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| **[WUNRN] UN Special Rapporteur Violence Against Women Call for Submissions for RAPE Report - Deadline Extended** |    |

Tue, Jun 16, 2020 7:49 am

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Call for submissions to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women

Update: the deadline for this call for submissions has been extended until 31 December 2020. The information received will inform the preparation of the Special Rapporteur’s final report to the Human Rights Council.

The United Nations Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović, in her thematic report to be presented to the UN Human Rights Council in June 2021 will address **States’ responsibility to criminalize and prosecute rape as a grave and systematic human rights violation and a manifestation of gender-based violence against women, in line with international human rights standards.**

Rape has been recognized as crime of sexual violence, a war crime, a crime against humanity  and/or genocide in specific circumstances and it has been criminalized and prosecuted in a large number of States and jurisdictions but in different ways, that is: rape has different definitions (force /consent), different scopes (women, men, marital rape, all types of penetrations), with different aggravating and mitigating circumstances, with different sanctions, and with  different statutes of limitations for its prosecution. While victims of rape can also be men and boys, it predominantly affects women and as such, falls under the definition of gender based violence against women as act of violence against women.

Globally, we know that rape is frequently not reported, and if reported seldom prosecuted with vigor; if prosecuted, results in very low numbers of convictions (attrition rates are high) and all this results in impunity for the majority of perpetrators; women thereby lose faith in the criminal system, do not report it, and the result is the mixture of low reporting rates and a culture of impunity and rape becomes normalized.

In general, there is lack of data on rape reporting, prosecution and conviction including on the relationship(s) between the victim and the perpetrator.

The international human rights framework on rape as a human rights violation and gender-based violence against women (GBVAW) has been significantly improved, but those improved standards are not fully incorporated into legislation and practice at the national level.

The aim of this report is to collect as much information as possible on the criminalization and prosecution of rape, and to thereby support and encourage a process of harmonization of national criminal laws and systems and practice with international standards on rape and sexual violence in both peacetime and during conflicts.

In her report, the Special Rapporteur intends **to**provide recommendations to States and other stakeholders on key international human rights standards that should be integrated in national criminal justice responses in order to harmonize them with accepted international standards; to provide access to justice and support for victims of rape; to break the cycle of impunity; and to prosecute perpetrators, ensuring that they are not protected by hidden domestic norms that are still part of criminal law or criminal procedure.

To that end, the Special Rapporteur on violence against women would like to invite all States, National Human Rights Institutions, civil society actors, international organisations, academics and other stakeholders from all countries to send responses to the questionnaire below.

(Due to limited time and resources, please send information including provision of the criminal law in English. If sent in other languages, translation services are not available and it could not be considered at this stage of information gathering).

All submissions should be sent to vaw@ohchr.org by**31 December 2020**. You are kindly requested to indicate if you DO NOT wish your submission to be made public.

Please indicate who is providing the response, along with contact details.

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**Questionnaire on criminalization and prosecution of rape**

**FIRST I HAVE PUT THE STATUTES – THAT TAKES UP 30 PAGES. SO THE ANSWERS TO THE QUESTIONS ARE IN THE LAST 5 AND I REFER BACK TO THE STATUTE NUMBER SO YOU ARE NOT HAVING TO SEARCH EVERYWHERE.**

**Definition and scope of criminal law provisions**

1.    Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

 Arizona Revised Statutes. Criminal Code, Article 13

13-1404. Sexual abuse; classification

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.

B. It is not a defense to a prosecution for a violation of this section that the other person consented if the other person was fifteen, sixteen or seventeen years of age and the defendant was in a position of trust.

C. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony punishable pursuant to section 13-705.

13-1405. Sexual conduct with a minor; classification

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.

B. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to section 13-705.  Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony.  Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is or was in a position of trust and the convicted 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 has been served or commuted.

13-1406. Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and 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.  If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705.  The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E.  If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years.  The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable.  The term for a first offense is as follows:

Minimum     Presumptive Maximum

5.25 years  7 years     14 years

The term for a defendant who has one historical prior felony conviction is as follows:

Minimum     Presumptive Maximum

7 years     10.5 years  21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

Minimum     Presumptive Maximum

14 years    15.75 years 28 years

C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and 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 at least twenty-five years have been served or the sentence is commuted.  If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to section 13-705.

13-1407. Defenses

A. It is a defense to a prosecution pursuant to sections 13-1404 and 13-1405 involving a minor if the act was done in furtherance of lawful medical practice.

B. It is a defense to a prosecution pursuant to sections 13-1404 and 13-1405 in which the victim's lack of consent is based on incapacity to consent because the victim was fifteen, sixteen or seventeen years of age if at the time the defendant engaged in the conduct constituting the offense the defendant did not know and could not reasonably have known the age of the victim.

C. It is a defense to a prosecution pursuant to section 13-1402, 13-1404, 13-1405 or 13-1406 if the act was done by a duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person who renders emergency care at the scene of an emergency occurrence, the act consisted of administering a recognized and lawful form of treatment that was reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in an emergency when the duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

D. It is a defense to a prosecution pursuant to section 13-1404 or 13-1405 that the person was the spouse of the other person at the time of commission of the act. It is not a defense to a prosecution pursuant to section 13-1406 that the defendant was the spouse of the victim at the time of commission of the act.

E. It is a defense to a prosecution pursuant to sections 13-1405 and 13-3560 if the victim is fifteen, sixteen or seventeen years of age, the defendant is under nineteen years of age or attending high school and is no more than twenty-four months older than the victim and the conduct is consensual.

13-1409. Unlawful sexual conduct; adult probation department employees; juvenile court employees; classification; definitions

A. An adult probation department employee or juvenile court employee commits unlawful sexual conduct if the employee knowingly coerces the victim to engage in sexual contact, oral sexual contact or sexual intercourse by either:

1. Threatening to negatively influence the victim's supervision or release status.

2. Offering to positively influence the victim's supervision or release status.

B. Unlawful sexual conduct with a victim who is under fifteen years of age is a class 2 felony.  Unlawful sexual conduct with a victim who is at least fifteen years of age and under eighteen years of age is a class 3 felony.  All other unlawful sexual conduct is a class 5 felony.

C. For the purposes of this section:

1. "Adult probation department employee or juvenile court employee" means an employee of an adult probation department or the juvenile court who either:

(a) Through the course of employment, directly provides treatment, care, control or supervision to a victim.

(b) Provides presentence or predisposition reports directly to a court regarding the victim.

2. "Victim" means a person who is either of the following:

(a) Subject to conditions of release or supervision by a court.

(b) A minor who has been referred to the juvenile court.

13-1410. Molestation of a child; classification

A. A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child who is under fifteen years of age.

B. Molestation of a child is a class 2 felony that is punishable pursuant to section 13-705.

13-1412. Unlawful sexual conduct; peace officers; classification; definitions

A. A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with any person who is in the officer's custody or a person who the officer knows or has reason to know is the subject of an investigation.

