q) Beta-hydroxy-3-methylfentanyl.
33 (r) Betameprodine.
34 (s) Betamethadol.
35 (t) Betaprodine.
36 (u) Bezitramide.
37 (v) Buprenorphine and its salts.
38 (w) Cannabis.
39 (x) Carfentanil.
40 (y) Clonitazene.
41 (z) Coca leaves.
42 (aa) Dextromoramide.
43 (bb) Dextropropoxyphene.
44 (cc) Diampromide.
45 (dd) Diethylthiambutene.
46 (ee) Difenoxyin.
47 (ff) Dihydrocodeine.
48 (gg) Dimenoxadol.

1 (hh) Dimepheptanol.
2 (ii) Dimethylthiambutene.
3 (jj) Dioxaphetyl butyrate.
4 (kk) Diphenoxylate.
5 (ll) Dipipanone.
6 (mm) Ethylmethylthiambutene.
7 (nn) Etonitazene.
8 (oo) Etoxeridine.
9 (pp) Fentanyl.
10 (qq) Furethidine.
11 (rr) Hydroxypethidine.
12 (ss) Isoamidone (isomethadone).
13 (tt) Isonipecaine (meperidine).
14 (uu) Ketobemidone.
15 (vv) Levomethorphan.
16 (ww) Levomoramide.
17 (xx) Levophenacymorphan.
18 (yy) Levorphanol.
19 (zz) Metazocine.
20 (aaa) 3-methylfentanyl.
21 (bbb) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
22 (ccc) 3-Methylthiofentanyl.
23 (ddd) Morpheridine.
24 (eee) Noracymethadol.
25 (fff) Norlevorphanol.
26 (ggg) Normethadone.
27 (hhh) Norpipanone.
28 (iii) Opium.
29 (jjj) Para-fluorofentanyl.
30 (kkk) Pentazocine.
31 (lll) Phenadoxone.
32 (mmm) Phenampromide.
33 (nnn) Phenazocine.
34 (ooo) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
35 (ppp) Phenomorphan.
36 (qqq) Phenoperidine.
37 (rrr) Piminodine.
38 (sss) Piritramide.
39 (ttt) Proheptazine.
40 (uuu) Properidine.
41 (vvv) Propiram.
42 (www) Racemethorphan.
43 (xxx) Racemoramide.
44 (yyy) Racemorphan.
45 (zzz) Sufentanil.
46 (aaaa) Thenylfentanyl.
47 (bbbb) Thiofentanyl.
48 (cccc) Tilidine.

- 1 (dddd) Trimeperidine.
2 18. "Opium" means any compound, manufacture, salt, isomer, salt of
3 isomer, derivative, mixture or preparation of the following, but does not
4 include apomorphine or any of its salts:
5 (a) Acetorphine.
6 (b) Acetyldihydrocodeine.
7 (c) Benzylmorphine.
8 (d) Codeine.
9 (e) Codeine methylbromide.
10 (f) Codeine-n-oxide.
11 (g) Cyrenorphine.
12 (h) Desomorphine.
13 (i) Dihydromorphine.
14 (j) Drotebanol.
15 (k) Ethylmorphine.
16 (l) Etorphine.
17 (m) Heroin.
18 (n) Hydrocodone.
19 (o) Hydromorphinol.
20 (p) Hydromorphone.
21 (q) Methyldesorphine.
22 (r) Methyldihydromorphine.
23 (s) Metopon.
24 (t) Morphine.
25 (u) Morphine methylbromide.
26 (v) Morphine methylsulfonate.
27 (w) Morphine-n-oxide.
28 (x) Myrophine.
29 (y) Nalorphine.
30 (z) Nicocodeine.
31 (aa) Nicomorphine.
32 (bb) Normorphine.
33 (cc) Oxycodone.
34 (dd) Oxymorphone.
35 (ee) Pholcodine.
36 (ff) Thebacon.
37 (gg) Thebaine.
38 19. "Peyote" means any part of a plant of the genus *Lophophora*,
39 known as the mescal button.
40 20. "Pharmacy" means a licensed business where drugs are compounded
41 or dispensed by a licensed pharmacist.
42 21. "Practitioner" means a person licensed to prescribe and
43 administer drugs.
44 22. "Precursor chemical I" means any material, compound, mixture or
45 preparation which contains any quantity of the following substances,— AND
46 their salts, optical isomers or salts of optical isomers:
47 (a) N-acetylanthranilic acid.
48 (b) Anthranilic acid.

