

from City of Phoenix Griffith Task Force

AN ACT

AMENDING SECTIONS 8-341, 13-1602, 28-304, AND 28-3320, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-2931-4; RELATING TO OFFENSES AGAINST PUBLIC ORDER

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1, Title 8, Chapter 341 (OR Section 8-341), Arizona Revised Statutes, is amended to read:

8-341. Disposition and commitment; definitions

A. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

1. It may award a delinquent juvenile:

(a) To the care of the juvenile's parents, subject to the supervision of a probation department.

(b) To a probation department, subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a private agency or institution, subject to the supervision of a probation officer.

(e) To the department of juvenile corrections.

(f) To maternal or paternal relatives, subject to the supervision of a probation department.

(g) To an appropriate official of a foreign country of which the juvenile is a foreign national who is unaccompanied by a parent or guardian in this state to remain on unsupervised probation for at least one year on the condition that the juvenile cooperate with that official.

2. It may award an incorrigible child:

(a) To the care of the child's parents, subject to the supervision of a probation department.

(b) To the protective supervision of a probation department, subject to any conditions the court may impose.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a public or private agency, subject to the supervision of a probation department.

(e) To maternal or paternal relatives, subject to the supervision of a probation department.

B. If a juvenile is placed on probation pursuant to this section, the period of probation may continue until the juvenile's eighteenth birthday, except that the term of probation shall not exceed one year if all of the following apply:

1. The juvenile is not charged with a subsequent offense.

2. The juvenile has not been found in violation of a condition of probation.

3. The court has not made a determination that it is in the best interests of the juvenile or the public to require continued supervision. The court shall state by minute entry or written order its reasons for finding that continued supervision is required.

4. The offense for which the juvenile is placed on probation does not involve a dangerous offense as defined in section 13-105.

5. The offense for which the juvenile is placed on probation does not involve a violation of title 13, chapter 14 or 35.1.

6. Restitution ordered pursuant to section 8-344 has been made.

7. The juvenile's parents have not requested that the court continue the juvenile's probation for more than one year.

C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile:

You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

D. If a juvenile is fourteen years of age or older and is adjudicated as a repeat felony juvenile offender, the juvenile court shall place the juvenile on juvenile intensive probation, which may include home arrest and electronic monitoring, may place the juvenile on juvenile intensive probation, which may include incarceration for a period of time in a juvenile detention center, or may commit the juvenile to the department of juvenile corrections pursuant to subsection A, paragraph 1, subdivision (e) of this section for a significant period of time.

E. If the juvenile is adjudicated as a repeat felony juvenile offender, the court shall provide the following written notice to the juvenile:

You have been adjudicated a repeat felony juvenile offender. You are now on notice that if you are arrested for another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fifteen years of age or older, you will be tried as an adult in the criminal division of the superior court. If you commit the other offense when you are fourteen years of age or older, you may be tried as an adult in the criminal division of the superior court. If you are convicted as an adult, you will be sentenced to a term of incarceration. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

F. The failure or inability of the court to provide the notices required under subsections C and E of this section does not preclude the use of the prior adjudications for any purpose otherwise permitted.

G. Except as provided in subsection S of this section, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, the court shall order the juvenile to pay a reasonable monetary assessment if the court determines that an assessment is in aid of rehabilitation. If the director of the department of juvenile corrections determines that enforcement of an order for monetary assessment as a term and condition of conditional liberty is not cost-effective, the director may require the youth to perform an equivalent amount of community restitution in lieu of the payment ordered as a condition of conditional liberty.

H. If a child is adjudicated incorrigible, the court may impose a monetary assessment on the child of not more than one hundred fifty dollars.

I. A juvenile who is charged with unlawful purchase, possession or consumption of spirituous liquor is subject to section 8-323. The monetary assessment for a conviction of unlawful purchase, possession or consumption of spirituous liquor by a juvenile shall not exceed five hundred dollars. The court of competent jurisdiction may order a monetary assessment or equivalent community restitution.

J. The court shall require the monetary assessment imposed under subsection G or H of this section on a juvenile who is not committed to the department of juvenile corrections to be satisfied in one or both of the following forms:

1. Monetary reimbursement by the juvenile in a lump sum or installment payments through the clerk of the superior court for appropriate distribution.

2. A program of work, not in conflict with regular schooling, to repair damage to the victim's property, to provide community restitution or to provide the juvenile with a job for wages. The court order for restitution or monetary assessment shall specify, according to the dispositional program, the amount of reimbursement and the portion of wages of either existing or provided work that is to be credited toward satisfaction of the restitution or assessment, or the nature of the work to be performed and the number of hours to be spent working. The number of hours to be spent working shall be set by the court based on the severity of the offense but shall not be less than sixteen hours.

