

2005 CRIMINAL CODE
SENTENCING PROVISIONS

Effective August 12, 2005

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	(3y)* 4y	5y	10y (12.5y)†	(4.5y)* 6y	9.25y	18.5y (23.25y)†	(10.5y)* 14y	15.75y	28y (35y)†
3	(2y)* 2.5y	3.5y	7y (8.75y)†	(3.5y)* 4.5y	6.5y	13y (16.25y)†	(7.5y)* 10y	11.25y	20y (25y)†
4	(1y)* 1.5y	2.5y	3y (3.75y)†	(2.25y)* 3y	4.5y	6y (7.5y)†	(6y)* 8y	10y	12y (15y)†
5	(.5y)* .75y	1.5y	2y (2.5y)†	(1y)* 1.5y	2.25y	3y (3.75y)†	(3y)* 4y	5y	6y (7.5y)†
6	(.33y)* .5y	1y	1.5y (2y)†	(.75y)* 1y	1.75y	2.25y (2.75y)†	(2.25y)* 3y	3.75y	4.5y (5.75y)†

 Probation eligible, except for single drug offenses involving manufacture, or in which the amount exceeds the statutory threshold pursuant to A.R.S. §13-3407 or A.R.S. §13-3408. 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—(A.R.S. §13-702.02)						
Class	Second Offenses			Third and Subsequent Offenses		
	MIN	P	MA	MIN	P	MAX
2	(3y)* 4y	5y	10y (12.5y)†	(4.5y)* 6y	9.25y	18.5y (23.25y)†
3	(2y)* 2.5y	3.5y	7y (8.75y)†	(3.5y)* 4.5y	6.5y	13y (16.25y)†
4	(1y)* 1.5y	2.5y	3y (3.75y)†	(2.25y)* 3y	4.5y	6y (7.5y)†
5	(.5y)* .75y	1.5y	2y (2.5y)†	(1y)* 1.5y	2.25y	3y (3.75y)†
6	(.33y)* .5y	1y	1.5y (2y)†	(.75y)* 1y	1.75y	2.25y (2.75y)†

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

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

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

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

A person convicted of any felony offense committed while released on bail or on the person's own recognizance for 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. (A.R.S. § 13-604 R)

If a person is 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. (A.R.S. § 13-604 T)

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 judge finds that at least two substantial aggravating circumstances listed in A.R.S. §13-702 (C) apply, the judge may increase the maximum sentence by 25%. (A.R.S. §13-604.02 A)

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. (A.R.S. §41-1604.15)

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

FINES FOR FELONIES — BEFORE SURCHARGES

A.R.S §13-801, A.R.S. §13-803

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

SURCHARGES AND PENALTY ASSESSMENTS

Amount added to all fines, penalties and forfeitures	§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)	§12-114.01 (Probation)
	47%	7%	* 3%	13%	10%	* \$5

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

Additional Penalty Assessments Applicable to Driving, Boating, Operating an Aircraft Under the Influence (Not subject to any surcharge)	\$250	\$500	\$1,000	\$1,250	\$1,500
	§28-1382 (D)(3), (F)(3) §28-1383 (J)(2)	§5-395.01 (L)* §5-395.01 (M)** §28-1381 (I)(4)* §28-1381 (I)(5)** §28-8284 (D)(4)* §28-8284 (D)(5)** §28-8286 (6)* §28-8286 (7)**	§5-397 (D)(4)* §5-397 (D)(5)** §28-1382 (D)(6)* §28-1382(D)(7)**	§5-395.01 (L)* §5-395.01 (M)** §5-397 (F)(4)* §5-397 (F)(5)** §28-1381 (K)(5)* §28-1381 (K)(6)** §28-1382 (F)(6)* §28-1382 (F)(7)** §28-8287 (A)(6)* §28-8287 (A)(7)**	§5-396 (I)* §5-396 (J)** §28-1383 (J)(4)* §28-1383 (J)(5)** §28-8288 (A)(5)* §28-8288 (A)(6)**

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

**Applicable to all violations committed on or after August 12, 2005

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), 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.