- 1 (c) Ephedrine.
2 (d) Ergotamine.
3 (e) Isosafrole.
4 (f) Lysergic acid.
5 (g) Methylamine.
6 (h) Phenylacetic acid.
7 (i) Piperidine.
- 8 23. "Precursor chemical II" means any material, compound, mixture or
9 preparation which contains any quantity of the following substances,— AND
10 their salts, optical isomers or salts of optical isomers:
11 (a) 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
12 (b) 4-cyano-1-methyl-4-phenylpiperidine.
13 (c) Ethyl-4-phenylpiperidine-4-carboxylate.
14 (d) 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
15 (e) 1-methyl-4-phenylpiperidine-4-carboxylic acid.
16 (f) N-formyl amphetamine.
17 (g) N-formyl methamphetamine.
18 (h) Phenyl-2-propanone.
19 (i) 1-piperidinocyclohexane carbonitrile.
20 (j) 1-pyrrolidinocyclohexane carbonitrile.
- 21 24. "Prescription-only drug" does not include a dangerous drug or
22 narcotic drug but means:
23 (a) Any drug which because of its toxicity or other potentiality
24 for harmful effect, or the method of its use, or the collateral measures
25 necessary to its use, is not generally recognized among experts, qualified
26 by scientific training and experience to evaluate its safety and efficacy,
27 as safe for use except by or under the supervision of a medical
28 practitioner.
29 (b) Any drug that is limited by an approved new drug application
30 under the federal act, as defined in section 32-1901, or section 32-1962
31 to use under the supervision of a medical practitioner.
32 (c) Every potentially harmful drug, the labeling of which does not
33 bear or contain full and adequate directions for use by the consumer.
34 (d) Any drug required by the federal act as defined in section
35 32-1901 to bear on its label the legend "caution: federal law prohibits
36 dispensing without prescription".
- 37 25. "Produce" means grow, plant, cultivate, harvest, dry, process or
38 prepare for sale.
- 39 26. "Sale" or "sell" means an exchange for anything of value or
40 advantage, present or prospective.
- 41 27. "Scientific purpose" means research, teaching or chemical
42 analysis.
- 43 28. "THRESHOLD AMOUNT" MEANS A WEIGHT OR MARKET VALUE OF AN UNLAWFUL
44 SUBSTANCE AS FOLLOWS:
45 (a) FOUR GRAMS OF HEROIN.
46 (b) FIFTEEN GRAMS OF COCAINE.
47 (c) TWO HUNDRED TWENTY MILLIGRAMS OF COCAINE BASE OR HYDROLIZED
48 COCAINE (CRACK).

1 (d) FOUR GRAMS OF PCP.
2 (e) FOUR GRAMS OF METHAMPHETAMINE.
3 (f) FIFTY MILLIGRAMS OF LYSERGIC ACID DIETHYLAMIDE, OR IN THE CASE
4 OF BLOTTER DOSAGE UNITS, LESS THAN ONE HUNDRED ONE DOSAGE UNITS.
5 (g) EIGHT POUNDS OF MARIJUANA OR THIRTY-SIX PLANTS EXCEEDING
6 TWENTY-FOUR INCHES IN HEIGHT.
7 (h) TWO THOUSAND DOSAGE UNITS OF ANABOLIC STEROIDS.
8 (i) FOR ANY UNLAWFUL SUBSTANCE, INCLUDING THE SUBSTANCES LISTED IN
9 THIS PARAGRAPH, A VALUE OF AT LEAST TWO THOUSAND DOLLARS.
10 ~~28-~~ 29. "Transfer" means furnish, deliver or give away.
11 ~~29-~~ 30. "Vapor-releasing substance containing a toxic substance"
12 means paint or varnish dispensed by the use of aerosol spray, or any glue,
13 which releases vapors or fumes containing acetone, volatile acetates,
14 benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl
15 alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum
16 ether, toluene, volatile ketones, isophorone, chloroform, methylene
17 chloride, mesityl oxide, xylene, cumene, ethylbenzene, trichloroethylene,
18 mibk, miak, mek or diacetone alcohol or isobutyl nitrite.
19 31. "WEIGHT" UNLESS OTHERWISE SPECIFIED INCLUDES THE ENTIRE WEIGHT
20 OF ANY MIXTURE OR SUBSTANCE THAT CONTAINS A DETECTABLE AMOUNT OF AN
21 UNLAWFUL SUBSTANCE. IF A MIXTURE OR SUBSTANCE CONTAINS MORE THAN ONE
22 UNLAWFUL SUBSTANCE, THE WEIGHT OF THE ENTIRE MIXTURE OR SUBSTANCE IS
23 ASSIGNED TO THE UNLAWFUL SUBSTANCE THAT RESULTS IN THE GREATER OFFENSE.
24 IF A MIXTURE OR SUBSTANCE CONTAINS LYSERGIC ACID DIETHYLAMIDE, THE OFFENSE
25 THAT IS ASSIGNED TO THE UNLAWFUL SUBSTANCE SHALL BE BASED ON THE GREATER
26 OFFENSE AS DETERMINED BY THE ENTIRE WEIGHT OF THE MIXTURE OR SUBSTANCE OR
27 THE NUMBER OF BLOTTER DOSAGE UNITS.
28 ~~30-~~ 32. "Wholesaler" means a person who in the usual course of
29 business lawfully supplies narcotic or dangerous drugs that he himself has
30 not produced or prepared, but not on prescriptions.
31 Sec. 17. Section 13-3405, Arizona Revised Statutes, as amended by
32 Laws 1991, chapter 316, section 5, is amended to read:
33 13-3405. Possession, use, production, sale or
34 transportation of marijuana; classification
35 A. A person shall not knowingly:
36 1. Possess or use marijuana.
37 2. Possess marijuana for sale.
38 3. Produce marijuana.
39 4. Transport for sale, import into this state or offer to transport
40 for sale or import into this state, sell, transfer or offer to sell or
41 transfer marijuana.
42 B. A person who violates:
43 1. Subsection A, paragraph 1 involving an amount of marijuana not
44 possessed for sale having a weight at the time of seizure of less than one
45 pound is guilty of a class 6 felony.
46 2. Subsection A, paragraph 1 involving an amount of marijuana not
47 possessed for sale having a weight at the time of seizure of at least one
48 pound but less than eight pounds is guilty of a class 5 felony.

