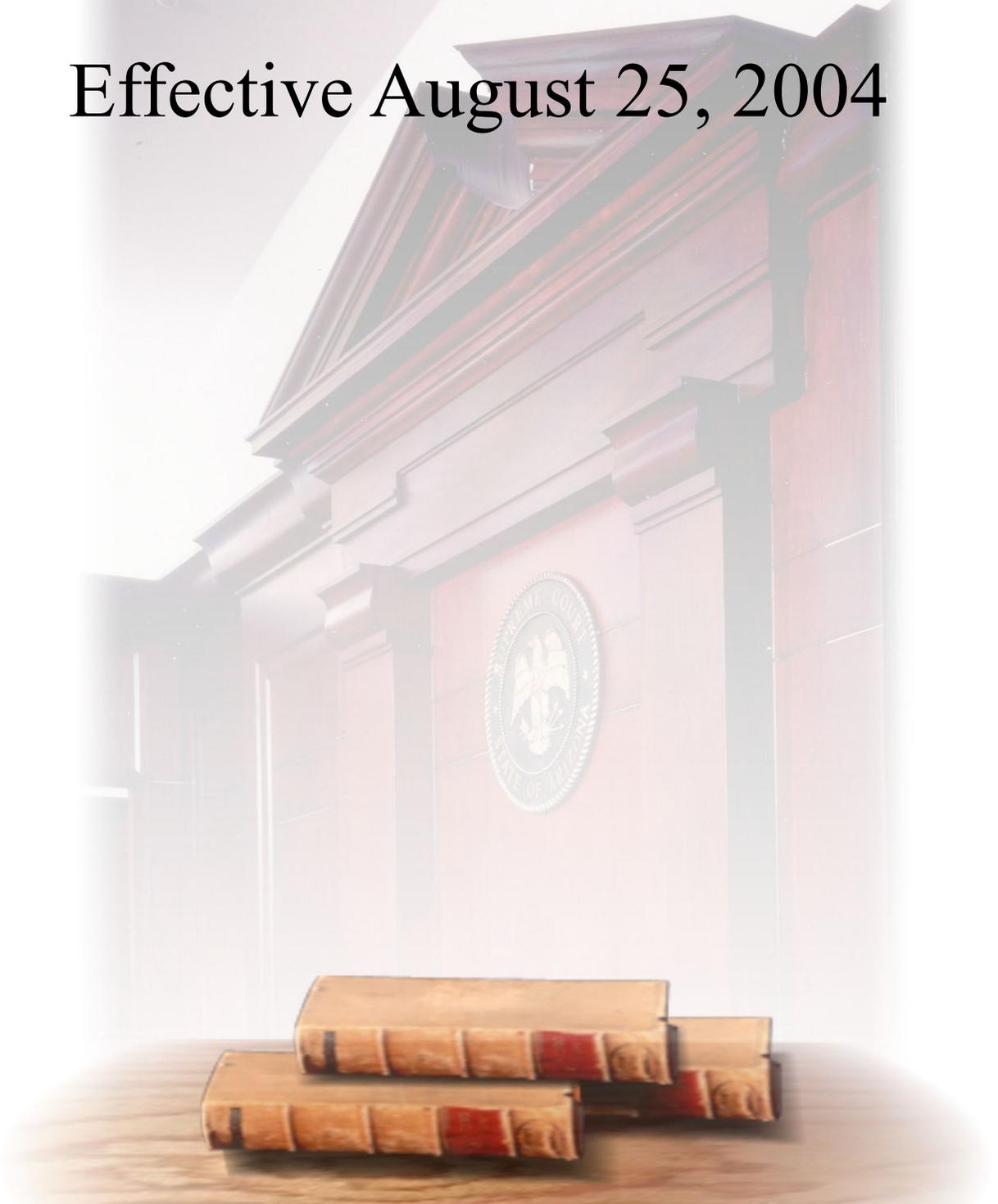


# 2004 CRIMINAL CODE SENTENCING PROVISIONS

Effective August 25, 2004



**Before imposing a sentence above the presumptive sentence based upon aggravating factors other than criminal history as stated in this document, judges are alerted to consider the U.S. constitutional requirements concerning the right to trial by jury stated in Blakely v. Washington, a U.S. Supreme Court case decided June 24, 2004, and in subsequent cases interpreting Blakely.**

