Conference Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 255

HOUSE BILL 2238

AN ACT

AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-709.05; AMENDING SECTION 13-901, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, FIRST SPECIAL SESSION, CHAPTER 5, SECTION 2; REPEALING SECTION 13-901, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, FIRST REGULAR SESSION, CHAPTER 125, SECTION 1; AMENDING SECTIONS 13-1402, 13-1403 AND 13-3212, ARIZONA REVISED STATUTES; REPEALING SECTION 13-3213, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-3821 AND 36-3701, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO SEXUAL OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 13, chapter 7, Arizona Revised Statutes, is amended by adding section 13-709.05, to read:

13-709.05. Special sentencing provisions; sexual offenses

A. A PERSON WHO IS CONVICTED OF A FELONY VIOLATION OF SECTION 13-1402 OR 13-1403 AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS FOR A VIOLATION OF SECTION 13-1402 OR 13-1403 INVOLVING INDECENT EXPOSURE OR PUBLIC SEXUAL INDECENCY TO A MINOR WHO IS UNDER FIFTEEN YEARS OF AGE SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

MITIGATED	MINIMUM	PRESUMPTIVE	MAXIMUM	AGGRAVATED
6 YEARS	8 YEARS	10 YEARS	12 YEARS	15 YEARS

B. THE PRESUMPTIVE TERM IMPOSED PURSUANT TO THIS SECTION MAY BE MITIGATED OR AGGRAVATED PURSUANT TO SECTION 13-701, SUBSECTIONS D AND E.

Sec. 2. Section 13-901, Arizona Revised Statutes, as amended by Laws 2009, first special session, chapter 5, section 2, is amended to read:

13-901. Probation

A. If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and, if so, shall without delay place the person on intensive probation supervision pursuant to section 13-913 or supervised or unsupervised probation on such terms and conditions as the law requires and the court deems appropriate, including participation in any programs authorized in title 12, chapter 2, article 11. If a person is not eligible for probation, imposition or execution of sentence shall not be suspended or delayed. If the court imposes probation, it may also impose a fine as authorized by chapter 8 of this title. If probation is granted the court shall impose a condition that the person waive extradition for any probation revocation procedures and it shall order restitution pursuant to section 13-603, subsection C where there is a victim who has suffered economic loss. When granting probation to an adult the court, as a condition of probation, shall assess a monthly fee of not less than sixty-five dollars unless, after determining the inability of the probationer to pay the fee, the court assesses a lesser fee. THIS FEE IS NOT SUBJECT TO ANY SURCHARGE. In justice and municipal courts the fee shall only be assessed when the person is placed on supervised probation. For persons placed on probation in the superior court, the fee shall be paid to the clerk of the superior court and the clerk of the court shall pay all monies collected from this fee to the county treasurer for deposit in the adult probation services fund established by section 12-267. For persons placed on supervised probation in the justice court, the fee shall be paid to the justice court and the justice court shall transmit all of the monies to the county treasurer for deposit in the adult probation services fund established by section 12-267. For persons placed on supervised probation in the municipal court, the fee shall be paid to the municipal court. The municipal court shall transmit all of the monies to the city treasurer who shall transmit the monies to the county treasurer for

deposit in the adult probation services fund established by section 12-267. Any amount assessed pursuant to this subsection shall be used to supplement monies used for the salaries of adult probation and surveillance officers and for support of programs and services of the superior court adult probation departments.

B. The period of probation shall be determined according to section 13-902, except that if a person is released pursuant to section 31-233, subsection B and community supervision is waived pursuant to section 13-603, subsection K, the court shall extend the period of probation by the amount of time the director of the state department of corrections approves for the inmate's temporary release.

C. The court, in its discretion, may issue a warrant for the rearrest of the defendant and may modify or add to the conditions or, if the defendant commits an additional offense or violates a condition, may revoke probation in accordance with the rules of criminal procedure at any time before the expiration or termination of the period of probation. If the court revokes the defendant's probation and the defendant is serving more than one probationary term concurrently, the court may sentence the person to terms of imprisonment to be served consecutively.

D. At any time during the probationary term of the person released on probation, any probation officer, without warrant or other process and at any time until the final disposition of the case, may rearrest any person and bring the person before the court.