B. Unlawful sexual conduct with a victim who is under fifteen years of age is a class 2 felony.  Unlawful sexual conduct with a victim who is at least fifteen years of age but less than eighteen years of age is a class 3 felony.  All other unlawful sexual conduct is a class 5 felony.

C. This section does not apply to either of the following:

1. Any direct or indirect touching or manipulating of the genitals, anus or female breast that occurs during a lawful search.

2. An officer who is married to or who is in a romantic or sexual relationship with the person at the time of the arrest or investigation.  The following factors may be considered in determining whether the relationship between the victim and the defendant is currently a romantic or sexual relationship:

(a) The type of relationship.

(b) The length of the relationship.

(c) The frequency of the interaction between the victim and the defendant.

(d) If the relationship has terminated, the length of time since the termination.

D. For the purposes of this section:

1. "Custody" includes the imposition of actual or constructive restraint pursuant to an on-site arrest, a court order or any contact in which a reasonable person would not feel free to leave.  Custody does not include detention in a correctional facility, a juvenile detention facility or a state hospital.

2. "Peace officer" has the same meaning prescribed in section 1-215 but does not include adult or juvenile corrections or detention officers.

13-1417. Continuous sexual abuse of a child; classification

A. A person who over a period of three months or more in duration engages in three or more acts in violation of section 13-1405, 13-1406 or 13-1410 with a child who is under fourteen years of age is guilty of continuous sexual abuse of a child.

B. Continuous sexual abuse of a child is a class 2 felony and is punishable pursuant to section 13-705.

C. To convict a person of continuous sexual abuse of a child, the trier of fact shall unanimously agree that the requisite number of acts occurred.  The trier of fact does not need to agree on which acts constitute the requisite number.

D. Any other felony sexual offense involving the victim shall not be charged in the same proceeding with a charge under this section unless the other charged felony sexual offense occurred outside the time period charged under this section or the other felony sexual offense is charged in the alternative.  A defendant may be charged with only one count under this section unless more than one victim is involved. If more than one victim is involved, a separate count may be charged for each victim.

13-1418. Sexual misconduct; behavioral health professionals; classification

A. A behavioral health professional licensed pursuant to title 32, chapter 33 or a psychiatrist or psychologist licensed pursuant to title 32, chapter 13, 17 or 19.1 commits sexual misconduct by intentionally or knowingly engaging in sexual intercourse with a client who is currently under the care or supervision of the licensed behavioral health professional, psychiatrist or psychologist.

B. Sexual misconduct by a licensed behavioral health professional, psychiatrist or psychologist is a class 6 felony.

C. This section does not apply to any act of sexual conduct that occurs between a licensed behavioral health professional, psychiatrist or psychologist and a client after the client has completed a course of treatment or if the client is not under the care of the licensed behavioral health professional, psychiatrist or psychologist.

13-1419. Unlawful sexual conduct; correctional facilities; classification; definition

A. A person commits unlawful sexual conduct by intentionally or knowingly engaging in any act of a sexual nature with an offender who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county.  For the purposes of this subsection, "person" means a person who:

1. Is employed by the state department of corrections or the department of juvenile corrections.

2. Is employed by a private prison facility, a juvenile detention facility or a city or county jail.

3. Contracts to provide services with the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.

4. Is an official visitor, volunteer or agency representative of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.

B. This section does not apply to a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail or an offender who is on release status if the person was lawfully married to the prisoner or offender on release status before the prisoner or offender was sentenced to the state department of corrections or was incarcerated in a city or county jail.

C. Unlawful sexual conduct with an offender who is under fifteen years of age is a class 2 felony.  Unlawful sexual conduct with an offender who is between fifteen and seventeen years of age is a class 3 felony.  All other unlawful sexual conduct is a class 5 felony.

D. For the purposes of this section, "any act of a sexual nature":

1. Includes the following:

(a) Any completed, attempted, threatened or requested touching of the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.

(b) Any act of exposing the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.

(c) Any act of photographing, videotaping, filming, digitally recording or otherwise viewing, with or without a device, a prisoner or offender with the intent to arouse or gratify sexual desire, either:

(i) While the prisoner or offender is in a state of undress or partial dress.

(ii) While the prisoner or offender is urinating or defecating.

2. Does not include an act done pursuant to a bona fide medical exam or lawful internal search.

13-1420. Sexual offense; evidence of similar crimes; definition

A. If the defendant is charged with committing a sexual offense, the court may admit evidence that the defendant committed past acts that would constitute a sexual offense and may consider the bearing this evidence has on any matter to which it is relevant.

B. This section does not limit the admission or consideration of evidence under any court rule.

C. For the purposes of this section, "sexual offense" means any of the following:

1. Sexual abuse in violation of section 13-1404.

2. Sexual conduct with a minor in violation of section 13-1405.

3. Sexual assault in violation of section 13-1406.

4. Sexual assault of a spouse if the offense was committed before the effective date of this amendment to this section.

5.  Molestation of a child in violation of section 13-1410.

6. Continuous sexual abuse of a child in violation of section 13-1417.

7. Sexual misconduct by a behavioral health professional in violation of section 13-1418.

8. Commercial sexual exploitation of a minor in violation of section 13-3552.

9. Sexual exploitation of a minor in violation of section 13-3553.

13-1421. Evidence relating to victim's chastity; pretrial hearing

A. Evidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity are not admissible in any prosecution for any offense in this chapter. Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence is one of the following:

1. Evidence of the victim's past sexual conduct with the defendant.

2. Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease or trauma.

3. Evidence that supports a claim that the victim has a motive in accusing the defendant of the crime.

4. Evidence offered for the purpose of impeachment when the prosecutor puts the victim's prior sexual conduct in issue.

5. Evidence of false allegations of sexual misconduct made by the victim against others.

B. Evidence described in subsection A shall not be referred to in any statements to a jury or introduced at trial without a court order after a hearing on written motions is held to determine the admissibility of the evidence. If new information is discovered during the course of the trial that may make the evidence described in subsection A admissible, the court may hold a hearing to determine the admissibility of the evidence under subsection A. The standard for admissibility of evidence under subsection A is by clear and convincing evidence.

13-1423. Violent sexual assault; natural life sentence

A. A person is guilty of violent sexual assault if in the course of committing an offense under section 13-1404, 13-1405, 13-1406 or 13-1410 the offense involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has a historical prior felony conviction for a sexual offense under this chapter or any offense committed outside this state that if committed in this state would constitute a sexual offense under this chapter.

B. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, a person who is guilty of a violent sexual assault shall be sentenced to life imprisonment and the court shall order that the person not be released on any basis for the remainder of the person's natural life.