# Misdemeanors, Felonies, Fines, Financial Assessments, Length of Probation Ranges & Juvenile Offenders

## MISDEMEANOR PENALTIES

§13-707, §13-802, §13-803

	Jail	Fines Before Surcharges	
<b>Class 1</b>	Up to 6 months	Up to \$2,500 (persons)	Up to \$20,000 (enterprises)*
<b>Class 2</b>	Up to 4 months	Up to \$750 (persons)	Up to \$10,000 (enterprises)*
<b>Class 3</b>	Up to 30 days	Up to \$500 (persons)	Up to \$2,000 (enterprises)*
<b>Petty Offense</b>		Up to \$300 (persons)	Up to \$1,000 (enterprises) *

\*Except for misdemeanor offenses prosecuted in a justice or municipal court, the presumptive fine imposed on an enterprise must be the median of the allowable range for the violation involved. With specified exceptions, the amount of the fine must be reduced by 25% if the enterprise had an effective program to prevent and detect violations of law when the offense was committed. Whether or not there is a program, five times the maximum allowable fine may be charged under circumstances prescribed in A.R.S. §13-822.01.

## FINES FOR FELONIES — BEFORE SURCHARGES

§13-801, §13-803

Up to \$150,000 per charge (persons); Up to \$1,000, 000 per charge (enterprises)\*

\*see notation above

## SURCHARGES AND PENALTY ASSESSMENTS

Amount added to all fines, penalties and forfeitures	§12-114.01 (Probation)	§12-116.01(A) (CJEF)	§12-116.01(B) (Fill the Gap)	§12-116.01(C) (DNA)	§12-116.02 (MSEF)	§16-954 (Clean Elections)
	*** \$5	47%	** 7%	*** 3%	13%	* 10%

\* Applicable to all violations committed on or after February 17, 1999

\*\* Applicable to all violations committed on or after September 1, 1999

\*\*\* Applicable to violations committed on or after August 22, 2002

Additional Penalty Assessments (Not subject to any surcharge)	\$250	\$500*	\$1,000*	\$1,250*	\$1,500*
DUI Abatement Fund (currently applicable)	§28-1382 (extreme DUI)	§28-1381 (I) (1st DUI)	§28-1382 (D) (1st extreme DUI)	§28-1381 (K) (2nd DUI)	§5-396 (I) (agg OUI)
§28-1383 (agg DUI)	§28-1383 (agg DUI)	§5-395.01 (L) (OUI)	§5-397 (D) (1st extreme OUI)	§5-397 (F) (2nd extreme OUI)	§28-1383 (J) (agg DUI)
		§5-395.03 (C)**		§28-1382 (F) (2nd extreme DUI)	§28-8288 (A) (3rd aircraft OUI)
		§§28-8284 (D) and 28-8286 (aircraft OUI)		§28-8287 (A) (2nd aircraft OUI)	
				§5-395.01 (L) (2nd OUI)	

\*Applicable to all violations committed on or after March 13, 2004

\*\*Applicable to all violations committed on or after August 25, 2004

TOTAL SURCHARGE IS 80% PLUS \$5 Note: The \$5 probation surcharge does not apply to local ordinance parking violations. Effective March 13, 2004, a judge shall not waive any portion of the total assessment, including surcharges, imposed for a conviction of an offense listed in A.R.S. §§5-395—398.01, §§28-1381—1389 or §§28-8271—8292. For all other convictions, after adding the penalty assessments to any fine, the judge may waive all or part of the total assessment (fines plus surcharges), excluding the time payment fee, if it would cause a hardship on the convicted person or convicted person’s immediate family. If a portion of the total assessment is waived, the amount assessed must be divided according to the portion that the fine and surcharges represent of the total amount due. When the total assessment includes a mandatory fine, the judge may waive all or part of the surcharges for that mandatory fine. However, mandatory fines may not be reduced to an amount less than the mandatory minimum and the surcharges must be reduced proportionately; one cannot be waived or reduced without waiving or reducing the others.

