



Bill Number: H.B. 2678

Gowan Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Zachary Dean

FLOOR AMENDMENT EXPLANATION

- Modifies the definition of *dangerous crime against children* (DCAC) to specify that both *sexual exploitation of a minor* and *commercial sexual exploitation of a minor* involving a visual depiction that is indistinguishable from an actual minor under 15 years old are considered DCACs.

GOWAN FLOOR AMENDMENT
SENATE AMENDMENTS TO H.B. 2678
(Reference to House engrossed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[~~GREEN STRIKEOUT IN BRACKETS~~] indicates new text removed from statute or previously enacted session law.

[~~Green strikeout in brackets~~] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<~~Green strikeout in carets~~>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 <<Sec. 1. Section 13-705, Arizona Revised Statutes, is amended to
3 read:

4 13-705. Dangerous crimes against children; sentences;
5 definitions

6 A. A person who is at least eighteen years of age and who is
7 convicted of a dangerous crime against children in the first degree
8 involving commercial sexual exploitation of a minor or child sex
9 trafficking and the person has previously been convicted of a dangerous
10 crime against children in the first degree shall be sentenced to
11 imprisonment in the custody of the state department of corrections for
12 natural life. A person who is sentenced to natural life is not eligible
13 for commutation, parole, work furlough, work release or release from
14 confinement on any basis for the remainder of the person's natural life.

15 B. A person who is at least eighteen years of age and who is
16 convicted of a dangerous crime against children in the first degree
17 involving sexual assault of a minor who is twelve years of age or younger
18 or sexual conduct with a minor who is twelve years of age or younger shall
19 be sentenced to life imprisonment and is not eligible for suspension of
20 sentence, probation, pardon or release from confinement on any basis
21 except as specifically authorized by section 31-233, subsection A or B
22 until the person has served thirty-five years or the sentence is commuted.
23 This subsection does not apply to masturbatory contact.

24 C. Except as otherwise provided in this section, a person who is at
25 least eighteen years of age or who has been tried as an adult and who is
26 convicted of a dangerous crime against children in the first degree
27 involving attempted first degree murder of a minor who is under twelve
28 years of age, sexual assault of a minor who is under twelve years of age,

1 sexual conduct with a minor who is under twelve years of age or
 2 manufacturing methamphetamine under circumstances that cause physical
 3 injury to a minor who is under twelve years of age may be sentenced to
 4 life imprisonment and is not eligible for suspension of sentence,
 5 probation, pardon or release from confinement on any basis except as
 6 specifically authorized by section 31-233, subsection A or B until the
 7 person has served thirty-five years or the sentence is commuted. If a
 8 life sentence is not imposed pursuant to this subsection, the person shall
 9 be sentenced to a term of imprisonment as follows:

10	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
11	13 years	20 years	27 years

12 D. Except as otherwise provided in this section, a person who is at
 13 least eighteen years of age or who has been tried as an adult and who is
 14 convicted of a dangerous crime against children in the first degree
 15 involving second degree murder of a minor who is under fifteen years of
 16 age may be sentenced to life imprisonment and is not eligible for
 17 suspension of sentence, probation, pardon or release from confinement on
 18 any basis except as specifically authorized by section 31-233, subsection
 19 A or B until the person has served thirty-five years or the sentence is
 20 commuted. If a life sentence is not imposed pursuant to this subsection,
 21 the person shall be sentenced to a term of imprisonment as follows:

22	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23	25 years	30 years	35 years

24 E. Except as otherwise provided in this section, a person who is
 25 at least eighteen years of age or who has been tried as an adult and who
 26 is convicted of a dangerous crime against children in the first degree
 27 involving attempted first degree murder of a minor who is twelve, thirteen
 28 or fourteen years of age, sexual assault of a minor who is twelve,
 29 thirteen or fourteen years of age, taking a child for the purpose of
 30 prostitution, child sex trafficking, commercial sexual exploitation of a
 31 minor, sexual conduct with a minor who is twelve, thirteen or fourteen
 32 years of age or manufacturing methamphetamine under circumstances that
 33 cause physical injury to a minor who is twelve, thirteen or fourteen years
 34 of age or involving or using minors in drug offenses shall be sentenced to
 35 a term of imprisonment as follows:

36	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
37	13 years	20 years	27 years

38 A person who has been previously convicted of one predicate felony shall
 39 be sentenced to a term of imprisonment as follows:

40	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
41	23 years	30 years	37 years

42 F. Except as otherwise provided in this section, a person who is at
 43 least eighteen years of age or who has been tried as an adult and who is
 44 convicted of a dangerous crime against children in the first degree
 45 involving aggravated assault, unlawful mutilation, molestation of a child,
 46 sexual exploitation of a minor, aggravated luring a minor for sexual

1 exploitation, child abuse or kidnapping shall be sentenced to a term of
2 imprisonment as follows:

3	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4	10 years	17 years	24 years

5 A person who has been previously convicted of one predicate felony shall
6 be sentenced to a term of imprisonment as follows:

7	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8	21 years	28 years	35 years

