2012-2013 CRIMINAL CODE SENTENCING PROVISIONS

EFFECTIVE August 2, 2012

GENERAL CRIMES SENTENCING RANGES

NON-DANGEROUS OFFENSES—§ 13-702					
Class	First Offense—§ 13-702(D)				
	MIT*	MIN	P	MAX	AGG*
2	3	4	5	10	12.5
3	2	2.5	3.5	7	8.75
4	1	1.5	2.5	3	3.75
5	.5	.75	1.5	2	2.5
6	.33	.5	1	1.5	2

Probation eligible, except for drug offenses in which the amount exceeds the statutory threshold pursuant to § 13-3405(C), § 13-3407(D), (E), (F) & (G), or § 13-3408 (D) & (E)

NON DANGEROUS OFFENSES—REPETITIVE OFFENSES—§ 13-703															
Class	Category One—(§ 13-703(H))					Category Two—(§ 13-703(I))					Category Three—(§ 13-703(J))				
	MIT*	MIN	P	MAX	AGG*	MIT*	MIN	P	MAX	AGG*	MIT*	MIN	P	MAX	AGG
2	3	4	5	10	12.5	4.5	6	9.25	18.5	23	10.5	14	15.75	28	35
3	2	2.5	3.5	7	8.75	3.3	4.5	6.5	13	16.25	7.5	10	11.25	20	25
4	1	1.5	2.5	3	3.75	2.25	3	4.5	6	7.5	6	8	10	12	15
5	.5	.75	1.5	2	2.5	1	1.5	2.25	3	3.75	3	4	5	6	7.5
6	.33	.5	1	1.5	2	.75	1	1.75	2.25	2.75	2.25	3	3.75	4.5	5.75

DANGEROUS OFFENSES—§ 13-704									
Class	First Offense § 13-704(A)			One Historical Prior § 13-704(B),(D)			Two Historical Priors § 13-704(C),(E)		
	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—REPETITIVE OFFENSES—§ 13-704(F)						
Class	Second Dangerous Offense			Third and Subsequent Dangerous Offenses		
	MIN	MAX	INCREASED MAX	MIN	MAX	INCREASED MAX
2	10.5	21	26.25	15.75	28	35
3	7.5	15	18.75	11.25	20	25
4	6	8	10	10	12	15
5	3	4	5	5	6	7.5
6	2.25	3	3.75	3.75	4.5	5.6

**Two or more mitigating or aggravating factors, as applicable. A.R.S. § 13-702*

DANGEROUS CRIMES AGAINST CHILDREN SENTENCING RANGES—§ 13-705

Subsection	First Offense			One Predicate Prior			Two Predicate Priors		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
A		LIFE			LIFE			LIFE	
B	LIFE/13	LIFE/20	LIFE/27	LIFE/13	LIFE/20	LIFE/27	LIFE/13	LIFE/20	LIFE/27
C	13	20	27	23	30	37		LIFE	
D	10	17	24	21	28	35		LIFE	
E	5	10	15	8	15	22		N/A	
F	2.5	5	7.5	8	15	22		N/A	

Probation eligible

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. § 13-705(M).

SERIOUS, VIOLENT OR AGGRAVATED OFFENSES—§ 13-706

A person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a serious offense except a drug offense, first degree murder or any dangerous crimes against children as defined in § 13-705, whether a completed or preparatory offense, and who has previously been convicted of two or more serious offenses not committed on the same occasion shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, except as specifically authorized by § 31-233(A) or (B), until the person has served at least twenty-five years or the sentence is commuted.

Unless a longer term of imprisonment or death is the prescribed penalty and notwithstanding any provision that establishes a shorter term of imprisonment, a person who has been convicted of committing or attempting or conspiring to commit any violent or aggravated felony and who has previously been convicted on separate occasions of two or more violent or aggravated felonies not committed on the same occasion shall be sentenced to imprisonment for life and is not eligible for suspension of sentence, probation, pardon or release on any basis except that the person may be eligible for commutation after the person has served at least thirty-five years.

