

Rough Draft  
November 30, 2012 01:38 PM  
Folder 247, Drafter STEVE PRIMACK

REFERENCE TITLE: **criminal offenses; sentencing**

State of Arizona  
Senate  
Fifty-first Legislature  
First Regular Session  
2013

**S. B. \_\_\_\_\_**

Introduced by \_\_\_\_\_

AN ACT

AMENDING SECTION 8-382, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-3423, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 12, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, AS SECTION 12-116.08; AMENDING SECTION 12-116.08, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-105, 13-703 AND 32-109, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 8-382, Arizona Revised Statutes, is amended to  
3 read:  
4 8-382. Definitions  
5 In this article, unless the context otherwise requires:  
6 1. "Accused" means a juvenile who is referred to juvenile court for  
7 committing a delinquent act.  
8 2. "Appellate proceeding" means any contested matter before the state  
9 court of appeals, the state supreme court, a federal court of appeals or the  
10 United States supreme court.  
11 3. "Arrest" means the actual custodial restraint or temporary custody  
12 of a person.  
13 4. "Court" means the juvenile division of the superior court when  
14 exercising its jurisdiction over children in any proceeding relating to  
15 delinquency.  
16 5. "Crime victim advocate" means a person who is employed or  
17 authorized by a public or private entity to provide counseling, treatment or  
18 other supportive assistance to crime victims.  
19 6. "CRIMINAL OFFENSE" MEANS CONDUCT THAT GIVES A PEACE OFFICER OR  
20 PROSECUTOR PROBABLE CAUSE TO BELIEVE THAT A FELONY, A MISDEMEANOR, A PETTY  
21 OFFENSE OR A VIOLATION OF A LOCAL CRIMINAL ORDINANCE HAS OCCURRED.  
22 ~~6-~~ 7. "Custodial agency" means any law enforcement officer or agency,  
23 a sheriff, a county juvenile detention center, the department of juvenile  
24 corrections or a secure mental health facility that has custody of a person  
25 who is arrested or in custody for a delinquent or incorrigible offense.  
26 ~~7-~~ 8. "Delinquency proceeding" means any hearing, argument or other  
27 matter that is scheduled or held by a juvenile court judge, commissioner or  
28 hearing officer and that relates to an alleged or adjudicated delinquent  
29 offense.  
30 ~~8-~~ 9. "Delinquent" means a child who is adjudicated to have committed  
31 a delinquent act.  
32 ~~9-~~ 10. "Delinquent act" means an act to which this article applies  
33 pursuant to section 8-381.  
34 ~~10-~~ 11. "Detention hearing" means the accused's initial appearance  
35 before the court to determine release before adjudication.  
36 ~~11-~~ 12. "Final disposition" means the ultimate termination of the  
37 delinquency proceeding by a court, including dismissal, acquittal, transfer  
38 to adult court or imposition of a disposition after an adjudication for a  
39 delinquent offense.  
40 ~~12-~~ 13. "Immediate family" means a victim's spouse, parent, child,  
41 sibling, grandparent or lawful guardian.  
42 ~~13-~~ 14. "Juvenile defendant" means a juvenile against whom a petition  
43 is filed seeking to have the juvenile adjudicated delinquent.  
44 ~~14-~~ 15. "Lawful representative" means a person who is designated by  
45 the victim or appointed by the court and who will act in the best interests  
46 of the victim.

1 ~~15.~~ 16. "Postadjudication release" means release on probation,  
2 intensive probation, work furlough, community supervision or home detention,  
3 release on conditional liberty pursuant to section 41-2818 by the department  
4 of juvenile corrections or any other permanent, conditional or temporary  
5 release from confinement, discharge or completion of commitment by the  
6 department of juvenile corrections, a sheriff, a municipal jail, a juvenile  
7 detention center, a residential treatment facility or a secure mental health  
8 facility.

9 ~~16.~~ 17. "Postadjudication review hearing" means a hearing that is held  
10 in open court and that involves a request by the juvenile for review of a  
11 disposition.

12 ~~17.~~ 18. "Postarrest release" means the discharge of the accused from  
13 confinement.

14 ~~18.~~ 19. "Release" means no longer in the custody of the custodial  
15 agency and includes transfer from one custodial agency to another custodial  
16 agency.

17 ~~19.~~ 20. "Rights" means any right granted to the victim by the laws of  
18 this state.