TIME PAYMENT FEE: In addition to any other assessment authorized by law, a fee of \$20 shall be assessed on each person who pays a court ordered penalty, fine or sanction on a time payment basis, including parking penalties, restitution and juvenile monetary assessments. A judge may NOT waive or suspend a time payment fee.

**PROBATION RANGES**

**§13-902**

General Crimes: Unless terminated sooner, the term of probation for a class 2 felony is up to 7 years; class 3 felony, up to 5 years; class 4 felony, up to 4 years; class 5 or 6 felony, up to 3 years; class 1 misdemeanor, up to 3 years; class 2 misdemeanor, up to 2 years; and class 3 misdemeanor, up to 1 year. For a conviction of committing or attempting to commit any felony offense pursuant to title 13, chapters 14 (sexual offenses) and 35.1 (sexual exploitation of children), terrorism offense pursuant to A.R.S. §13-2308.01, stalking offense pursuant to A.R.S. §13-2923 or child and vulnerable adult abuse offense pursuant to A.R.S. §13-3623, if probation is available, the term of probation shall be for at least the maximum term of probation allowed for that class felony and may be for a term up to life in the discretion of the court.

DUI: For a conviction of a DUI offense pursuant to A.R.S. §28-1381 or extreme DUI offense pursuant to A.R.S. §28-1382, the term of probation is up to 5 years and for a conviction of an aggravated DUI offense pursuant to A.R.S. § 28-1383, up to 10 years.

**JUVENILE OFFENDERS**

A juvenile convicted in adult court as a chronic felony offender pursuant to A.R.S. §13-501 and placed on probation must be sentenced to a term of incarceration in the county jail. The term of incarceration cannot exceed one year, A.R.S. §13-608.

**Drug Offense Sentencing Ranges**

**Drug Threshold Amounts (§13-3401)**

Drug	Threshold Amount
Amphetamine & Methamphetamine	9 grams (including in liquid suspension)
Cocaine	9 grams (powder form) — 750 milligrams (rock form)
Heroin	1 gram
LSD	1/2 milliliter (liquid form) — 50 dosage units (blotter form)
Marijuana	2 pounds
PCP	4 grams or 50 milliliters

*For any combination consisting solely of the drugs listed above, the threshold is an amount equal to or in excess of the threshold amount as determined by the application of A.R.S. §13-3420.*

*For any drug not listed above, or any combination of drugs not listed above, the threshold is an amount with a value of at least \$1,000.*

DRUG OFFENSES — MULTIPLE OFFENSES Below Statutory Threshold Amounts (§13-3419)						
Class	Second Offense			Subsequent Offenses		
	Min	P	MAX	Min	P	MAX
2	(3)* 4	5	10 (12.5) <sup>†</sup>	(3)* 4	5	10 (12.5) <sup>†</sup>
3	(2)* 2.5	3.5	7 (8.75) <sup>†</sup>	(2)* 2.5	3.5	7 (8.75) <sup>†</sup>
4	(1)* 1.5	2.5	3 (3.75) <sup>†</sup>	(1)* 1.5	2.5	3 (3.75) <sup>†</sup>
5	(.5)* .75	1.5	2 (2.5) <sup>†</sup>	(.5)* .75	1.5	2 (2.5) <sup>†</sup>