13-1428. Sexual extortion; classification; definition

A. A person commits sexual extortion by knowingly communicating a threat with the intent to coerce another person to do any of the following:

1. Engage in sexual contact or sexual intercourse.

2. Allow the other person's genitals, anus or female breast to be photographed, filmed, videotaped or digitally recorded.

3. Exhibit the other person's genitals, anus or female breast.

B. Sexual extortion is a class 3 felony unless the victim is under fifteen years of age in which case sexual extortion is a class 2 felony punishable pursuant to section 13-705.

C. For the purposes of this section, "communicating a threat" means a threat to do any of the following:

1. Damage the property of the other person.

2. Harm the reputation of the other person.

3. Produce or distribute a photograph, film, videotape or digital recording that depicts the other person engaging in sexual contact or sexual intercourse or the exhibition of the other person's genitals, anus or female breast.

13-2907.03. False reporting of sexual assault involving a spouse; classification

A person who intentionally makes a false report of sexual assault involving a spouse knowing the report is false or a person who coerces another person to make a false report of sexual assault involving a spouse knowing the report is false is guilty of a class 1 misdemeanor.

13-3205. Causing spouse to become prostitute; classification

A person who knowingly by force, fraud, intimidation or threats, causes his or her spouse to live in a house of prostitution or to lead a life of prostitution, is guilty of a class 5 felony.

13-3608. Incest; classification

Persons who are eighteen or more years of age and are within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who knowingly intermarry with each other, or who knowingly commit fornication or adultery with each other are guilty of a class 4 felony.

13-3961. Offenses not bailable; purpose; preconviction; exceptions

A. A person who is in custody shall not be admitted to bail if the proof is evident or the presumption great that the person is guilty of the offense charged and the offense charged is one of the following:

1. A capital offense.

2. Sexual assault.

3. Sexual conduct with a minor under either of the following circumstances:

(a) At the time of the offense, the person was at least eighteen years of age and the victim was under thirteen years of age.

(b) At the time of the offense, the victim was thirteen or fourteen years of age and the person was at least ten years older than the victim.

4. Molestation of a child under either of the following circumstances:

(a) At the time of the offense, the person was at least eighteen years of age and the victim was under thirteen years of age.

(b) At the time of the offense, the victim was thirteen or fourteen years of age and the person was at least ten years older than the victim.

5. A serious felony offense if there is probable cause to believe that the person has entered or remained in the United States illegally. For the purposes of this paragraph:

(a) The court shall consider all of the following in making a determination that a person has entered or remained in the United States illegally:

(i) Whether a hold has been placed on the arrested person by the United States immigration and customs enforcement.

(ii) Any indication by a law enforcement agency that the person is in the United States illegally.

(iii) Whether an admission by the arrested person has been obtained by the court or a law enforcement agency that the person has entered or remained in the United States illegally.

(iv) Any information received from a law enforcement agency pursuant to section 13-3906.

(v) Any evidence that the person has recently entered or remained in the United States illegally.

(vi) Any other relevant information that is obtained by the court or that is presented to the court by a party or any other person.

(b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or any violation of section 28-1383.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.

2. Protecting against the intimidation of witnesses.

3. Protecting the safety of the victim, any other person or the community.

C. The initial determination of whether an offense is bailable pursuant to subsection A of this section shall be made by the magistrate or judicial officer at the time of the person's initial appearance.

D. Except as provided in subsection A of this section, a person who is in custody shall not be admitted to bail if the person is charged with a felony offense and the state certifies by motion and the court finds after a hearing on the matter that there is clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense, that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community and that the proof is evident or the presumption great that the person committed the offense for which the person is charged.  For the purposes of this subsection, "violent offense" means either of the following:

1. A dangerous crime against children.

2. Terrorism.

E. On oral motion of the state, the court shall order the hearing required by subsection D of this section at or within twenty-four hours of the initial appearance unless the person who is subject to detention or the state moves for a continuance.  A continuance that is granted on the motion of the person shall not exceed five calendar days unless there are extenuating circumstances.  A continuance on the motion of the state shall be granted on good cause shown and shall not exceed twenty-four hours.  The prosecutor shall provide reasonable notice and an opportunity for victims and witnesses to be present and heard at any hearing.  The person may be detained pending the hearing. The person is entitled to representation by counsel and is entitled to present information by proffer or otherwise, to testify and to present witnesses in the person's own behalf.  Testimony of the person charged that is given during the hearing shall not be admissible on the issue of guilt in any subsequent judicial proceeding, except as it might relate to the compliance with or violation of any condition of release subsequently imposed or the imposition of appropriate sentence or in perjury proceedings, or for the purposes of impeachment.  The case of the person shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person's trial shall be given priority.  The person may be admitted to bail in accordance with the Arizona rules of criminal procedure whenever a judicial officer finds that a subsequent event has eliminated the basis for detention.

F. The finding of an indictment or the filing of an information does not add to the strength of the proof or the presumption to be drawn.

G. In a hearing pursuant to subsection D of this section, proof that the person is a criminal street gang member may give rise to the inference that the person poses a substantial danger to another person or the community and that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community.

13-4063. Competency of female concerned in certain offenses; effect of marriage to accused

In a prosecution for rape, abduction, seduction, pandering, receiving earnings of a prostitute, transporting a female for immoral purposes, forcing a woman to marry, defiling a woman, inveigling or enticing a female into a house of ill-fame or to have illicit carnal relation with a man, the female concerned in the offense is a competent witness to testify to any and all matters, including conversations with the accused, or by him with third persons in her presence, notwithstanding her having married the accused either before or after the commission of the offense charged.

13-4065. Prohibition on psychological or psychiatric examination to determine credibility

Except on agreement of the parties or as provided in section 13-3993, the court shall not order an adult or child victim or witness in a prosecution for any offense in violation of chapter 14 of this title, a dangerous crime against children in the first or second degree or child abuse to submit to a psychological or psychiatric examination for the purpose of assessing the witness' or victim's credibility.

 13-701. Sentence of imprisonment for felony; presentence report; aggravating and mitigating factors; consecutive terms of imprisonment; definition

A. A sentence of imprisonment for a felony shall be a definite term of years and the person sentenced, unless otherwise provided by law, shall be committed to the custody of the state department of corrections.

B. No prisoner may be transferred to the custody of the state department of corrections without a certified copy of the judgment and sentence, signed by the sentencing judge, and a copy of a recent presentence investigation report unless the court has waived preparation of the report.

C. The minimum or maximum term imposed pursuant to section 13-702, 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be imposed only if one or more of the circumstances alleged to be in aggravation of the crime are found to be true by the trier of fact beyond a reasonable doubt or are admitted by the defendant, except that an alleged aggravating circumstance under subsection D, paragraph 11 of this section shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of such findings are set forth on the record at the time of sentencing.

D. For the purpose of determining the sentence pursuant to subsection C of this section, the trier of fact shall determine and the court shall consider the following aggravating circumstances, except that the court shall determine an aggravating circumstance under paragraph 11 of this subsection:

1. Infliction or threatened infliction of serious physical injury, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 13-704.

2. Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of the crime, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 13-704.

3. If the offense involves the taking of or damage to property, the value of the property taken or damaged.

4. Presence of an accomplice.

5. Especially heinous, cruel or depraved manner in which the offense was committed.

6. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

7. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

8. At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to the defendant's office or employment.

9. The victim or, if the victim has died as a result of the conduct of the defendant, the victim's immediate family suffered physical, emotional or financial harm.

10. During the course of the commission of the offense, the death of an unborn child at any stage of its development occurred.

11. The defendant was previously convicted of a felony within the ten years immediately preceding the date of the offense.  A conviction outside the jurisdiction of this state for an offense that if committed in this state would be punishable as a felony is a felony conviction for the purposes of this paragraph.

12. The defendant was wearing body armor as defined in section 13-3116.

13. The victim of the offense is at least sixty-five years of age or is a person with a disability as defined in section 38-492, subsection B.

14. The defendant was appointed pursuant to title 14 as a fiduciary and the offense involved conduct directly related to the defendant's duties to the victim as fiduciary.

15. Evidence that the defendant committed the crime out of malice toward a victim because of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3 or because of the defendant's perception of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3.

16. The defendant was convicted of a violation of section 13-1102, section 13-1103, section 13-1104, subsection A, paragraph 3 or section 13-1204, subsection A, paragraph 1 or 2 arising from an act that was committed while driving a motor vehicle and the defendant's alcohol concentration at the time of committing the offense was 0.15 or more.  For the purposes of this paragraph, "alcohol concentration" has the same meaning prescribed in section 28-101.

17. Lying in wait for the victim or ambushing the victim during the commission of any felony.

18. The offense was committed in the presence of a child and any of the circumstances exists that are set forth in section 13-3601, subsection A.

19. The offense was committed in retaliation for a victim either reporting criminal activity or being involved in an organization, other than a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity.

20. The defendant was impersonating a peace officer as defined in section 1-215.

21. The defendant was in violation of 8 United States Code section 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

22. The defendant used a remote stun gun or an authorized remote stun gun in the commission of the offense.  For the purposes of this paragraph:

(a) "Authorized remote stun gun" means a remote stun gun that has all of the following:

(i) An electrical discharge that is less than one hundred thousand volts and less than nine joules of energy per pulse.

(ii) A serial or identification number on all projectiles that are discharged from the remote stun gun.

(iii) An identification and tracking system that, on deployment of remote electrodes, disperses coded material that is traceable to the purchaser through records that are kept by the manufacturer on all remote stun guns and all individual cartridges sold.

(iv) A training program that is offered by the manufacturer.

(b) "Remote stun gun" means an electronic device that emits an electrical charge and that is designed and primarily employed to incapacitate a person or animal either through contact with electrodes on the device itself or remotely through wired probes that are attached to the device or through a spark, plasma, ionization or other conductive means emitting from the device.

23. During or immediately following the commission of the offense, the defendant committed a violation of section 28-661, 28-662 or 28-663.

24. The defendant was convicted of a violation of section 13-1307 or 13-1308 or section 13-3212, subsection A, paragraph 9 or 10 and the defendant recruited, enticed or obtained the victim from a shelter that is designed to serve runaway youth, foster children, homeless persons or victims of human trafficking, domestic violence or sexual assault.

25. The defendant was convicted of a violation of section 13-1204 and there is evidence that the defendant committed the crime out of malice toward a victim because of the victim's employment as a peace officer.

26. During or immediately following the commission of the offense, the defendant used a mask or other disguise to obscure the defendant's face to avoid identification.

27. Any other factor that the state alleges is relevant to the defendant's character or background or to the nature or circumstances of the crime.

E. For the purpose of determining the sentence pursuant to subsection C of this section, the court shall consider the following mitigating circumstances:

1. The age of the defendant.

2. The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.

3. The defendant was under unusual or substantial duress, although not to a degree that would constitute a defense to prosecution.

4. The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.

5. During or immediately following the commission of the offense, the defendant complied with all duties imposed under sections 28-661, 28-662 and 28-663.

6. Any other factor that is relevant to the defendant's character or background or to the nature or circumstances of the crime and that the court finds to be mitigating.

F. If the trier of fact finds at least one aggravating circumstance, the trial court may find by a preponderance of the evidence additional aggravating circumstances. In determining what sentence to impose, the court shall take into account the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to justify the lesser term.  If the trier of fact finds aggravating circumstances and the court does not find any mitigating circumstances, the court shall impose an aggravated sentence.

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

H. This section does not affect any provision of law that imposes the death penalty, that expressly provides for imprisonment for life or that authorizes or restricts the granting of probation and suspending the execution of sentence.

I. The intentional failure by the court to impose the mandatory sentences or probation conditions provided in this title is malfeasance.

J. For the purposes of this section, "trier of fact" means a jury, unless the defendant and the state waive a jury in which case the trier of fact means the court.

13-702. First time felony offenders; sentencing; definition

A. Unless a specific sentence is otherwise provided, the term of imprisonment for a first felony offense shall be the presumptive sentence determined pursuant to subsection D of this section.  Except for those felonies involving a dangerous offense or if a specific sentence is otherwise provided, the court may increase or reduce the presumptive sentence within the ranges set by subsection D of this section.  Any reduction or increase shall be based on the aggravating and mitigating circumstances listed in section 13-701, subsections D and E and shall be within the ranges prescribed in subsection D of this section.

B. If a person is convicted of a felony without having previously been convicted of any felony and if at least two of the aggravating factors listed in section 13-701, subsection D apply, the court may increase the maximum term of imprisonment otherwise authorized for that offense to an aggravated term.  If a person is convicted of a felony without having previously been convicted of any felony and if the court finds at least two mitigating factors listed in section 13-701, subsection E apply, the court may decrease the minimum term of imprisonment otherwise authorized for that offense to a mitigated term.

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

D. The term of imprisonment for a presumptive, minimum, maximum, mitigated or aggravated sentence shall be within the range prescribed under this subsection.  The terms are as follows:

Felony      Mitigated   Minimum     Presumptive Maximum     Aggravated

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     .33 years   .5 years    1 year      1.5 years   2 years

E. The court shall inform all of the parties before sentencing occurs of its intent to increase or decrease a sentence to the aggravated or mitigated sentence pursuant this section.  If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

F. For the purposes of this section, "trier of fact" means a jury, unless the defendant and the state waive a jury in which case the trier of fact means the court.

13-703. Repetitive offenders; sentencing

A. If a person is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions, the person shall be sentenced as a first time felony offender pursuant to section 13-702 for the first offense, as a category one repetitive offender for the second offense, and as a category two repetitive offender for the third and subsequent offenses.

B. Except as provided in section 13-704 or 13-705, a person shall be sentenced as a category two repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony and has one historical prior felony conviction.