"Serious offense" means any of the following offenses if committed in this state or any offense committed outside this state which if committed in this state would constitute one of the following offenses: (a) First degree murder, (b) Second degree murder, (c) Manslaughter, (d) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, (e) Sexual assault, (f) Any dangerous crime against children, (g) Arson of an occupied structure, (h) Armed robbery, (i) Burglary in the first degree, (j) Kidnapping, (k) Sexual conduct with a minor under fifteen years of age, (i) Child Prostitution.

"Violent or aggravated felony" means any of the following offenses: (a) First degree murder, (b) Second degree murder, (c) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, (d) Dangerous or deadly assault by prisoner, (e) Committing assault with intent to incite to riot or participate in riot, (f) Drive by shooting, (g) Discharging a firearm at a residential structure if the structure is occupied, (h) Kidnapping, (i) Sexual conduct with a minor that is a class 2 felony, (j) Sexual assault, (k) Molestation of a child, (l) Continuous sexual abuse of a child, (m) Violent sexual assault, (n) Burglary in the first degree committed in a residential structure if the structure is occupied, (o) Arson of an occupied structure, (p) Arson of an occupied jail or prison facility,(q) Armed robbery, (r) Participating in or assisting a criminal syndicate or leading or participating in a criminal street gang, (s) Terrorism, (t) Taking a child for the purpose of prostitution, (u) Child prostitution, (v) Commercial sexual exploitation of a minor, (w) Sexual exploitation of a minor, (x) Unlawful introduction of disease or parasite as prescribed by § 13-2912(A),(2) or (3).

OFFENSES COMMITTED WHILE RELEASED FROM CONFINEMENT—§ 13-708

A person who is convicted of any felony involving a dangerous offense that is committed while the person is on probation for a conviction of a felony or parole, work furlough, community supervision or any other release or has escaped from confinement for conviction of a felony shall be sentenced pursuant to § 13-708(A).

A person who is convicted of a dangerous offense that is committed while the person is on release or has escaped from confinement for a conviction of a serious offense, an offense resulting in serious physical injury or an offense involving the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced pursuant to § 13-708(B).

A person who is convicted of any felony that is not included in § 13-708(A) or (B) and that is committed while the person is on probation for a conviction of a felony or parole, work furlough, community supervision or any other release or has escaped from confinement for a conviction of a felony shall be sentenced pursuant to § 13-708(C).

A person who is convicted of any felony that is committed while the person is released on bond or on the person's own recognizance on a separate felony or while the person is escaped from pre-conviction custody for a separate felony shall be sentenced pursuant to § 13-708(D).

SEXUAL ASSAULT—§ 13-1406

A person convicted of sexual assault is sentenced pursuant to A.R.S. § 13-1406. A person is not eligible for early release except pursuant to A.R.S. § 31-233 (A) or (B) or unless the sentence is commuted. The sentence shall be consecutive to any other sexual assault sentence imposed on the person at any time.

FINES FOR FELONIES—§ 13-801, § 13-803

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

PENALTIES FOR MISDEMEANORS—§ 13-707, § 13-802

Class	Jail-Maximum	Fines Before Surcharges	
1	6 months	Up to $2,500 (persons)	Up to $20,000 (enterprises)
2	4 months	Up to $750 (persons)	Up to $10,000 (enterprises)
3	30 days	Up to $500 (persons)	Up to $2,000 (enterprises)
Petty Offense	No jail	Up to $300 (persons)	Up to $1,000 (enterprises)

A.R.S. § 13-707(B) 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 § 13-823.

OTHER SENTENCING PROVISIONS

If a person is sentenced to a term of imprisonment, the court at the time of sentencing shall impose on the convicted person a term of community supervision equal to one day for every seven days of the sentence or sentences imposed. A.R.S. § 13-603(I).

A person may earn release credits of one day for every six days served, unless prohibited by statute. Commutation is possible, unless otherwise provided by law. A.R.S. § 41-1604.07.

