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JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 29

HOUSE BILL 2226

AN ACT

AMENDING SECTIONS 13-912, 13-2102, 13-3506.01, 13-4062, 28-1559, 28-3304, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; AMENDING SECTION 28-3315, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 65, SECTION 4; RELATING TO THE CRIMINAL CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-912, Arizona Revised Statutes, is amended to read:

13-912. Restoration of civil rights for first offenders; exception

A. Any person who has not previously been convicted of any other felony shall automatically be restored any civil rights that were lost or suspended by the conviction if the person both:

1. Completes a term of probation or receives an absolute discharge from imprisonment.

2. Pays any fine or restitution imposed.

B. This section does not apply to a person's right to possess weapons as defined in section 13-3101 unless the person applies to a court pursuant to ~~the procedures of~~ section 13-905 OR 13-906.

Sec. 2. Section 13-2102, Arizona Revised Statutes, is amended to read:

13-2102. Theft of a credit card or obtaining a credit card by fraudulent means; classification

A. A person commits theft of a credit card or obtaining a credit card by fraudulent means if the person:

1. Controls a credit card without the cardholder's or issuer's consent through conduct ~~defined~~ PRESCRIBED in ~~sections~~ SECTION 13-1802 ~~and~~ OR 13-1804; or

2. Sells, transfers or conveys a credit card with the intent to defraud; or

3. With intent to defraud, obtains possession, care, custody or control over a credit card as security for debt.

B. Theft of a credit card or obtaining a credit card by fraudulent means is a class 5 felony.

Sec. 3. Section 13-3506.01, Arizona Revised Statutes, is amended to read:

13-3506.01. Furnishing harmful items to minors; internet activity; classification; definitions

A. It is unlawful for any person, with knowledge of the character of the item involved, to intentionally or knowingly transmit or send to a minor by means of electronic mail, personal messaging or any other direct internet communication an item that is harmful to minors when the person knows or believes at the time of the transmission that a minor in this state will receive the item.

B. This section does not apply to:

1. Posting material on an internet web site, bulletin board or newsgroup.

2. Sending material via a mailing list or listserv that is not administered by the sender. ~~A~~ FOR THE PURPOSES OF THIS PARAGRAPH, "mailing list" or "listserv" ~~is~~ MEANS a method of internet communication where a

message is sent to an internet address and then is retransmitted to one or more subscribers to the mailing list or listserv.

C. It is not a defense to a prosecution for a violation of this section that the recipient of the transmission was a peace officer posing as a minor.

D. A violation of this section is a class 4 felony.

E. THE failure to report a violation of this section is a class 6 felony as prescribed by section 13-3620.

F. ~~The term~~ FOR THE PURPOSES OF THIS SECTION:

1. "Internet" means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the transmission control protocol or internet protocol or any successor protocol to transmit information.

~~G.~~ 2. ~~The term~~ "Internet web site" means a location where material placed in a computer server-based file archive is publicly accessible, over the internet, using hypertext transfer protocol or any successor protocol.

Sec. 4. Section 13-4062, Arizona Revised Statutes, is amended to read:

13-4062. Anti-marital fact privilege; other privileged communications

A person shall not be examined as a witness in the following cases:

1. A husband for or against his wife without her consent, nor a wife for or against her husband without his consent, as to events occurring during the marriage, nor can either, during the marriage or afterwards, without consent of the other, be examined as to any communication made by one to the other during the marriage. These exceptions do not apply in a criminal action or proceeding for a crime committed by the husband against the wife, or by the wife against the husband, nor in a criminal action or proceeding against the husband for abandonment, failure to support or provide for or failure or neglect to furnish the necessities of life to the wife or the minor children. Either spouse, at his or her request, but not otherwise, may be examined as a witness for or against the other in a prosecution for an offense listed in section 13-604, subsection V, paragraph ~~3~~ 4, for bigamy or adultery, committed by either spouse, or for sexual assault committed by the husband.