C. Except as provided in section 13-704 or 13-705, a person shall be sentenced as a category three repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony and has two or more historical prior felony convictions.

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

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

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

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

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

Felony      Mitigated   Minimum    Presumptive  Maximum     Aggravated

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     .25 years   .5 years   1 year      1.5 years   2 years

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

Felony      Mitigated   Minimum     Presumptive Maximum     Aggravated

Class 2     4.5 years   6 years     9.25 years  18.5 years 23 years

Class 3     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

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

Felony      Mitigated   Minimum     Presumptive Maximum     Aggravated

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

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

L. Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for the purposes of subsections B and C of this section.

M. A person who has been convicted in any court outside the jurisdiction of this state of an offense that was punishable by that jurisdiction as a felony is subject to this section. A person who has been convicted as an adult of an offense punishable as a felony under the provisions of any prior code in this state or the jurisdiction in which the offense was committed is subject to this section.  A person who has been convicted of a felony weapons possession violation in any court outside the jurisdiction of this state that would not be punishable as a felony under the laws of this state is not subject to this section.

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

O. A person who is sentenced pursuant to this section 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.

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

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

13-807. Civil actions by victims or other persons

A defendant who is convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding brought by the victim or this state against the criminal defendant the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas. An order of restitution in favor of a person does not preclude that person from bringing a separate civil action and proving in that action damages in excess of the amount of the restitution order that is actually paid.

13-4221. Preservation of biological evidence; retention period; definitions

A. Notwithstanding any other law, the appropriate governmental entity shall retain all identified biological evidence that is secured in connection with a felony sexual offense or homicide for:

1. The period of time that a person who was convicted of a felony sexual offense or homicide remains incarcerated for that offense or until the completion of the person's supervised release.

2. A cold case, fifty-five years or until a person is convicted of the crime and remains incarcerated or under supervised release for that offense.

B. The governmental entity shall preserve the evidence for the period of time prescribed in subsection A of this section in a condition that is suitable for deoxyribonucleic acid testing.

C. Evidence retained pursuant to this section shall be made available for deoxyribonucleic acid testing pursuant to section 13-4240.

D. The government entity that investigates the crime may establish procedures for retaining probative samples of the biological evidence and disposing of bulk evidence that do not affect the suitability of the probative sample for deoxyribonucleic acid testing.  The government entity responsible for retaining the samples shall obtain approval from the county attorney or attorney general before disposal of any bulk evidence.  Before the disposal of any bulk evidence, reasonable efforts shall be made to provide written notice to the victim.

E. This section does not preclude a governmental entity from disposing of evidence in a case in which a conviction has been obtained after the expiration of the defendant's sentence.  Under any other circumstance, the governmental entity may dispose of physical evidence after the conclusion of the convicted defendant's direct appeal and first postconviction relief proceeding or after the time for initiating the direct appeal and first postconviction relief proceeding has expired, with the agreement of the county attorney or the attorney general and then, upon written notice to the defendant, any counsel of record and the victim if no other law requires that biological evidence be preserved or retained.

F. This section does not limit a governmental entity's discretion concerning the conditions under which biological evidence is retained, preserved or transferred among different entities if the evidence is retained in a condition that is suitable for deoxyribonucleic acid testing.

G. For the purposes of this section:

1. "Biological evidence" includes a sexual assault forensic examination kit, semen, blood, saliva, hair, skin tissue or other identified biological material.

2. "Cold case" means a homicide or a felony sexual offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.

13-4402. Implementation of rights and duties

A. Except as provided in sections 13-4405 and 13-4433 and section 13-4408, subsection B, the rights and duties that are established by this chapter arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this chapter until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable by the court until restitution is paid.

B. If a defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceeding.

C. After the final termination of a criminal prosecution by dismissal with prejudice or acquittal, a person who has received notice and the right to be present and heard pursuant to the victims' rights act, article II, section 2.1, Constitution of Arizona, any implementing legislation or court rule is no longer entitled to such rights.

13-4423. Plea negotiation proceedings

A. On request of the victim, the victim has the right to be present and be heard at any proceeding in which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court.

B. The court shall not accept a plea agreement unless:

1. The prosecuting attorney advises the court that before requesting the negotiated plea reasonable efforts were made to confer with the victim pursuant to section 13-4419.

2. Reasonable efforts are made to give the victim notice of the plea proceeding pursuant to section 13-4409 and to inform the victim that the victim has the right to be present and, if present, to be heard.

3. The prosecuting attorney advises the court that to the best of the prosecutor's knowledge notice requirements of this chapter have been complied with and the prosecutor informs the court of the victim's position, if known, regarding the negotiated plea.

13-4426.01. Sentencing; victims' right to be heard

In any proceeding in which the victim has the right to be heard pursuant to article II, section 2.1, Constitution of Arizona, or this chapter, the victim's right to be heard is exercised not as a witness, the victim's statement is not subject to disclosure to the state or the defendant or submission to the court and the victim is not subject to cross-examination. The state and the defense shall be afforded the opportunity to explain, support or deny the victim's statement.

13-4430. Consultation between crime victim advocate and victim; privileged information; exception

A. A crime victim advocate shall not disclose as a witness or otherwise any communication made by or with the victim, including any communication made to or in the presence of others, unless the victim consents in writing to the disclosure.

B. Unless the victim consents in writing to the disclosure, a crime victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on communications made by or with the victim, including communications made to or in the presence of others.

C. The communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory evidence.

D. A defendant may make a motion for disclosure of privileged information.  If the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in camera. Material that the court finds is exculpatory shall be disclosed to the defendant.

E. If, with the written or verbal consent of the victim, the crime victim advocate discloses to the prosecutor or a law enforcement agency any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports or memoranda, the prosecutor or law enforcement agent shall disclose such material to the defendant's attorney only if such information is otherwise exculpatory.

F. Notwithstanding subsections A and B, if a crime victim consents either verbally or in writing, a crime victim advocate may disclose information to other professionals and administrative support persons that the advocate works with for the purpose of assisting the advocate in providing services to the victim and to the court in furtherance of any victim's right pursuant to this chapter.

13-4431. Minimizing victim's contacts

Before, during and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that occurs between the victim, the victim's immediate family and the victim's witnesses and the defendant, the defendant's immediate family and defense witnesses.

13-4433. Victim's right to refuse an interview; applicability

A. Unless the victim consents, the victim shall not be compelled to submit to an interview on any matter, including any charged criminal offense witnessed by the victim and that occurred on the same occasion as the offense against the victim, or filed in the same indictment or information or consolidated for trial, that is conducted by the defendant, the defendant's attorney or an agent of the defendant.

B. The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the prosecutor's office. The prosecutor's office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview.

C. The prosecutor shall not be required to forward any correspondence from the defendant, the defendant's attorney or an agent of the defendant to the victim or the victim's representative.