A person convicted of a violent crime as defined in A.R.S. § 13-901.03 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.

JUVENILE OFFENDERS—§ 13-501, 13-504

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

On the motion of a juvenile or on the court's own motion, if a juvenile is being prosecuted in the same manner as an adult pursuant to section §13-501 (B), the court, shall hold a hearing to determine if jurisdiction of the criminal prosecution should be transferred to the juvenile court. A.R.S. § 13-504.

PROBATION RANGES—§ 13-902

General Crimes: Unless terminated sooner, the term of probation for a class 2 felony is up to seven years; class 3 felony, up to five years; class 4 felony, up to four years; class 5 or 6 felony, up to three years; class 1 misdemeanor, up to three years; class 2 misdemeanor, up to two years; and class 3 misdemeanor, up to one year. Persons with outstanding restitution payments are subject to an extension in their probationary period of up to five years for a felony and up to two years for a misdemeanor. If a person is released pursuant to § 31-233(B) and community supervision is waived pursuant to § 13-603(K), the court shall extend the period of probation by the amount of time the director of the state department of corrections approves the inmate's temporary release.

DUI: For a conviction of a DUI offense pursuant to § 28-1381 or extreme DUI offense pursuant to § 28-1382, the term of probation is up to five years and for a conviction of an aggravated DUI offense pursuant to § 28-1383, up to ten years. A.R.S. § 13-902(B).

Lifetime Probation: For a conviction of committing or attempting to commit any felony offense pursuant to Title 13, Chapter 14 or Chapter 35.1, or § 13-2308.01, § 13-2923, § 13-3623 or § 13-3824(A), 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. A.R.S. § 13-902(E), (F).

PROBATION: EARNED TIME CREDIT—§ 13-924

The court may adjust the period of a probationer's supervised probation on the recommendation of an adult probation officer for earned time credit of twenty days for every thirty days that a probationer complies with all statutory requirements. This provision does not apply to a probationer who is on lifetime probation, probation for any class 2 or 3 felony, on probation exclusively for a misdemeanor offense or a person required to register pursuant to § 13-3821.

DRUG OFFENSE SENTENCING RANGES

Drug Threshold Amounts—§ 13-3401(36)

Drug	Threshold Amount
Amphetamine & Methamphetamine	9 grams (including in liquid suspension)
Cocaine	9 grams (powder form) — 750 milligrams (rock form)
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.

Unless otherwise provided by statute, penalty provisions for a specific drug offense are found in the statute in Title 13, Chapter 34 defining that offense. Note: Probation is required for persons convicted of possession or use of a controlled substance or drug paraphernalia. A.R.S. §13-901.01.

DRUG OFFENSES—MULTIPLE OFFENSES § 13-3419 Below Statutory Threshold Amounts—§ 13-3419(A)(1),(2)										
Class		Second Offense					Third and Subsequent Offenses			
2	MIT	MIN	P	MAX	AGG	MIT	MIN	P	MAX	AGG
	3	4	5	10	12.5	3	4	5	10	12.5
3	1.8	2.5	3.5	7	8.7	1.8	2.5	3.5	7	8.7
4	1.1	1.5	2.5	3	3.7	1.1	1.5	2.5	3	3.7
5	.5	.75	1.5	2	2.5	.5	.75	1.5	2	2.5

Probation eligible.

DRUG OFFENSES—MULTIPLE OFFENSE—S§ 13-3419) Equals or Exceeds Statutory Threshold Amounts—§ 13-3419(A)(3),(4)									
Class		Second Offense				Third and Subsequent Offenses			
2	MIT	Min	P	Max	AGG	Min	P	Max	AGG
	3	4	5	10	12.5	4	7	12	15
3	1.8	2.5	3.5	7	8.7	2.5	5	9	11.2
4	1.1.	1.5	2.5	3	3.7	1.5	3	5	6.2
5	.5	.75	1.5	2	2.5	0.75	2.5	4	5

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

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 § 36-2501 must be placed on probation unless the person is also convicted of a violent offense defined in § 13-901.03. 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. A person convicted of a second offense may be incarcerated as a term of probation.