2. An attorney, without consent of the attorney's client, as to any communication made by the client to the attorney, or the attorney's advice given in the course of professional employment.

3. A clergyman or priest, without consent of the person making the confession, as to any confession made to the clergyman or priest in his professional character in the course of discipline enjoined by the church to which the clergyman or priest belongs.

4. A physician or surgeon, without consent of the physician's or surgeon's patient, as to any information acquired in attending the patient

which was necessary to enable the physician or surgeon to prescribe or act for the patient.

Sec. 5. Section 28-1559, Arizona Revised Statutes, is amended to read:

28-1559. Traffic case records; abstract of record; reports

A. Each magistrate, judge or hearing officer of a court shall:

1. Keep or cause to be kept a record of each traffic complaint or other legal form of traffic charge deposited with or presented to the court or its traffic violations bureau.

2. Keep a record of each official action by the court or its traffic violations bureau in reference to each traffic complaint or other legal form of traffic charge deposited with or presented to the court or its traffic violations bureau, including but not limited to a record of:

(a) Each conviction, forfeiture of bail or deposit, judgment of acquittal or civil adjudication.

(b) The amount of the civil penalty, fine or forfeiture resulting from each traffic complaint deposited with or presented to the court or traffic violations bureau.

B. Within ten days after the conviction, judgment or forfeiture of bail or deposit of a person on a charge of violating chapter 3 or 4 of this title or this chapter or any other law regulating the operation of vehicles on highways, each magistrate of the court or clerk of the court of record in which the conviction or judgment was had or bail or deposit was forfeited shall prepare and immediately forward to the department an abstract of the record of the court covering the case in which the person either:

1. Was convicted.

2. Was adjudicated to have committed a civil traffic violation.

3. Forfeited bail or deposit.

C. The person required to prepare the abstract shall certify that it is true and correct.

D. A report is not required for a conviction or civil adjudication involving the illegal parking or standing of a vehicle.

E. The abstract shall be made on a form furnished or in a manner prescribed by the department and shall include:

1. The name and address of the party charged.

2. The number, if any, of the driver license of the party charged.

3. The registration number of the vehicle involved.

4. The nature of the offense or civil traffic violation.

5. The date of the hearing, the plea, the judgment or whether bail or deposit was forfeited.

6. The amount of the fine, civil penalty or forfeiture.

F. Each court of record shall also forward a like report to the department on the conviction of a person of homicide or aggravated assault resulting from the operation of a motor vehicle or any other felony in the commission of which a motor vehicle was used. To facilitate the preparation of the report, the sentencing minute entry that is issued by the court shall

indicate if the person was convicted of an offense that required the mandatory revocation of a driver license pursuant to section 28-3304, subsection A, paragraph 1, ~~or~~ 3, 4, 5 OR 6.

G. The department shall keep all abstracts received under this section for inspection as required by law.

H. Each judge, referee, hearing officer, probation officer or other person responsible for the disposition of cases involving traffic offenses or civil violations committed by persons under eighteen years of age shall:

1. Keep a full record of each case in which the person is charged with a violation of chapter 3 or 4 of this title or this chapter or any other law regulating the operation of vehicles on highways.

2. Report the offense or civil violation to the department at its office in Phoenix not more than thirty days after the date on which it was committed, except that a report is not required for parking violations or if it is found that the offense or civil violation was not committed.

I. The report required by subsection H of this section shall:

1. Be made on a form furnished or in a manner prescribed by the department.

2. Contain:

(a) All necessary information as to the identity of the offender.

(b) The citing or arresting agency.

(c) The date and nature of the offense or civil violation.

(d) The date of the hearing, the plea, the judgment or whether bail or deposit was forfeited.

(e) The amount of the fine, civil penalty or forfeiture.

J. Failure, refusal or neglect of a judicial officer to comply with this section is misconduct in office and grounds for removal from office.