MISDEMEANOR PENALTIES

A.R.S. §13-707, A.R.S. §13-802, A.R.S. §13-803

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

A.R.S. § 13-604 (E) provides that a person convicted of the same misdemeanor or petty offense within two years of the date of the present offense shall be sentenced for the next higher class of offense for which the person currently stands convicted. 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.

PROBATION RANGES – A.R.S. §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 A.R.S. §13-2308.01 (terrorism), A.R.S. §13-2923 (stalking) or A.R.S. §13-3623 (child and vulnerable adult abuse), if probation is available, the term shall be the maximum allowed for that class felony and, at the discretion of the court, may be for life.

Sexual Offenses: For a conviction of committing or attempting to commit any felony offense pursuant to A.R.S. Title 13, Chapter 14 (sexual offenses), Chapter 35.1 (sexual exploitation of children) and a conviction of §13-3824(A), Failure to register as a sex offender, if the underlying offense was a felony and probation is available, the term shall be the maximum allowed for that class felony and, at the discretion of the court, may be for life.

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.

DRUG OFFENSE SENTENCING RANGES

Drug Threshold Amounts (A.R.S. §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 (A.R.S. §13-3419)

Class	Second Offense			Third and Subsequent Offenses		
2	Min (3y)* 4y	P 5y	MAX 10y (12.5y)†	Min (3y)* 4y	P 5y	MAX 10y (12.5y)†
3	(2y)* 2.5y	3.5y	7y (8.75y)†	(2y)* 2.5y	3.5y	7y (8.75y)†
4	(1y)* 1.5y	2.5y	3y (3.75y)†	(1y)* 1.5y	2.5y	3y (3.75y)†
5	(.5y)* .75y	1.5y	2y (2.5y)†	(.5y)* .75y	1.5y	2y (2.5y)†

 Probation eligible.

DRUG OFFENSES — MULTIPLE OFFENSES

Above Statutory Threshold Amounts (A.R.S. §13-3419)

Class	Second Offense			Third and Subsequent Offenses		
2	Min (3y)* 4y	P 5y	Max 10y (12.5y)†	Min 4y	P 7y	Max 12y (15y)†
3	2y (2.5y)†	3.5y	7y (8.75y)†	2.5y	5y	9y (11.25y)†
4	(1y)* 1.5y	2.5y	3y (3.75y)†	1.5y	3y	5y (6.25y)†
5	(.5y)* .75y	1.5y	2y (2.5y)†	0.75y	2.5y	4y (5y)†

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

† Approximate 25% increase: A.R.S. §13-3419 (B).

* Approximate 25% reduction: A.R.S. §13-3419 (C).

Offer to sell, possession for sale, possession of equipment or chemicals for the purposes of manufacturing, manufacture, transport for sale, import, offer to transport for sale or import for sale, sale, transfer, or offer to sell or transfer any amount of methamphetamine carries its own sentencing provisions, A.R.S. §13-712.

For the first offense the presumptive sentence is 10 years, the minimum 5 years and the maximum 15 years. For a second or subsequent offense the presumptive sentence is 15 years, the minimum is 10 years and the maximum is 20 years. The person is not eligible for probation.

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 of 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.

FIRST AND SECOND DEGREE MURDER

1st Degree Murder Sentence of death or imprisonment for life or natural life, as determined in accordance with the procedures provided in A.R.S. §13-703.01. A person who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release, or release from confinement on any basis. If the person is sentenced to life, the person 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 up to 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 up to 5 years for aggravating or mitigating circumstances, A.R.S. §13-710.

DANGEROUS CRIMES AGAINST CHILDREN SENTENCING RANGES

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

 Probation eligible

¹Second 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, manufacturing methamphetamine under circumstances that cause physical injury to a minor, sex trafficking that is committed against a person who is under the age of 15, 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).

²Aggravated 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).

³Sexual abuse, A.R.S. §13-604.01 (E).

⁴Preparatory offenses, Luring a Minor for Sexual Exploitation, 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 person 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 A.R.S. §13-604.01(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).

DOMESTIC VIOLENCE OFFENSES

Pursuant to A.R.S. §13-3601.01, the judge 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 judge 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 judge 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.

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.



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Document available at www.supreme.state.az.us/aoc/crimcode.htm