E. The court, on its own initiative or on application of the probationer, after notice and an opportunity to be heard for the prosecuting attorney and, on request, the victim, may terminate the period of probation or intensive probation and discharge the defendant at a time earlier than that originally imposed if in the court's opinion the ends of justice will be served and if the conduct of the defendant on probation warrants it.

F. When granting probation the court may require that the defendant be imprisoned in the county jail at whatever time or intervals, consecutive or nonconsecutive, the court shall determine, within the period of probation, as long as the period actually spent in confinement does not exceed one year or the maximum period of imprisonment permitted under chapter 7 of this title, whichever is the shorter.

G. IF THE DEFENDANT IS PLACED ON LIFETIME PROBATION AND HAS SERVED ONE YEAR IN THE COUNTY JAIL AS A TERM OF PROBATION, THE COURT MAY REQUIRE THAT THE DEFENDANT BE ADDITIONALLY IMPRISONED IN THE COUNTY JAIL AT WHATEVER TIME OR INTERVALS, CONSECUTIVE OR NONCONSECUTIVE, THE COURT SHALL DETERMINE, WITHIN THE PERIOD OF PROBATION IF THE DEFENDANT'S PROBATION IS REVOKED BY THE COURT AND THE DEFENDANT IS SUBSEQUENTLY REINSTATED ON PROBATION. THE PERIOD ACTUALLY SPENT IN CONFINEMENT AS A TERM OF BEING REINSTATED ON PROBATION SHALL NOT EXCEED ONE YEAR OR WHEN INCLUDING THE INITIAL ONE YEAR PERIOD OF INCARCERATION IMPOSED AS A TERM OF PROBATION, THE MAXIMUM PERIOD OF

IMPRISONMENT PERMITTED UNDER CHAPTER 7 OF THIS TITLE, WHICHEVER IS THE SHORTER.

~~G.~~ H. If restitution is made a condition of probation, the court shall fix the amount of restitution and the manner of performance pursuant to chapter 8 of this title.

~~H.~~ I. When granting probation, the court shall set forth at the time of sentencing and on the record the factual and legal reasons in support of each sentence.

~~I.~~ J. If the defendant meets the criteria set forth in section 13-901.01 or 13-3422, the court may place the defendant on probation pursuant to either section. If a defendant is placed on probation pursuant to section 13-901.01 or 13-3422, the court may impose any term of probation that is authorized pursuant to this section and that is not in violation of section 13-901.01.

Sec. 3. Repeal

Section 13-901, Arizona Revised Statutes, as amended by Laws 2009, first regular session, chapter 125, section 1, is repealed.

Sec. 4. Section 13-1402, Arizona Revised Statutes, is amended to read:

13-1402. Indecent exposure; exception; classification

A. A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts and another person is present, and the defendant is reckless about whether the other person, as a reasonable person, would be offended or alarmed by the act.

B. Indecent exposure does not include an act of breast-feeding by a mother.

C. Indecent exposure to a person who is fifteen or more years of age is a class 1 misdemeanor. Indecent exposure to a person who is under fifteen years of age is a class 6 felony.

D. A PERSON WHO IS CONVICTED OF A FELONY VIOLATION OF THIS SECTION AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS FOR A VIOLATION OF THIS SECTION OR SECTION 13-1403 INVOLVING INDECENT EXPOSURE OR PUBLIC SEXUAL INDECENCY TO A MINOR WHO IS UNDER FIFTEEN YEARS OF AGE SHALL BE SENTENCED PURSUANT TO SECTION 13-709.05.

Sec. 5. Section 13-1403, Arizona Revised Statutes, is amended to read:

13-1403. Public sexual indecency; public sexual indecency to a minor; classification

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

1. An act of sexual contact.
2. An act of oral sexual contact.
3. An act of sexual intercourse.
4. An act of bestiality.

B. A person commits public sexual indecency to a minor if the person intentionally or knowingly engages in any of the acts listed in subsection A and such person is reckless about whether a minor WHO IS under ~~the age of~~ fifteen years OF AGE is present.