K. If a juvenile is committed to the department of juvenile corrections, the court shall specify the amount of the monetary assessment imposed pursuant to subsection G or H of this section.

L. After considering the length of stay guidelines developed pursuant to section 41-2816, subsection C, the court may set forth in the order of commitment the minimum period during which

the juvenile shall remain in secure care while in the custody of the department of juvenile corrections. When the court awards a juvenile to the department of juvenile corrections or an institution or agency, it shall transmit with the order of commitment copies of a diagnostic psychological evaluation and educational assessment if one has been administered, copies of the case report, all other psychological and medical reports, restitution orders, any request for postadjudication notice that has been submitted by a victim and any other documents or records pertaining to the case requested by the department of juvenile corrections or an institution or agency. The department shall not release a juvenile from secure care before the juvenile completes the length of stay determined by the court in the commitment order unless the county attorney in the county from which the juvenile was committed requests the committing court to reduce the length of stay. The department may temporarily escort the juvenile from secure care pursuant to section 41-2804, may release the juvenile from secure care without a further court order after the juvenile completes the length of stay determined by the court or may retain the juvenile in secure care for any period subsequent to the completion of the length of stay in accordance with the law.

M. Written notice of the release of any juvenile pursuant to subsection L of this section shall be made to any victim requesting notice, the juvenile court that committed the juvenile and the county attorney of the county from which the juvenile was committed.

N. Notwithstanding any law to the contrary, if a person is under the supervision of the court as an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment services may be provided until the person reaches twenty-one years of age if the court, the person and the state agree to the provision of the treatment and a motion to transfer the person pursuant to section 8-327 has not been filed or has been withdrawn. The court may terminate the provision of treatment services after the person reaches eighteen years of age if the court determines that any of the following applies:

1. The person is not progressing toward treatment goals.
2. The person terminates treatment.
3. The person commits a new offense after reaching eighteen years of age.
4. Continued treatment is not required or is not in the best interests of the state or the

person.

O. On the request of a victim of an act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus. If the victim is a minor the prosecuting attorney shall file this petition at the request of the victim's parent or guardian. If the act committed against a victim is an act that if committed by an adult would be a sexual offense or the court determines that sufficient evidence exists to indicate that significant exposure occurred, it shall order the department of juvenile corrections or the department of health services to test the juvenile pursuant to section 13-1415. Notwithstanding any law to the contrary, the department of juvenile corrections and the department of health services shall release the test results only to the victim, the delinquent juvenile, the delinquent juvenile's parent or guardian and a minor victim's parent or guardian and shall counsel them regarding the meaning and health implications of the results.

P. If a juvenile has been adjudicated delinquent for an offense that if committed by an adult would be a felony, the court shall provide the department of public safety Arizona automated fingerprint identification system established in section 41-2411 with the juvenile's fingerprints, personal identification data and other pertinent information. If a juvenile has been committed to the department of juvenile corrections the department shall provide the fingerprints and information required by this subsection to the Arizona automated fingerprint identification system. If the juvenile's fingerprints and information have been previously submitted to the Arizona automated fingerprint identification system the information is not required to be resubmitted.

Q. Access to fingerprint records submitted pursuant to subsection P of this section shall be limited to the administration of criminal justice as defined in section 41-1750. Dissemination of fingerprint information shall be limited to the name of the juvenile, juvenile case number, date of adjudication and court of adjudication.

R. If a juvenile is adjudicated delinquent for an offense that if committed by an adult would be a misdemeanor, the court may prohibit the juvenile from carrying or possessing a firearm while the juvenile is under the jurisdiction of the department of juvenile corrections or the juvenile court.

S. If a juvenile is adjudicated delinquent for a violation of section 13-1602, subsection A, PARAGRAPHS 1 OR 5, the court shall:

1. Order the juvenile to pay a fine of at least three hundred dollars but not more than one thousand dollars.

2. ORDER THE JUVENILE TO MAKE FULL RESTITUTION FOR THE ECONOMIC LOSS INCURRED BY THE VICTIM OF THE OFFENSE OR THE ECONOMIC LOSS INCURRED BY THE ESTATE OF THE VICTIM IF THE VICTIM HAS DIED. IF THE COURT, AFTER CONSIDERING THE DEGREE OF DAMAGE RESULTING FROM THE OFFENSE, AND THE AGE, PHYSICAL AND MENTAL CONDITION AND EARNING CAPACITY OF THE JUVENILE, FINDS THE JUVENILE UNFIT OR UNABLE TO MAKE THE FULL RESTITUTION, THE COURT SHALL ORDER ONE OR BOTH OF THE JUVENILE'S CUSTODIAL PARENTS TO MAKE RESTITUTION TO THE VICTIM OF THE OFFENSE OR TO THE ESTATE OF THE VICTIM IF THE VICTIM HAS DIED. THE COURT SHALL DETERMINE THE AMOUNT OF RESTITUTION ORDERED PURSUANT TO THIS SUBSECTION, EXCEPT THAT THE AMOUNT SHALL NOT EXCEED THE LIABILITY LIMIT ESTABLISHED PURSUANT TO SECTION 12-661. THE COURT MAY ORDER A PARENT OR JUVENILE WHO IS ORDERED TO PAY RESTITUTION TO SATISFY THE ORDER IN A LUMP SUM OR INSTALLMENT PAYMENTS TO THE CLERK OF CLERK FOR DISBURSEMENT TO THE VICTIM OR ESTATE OF THE VICTIM. IF THE COURT ORDERS THE JUVENILE'S PARENTS TO MAKE RESTITUTION PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE JUVENILE TO MAKE EITHER FULL OR PARTIAL RESTITUTION, REGARDLESS OF THE JUVENILE'S INSUFFICIENT EARNING CAPACITY. THE COURT SHALL NOT CONSIDER THE ABILITY OF THE JUVENILE'S PARENTS TO PAY RESTITUTION BEFORE MAKING A RESTITUTION ORDER. Any restitution ordered shall be paid in accordance with section 13-809, subsection A.

3. ORDER THE JUVENILE TO PERFORM COMMUNITY RESTITUTION OF AT LEAST "X" AMOUNT OF HOURS. The court may order the juvenile to perform ADDITIONAL community restitution in lieu of the payment for all or part of the fine IMPOSED IN PARAGRAPH 1 OF THIS SUBSECTION if it is in the best interests of the juvenile. The amount of community restitution ORDERED IN LIEU OF THE FINE shall be equivalent to the amount of the fine by crediting any service performed at a rate of ten dollars per hour. If the juvenile is convicted of a second or subsequent violation of section 13-1602, subsection A, paragraph 1 OR 5 and is ordered to perform community restitution, the court may order the parent or guardian of the juvenile to assist the juvenile in the performance of the community restitution if both of the following apply:

1- (a) The parent or guardian had knowledge that the juvenile intended to engage in or was engaging in the conduct that gave rise to the violation.

2- (b) The parent or guardian knowingly provided the juvenile with the means to engage in the conduct that gave rise to the violation.

4. SEND NOTICE OF THE JUVENILE'S CONVICTION TO THE DEPARTMENT OF TRANSPORTATION SO THAT THE DEPARTMENT CAN IMMEDIATELY SUSPEND THE DRIVER'S LICENSE OF THE JUVENILE OR REFUSE TO ISSUE A DRIVER'S LICENSE TO THE JUVENILE PURSUANT TO SECTION 28-3320.

T. If a juvenile is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34 and is placed on juvenile probation, the court may order the juvenile to submit to random drug and alcohol testing at least two times per week as a condition of probation.

U. A juvenile who is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34, who is placed on juvenile probation and who is found to have consumed any spirituous liquor or to have used any drug listed in section 13-3401 while on probation is in violation of the juvenile's probation. A juvenile who commits a third or subsequent violation of a condition of probation as prescribed by this subsection shall be brought before the juvenile court and, if the allegations are proven, the court shall either revoke probation and hold a disposition hearing pursuant to this section or select additional conditions of probation as it deems necessary, including detention, global position system monitoring, additional alcohol or drug treatment, community restitution, additional drug or alcohol testing or a monetary assessment.

V. For the purposes of this section:

1. "First time felony juvenile offender" means a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

2. "Repeat felony juvenile offender" means a juvenile to whom both of the following apply:

(a) Is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

(b) Previously has been adjudicated a first time felony juvenile offender.

3. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

4. "ECONOMIC LOSS" MEANS ANY LOSS INCURRED BY A PERSON AS A RESULT OF THE COMMISSION OF AN OFFENSE. ECONOMIC LOSS INCLUDES LOST INTEREST, LOST EARNINGS AND OTHER LOSSES THAT WOULD NOT HAVE BEEN INCURRED BUT FOR THE OFFENSE. ECONOMIC LOSS DOES NOT INCLUDE LOSSES INCURRED BY THE CONVICTED PERSON, DAMAGES FOR PAIN AND SUFFERING, PUNITIVE DAMAGES OR CONSEQUENTIAL DAMAGES EXCEPT A PERSON MAY RECOVER LABOR COSTS OF ANY KIND, MATERIAL COSTS OF ANY KIND, AND ANY COSTS ATTRIBUTED TO EQUIPMENT INCURRED TO ABATE OR REPAIR DAMAGE TO THAT PERSON'S PROPERTY.