DRUG OFFENSES — MULTIPLE OFFENSES Above Statutory Threshold Amounts (§13-3419)						
Class	Second Offense			Subsequent Offenses		
	Min	P	MAX	Min	P	MAX
2	(3)* 4	5	10 (12.5) <sup>†</sup>	4	7	12 (15) <sup>†</sup>
3	(2)* 2.5	3.5	7 (8.75) <sup>†</sup>	2.5	5	9 (11.25) <sup>†</sup>
4	(1)* 1.5	2.5	3 (3.75) <sup>†</sup>	1.5	3	5 (6.25) <sup>†</sup>
5	(.5)* .75	1.5	2 (2.5) <sup>†</sup>	0.75	2.5	4 (5) <sup>†</sup>

 Probation eligible *For non-multiple drug offense sentencing ranges, refer to the general crimes sentencing ranges.*

<sup>†</sup> *Approximate 25% increase: 2 or more substantial aggravating factors, A.R.S. §13-3419 (B).*

\* *Approximate 25% reduction: 2 or more substantial mitigating factors, A.R.S. §13-3419 (C).*

A defendant may earn release credits of one day for every six days served. Commutation is possible. (§41-1604.07)

## Personal Possession & Use of Drugs (§13-901.01)

A person convicted of a first or second offense for the personal possession or use of a controlled substance as defined in A.R.S. §36-2501 must be placed on probation unless the person is also convicted of a violent offense defined in A.R.S. §13-604.04. Incarceration may not be imposed as an initial condition of probation for a first offense. If a person convicted of a first offense is found to be in violation of probation by committing an offense listed in Title 13, Chapter 34 or 34.1 or an act in violation of an order of the court related to drug treatment the person may be incarcerated upon reinstatement on probation. Participation in an appropriate drug treatment or education program is a required condition of probation and each person enrolled in a program shall pay for participation in the program to the extent of the person's financial ability. For a second offense, the court may include additional conditions of probation it deems necessary, including intensified drug treatment, community service, intensive probation, home arrest or any other action within the jurisdiction of the court.

## Domestic Violence Offenses

Pursuant to A.R.S. §13-3601.01, the court must order a person convicted of a misdemeanor domestic violence offense to complete a domestic violence offender treatment program, unless the person previously has completed a program as ordered and the court deems alternative sanctions to be more appropriate. On conviction of a misdemeanor domestic violence offense, if a person within a period of sixty months has previously been convicted of a domestic violence offense (as defined in A.R.S. §13-3601) or is convicted in another jurisdiction of an act that if committed in this state would be a domestic violence offense, the judge may order the person to be placed on supervised probation and the person may be incarcerated as a condition of probation. If the person is incarcerated and is either employed or a student, the court may provide in the sentence that the person may continue the employment or studies for not more than twelve hours a day nor more than five days a week and be allowed out of jail only long enough to complete the actual hours of employment or studies. The person must spend the remaining day, days or parts of days in jail until the sentence is served. Pursuant to A.R.S. §13-3601.02 if a person is guilty of aggravated domestic violence the person must serve not less than four

months in jail. If a person is convicted of aggravated domestic violence and has been convicted of three or more prior domestic violence offenses within 60 months the person must serve at least eight months in jail. For purposes of these sections, previous convictions of domestic violence offenses apply only to convictions for offenses committed on or after January 1, 1999. Pursuant to A.R.S. §13-3601 (L) the maximum sentence otherwise authorized shall be increased by up to two years if a person is convicted of a felony domestic violence offense against a pregnant victim knowing the victim was pregnant.