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

D. A PERSON WHO IS CONVICTED OF A FELONY VIOLATION OF THIS SECTION AND WHO HAS TWO OR MORE HISTORICAL PRIOR FELONY CONVICTIONS FOR A VIOLATION OF THIS SECTION OR SECTION 13-1402 INVOLVING INDECENT EXPOSURE OR PUBLIC SEXUAL INDECENCY TO A MINOR WHO IS UNDER FIFTEEN YEARS OF AGE SHALL BE SENTENCED PURSUANT TO SECTION 13-709.05.

Sec. 6. Section 13-3212, Arizona Revised Statutes, is amended to read:

13-3212. Child prostitution; classification; increased punishment

A. A person commits child prostitution by knowingly:

1. Causing any minor to engage in prostitution.

2. Using any minor for the purposes of prostitution.

3. Permitting a minor who is under the person's custody or control to engage in prostitution.

4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.

5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.

6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.

7. Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.

~~8. Engaging in prostitution with a minor.~~

B. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE COMMITS CHILD PROSTITUTION BY KNOWINGLY:

1. ENGAGING IN PROSTITUTION WITH A MINOR UNDER FIFTEEN YEARS OF AGE.

2. ENGAGING IN PROSTITUTION WITH A MINOR WHO THE PERSON KNOWS IS FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE.

3. ENGAGING IN PROSTITUTION WITH A MINOR WHO IS FIFTEEN, SIXTEEN, OR SEVENTEEN YEARS OF AGE.

~~B. Notwithstanding any other law, a sentence imposed on a person for a violation of this section involving a minor who is fifteen, sixteen or seventeen years of age shall be consecutive to any other sentence imposed on the person at any time.~~

~~C. If a person is convicted of a violation of subsection A, paragraph 8 of this section, the victim is fifteen, sixteen or seventeen years of age and the court sentences the person to a term of probation, the court shall order that as an initial term of probation the person be imprisoned in the county jail for not less than thirty days. This jail term of incarceration~~

~~shall not be deleted, deferred or otherwise suspended and shall commence on the date of sentencing. This subsection does not apply to persons who are sentenced to serve a period of incarceration in the state department of corrections.~~

C. IT IS NOT A DEFENSE TO A PROSECUTION UNDER SUBSECTION A AND SUBSECTION B, PARAGRAPHS 1 AND 2 OF THIS SECTION THAT THE OTHER PERSON IS A PEACE OFFICER POSING AS A MINOR OR A PERSON ASSISTING A PEACE OFFICER POSING AS A MINOR.

D. Child prostitution PURSUANT TO SUBSECTION A OF THIS SECTION is a class 2 felony~~, and~~ if the minor is under fifteen years of age ~~it~~ AND is punishable pursuant to section 13-705.

E. CHILD PROSTITUTION PURSUANT TO SUBSECTION B, PARAGRAPH 1 OF THIS SECTION IS A CLASS 2 FELONY AND IS PUNISHABLE PURSUANT TO SECTION 13-705.

~~E.~~ F. If the minor is fifteen, sixteen or seventeen years of age, child prostitution pursuant to subsection A~~, paragraph 1, 2, 3, 4, 5, 6 or 7~~ AND SUBSECTION B, PARAGRAPH 2 of this section is a class 2 felony, the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. The terms are as follows:

1. The term for a first offense is as follows:

Minimum	Presumptive	Maximum
7 years	10.5 years	21 years

2. The term for a defendant who has one historical prior felony conviction FOR A VIOLATION OF THIS SECTION is as follows:

Minimum	Presumptive	Maximum
14 years	15.75 years	28 years

3. The term for a defendant who has two or more historical prior felony convictions FOR A VIOLATION OF THIS SECTION is as follows:

Minimum	Presumptive	Maximum
21 years	28 years	35 years

G. CHILD PROSTITUTION PURSUANT TO SUBSECTION B, PARAGRAPH 3 OF THIS SECTION IS A CLASS 6 FELONY. IF THE COURT SENTENCES THE PERSON TO A TERM OF PROBATION, THE COURT SHALL ORDER THAT AS AN INITIAL TERM OF PROBATION THE PERSON BE IMPRISONED IN THE COUNTY JAIL FOR NOT LESS THAN ONE HUNDRED EIGHTY CONSECUTIVE DAYS. THIS JAIL TERM SHALL COMMENCE ON THE DATE OF SENTENCING. THE COURT MAY SUSPEND NINETY DAYS OF THE JAIL SENTENCE IF THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THIS SECTION, A VIOLATION OF SECTION 13-3214 OR A VIOLATION OF ANY CITY OR TOWN ORDINANCE THAT PROHIBITS PROSTITUTION AND THAT HAS THE SAME OR SUBSTANTIALLY SIMILAR ELEMENTS AS SECTION 13-3214 AND THE PERSON SUCCESSFULLY COMPLETES AN APPROPRIATE COURT ORDERED EDUCATION OR TREATMENT PROGRAM.

H. NOTHING IN THIS SECTION PRECLUDES THE STATE FROM ALLEGING AND PROVING ANY OTHER SENTENCING ENHANCEMENTS AS PROVIDED BY LAW.

Sec. 7. Repeal

Section 13-3213, Arizona Revised Statutes, is repealed.

Sec. 8. Section 13-3821, Arizona Revised Statutes, is amended to read:

13-3821. Persons required to register; procedure; identification card; assessment; definitions

A. A person who has been convicted of a violation or attempted violation of any of the following offenses or who has been convicted of an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the following offenses or an offense that was in effect before September 1, 1978 and that, if committed on or after September 1, 1978, has the same elements of an offense listed in this section or who is required to register by the convicting jurisdiction, within ten days after the conviction or within ten days after entering and remaining in any county of this state, shall register with the sheriff of that county:

1. Unlawful imprisonment pursuant to section 13-1303 if the victim is under eighteen years of age and the unlawful imprisonment was not committed by the child's parent.

2. Kidnapping pursuant to section 13-1304 if the victim is under eighteen years of age and the kidnapping was not committed by the child's parent.

3. Sexual abuse pursuant to section 13-1404 if the victim is under eighteen years of age.

4. Sexual conduct with a minor pursuant to section 13-1405.

5. Sexual assault pursuant to section 13-1406.

6. Sexual assault of a spouse if the offense was committed before August 12, 2005.

7. Molestation of a child pursuant to section 13-1410.

8. Continuous sexual abuse of a child pursuant to section 13-1417.

9. Taking a child for the purpose of prostitution pursuant to section 13-3206.

10. Child prostitution pursuant to section 13-3212 SUBSECTION A OR SUBSECTION B, PARAGRAPHS 1 OR 2.

11. Commercial sexual exploitation of a minor pursuant to section 13-3552.

12. Sexual exploitation of a minor pursuant to section 13-3553.

13. Luring a minor for sexual exploitation pursuant to section 13-3554.

14. Sex trafficking of a minor pursuant to section 13-1307.

15. A second or subsequent violation of indecent exposure to a person under fifteen years of age pursuant to section 13-1402.

16. A second or subsequent violation of public sexual indecency to a minor under the age of fifteen years pursuant to section 13-1403, subsection B.

17. A third or subsequent violation of indecent exposure pursuant to section 13-1402.

18. A third or subsequent violation of public sexual indecency pursuant to section 13-1403.

19. A violation of section 13-3822 or 13-3824.

20. Unlawful age misrepresentation.

21. Aggravated luring a minor for sexual exploitation pursuant to section 13-3560.

B. Before the person is released from confinement the state department of corrections in conjunction with the department of public safety and each county sheriff shall complete the registration of any person who was convicted of a violation of any offense listed under subsection A of this section. Within three days after the person's release from confinement, the state department of corrections shall forward the registered person's records to the department of public safety and to the sheriff of the county in which the registered person intends to reside. Registration pursuant to this subsection shall be consistent with subsection E of this section.

C. Notwithstanding subsection A of this section, the judge who sentences a defendant for any violation of chapter 14 or 35.1 of this title or for an offense for which there was a finding of sexual motivation pursuant to section 13-118 may require the person who committed the offense to register pursuant to this section.

D. The court may require a person who has been adjudicated delinquent for an act that would constitute an offense specified in subsection A or C of this section to register pursuant to this section. Any duty to register under this subsection shall terminate when the person reaches twenty-five years of age.