Sec. 2. Title 13, Chapter 16, Section 2 (OR Section 13-1602), Arizona Revised Statutes, is amended to read:

13-1602. Criminal damage; classification

A. A person commits criminal damage by recklessly:

1. Defacing or damaging property of another person; or

2. Tampering with property of another person so as substantially to impair its function or value; or

3. Tampering with or damaging the property of a utility.

4. Parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water.

5. Drawing or inscribing a message, slogan, sign or symbol that is made on any public or private building, structure or surface, except the ground, and that is made without permission of the owner.

B. Criminal damage is punished as follows:

1. Criminal damage is a class 4 felony if the person recklessly damages property of another in an amount of ten thousand dollars or more.

2. Criminal damage is a class 4 felony if the person recklessly damages the property of a utility in an amount of five thousand dollars or more or if the person recklessly causes impairment of the functioning of any utility.

3. Criminal damage is a class 5 felony if the person recklessly damages property of another in an amount of two thousand dollars or more but less than ten thousand dollars.

4. Criminal damage is a class 6 felony if the person recklessly damages the property of another in an amount of one thousand dollars or more but less than two thousand dollars.

5. Criminal damage is a class 1 misdemeanor if the person recklessly damages property of another in an amount of more than two hundred fifty dollars but less than one thousand dollars, OR RECKLESSLY DAMAGES PROPERTY OF ANOTHER PURSUANT TO SUBSECTION A, PARAGRAPH 5 OF THIS SECTION IN ANY AMOUNT LESS THAN ONE THOUSAND DOLLARS.

6. In all other cases criminal damage is a class 2 misdemeanor.

Sec. 3. Title 28, Chapter 33, Section 4 (OR Section 28-3304), Arizona Revised Statutes, is amended to read:

28-3304. Mandatory revocation of license; definition

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.

4. Theft of a motor vehicle pursuant to section 13-1802.
5. Unlawful use of means of transportation pursuant to section 13-1803.
6. Theft of means of transportation pursuant to section 13-1814.
7. Drive by shooting pursuant to section 13-1209.
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.
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.

10. CRIMINAL DAMAGE OF PROPERTY PURSUANT TO SECTION 13-1602, SUBSECTION A, PARAGRAPH 5.

~~10.~~ 11. Conviction or forfeiture of bail not vacated on a second or subsequent charge of the following offenses that are committed within eighty-four 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.

~~11.~~ 12. Conviction or forfeiture of bail not vacated on a second charge of violating section 28-1381 or 28-1382 within eighty-four months.

~~12.~~ 13. Conviction or forfeiture of bail not vacated on a third or subsequent charge of violating section 28-1381 or 28-1382 within eighty-four months.

~~13.~~ 14. 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 eighty-four 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 eighty-four month period prescribed in subsection A, paragraphs ~~10~~ 11 through ~~13~~ 14 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. 4. Title 28, Chapter 33, Section 20 (OR Section 28-3320), Arizona Revised Statutes, is amended to read:

28-3320. Suspension of license for persons under eighteen years of age; notice; definition

A. In addition to the grounds for mandatory suspension or revocation provided for in chapters 3, 4 and 5 of this title, the department shall immediately suspend the driver license or privilege to drive or refuse to issue a driver license or privilege to drive of a person who commits an offense while under eighteen years of age as follows:

1. For a period of two years on receiving the record of the person's conviction for a violation of section 4-244, paragraph 34, section 28-1381 or section 28-1382.
2. For a period of three years on receiving the record of the person's conviction for a violation of section 28-1383.
3. Until the person's eighteenth birthday on receiving the record of the person's conviction for a violation of section 13-1602, subsection A, paragraph 1 or section 13-1604, subsection A involving the damage or disfigurement of property by graffiti.
4. Until the person's eighteenth birthday on receiving the record of the person's conviction of criminal damage pursuant to section 13-1602, subsection A, paragraph 5 or a violation of a city or town ordinance that prohibits the type of criminal action prescribed in section 13-1602, subsection A, paragraph 5.
5. Until the person's eighteenth birthday on receiving the record of the person's conviction for a violation of SECTION 13-2931, OR any OTHER statute or ordinance involving the purchase or possession of materials used for graffiti.
6. Until the person's eighteenth birthday on receiving the record of the person's conviction for a violation of any provision of title 13, chapter 34.
7. Until the person's eighteenth birthday or for a period of two years on receiving the record of the person's conviction for a second or subsequent violation of section 4-244, paragraph 9, if ordered by the court.

8. Until the person's eighteenth birthday on receiving the record of the person's conviction of theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.

B. If ordered by the court, the department shall restrict the person's privilege to drive between the person's home, school and place of employment during specified periods of time according to the person's school and employment schedule.

