START\_STATUTE13-751.  Sentence of death or life imprisonment; aggravating and mitigating circumstances; definition

A.  If the state has filed a notice of intent to seek the death penalty and the defendant is:

1.  Convicted of first degree murder pursuant to section 13‑1105, subsection A, paragraph 1 or 3 and was at least eighteen years of age at the time of the commission of the offense, the defendant shall be sentenced to death or imprisonment in the custody of the state department of corrections for natural life as determined and in accordance with the procedures provided in section 13‑752.  A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis.

2.  Convicted of first degree murder pursuant to section 13‑1105 and was under eighteen years of age at the time of the commission of the offense, the defendant shall be sentenced to imprisonment in the custody of the state department of corrections for life or natural life, as determined and in accordance with the procedures provided in section 13‑752. A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis.  If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty‑five calendar years if the murdered person was fifteen or more years of age and thirty-five years if the murdered person was under fifteen years of age or was an unborn child.

3.  Convicted of first degree murder pursuant to section 13‑1105, subsection A, paragraph 2, the defendant shall be sentenced to death or imprisonment in the custody of the state department of corrections for life or natural life as determined and in accordance with the procedures provided in section 13‑752. A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis.  If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years if the murdered person was fifteen or more years of age and thirty-five years if the murdered person was under fifteen years of age or was an unborn child.

B.  At the aggravation phase of the sentencing proceeding that is held pursuant to section 13‑752, the admissibility of information relevant to any of the aggravating circumstances set forth in subsection F of this section shall be governed by the rules of evidence applicable to criminal trials.  The burden of establishing the existence of any of the aggravating circumstances set forth in subsection F of this section is on the prosecution.  The prosecution must prove the existence of the aggravating circumstances beyond a reasonable doubt.

C.  At the penalty phase of the sentencing proceeding that is held pursuant to section 13‑752, the prosecution or the defendant may present any information that is relevant to any of the mitigating circumstances included in subsection G of this section, regardless of its admissibility under the rules governing admission of evidence at criminal trials.  The burden of establishing the existence of the mitigating circumstances included in subsection G of this section is on the defendant. The defendant must prove the existence of the mitigating circumstances by a preponderance of the evidence. If the trier of fact is a jury, the jurors do not have to agree unanimously that a mitigating circumstance has been proven to exist. Each juror may consider any mitigating circumstance found by that juror in determining the appropriate penalty.

D.  Evidence that is admitted at the trial and that relates to any aggravating or mitigating circumstances shall be deemed admitted as evidence at a sentencing proceeding if the trier of fact considering that evidence is the same trier of fact that determined the defendant's guilt. The prosecution and the defendant shall be permitted to rebut any information received at the aggravation or penalty phase of the sentencing proceeding and shall be given fair opportunity to present argument as to whether the information is sufficient to establish the existence of any of the circumstances included in subsections F and G of this section.

E.  In determining whether to impose a sentence of death or life imprisonment, the trier of fact shall take into account the aggravating and mitigating circumstances that have been proven. The trier of fact shall impose a sentence of death if the trier of fact finds one or more of the aggravating circumstances enumerated in subsection F of this section and then determines that there are no mitigating circumstances sufficiently substantial to call for leniency.

F.  The trier of fact shall consider the following aggravating circumstances in determining whether to impose a sentence of death:

1.  The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.

2.  The defendant has been or was previously convicted of a serious offense, whether preparatory or completed.  Convictions for serious offenses committed on the same occasion as the homicide, or not committed on the same occasion but consolidated for trial with the homicide, shall be treated as a serious offense under this paragraph.

3.  The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value, or the defendant committed the offense as a result of payment, or a promise of payment, of anything of pecuniary value.

4.  The defendant committed the offense in an especially heinous, cruel or depraved manner.

5.  The defendant committed the offense while:

(a)  In the custody of or on authorized or unauthorized release from the state department of corrections, a law enforcement agency or a county or city jail.

(b)  On probation for a felony offense.

6.  The defendant has been convicted of one or more other homicides, as defined in section 13‑1101, that were committed during the commission of the offense.

7.  The defendant was an adult at the time the offense was committed or was tried as an adult and the murdered person was under fifteen years of age, was an unborn child in the womb at any stage of its development or was seventy years of age or older.

8.  The murdered person was an on duty peace officer who was killed in the course of performing the officer's official duties and the defendant knew, or should have known, that the murdered person was a peace officer.

9.  The defendant committed the offense with the intent to promote, further or assist the objectives of a criminal street gang or criminal syndicate or to join a criminal street gang or criminal syndicate.

10.  The defendant committed the offense to prevent a person's cooperation with an official law enforcement investigation, to prevent a person's testimony in a court proceeding, in retaliation for a person's cooperation with an official law enforcement investigation or in retaliation for a person's testimony in a court proceeding.

G.  The trier of fact shall consider as mitigating circumstances any factors proffered by the defendant or the state that are relevant in determining whether to impose a sentence less than death, including any aspect of the defendant's character, propensities or record and any of the circumstances of the offense, including but not limited to the following:

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

2.  The defendant was under unusual and substantial duress, although not such as to constitute a defense to prosecution.

3.  The defendant was legally accountable for the conduct of another under section 13‑303, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution.

4.  The defendant could not reasonably have foreseen that his conduct in the course of the commission of the offense for which the defendant was convicted would cause, or would create a grave risk of causing, death to another person.

5.  The defendant's age.

H.  For the purposes of determining whether a conviction of any dangerous crime against children is a serious offense pursuant to this section, an unborn child shall be treated like a minor who is under twelve years of age.

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

J.  For the purposes of this section, "serious offense" means any of the following offenses if committed in this state or any offense committed outside this state that if committed in this state would constitute one of the following offenses:

1.  First degree murder.

2.  Second degree murder.

3.  Manslaughter.

4.  Aggravated assault resulting in serious physical injury or committed by the use, threatened use or exhibition of a deadly weapon or dangerous instrument.

5.  Sexual assault.

6.  Any dangerous crime against children.

7.  Arson of an occupied structure.

8.  Robbery.

9.  Burglary in the first degree.

10.  Kidnapping.

11.  Sexual conduct with a minor under fifteen years of age.

12.  Burglary in the second degree.

13.  Terrorism. END\_STATUTE