9 G. Except as otherwise provided in this section, if a person is at
10 least eighteen years of age or has been tried as an adult and is convicted
11 of a dangerous crime against children involving luring a minor for sexual
12 exploitation, sexual extortion or unlawful age misrepresentation and is
13 sentenced to a term of imprisonment, the term of imprisonment is as
14 follows and the person is not eligible for release from confinement on any
15 basis except as specifically authorized by section 31-233, subsection A or
16 B until the sentence imposed by the court has been served or is commuted,
17 except that if the person is convicted of unlawful age misrepresentation
18 the person is eligible for release pursuant to section 41-1604.07:

19	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
20	5 years	10 years	15 years

21 A person who has been previously convicted of one predicate felony shall
22 be sentenced to a term of imprisonment as follows and the person is not
23 eligible for suspension of sentence, probation, pardon or release from
24 confinement on any basis except as specifically authorized by section
25 31-233, subsection A or B until the sentence imposed by the court has been
26 served or is commuted, except that if the person is convicted of unlawful
27 age misrepresentation the person is eligible for release pursuant to
28 section 41-1604.07:

29	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
30	8 years	15 years	22 years

31 H. Except as otherwise provided in this section, if a person is at
32 least eighteen years of age or has been tried as an adult and is convicted
33 of a dangerous crime against children involving sexual abuse or bestiality
34 under section 13-1411, subsection A, paragraph 2 and is sentenced to a
35 term of imprisonment, the term of imprisonment is as follows and the
36 person is not eligible for release from confinement on any basis except as
37 specifically authorized by section 31-233, subsection A or B until the
38 sentence imposed by the court has been served, the person is eligible for
39 release pursuant to section 41-1604.07 or the sentence is commuted:

40	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
41	2.5 years	5 years	7.5 years

42 A person who has been previously convicted of one predicate felony shall
43 be sentenced to a term of imprisonment as follows and the person is not
44 eligible for suspension of sentence, probation, pardon or release from
45 confinement on any basis except as specifically authorized by section
46 31-233, subsection A or B until the sentence imposed by the court has been

1 served, the person is eligible for release pursuant to section 41-1604.07
2 or the sentence is commuted:

3	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4	8 years	15 years	22 years

5 I. Except as otherwise provided in this section, a person who is at
6 least eighteen years of age or who has been tried as an adult and who is
7 convicted of a dangerous crime against children in the first degree
8 involving continuous sexual abuse of a child shall be sentenced to a term
9 of imprisonment as follows:

10	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
11	39 years	60 years	81 years

12 A person who has been previously convicted of one predicate felony shall
13 be sentenced to a term of imprisonment as follows:

14	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
15	69 years	90 years	111 years

16 J. The presumptive sentences prescribed in subsections C, D, E[.]
17 [and] F and I of this section or subsections G and H of this section if
18 the person has previously been convicted of a predicate felony may be
19 increased or decreased pursuant to section 13-701, subsections C, D and E.

20 K. Except as provided in subsections G, H, M and N of this section,
21 a person who is sentenced for a dangerous crime against children in the
22 first degree pursuant to this section is not eligible for suspension of
23 sentence, probation, pardon or release from confinement on any basis
24 except as specifically authorized by section 31-233, subsection A or B
25 until the sentence imposed by the court has been served or commuted.

26 L. A person who is convicted of any dangerous crime against
27 children in the first degree pursuant to subsection C, D, E[.] [or] F or I
28 of this section and who has been previously convicted of two or more
29 predicate felonies shall be sentenced to life imprisonment and is not
30 eligible for suspension of sentence, probation, pardon or release from
31 confinement on any basis except as specifically authorized by section
32 31-233, subsection A or B until the person has served not fewer than
33 thirty-five years or the sentence is commuted.

34 M. Notwithstanding chapter 10 of this title, a person who is at
35 least eighteen years of age or who has been tried as an adult and who is
36 convicted of a dangerous crime against children in the second degree
37 pursuant to subsection B, C, E[.] [or] F or I of this section is guilty of
38 a class 3 felony and if the person is sentenced to a term of imprisonment,
39 the term of imprisonment is as follows and the person is not eligible for
40 release from confinement on any basis except as specifically authorized by
41 section 31-233, subsection A or B until the person has served the sentence
42 imposed by the court, the person is eligible for release pursuant to
43 section 41-1604.07 or the sentence is commuted:

44	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
45	5 years	10 years	15 years

46 N. A person who is convicted of any dangerous crime against
47 children in the second degree and who has been previously convicted of one

1 or more predicate felonies 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, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

O. Section 13-704, subsection J and section 13-707, subsection B apply to the determination of prior convictions.

P. The sentence imposed on a person by the court for a dangerous crime against children under subsection H of this section involving sexual abuse may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed on a person for any other dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time, including sexual abuse of the same victim.

Q. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

R. A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.

S. It is not a defense to a dangerous crime against children that the minor is a person posing as a minor or is otherwise fictitious if the defendant knew or had reason to know the purported minor was under fifteen years of age.