Sec. 6. Section 28-3304, Arizona Revised Statutes, is amended to read:

28-3304. <u>Mandatory revocation of license; definition</u>

A. In addition to the grounds for mandatory revocation provided for in chapters 3, 4 and 5 of this title, the department shall immediately revoke the license of a driver on receipt of a record of the driver's conviction of any of the following offenses if the conviction is final:

1. A homicide or aggravated assault resulting from the operation of a motor vehicle.

2. Driving a motor vehicle while under the influence of a drug as defined in section 13-3401 or in violation of section 28-1381, subsection A, paragraph 3.

3. A felony in the commission of which a motor vehicle is used. ~~, including~~

4. Theft of a motor vehicle pursuant to section 13-1802. ~~,~~

5. Unlawful use of means of transportation pursuant to section 13-1803. ~~or~~

6. Theft of means of transportation pursuant to section 13-1814.

~~4.~~ 7. Drive by shooting pursuant to section 13-1209.

~~5.~~ 8. Failure to stop and render aid as required under the laws of this state if a motor vehicle accident results in the death or personal injury of another.

~~6.~~ 9. Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of a motor vehicle.

~~7.~~ 10. Conviction or forfeiture of bail not vacated on a second or subsequent charge of the following offenses that are committed within sixty months:

(a) Reckless driving.

(b) Racing on highways.

(c) Any combination of a violation of section 28-1381 or 28-1382 and reckless driving, of a violation of section 28-1381 or 28-1382 and racing on highways, or of reckless driving and racing on highways, if they do not arise out of the same event.

~~8.~~ 11. Conviction or forfeiture of bail not vacated on a second charge of violating section 28-1381 or 28-1382 within sixty months.

~~9.~~ 12. Conviction or forfeiture of bail not vacated on a third or subsequent charge of violating section 28-1381 or 28-1382 within sixty months.

~~10.~~ 13. Conviction or forfeiture of bail not vacated on a charge of violating section 28-1381 or 28-1382 and the driver has been convicted within a period of sixty months of an offense in another jurisdiction that if committed in this state would be a violation of section 28-1381 or 28-1382.

B. In determining the starting date for the sixty month period prescribed in subsection A, paragraphs ~~7~~ 10 through ~~10~~ 13 of this section, the department shall use the date of the commission of the offense.

C. For the purposes of this section, "conviction" means a final adjudication or judgment, including an order of a juvenile court finding that a juvenile violated any provision of this title or committed a delinquent act that if committed by an adult would constitute a criminal offense.

Sec. 7. Section 28-3315, Arizona Revised Statutes, as amended by Laws 2003, chapter 65, section 4, is amended to read:

28-3315. <u>Period of suspension, revocation or disqualification; unlicensed drivers</u>

A. The department shall not suspend, revoke or disqualify a driver license or privilege to drive a motor vehicle on the public highways for more than one year from the date of a conviction or judgment, if any, against a person for which this chapter makes revocation, suspension or disqualification mandatory or from the date the notice is sent pursuant to section 28-3318 if no conviction was involved, except as permitted under subsection E of this section and sections 28-1383, 28-3312, 28-3319, 28-3320 and 28-3473.

B. A person whose license or privilege to drive a motor vehicle on the public highways has been revoked may apply for a new license as provided by law after the cause of the revocation is removed or after expiration of the revocation period prescribed by law. After the department investigates an applicant's driving record in this state or another state by examining department records or other sufficient evidence to determine that all withdrawal actions are complete, that the applicant has not committed any traffic violations within twelve months preceding application and that all other statutory requirements are satisfied, the department may issue a new license.

C. The department shall not accept an application for reinstatement of a driver license until after the twelve month period prescribed in subsection B of this section has elapsed.

D. If the revocation is related to alcohol or other drugs, the person shall provide the department with a current evaluation from a physician licensed pursuant to title 32, chapter 13, 17 or 29, a psychologist licensed pursuant to title 32, chapter 19.1 or a substance abuse counselor as defined in section 28-3005 indicating that, in the opinion of the physician, psychologist or counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle. For the purposes of reinstating a license or driving privilege pursuant to this article, the department may rely on the opinion of a physician licensed pursuant to title 32, chapter 13, 17 or 29, a psychologist licensed pursuant to title 32, chapter 19.1 or a substance abuse counselor as defined in section 28-3005.