1 3. Subsection A, paragraph 1 involving an amount of marijuana not
2 possessed for sale having a weight at the time of seizure of eight pounds
3 or more is guilty of a class 4 felony.

4 4. Subsection A, paragraph 2 involving an amount of marijuana
5 having a weight at the time of seizure of less than one pound is guilty of
6 a class 4 felony.

7 5. Subsection A, paragraph 2 involving an amount of marijuana
8 having a weight at the time of seizure of one pound or more is guilty of a
9 class 3 felony.

10 6. Subsection A, paragraph 3 involving an amount of marijuana
11 having a weight at the time of seizure of less than one pound is guilty of
12 a class 5 felony.

13 7. Subsection A, paragraph 3 involving an amount of marijuana
14 having a weight at the time of seizure of one pound or more is guilty of a
15 class 3 felony.

16 8. Subsection A, paragraph 4 involving an amount of marijuana
17 having a weight at the time of seizure of less than one pound is guilty of
18 a class 3 felony.

19 9. Subsection A, paragraph 4 involving an amount of marijuana
20 having a weight at the time of seizure of one pound or more is guilty of a
21 class 2 felony.

22 C. IF THE AGGREGATE AMOUNT OF MARIJUANA INVOLVED IN ALL OF THE
23 OFFENSES THAT ARE CONSOLIDATED FOR TRIAL EQUALS OR EXCEEDS AT THE TIME OF
24 SEIZURE THE STATUTORY THRESHOLD AMOUNT, a person who is sentenced pursuant
25 to the provisions of subsection B, paragraph 5, 7 or 9 ~~involving an amount~~
26 ~~of marijuana having a weight at the time of seizure of eight pounds or~~
27 ~~more~~ is not eligible for suspension or commutation of sentence, probation,
28 parole, work furlough or release from confinement on any other basis until
29 the person has served not less than two-thirds of the sentence imposed by
30 the court.

31 D. In addition to any other penalty prescribed by this title, the
32 court shall order a person who is convicted of a violation of any
33 provision of this section to pay a fine of not less than seven hundred
34 fifty dollars or three times the value as determined by the court of the
35 marijuana involved in or giving rise to the charge, whichever is greater,
36 and not more than the maximum authorized by chapter 8 of this title. A
37 judge shall not suspend any part or all of the imposition of any fine
38 required by this subsection.

39 E. A person who is convicted of a felony violation of any provision
40 of this section for which probation or release before the expiration of
41 the sentence imposed by the court is authorized is prohibited from using
42 any marijuana, dangerous drug or narcotic drug except as lawfully
43 administered by a practitioner and as a condition of any probation or
44 release shall be required to submit to drug testing administered under the
45 supervision of the probation department of the county or the state
46 department of corrections as appropriate during the duration of the term
47 of probation or before the expiration of the sentence imposed. The
48 probation officer responsible for the person shall inform the sentencing

1 judge or his successor immediately of any conduct which violates a
2 condition of this subsection.

3 F. If THE AGGREGATE AMOUNT OF MARIJUANA INVOLVED IN ALL OF THE
4 OFFENSES THAT ARE CONSOLIDATED FOR TRIAL IS LESS AT THE TIME OF SEIZURE
5 THAN THE STATUTORY THRESHOLD AMOUNT, a person who is sentenced pursuant to
6 the provisions of subsection B, paragraph 4, 6 or 8 or subsection B,
7 paragraph 5, 7 or 9 ~~involving an amount of marijuana at the time of~~
8 ~~seizure of less than eight pounds~~ AND WHO is granted probation BY the
9 court shall ~~order~~ BE ORDERED BY THE COURT that as a condition of probation
10 the person perform not less than two hundred forty hours of community
11 service with an agency or organization providing counseling,
12 rehabilitation or treatment for alcohol or drug abuse, an agency or
13 organization that provides medical treatment to persons who abuse
14 controlled substances, an agency or organization that serves persons who
15 are victims of crime or any other appropriate agency or organization.

16 G. If a person who is sentenced pursuant to the provisions of
17 subsection B, paragraph 1, 2 or 3 is granted probation for a felony
18 violation of this section, the court shall order that as a condition of
19 probation the person perform not less than twenty-four hours of community
20 service with an agency or organization providing counseling,
21 rehabilitation or treatment for alcohol or drug abuse, an agency or
22 organization that provides medical treatment to persons who abuse
23 controlled substances, an agency or organization that serves persons who
24 are victims of crimes or any other appropriate agency or organization.