19 ~~20.~~ 21. "Victim" means a person against whom the delinquent act was  
20 committed, or if the person is killed or incapacitated, the person's spouse,  
21 parent, child, grandparent or sibling, any other person related to the person  
22 by consanguinity or affinity to the second degree or any other lawful  
23 representative of the person, except if the person or the person's spouse,  
24 parent, child, grandparent, sibling, other person related to the person by  
25 consanguinity or affinity to the second degree or other lawful representative  
26 is in custody for an offense or is the accused.

27 Sec. 2. Section 13-3423, Arizona Revised Statutes, is transferred and  
28 renumbered for placement in title 12, chapter 1, article 1, Arizona Revised  
29 Statutes, as section 12-116.08 and, as so renumbered, is amended to read:

30 12-116.08. Penalty assessment

31 In addition to any other penalty prescribed by law, the court shall  
32 order a person who is convicted of a violation of ~~this~~ TITLE 13, chapter 34  
33 to pay an additional assessment of fifteen dollars. This assessment is not  
34 subject to any surcharge. The court shall transmit the monies received  
35 pursuant to this ~~subsection~~ SECTION to the county treasurer. The county  
36 treasurer shall transmit the monies received to the state treasurer. The  
37 state treasurer shall deposit the monies received in the technical  
38 registration fund established by section 32-109.

39 Sec. 3. Section 13-105, Arizona Revised Statutes, is amended to read:

40 13-105. Definitions

41 In this title, unless the context otherwise requires:

42 1. "Absconder" means a probationer who has moved from the  
43 probationer's primary residence without permission of the probation officer,  
44 who cannot be located within ninety days of the previous contact and against  
45 whom a petition to revoke has been filed in the superior court alleging that  
46 the probationer's whereabouts are unknown. A probationer is no longer deemed

1 an absconder when the probationer is voluntarily or involuntarily returned to  
2 probation service.

3 2. "Act" means a bodily movement.

4 3. "Benefit" means anything of value or advantage, present or  
5 prospective.

6 4. "Calendar year" means three hundred sixty-five days' actual time  
7 served without release, suspension or commutation of sentence, probation,  
8 pardon or parole, work furlough or release from confinement on any other  
9 basis.

10 5. "Community supervision" means that portion of a felony sentence  
11 that is imposed by the court pursuant to section 13-603, subsection I and  
12 that is served in the community after completing a period of imprisonment or  
13 served in prison in accordance with section 41-1604.07.

14 6. "Conduct" means an act or omission and its accompanying culpable  
15 mental state.

16 7. "Crime" means a misdemeanor or a felony.

17 8. "Criminal street gang" means an ongoing formal or informal  
18 association of persons in which members or associates individually or  
19 collectively engage in the commission, attempted commission, facilitation or  
20 solicitation of any felony act and that has at least one individual who is a  
21 criminal street gang member.

22 9. "Criminal street gang member" means an individual to whom at least  
23 two of the following seven criteria that indicate criminal street gang  
24 membership apply:

25 (a) Self-proclamation.

26 (b) Witness testimony or official statement.

27 (c) Written or electronic correspondence.

28 (d) Paraphernalia or photographs.

29 (e) Tattoos.

30 (f) Clothing or colors.

31 (g) Any other indicia of street gang membership.

32 10. "Culpable mental state" means intentionally, knowingly, recklessly  
33 or with criminal negligence as those terms are defined in this paragraph:

34 (a) "Intentionally" or "with the intent to" means, with respect to a  
35 result or to conduct described by a statute defining an offense, that a  
36 person's objective is to cause that result or to engage in that conduct.

37 (b) "Knowingly" means, with respect to conduct or to a circumstance  
38 described by a statute defining an offense, that a person is aware or  
39 believes that the person's conduct is of that nature or that the circumstance  
40 exists. It does not require any knowledge of the unlawfulness of the act or  
41 omission.

42 (c) "Recklessly" means, with respect to a result or to a circumstance  
43 described by a statute defining an offense, that a person is aware of and  
44 consciously disregards a substantial and unjustifiable risk that the result  
45 will occur or that the circumstance exists. The risk must be of such nature  
46 and degree that disregard of such risk constitutes a gross deviation from the

1 standard of conduct that a reasonable person would observe in the situation.  
2 A person who creates such a risk but who is unaware of such risk solely by  
3 reason of voluntary intoxication also acts recklessly with respect to such  
4 risk.