E. Notwithstanding subsections A and B of this section:

1. A person whose license or privilege to drive is revoked pursuant to section 28-1383, subsection J or section 28-3304, subsection A, paragraph 1 or ~~9~~ 12 is not entitled to have the person's license or privilege renewed or restored for three years.

2. A person whose license or privilege to drive is revoked pursuant to section 13-1209 is not entitled to have the person's license or privilege renewed or restored for the period of time ordered by the court.

3. A person whose license, permit or privilege to drive is revoked pursuant to section 28-661, subsection E is not entitled to have the person's license, permit or privilege renewed or restored for five years.

4. A person whose license, permit or privilege to drive is revoked pursuant to section 28-661, subsection F is not entitled to have the person's license, permit or privilege renewed or restored for three years.

F. Except as provided in section 28-3473, if an unlicensed driver commits an offense for which a driver license could be suspended, revoked or disqualified, the department shall not accept the unlicensed driver's application for a driver license for a period equal to the period of time that applies to a driver with a license. If the offense is one for which a driver license could be revoked, the department shall not accept the unlicensed driver's application for a driver license unless it investigates

the character, habits and driving ability of the person and is satisfied that it is safe to grant the privilege of driving a motor vehicle on the public highways.

G. The expiration of a person's license during the period of time it is under suspension, revocation or disqualification does not invalidate or terminate the suspension, revocation or disqualification.

H. A person whose license or privilege to drive a motor vehicle on the public highways has been suspended pursuant to section 28-3306, subsection A, paragraph 5 or section 28-3314 may apply for a new license as provided by law after the cause for suspension is removed or after expiration of the suspension period prescribed by law if both of the following conditions are met:

1. The department is satisfied, after reviewing the medical condition and driving ability of the person, that it is safe to grant the person the privilege of driving a motor vehicle on the public highways.

2. If the person has a medical condition related to alcohol or other drugs, the person provides the department with a current evaluation form from a physician licensed pursuant to title 32, chapter 13, 17 or 29, a psychologist licensed pursuant to title 32, chapter 19.1 or a substance abuse counselor as defined in section 28-3005 indicating that, in the opinion of the physician, psychologist or counselor, the condition does not affect or impair the person's ability to operate a motor vehicle in a safe manner.

Sec. 8. Section 31-412, Arizona Revised Statutes, is amended to read:

31-412. <u>Criteria for release on parole; release; custody of parolee; definition</u>

A. If a prisoner is certified as eligible for parole pursuant to section 41-1604.09 the board of executive clemency shall authorize the release of the applicant upon parole if the applicant has reached the applicant's earliest parole eligibility date pursuant to section 41-1604.09, subsection D and it appears to the board, in its sole discretion, that there is a substantial probability that the applicant will remain at liberty without violating the law and that the release is in the best interests of the state. The applicant shall thereupon be allowed to go upon parole in the legal custody and under the control of the state department of corrections, until the board revokes the parole or grants an absolute discharge from parole or until the prisoner reaches the prisoner's individual earned release credit date pursuant to section 41-1604.10. When the prisoner reaches the prisoner's individual earned release credit date the prisoner's parole shall be terminated and the prisoner shall no longer be under the authority of the board but shall be subject to revocation under section 41-1604.10.

B. Notwithstanding subsection A of this section, the director of the state department of corrections may certify as eligible for parole any prisoner, regardless of the classification of the prisoner, who has reached the prisoner's parole eligibility date pursuant to section 41-1604.09, subsection D, unless an increased term has been imposed pursuant to section

41-1604.09, subsection F, for the sole purpose of parole to the custody of any other jurisdiction to serve a term of imprisonment imposed by the other jurisdiction or to stand trial on criminal charges in the other jurisdiction or for the sole purpose of parole to the custody of the state department of corrections to serve any consecutive term imposed on the prisoner. Upon review of an application for parole pursuant to ~~the provisions of~~ this subsection the board may authorize parole if, in its discretion, parole appears to be in the best interests of the state.