25 H. If a person is granted probation for a misdemeanor violation of
26 this section, the court shall order as a condition of probation that the
27 person attend eight hours of instruction on the nature and harmful effects
28 of narcotic drugs, marijuana and other dangerous drugs on the human
29 system, and on the laws related to the control of these substances, or
30 perform twenty-four hours of community service.

31 I. On or before each January 1, ~~each presiding~~ THE judge PRESIDING
32 OVER THE PROBATIONER'S CASE or his designee shall file with the chief
33 justice of the supreme court a full and complete account of the number of
34 reports received of conduct which violates a condition of subsection E and
35 which could result in revocation of probation and of the number of
36 revocations that were rendered.

37 Sec. 18. Section 13-3405, Arizona Revised Statutes, as amended by
38 Laws 1990, chapter 366, section 8, is amended to read:

39 13-3405. Possession, use, production, sale or
40 transportation of marijuana; classification

41 A. A person shall not knowingly:

- 42 1. Possess or use marijuana.
- 43 2. Possess marijuana for sale.
- 44 3. Produce marijuana.
- 45 4. Transport for sale, import into this state or offer to transport
46 for sale or import into this state, sell, transfer or offer to sell or
47 transfer marijuana.

48 B. A person who violates:

1 1. Subsection A, paragraph 1 involving an amount of marijuana not
2 possessed for sale having a weight at the time of seizure of less than one
3 pound is guilty of a class 6 felony.

4 2. Subsection A, paragraph 1 involving an amount of marijuana not
5 possessed for sale having a weight at the time of seizure of at least one
6 pound but less than eight pounds is guilty of a class 5 felony.

7 3. Subsection A, paragraph 1 involving an amount of marijuana not
8 possessed for sale having a weight at the time of seizure of eight pounds
9 or more is guilty of a class 4 felony.

10 4. Subsection A, paragraph 2 involving an amount of marijuana
11 having a weight at the time of seizure of less than one pound is guilty of
12 a class 4 felony.

13 5. Subsection A, paragraph 2 involving an amount of marijuana
14 having a weight at the time of seizure of one pound or more is guilty of a
15 class 3 felony.

16 6. Subsection A, paragraph 3 involving an amount of marijuana
17 having a weight at the time of seizure of less than one pound is guilty of
18 a class 5 felony.

19 7. Subsection A, paragraph 3 involving an amount of marijuana
20 having a weight at the time of seizure of one pound or more is guilty of a
21 class 3 felony.

22 8. Subsection A, paragraph 4 involving an amount of marijuana
23 having a weight at the time of seizure of less than one pound is guilty of
24 a class 3 felony.

25 9. Subsection A, paragraph 4 involving an amount of marijuana
26 having a weight at the time of seizure of one pound or more is guilty of a
27 class 2 felony.

28 C. IF THE AGGREGATE AMOUNT OF MARIJUANA INVOLVED IN ALL OF THE
29 OFFENSES THAT ARE CONSOLIDATED FOR TRIAL EQUALS OR EXCEEDS AT THE TIME OF
30 SEIZURE THE STATUTORY THRESHOLD AMOUNT, a person who is sentenced pursuant
31 to the provisions of subsection B, paragraph 5, 7 or 9 ~~involving an amount~~
32 ~~of marijuana having a weight at the time of seizure of eight pounds or~~
33 ~~more~~ is not eligible for suspension or commutation of sentence, probation,
34 parole, work furlough or release from confinement on any other basis until
35 the person has served not less than two-thirds of the sentence imposed by
36 the court.

37 D. In addition to any other penalty prescribed by this title, the
38 court shall order a person who is convicted of a violation of any
39 provision of this section to pay a fine of not less than seven hundred
40 fifty dollars or three times the value as determined by the court of the
41 marijuana involved in or giving rise to the charge, whichever is greater,
42 and not more than the maximum authorized by chapter 8 of this title. A
43 judge shall not suspend any part or all of the imposition of any fine
44 required by this subsection.

45 E. A person who is convicted of a felony violation of any provision
46 of this section for which probation or release before the expiration of
47 the sentence imposed by the court is authorized is prohibited from using
48 any marijuana, dangerous drug or narcotic drug except as lawfully

1 administered by a practitioner and as a condition of any probation or
2 release shall be required to submit to drug testing administered under the
3 supervision of the probation department of the county or the state
4 department of corrections as appropriate during the duration of the term
5 of probation or before the expiration of the sentence imposed.

6 F. If THE AGGREGATE AMOUNT OF MARIJUANA INVOLVED IN ALL OF THE
7 OFFENSES THAT ARE CONSOLIDATED FOR TRIAL IS LESS AT THE TIME OF SEIZURE
8 THAN THE STATUTORY AMOUNT, a person who is sentenced pursuant to the
9 provisions of subsection B, paragraph 4, 6 or 8 or subsection B, paragraph
10 5, 7 or 9 AND WHO ~~involving an amount of marijuana at the time of seizure~~
11 ~~of less than eight pounds~~ is granted probation BY the court shall order BE
12 ORDERED that as a condition of probation the person perform not less than
13 two hundred forty hours of community service with an agency or
14 organization providing counseling, rehabilitation or treatment for alcohol
15 or drug abuse, an agency or organization that provides medical treatment
16 to persons who abuse controlled substances, an agency or organization that
17 serves persons who are victims of crime or any other appropriate agency or
18 organization.