5 (d) "Criminal negligence" means, with respect to a result or to a  
6 circumstance described by a statute defining an offense, that a person fails  
7 to perceive a substantial and unjustifiable risk that the result will occur  
8 or that the circumstance exists. The risk must be of such nature and degree  
9 that the failure to perceive it constitutes a gross deviation from the  
10 standard of care that a reasonable person would observe in the situation.

11 11. "Dangerous drug" means dangerous drug as defined in section  
12 13-3401.

13 12. "Dangerous instrument" means anything that under the circumstances  
14 in which it is used, attempted to be used or threatened to be used is readily  
15 capable of causing death or serious physical injury.

16 13. "Dangerous offense" means an offense involving the discharge, use  
17 or threatening exhibition of a deadly weapon or dangerous instrument or the  
18 intentional or knowing infliction of serious physical injury on another  
19 person.

20 14. "Deadly physical force" means force that is used with the purpose  
21 of causing death or serious physical injury or in the manner of its use or  
22 intended use is capable of creating a substantial risk of causing death or  
23 serious physical injury.

24 15. "Deadly weapon" means anything designed for lethal use, including a  
25 firearm.

26 16. "Economic loss" means any loss incurred by a person as a result of  
27 the commission of an offense. Economic loss includes lost interest, lost  
28 earnings and other losses that would not have been incurred but for the  
29 offense. Economic loss does not include losses incurred by the convicted  
30 person, damages for pain and suffering, punitive damages or consequential  
31 damages.

32 17. "Enterprise" includes any corporation, association, labor union or  
33 other legal entity.

34 18. "Felony" means an offense for which a sentence to a term of  
35 imprisonment in the custody of the state department of corrections is  
36 authorized by any law of this state.

37 19. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
38 rifle, shotgun or other weapon that will or is designed to or may readily be  
39 converted to expel a projectile by the action of expanding gases, except that  
40 it does not include a firearm in permanently inoperable condition.

41 20. "Government" means the state, any political subdivision of the  
42 state or any department, agency, board, commission, institution or  
43 governmental instrumentality of or within the state or political subdivision.

44 21. "Government function" means any activity that a public servant is  
45 legally authorized to undertake on behalf of a government.

1           22. "Historical prior felony conviction" means:  
2           (a) Any prior felony conviction for which the offense of conviction  
3 either:  
4           (i) Mandated a term of imprisonment except for a violation of chapter  
5 34 of this title involving a drug below the threshold amount.  
6           (ii) Involved a dangerous offense.  
7           (iii) Involved the illegal control of a criminal enterprise.  
8           (iv) Involved aggravated driving under the influence of intoxicating  
9 liquor or drugs.  
10          (v) Involved any dangerous crime against children as defined in  
11 section 13-705.  
12          (b) Any class 2 or 3 felony, except ~~the offenses~~ AN OFFENSE listed in  
13 subdivision (a) of this paragraph, that was committed within the ten years  
14 immediately preceding the date of the present offense. Any time spent on  
15 absconder status while on probation, on escape status or incarcerated is  
16 excluded in calculating if the offense was committed within the preceding ten  
17 years. If a court determines a person was not on absconder status while on  
18 probation or escape status, that time is not excluded. For the purposes of  
19 this subdivision, "escape" means:  
20          (i) A departure from custody or from a juvenile secure care facility,  
21 a juvenile detention facility or an adult correctional facility in which the  
22 person is held or detained, with knowledge that the departure is not  
23 permitted, or the failure to return to custody or detention following a  
24 temporary leave granted for a specific purpose or for a limited period.  
25          (ii) A failure to report as ordered to custody or detention to begin  
26 serving a term of incarceration.  
27          (c) Any class 4, 5 or 6 felony, except the offenses listed in  
28 subdivision (a) of this paragraph, that was committed within the five years  
29 immediately preceding the date of the present offense. Any time spent on  
30 absconder status while on probation, on escape status or incarcerated is  
31 excluded in calculating if the offense was committed within the preceding  
32 five years. If a court determines a person was not on absconder status while  
33 on probation or escape status, that time is not excluded. For the purposes  
34 of this subdivision, "escape" has the same meaning prescribed in subdivision  
35 (b) of this paragraph.  
36          (d) Any felony conviction that is a third or more prior felony  
37 conviction.  
38          (e) Any offense committed outside the jurisdiction of this state that  
39 was punishable by that jurisdiction as a felony, ~~—~~ AND that was committed  
40 within the five years immediately preceding the date of the present offense.  
41 Any time spent on absconder status while on probation, on escape status or  
42 incarcerated is excluded in calculating if the offense was committed within  
43 the preceding five years. If a court determines a person was not on  
44 absconder status while on probation or escape status, that time is not  
45 excluded. For the purposes of this subdivision, "escape" has the same  
46 meaning prescribed in subdivision (b) of this paragraph.