## General Crimes Sentencing Ranges

NON-DANGEROUS OFFENSES									
Class	First Offense			One Historical Prior			Two Historical Priors		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
2	(3)* 4	5	10 (12.5) <sup>†</sup>	(4.5)* 6	9.25	18.5 (23.25) <sup>†</sup>	(10.5)* 14	15.75	28 (35) <sup>†</sup>
3	(2)* 2.5	3.5	7 (8.75) <sup>†</sup>	(3.5)* 4.5	6.5	13 (16.25) <sup>†</sup>	(7.5)* 10	11.25	20 (25) <sup>†</sup>
4	(1)* 1.5	2.5	3 (3.75) <sup>†</sup>	(2.25)* 3	4.5	6 (7.5) <sup>†</sup>	(6)* 8	10	12 (15) <sup>†</sup>
5	(.5)* .75	1.5	2 (2.5) <sup>†</sup>	(1)* 1.5	2.25	3 (3.75) <sup>†</sup>	(3)* 4	5	6 (7.5) <sup>†</sup>
6	(.33)* .5	1	1.5 (2) <sup>†</sup>	(.75)* 1	1.75	2.25 (2.75) <sup>†</sup>	(2.25)* 3	3.75	4.5 (5.75) <sup>†</sup>



Probation eligible

*Probation eligible, except for single drug offenses involving manufacture or in which the amount exceeds the statutory threshold. Convictions for first offense sexual assault: minimum of 5.25 years, presumptive of 7 years and a maximum of 14 years with no early release unless the sentence is commuted.*

NON-DANGEROUS OFFENSES—MULTIPLE OFFENSES—(§13-702.02)						
Class	Second Offense			Subsequent Offenses		
	MIN	P	MAX	MIN	P	MAX
2	(3)* 4	5	10 (12.5) <sup>†</sup>	(4.5)* 6	9.25	18.5 (23.25) <sup>†</sup>
3	(2)* 2.5	3.5	7 (8.75) <sup>†</sup>	(3.5)* 4.5	6.5	13 (16.25) <sup>†</sup>
4	(1)* 1.5	2.5	3 (3.75) <sup>†</sup>	(2.25)* 3	4.5	6 (7.5) <sup>†</sup>
5	(.5)* .75	1.5	2 (2.5) <sup>†</sup>	(1)* 1.5	2.25	3 (3.75) <sup>†</sup>
6	(.33)* .5	1	1.5 (2) <sup>†</sup>	(.75)* 1	1.75	2.25 (2.75) <sup>†</sup>

DANGEROUS OFFENSES									
Class	First Offense			One Historical Dangerous Prior			Two Historical Dangerous Priors		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
2	7	10.5	21	14	15.75	28	21	28	35
3	5	7.5	15	10	11.25	20	15	20	25
4	4	6	8	8	10	12	12	14	16
5	2	3	4	4	5	6	6	7	8
6	1.5	2.25	3	3	3.75	4.5	4.5	5.25	6

DANGEROUS OFFENSES—MULTIPLE OFFENSES—(§13-702.02)				
Class	Second Dangerous Offense		Subsequent Dangerous Offenses	
	MIN/P	MAX	MIN/P	MAX
2	10.5	21 (26.25) <sup>†</sup>	15.75	28 (35) <sup>†</sup>
3	7.5	15 (18.75) <sup>†</sup>	11.25	20 (25) <sup>†</sup>
4	6	8 (10) <sup>†</sup>	10	12 (15) <sup>†</sup>
5	3	4 (5) <sup>†</sup>	5	6 (7.5) <sup>†</sup>
6	2.25	3 (3.75) <sup>†</sup>	3.75	4.5 (5.75) <sup>†</sup>

\* Approximate 25% reduction: 2 or more substantial mitigating factors. A.R.S. §13-702.01

† Approximate 25% increase: 2 or more substantial aggravating factors. A.R.S. §13-702.01

A defendant may earn release credits of one day for every six days served. Commutation is possible. (§ 41-1604.07)
A person convicted of a violent crime as defined in A.R.S. § 13-604.04 committed while the person is under the influence of marijuana, a dangerous drug or a narcotic drug is not eligible for release or probation until the entire sentence has been served.
The court shall increase by up to two years the maximum sentence for any felony causing physical injury committed against a pregnant victim known by the person to be pregnant. (§ 13-3601 (L))
If committed while the person is on probation for a conviction of a felony offense or parole, work furlough, community supervision or any other release or escape from confinement and the court finds that at least two substantial aggravating circumstances listed in § 13-702 ( C ) apply, the court may increase the maximum sentence by 25%. (§ 13-604.02 A)
A person convicted of any felony offense committed while released on bail or on the defendant's own recognition on a separate felony offense or while the person is escaped from pre-conviction custody for a separate felony offense, shall be sentenced to a term of imprisonment two years longer than would otherwise be imposed for the felony offense. (§ 13-604 R)
A person convicted of committing any felony offense with the intent to promote, further or assist any criminal conduct by a criminal street gang, the presumptive, minimum and maximum shall be increased by three years. (§ 13-604 T)