C. A prisoner who is otherwise eligible for parole, who is not on home arrest or work furlough and who is currently serving a sentence for a conviction of a serious offense or conspiracy to commit or attempt to commit a serious offense shall not be granted parole or absolute discharge from imprisonment except by one of the following votes:

1. A majority affirmative vote if four or more members consider the action.

2. A unanimous affirmative vote if three members consider the action.

3. A unanimous affirmative vote if two members consider the action pursuant to section 31-401, subsection I~~, paragraph 2~~ and the chairman concurs after reviewing the information considered by the two members.

D. The board shall as a condition of parole order a prisoner to make any court-ordered restitution.

E. Payment of restitution by the prisoner in accordance with ~~the provisions of~~ subsection D of this section shall be made through the clerk of the superior court in the county in which the prisoner was sentenced for the offense for which the prisoner has been imprisoned in the same manner as restitution is paid as a condition of probation. The clerk of the superior court shall report to the board monthly whether or not restitution has been paid for that month by the prisoner.

F. The board shall not disclose the address of the victim or the victim's immediate family to any party without the written consent of the victim or the victim's family.

G. For the purposes of this section, "serious offense" includes any of the following:

1. A serious offense as defined in section 13-604, subsection V, paragraph ~~3~~ 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

2. A dangerous crime against children as defined in section 13-604.01. The citation of section 13-604.01 is not a necessary element for a serious offense designation.

3. A conviction under a prior criminal code for any offense that possesses reasonably equivalent offense elements as the offense elements that are listed under section 13-604, subsection V, paragraph ~~3~~ 4 and section 13-604.01, subsection L, paragraph 1.

Sec. 9. Section 41-1604.11, Arizona Revised Statutes, is amended to read:

41-1604.11. Order for removal; purposes; duration; work furlough; notice; failure to return; classification; applicability; definition

A. The director of the state department of corrections may authorize the temporary removal under custody from prison or any other institution for the detention of adults under the jurisdiction of the state department of corrections of any inmate for the purpose of employing that inmate in any work directly connected with the administration, management or maintenance of the prison or institution in which the inmate is confined, for purposes of cooperating voluntarily in medical research ~~which~~ THAT cannot be performed at the prison or institution, or for participating in community action activities directed toward delinquency prevention and community betterment programs. The removal shall not be for a period longer than one day.

B. Under specific rules established by the director for the selection of inmates, the director may also authorize furlough, temporary removal or temporary release of any inmate for compassionate leave, for the purpose of furnishing to the inmate medical treatment not available at the prison or institution, for purposes preparatory to a return to the community within ninety days of the inmate's release date or for disaster aid, including local mutual aid and state emergencies. When an inmate is temporarily removed or temporarily released for a purpose preparatory to return to the community or for compassionate leave, the director may require the inmate to reimburse the state, in whole or part, for expenses incurred by the state in connection with the temporary removal or release.

C. The board of executive clemency, under specific rules established for the selection of inmates, if it appears to the board, in its sole discretion, that there is a substantial probability that the inmate will remain at liberty without violating the law and that the release is in the best interests of the state, may authorize the release of an inmate on work furlough if the inmate has served not less than six months of the sentence imposed by the court, is within twelve months of the inmate's parole eligibility date and has not been convicted of a sexual offense. The director shall provide information as the board requests concerning any inmate eligible for release on work furlough. The inmate shall not be released on work furlough unless the release is approved by the board.