1 (f) Any offense committed outside the jurisdiction of this state that  
2 involved ~~the discharge, use or threatening exhibition of a deadly weapon or~~  
3 ~~dangerous instrument or the intentional or knowing infliction of death or~~  
4 ~~serious physical injury~~ A DANGEROUS OFFENSE AND that was punishable by that  
5 jurisdiction as a felony. A person who has been convicted of a felony  
6 weapons possession violation in any court outside the jurisdiction of this  
7 state that would not be punishable as a felony under the laws of this state  
8 is not subject to this paragraph.

9 23. "Human smuggling organization" means an ongoing formal or informal  
10 association of persons in which members or associates individually or  
11 collectively engage in the smuggling of human beings.

12 24. "Intoxication" means any mental or physical incapacity resulting  
13 from use of drugs, toxic vapors or intoxicating liquors.

14 25. "Misdemeanor" means an offense for which a sentence to a term of  
15 imprisonment other than to the custody of the state department of corrections  
16 is authorized by any law of this state.

17 26. "Narcotic drug" means narcotic drugs as defined in section 13-3401.

18 27. "Offense" or "public offense" means conduct for which a sentence to  
19 a term of imprisonment or of a fine is provided by any law of the state in  
20 which it occurred or by any law, regulation or ordinance of a political  
21 subdivision of that state and, if the act occurred in a state other than this  
22 state, it would be so punishable under the laws, regulations or ordinances of  
23 this state or of a political subdivision of this state if the act had  
24 occurred in this state.

25 28. "Omission" means the failure to perform an act as to which a duty  
26 of performance is imposed by law.

27 29. "Peace officer" means any person vested by law with a duty to  
28 maintain public order and make arrests and includes a constable.

29 30. "Person" means a human being and, as the context requires, an  
30 enterprise, a public or private corporation, an unincorporated association, a  
31 partnership, a firm, a society, a government, a governmental authority or an  
32 individual or entity capable of holding a legal or beneficial interest in  
33 property.

34 31. "Petty offense" means an offense for which a sentence of a fine  
35 only is authorized by law.

36 32. "Physical force" means force used upon or directed toward the body  
37 of another person and includes confinement, but does not include deadly  
38 physical force.

39 33. "Physical injury" means the impairment of physical condition.

40 34. "Possess" means knowingly to have physical possession or otherwise  
41 to exercise dominion or control over property.

42 35. "Possession" means a voluntary act if the defendant knowingly  
43 exercised dominion or control over property.

44 36. "Preconviction custody" means the confinement of a person in a jail  
45 in this state or another state after the person is arrested for or charged  
46 with a felony offense.