## Dangerous Crimes Against Children Sentencing Ranges

Category	First			One Predicate Prior			Two Predicate Priors		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
A <sup>1</sup>	13	20	27	23	30	37		LIFE	
B <sup>2</sup>	10	17	24	21	28	35		LIFE	
C <sup>3</sup>	2.5	5	7.5	8	15	22		N/A	
D <sup>4</sup>	5	10	15	5	10	15		N/A	

 Probation eligible

<sup>1</sup>Second degree murder, sexual assault, taking a child for the purpose of prostitution, child prostitution, sexual conduct with a minor or continuous sexual abuse of a child, involving or using minors in drug offenses, or attempted first degree murder. This category addresses offenses involving a victim who is 12, 13, or 14 years of age, A.R.S. §13-604.01 (C).

<sup>2</sup>Aggravated assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, child abuse or kidnapping, A.R.S. §13-604.01 (D).

<sup>3</sup>Sexual abuse, A.R.S. §13-604.01 (E).

<sup>4</sup>Preparatory offenses, A.R.S. §13-604.01 (I).

Categories A and B: Unless commuted not eligible for suspension, probation, pardon or release from confinement on any basis until the complete sentence is served.

Categories C and D: A defendant may earn release credits of one day for every six days served. Commutation is possible.

A prison sentence imposed for a conviction of child molestation or sexual abuse may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed for any other dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed at any time, including child molestation and sexual abuse of the same victim, A.R.S. §13-604.01 (K).

A person who is at least 18 years of age who is convicted of a dangerous crime against children in the first degree involving sexual assault or sexual conduct with a minor, and the victim is 12 years of age or younger, shall be sentenced to life imprisonment and is not eligible for suspension, probation, pardon or release from confinement on any basis until the person has served 35 years. This provision does not apply to masturbatory contact, A.R.S. §13-604.01 (A).

Except as otherwise provided in Section A, a person who is at least 18 years of age, or who is tried as an adult, who is convicted of a dangerous crime against children in the first degree involving second degree murder, sexual assault, sexual conduct with a minor, or attempted first degree murder, and the victim is under 12 years of age, may be sentenced to life imprisonment and is not eligible for suspension, probation, pardon or release from confinement on any basis until the person has served 35 years. If a life sentence is not imposed, the defendant shall be sentenced to a presumptive term of 20 years, A.R.S. §13-604.01 (B).

## First and Second Degree Murder

**1st Degree Murder** Death or imprisonment for life or natural life, as determined in accordance with the procedures provided in A.R.S. § 13-703.01. A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release, or release from confinement on any basis. If the defendant is sentenced to life, the defendant shall not be released on any basis until having served 25 calendar years if the murdered person was 15 or more years of age and 35 calendar years if the murdered person was under 15 years of age, A.R.S. §13-703.

**2nd Degree Murder** Except as provided in A.R.S. §13-604 (S) or A.R.S. §13-604.01, imprisonment for 16 calendar years with a possible increase or decrease of 6 years for aggravating or mitigating circumstances. Except as provided in A.R.S. §13-604 (S) or A.R.S. §13-604.01, a person previously convicted of 2nd degree murder or a class 2 or 3 felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person shall be imprisoned for 20 calendar years with a possible increase or decrease of 5 years for aggravating or mitigating circumstances, A.R.S. §13-710.