19 G. If a person who is sentenced pursuant to the provisions of
20 subsection B, paragraph 1, 2 or 3 is granted probation for a felony
21 violation of this section, the court shall order that as a condition of
22 probation the person perform not less than twenty-four hours of community
23 service with an agency or organization providing counseling,
24 rehabilitation or treatment for alcohol or drug abuse, an agency or
25 organization that provides medical treatment to persons who abuse
26 controlled substances, an agency or organization that serves persons who
27 are victims of crimes or any other appropriate agency or organization.

28 H. If a person is granted probation for a misdemeanor violation of
29 this section, the court shall order as a condition of probation that the
30 person attend eight hours of instruction on the nature and harmful effects
31 of narcotic drugs, marijuana and other dangerous drugs on the human
32 system, and on the laws related to the control of these substances, or
33 perform twenty-four hours of community service.

34 Sec. 19. Section 13-3407, Arizona Revised Statutes, as amended by
35 Laws 1991, chapter 316, section 7, is amended to read:

36 13-3407. Possession, use, administration, acquisition,
37 sale, manufacture or transportation of
38 dangerous drugs; classification

- 39 A. A person shall not knowingly:
40 1. Possess or use a dangerous drug.
41 2. Possess a dangerous drug for sale.
42 3. Possess equipment and chemicals for the purpose of manufacturing
43 a dangerous drug.
44 4. Manufacture a dangerous drug.
45 5. Administer a dangerous drug to another person.
46 6. Obtain or procure the administration of a dangerous drug by
47 fraud, deceit, misrepresentation or subterfuge.

1 7. Transport for sale, import into this state or offer to transport
2 for sale or import into this state, sell, transfer or offer to sell or
3 transfer a dangerous drug.
4 B. A person who violates:
5 1. Subsection A, paragraph 1 is guilty of a class 4 felony, but the
6 court on motion of the state, considering the nature and circumstances of
7 the offense, for a person not previously convicted of any felony may enter
8 judgment of conviction for a class 1 misdemeanor and make disposition
9 accordingly or may place the defendant on probation in accordance with
10 chapter 9 of this title and refrain from designating the offense as a
11 felony or misdemeanor until the probation is terminated. The offense
12 shall be treated as a felony for all purposes until such time as the court
13 enters an order designating the offense a misdemeanor.
14 2. Subsection A, paragraph 2 is guilty of a class 3 felony.
15 3. Subsection A, paragraph 3 is guilty of a class 4 felony.
16 4. Subsection A, paragraph 4 is guilty of a class 3 felony.
17 5. Subsection A, paragraph 5 is guilty of a class 2 felony.
18 6. Subsection A, paragraph 6 is guilty of a class 3 felony.
19 7. Subsection A, paragraph 7 is guilty of a class 2 felony.
20 C. IF THE AGGREGATE AMOUNT OF DANGEROUS DRUGS INVOLVED IN ALL OF
21 THE OFFENSES THAT ARE CONSOLIDATED FOR TRIAL EQUALS OR EXCEEDS AT THE TIME
22 OF SEIZURE THE STATUTORY THRESHOLD AMOUNT, a person who is convicted of a
23 violation of subsection A, paragraph 2, 4 or 5 is not eligible for
24 suspension or commutation of sentence, probation, pardon, parole, work
25 furlough or release from confinement on any other basis until the person
26 has served not less than two-thirds of the sentence imposed by the court.
27 D. IF THE AGGREGATE AMOUNT OF DANGEROUS DRUGS INVOLVED IN ALL OF
28 THE OFFENSES THAT ARE CONSOLIDATED FOR TRIAL EQUALS OR EXCEEDS AT THE TIME
29 OF SEIZURE THE STATUTORY THRESHOLD AMOUNT, a person who is convicted of a
30 violation of subsection A, paragraph 7 is not eligible for suspension or
31 commutation of sentence, probation, pardon, parole, work furlough or
32 release from confinement on any other basis until the person has served
33 the sentence imposed by the court.
34 E. In addition to any other penalty prescribed by this title, the
35 court shall order a person who is convicted of a violation of any
36 provision of this section to pay a fine of not less than one thousand
37 dollars or three times the value as determined by the court of the
38 dangerous drugs involved in or giving rise to the charge, whichever is
39 greater, and not more than the maximum authorized by chapter 8 of this
40 title. A judge shall not suspend any part or all of the imposition of any
41 fine required by this subsection.
42 F. A person who is convicted of a violation of a provision of this
43 section for which probation or release before the expiration of the
44 sentence imposed by the court is authorized is prohibited from using any
45 marijuana, dangerous drug, narcotic drug or prescription-only drug except
46 as lawfully administered by a practitioner and as a condition of any
47 probation or release shall be required to submit to drug testing
48 administered under the supervision of the probation department of the

1 county or the state department of corrections, as appropriate, during the
2 duration of the term of probation or before the expiration of the sentence
3 imposed. The probation officer responsible for the person shall inform
4 the sentencing judge or his successor immediately of any conduct which
5 violates a condition of this subsection.