1           37. "Property" means anything of value, tangible or intangible.  
2           38. "Public servant":  
3           (a) Means any officer or employee of any branch of government, whether  
4 elected, appointed or otherwise employed, including a peace officer, and any  
5 person participating as an advisor or consultant or otherwise in performing a  
6 governmental function.  
7           (b) Does not include jurors or witnesses.  
8           (c) Includes those who have been elected, appointed, employed or  
9 designated to become a public servant although not yet occupying that  
10 position.  
11          39. "Serious physical injury" includes physical injury that creates a  
12 reasonable risk of death, or that causes serious and permanent disfigurement,  
13 serious impairment of health or loss or protracted impairment of the function  
14 of any bodily organ or limb.  
15          40. "Unlawful" means contrary to law or, where the context so requires,  
16 not permitted by law.  
17          41. "Vehicle" means a device in, upon or by which any person or  
18 property is, may be or could have been transported or drawn upon a highway,  
19 waterway or airway, excepting devices moved by human power or used  
20 exclusively upon stationary rails or tracks.  
21          42. "Voluntary act" means a bodily movement performed consciously and  
22 as a result of effort and determination.  
23          43. "Voluntary intoxication" means intoxication caused by the knowing  
24 use of drugs, toxic vapors or intoxicating liquors by a person, the tendency  
25 of which to cause intoxication the person knows or ought to know, unless the  
26 person introduces them pursuant to medical advice or under such duress as  
27 would afford a defense to an offense.  
28          Sec. 4. Section 13-703, Arizona Revised Statutes, is amended to read:  
29          13-703. Repetitive offenders; sentencing  
30          A. A person shall be sentenced as a category one repetitive offender  
31 if the person is convicted of two felony offenses that were not committed on  
32 the same occasion but that either are consolidated for trial purposes or are  
33 not historical prior felony convictions.  
34          B. A person shall be sentenced as a category two repetitive offender  
35 if the person either:  
36           1. Is convicted of three or more felony offenses that were not  
37 committed on the same occasion but that either are consolidated for trial  
38 purposes or are not historical prior felony convictions.  
39           2. Except as provided in section 13-704 or 13-705, is at least  
40 eighteen years of age or has been tried as an adult and stands convicted of a  
41 felony and has one historical prior felony conviction.  
42          C. Except as provided in section 13-704 or 13-705, a person shall be  
43 sentenced as a category three repetitive offender if the person is at least  
44 eighteen years of age or has been tried as an adult and stands convicted of a  
45 felony and has two or more historical prior felony convictions.

1 D. The presumptive term set by this section may be aggravated or  
2 mitigated within the range under this section pursuant to section 13-701,  
3 subsections C, D and E.

4 E. If a person is sentenced as a category one repetitive offender  
5 pursuant to subsection A of this section and if at least two aggravating  
6 circumstances listed in section 13-701, subsection D apply or at least two  
7 mitigating circumstances listed in section 13-701, subsection E apply, the  
8 court may impose a mitigated or aggravated sentence pursuant to subsection H  
9 of this section.

10 F. If a person is sentenced as a category two repetitive offender  
11 pursuant to subsection B of this section and if at least two aggravating  
12 circumstances listed in section 13-701, subsection D apply or at least two  
13 mitigating circumstances listed in section 13-701, subsection E apply, the  
14 court may impose a mitigated or aggravated sentence pursuant to subsection I  
15 of this section.

16 G. If a person is sentenced as a category three repetitive offender  
17 pursuant to subsection C of this section and at least two aggravating  
18 circumstances listed in section 13-701, subsection D or at least two  
19 mitigating circumstances listed in section 13-701, subsection E apply, the  
20 court may impose a mitigated or aggravated sentence pursuant to subsection J  
21 of this section.

22 H. A category one repetitive offender shall be sentenced within the  
23 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	3 years	4 years	5 years	10 years	12.5 years
Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
Class 4	1 year	1.5 years	2.5 years	3 years	3.75 years
Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
Class 6	<del>.3</del> .25 years	.5 years	1 year	1.5 years	<del>1.8</del> 2 years

30 I. A category two repetitive offender shall be sentenced within the  
31 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	4.5 years	6 years	9.25 years	18.5 years	23 years
Class 3	<del>3.3</del> 3.25 years	4.5 years	6.5 years	13 years	16.25 years
Class 4	2.25 years	3 years	4.5 years	6 years	7.5 years
Class 5	1 year	1.5 years	2.25 years	3 years	3.75 years
Class 6	.75 years	1 year	1.75 years	2.25 years	2.75 years

38 J. A category three repetitive offender shall be sentenced within the  
39 following ranges:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	10.5 years	14 years	15.75 years	28 years	35 years
Class 3	7.5 years	10 years	11.25 years	20 years	25 years
Class 4	6 years	8 years	10 years	12 years	15 years
Class 5	3 years	4 years	5 years	6 years	7.5 years
Class 6	2.25 years	3 years	3.75 years	4.5 years	5.75 years

1 K. The aggravated or mitigated term imposed pursuant to subsection H,  
2 I or J of this section may be imposed only if at least two of the aggravating  
3 circumstances are found beyond a reasonable doubt to be true by the trier of  
4 fact or are admitted by the defendant, except that an aggravating  
5 circumstance under section 13-701, subsection D, paragraph 11 shall be found  
6 to be true by the court, or in mitigation of the crime are found to be true  
7 by the court, on any evidence or information introduced or submitted to the  
8 court or the trier of fact before sentencing or any evidence presented at  
9 trial, and factual findings and reasons in support of these findings are set  
10 forth on the record at the time of sentencing.