E. A person who has been convicted of or adjudicated delinquent and who is required to register in the convicting state for an act that would constitute an offense specified in subsection A or C of this section and who is not a resident of this state shall be required to register pursuant to this section if the person is either:

1. Employed full-time or part-time in this state, with or without compensation, for more than fourteen consecutive days or for an aggregate period of more than thirty days in a calendar year.

2. Enrolled as a full-time or part-time student in any school in this state for more than fourteen consecutive days or for an aggregate period of more than thirty days in a calendar year. For the purposes of this paragraph, "school" means an educational institution of any description, public or private, wherever located in this state.

F. Any duty to register under subsection D or E of this section for a juvenile adjudication terminates when the person reaches twenty-five years of age.

G. The court may order the termination of any duty to register under this section on successful completion of probation if the person was under eighteen years of age when the offense for which the person was convicted was committed.

H. The court may order the suspension or termination of any duty to register under this section after a hearing held pursuant to section 13-923.

I. At the time of registering, the person shall sign or affix an electronic fingerprint to a statement giving such information as required by the director of the department of public safety, including all names by which the person is known, any required online identifier and the name of any website or internet communication service where the identifier is being used. The sheriff shall fingerprint and photograph the person and within three days thereafter shall send copies of the statement, fingerprints and photographs to the department of public safety and the chief of police, if any, of the place where the person resides. The information that is required by this subsection shall include the physical location of the person's residence and the person's address. If the person has a place of residence that is different from the person's address, the person shall provide the person's address, the physical location of the person's residence and the name of the owner of the residence if the residence is privately owned and not offered for rent or lease. If the person receives mail at a post office box, the person shall provide the location and number of the post office box. If the person does not have an address or a permanent place of residence, the person shall provide a description and physical location of any temporary residence and shall register as a transient not less than every ninety days with the sheriff in whose jurisdiction the transient is physically present.

J. On the person's initial registration and every year after the person's initial registration, the person shall confirm any required online identifier and the name of any website or internet communication service where the identifier is being used and the person shall obtain a new nonoperating identification license or a driver license from the motor vehicle division in the department of transportation and shall carry a valid nonoperating identification license or a driver license. Notwithstanding sections 28-3165 and 28-3171, the license is valid for one year from the date of issuance, and the person shall submit to the department of transportation proof of the person's address and place of residence. The motor vehicle division shall annually update the person's address and photograph and shall make a copy of the photograph available to the department of public safety or to any law enforcement agency. The motor vehicle division shall provide to the department of public safety daily address updates for persons required to register pursuant to this section.

K. Except as provided in subsection E or L of this section, the clerk of the superior court in the county in which a person has been convicted of a violation of any offense listed under subsection A of this section or has been ordered to register pursuant to subsection C or D of this section shall

notify the sheriff in that county of the conviction within ten days after entry of the judgment.

L. Within ten days after entry of judgment, a court not of record shall notify the arresting law enforcement agency of an offender's conviction of a violation of section 13-1402. Within ten days after receiving this information, the law enforcement agency shall determine if the offender is required to register pursuant to this section. If the law enforcement agency determines that the offender is required to register, the law enforcement agency shall provide the information required by section 13-3825 to the department of public safety and shall make community notification as required by law.

M. A person who is required to register pursuant to this section because of a conviction for the unlawful imprisonment of a minor or the kidnapping of a minor is required to register, absent additional or subsequent convictions, for a period of ten years from the date that the person is released from prison, jail, probation, community supervision or parole and the person has fulfilled all restitution obligations. Notwithstanding this subsection, a person who has a prior conviction for an offense for which registration is required pursuant to this section is required to register for life.

N. A person who is required to register pursuant to this section and who is a student at a public or private institution of postsecondary education or who is employed, with or without compensation, at a public or private institution of postsecondary education or who carries on a vocation at a public or private institution of postsecondary education shall notify the county sheriff having jurisdiction of the institution of postsecondary education. The person who is required to register pursuant to this section shall also notify the sheriff of each change in enrollment or employment status at the institution.