C. If a person commits an offense prescribed in subsection A, paragraph 1 of this section and the person's privilege to drive is restricted as prescribed in subsection B of this section, the department shall issue a special ignition interlock restricted driver license to the person pursuant to section 28-1401.

D. If ordered by the court pursuant to section 4-246, subsection D, the department shall suspend the driving privilege of a person under eighteen years of age for a period of up to one hundred eighty days on receiving the record of the person's first conviction for a violation of section 4-244, paragraph 9.

E. For the purposes of this section, "conviction" means a final conviction or judgment, including an order of the 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. 5. Title 13, chapter 29, Arizona Revised Statutes, is amended by adding section 13-2931, to read:

13-2931. Unlawful possession of graffiti implements; minors; exception; classification; definition

A. IT IS UNLAWFUL FOR A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE TO POSSESS ANY GRAFFITI IMPLEMENT WHILE ON PUBLIC OR PRIVATE PROPERTY WITHOUT THE EXPRESS CONSENT OF THE OWNER OR RESPONSIBLE AGENT OF THE PROPERTY.

B. THIS SECTION DOES NOT APPLY TO A MINOR WHO:

1. IS UNDER THE IMMEDIATE SUPERVISION OF A PARENT, LEGAL GUARDIAN, EMPLOYER, TEACHER, OR OTHER ADULT IN ANY SIMILAR RELATIONSHIP AND SUCH POSSESSION IS FOR A LAWFUL PURPOSE.

C. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR AND WILL BE PUNISHED AS PROVIDED BY OR PURSUANT TO TITLE 8.

D. FOR THE PURPOSES OF THIS SECTION, "GRAFFITI IMPLEMENT" INCLUDES AEROSOL OR PRESSURIZED PAINT CONTAINERS, BROAD-TIPPED INDELIBLE MARKER, SOLIDIFIED PAINT MARKER, OR ETCHING TOOLS OR SOLUTIONS THAT COULD BE USED TO COMMIT CRIMINAL DAMAGE PURSUANT TO SUBSECTION 13-1602, SUBSECTION A, PARAGRAPHS 1 OR 5 OR SECTION 13-1604, SUBSECTION A INVOLVING THE DAMAGE OR DEFAACEMENT OF PROPERTY OR A VIOLATION OF A CITY OR TOWN ORDINANCE THAT PROHIBITS THE TYPE OF CRIMINAL ACTION PRESCRIBED IN SECTION 13-1602, SUBSECTION A, PARAGRAPHS 1 OR 5 OR SECTION 13-1604, SUBSECTION A.

Sec. 6. Title 13, chapter 29, Arizona Revised Statutes, is amended by adding section 13-2932, to read:

13-2932. Illegally obtaining graffiti implements by minor; violation; classification; definition

A. A MINOR WHO MISREPRESENTS HIS OR HER AGE TO ANY PERSON BY MEANS OF A WRITTEN INSTRUMENT OF IDENTIFICATION WITH THE INTENT TO INDUCE A PERSON TO SELL, DELIVER, GIVE OR FURNISH GRAFFITI IMPLEMENTS CONTRARY TO LAW IS GUILTY OF A CLASS 1 MISDEMEANOR.

B. A MINOR WHO SOLICITS ANOTHER PERSON TO PURCHASE, SELL GIVE, DELIVER OR FURNISH GRAFFITI IMPLEMENTS CONTRARY TO LAW IS GUILTY OF A CLASS 3 MISDEMEANOR.

C. A MINOR WHO USES A WRITTEN INSTRUMENT OF IDENTIFICATION IN VIOLATION OF SUBSECTION A OR B OF THIS SECTION IS SUBJECT TO SUSPENSION OF THE DRIVER LICENSE OR PRIVILEGE TO DRIVE AS PROVIDED IN SECTION 28-3320.

D. FOR THE PURPOSES OF THIS SECTION, "GRAFFITI IMPLEMENT" INCLUDES AEROSOL OR PRESSURIZED PAINT CONTAINERS, BROAD-TIPPED INDELIBLE MARKER, SOLIDIFIED PAINT MARKER, OR ETCHING TOOLS OR SOLUTIONS THAT COULD BE

USED TO COMMIT CRIMINAL DAMAGE PURSUANT TO SUBSECTION 13-1602, SUBSECTION A, PARAGRAPHS 1 OR 5 OR SECTION 13-1604, SUBSECTION A INVOLVING THE DAMAGE OR DEFACEMENT OF PROPERTY OR A VIOLATION OF A CITY OR TOWN ORDINANCE THAT PROHIBITS THE TYPE OF CRIMINAL ACTION PRESCRIBED IN SECTION 13-1602, SUBSECTION A, PARAGRAPHS 1 OR 5 OR SECTION 13-1604, SUBSECTION A.