D. If the victim consents to an interview, the prosecutor's office shall inform the defendant, the defendant's attorney or an agent of the defendant of the time and place the victim has selected for the interview.  If the victim wishes to impose other conditions on the interview, the prosecutor's office shall inform the defendant, the defendant's attorney or an agent of the defendant of the conditions. The victim has the right to terminate the interview at any time or to refuse to answer any question during the interview. The prosecutor has standing at the request of the victim to protect the victim from harassment, intimidation or abuse and, pursuant to that standing, may seek any appropriate protective court order.

E. Unless otherwise directed by the victim, the prosecutor may attend all interviews. If a transcript or tape recording of the interview is made and on request of the prosecutor, the prosecutor shall receive a copy of the transcript or tape recording at the prosecutor's expense.

F. If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Arizona Constitution.

G. This section applies to the parent or legal guardian of a minor child who exercises victims' rights on behalf of the minor child. Notwithstanding subsection E of this section, the defendant, the defendant's attorney or an agent of the defendant may not interview a minor child who has agreed to an interview, even if the minor child's parent or legal guardian initiates contact with the defendant, the defendant's attorney or an agent of the defendant, unless the prosecutor has actual notice at least five days in advance and the minor child is informed that the prosecutor may be present at the interview.

H. Except in cases involving a dismissal with prejudice or an acquittal, the right of a victim and a victim's representative to refuse an interview, a deposition or any other discovery request related to the criminal case involving the victim by the defendant, the defendant's attorney or any other person acting on behalf of the defendant remains enforceable beyond a final disposition of the charges.  This subsection does not require any other right enumerated in article II, section 2.1, Constitution of Arizona, to remain enforceable beyond a final disposition as prescribed in section 13-4402, subsection A.

13-4434. Victim's right to privacy; exception; definitions

A. The victim has the right at any court proceeding not to testify regarding any identifying or locating information unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.

B. A victim's identifying and locating information that is obtained, compiled or reported by a law enforcement agency or prosecution agency shall be redacted by the originating agency and prosecution agencies from records pertaining to the criminal case involving the victim, including discovery disclosed to the defendant.

C. Subsection B of this section does not apply to:

1. The victim's name except, if the victim is a minor, the victim's name may be redacted from public records pertaining to the crime if the countervailing interests of confidentiality, privacy, the rights of the minor or the best interests of this state outweigh the public interest in disclosure.

2. Any records that are transmitted between law enforcement and prosecution agencies or a court.

3. Any records if the victim or, if the victim is a minor, the victim's representative as designated under section 13-4403 has consented to the release of the information.

4. The general location at which the reported crime occurred.

D. For the purposes of this section:

1. "Identifying information" includes a victim's date of birth, social security number and official state or government issued driver license or identification number.

2. "Locating information" includes the victim's address, telephone number, e-mail address and place of employment.

13-4437. Standing to invoke rights; recovery of damages; right to counsel

A. The rights enumerated in the victims' bill of rights, article II, section 2.1, Constitution of Arizona, any implementing legislation or court rules belong to the victim.  The victim has standing to seek an order, to bring a special action or to file a notice of appearance in a trial court or an appellate proceeding, seeking to enforce any right or to challenge an order denying any right guaranteed to victims. A victim may not be charged a filing fee to file a special action or to seek an order pursuant to this subsection. In asserting any right, the victim has the right to be represented by personal counsel at the victim's expense and the proceedings may be initiated by the victim's counsel or the prosecutor.

B. A victim has the right to recover damages from a governmental entity responsible for the intentional, knowing or grossly negligent violation of the victim's rights under the victims' bill of rights, article II, section 2.1, Constitution of Arizona, any implementing legislation or court rules.  Nothing in this section alters or abrogates any provision for immunity provided for under common law or statute.

C. At the request of the victim, the prosecutor may assert any right to which the victim is entitled.

D. On the filing of a notice of appearance, counsel for the victim shall be endorsed on all pleadings and, if present, be included in all bench conferences and in chambers meetings and sessions with the trial court that directly involve a victim's right enumerated in article II, section 2.1, Constitution of Arizona.

E. Notwithstanding any other law and without limiting any rights and powers of the victim, the victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution pursuant to section 13-804.

12-511. Civil action arising from criminal conduct; definitions

A. Notwithstanding sections 12-505 and 12-542, if a defendant is charged by a criminal complaint or indictment the statute of limitations for any civil cause of action that is brought by a victim against the defendant for criminal conduct against the victim is extended for one year from the final disposition of the criminal proceedings, regardless of whether the defendant is convicted of criminal conduct against the victim.

B. There is no duty under a policy of insurance to defend or indemnify for any loss resulting from criminal conduct if the civil action is not commenced within the time period that would be applicable without any tolling or extension of the statute of limitations pursuant to this section.

C. This section does not toll or extend any statute of limitations applicable to a civil cause of action brought against the employer or former employer of any defendant who is subject to this section.

D. This section does not shorten any other applicable tolling provisions.

E. In any action brought pursuant to this section, the standard of proof is by the preponderance of the evidence.

F. This section applies to all cases in which the victim files a civil action within one year after the final disposition of the defendant's criminal proceedings, regardless of when the defendant committed the criminal conduct.

G. For the purposes of this section:

1. "Civil cause of action" means any civil claim that the victim could have brought against the defendant for criminal conduct committed against the victim regardless of whether any of these incidents was criminally prosecuted.

2. "Criminal conduct":

(a) Means any act, including all preparatory offenses, in violation of section 13-1103, 13-1104, 13-1105, 13-1202, 13-1203, 13-1204, 13-1208, 13-1304, 13-1404, 13-1405, 13-1406, 13-1410, 13-1417, 13-2314.04, 13-2915, 13-2916, 13-2921, 13-2921.01, 13-3019, 13-3552, 13-3553, 13-3554, 13-3601 or 13-3601.02.

(b) Includes any act involving sexual assault of a spouse that was committed before the effective date of this amendment to this section.

3. "Defendant" means a natural person.

4. "Final disposition" has the same meaning prescribed in sections 8-382 and 13-4401.

5. "Victim" has the same meaning prescribed in sections 8-382 and 13-4401.

12-514. Civil action arising from sexual conduct or sexual contact committed against a minor; failure to report; statute of limitations; definitions

A. Notwithstanding sections 12-505, 12-511 and 12-542, an action for the recovery of damages that is based on either of the following shall be commenced within twelve years after the plaintiff reaches eighteen years of age and not afterward:

1. An injury that a minor suffers as a result of another person's negligent or intentional act if that act is a cause of sexual conduct or sexual contact committed against the minor.

2. The failure to report pursuant to section 13-3620 sexual conduct or sexual contact committed against a minor.

B. For the purposes of this section:

1. "Person" means an individual, the United States, this state or a public or private corporation, local government unit, public agency, partnership, association, firm, trust or estate or any other legal entity.