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 § 13-752. Note, life is only available if the offense is committed by a person under eighteen years of age or the person is convicted of felony murder. 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. § 13-751.
2nd Degree Murder	Except as provided in § 13-706(A) or § 13-705, imprisonment for 16 calendar years with a possible increase to 25 years or decrease to 10 years for aggravating or mitigating circumstances. Except as provided in § 13-704(A) or § 13-705, a person previously convicted of second degree murder or a class 2 or 3 felony involving a dangerous offense shall be imprisoned for 20 calendar years with a possible increase to 29 years or decrease to 15 years for aggravating or mitigating circumstances. A.R.S. § 13-710.

DOMESTIC VIOLENCE OFFENSES—§ 13-3601

Pursuant to § 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 60 months has previously been convicted of a domestic violence offense, as defined in § 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 12 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 § 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 84 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 § 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.

SURCHARGES

Amount added to all fines, penalties and forfeitures	§ **12-116.01 (Surcharges)**	§ **12-116.02 (Additional Surcharges)**	§ **16-954 (Clean Elections)**
	60%*	13%	10%

Surcharges are applied to the base fine, civil penalty or forfeiture and not to other surcharges.

**Applicable to violations committed on or after January 1, 2012. 61%is applicable to violations committed from September 19, 2007 – December 31, 2011, 57% is applicable to violations committed from August 22, 2002 to September 18, 2007*.

PENALTY ASSESSMENTS

§ **12-114.01 (Probation)** *	§ **12-116.04 (Moving violations; assessment)** **	§ **12-116.05 (Protected address)** ***	§ **12-116.06 (Family offenses)** ****	§ **13-116.07 (DCAC & Sexual Assault)** *****	**§13-3423 (Drug Offenses)** ******

***$5 surcharge applicable to violations committed on or after August 22, 2002. $10 surcharge applicable to violations committed **statewide** on or after September 21, 2006. $20 surcharge applicable to violations committed **in Maricopa County** on or after July 1, 2008 and applicable **statewide** for violations committed on or after November 24, 2009. The probation surcharge does not apply to local ordinance parking violations.*

***$13 assessment applicable to each conviction or finding of responsibility to which the surcharge is applicable. Note that the assessment is broader than the title indicates. Effective July 20, 2011.*

****$50 assessment applicable to a conviction for an offense in Title 13, Chapter 14 or 35.1, § 13-2923 or a Domestic Violence offense pursuant to section § 13-3601. Effective January 1, 2012.*

*****$50 assessment applicable to a conviction for a violation of § 13-2921, 13-2921.01, 13-2923 or an offense listed in Title 13, Chapter 36. Effective July 20, 2011.*

******$500 assessment applicable to each conviction or finding of delinquency for a Dangerous Crime Against Children or Sexual Assault. This assessment shall not be waived. Effective January 1, 2012. (Formerly §13-824)*

*******$15 assessment applicable to each conviction for a violation of Title 13, Chapter 34. Effective August 2, 2012*

	$250	$500	$1,000	$1,250	$1,500
Additional Penalty Assessments Applicable to Driving, Boating, Operating an Aircraft Under the Influence (Not subject to any surcharge)	§ 28-1382 (D)(3), (E)(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 83%

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.

MONTHLY PROBATION FEE: When granting probation to an adult the court, as a condition of probation, shall assess a monthly fee of not less than $65 ($50 for offenses committed prior to May 2, 2009) unless, after determining the inability of the probationer to pay the fee, the court assesses a lesser fee. For intensive probation the fee is $75 ($50 for offenses committed prior to November 24, 2009). In justice and municipal courts the fee shall only be assessed when the person is placed on supervised probation. A.R.S. §13-901.

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. A.R.S. §12-116.

Arizona Supreme Court

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DOCUMENT AVAILABLE AT
www.azcourts.gov/PublicServices/CriminalLaw/CriminalCodeSentencingChart.aspx

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