E. FOR THE PURPOSES OF THIS SECTION, "WRITTEN INSTRUMENT OF IDENTIFICATION" INCLUDE ONLY THE FOLLOWING AS ACCEPTABLE TYPES OF IDENTIFICATION:

1. AN UNEXPIRED DRIVER LICENSE ISSUED BY ANY STATE OR CANADA IF THE LICENSE INCLUDES A PICTURE OF THE LICENSEE.

2. A NONOPERATING IDENTIFICATION LICENSE ISSUED PURSUANT TO SECTION 28-3165 OR AN EQUIVALENT FORM OF IDENTIFICATION LICENSE ISSUED BY ANY STATE OR CANADA IF THE LICENSE INCLUDES A PICTURE OF THE PERSON AND THE PERSON'S DATE OF BIRTH.

3. AN ARMED FORCES IDENTIFICATION CARD.

4. A VALID UNEXPIRED PASSPORT OR BORDER CROSSING IDENTIFICATION CARD THAT IS ISSUED BY A GOVERNMENT OR A VOTER CARD THAT IS ISSUED BY THE GOVERNMENT OF MEXICO IF THE PASSPORT OR CARD CONTAINS A PHOTOGRAPH OF THE PERSON AND THE PERSON'S DATE OF BIRTH.

Sec. 7. Title 13, chapter 29, Arizona Revised Statutes, is amended by adding section 13-2933, to read:

13-2933. Unlawful distribution of graffiti implements to minors; Selling, delivering or giving graffiti implements to minors; defenses; exception; classification; definitions

A. IT IS UNLAWFUL FOR ANY PERSON, FIRM, OR CORPORATION TO SELL, DELIVER, OR GIVE, OR CAUSE TO BE SOLD, DELIVERED, OR GIVEN TO ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS, AND NO PERSON UNDER THE AGE OF EIGHTEEN YEARS MAY BUY, RECEIVE, OR HAVE IN POSSESSION ANY GRAFFITI IMPLEMENT.

B. IF ANY PERSON, FIRM, OR CORPORATION QUESTIONS OR HAS REASON TO QUESTION THAT THE PERSON ORDERING, PURCHASING, ATTEMPTING TO PURCHASE OR OTHERWISE PROCURING OR ATTEMPTING TO PROCURE GRAFFITI IMPLEMENTS IS UNDER THE AGE OF EIGHTEEN, THE PERSON, FIRM, OR CORPORATION SHALL DO ALL OF THE FOLLOWING:

1. DEMAND IDENTIFICATION FROM THE PERSON.

2. EXAMINE THE IDENTIFICATION TO DETERMINE THAT THE IDENTIFICATION REASONABLY APPEARS TO BE VALID, UNALTERED IDENTIFICATION THAT HAS NOT BEEN DEFACED.

3. EXAMINE THE PHOTOGRAPH IN THE IDENTIFICATION AND DETERMINE THAT THE PERSON REASONABLY APPEARS TO BE THE SAME PERSON IN THE IDENTIFICATION.

4. DETERMINE THAT THE DATE OF BIRTH IN THE IDENTIFICATION INDICATES THE PERSON IS NOT UNDER THE AGE OF EIGHTEEN.

C. EVIDENCE THAT A PERSON, FIRM, OR CORPORATION, OR AN EMPLOYEE OR AGENT OF THE PERSON, FIRM, OR CORPORATION DEMANDED AND EXAMINED IDENTIFICATION PURSUANT TO THE PROCEDURES SET FORTH IN SUBSECTION B OF THIS SECTION, AND ACTED UPON SUCH IDENTIFICATION IN A TRANSACTION OR SALE ON THIS PARTICULAR VISIT SHALL BE A DEFENSE TO ANY PROSECUTION UNDER THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "EVIDENCE" IS A RECORD RETAINED BY THE PERSON, FIRM OR CORPORATION THAT ILLUSTRATES THAT THE PROCEDURES SET FORTH IN SUBSECTION B WERE FOLLOWED. ANY OF THE FOLLOWING TYPES OF RECORDS ARE ACCEPTABLE FORMS OF "EVIDENCE":

1. A WRITING CONTAINING THE TYPE OF IDENTIFICATION, THE DATE OF ISSUANCE OF THE IDENTIFICATION, THE NAME ON THE IDENTIFICATION, THE DATE OF BIRTH ON THE IDENTIFICATION AND THE SIGNATURE OF THE PERSON BEING IDENTIFIED.