11 L. Convictions for two or more offenses committed on the same occasion  
12 shall be counted as only one conviction for the purposes of subsection B,  
13 paragraph 2 and subsection C of this section.

14 M. For the purposes of subsection B, paragraph 2 and subsection C of  
15 this section, a person who has been convicted in any court outside the  
16 jurisdiction of this state of an offense that was punishable by that  
17 jurisdiction as a felony is subject to this section. A person who has been  
18 convicted as an adult of an offense punishable as a felony under the  
19 provisions of any prior code in this state or the jurisdiction in which the  
20 offense was committed is subject to this section. A person who has been  
21 convicted of a felony weapons possession violation in any court outside the  
22 jurisdiction of this state that would not be punishable as a felony under the  
23 laws of this state is not subject to this section.

24 N. The penalties prescribed by this section shall be substituted for  
25 the penalties otherwise authorized by law if an allegation of prior  
26 conviction is charged in the indictment or information and admitted or found  
27 by the court. The release provisions prescribed by this section shall not be  
28 substituted for any penalties required by the substantive offense or a  
29 provision of law that specifies a later release or completion of the sentence  
30 imposed before release. The court shall allow the allegation of a prior  
31 conviction at any time before the date the case is actually tried unless the  
32 allegation is filed fewer than twenty days before the case is actually tried  
33 and the court finds on the record that the person was in fact prejudiced by  
34 the untimely filing and states the reasons for these findings. If the  
35 allegation of a prior conviction is filed, the state must make available to  
36 the person a copy of any material or information obtained concerning the  
37 prior conviction. The charge of previous conviction shall not be read to the  
38 jury. For the purposes of this subsection, "substantive offense" means the  
39 felony offense that the trier of fact found beyond a reasonable doubt the  
40 person committed. Substantive offense does not include allegations that, if  
41 proven, would enhance the sentence of imprisonment or fine to which the  
42 person otherwise would be subject.

43 O. A person who is sentenced pursuant to this section is not eligible  
44 for suspension of sentence, probation, pardon or release from confinement on  
45 any basis, except as specifically authorized by section 31-233, subsection A  
46 or B, until the sentence imposed by the court has been served, the person is

1 eligible for release pursuant to section 41-1604.07 or the sentence is  
2 commuted.

3 P. The court shall inform all of the parties before sentencing occurs  
4 of its intent to impose an aggravated or mitigated sentence pursuant to  
5 subsection H, I or J of this section. If the court fails to inform the  
6 parties, a party waives its right to be informed unless the party timely  
7 objects at the time of sentencing.

8 Q. The court in imposing a sentence shall consider the evidence and  
9 opinions presented by the victim or the victim's immediate family at any  
10 aggravation or mitigation proceeding or in the presentence report.

11 Sec. 5. Section 32-109, Arizona Revised Statutes, is amended to read:

12 32-109. Technical registration fund

13 A. Pursuant to sections 35-146 and 35-147, the executive director  
14 shall deposit ten per cent of all fees or other revenues received by the  
15 board in the state general fund to assist in defraying the cost of  
16 maintaining the state government and shall deposit the remaining ninety per  
17 cent in a separate fund, known as the technical registration fund, to be used  
18 only in defraying expenses of the board and in prosecuting violations of this  
19 chapter.

20 B. Monies deposited in the technical registration fund pursuant to  
21 subsection A of this section ~~shall be~~ ARE subject to ~~the provisions of~~  
22 section 35-143.01.

23 C. In addition to the monies deposited in the technical registration  
24 fund pursuant to subsection A of this section, the technical registration  
25 fund consists of monies received pursuant to section ~~13-3423~~ 12-116.08. The  
26 monies that are received in the fund pursuant to this subsection shall be  
27 used:

28 1. To pay the board's expenses associated with investigations and  
29 enforcement actions pursuant to section 12-1000.

30 2. For a county, city or town for remediation pursuant to section  
31 12-1000, subsection D. Notwithstanding section 35-143.01, the monies  
32 received pursuant to section ~~13-3423~~ 12-116.08 are not subject to legislative  
33 appropriation.