O. At the time of registering, the sheriff shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from a person who has been convicted of an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the offenses listed in subsection A of this section or an offense that was in effect before September 1, 1978 and that, if committed on or after September 1, 1978, has the same elements of an offense listed in subsection A of this section or who is required to register by the convicting jurisdiction. The sheriff shall transmit the sample to the department of public safety.

P. Any person who is required to register under subsection A of this section shall register the person's required online identifier and the name of any website or internet communication service where the identifier is being used or is intended to be used with the sheriff from and after December 31, 2007, regardless of whether the person was required to register an

identifier at the time of the person's initial registration under this section.

Q. On conviction of any offense for which a person is required to register pursuant to this section, in addition to any other penalty prescribed by law, the court shall order the person to pay an additional assessment of two hundred fifty dollars. This assessment is not subject to any surcharge. The court shall transmit the monies received pursuant to this section to the county treasurer. The county treasurer shall transmit the monies received to the state treasurer. The state treasurer shall deposit the monies received in the sex offender monitoring fund established by section 13-3828. Notwithstanding any other law, the court shall not waive the assessment imposed pursuant to this section.

R. For the purposes of this section:

1. "Address" means the location at which the person receives mail.

2. "Required online identifier" means any electronic e-mail address information or instant message, chat, social networking or other similar internet communication name, but does not include a social security number, date of birth or pin number.

3. "Residence" means the person's dwelling place, whether permanent or temporary.

Sec. 9. Section 36-3701, Arizona Revised Statutes, is amended to read:

36-3701. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means any agency that is authorized to direct the release of a person who is serving a sentence or term of confinement or who is receiving treatment, including a state or federal prison, a county jail and the Arizona state hospital.

2. "Competent professional" means a person who is:

(a) Familiar with the state's sexually violent persons statutes and sexual offender treatment programs available in this state.

(b) Approved by the superior court as meeting court approved guidelines.

3. "Conviction" includes a finding of guilt at any time for a sexually violent offense or an order of the juvenile court adjudicating the person delinquent for any sexually violent offense.

4. "Less restrictive alternative" means court ordered treatment in a setting that is less restrictive than total confinement and that is conducted in a setting approved by the superintendent of the state hospital.

5. "Mental disorder" means a paraphilia, personality disorder or conduct disorder or any combination of paraphilia, personality disorder and conduct disorder that predisposes a person to commit sexual acts to such a degree as to render the person a danger to the health and safety of others.

6. "Sexually violent offense" means any of the following:

(a) INDECENT EXPOSURE TO A PERSON WHO IS UNDER FIFTEEN YEARS OF AGE PURSUANT TO SECTION 13-1402, PUBLIC SEXUAL INDECENCY TO A MINOR PURSUANT TO SECTION 13-1403, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, continuous sexual abuse of a child pursuant to section 13-1417 or sexual assault of a spouse if the offense was committed before ~~the effective date of this amendment to this section~~ AUGUST 12, 2005.

(b) Second degree murder pursuant to section 13-1104, first degree murder pursuant to section 13-1105, assault pursuant to section 13-1203, aggravated assault pursuant to section 13-1204, unlawful imprisonment pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or burglary in the first degree pursuant to section 13-1508 if the court at the time of sentencing or civil commitment proceedings determines beyond a reasonable doubt that the act was sexually motivated pursuant to section 13-118.

(c) An attempt, a solicitation, a facilitation or a conspiracy to commit an offense listed in subdivision (a) or (b) of this paragraph.

(d) An act committed in another jurisdiction that if committed in this state would be a sexually violent offense listed in subdivision (a) or (b) of this paragraph.

(e) A conviction for a felony offense that was in effect before September 1, 1978 and that if committed on or after September 1, 1978 would be comparable to a sexually violent offense listed in subdivision (a) or (b) of this paragraph.

7. "Sexually violent person" means a person to whom both of the following apply:

(a) Has ever been convicted of or found guilty but insane of a sexually violent offense or was charged with a sexually violent offense and was determined incompetent to stand trial.

(b) Has a mental disorder that makes the person likely to engage in acts of sexual violence.

APPROVED BY THE GOVERNOR MAY 7, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.