6 G. If a person who is convicted of a violation of a provision of
7 this section is granted probation, the court shall order that as a
8 condition of probation the person perform not less than three hundred
9 sixty hours of community service with an agency or organization providing
10 counseling, rehabilitation or treatment for alcohol or drug abuse, an
11 agency or organization that provides medical treatment to persons who
12 abuse controlled substances, an agency or organization that serves persons
13 who are victims of crime or any other appropriate agency or organization.

14 H. On or before each January 1, each presiding judge or his
15 designee shall file with the chief justice of the supreme court a full and
16 complete account of the number of reports received of conduct which
17 violates a condition of subsection F and which could result in revocation
18 of probation and of the number of revocations that were rendered.

19 Sec. 20. Section 13-3407, Arizona Revised Statutes, as amended by
20 Laws 1990, chapter 366, section 12, is amended to read:

21 13-3407. Possession, use, administration, acquisition,
22 sale, manufacture or transportation of
23 dangerous drugs; classification

24 A. A person shall not knowingly:

- 25 1. Possess or use a dangerous drug.
- 26 2. Possess a dangerous drug for sale.
- 27 3. Possess equipment and chemicals for the purpose of manufacturing
28 a dangerous drug.
- 29 4. Manufacture a dangerous drug.
- 30 5. Administer a dangerous drug to another person.
- 31 6. Obtain or procure the administration of a dangerous drug by
32 fraud, deceit, misrepresentation or subterfuge.
- 33 7. Transport for sale, import into this state or offer to transport
34 for sale or import into this state, sell, transfer or offer to sell or
35 transfer a dangerous drug.

36 B. A person who violates:

- 37 1. Subsection A, paragraph 1 is guilty of a class 4 felony, but the
38 court on motion of the state, considering the nature and circumstances of
39 the offense, for a person not previously convicted of any felony may enter
40 judgment of conviction for a class 1 misdemeanor and make disposition
41 accordingly or may place the defendant on probation in accordance with
42 chapter 9 of this title and refrain from designating the offense as a
43 felony or misdemeanor until the probation is terminated. The offense
44 shall be treated as a felony for all purposes until such time as the court
45 ~~may actually enter~~ ENTERS an order designating the offense a misdemeanor.
- 46 2. Subsection A, paragraph 2 is guilty of a class 3 felony.
- 47 3. Subsection A, paragraph 3 is guilty of a class 4 felony.
- 48 4. Subsection A, paragraph 4 is guilty of a class 3 felony.

1 5. Subsection A, paragraph 5 is guilty of a class 2 felony.
2 6. Subsection A, paragraph 6 is guilty of a class 3 felony.
3 7. Subsection A, paragraph 7 is guilty of a class 2 felony.
4 C. IF THE AGGREGATE AMOUNT OF DANGEROUS DRUGS INVOLVED IN ALL OF
5 THE OFFENSES THAT ARE CONSOLIDATED FOR TRIAL EQUALS OR EXCEEDS AT THE TIME
6 OF SEIZURE THE STATUTORY THESHOLD AMOUNT, a person who is convicted of a
7 violation of subsection A, paragraph 2, 4 or 5 is not eligible for
8 suspension or commutation of sentence, probation, pardon, parole, work
9 furlough or release from confinement on any other basis until the person
10 has served not less than two-thirds of the sentence imposed by the court.
11 D. IF THE AGGREGATE AMOUNT OF DANGEROUS DRUGS INVOLVED IN ALL OF
12 THE OFFENSES THAT ARE CONSOLIDATED FOR TRIAL EQUALS OR EXCEEDS AT THE TIME
13 OF SEIZURE THE STATUTORY THESHOLD AMOUNT, a person who is convicted of a
14 violation of subsection A, paragraph 7 is not eligible for suspension or
15 commutation of sentence, probation, pardon, parole, work furlough or
16 release from confinement on any other basis until the person has served
17 the sentence imposed by the court.
18 E. In addition to any other penalty prescribed by this title, the
19 court shall order a person who is convicted of a violation of any
20 provision of this section to pay a fine of not less than one thousand
21 dollars or three times the value as determined by the court of the
22 dangerous drugs involved in or giving rise to the charge, whichever is
23 greater, and not more than the maximum authorized by chapter 8 of this
24 title. A judge shall not suspend any part or all of the imposition of any
25 fine required by this subsection.
26 F. A person who is convicted of a violation of a provision of this
27 section for which probation or release before the expiration of the
28 sentence imposed by the court is authorized is prohibited from using any
29 marijuana, dangerous drug, narcotic drug or prescription-only drug except
30 as lawfully administered by a practitioner and as a condition of any
31 probation or release shall be required to submit to drug testing
32 administered under the supervision of the probation department of the
33 county or the state department of corrections, as appropriate, during the
34 duration of the term of probation or before the expiration of the sentence
35 imposed.
36 G. If a person who is convicted of a violation of a provision of
37 this section is granted probation, the court shall order that as a
38 condition of probation the person perform not less than three hundred
39 sixty hours of community service with an agency or organization providing
40 counseling, rehabilitation or treatment for alcohol or drug abuse, an
41 agency or organization that provides medical treatment to persons who
42 abuse controlled substances, an agency or organization that serves persons
43 who are victims of crime or any other appropriate agency or organization.
44 Sec. 21. Repeal
45 Section 13-3407, Arizona Revised Statutes, as amended by Laws 1991,
46 chapter 316, section 8, is repealed.
47 Sec. 22. Section 13-3408, Arizona Revised Statutes, as amended by
48 Laws 1991, chapter 316, section 9, is amended to read:

1 13-3408. Possession, use, administration, acquisition,
2 sale, manufacture or transportation of
3 narcotic drugs; classification
4 A. A person shall not knowingly:
5 1. Possess or use a narcotic drug.
6 2. Possess a narcotic drug for sale.
7 3. Possess equipment and chemicals for the purpose of manufacturing
8 a narcotic drug.
9 4. Manufacture a narcotic drug.
10 5. Administer a narcotic drug to another person.
11 6. Obtain or procure the administration of a narcotic drug by
12 fraud, deceit, misrepresentation or subterfuge.
13 7. Transport for sale, import into this state, offer to transport
14 for sale or import into this state, sell, transfer or offer to sell or
15 transfer a narcotic drug.
16 B. A person who violates:
17 1. Subsection A, paragraph 1 of this section is guilty of a class 4
18 felony.
19 2. Subsection A, paragraph 2 of this section is guilty of a class 2
20 felony.
21 3. Subsection A, paragraph 3 of this section is guilty of a class 3
22 felony.
23 4. Subsection A, paragraph 4 of this section is guilty of a class 2
24 felony.
25 5. Subsection A, paragraph 5 of this section is guilty of a class 2
26 felony.
27 6. Subsection A, paragraph 6 of this section is guilty of a class 3
28 felony.
29 7. Subsection A, paragraph 7 of this section is guilty of a class 2
30 felony.
31 C. A person who is convicted of a violation of subsection A,
32 paragraph 1, 3 or 6 of this section and who has not previously been
33 convicted of any felony or not sentenced pursuant to section 13-604 or any
34 other provision of law making the convicted person ineligible for
35 probation is eligible for probation, and if granted probation, the court
36 shall order that as a condition of probation the person perform not less
37 than three hundred sixty hours of community service with an agency or
38 organization providing counseling, rehabilitation or treatment for alcohol
39 or drug abuse, an agency or organization that provides medical treatment
40 to persons who abuse controlled substances, an agency or organization that
41 serves persons who are victims of crime or any other appropriate agency or
42 organization.
43 D. IF THE AGGREGATE AMOUNT OF NARCOTIC DRUGS INVOLVED IN ALL OF THE
44 OFFENSES THAT ARE CONSOLIDATED FOR TRIAL EQUALS OR EXCEEDS AT THE TIME OF
45 SEIZURE THE STATUTORY THRESHOLD AMOUNT, a person who is convicted of a
46 violation of subsection A, paragraph 2, 4, 5 or 7 of this section is not
47 eligible for suspension or commutation of sentence, probation, pardon,

1 parole, work furlough or release from confinement on any other basis until
2 the person has served the sentence imposed by the court.

3 E. In addition to any other penalty prescribed by this title, the
4 court shall order a person who is convicted of a violation of any
5 provision of this section to pay a fine of not less than two thousand
6 dollars or three times the value as determined by the court of the
7 narcotic drugs involved in or giving rise to the charge, whichever is
8 greater, and not more than the maximum authorized by chapter 8 of this
9 title. A judge shall not suspend any part or all of the imposition of any
10 fine required by this subsection.

11 F. A person who is convicted of a violation of a provision of this
12 section for which probation or release before the expiration of the
13 sentence imposed by the court is authorized is prohibited from using any
14 marijuana, dangerous drug, narcotic drug or prescription-only drug except
15 as lawfully administered by a practitioner and as a condition of any
16 probation or release shall be required to submit to drug testing
17 administered under the supervision of the probation department of the
18 county or the state department of corrections, as appropriate, during the
19 duration of the term of probation or before the expiration of the sentence
20 imposed. The probation officer responsible for the person shall inform
21 the sentencing judge or his successor immediately of any conduct which
22 violates a condition of this subsection.

23 G. On or before each January 1, ~~each presiding~~ THE judge PRESIDING
24 OVER THE PROBATIONER'S CASE or his designee shall file with the chief
25 justice of the supreme court a full and complete account of the number of
26 reports received of conduct which violates a condition of subsection F of
27 this section and which could result in revocation of probation and of the
28 number of revocations that were rendered.

29 Sec. 23. Section 13-3408, Arizona Revised Statutes, as amended by
30 Laws 1990, chapter 366, section 14, is amended to read:

31 13-3408. Possession, use, administration, acquisition,
32 sale, manufacture or transportation of
33 narcotic drugs; classification

- 34 A. A person shall not knowingly:
- 35 1. Possess or use a narcotic drug.
 - 36 2. Possess a narcotic drug for sale.
 - 37 3. Possess equipment and chemicals for the purpose of manufacturing
38 a narcotic drug.
 - 39 4. Manufacture a narcotic drug.
 - 40 5. Administer a narcotic drug to another person.
 - 41 6. Obtain or procure the administration of a narcotic drug by
42 fraud, deceit, misrepresentation or subterfuge.
 - 43 7. Transport for sale, import into this state, offer to transport
44 for sale or import into this state, sell, transfer or offer to sell or
45 transfer a narcotic drug.