D. An inmate who is otherwise eligible for work furlough pursuant to subsection C of this section, who is not on home arrest and who is currently serving a sentence for a conviction of a serious offense or conspiracy to commit or attempt to commit a serious offense shall not be granted work furlough except by one of the following votes:

1. A majority affirmative vote if four or more members of the board of executive clemency consider the action.

2. A unanimous affirmative vote if three members of the board of executive clemency consider the action.

3. A unanimous affirmative vote if two members of the board of executive clemency consider the action pursuant to section 31-401, subsection I~~, paragraph 2~~ and the chairman of the board concurs after reviewing the information considered by the two members.

E. Before holding a hearing on the work furlough under consideration, the board shall, on request, notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting a work furlough was sentenced, the prosecuting attorney, the director of the arresting law enforcement agency and the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting the work furlough, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of the victim's right to be present and submit a written report to the board expressing the victim's opinion concerning the inmate's release. No hearing concerning work furlough shall be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

F. The board shall require that every inmate released on work furlough comply with the terms and conditions of release as the board may impose, including that the inmate be gainfully employed while on work furlough and that the inmate make restitution to the victim of the offense for which the inmate was incarcerated.

G. If the board finds that an inmate has failed to comply with the terms and conditions of release or that the best interests of this state would be served by revocation of an inmate's work furlough, the board may issue a warrant for retaking the inmate before the expiration of the inmate's maximum sentence. After return of the inmate, the board may revoke the inmate's work furlough after the inmate has been given an opportunity to be heard.

H. If the board denies the release of an inmate on work furlough or home arrest, it may prescribe that the inmate not be recommended again for release on work furlough or home arrest for a period of up to one year.

I. The director shall transmit a monthly report containing the name, date of birth, offense for which the inmate was sentenced, length of the sentence and date of admission to the state department of corrections of each inmate on work furlough or home arrest to the chairperson of the house of representatives judiciary committee or its successor committee and the chairperson of the senate judiciary committee or its successor committee. The director shall also submit a report containing this information for any inmate released on work furlough or home arrest within

a jurisdiction to the county attorney, sheriff and chief of police for the jurisdiction in which the inmate is released on work furlough or home arrest.

J. Any inmate who knowingly fails to return from furlough, home arrest, work furlough or temporary removal or temporary release granted under the provisions of this section is guilty of a class 5 felony.

K. At any given time if the director declares there is a shortage of beds available for inmates within the state department of corrections, the parole eligibility as set forth in sections 31-411 and 41-1604.09 may be suspended for any inmate who has served not less than six months of the sentence imposed by the court, who has not been previously convicted of a felony and who has been sentenced for a class 4, 5 or 6 felony, not involving a sexual offense, the use or exhibition of a deadly weapon or dangerous instrument or the infliction of serious physical injury pursuant to section 13-604, and the inmate shall be continuously eligible for parole, home arrest or work furlough.

L. Prisoners who have served at least one calendar year and are serving a sentence for conviction of a crime committed on or after October 1, 1978, under the provisions of section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02 or 36-1002.03, and who are sentenced to the custody of the state department of corrections, may be temporarily released, according to the rules of the department, at the discretion of the director, one hundred eighty calendar days prior to expiration of the term imposed and shall remain under the control of the state department of corrections until expiration of the maximum sentence specified. If an offender released under this section or pursuant to section 31-411, subsection B violates the rules, the offender may be returned to custody and shall be classified to a parole class as provided by the rules of the department.

M. This section applies only to persons who commit felony offenses before January 1, 1994.

N. For the purposes of this section, "serious offense" means any of the following:

1. A serious offense as defined in section 13-604, subsection V, paragraph ~~3~~ 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

2. A dangerous crime against children as defined in section 13-604.01. The citation of section 13-604.01 is not a necessary element for a serious offense designation.

3. A conviction under a prior criminal code for any offense that possesses reasonably equivalent offense elements as the offense elements that are listed under section 13-604, subsection V, paragraph ~~3~~ 4 or section 13-604.01, subsection L, paragraph 1.