2. AN ELECTRONIC FILE OR PRINTED DOCUMENT PRODUCED BY A DEVICE THAT READS THE PERSON AGE FROM THE IDENTIFICATION.

3. A DATED AND SIGNED PHOTOCOPY OF THE IDENTIFICATION.

4. A PHOTOGRAPH OF THE IDENTIFICATION.

5. A DIGITAL COPY OF THE IDENTIFICATION.

D. IT IS A DEFENSE TO A VIOLATION OF SUBSECTION A OF THIS SECTION IF THE PERSON ORDERING, PURCHASING, ATTEMPTING TO PURCHASE OR OTHERWISE PROCURING OR ATTEMPTING TO PROCURE THE SALE, DELIVERY OR GIFT OF GRAFFITI IMPLEMENTS IS NOT UNDER THE AGE OF EIGHTEEN.

E. THE DEFENSES PROVIDED IN THIS SECTION DO NOT APPLY TO A PERSON, FIRM, OR CORPORATION WHO HAS ACTUAL KNOWLEDGE THAT THE PERSON EXHIBITING THE IDENTIFICATION IS UNDER THE AGE OF EIGHTEEN.

F. THIS SECTION DOES NOT APPLY TO:

1. THE TRANSFER OF ANY GRAFFITI IMPLEMENT FROM A PARENT TO CHILD, GUARDIAN TO WARD, EMPLOYER TO EMPLOYEE, TEACHER TO STUDENT, OR IN ANY OTHER SIMILAR RELATIONSHIP WHEN SUCH TRANSFER IS FOR A LAWFUL PURPOSE.

G. A PERSON, FIRM, OR CORPORATION CONVICTED OF A VIOLATION OF THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS.

H. FOR THE PURPOSES OF THIS SECTION, "GRAFFITI IMPLEMENT" INCLUDES AEROSOL OR PRESSURIZED PAINT CONTAINERS, BROAD-TIPPED INDELIBLE MARKER, SOLIDIFIED PAINT MARKER, OR ETCHING TOOLS OR SOLUTIONS.

I. FOR THE PURPOSES OF THIS SECTION, "IDENTIFICATION" INCLUDE ONLY THE FOLLOWING WRITTEN INSTRUMENTS AS ACCEPTABLE TYPES OF IDENTIFICATION:

1. AN UNEXPIRED DRIVER LICENSE ISSUED BY ANY STATE OR CANADA IF THE LICENSE INCLUDES A PICTURE OF THE LICENSEE.

2. A NONOPERATING IDENTIFICATION LICENSE ISSUED PURSUANT TO SECTION 28-3165 OR AN EQUIVALENT FORM OF IDENTIFICATION LICENSE ISSUED BY ANY STATE OR CANADA IF THE LICENSE INCLUDES A PICTURE OF THE PERSON AND THE PERSON'S DATE OF BIRTH.

3. AN ARMED FORCES IDENTIFICATION CARD.

4. A VALID UNEXPIRED PASSPORT OR BORDER CROSSING IDENTIFICATION CARD THAT IS ISSUED BY A GOVERNMENT OR A VOTER CARD THAT IS ISSUED BY THE GOVERNMENT OF MEXICO IF THE PASSPORT OR CARD CONTAINS A PHOTOGRAPH OF THE PERSON AND THE PERSON'S DATE OF BIRTH.

J. LAW ENFORCEMENT AGENCIES MAY USE PERSONS WHO ARE UNDER THE AGE OF EIGHTEEN TO TEST COMPLIANCE WITH THIS SECTION BY A PERSON, FIRM, OR CORPORATION IF THE LAW ENFORCEMENT AGENCY HAS REASONABLE SUSPICION THAT THE PERSON, FIRM, OR CORPORATION IS VIOLATING THIS SECTION. A PERSON WHO IS UNDER THE AGE OF EIGHTEEN AND WHO PURCHASES OR ATTEMPTS TO PURCHASE GRAFFITI IMPLEMENTS UNDER THE DIRECTION OF A LAW ENFORCEMENT AGENCY PURSUANT TO THIS SUBSECTION IS IMMUNE FROM PROSECUTION FOR THAT PURCHASE OR ATTEMPTED PURCHASE. LAW ENFORCEMENT AGENCIES MAY USE A PERSON UNDER THE AGE OF EIGHTEEN PURSUANT TO THIS SUBSECTION ONLY IF:

1. THE PERSON IS AT LEAST FIFTEEN BUT NOT MORE THAN SEVENTEEN YEARS OF AGE.

2. THE PERSON IS NOT EMPLOYED ON AN INCENTIVE OR QUOTA BASIS.

3. THE PERSON'S APPEARANCE IS THAT OF A PERSON WHO IS UNDER THE AGE OF EIGHTEEN.

4. A PHOTOGRAPH OF THE PERSON IS TAKEN NO MORE THAN TWELVE HOURS BEFORE THE PURCHASE OR ATTEMPTED PURCHASE. THE PHOTOGRAPH SHALL ACCURATELY DEPICT THE PERSON'S APPEARANCE AND ATTIRE. A PERSON, FIRM, OR CORPORATION WHO IS CITED FOR SELLING, DELIVERING OR GIVING GRAFFITI IMPLEMENTS TO A PERSON UNDER THE AGE OF EIGHTEEN PURSUANT TO THIS