- 46 B. A person who violates:
- 47 1. Subsection A, paragraph 1 of this section is guilty of a class 4
48 felony.

1 2. Subsection A, paragraph 2 of this section is guilty of a class 2
2 felony.
3 3. Subsection A, paragraph 3 of this section is guilty of a class 3
4 felony.
5 4. Subsection A, paragraph 4 of this section is guilty of a class 2
6 felony.
7 5. Subsection A, paragraph 5 of this section is guilty of a class 2
8 felony.
9 6. Subsection A, paragraph 6 of this section is guilty of a class 3
10 felony.
11 7. Subsection A, paragraph 7 of this section is guilty of a class 2
12 felony.
13 C. A person who is convicted of a violation of subsection A,
14 paragraph 1, 3 or 6 of this section and who has not previously been
15 convicted of any felony or not sentenced pursuant to section 13-604 or any
16 other provision of law making the convicted person ineligible for
17 probation is eligible for probation, and if granted probation, the court
18 shall order that as a condition of probation the person perform not less
19 than three hundred sixty hours of community service with an agency or
20 organization providing counseling, rehabilitation or treatment for alcohol
21 or drug abuse, an agency or organization that provides medical treatment
22 to persons who abuse controlled substances, an agency or organization that
23 serves persons who are victims of crime or any other appropriate agency or
24 organization.
25 D. IF THE AGGREGATE AMOUNT OF NARCOTIC DRUGS INVOLVED IN ALL OF THE
26 OFFENSES THAT ARE CONSOLIDATED FOR TRIAL EQUALS OR EXCEEDS AT THE TIME OF
27 SEIZURE THE STATUTORY THRESHOLD AMOUNT, a person who is convicted of a
28 violation of subsection A, paragraph 2, 4, 5 or 7 of this section is not
29 eligible for suspension or commutation of sentence, probation, pardon,
30 parole, work furlough or release from confinement on any other basis until
31 the person has served the sentence imposed by the court.
32 E. In addition to any other penalty prescribed by this title, the
33 court shall order a person who is convicted of a violation of any
34 provision of this section to pay a fine of not less than two thousand
35 dollars or three times the value as determined by the court of the
36 narcotic drugs involved in or giving rise to the charge, whichever is
37 greater, and not more than the maximum authorized by chapter 8 of this
38 title. A judge shall not suspend any part or all of the imposition of any
39 fine required by this subsection.
40 F. A person who is convicted of a violation of a provision of this
41 section for which probation or release before the expiration of the
42 sentence imposed by the court is authorized is prohibited from using any
43 marijuana, dangerous drug, narcotic drug or prescription-only drug except
44 as lawfully administered by a practitioner and as a condition of any
45 probation or release shall be required to submit to drug testing
46 administered under the supervision of the probation department of the
47 county or the state department of corrections, as appropriate, during the

1 duration of the term of probation or before the expiration of the sentence
2 imposed.
3 Sec. 24. Title 13, chapter 34, Arizona Revised Statutes, is amended
4 by adding section 13-3419, to read:
5 13-3419. Enhanced punishment
6 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON WHO
7 IS CONVICTED OF FOUR OR MORE OFFENSES UNDER THIS CHAPTER THAT WERE NOT
8 COMMITTED ON THE SAME OCCASION BUT THAT WERE CONSOLIDATED FOR TRIAL
9 PURPOSES MAY NOT BE ELIGIBLE FOR SUSPENSION OR COMMUTATION OF SENTENCE,
10 PROBATION, PARDON, PAROLE, WORK FURLOUGH OR RELEASE FROM CONFINEMENT ON
11 ANY OTHER BASIS UNTIL NOT LESS THAN TWO-THIRDS OF THE SENTENCE IMPOSED BY
12 THE COURT HAS BEEN SERVED.
13 B. A PERSON WHO IS CONVICTED OF FOUR OR MORE OFFENSES PURSUANT TO
14 SECTION 13-3405, SUBSECTION C OR F, SECTION 13-3407, SUBSECTION C OR D OR
15 SECTION 13-3408, SUBSECTION D THAT WERE NOT COMMITTED ON THE SAME OCCASION
16 BUT THAT WERE CONSOLIDATED FOR TRIAL PURPOSES MAY BE SENTENCED PURSUANT
17 TO SECTION 13-3405, SUBSECTION C OR F, SECTION 13-3407, SUBSECTION C OR D
18 OR SECTION 13-3408, SUBSECTION D AS IF THE PERSON HAD EXCEEDED THE
19 STATUTORY THRESHOLD AMOUNT.
20 Sec. 25. Delayed effective date
21 Sections 18, 20 and 23 of this act are effective from and after
22 July 1, 1994.