2. "Sexual conduct" means sexual conduct as proscribed by section 13-1405.

3. "Sexual contact" has the same meaning prescribed in section 13-1401.

13-107. Time limitations

A. A prosecution for any homicide, any conspiracy to commit homicide that results in the death of a person, any offense that is listed in chapter 14 or 35.1 of this title and that is a class 2 felony, any violent sexual assault pursuant to section 13-1423, any violation of section 13-2308.01 or 13-2308.03, any misuse of public monies or a felony involving falsification of public records or any attempt to commit an offense listed in this subsection may be commenced at any time.

B. Except as otherwise provided in this section and section 28-672, prosecutions for other offenses must be commenced within the following periods after actual discovery by the state or the political subdivision having jurisdiction of the offense or discovery by the state or the political subdivision that should have occurred with the exercise of reasonable diligence, whichever first occurs:

1. For a class 2 through a class 6 felony, seven years.

2. For a misdemeanor, one year.

3. For a petty offense, six months.

C. For the purposes of subsection B of this section, a prosecution is commenced when an indictment, information or complaint is filed.

D. The period of limitation does not run during any time when the accused is absent from the state or has no reasonably ascertainable place of abode within the state.

E. The period of limitation does not run for a serious offense as defined in section 13-706 during any time when the identity of the person who commits the offense or offenses is unknown.

F. The time limitation within which a prosecution of a class 6 felony shall commence shall be determined pursuant to subsection B, paragraph 1 of this section, irrespective of whether a court enters a judgment of conviction for or a prosecuting attorney designates the offense as a misdemeanor.

G. If a complaint, indictment or information filed before the period of limitation has expired is dismissed for any reason, a new prosecution may be commenced within six months after the dismissal becomes final even if the period of limitation has expired at the time of the dismissal or will expire within six months of the dismissal.

Footer

**ANSWERS TO THE QUESTIONS WITH REFERENCE TO THE STATUTE NUMBERS**

2.    Based on the wording of those provisions, is the provided definition of rape:

a.    Gender specific, covering women only NO – see ARS 13-1404, 13-1405

b.    Gender neutral, covering  all persons   YES

c.     Based on the lack of consent of victim YES See 13-1406

d.    Based on the use of force or threat  NO13-1409(A) (1) BUT SEE 13-1428

e.    Some combination of the above.  YES 13-1428 for person in power

f.     Does it cover only vaginal rape?  NO 13-1406

g.    Does it cover all forms of penetration? NO. If yes, please specify. 13-1406

h.    Is marital rape in this provision explicitly included? YES 13-1407(D) but see 13-2907.03 and 13-3205.

i.      Is the law silent on marital rape? NO see above.

j.     Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO NA

k.    Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO. NA

3.    Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

 13-1412(C )(2) if police officer

4.    What is the legal age for sexual consent?

 16 but see 13-1407 (B) and 13-3608

5.    Are there provisions that differentiate for sexual activity between peers? If so, please provide them. Yes See 13-1407(E)

6.    Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

 13-1406

7.    What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

See 13-4437, 13-4402, 13- 807

The person can also file a civil suit. Information further on.

**Aggravating and mitigating circumstances**

8.    Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they? For children: 13-1410, 13-1412(B)

a.     Is rape by more than one perpetrator an aggravating circumstance?  NO

b.    Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES

13-1409, 1412, 1417-1419

c.     Is rape by spouse or intimate partner an aggravating circumstance? No

9.    Does the law foresee mitigating circumstances for the purposes of punishment? YES If yes, please specify. See 13-701, 702, 703

10.  Is reconciliation between the victim and the perpetrator allowed as part of a legal response? NO  If so, at what stage and what are the consequences?

a.    Regardless of the law, is reconciliation permitted in practice? YES and what is the practice in this regard? Yes. It should have no legal impact but it does on a practical matter i.e. the prosecutor does not want to prosecute and the jury does does not want to convict and the judge does not want to sentence.

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES If yes, please specify. It is entirely up to the prosecutor who can refuse because no resources, no possibility of conviction, or any reason s/he pleases. Or no reason at all.

a.    if the perpetrator marries the victim of rape? NO. not legally. See 13-4063

b.     if the perpetrator loses his “socially dangerous” character or reconciles with the victim? NO see above.

**Prosecution**

12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES

13. Is rape reported to the police prosecuted ex parte (private prosecution)? NO

14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES. See 13-4423, and 13-4426

15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES same as above

16. Please provide information on the statute of limitations for prosecuting rape.

 See 13-107

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   YES see 12-511 and 12-514

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  NO If yes, please specify. But see 13-4221

19.  Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES see 13-1421 and 13-4065

20.  Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES If yes, please specify. See 13-3961,13-4430, 4431, 4433, 4434

**War and/or conflict**

21. Is rape criminalized as a war crime or crime against humanity? NO

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO NA

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

 NA

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? NO

**Data**

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

For every 100 rapes or attempted rapes reported to police, only 19 cases lead to arrest, 5 end in a plea deal, and 1 ends in a guilty verdict through trial. Melissa S. Morabito, et al., U.S. Dept. of Justice, *Decision Making in Sexual Assault Cases, Replication Research on Sexual Violence Case Attrition in the U.S., III,* 1, 16 (2019). For every 100 rapes or attempted rapes reported to police, only 19 cases lead to arrest, 5 end in a plea deal, and 1 ends in a guilty verdict through trial. Melissa S. Morabito, et al., U.S. Dept. of Justice, *Decision Making in Sexual Assault Cases, Replication Research on Sexual Violence Case Attrition in the U.S., III,* 1, 16 (2019). Between 200,000 and 400,000 untested rape kits are sitting today in police departments across the United States. Rebecca Campbell, et al., *Changing the Criminal Justice System Response to Sexual Assault*, Am. J. Community Psychol., at 1, 2 (June 2020). The persistent failure of law enforcement to take sexual violence seriously is no doubt a significant factor in why so few rapes are reported. One study found that only 15.8% of rapes are reported to law enforcement. *See* Dean G. Kilpatrick et al., Med. Univ. of South Carolina, *Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study* 44 (2007). And on college campuses, the numbers are even worse: less than 5% of completed and/or attempted rapes are reported. Christopher P. Krebs, et al., *The Campus Sexual Assault (CSA) Study: Final Report* (2007).

The intersection between sex and race intensifies the epidemic of violence. Black women are subjected to rape and sexual assault at a higher rate than White, Asian, and Latina women; 40–60% of Black women have been subjected to coercive sexual contact by the age of 18. Nat’l Ctr. on Violence against Women in the Black Community, *Black Women and Sexual Assault* 1 (2018). And “violence against indigenous women has reached unprecedented levels on tribal lands and in Alaska Native Villages;” more than half are victims of sexual violence. Indian Law Res. Ctr., *Ending Violence Against Native Women*, at www.indianlaw.org/issue/ending-violence-against-native-women. Studies show that American Indian women are subjected to sexual violence at much higher rates than other U.S. women. Futures Without Violence, *American Indian Alaskan Native Violence Fact Sheet* 2 (2012).