SUBSECTION SHALL BE PERMITTED TO INSPECT THE PHOTOGRAPH IMMEDIATELY AFTER THE CITATION IS ISSUED. THE PERSON'S APPEARANCE AT ANY TRIAL OR ADMINISTRATIVE HEARING THAT RESULTS FROM A CITATION SHALL NOT BE SUBSTANTIALLY DIFFERENT FROM THE PERSON'S APPEARANCE AT THE TIME THE CITATION WAS ISSUED.

5. THE PERSON PLACES, RECEIVES AND PAYS FOR THE PERSON'S ORDER OF GRAFFITI IMPLEMENTS. AN ADULT SHALL NOT ACCOMPANY THE PERSON ONTO THE PREMISES OF THE PERSON, FIRM OR CORPORATION.

6. THE PERSON DOES NOT USE THE GRAFFITI IMPLEMENTS.

Sec. 8. Title 13, chapter 29, Arizona Revised Statutes, is amended by adding section 13-2934, to read:

13-2934. Storage and display of graffiti implements; classification; definition

A. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, OR CORPORATION WHO OWNS, CONDUCTS, OPERATES, OR MANAGES A BUSINESS, WHERE GRAFFITI IMPLEMENTS ARE SOLD, OR ANY PERSON, FIRM, OR CORPORATION WHO SELLS OR OFFERS FOR SALE GRAFFITI IMPLEMENTS, TO STORE OR DISPLAY, OR CAUSE TO BE STORED OR DISPLAYED SUCH GRAFFITI IMPLEMENTS IN AN AREA THAT IS ACCESSIBLE TO THE PUBLIC WITHOUT EMPLOYEE ASSISTANCE IN THE REGULAR COURSE OF BUSINESS PENDING LEGAL SALE OR OTHER DISPOSITION.

B. NOTHING HEREIN SHALL PRECLUDE THE STORAGE OR DISPLAY OF GRAFFITI IMPLEMENTS IN AN AREA VIEWABLE BY THE PUBLIC SO LONG AS SUCH ITEMS ARE NOT ACCESSIBLE TO THE PUBLIC WITHOUT EMPLOYEE ASSISTANCE.

C. A PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION SHALL BE SUBJECT TO A CIVIL SANCTION OF NOT LESS THAN FIVE HUNDRED DOLLARS.

D. FOR THE PURPOSES OF THIS SECTION, "GRAFFITI IMPLEMENT" INCLUDES AEROSOL OR PRESSURIZED PAINT CONTAINERS, BROAD-TIPPED INDELIBLE MARKERES, SOLIDIFIED PAINT MARKERS, OR ETCHING TOOLS AND SOLUTIONS.

Summary of Proposed Graffiti Legislation

The attached graffiti omnibus legislation addresses many City concerns involving punishments for criminal damage via graffiti, minor possession of graffiti implements, the sale and distribution of graffiti implements to minors, and procedures for vendor storage and display of graffiti implements. The following illustrations detail the changes:

- Makes full restitution mandatory for minors convicted of any conceivable form of criminal graffiti damage
- Provides for parental restitution liability (capped at \$10,000) if the Court finds that the convicted minor is unable to make restitution
- Makes community restitution mandatory for minors convicted of criminal damage offenses
- Provides judicial discretion to order additional community restitution in lieu of the mandatory fine, but not the mandatory restitution
- Makes the Court send notice of a juvenile's conviction for criminal graffiti damage to the Department of Transportation, which results in suspension of driver's license.
- Makes criminal graffiti damage no less than a Class 1 misdemeanor
- Makes adults convicted of criminal graffiti damage subject to driver's license revocation
- Defines graffiti implements
- Makes minor possession of graffiti implements a strict liability offense with a class 1 misdemeanor designation if there is no immediate supervision from a parent, guardian, teacher, employer, etc. and the possession is not for a lawful purpose
- Makes illegally obtaining graffiti implements by minors a class 1 misdemeanor
- Makes solicitation to illegally obtain graffiti implements a class 3 misdemeanor
- Makes it illegal to sell, deliver, give or furnish graffiti implements to minors
- Provides procedures for identification check at the point of sale for graffiti implements
- Provides parameters for what constitutes valid identification/proof of majority
- Provides law enforcement with the ability to use certain minors to check the compliance of identification procedures if they have belief that a business is not in compliance
- Makes it illegal for vendors of graffiti implements to not lock-up graffiti implements or display graffiti implements in areas that are accessible to the public without employee assistance.