T. For the purposes of this section:

1. "Dangerous crime against children" means any of the following that is committed against a minor who is under fifteen years of age [OR FOR THE PURPOSES OF SUBDIVISIONS (f) AND (g) OF THIS PARAGRAPH, A DANGEROUS CRIME AGAINST CHILDREN SHALL INCLUDE A VISUAL DEPICTION THAT IS INDISTINGUISHABLE FROM AN ACTUAL MINOR THAT IS UNDER 15 YEARS OF AGE]:

(a) Second degree murder.

(b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

(c) Sexual assault.

(d) Molestation of a child.

(e) Sexual conduct with a minor.

(f) Commercial sexual exploitation of a minor.

(g) Sexual exploitation of a minor.

(h) Child abuse as prescribed in section 13-3623, subsection A, paragraph 1.

(i) Kidnapping.

(j) Sexual abuse.

(k) Taking a child for the purpose of prostitution as prescribed in section 13-3206.

(l) Child sex trafficking as prescribed in section 13-3212.

(m) Involving or using minors in drug offenses.

1 (n) Continuous sexual abuse of a child.
2 (o) Attempted first degree murder.
3 (p) Sex trafficking.
4 (q) Manufacturing methamphetamine under circumstances that cause
5 physical injury to a minor.
6 (r) Bestiality as prescribed in section 13-1411, subsection A,
7 paragraph 2.
8 (s) Luring a minor for sexual exploitation.
9 (t) Aggravated luring a minor for sexual exploitation.
10 (u) Unlawful age misrepresentation.
11 (v) Unlawful mutilation.
12 (w) Sexual extortion as prescribed in section 13-1428.
13 2. "Predicate felony" means any felony involving child abuse
14 pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense,
15 conduct involving the intentional or knowing infliction of serious
16 physical injury or the discharge, use or threatening exhibition of a
17 deadly weapon or dangerous instrument, or a dangerous crime against
18 children in the first or second degree. >>
19 Sec. 2. Section 13-3551, Arizona Revised Statutes, is amended to
20 read:
21 13-3551. Definitions
22 In this chapter, unless the context otherwise requires:
23 1. "Advertising" or "advertisement" means any message in any medium
24 that offers or solicits any person to engage in sexual conduct in this
25 state.
26 2. "Communication service provider" has the same meaning prescribed
27 in section 13-3001.
28 3. "Computer" has the same meaning prescribed in section 13-2301,
29 subsection E.
30 4. "Computer system" has the same meaning prescribed in section
31 13-2301, subsection E.
32 5. "Exploitive exhibition" means the actual or simulated exhibition
33 of the genitals or pubic or rectal areas of any person for the purpose of
34 sexual stimulation of the viewer.
35 6. "INDISTINGUISHABLE" MEANS A VISUAL DEPICTION SUCH THAT A PERSON
36 VIEWING THE DEPICTION WOULD REASONABLY CONCLUDE THAT THE DEPICTION IS OF
37 AN ACTUAL MINOR.
38 ~~6-~~ 7. "Minor":
39 (a) Means a person or persons who were under eighteen years of age
40 at the time a visual depiction was created, adapted or modified.
41 (b) INCLUDES A VISUAL DEPICTION THAT IS INDISTINGUISHABLE FROM AN
42 ACTUAL MINOR.
43 ~~7-~~ 8. "Network" has the same meaning prescribed in section
44 13-2301, subsection E.
45 ~~8-~~ 9. "Producing" means financing, directing, manufacturing,
46 issuing, publishing or advertising for pecuniary gain.

1 ~~9.~~ 10. "Remote computing service" has the same meaning prescribed
2 in section 13-3001.
3 ~~10.~~ 11. "Sexual conduct" means actual or simulated:
4 (a) Sexual intercourse, including genital-genital, oral-genital,
5 anal-genital or oral-anal, whether between persons of the same or opposite
6 sex.
7 (b) Penetration of the vagina or rectum by any object except when
8 done as part of a recognized medical procedure.
9 (c) Sexual bestiality.
10 (d) Masturbation, for the purpose of sexual stimulation of the
11 viewer.
12 (e) Sadomasochistic abuse for the purpose of sexual stimulation of
13 the viewer.
14 (f) Defecation or urination for the purpose of sexual stimulation
15 of the viewer.
16 ~~11.~~ 12. "Simulated" means any depicting of the genitals or rectal
17 areas that gives the appearance of sexual conduct or incipient sexual
18 conduct.
19 ~~12.~~ 13. "Visual depiction" includes each visual image that is
20 contained in an undeveloped film, videotape or photograph or data stored
21 in any form, **REGARDLESS OF WHETHER THE IMAGE IS CREATED OR MODIFIED BY**
22 **MEANS OF COMPUTER SOFTWARE, ARTIFICIAL INTELLIGENCE OR OTHER DIGITAL**
23 **EDITING TOOLS**, and that is capable of conversion into a visual image.

24 Enroll and engross to conform
25 Amend title to conform

DAVID GOWAN

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