Sexual violence and domestic violence are also acutely problematic for immigrant women. Nat’l Sexual Violence Res. Ctr., *Immigrant Victims of Sexual Assault, SART Toolkit Section* 6.12, at www.nsvrc.org/sarts/toolkit/6-12.Immigrants are also more susceptible to sexual assault in the workplace. *I**d.* Immigrant victims of sexual violence confront not only the trauma of sexual violence but also the legal, economic, community, and other significant pressures arising from their immigrant status. *I**d.* They may be unfamiliar with the U.S. legal system, lack access to service providers, and face language barriers. They may hesitate to report their abuse for fear that seeking justice could lead to deportation. *I**d.* Perpetrators of sexual assault often target undocumented women because they can be isolated due to language and cultural barriers and are less likely to know their rights. *I**d.*

CRIME IN ARIZONA 2018

Rape

Definition

Rape is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Assaults or attempts to commit forcible rape are also included; however, statutory rape (without force) and other sex offenses are not counted in this category.

2018 Summary

* There were 3,201 rapes reported during 2018.
* Rape accounted for 1.65 percent of the total index offenses and 11.22 percent of violent

crimes.

* January recorded the highest number with 312, while December recorded the lowest with

210.

* Of the total rapes reported, rape accounted for 3,001 offenses and attempted rape

accounted for 200 offenses.

* The total value of property stolen amounted to $21,422.

Arrests/Clearances

* A total of 324 persons were arrested in 2018.
* Adults accounted for 259 arrests and juveniles accounted for 65 arrests.
* Of those persons arrested, 75.9 percent were White, 18.2 percent were Black, 5.6 percent

were American Indian/Alaskan Native, 0.3 percent were Asian, and 0.0 percent were Pacific

Islander.

* Hispanics accounted for 34.9 percent of the arrests.
* There were 561 clearances for rape reported in 2018. Juveniles represented 15.0 percent

of this total.



CRIME IN ARIZONA 2017

RAPE

DEFINITION

Rape is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Assaults or attempts to commit forcible rape are also included; however, statutory rape (without force) and other sex offenses are not counted in this category.

2017 SUMMARY

* There were 3,279 rapes reported during 2017.
* Rape accounted for 1.4 percent of the total index offenses and 10.7 percent of violent

crimes.

* November recorded the highest number with 332, while February recorded the lowest

with 226.

* Of the total rapes reported, rape accounted for 3,043 offenses and attempted rape

accounted for 236 offenses.

* The total value of property stolen amounted to $8,808.

ARRESTS / CLEARANCES

* + A total of 305 persons were arrested in 2017.
	+ Adults accounted for 253 arrests and juveniles accounted for 52 arrests.
	+ Of those persons arrested, 73.1 percent were White, 18.4 percent were Black, 6.9 percent

were American Indian/Alaskan Native, 1.6 percent were Asian and 0.0 percent were Pacific

Islander.

* + Hispanics accounted for 31.8 percent of the arrests.
	+ There were 490 clearances for rape reported in 2017. Juveniles represented 13.7 percent

of this total.

Crime in Arizona 2017



CRIME IN ARIZONA 2016

RAPE

DEFINITION

Rape is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Assaults or attempts to commit forcible rape are also included; however, statutory rape (without force) and other sex offenses are not counted in this category.

2015 SUMMARY

* •  There were 3,004 rapes reported during 2016.
* •  Rape accounted for 1.3 percent of the total index offenses and 10.8 percent of violent

crimes.

* •  August recorded the highest number with 299, while November recorded the lowest with

202.

* •  Of the total rapes reported, rape accounted for 2,770 offenses and attempted rape

accounted for 234 offenses.

* •  The total value of property stolen amounted to $11,940.

ARRESTS / CLEARANCES

* •  A total of 333 persons were arrested in 2016.
* •  Adults accounted for 277 arrests and juveniles accounted for 56 arrests.
* •  Of those persons arrested, 74.5 percent were White, 16.2 percent were Black, 7.5 percent

were American Indian/Alaskan Native, 1.5 percent were Asian and 0.3 percent were Pacific

Islander.

* •  Hispanics accounted for 30.0 percent of the arrests.
* •  There were 564 clearances for rape reported in 2016. Juveniles represented 16.7 percent

of this total.

CRIME IN ARIZONA 2015

RAPE

DEFINITION

Rape is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Assaults or attempts to commit forcible rape are also included; however, statutory rape (without force) and other sex offenses are not counted in this category.

2015 SUMMARY

* •  There were 2,731 rapes reported during 2015.
* •  Rape accounted for 1.2 percent of the total index offenses and 11.1 percent of violent

crimes.

* •  November recorded the highest number with 250, while December recorded the lowest

with 184.

* •  Of the total rapes reported, rape accounted for 2,509 offenses and attempted rape

accounted for 222 offenses.

* •  The total value of property stolen amounted to $41,640.

ARRESTS / CLEARANCES

* •  A total of 276 persons were arrested in 2015.
* •  Adults accounted for 227 arrests and juveniles accounted for 49 arrests.
* •  Of those persons arrested, 81.5 percent were White, 11.2 percent were Black, 6.5 percent

were American Indian/Alaskan Native, 0.3 percent were Asian and 0.3 percent were Pacific

Islander.

* •  Hispanics accounted for 33.6 percent of the arrests.
* •  There were 583 clearances for rape reported in 2015. Juveniles represented 15.9 percent

of this total.

Crime in Arizona 2015



CRIME IN ARIZNOA 2014

RAPE

Rape is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Assaults or attempts to commit forcible rape are also included; however, statutory rape (without force) and other sex offenses are not counted in this category.

SUMMARY

* ❖  There were 2,645 rapes reported during 2014.
* ❖  Rape accounted for 1.2 percent of the total Index offenses and 11.0 percent of violent

crimes.

* ❖  October recorded the highest number with 251, while February recorded the lowest with 147.
* ❖  Of the total rapes reported, rape accounted for 2,445 offenses and attempted rape accounted for 200 offenses.
* ❖  The total value of property stolen amounted to $19,300.

ARRESTS/CLEARANCES

* ❖  A total of 301 persons were arrested in 2014.
* ❖  Adults accounted for 256 arrests and juveniles accounted for 45 arrests.
* ❖  Of those persons arrested, 77.4 percent were White, 16.9 percent were Black, 4.3 percent were American Indian/Alaskan Native, 1.3 percent were Asian and 0.0 percent were Pacific Islander.
* ❖  Hispanics accounted for 32.2 percent of the arrests.
* ❖  There were 555 clearances for rape reported in 2014. Juveniles represented 17.1 percent of this total.