Sec. 10. Section 41-1604.13, Arizona Revised Statutes, is amended to read:

41-1604.13. Home arrest; eligibility; victim notification; conditions; applicability; definition

A. An inmate who has served not less than six months of the sentence imposed by the court is eligible for the home arrest program if the ~~prisoner~~ INMATE:

1. Meets the following criteria:

(a) Was convicted of committing a class 4, 5 or 6 felony not involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument.

(b) Was not convicted of a sexual offense.

(c) Has not previously been convicted of any felony.

2. Violated parole by the commission of a technical violation that was not chargeable or indictable as a criminal offense.

3. Is eligible for work furlough.

4. Is eligible for parole pursuant to section 31-412, subsection A.

B. The board of executive clemency shall determine which inmates are released to the home arrest program based on the criteria in subsection A of this section and based on a determination that there is a substantial probability that the inmate will remain at liberty without violating the law and that the release is in the best interests of the state after considering the offense for which the inmate is presently incarcerated, the prior record of the inmate, the conduct of the inmate while incarcerated and any other information concerning the inmate which is in the possession of the state department of corrections, including any presentence report. The board maintains the responsibility of revocation as applicable to all parolees.

C. An inmate who is otherwise eligible for home arrest, who is not on work furlough and who is currently serving a sentence for a conviction of a serious offense or conspiracy to commit or attempt to commit a serious offense shall not be granted home arrest except by one of the following votes:

1. A majority affirmative vote if four or more members of the board of executive clemency consider the action.

2. A unanimous affirmative vote if three members of the board of executive clemency consider the action.

3. A unanimous affirmative vote if two members of the board of executive clemency consider the action pursuant to section 31-401, subsection I~~, paragraph 2~~ and the chairman of the board concurs after reviewing the information considered by the two members.

D. Home arrest is conditioned on the following:

1. Active electronic monitoring surveillance for a minimum term of one year or until eligible for general parole.

2. Participation in gainful employment or other beneficial activities.

3. Submission to alcohol and drug tests as mandated.

4. Payment of the electronic monitoring fee in an amount determined by the board of not less than one dollar per day and not more than the total cost of the electronic monitoring unless, after determining the inability of the inmate to pay the fee, the board requires payment of a lesser amount. The fees collected shall be returned to the department's home arrest program to offset operational costs of the program.

5. Remaining at the inmate's place of residence at all times except for movement out of the residence according to mandated conditions.

6. Adherence to any other conditions imposed by the court, board of executive clemency or supervising corrections officers.

7. Compliance with all other conditions of supervision.

E. Before holding a hearing on home arrest, the board on request shall notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting home arrest was sentenced, the prosecuting attorney and the director of the arresting law enforcement agency. The board shall notify the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting home arrest, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of the victim's right to be present and to submit a written report to the board expressing the victim's opinion concerning the inmate's release. No hearing concerning home arrest may be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

F. An inmate who is placed on home arrest is on inmate status, is subject to all the limitations of rights and movement and is entitled only to due process rights of return.

G. If an inmate violates a condition of home arrest which poses any threat or danger to the community, or commits an additional felony offense, the board shall revoke the home arrest and return the inmate to the custody of the state department of corrections to complete the term of imprisonment as authorized by law.

H. The ratio of supervising corrections officers to supervisees in the home arrest program shall be no greater than one officer for every twenty-five supervisees.

I. The board shall determine when the supervisee is eligible for transfer to the regular parole program pursuant to section 31-411.

J. This section applies only to persons who commit felony offenses before January 1, 1994.

K. For the purposes of this section, "serious offense" includes any of the following:

1. A serious offense as defined in section 13-604, subsection V, paragraph ~~3~~ 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

2. A dangerous crime against children as defined in section 13-604.01. The citation of section 13-604.01 is not a necessary element for a serious offense designation.

3. A conviction under a prior criminal code for any offense that possesses reasonably equivalent offense elements as the offense elements that are listed under section 13-604, subsection V, paragraph ~~3~~ 4 and section 13-604.01, subsection L, paragraph 1.

APPROVED BY THE GOVERNOR APRIL 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2004.