## Community Supervision Ranges

Applicable to Offenses Committed on or after August 9, 2001

NON-DANGEROUS OFFENSES									
Class	First Offense			One Historical Prior			Two Historical Priors		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
2	(5m) 6m	8m	1y5m (1y9m)	(7m) 10m	1y3m	2y7m (3y3m)	(1y6m) 2y	2y3m	4y (5y)
3	(3m) 4m	6m	1y (1y3m)	(6m) 7m	11m	1y10m (2y3m)	(1y) 1y5m	1y7m	2y10m (3y6m)
4	(1m) 2m	4m	5m (6m)	(3m) 5m	7m	10m (1y)	(10m) 1y1m	1y5m	1y8m (2y1m)
5	(1m) 1m	2m	3m (4m)	(1m) 2m	3m	5m (6m)	(5m) 6m	8m	10m (1y)
6	(1m) 1m	1m	2m (3m)	(1m) 1m	3m	3m (4m)	(3m) 5m	6m	7m (9m)

NON-DANGEROUS OFFENSES—MULTIPLE OFFENSES (§13-702.02)						
Class	Second Offense			Subsequent Offenses		
	MIN	P	MAX	MIN	P	MAX
2	(5m) 6m	8m	1y5m (1y9m)	(7m) 10m	1y3m	2y7m (3y3m)
3	(3m) 4m	6m	1y (1y3m)	(6m) 7m	11m	1y10m (2y3m)
4	(1m) 2m	4m	5m (6m)	(3m) 5m	7m	10m (1y)
5	(1m) 1m	2m	3m (4m)	(1m) 2m	3m	5m (6m)
6	(1m) 1m	1m	2m (3m)	(1m) 1m	3m	3m (4m)

DANGEROUS OFFENSES									
Class	First Offense			One Historical Dangerous Prior			Two Historical Dangerous Priors		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
2	1y	1y5m	3y	2y	2y3m	4y	3y	4y	5y
3	8m	1y	2y1m	1y5m	1y7m	2y10m	2y1m	2y10m	3y6m
4	6m	10m	1y1m	1y1m	1y5m	1y8m	1y8m	2y	2y3m
5	3m	5m	6m	6m	8m	10m	10m	1y	1y1m
6	2m	3m	5m	5m	6m	7m	7m	9m	10m

DANGEROUS OFFENSES—MULTIPLE OFFENSES—(§13-702.02)				
Class	Second Dangerous Offense		Subsequent Dangerous Offenses	
	MIN/P	MAX	MIN/P	MAX
2	1y5m	3y (3y9m)	2y3m	4y (5y)
3	1y	2y1m (2y8m)	1y7m	2y10m (3y6m)
4	10m	1y1m (1y5m)	1y5m	1y8m (2y1m)
5	5m	6m (8m)	8m	10m (1y)
6	3m	5m (6m)	6m	7m (9m)

For each prison sentence imposed, the court must order a term of community supervision to run consecutive to the prison sentence. The community supervision term is one day for every seven days of the sentence imposed, A.R.S. 13-603 (I). In calculating the term of community supervision, all fractions shall be decreased to the nearest month, except for a class 5 or 6 felony, which shall not be less than one month, A.R.S. §13-603 (J).

To calculate a term of community supervision not represented in the charts above, convert the sentence of imprisonment to days, multiply the result by .143 and reconvert to years and/or months, rounding down to the nearest month.

*\*If the court sentences a person to serve a consecutive term of probation immediately after the person serves a term of imprisonment, the court may waive community supervision and order that the person begin serving the term of probation upon release from confinement. The court must sentence the person to a term of probation equal to or greater than the term of community supervision that would have been imposed. The court may retroactively waive the term of community supervision or that part remaining to be served if the community supervision was imposed prior to 7/21/97, A.R.S. §13-603 (K).*



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 Administrative Office of the Courts  
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 Phoenix, Arizona 85007-3231

Document available at [www.supreme.state.az.us/aoc/crimcode.htm](http://www.supreme.state.az.us/aoc/crimcode.htm)